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

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

Agency Contact Information

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; technical corrections.

SUMMARY: The Consumer Financial Protection Bureau (Bureau or CFPB) is issuing this final rule to make non-substantive corrections and updates to Bureau and other Federal agency contact information found at certain locations in Regulations B, E, F, J, V, X, Z, and DD, including Federal agency contact information that must be provided with Equal Credit Opportunity Act adverse action notices and the Fair Credit Reporting Act Summary of Consumer Rights. This final rule also revises the chapter heading, makes various non-substantive changes to Regulations B and V, and provides a Bureau website address where the public may access certain APR tables referenced in Regulation Z.

DATES: The rule is effective April 19, 2023. However, the mandatory compliance date for the amendments to appendix A to Regulation B, appendix A to Regulation J, and appendix K to Regulation V is March 20, 2024. See part V for more information.

FOR FURTHER INFORMATION CONTACT: Luke Diamond, Counsel; Ruth Van Veldhuizen, Senior Counsel, Office of Regulations, at 202–435–7700 or *https://reginquiries.consumerfinance.gov/*. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION:

I. Summary of Final Rule

The Bureau is making non-substantive corrections and updates to Federal agency contact information located in several regulations. This includes correcting the zip code in the Bureau's mailing address found at certain locations in Regulations B, E, J, Z, and DD; replacing the name of a former Bureau division specified at certain locations in Regulations B, E, F, X, and Z with the name of a new, expanded Bureau division or updating references to officials of the former division to instead refer more generally to Bureau officials; and updating other Federal agency contact information in appendix A to Regulation B, which must be included in Equal Credit Opportunity Act (ECOA) adverse action notices, and appendix K to Regulation V, which contains the model form of the Fair Credit Reporting Act (FCRA) Summary of Consumer Rights. The Bureau is also changing the header of 12 CFR chapter X from ''Bureau of Consumer Financial Protection'' to ''Consumer Financial Protection Bureau,'' and making various non-substantive corrections in Regulations B and V. Finally, the Bureau is updating the comment for appendix J to Regulation Z in the Official Interpretations of Regulation Z to add a URL (website address) at which the public may access a new Bureau website that contains certain APR tables. Previously, the public could only request the tables from the Bureau at its postal mailing address.

In Regulation B, implementing ECOA, the Bureau is amending appendix A, which contains Federal agency contact information that creditors must include in ECOA adverse action notices.[1] The Bureau is correcting the contact information in appendix A for the following agencies: the Bureau; the Office of the Comptroller of the Currency (OCC); the Federal Deposit Insurance Corporation (FDIC); the National Credit Union Administration (NCUA); the Department of Transportation (DOT); the Surface Transportation Board (STB); the United States Department of Agriculture, Agricultural Marketing Service (USDA–AMS); the United States Small Business Administration (SBA); the Securities and Exchange Commission (SEC); and the Federal Trade Commission (FTC). The Bureau is also correcting its own contact information in appendix D, which sets forth the process by which entities may request official Bureau interpretations of Regulation B, and removing an obsolete sentence located in section 1002.9(b)(1).

In Regulation E, implementing the Electronic Fund Transfer Act (EFTA), the Bureau is correcting and updating its own contact information in appendix C, which sets forth the process by which entities may request official Bureau interpretations of Regulation E. Appendix C to Regulation E currently designates the ''Associate Director and other officials of the Division of Research, Markets, and Regulations'' as the officials authorized under the Act to issue official interpretations. Because the Division of Research, Markets, and Regulations no longer exists, the Bureau is updating this language to reflect that fact, and instead indicate more generally that ''duly authorized officials of the Bureau'' may provide official interpretations of Regulation E.

In Regulation F, implementing the Fair Debt Collection Practices Act (FDCPA), the Bureau is correcting its own contact information in appendix A, which sets forth the process by which States may apply to the Bureau to exempt a class of debt collection practices from the requirements of the FDCPA and Regulation F, and in the introduction section of Supplement I, which sets forth the process by which entities can request official interpretations of Regulation F.

In Regulation J, implementing the Interstate Land Sales Full Disclosure Act (ILSA), the Bureau is correcting its own contact information in appendix A, which contains model forms and clauses that land developers must provide to prospective land buyers under certain circumstances.

In Regulation V, implementing the FCRA, the Bureau is amending the model form in appendix K for the Summary of Consumer Rights. Consumer reporting agencies must provide a Summary of Consumer Rights when making a written disclosure of information from a consumer's file or providing a credit score to a consumer, and the FCRA also requires certain other persons to provide a Summary of Consumer Rights to consumers under specified circumstances. The Bureau is correcting the contact information in the Summary of Consumer Rights model

[1] In appendix A to Regulation B and appendix K to Regulation V, the contact information for some agencies includes a specific office (such as the OCC's Customer Assistance Group and the USDA–AMS's Packers and Stockyards Division). References to agencies in this notice mean the specific office of that agency if an office is designated in the relevant appendix.

form for the following agencies: the OCC, FDIC, NCUA, DOT, STB, USDA–AMS, and SBA. The Bureau is also amending the Summary of Consumer Rights model form to update references to obsolete business types and to make other technical corrections.

In Regulation X, implementing the Real Estate Settlement Procedures Act (RESPA), the Bureau is correcting its own contact information in the definition of ''Public Guidance Documents'' in section 1024.2(b), which contains the procedure by which entities can request copies of public guidance documents from the Bureau, and in the introduction section of Supplement I, which sets forth the process by which entities can request official interpretations of Regulation X.

In Regulation Z, implementing the Truth in Lending Act (TILA), the Bureau is correcting its own contact information in appendices A, B, and C. Appendix A sets forth the process by which States may request a determination from the Bureau regarding whether a State law is inconsistent with or substantially the same as TILA and Regulation Z. Appendix B sets forth the process by which States may apply to the Bureau to exempt a class of transactions from the requirements of TILA and Regulation Z. Appendix C sets forth the process by which entities may request official Bureau interpretations of Regulation Z. The Bureau is also correcting its own contact information in the comment for appendix J, located in the Official Interpretations in Supplement I. Appendix J sets forth the actuarial equations and instructions for calculating the annual percentage rate in closed-end credit transactions. The Bureau maintains Annual Percentage Rate Tables to assist in performance of these calculations, and the comment for appendix J in the Official Interpretations describes a process that entities may use to request these tables from the Bureau. In addition to correcting the Bureau's zip code in its postal address provided there, the Bureau now makes the tables available to the public on its website and is updating the comment to appendix J in the Official Interpretations to add a URL at which the public may access the website.

In Regulation DD, implementing the Truth in Savings Act (TISA), the Bureau is correcting its own contact information in appendix C, which sets forth the process by which States may request a determination from the Bureau regarding whether a State law is inconsistent with TISA and Regulation DD.

II. Background

As of July 21, 2011, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[2] transferred rulemaking authority for several consumer financial protection laws from seven Federal agencies to the Bureau. In the process of republishing the regulations implementing those laws, an incorrect zip code (20006) was mistakenly included as part of postal address contact information for the Bureau. The error appears in a limited number of locations in appendices and supplements to Regulations B, E, J, Z, and DD, including in certain forms: the list of Federal agencies' contact information in appendix A to Regulation B, which must be included in adverse action notices under ECOA; and the Sample Receipt, Agent Certification and Cancellation Page, in appendix A to Regulation J, which must be delivered to prospective lot purchasers under ILSA. The correct postal address for the Bureau is: 1700 G Street NW, Washington, DC 20552.

In addition, the Bureau recently completed an organizational realignment in which its Division of Research, Markets, and Regulations and portions of an office from another division were combined to create a new expanded division called Research, Monitoring, and Regulations. The Research, Markets, and Regulations' name appears in a limited number of locations in Regulations B, E, F, X, and Z, and needs to be updated.

Finally, the Bureau has been in contact with other Federal agencies referenced in the Bureau's regulations to determine whether their contact information requires updating. Eight Federal agencies requested that the Bureau correct their contact information for the ECOA adverse action notices in appendix A to Regulation B, described above, and six Federal agencies requested that the Bureau correct their contact information in the model form of the Summary of Consumer Rights in appendix K to Regulation V. One Federal agency also requested that the Bureau update references to obsolete business types in the Summary of Consumer Rights. Updated contact information and other changes to these two appendices are described in more detail in the section-by-section analysis in part IV, below.

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, tit. X, 124 Stat. 1376, 1955 (2010).

III. Legal Authority

Rulemaking Authority

The Bureau is issuing this final rule pursuant to its authority under ECOA, EFTA, FDCPA, ILSA, FCRA, RESPA, TILA, TISA, and the Dodd-Frank Act. Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe ''rules . . . as may be necessary or appropriate to . . . carry out the purposes and objectives of the Federal consumer financial laws, and prevent evasions thereof.'' ECOA, EFTA, FDCPA, ILSA, FCRA, RESPA, TILA, and TISA are all Federal consumer financial laws,[3] and each statute additionally independently authorizes the Bureau to promulgate regulations.[4] Accordingly, the Bureau has authority to issue regulations pursuant to ECOA, EFTA, FDCPA, ILSA, FCRA, RESPA, TILA, TISA, and the Dodd-Frank Act.

Procedural Requirements

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Bureau finds for good cause that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[5] The changes made in this rulemaking correct incorrect mailing addresses for the Bureau and other government agencies, correct typographical errors, or are similar technical amendments that do not alter the substance of the regulations. The Bureau believes there is minimal, if any, basis for substantive disagreement with these amendments. As to all of these changes, the Bureau finds that notice and public comment are unnecessary.

For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing

[3] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws''); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining ''enumerated consumer laws'' to include ECOA; EFTA, except with respect to section 920 of that Act; FDCPA; ILSA; FCRA, except with respect to sections 615(e) and 628 of that Act; RESPA; TILA; and TISA).

[4] Regulation B, 12 CFR part 1002, implements ECOA, 15 U.S.C. 1691 *et seq.* pursuant to 15 U.S.C. 1691b. Regulation E, 12 CFR part 1005, implements EFTA, 15 U.S.C. 1693 *et seq.* pursuant to 15 U.S.C. 1693b. Regulation F, 12 CFR part 1006, implements the FDCPA, 15 U.S.C. 1692 *et seq.* pursuant to 15 U.S.C. 1692l(d). Regulation J, 12 CFR part 1010, implements ILSA, 15 U.S.C. 1701 *et seq.* pursuant to 15 U.S.C. 1718. Regulation V, 12 CFR part 1022, implements the FCRA, 15 U.S.C. 1681 *et seq.* pursuant to 15 U.S.C. 1681s(e). Regulation X, 12 CFR part 1024, implements RESPA, 12 U.S.C. 2601 *et seq.* pursuant to 12 U.S.C. 2716(a). Regulation Z, 12 CFR part 1026, implements TILA, 15 U.S.C. 1601 *et seq.* pursuant to 15 U.S.C. 1604(a). Regulation DD, 12 CFR part 1030, implements 12 U.S.C. 4301 *et seq.* pursuant to 12 U.S.C. 4308.

[5] 5 U.S.C. 553(b).

opportunity for public comment are not required. Therefore, the amendments are adopted in final form.

IV. Section-by-Section Analysis

A. Regulation B

Section 1002.9 Notifications

9(b)

9(b)(1)

Section 1002.9(b)(1) provides model language that satisfies certain disclosure requirements of 12 CFR 1002.9(a)(2) relating to adverse action notices. These notices must include Federal agency contact information located in appendix A to Regulation B. The final sentence of § 1002.9(b)(1) permitted creditors to include Federal agency contact information as it appeared in an old version of appendix A until January 1, 2013. As that permission has now expired, the sentence is obsolete, and the Bureau is amending § 1002.9(b)(1) to remove it.

Appendix A to Part 1002—Federal Agencies To Be Listed in Adverse Action Notices

Appendix A to part 1002 provides a list of contact information for Federal agencies that creditors must include in adverse action notices pursuant to 12 CFR 1002.9(b)(1). To update Federal agencies' contact information and for the reasons discussed in part II, the Bureau is revising appendix A to part 1002.

1

The Bureau is amending paragraph 1 to correct postal address contact information for the Bureau and the FTC. The zip code will be corrected in contact information for the Bureau and contact information for the FTC will be changed from ''FTC Regional Office for region in which the creditor operates or Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580'' to ''Federal Trade Commission, Consumer Response Center, 600 Pennsylvania Avenue NW, Washington, DC 20580.''

2

2(a)

The Bureau is amending paragraph 2(a) to correct postal address contact information for the OCC. The contact information will be changed from ''Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, TX 77010–9050'' to ''Office of the Comptroller of the Currency, Customer Assistance Group, P.O. Box 53570, Houston, TX 77052.''

2(c)

The Bureau is amending paragraph 2(c) to correct postal address contact information for the FDIC. The contact information will be changed from ''FDIC Consumer Response Center, 1100 Walnut Street, Box #11, Kansas City, MO 64106'' to ''Division of Depositor and Consumer Protection, National Center for Consumer and Depositor Assistance, Federal Deposit Insurance Corporation, 1100 Walnut Street, Box #11, Kansas City, MO 64106.''

2(d)

The Bureau is amending paragraph 2(d) to correct postal address contact information for the NCUA. The contact information will be changed from ''National Credit Union Administration, Office of Consumer Protection, 1775 Duke Street, Alexandria, VA 22314'' to ''National Credit Union Administration, Office of Consumer Financial Protection, 1775 Duke Street, Alexandria, VA 22314.''

3

The Bureau is amending paragraph 3 to correct postal address contact information for the DOT. The contact information will be changed from ''Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street SW, Washington, DC 20590'' to ''Assistant General Counsel for Office of Aviation Consumer Protection, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.''

4

The Bureau is amending paragraph 4 to correct postal address contact information for the STB. The contact information will be changed from ''Office of Proceedings, Surface Transportation Board, Department of Transportation, 1925 K Street NW, Washington, DC 20423'' to ''Office of Public Assistance, Governmental Affairs, and Compliance, Surface Transportation Board, 395 E Street SW, Washington, DC 20423.''

5

The Bureau is amending paragraph 5 to correct contact information for the USDA–AMS. The contact information will be changed from ''Nearest Packers and Stockyards Administration area supervisor'' to ''Nearest Packers and Stockyards Division Regional Office.''

6

The Bureau is amending paragraph 6 to correct postal office contact information for the SBA. The contact information will be changed from ''Associate Deputy Administrator for Capital Access, United States Small Business Administration, 409 Third Street SW, 8th Floor, Washington, DC 20416'' to ''Associate Administrator, Office of Capital Access, United States Small Business Administration, 409 Third Street SW, Suite 8200, Washington, DC 20416.''

7

The Bureau is amending paragraph 7 to correct postal address contact information for the SEC. The contact information will be changed from ''Securities and Exchange Commission, Washington, DC 20549'' to ''Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.''

9

The Bureau is amending paragraph 9 to correct postal address contact information for the FTC. The contact information will be changed from ''FTC Regional Office for region in which the creditor operates or Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580'' to ''Federal Trade Commission, Consumer Response Center, 600 Pennsylvania Avenue NW, Washington, DC 20580.''

Appendix D to Part 1002—Issuance of Official Interpretations

2

Appendix D to part 1002 sets forth the process by which entities may request official Bureau interpretations of Regulation B that provide protections afforded under section 706(e) of ECOA. For reasons discussed in part II, the Bureau is amending paragraph 2 in appendix D to part 1002 to correct the zip code in postal address contact information for the Bureau and to replace the reference to the Division of Research, Markets, and Regulations with a reference to the new, expanded Division of Research, Monitoring, and Regulations.

B. Regulation E

Appendix C to Part 1005—Issuance of Official Interpretations

Requests for Issuance of Official Interpretations

Appendix C to part 1005 sets forth the process by which entities may request official Bureau interpretations of Regulation E that provide protections afforded under section 916(d) of EFTA. For the reasons discussed in part II, the Bureau is amending appendix C to part 1005 to correct the zip code in postal address contact information for the Bureau and to update the language

referring to officials of the former Research, Markets, and Regulations Division to instead indicate more generally that duly authorized officials of the Bureau may provide official interpretations of Regulation E.

C. Regulation F

Appendix A to Part 1006—Procedures for State Application for Exemption From the Provisions of the Act

II. Application

Appendix A to part 1006 sets forth the process by which states may apply to the Bureau to exempt a class of debt collection practices within the applying State from the requirements of the FDCPA and Regulation F pursuant to section 817 of the FDCPA. For the reasons discussed in part II, the Bureau is amending appendix A to replace the reference to the Division of Research, Markets, and Regulations with a reference to the new, expanded Division of Research, Monitoring, and Regulations.

Supplement I to Part 1006—Official Interpretations

Introduction

The introduction of Supplement I to part 1006 explains the purpose of the supplement and describes the procedure by which anyone may request an official interpretation of Regulation F. For the reasons discussed in part II, the Bureau is amending the introduction to Supplement I to replace the reference to the Division of Research, Markets, and Regulations with a reference to the new, expanded Division of Research, Monitoring, and Regulations. The Bureau is also changing the addressee to contact for official interpretations of Regulation F from Associate Director, Division of Research, Markets, and Regulations to Assistant Director, Office of Regulations, Division of Research, Monitoring, and Regulations, to maintain consistency with other Bureau regulations that reference the Assistant Director, Office of Regulations as the addressee for official interpretations.

D. Regulation J

Appendix A to Part 1010—Standard and Model Forms and Clauses

Section XXVII, Receipt, Agent Certification and Cancellation Page—§ 1010.188(a)

Appendix A to part 1010 provides Standard and Model Forms and Clauses required under Regulation J, which implements ILSA. Section 1404(a)(1)(B) of ILSA prohibits the sale or lease of certain unexempted lots unless the purchaser is provided with a copy of a property report that contains certain representations about the lots and other information required under the Bureau's rules. Section 1010.118 of Regulation J requires that a receipt, agency certification, and cancellation page, formatted in accordance with section XXVII of appendix A, be attached to the property report. Included on this page is a notice that the buyer should notify the Bureau if the seller makes any representations contrary to those in the property report. For the reasons discussed in part II, the Bureau is amending section XXVII of appendix A to part 1010 to correct the zip code in postal address contact information for the Bureau.

E. Regulation V

Appendix K to Part 1022—Summary of Consumer Rights

Appendix K to part 1022 provides the model form for the Summary of Consumer Rights, which explains certain major consumer rights under the FCRA. A consumer reporting agency must provide a Summary of Consumer Rights whenever it makes a written disclosure of information from a consumer's file or provides a credit score to the consumer.[6] The FCRA also requires certain other persons to provide a Summary of Consumer Rights to consumers under specified circumstances.[7] To update Federal agencies' contact information and for the reasons discussed in part II, the Bureau is amending appendix K to part 1022 to correct contact information provided for the OCC, FDIC, NCUA, DOT, STB, USDA–AMS, and SBA.

Contact information for the OCC will be changed from ''Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, TX 77010–9050'' to ''Office of the Comptroller of the Currency, Customer Assistance Group, P.O. Box 53570, Houston, TX 77052.''

Contact information for the FDIC will be changed from ''FDIC Consumer Response Center, 1100 Walnut Street, Box #11, Kansas City, MO 64106'' to ''Division of Depositor and Consumer Protection, National Center for Consumer and Depositor Assistance, Federal Deposit Insurance Corporation, 1100 Walnut Street, Box #11, Kansas City, MO 64106.''

Contact information for the NCUA will be changed from ''National Credit Union Administration, Office of Consumer Financial Protection (OCFP), Division of Consumer Compliance Policy and Outreach, 1775 Duke Street, Alexandria, VA 22314'' to ''National Credit Union Administration, Office of Consumer Financial Protection, 1775 Duke Street, Alexandria, VA 22314.''

Contact information for the DOT will be changed from ''Asst. General Counsel for Aviation Enforcement & Proceedings, Aviation Consumer Protection Division, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590'' to ''Assistant General Counsel for Office of Aviation Consumer Protection, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.''

Contact information for the STB will be changed from ''Office of Proceedings, Surface Transportation Board, Department of Transportation, 395 E Street SW, Washington, DC 20423'' to ''Office of Public Assistance, Governmental Affairs, and Compliance, Surface Transportation Board, 395 E Street SW, Washington, DC 20423.''

Contact information for the USDA–AMS will be changed from ''Nearest Packers and Stockyards Administration area supervisor'' to ''Nearest Packers and Stockyards Division Regional Office.''

Contact information for the SBA will be changed from ''Associate Deputy Administrator for Capital Access, United States Small Business Administration, 409 Third Street SW, Suite 8200, Washington, DC 20416'' to ''Associate Administrator, Office of Capital Access, United States Small Business Association, 409 Third Street SW, Suite 8200, Washington, DC 20416.''

The Bureau is also amending the eighth row on page four of the model form in appendix K. This entry indicates that the FCA is a point of contact for information regarding certain Farm Credit System institutions. The FCA has requested that the Bureau update the language in appendix K because certain of the listed institutions, such as Federal land banks, no longer exist. Based on the FCA's request, the

[6] 15 U.S.C. 1681g(c)(2)(A) (requirement to provide a Summary of Consumer Rights with any written file disclosure). A consumer reporting agency must also provide an employer with a Summary of Consumer Rights before furnishing a consumer report for employment purposes. 15 U.S.C. 1681b(b)(1)(B) (requirement to provide a Summary of Consumer Rights with a report for employment purposes if the Summary of Consumer Rights has not been provided previously).

[7] *See, e.g.,* 15 U.S.C. 1681b(b)(3) (generally requiring persons using a consumer report for employment purposes to provide the consumer with a Summary of Consumer Rights before taking any adverse action based on the report). The Bureau must also actively publicize the availability of the Summary of Consumer Rights, conspicuously post its availability on the Bureau's internet website, and promptly make it available to consumers, on request. 15 U.S.C. 1681g(c)(1)(C).

Bureau is therefore changing the ''TYPE OF BUSINESS'' entry on the eighth row of page four from ''Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations'' to ''Institutions that are members of the Farm Credit System.''[8]

The Bureau is also making technical corrections to the text of the model form. The Bureau is correcting a misspelling of the word ''from'' on page two. The corrected text reads in relevant part: ''Unsolicited 'prescreened' offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on.'' The Bureau is also correcting the punctuation of agencies' contact information to maintain consistent punctuation usage throughout the model form. For example, ''100 F Street, N.E.'' will be changed to ''100 F Street NE.''

F. Regulation X

Section 1024.2 Definitions

2(b)

Public Guidance Documents

Section 1024.2(b) contains definitions for terms used in Regulation X. Accordingly, the definition of ''Public Guidance Documents'' in section 1024.2(b) sets forth the definition of that term, as it is used in Regulation X. In addition, it provides a Bureau mailing address by which anyone may request copies of public guidance documents from the Bureau. The Bureau is amending the definition of ''Public Guidance Documents'' to replace the reference to the Division of Research, Markets, and Regulations with a reference to the new, expanded Division of Research, Monitoring, and Regulations. The Bureau is also changing the addressee to contact for copies of public guidance documents from Associate Director, Division of Research, Markets, and Regulations to Assistant Director, Office of Regulations, Division of Research, Monitoring, and Regulations, to maintain consistency with other Bureau regulations that reference Assistant Director, Office of Regulations as the addressee.

Supplement I to Part 1024—Official Interpretations

Introduction

The introduction of Supplement I to part 1024 explains the purpose of the supplement and describes the procedure by which anyone may request an official interpretation of Regulation X. For the reasons discussed in part II, the Bureau is amending the introduction to Supplement I to replace the reference to the Division of Research, Markets, and Regulations with a reference to the new, expanded Division of Research, Monitoring, and Regulations. The Bureau is also changing the addressee to contact for official interpretations of Regulation X from Associate Director, Division of Research, Markets, and Regulations to Assistant Director, Office of Regulations, Division of Research, Monitoring, and Regulations, to maintain consistency with other Bureau regulations that reference the Assistant Director, Office of Regulations as the addressee for official interpretations.

G. Regulation Z

Appendix A to Part 1026—Effect of State Laws

Request for Determination

Appendix A to part 1026 sets forth the process by which states may request a determination from the Bureau regarding whether a State law is inconsistent with or substantially the same as TILA and Regulation Z pursuant to section 111(a) of TILA. For the reasons discussed in part II, the Bureau is amending appendix A to part 1026 to correct the zip code in postal address contact information for the Bureau.

Appendix B to Part 1026—State Exemptions

Application

Appendix B to part 1026 sets forth the process by which states may apply to the Bureau to exempt a class of transactions from the requirements of TILA and Regulation Z pursuant to sections 123 and 173(b) of TILA. For the reasons discussed in part II, the Bureau is amending appendix B to part 1026 to correct the zip code in postal address contact information for the Bureau.

Appendix C to Part 1026—Issuance of Official Interpretations

Requests for Issuance of Official Interpretations

Appendix C to part 1026 sets forth the process by which entities may request official Bureau interpretations of Regulation Z that provide protections afforded under section 130(f) of TILA. For the reasons discussed in part II, the Bureau is amending appendix C to part 1026 to correct the zip code in postal address contact information for the Bureau and to replace the reference to the Division of Research, Markets, and Regulations with a reference to the new, expanded Division of Research, Monitoring, and Regulations.

Appendix J—Annual Percentage Rate Computations for Closed-End Credit Transactions

Appendix J to part 1026 sets forth the actuarial equations and instructions for calculating the annual percentage rate in closed-end credit transactions. The Official Interpretation of appendix J refers to tables that creditors may use to perform the calculations. It explains that entities may request these tables from the Bureau and provides the Bureau's postal address. For the reasons discussed in part II, the Bureau is amending comment appendix J–2 in the Official Interpretation of appendix J, located in Supplement I, to correct the zip code in postal address contact information for the Bureau. In addition, the Bureau has recently made the tables available to the public on the Bureau's website. The Bureau is amending comment appendix J–2 to provide a URL at which the public may access that website.[9]

H. Regulation DD

Appendix C to Part 1030—Effect on State Laws

(b) Preemption Determinations

Appendix C to part 1030 sets forth the process by which States may request a determination from the Bureau regarding whether a State law is inconsistent with TISA and Regulation DD pursuant to section 273 of TISA. For the reasons discussed in part II, the Bureau is amending paragraph (b) in appendix C to part 1030 to correct the zip code in postal address contact information for the Bureau.

[8] At this time, the Bureau is not making a similar change to the language in appendix A to Regulation B because appendix A to Regulation B tracks specific language in ECOA regarding the Farm Credit Administration's enforcement authority. *See* 15 U.S.C. 1691c(a)(6).

[9] The URL is: *https://www.consumerfinance.gov/compliance/compliance-resources/other-applicable-requirements/annual-percentage-rate-tables/.*

I. Heading of 12 CFR Chapter X

Finally, the Bureau is updating the heading of the Bureau's chapter in the Code of Federal Regulations, 12 CFR chapter X, from ''Bureau of Consumer Financial Protection'' to ''Consumer Financial Protection Bureau.'' Using the generally recognized version of the Bureau's name will reduce the risk of public confusion.[10] This change to a heading within the Code of Federal Regulations will not impose any costs on the public.

V. Effective Date

Consistent with the requirements of the Administrative Procedure Act, the amendments made by this final rule will take effect 30 days after publication in the **Federal Register**. However, to provide affected entities with adequate time to implement changes to the forms referenced in appendix A to Regulation B (ECOA adverse action notices), appendix A to Regulation J (Receipt, Agent Certification and Cancellation Page), and appendix K to Regulation V (Summary of Consumer Rights), the Bureau is allowing optional compliance with those changes until March 20, 2024. The Bureau anticipates this phase-in period will allow affected companies to make any needed modifications to the systems used to produce the forms as a part of regular updates made to those systems. Nevertheless, the Bureau encourages entities to correct their forms at the earliest feasible date to ensure consumers have accurate contact information for the relevant Federal agencies.

VI. Dodd-Frank Act Section 1022(b) Analysis

A. Overview

In developing this final rule, the Bureau has considered the rule's potential benefits, costs, and impacts, and has consulted or offered to consult with appropriate prudential banking regulators and other Federal agencies, including regarding the consistency of this rule with prudential, market, or systemic objectives administered by those agencies.[11]

The purpose of this rule is to make non-substantive corrections and updates to Bureau and other Federal agency contact information found at certain locations in Regulations B, E, F, J, V, X, Z, and DD, including Federal agency contact information that must be provided with Equal Credit Opportunity Act adverse action notices and the Fair Credit Reporting Act Summary of Consumer Rights. This final rule also revises the header of 12 CFR chapter X, makes various non-substantive changes to Regulations B and V, and provides a Bureau website address where the public may access certain APR tables referenced in Regulation Z.

1. Description of the Baseline

The Bureau considered the benefits, costs, and impacts of this rule against a baseline in which the Bureau takes no action. In the baseline, mail addressed to the Bureau using incorrect contact information could be delayed because it may require manual handling. In addition, mail addressed using incorrect contact information specified in various Bureau regulations to other agencies, such as the OCC, may be delayed or sent back to the sender, and information concerning certain APR tables provided by the Bureau in the Official Interpretations of Regulation Z may take significantly longer to reach the public by mail than by accessing a website provided in the rule.

2. Benefits to Consumers and Covered Persons

Covered persons and consumers may benefit from the rule by preventing situations where mail to the Bureau, the OCC, or other Federal agencies is delayed or returned to the sender because of incorrect contact information as currently listed in the Bureau's regulations. The Bureau does not have data available to predict the number of such potentially misdirected communications that would be prevented, or the costs involved in handling such communications. As such, the Bureau cannot quantify the potential magnitude of these benefits.

In addition, the Bureau expects that the rule would benefit consumers by potentially preventing delays they may currently experience in receiving a response to communications they address to the Bureau, the OCC, or other Federal agencies, to the extent these delays are attributable to incorrect contact information for these agencies as currently listed in certain of the Bureau's regulations. The Bureau does not have data available to predict the magnitude of such delays consumers may experience, or the number of such communications.

The Bureau further expects that consumers and covered persons seeking to access APR information in connection with Regulation Z may be able to access it more efficiently through the URL provided in this rule than by requesting it by mail. The Bureau does not have data available to predict the magnitude of the benefits provided to consumers and covered persons as a result of making this information available through a Bureau website.

Accordingly, the Bureau cannot quantify the potential magnitude of the benefits to consumers and covered persons from the rule.

3. Costs to Covered Persons and Consumers

Covered persons may incur some costs in updating the forms and materials affected by the rule. The rule makes only technical, non-substantive changes to the existing text of certain forms and materials, and as noted in section V, the Bureau is providing covered persons with a period of one year in which to effectuate any necessary changes to the forms. The Bureau believes that this phase-in period will minimize entity costs related to the disposal of existing materials and allow entities the flexibility to make required changes as part of regular updates to their forms. The Bureau therefore believes that costs associated with the form changes required by this rule will likely be negligible.

The Bureau does not anticipate that the rule will result in costs to consumers.

B. Potential Impact on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

The Bureau has no reason to believe that this final rule would have a unique impact on depository institutions and credit unions with $10 billion or less in total assets.

[10] Congress has used both versions of the agency's name in statutes, and the difference has no legal significance. *Compare, e.g.,* 12 U.S.C. 5491(a) *with* 5 U.S.C. 609(d), 12 U.S.C. 1812(a)(1), (d)(2), 3303(a), 10 U.S.C. 1144 note. The Bureau, the Federal courts, and the public overwhelmingly use ''Consumer Financial Protection Bureau.'' Using the less common ''Bureau of Consumer Financial Protection'' risks confusion when some members of the public search for the Bureau's regulations.

[11] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act requires the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. Section 1022(b)(2)(B) of the Dodd-Frank Act directs the Bureau to consult with appropriate prudential regulators or other Federal agencies regarding consistency with prudential, market, or systemic objectives that those agencies administer. The manner and extent to which these provisions apply to a rulemaking of this kind that does not establish standards of conduct is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the described analyses and has consulted, or offered to consult, as indicated.

C. Potential Impact on Consumers in Rural Areas and on Access by Consumers to Consumer Financial Products or Services

The Bureau has no reason to believe that the final rule would have a unique impact on consumers in rural areas. Because the rule makes only technical, non-substantive changes to the existing text of several regulations, the Bureau believes that the rule would not materially affect access by consumers to consumer financial products or services.

VII. Regulatory Flexibility Act Analysis

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[12]

VIII. Paperwork Reduction Act

The Bureau has determined that this final rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be new or revised collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.[13] The OMB Control Numbers associated with the collections of information contained in these regulations are:

- Regulation B—3170–0013
- Regulation E—3170–0014
- Regulation F—3170–0056
- Regulation J—3170–0012
- Regulation V—3170–0002
- Regulation X—3170–0015
- Regulation Z—3170–0015
- Regulation DD—3170–0004

IX. Congressional Review Act

Pursuant to the Congressional Review Act,[14] the Bureau will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

12 CFR Part 1002

Aged, Banks, Banking, Civil rights, Consumer protection, Credit, Credit unions, Discrimination, Fair lending, Marital status discrimination, National banks, National origin discrimination, Penalties, Race discrimination, Religious discrimination, Reporting and recordkeeping requirements, Savings associations, Sex discrimination.

12 CFR Part 1005

Automated teller machines, Banks, Banking, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittances, Reporting and recordkeeping requirements, Savings Associations.

12 CFR Part 1006

Administrative practice and procedure, Consumer protection, Credit, Intergovernmental relations.

12 CFR Part 1010

Land registration; Reporting requirements; Certification of substantially equivalent state law; Purchasers' revocation rights; Unlawful sales practices; Advertising disclaimers; Filing assistance; and Adjudicatory proceedings.

12 CFR Part 1022

Banks, Banking, Consumer protection, Credit unions, Fair Credit Reporting Act, Holding companies, National banks, Privacy, Reporting and recordkeeping requirements, Savings associations, State member banks.

12 CFR Part 1024

Condominiums, Consumer protection, Housing, Insurance, Mortgages, Mortgagees, Mortgage servicing, Reporting and recordkeeping requirements.

12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

12 CFR Part 1030

Advertising, Banking, Banks, Consumer protection, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in savings.

Authority and Issuance

For the reasons set forth above, the Bureau amends 12 CFR chapter X, as set forth below:

Chapter X—Consumer Financial Protection Bureau

■ 1. Under the authority of 12 U.S.C. 5512(b)(1), revise the heading for chapter X to read as set forth above.

PART 1002—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

■ 2. The authority citation for part 1002 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1691b.

§ 1002.9 [Amended]

■ 3. Section 1002.9 is amended by removing the last sentence of paragraph (b)(1).

■ 4. Revise appendix A to read as follows:

Appendix A to Part 1002—Federal Agencies To Be Listed in Adverse Action Notices

The following list indicates the Federal agency or agencies that should be listed in notices provided by creditors pursuant to § 1002.9(b)(1). Any questions concerning a particular creditor may be directed to such agencies. This list is not intended to describe agencies' enforcement authority for ECOA and Regulation B. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

1. *Banks, savings associations, and credit unions with total assets of over $10 billion and their affiliates:* Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the Bureau: Federal Trade Commission, Consumer Response Center, 600 Pennsylvania Avenue NW, Washington, DC 20580.

2. To the extent not included in item 1 above:

a. *National Banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks:* Office of the Comptroller of the Currency, Customer Assistance Group, P.O. Box 53570, Houston, TX 77052.

b. *State member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act:* Federal Reserve Consumer Help Center, P.O. Box 1200, Minneapolis, MN 55480.

c. *Nonmember Insured Banks, Insured State Branches of Foreign Banks, and Insured State Savings Associations:* Division of Depositor and Consumer Protection, National Center for Consumer and Depositor Assistance, Federal Deposit Insurance Corporation, 1100 Walnut Street, Box #11, Kansas City, MO 64106.

d. *Federal Credit Unions:* National Credit Union Administration, Office of Consumer Financial Protection (OCFP), Division of Consumer Compliance Policy and Outreach, 1775 Duke Street, Alexandria, VA 22314.

3. *Air Carriers:* Assistant General Counsel for Office of Aviation Consumer Protection,

[12] 5 U.S.C. 603(a), 604(a).

[13] 44 U.S.C. 3501 through 3521.

[14] 5 U.S.C. 801 *et seq.*

Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

4. *Creditors Subject to Surface Transportation Board:* Office of Public Assistance, Governmental Affairs, and Compliance, Surface Transportation Board, 395 E Street SW, Washington, DC 20423.

5. *Creditors Subject to Packers and Stockyards Act:* Nearest Packers and Stockyards Division Regional Office.

6. *Small Business Investment Companies:* Associate Administrator, Office of Capital Access, United States Small Business Association, 409 Third Street SW, Suite 8200, Washington, DC 20416.

7. *Brokers and Dealers:* Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

8. *Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations:* Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

9. *Retailers, Finance Companies, and All Other Creditors Not Listed Above:* Federal Trade Commission, Consumer Response Center, 600 Pennsylvania Avenue NW, Washington, DC 20580.

Appendix D to Part 1002 [Amended]

■ 5. Appendix D to part 1002 is amended in paragraph 2 by:

■ a. Removing ''Division of Research, Markets, and Regulations'' and adding ''Division of Research, Monitoring, and Regulations'' in its place; and

■ b. Removing ''20006'' and adding ''20552'' in its place.

PART 1005—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ 6. The authority citation for part 1005 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1693b. Subpart B is also issued under 12 U.S.C. 5601 and 15 U.S.C. 1693o–1.

■ 7. Revise appendix C to read as follows:

Appendix C to Part 1005—Issuance of Official Interpretations

Official Interpretations

Interpretations of this part issued by duly authorized officials of the Bureau provide the protection afforded under section 916(d) of the Act. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to this part, which will be amended periodically.

Requests for Issuance of Official Interpretations

A request for an official interpretation shall be in writing and addressed to the Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. The request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

Scope of Interpretations

No interpretations will be issued approving financial institutions' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

PART 1006—DEBT COLLECTION PRACTICES (REGULATION F)

■ 8. The authority citation for part 1006 continues to read as follows:

Authority: 12 U.S.C. 5512, 5514(b), 5532; 15 U.S.C. 1692l(d), 1692o, 7004.

Appendix A to Part 1006 [Amended]

■ 9. Appendix A to part 1006 is amended:

■ a. In the second sentence of section II, by removing ''Division of Research, Markets, and Regulations'' and adding ''Division of Research, Monitoring, and Regulations'' in its place; and

■ b. In the first sentence of section VI(b)(i), by removing ''Division of Research, Markets, and Regulations'' and adding ''Division of Research, Monitoring, and Regulations'' in its place.

■ 10. Supplement I is amended by revising the introduction to read as follows:

Supplement I to Part 1006—Official Interpretations

Introduction

1. Official status. This commentary is the vehicle by which the Bureau of Consumer Financial Protection supplements Regulation F, 12 CFR part 1006. The provisions of the commentary are issued under the same authorities as the corresponding provisions of Regulation F and have been adopted in accordance with the notice-and-comment procedures of the Administrative Procedure Act (5 U.S.C. 553). Unless specified otherwise, references in this commentary are to sections of Regulation F or the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.* No commentary is expected to be issued other than by means of this Supplement I.

2. Procedure for requesting interpretations. Anyone may request that an official interpretation of the regulation be added to this commentary. A request for such an official interpretation must be in writing and addressed to the Assistant Director, Office of Regulations, Division of Research, Monitoring, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. The request must contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents. Revisions to this commentary that are adopted in accordance with the rulemaking procedures of section 553 of the Administrative Procedure Act (5 U.S.C. 553) will be incorporated in the commentary following publication in the **Federal Register**.

3. Comment designations. Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, comments to § 1006.6(d)(4) are further divided by subparagraph, such as comment 6(d)(4)(i)–1 and comment 6(d)(4)(ii)–1. Comments that have more general application are designated, for example, as comments 38–1 and 38–2. This introduction may be cited as comments I–1, I–2, and I–3.

* * * * *

PART 1010—LAND REGISTRATION (REGULATION J)

■ 11. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1718.

Appendix A to Part 1010 [Amended]

■ 12. Appendix A to part 1010 is amended in section XXVII, in the address for Bureau of Consumer Financial Protection, before ''Agent Certification,'' by removing ''20006'' and adding ''20552'' in its place.

PART 1022—FAIR CREDIT REPORTING (REGULATION V)

■ 13. The authority citation for part 1022 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1681a, 1681b, 1681c, 1681c–1, 1681c–3, 1681e, 1681g, 1681i, 1681j, 1681m, 1681s, 1681s–2, 1681s–3, and 1681t; Sec. 214, Pub. L. 108–159, 117 Stat. 1952.

■ 14. Revise appendix to read as follows:

Appendix K to Part 1022—Summary of Consumer Rights

The prescribed form for this summary is a disclosure that is substantially similar to the Bureau's model summary with all information clearly and prominently displayed. The list of Federal regulators that is included in the Bureau's prescribed summary may be provided separately so long as this is done in a clear and conspicuous way. A summary should accurately reflect changes to those items that may change over time (*e.g.,* dollar amounts, or telephone numbers and addresses of Federal agencies) to remain in compliance. Translations of this summary will be in compliance with the Bureau's prescribed model, provided that the translation is accurate and that it is provided

in a language used by the recipient consumer.

BILLING CODE 4810–AM–P

Para información en español, visite www.consumerfinance.gov/learnmore o escribe a la Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under FCRA. **For more information, including information about additional rights, go to www.consumerfinance.gov/learnmore or write to: Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.

- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your "file disclosure"). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:

  - a person has taken adverse action against you because of information in your credit report;
  - you are the victim of identity theft and place a fraud alert in your file;
  - your file contains inaccurate information as a result of fraud;
  - you are on public assistance;
  - you are unemployed but expect to apply for employment within 60 days.

  In addition, all consumers are entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.consumerfinance.gov/learnmore for additional information.

- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.

- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer

reporting agency, the agency must investigate unless your dispute is frivolous. See www.consumerfinance.gov/learnmore for an explanation of dispute procedures.

- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete, or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.

- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.

- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need – usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.

- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.consumerfinance.gov/learnmore.

- **You may limit "prescreened" offers of credit and insurance you get based on information in your credit report.** Unsolicited "prescreened" offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt out with the nationwide credit bureaus at 1-800-XXX-XXXX.

- The following FCRA right applies with respect to nationwide consumer reporting agencies:

CONSUMERS HAVE THE RIGHT TO OBTAIN A SECURITY FREEZE

You have a right to place a "security freeze" on your credit report, which will prohibit a consumer reporting agency from releasing information in your credit report without your express authorization. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gets access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding a new loan, credit, mortgage, or any other account involving the extension of credit.

As an alternative to a security freeze, you have the right to place an initial or extended fraud alert on your credit file at no cost. An initial fraud alert is a 1-year alert that is

placed on a consumer's credit file. Upon seeing a fraud alert display on a consumer's credit file, a business is required to take steps to verify the consumer's identity before extending new credit. If you are a victim of identity theft, you are entitled to an extended fraud alert, which is a fraud alert lasting 7 years.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account that requests information in your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.

- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit www.consumerfinance.gov/learnmore.

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. For information about your federal rights, contact:

TYPE OF BUSINESS:	CONTACT:
1.a. Banks, savings associations, and credit unions with total assets of over $10 billion and their affiliates b. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the CFPB:	a. Consumer Financial Protection Bureau 1700 G Street NW Washington, DC 20552 b. Federal Trade Commission Consumer Response Center 600 Pennsylvania Avenue NW Washington, DC 20580 (877) 382-4357
2. To the extent not included in item 1 above: a. National banks, federal savings associations, and federal branches and federal agencies of foreign banks b. State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and Insured State Branches of Foreign Banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. c. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and insured state savings associations d. Federal Credit Unions	a. Office of the Comptroller of the Currency Customer Assistance Group P.O. Box 53570 Houston, TX 77052 b. Federal Reserve Consumer Help Center P.O. Box 1200 Minneapolis, MN 55480 c. Division of Depositor and Consumer Protection National Center for Consumer and Depositor Assistance Federal Deposit Insurance Corporation 1100 Walnut Street, Box #11 Kansas City, MO 64106 d. National Credit Union Administration Office of Consumer Financial Protection 1775 Duke Street Alexandria, VA 22314
3. Air carriers	Assistant General Counsel for Office of Aviation Protection Department of Transportation 1200 New Jersey Avenue SE Washington, DC 20590
4. Creditors Subject to the Surface Transportation Board	Office of Public Assistance, Governmental Affairs, and Compliance Surface Transportation Board 395 E Street SW Washington, DC 20423
5. Creditors Subject to the Packers and Stockyards Act, 1921	Nearest Packers and Stockyards Division Regional Office
6. Small Business Investment Companies	Associate Administrator, Office of Capital Access United States Small Business Administration 409 Third Street SW, Suite 8200 Washington, DC 20416
7. Brokers and Dealers	Securities and Exchange Commission 100 F Street NE Washington, DC 20549
8. Institutions that are members of the Farm Credit System	Farm Credit Administration 1501 Farm Credit Drive McLean, VA 22102-5090
9. Retailers, Finance Companies, and All Other Creditors Not Listed Above	Federal Trade Commission Consumer Response Center 600 Pennsylvania Avenue NW Washington, DC 20580 (877) 382-4357

4

PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)

■ 15. The authority citation for part 1024 continues to read as follows:

Authority: 12 U.S.C. 2603–2605, 2607, 2609, 2617, 5512, 5532, 5581.

§ 1024.2 [Amended]

■ 16. Section 1024.2 is amended in paragraph (b) in the last sentence of the definition of ''Public Guidance Documents'' by removing ''Associate Director, Research, Markets, and Regulations'' and adding ''Assistant Director, Office of Regulations, Division of Research, Monitoring, and Regulations'' in its place.

■ 17. Supplement I is amended by revising the introduction to read as follows:

Supplement I to Part 1024—Official Bureau Interpretations

Introduction

1. Official status. This commentary is the primary vehicle by which the Bureau of Consumer Financial Protection issues official interpretations of Regulation X. Good faith compliance with this commentary affords protection from liability under section 19(b) of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. 2617(b).

2. Requests for official interpretations. A request for an official interpretation shall be in writing and addressed to the Assistant Director, Office of Regulations, Division of Research, Monitoring, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. A request shall contain a complete statement of all

relevant facts concerning the issue, including copies of all pertinent documents. Except in unusual circumstances, such official interpretations will not be issued separately but will be incorporated in the official commentary to this part, which will be amended periodically. No official interpretations will be issued approving financial institutions' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

3. Unofficial oral interpretations. Unofficial oral interpretations may be provided at the discretion of Bureau staff. Written requests for such interpretations should be sent to the address set forth for official interpretations. Unofficial oral interpretations provide no protection under section 19(b) of RESPA. Ordinarily, staff will not issue unofficial oral interpretations on matters adequately covered by this part or the official Bureau interpretations.

4. Rules of construction. (a) Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. In most cases, illustrative lists are introduced by phrases such as ''including, but not limited to,'' ''among other things,'' ''for example,'' or ''such as.''

(b) Throughout the commentary, reference to ''this section'' or ''this paragraph'' means the section or paragraph in the regulation that is the subject of the comment.

5. Comment designations. Each comment in the commentary is identified by a number and the regulatory section or paragraph that the comment interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to § 1024.37(c)(1) are further divided by subparagraph, such as comment 37(c)(1)(i)–1. In other cases, comments have more general application and are designated, for example, as comment 40(a)–1. This introduction may be cited as comments I–1 through I–5.

* * * * *

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 18. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Appendix A to Part 1026 [Amended]

■ 19. Appendix A to part 1026 is amended in the first sentence of the first paragraph immediately after the subheading *Request for Determination* by removing ''20006'' and adding ''20552'' in its place.

Appendix B to Part 1026 [Amended]

■ 20. Appendix B to part 1026 is amended in the ''Application'' section in the second sentence by removing ''20006'' and adding ''20552'' in its place.

Appendix C to Part 1026 [Amended]

■ 21. Appendix C to part 1026 is amended under ''Requests for Issuance of Official Interpretations'' by:

■ a. Removing ''Division of Research, Markets, and Regulations'' and adding ''Division of Research, Monitoring, and Regulations'' in its place; and

■ b. Removing ''20006'' and adding ''20552'' in its place.

■ 22. Supplement I is amended by revising paragraphs 1 and 2 under ''Appendix J—Annual Percentage Rate Computations for Closed-End Credit Transactions'' to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Appendix J—Annual Percentage Rate Computations for Closed-End Credit Transactions

1. Use of appendix J. Appendix J sets forth the actuarial equations and instructions for calculating the annual percentage rate in closed-end credit transactions. While the formulas contained in this appendix may be directly applied to calculate the annual percentage rate for an individual transaction, they may also be utilized to program calculators and computers to perform the calculations.

2. Relation to Bureau tables. The Bureau's Annual Percentage Rate Tables also provide creditors with a calculation tool that applies the technical information in appendix J. An annual percentage rate computed in accordance with the instructions in the tables is deemed to comply with the regulation. Volume I of the tables may be used for credit transactions involving equal payment amounts and periods, as well as for transactions involving any of the following irregularities: odd first period, odd first payment and odd last payment. Volume II of the tables may be used for transactions that involve any type of irregularities. These tables may be obtained from the Bureau, 1700 G Street NW, Washington, DC 20552, upon request. The tables are also available on the Bureau's website at: *https://www.consumerfinance.gov//resources/applicable-requirements/annual-percentage-rate-tables/.*

* * * * *

PART 1030—TRUTH IN SAVINGS (REGULATION DD)

■ 23. The authority citation for part 1030 continues to read as follows:

Authority: 12 U.S.C. 4302–4304, 4308, 5512, 5581.

Appendix C to Part 1030 [Amended]

■ 24. Appendix C to part 1030 is amended in the second sentence of paragraph (b) by removing ''20006'' and adding ''20552'' in its place.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2023–05216 Filed 3–17–23; 8:45 am]

BILLING CODE 4810–AM–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 516, 520, 522, 524, 526, 529, 556, and 558

[Docket No. FDA–2022–N–0002]

New Animal Drugs; Approval of New Animal Drug Applications; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the animal drug regulations to reflect application-related actions for new animal drug applications (NADAs), abbreviated new animal drug applications (ANADAs), and conditionally approved new animal drug applications (cNADAs) during October, November, and December 2022. FDA is informing the public of the availability of summaries of the basis of approval and of environmental review documents, where applicable. The animal drug regulations are also being amended to improve the accuracy and readability of the regulations.

DATES: This rule is effective March 20, 2023.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl.,

Rockville, MD 20855, 240–402–5689, *George.Haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Approvals

FDA is amending the animal drug regulations to reflect approval actions for NADAs, ANADAs, and cNADAs during October, November, and December 2022, as listed in table 1. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the office of the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. Persons with access to the internet may obtain these documents at the CVM FOIA Electronic Reading Room: *https://www.fda.gov/about-fda/center-veterinary-medicine/cvm-foia-electronic-reading-room.* Marketing exclusivity and patent information may be accessed in FDA's publication, Approved Animal Drug Products Online (Green Book) at: *https://www.fda.gov/animal-veterinary/products/approved-animal-drug-products-green-book.*

FDA has verified the website addresses as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS, ANADAS, AND CNADAS APPROVED DURING OCTOBER, NOVEMBER, AND DECEMBER 2022 REQUIRING EVIDENCE OF SAFETY AND/OR EFFECTIVENESS

Approval date	File No.	Sponsor	Product name	Effect of the action	Public documents	21 CFR section
November 4, 2022.	200–730	Parnell Technologies Pty. Ltd., Unit 4, 476 Gardeners Rd., Alexandria, New South Wales 2015, Australia.	RESPIRMYCIN (tulathromycin injection) Injectable Solution.	Original approval for the treatment of bovine respiratory disease, infectious bovine keratoconjunctivitis, and bovine foot rot as a generic copy of NADA 141–244.	FOI Summary	522.2630
November 14, 2022.	141–567	Ishihara Sangyo Kaisha, Ltd., 3–15, Edobori 1-chome, Nishi-ku, Osaka 550–0002, Japan.	PANOQUELL–CA1 (fuzapladib sodium for injection) Powder for injection.	Conditional approval for management of clinical signs associated with acute onset of pancreatitis in dogs.	FOI Summary	516.1012
December 2, 2022.	200–377	Bimeda Animal Health Ltd., 1B The Herbert Building, The Park, Carrickmines, Dublin 18, Ireland.	LINXMED (lincomycin hydrochloride) Soluble Powder.	Supplemental approval for control of American foulbrood in honey bees as a generic copy of NADA 111–636.	FOI Summary	520.1263b
December 2, 2022.	141–529	Pharmgate, Inc., 1800 Sir Tyler Dr., Wilmington, NC 28405.	PENNITRACIN (bacitracin methylenedisalicylate) and MAXIBAN (narasin and nicarbazin).	Original approval for the prevention of mortality caused by necrotic enteritis and coccidiosis in broiler chickens.	FOI Summary	558.364
December 8, 2022.	141–566	Increvet, Inc., 200 Portland St., Floor 3, Boston, MA 02114.	BEXACAT (bexagliflozin tablets) Tablets.	Original approval to improve glycemic control in otherwise healthy cats with diabetes mellitus not previously treated with insulin.	FOI Summary	520.170
December 15, 2022.	200–455	Bimeda Animal Health Ltd., 1B The Herbert Building, The Park, Carrickmines, Dublin 18, Ireland.	BILOVET (tylosin tartrate) Soluble Powder.	Original approval for the control of mortality caused by necrotic enteritis associated with *Clostridium perfringens* in broiler chickens as a generic copy of NADA 013–076.	FOI Summary	520.2640
December 20, 2022.	141–559	Anzac Animal Health, LLC, 218 Millwell Dr., Suite B, Maryland Heights, MO 63043.	ZYCOSAN (pentosan polysulfate sodium injection) Injectable Solution.	Original approval for the control of clinical signs associated with osteoarthritis in horses.	FOI Summary	522.1704
December 23, 2022.	141–450	Intervet, Inc., 2 Giralda Farms, Maison, NJ 07940.	BANAMINE Transdermal (flunixin transdermal solution) Transdermal Solution.	Supplemental approval for control of pyrexia associated with acute bovine mastitis, for addition of lactating dairy cows for all approved indications, and of a milk discard time.	FOI Summary	524.970

Also, FDA is amending the animal drug regulations to reflect approval of supplemental applications, as listed in table 2, to change the marketing status of dosage form antimicrobial animal drug products from over-the-counter (OTC) to by veterinary prescription (Rx). These applications were submitted in voluntary compliance with the goals of the FDA Center for Veterinary Medicine's (CVM's) Judicious Use Initiative as identified by guidance for industry #263, ''Recommendations for Sponsors of Medically Important Antimicrobial Drugs Approved for Use in Animals to Voluntarily Bring Under Veterinary Oversight All Products That Continue to be Available Over-the-Counter,'' June 11, 2021 (*https://www.fda.gov/media/130610/download*).

TABLE 2—SUPPLEMENTAL APPLICATIONS APPROVED DURING OCTOBER, NOVEMBER, AND DECEMBER 2022 TO CHANGE THE MARKETING STATUS OF ANTIMICROBIAL ANIMAL DRUG PRODUCTS FROM OTC TO RX

Approval date	File No.	Sponsor	Product name	21 CFR section
October 11, 2022.	097–222	Boehringer Ingelheim Animal Health USA, Inc., 3239 Satellite Blvd., Duluth, GA 30096.	TODAY (cephapirin sodium) Intramammary Infusion.	526.365

TABLE 2—SUPPLEMENTAL APPLICATIONS APPROVED DURING OCTOBER, NOVEMBER, AND DECEMBER 2022 TO CHANGE THE MARKETING STATUS OF ANTIMICROBIAL ANIMAL DRUG PRODUCTS FROM OTC TO Rx—Continued

Approval date	File No.	Sponsor	Product name	21 CFR section
October 18, 2022.	055–039	Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sofia, Bulgaria.	Chlortetracycline Calf Oblets, 500 mg	520.443
October 31, 2022.	034–025	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007	LINCOMIX (lincomycin hydrochloride) Injectable Solution.	522.1260
November 2, 2022.	065–498	Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sofia, Bulgaria.	PEN BP–48 (penicillin G benzathine and penicillin G procaine) Injectable Suspension.	522.1696a
November 9, 2022.	108–114	Boehringer Ingelheim Animal Health USA, Inc., 3239 Satellite Blvd., Duluth, GA 30096.	TOMORROW (cephapirin benzathine) Intramammary Infusion.	526.363
November 15, 2022.	065–010	Norbrook Laboratories Ltd., Carnbane Industrial Estate, Newry, County Down, BT35 6QQ, United Kingdom.	NOROCILLIN (penicillin G procaine) Injectable Suspension.	522.1696b
November 16, 2022.	140–582	Bimeda Animal Health Ltd., 1B The Herbert Building, The Park, Carrickmines, Dublin 18, Ireland.	BIOCYL–50 (oxytetracycline hydrochloride) Injectable Solution; BIOCYL–100 (oxytetracycline hydrochloride) Injectable Solution.	522.1662
November 18, 2022.	141–143	Norbrook Laboratories Ltd., Carnbane Industrial Estate, Newry, County Down, BT35 6QQ, United Kingdom.	NOROMYCIN 300 LA (oxytetracycline) Injectable Solution.	522.1660b
November 30, 2022.	031–715	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007	ALBON (sulfadimethoxine) Boluses	520.2220d
November 30, 2022.	122–271	Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sofia, Bulgaria.	SULMET (sulfamethazine) Oblets	520.2260a
November 30, 2022.	200–038	Do	DI–METHOX (sulfadimethoxine) Injectable Solution.	522.2220
December 2, 2022.	101–862	Intervet, Inc., 2 Giralda Farms, Madison, NJ 07940	GARASOL (gentamicin sulfate) Injection	522.1044
December 7, 2022.	065–174	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007	CRYSTICILLIN 300 A.S. (penicillin G procaine) Injectable Suspension.	522.1696b
December 9, 2022.	113–232	Do	LIQUAMYCIN LA-200 (oxytetracycline) Injectable Solution.	522.1660a
December 9, 2022.	200–523	Bimeda Animal Health Ltd., 1B The Herbert Building, The Park, Carrickmines, Dublin 18, Ireland.	SULFAMED (sulfadimethoxine) Injectable Solution.	522.2220
December 12, 2022.	103–037	Intervet, Inc., 2 Giralda Farms, Madison, NJ 07940	GARACIN (gentamicin) Injectable Solution.	522.1044
December 15, 2022.	200–508	Bimeda Animal Health Ltd., 1B The Herbert Building, The Park, Carrickmines, Dublin 18, Ireland.	BILOVET (tylosin) Injectable Solution	522.2640
December 16, 2022.	138–955	Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sofia, Bulgaria.	TYLOVET (tylosin) Injectable Solution ...	522.2640
December 22, 2022.	092–523	Intervet, Inc., 2 Giralda Farms, Madison, NJ 07940	GARASOL (gentamicin sulfate) Solution	529.1044b

II. Changes of Sponsorship

Increvet, Inc., 200 Portland St., Floor 3, Boston, MA 02114 has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 141–566 for BEXACAT (bexagliflozin tablets) Tablets, approved December 8, 2022, to Elanco US Inc., 2500 Innovation Way, Greenfield, IN 46140. The regulatory text for the original approval of this application reflects this change of sponsorship.

III. Technical Amendments

FDA is making the following amendments to improve the accuracy of the animal drug regulations:

- 21 CFR 516.498 is removed from subpart C of part 516 and is added to subpart E.
- 21 CFR 520.370, 520.522, 522.246, 522.304, 522.2470, 524.1044c, 524.1044f, and 524.1484g are amended to reflect a sponsor's current drug labeler code.
- 21 CFR 520.441 is amended to revise the sponsor listings for uses of chlortetracycline in drinking water of various food-producing animals.
- 21 CFR 520.443 is amended to revise the sponsor listings for uses of chlortetracycline tablets and boluses in calves.
- 21 CFR 520.1196 is amended to revise the indication for uses of ivermectin and pyrantel tablets in dogs.
- 21 CFR 522. 1660a is amended to reflect the correct drug labeler code for a sponsor of an oxytetracycline injectable solution.
- 21 CFR 522.2471 is amended to add human food safety warnings for use of tilmicosin injectable solution in cattle and sheep.
- 21 CFR 524.1448 is amended to revise the indication for use of mirtazapine transdermal ointment in cats.
- 21 CFR 556.222 is amended to reflect a revised tolerance for residues of doramectin in liver of cattle.
- 21 CFR 556.500 is amended to reflect revised numbering of sections for oxytetracycline uses in food-producing animals.
- 21 CFR 558.76 is amended to add conditions of use previously approved under NADA 141–137 for use of bacitracin methylenedisalicylate in the manufacture of Type C medicated feeds for broiler and replacement chickens (87 FR 76418, December 14, 2022).
- 21 CFR 558.355 is amended to revise a caution statement on labeling of monensin Type A medicated articles for use in broiler breeder replacement chickens.

IV. Legal Authority

This final rule is issued under section 512(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C.360b(i)), which requires **Federal Register** publication of ''notice[s] . . . effective as a regulation,'' of the conditions of use of approved new animal drugs. This rule sets forth technical amendments to the regulations to codify recent actions on approved new animal drug applications and corrections to improve the accuracy of the regulations, and as such does not impose any burden on regulated entities.

Although denominated a rule pursuant to the FD&C Act, this document does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a ''rule of particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808. Likewise, this is not a rule subject to Executive Order 12866, which defines a rule as ''an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency.''

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 516

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, 524, 526, and 529

Animal drugs.

21 CFR Part 556

Animal drugs, Dairy products, Foods, Meat and meat products.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 510, 516, 520, 522, 524, 526, 529, 556, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1), add entries in alphabetical order for ''Ishihara Sangyo Kaisha, Ltd.'' and ''ZyVet Animal Health, Inc.'' and in the table in paragraph (c)(2), add entries in numerical order for ''064642'' and ''086117'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
Ishihara Sangyo Kaisha, Ltd., 3–15, Edobori 1-chome, Nishi-ku, Osaka 550–0002, Japan	064642
* * * * * * *	
ZyVet Animal Health, Inc., 73 Route 31N, Pennington, NJ 08534	086117

(2) * * *

Drug labeler code	Firm name and address
* * * * * * *	
064642	Ishihara Sangyo Kaisha, Ltd., 3–15, Edobori 1-chome, Nishi-ku, Osaka 550–0002, Japan.
* * * * * * *	
086117	ZyVet Animal Health, Inc., 73 Route 31N, Pennington, NJ 08534.
* * * * * * *	

PART 516—NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES

■ 3. The authority citation for part 516 continues to read as follows:

Authority: 21 U.S.C. 360ccc–1, 360ccc–2, 371.

§ 516.498 [Transferred to Subpart E]

■ 4. Transfer § 516.498 from subpart C to subpart E.

■ 5. Add § 516.1012 to read as follows:

§ 516.1012 Fuzapladib.

(a) *Specifications.* The drug is provided as a powder for injection that is reconstituted with 3.5 milliliter (mL) of provided diluent to a final concentration of 4 milligrams (mg) fuzapladib sodium per mL.

(b) *Sponsor.* See No. 064642 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer at a dosage of 0.4 mg (0.1 mL) per kilogram of body weight once daily for 3 consecutive days by intravenous (IV) injection over 15 seconds to 1 minute.

(2) *Indications for use in dogs.* For the management of clinical signs associated with acute onset of pancreatitis in dogs.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. It is a violation of Federal law to use this product other than as directed in the labeling.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 6. The authority citation for part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 7. Add § 520.170 to read as follows:

§ 520.170 Bexagliflozin.

(a) *Specifications.* Each tablet contains 15 milligrams bexagliflozin.

(b) *Sponsor.* See No. 058198 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer one tablet by mouth to cats 6.6 lb (3.0 kg) or greater once daily, at approximately the same time each day, with or without food, and regardless of blood glucose level.

(2) *Indications for use.* To improve glycemic control in otherwise healthy cats with diabetes mellitus not previously treated with insulin.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.370 [Amended]

■ 8. In § 520.370, in paragraph (b)(1), remove ''026637'' and add in its place ''017033''.

■ 9. In § 520.441, revise paragraphs (b)(1) and (3) and (d)(4)(iii)(C) to read as follows:

§ 520.441 Chlortetracycline powder.

* * * * *

(b) * * *

(1) No. 069254 for use as in paragraph (d) of this section.

* * * * *

(3) Nos. 069043 and 076475 for use as in paragraphs (d)(4)(i)(A), (d)(4)(i)(B), and (d)(4)(ii) and (iii) of this section.

* * * * *

(d) * * *

(4) * * *

(iii) * * *.

(C) *Limitations.* Prepare fresh solution daily as the sole source of chlortetracycline. Do not use for more than 5 days. For Nos. 066104, 069043, 069254, and 076475: Do not slaughter animals for food within 5 days of treatment. For No. 069254: Do not slaughter animals for food within 24 hours of treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

■ 10. In § 520.443, revise paragraphs (a), (b), and (d)(3)(ii) to read as follows:

§ 520.443 Chlortetracycline hydrochloride tablets and boluses.

(a) *Specifications.* Each tablet contains 25 milligrams (mg) chlortetracycline hydrochloride; each bolus contains 250 or 500 mg chlortetracycline hydrochloride.

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

(1) No. 069043 for use of a 250-mg bolus as in paragraph (d)(1) of this section.

(2) No. 016592 for use of a 25-mg tablet as in paragraph (d)(2) of this section.

(3) No. 016592 for use of a 500-mg bolus as in paragraph (d)(3) of this section.

* * * * *

(d) * * *

(3) * * *

(ii) *Limitations.* Do not use for more than 5 days. Do not administer within 24 hours of slaughter. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.522 [Amended]

■ 11. In § 520.522, in paragraph (b)(2), remove ''026637'' and add in its place ''017033''.

§ 520.1196 [Amended]

■ 12. In § 520.1196, in paragraph (c)(1)(ii), remove ''ascarids'' and add in its place ''roundworms''.

■ 13. In § 520.1263b, revise paragraphs (b)(1) and (2) to read as follows:

§ 520.1263b Lincomycin powder.

* * * * *

(b) * * *

(1) Nos. 054771 and 061133 for use as in paragraph (d) of this section.

(2) Nos. 016592, 054925, and 076475 for use as in paragraphs (d)(1) and (d)(2) of this section.

* * * * *

■ 14. In § 520.2220d, revise paragraph (d)(3) to read as follows:

§ 520.2220d Sulfadimethoxine bolus.

* * * * *

(d) * * *

(3) *Limitations.* Do not administer within 7 days of slaughter. Milk that has been taken from animals during treatment and 60 hours (five milkings) after the latest treatment must not be used for food. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 15. In § 520.2260a, revise paragraph (d)(1)(iii) to read as follows:

§ 520.2260a Sulfamethazine oblets and boluses.

* * * * *

(d) * * *

(1) * * *

(iii) *Limitations.* Do not administer for more than 5 consecutive days. Do not treat cattle within 10 days of slaughter. Do not use in female dairy cattle 20 months of age or older. Use of sulfamethazine in this class of cattle may cause milk residues. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

■ 16. In § 520.2640, add paragraph (b)(3) to read as follows:

§ 520.2640 Tylosin.

* * * * *

(b) * * *

(3) No. 061133 for use of a 100-g container as in paragraphs (e)(1)(i)(B) and (e)(1)(ii) of this section.

* * * * *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 17. The authority citation for part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 18. In § 522.246, revise paragraph (b)(3) to read as follows:

§ 522.246 Butorphanol.

* * * * *

(b) * * *

(3) Nos. 000061, 017033, 043264, and 059399 for use of the product described in paragraph (a)(3) of this section as in paragraph (d)(3) of this section.

* * * * *

§ 522.304 [Amended]

■ 19. In § 522.304, in paragraph (b), remove ''026637'' and add in its place ''017033''.

■ 20. In § 522.1044, revise paragraphs (d)(2)(i) through (iii), (d)(3)(i) though (iii), and (d)(4)(i) through (iii) to read as follows:

§ 522.1044 Gentamicin.

* * * * *

(d) * * *

(2) * * *

(i) *Amount.* Administer subcutaneously in the neck 1 mg of gentamicin per 0.2 mL dose, using the 50- or 100-mg/mL product diluted with sterile saline to a concentration of 5 mg/mL.

(ii) *Indications for use.* As an aid in the prevention of early mortality in 1- to 3-day old turkey poults due to *Arizona*

paracolon infections susceptible to gentamicin.

(iii) *Limitations.* Injected poults must not be slaughtered for food for at least 9 weeks after treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(3) * * *

(i) *Amount.* Administer subcutaneously in the neck 0.2 mg of gentamicin per 0.2 mL dose, using the 50- or 100-mg/mL product diluted with sterile saline to a concentration of 1.0 mg/mL.

(ii) *Indications for use.* For prevention of early mortality in day-old chickens caused by *Escherichia coli, Salmonella typhimurium,* and *Pseudomonas aeruginosa* susceptible to gentamicin.

(iii) *Limitations.* Injected chicks must not be slaughtered for food for at least 5 weeks after treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(4) * * *

(i) *Amount.* Administer 5 mg of gentamicin as a single intramuscular dose using the 5 mg/mL solution.

(ii) *Indications for use.* For treatment of porcine colibacillosis in piglets up to 3 days old caused by strains of *Escherichia coli* sensitive to gentamicin.

(iii) *Limitations.* For single intramuscular dose in pigs up to 3 days of age only. Do not slaughter treated animals for food for at least 40 days following treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

■ 21. In § 522.1260, revise paragraph (e)(2)(iii) to read as follows:

§ 522.1260 Lincomycin.

* * * * *

(e) * * *

(2) * * *

(iii) *Limitations.* Do not treat within 48 hours of slaughter. For No 054771: Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 22. In § 522.1660a, revise paragraph (b) and add a sentence to the end of paragraphs (e)(1)(ii) and (e)(2)(ii) to read as follows:

§ 522.1660a Oxytetracycline solution, 200 milligrams/milliliter.

* * * * *

(b) *Sponsors.* See Nos. 000010, 016592, 054771, 055529, 061133, and 069254 in § 510.600(c) of this chapter.

* * * * *

(e) * * *

(1) * * *

(ii) * * * For No. 054771: Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) * * *

(ii) * * * For No. 054771: Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 23. In § 522.1660b, add a sentence to the end of paragraphs (e)(1)(ii) and (e)(2)(ii) to read as follows:

§ 522.1660b Oxytetracycline solution, 300 milligrams/milliliter.

* * * * *

(e) * * *

(1) * * *

(ii) * * * For No. 055529: Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) * * *

(ii) * * * For No. 055529: Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 24. In § 522.1662, revise paragraphs (j)(3)(i) and (iii) to read as follows:

§ 522.1662 Oxytetracycline.

* * * * *

(j) * * *

(3) * * *

(i) *Amount.* Administer by intravenous injection 3 to 5 milligrams per pound of body weight daily. Administer 5 milligrams per pound for anaplasmosis, severe foot rot, and severe forms of other diseases. Treatment should be continued 24 to 48 hours following remission of disease symptoms, but not to exceed a total of 4 consecutive days.

* * * * *

(iii) *Limitations.* Not for use in lactating dairy cattle. Discontinue use at least 19 days prior to slaughter. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 25. In § 522.1696a, revise paragraph (d)(2)(iii) to read as follows:

§ 522.1696a Penicillin G benzathine and penicillin G procaine suspension.

* * * * *

(d) * * *

(2) * * *

(iii) *Limitations.* Not for use within 30 days of slaughter. For No. 016592: A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. For No. 016592: Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 26. In § 522.1696b, revise paragraph (d)(2)(iii)(C) to read as follows:

§ 522.1696b Penicillin G procaine aqueous suspension.

* * * * *

(d) * * *

(2) * * *

(iii) * * *

(C) For Nos. 054771 and 055529: Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 27. Add § 522.1704 to read as follows:

§ 522.1704 Pentosan polysulfate sodium.

(a) *Specifications.* Each milliliter of solution contains 250 milligrams (mg) of pentosan polysulfate sodium.

(b) *Sponsor.* See No. 086073 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer 3 mg per kilogram of body weight (1.4 mg per pound) by intramuscular injection once weekly for 4 weeks for a total of four doses.

(2) *Indications for use.* For the control of clinical signs associated with osteoarthritis in horses.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 28. In § 522.2470, revise paragraphs (b) introductory text and (b)(1) to read as follows:

§ 522.2470 Tiletamine and zolazepam for injection.

* * * * *

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter.

(1) Nos. 017033 and 054771 for use as in paragraph (c) of this section.

* * * * *

■ 29. In § 522.2471, remove paragraph (d), redesignate paragraph (e) as paragraph (d), and revise newly redesignated paragraphs (d)(1)(iii) and (d)(2)(iii).

The revisions read as follows:

§ 522.2471 Tilmicosin.

* * * * *

(d) * * *

(1) * * *

(iii) *Limitations.* Animals intended for human consumption must not be slaughtered within 42 days of last treatment. Do not use in lactating dairy cattle 20 months of age or older. Use of tilmicosin in this class of cattle may cause milk residues. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) * * *

(iii) *Limitations.* Not for use in lactating ewes producing milk for human consumption. Animals intended for human consumption must not be slaughtered within 42 days of last treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 30. In 522.2630, revise paragraph (b)(1) to read as follows:

§ 522.2630 Tulathromycin.

* * * * *

(b) * * *

(1) Nos. 000061, 013744, 051311, 054771, 055529, 058198, 061133, and 068504 for use of product described in paragraph (a)(1) as in paragraphs (d)(1)(i), (d)(1)(ii), (d)(1)(iii)(A), and (d)(2) of this section.

* * * * *

§ 522.2640 [Amended]

■ 31. In § 522.2640, in paragraph (b)(2), remove ''000010'' and add in its place ''016592'' and in paragraphs (e)(1)(iii) and (e)(2)(iii), in the last sentence of each paragraph, remove ''For No. 058198:''.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 32. The authority citation for part 524 continues to read as follows:

Authority 21 U.S.C. 360b.

■ 33. In § 524.970, revise paragraphs (d)(2) and (3) to read as follows:

§ 524.970 Flunixin.

* * * * *

(d) * * *

(2) *Indications for use.* For the control of pyrexia associated with bovine respiratory disease and acute bovine mastitis, and the control of pain associated with foot rot in beef cattle 2 months of age and older and dairy cattle.

(3) *Limitations.* Not for use in beef and dairy bulls intended for breeding over 1 year of age. Milk that has been taken during treatment and for 48 hours after treatment must not be used for human consumption. Cattle must not be slaughtered for human consumption within 8 days of treatment. Not for use in replacement dairy heifers 20 months of age or older or dry dairy cows; use in these cattle may cause drug residues in calves born to these cows or heifers. Not for use in beef calves less than 2 months of age, dairy calves, and veal calves. A withdrawal period has not been established for this product in pre-ruminating calves. Approved only as a single topical dose in cattle. Repeated treatments may result in violative residues in milk or in edible tissues. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 524.1044c [Amended]

■ 34. In § 524.1044c, in paragraph (b), remove ''026637'' and add in its place ''017033''.

■ 35. In § 524.1044f, revise paragraph (b) to read as follows:

§ 524.1044f Gentamicin and betamethasone spray.

* * * * *

(b) *Sponsors.* See Nos. 000061, 017033, 054925, 058005, and 058829 in § 510.600(c) of this chapter.

* * * * *

■ 36. In § 524.1448, revise paragraph (c)(2) to read as follows:

§ 524.1448 Mirtazapine transdermal ointment.

* * * * *

(c) * * *

(2) *Indications for use.* For body weight gain in cats with a history of weight loss.

* * * * *

§ 524.1484g [Amended]

■ 37. In § 524.1484g, in paragraph (b), remove ''026637'' and add in its place ''017033''.

PART 526—INTRAMAMMARY DOSAGE FORM NEW ANIMAL DRUGS

■ 38. The authority citation for part 526 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 39. In § 526.363, revise paragraph (d)(3) to read as follows:

§ 526.363 Cephapirin benzathine.

* * * * *

(d) * * *

(3) *Limitations.* For use in dry cows only. Not to be used within 30 days of calving. Milk from treated cows must not be used for food during the first 72 hours after calving. Animals infused with this product must not be slaughtered for food until 42 days after the latest infusion. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 40. In § 526.365, revise paragraph (d)(3) to read as follows:

§ 526.365 Cephapirin sodium.

* * * * *

(d) * * *

(3) *Limitations.* Milk that has been taken from animals during treatment and for 96 hours after the last treatment must not be used for food. Treated animals must not be slaughtered for food until 4 days after the last treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 41. The authority citation for part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 42. In § 529.1044b, add a sentence to the end of paragraph (c)(3) to read as follows:

§ 529.1044b Gentamicin solution for dipping eggs.

* * * * *

(c) * * *

(3) * * * For No. 000061: Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 43. The authority citation for part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

■ 44. In § 556.222, revise paragraphs (b)(1)(i) and (c) to read as follows:

§ 556.222 Doramectin.

* * * * *

(b) * * *

(1) * * *

(i) Liver (target tissue): 300 ppb.

* * * * *

(c) *Related conditions of use.* See §§ 522.770, 522.772, and 524.770 of this chapter.

■ 45. In § 556.500, revise paragraph (c) to read as follows:

§ 556.500 Oxytetracycline.

* * * * *

(c) *Related conditions of use.* See §§ 520.1660a, 520.1660c, 520.1660d, 522.1660a, 522.1660b, 522.1662, 522.1664, 529.1660, 558.450, and 558.455 of this chapter.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 46. The authority citation for part 558 continues to read as follows:

Authority: 21 U.S.C. 354, 360b, 360ccc, 360ccc–1, 371.

■ 47. In § 558.76, redesignate paragraph (d)(1)(iv) as paragraph (d)(1)(v) and add new paragraph (d)(1)(iv) to read as follows:

§ 558.76 Bacitracin methylenedisalicylate.

* * * * *

(d) * * *

(1) * * *

Bacitracin in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*
(iv) 50	Broiler and replacement chickens: For the prevention of mortality caused by necrotic enteritis associated with *Clostridium perfringens*.	Feed as the sole ration for 28 to 35 days, starting from the time chicks are placed for brooding.	069254
*	*	*	*

* * * * *

■ 48. In § 558.355, revise paragraph (d)(8)(vi) to read as follows:

§ 558.355 Monensin.

* * * * *

(d) * * *

(8) * * *

(vi) Not for broiler breeder replacement chickens.

* * * * *

■ 49. In § 558.364:

■ a. Revise paragraphs (d)(1)(ii) and (iii);

■ b. Redesignate paragraphs (d)(1)(iv) and (v) as paragraphs (d)(1)(vi) and (vii); and

■ c. Add new paragraphs (d)(1)(iv) and (v).

The revisions and additions read as follows:

§ 558.364 Narasin and nicarbazin.

* * * * *

(d) * * *

(1) * * *

Narasin and nicarbazin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(ii) 27 to 45 of each drug.	Bacitracin methylenedisalicylate, 4 to 50.	Broiler chickens: For the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for increased rate of weight gain and improved feed efficiency.	Feed continuously as the sole ration. Do not feed to laying hens. Do not allow adult turkeys, horses, or other equines access to formulations containing narasin. Ingestion of narasin by these species has been fatal. Withdraw 5 days before slaughter. Bacitracin methylenedisalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	058198
(iii) 27 to 45 of each drug.	Bacitracin methylenedisalicylate, 4 to 50.	Broiler chickens: For the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for increased rate of weight gain and improved feed efficiency.	Feed as the sole ration throughout the feeding period. For broiler chickens only. Do not feed to laying hens. Do not allow adult turkeys, horses, or other equines access to formulations containing narasin. Ingestion of narasin by these species has been fatal. Bacitracin methylenedisalicylate as provided by No. 069254 in § 510.600(c) of this chapter.	069254
(iv) 27 to 45 of each drug.	Bacitracin methylenedisalicylate, 50.	Broiler chickens: For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* and as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.	Feed continuously as the sole ration. Do not feed to laying hens. Do not allow adult turkeys, horses, or other equines access to formulations containing narasin. Ingestion of narasin by these species has been fatal. Withdraw 5 days before slaughter. Bacitracin methylenedisalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(v) 27 to 45 of each drug.	Bacitracin methylenedisalicylate, 50.	Broiler chickens: For the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for the prevention of mortality caused by necrotic enteritis associated with *Clostridium perfringens*.	Feed as the sole ration for 28 to 35 days, starting from the time chicks are placed for brooding. For broiler chickens only. Do not feed to laying hens. Do not allow adult turkeys, horses, or other equines access to formulations containing narasin. Ingestion of narasin by these species has been fatal. Bacitracin methylenedisalicylate as provided by No. 069254 in § 510.600(c) of this chapter.	069254
*	*	*	*	*

* * * * *

Dated: March 13, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–05465 Filed 3–17–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1100, 1107, 1114, 1140, and 1143

[Docket No. FDA–2022–N–3262]

Definition of the Term "Tobacco Product" in Regulations Issued Under the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is announcing conforming changes to its regulations issued under the Federal Food, Drug, and Cosmetic Act (FD&C Act) as required by the Consolidated Appropriations Act of 2022, which amended the term ''tobacco product'' in the FD&C Act to include products that contain nicotine from any source.

DATES: The technical amendments to title 21 of the Code of Federal Regulations (CFR) are effective March 20, 2023.

FOR FURTHER INFORMATION CONTACT: Paul Hart or Laura Chilaka, Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993, 877–287–1373, *AskCTP@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) was enacted on June 22, 2009, amending the FD&C Act and providing FDA with the authority to regulate tobacco products. Section 201(rr) of the FD&C Act (21 U.S.C. 321(rr)), as amended by the Tobacco Control Act, defined the term ''tobacco product'' to mean any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product). It further stated that the term ''tobacco product'' does not mean an article that is a drug under section 201(g)(1), a device under section 201(h), or a combination product described in section 503(g) of the FD&C Act (21 U.S.C. 353(g)).

The Consolidated Appropriations Act of 2022 (the Appropriations Act) (Pub. L. 117–103), enacted on March 15, 2022, amended the definition of the term ''tobacco product'' in section 201(rr) of the FD&C Act to include products that contain nicotine from any source. It further amended the definition to exclude articles that are foods under section 201(f) of the FD&C Act if such articles contain no nicotine or no more than trace amounts of naturally occurring nicotine. The Appropriations Act also amended section 901(b) of the FD&C Act (21 U.S.C. 387a(b)), which concerns FDA authority over tobacco products, by adding a sentence stating chapter IX of the FD&C Act shall also apply to any tobacco product containing nicotine that is not made or derived from tobacco. As a result, tobacco products that contain non-tobacco nicotine (NTN), including synthetic nicotine, are now subject to the provisions in chapter IX of the FD&C Act (21 U.S.C. 387 to 387t), including, but not limited to the:

- Adulteration and misbranding provisions (sections 902 and 903 of the FD&C Act);
- Required submission of ingredient listing and reporting of harmful and potentially harmful constituents for all tobacco products (section 904 of the FD&C Act);
- Required establishment registration and product listing (section 905 of the FD&C Act);
- Prohibition of selling tobacco products to individuals under 21 years of age (section 906(d)(5) of the FD&C Act);
- Requirement that new tobacco products have an FDA marketing order (section 910 of the FD&C Act) in effect; and
- Requirement that modified risk tobacco products have a modified risk order in effect (section 911 of the FD&C Act).

The Appropriations Act further states that products that are tobacco products under the amended definition in section 201(rr) of the FD&C Act shall be subject to all requirements of regulations for tobacco products and specifies that the term ''tobacco product'' in regulations and guidance issued, in whole or in part, under the FD&C Act shall have the meaning of, and shall be deemed amended to reflect the meaning of, the amended definition in section 201(rr). As a result, beginning April 14, 2022, tobacco products that contain NTN, including synthetic nicotine, are subject to the provisions that apply to tobacco products in FDA's regulations, including, but not limited to:

- Refuse to accept criteria for premarket submissions (21 CFR 1105.10);
- Content and format requirements for premarket tobacco product applications (21 CFR part 1114);
- Exemption from substantial equivalence requirements (21 CFR part 1107, subpart A); and
- Prohibition of the distribution of free samples (21 CFR 1140.16(d)).

The Appropriations Act directs FDA to publish a notice in the **Federal Register** to update the Code of Federal Regulations (CFR) to reflect the deemed amendment to existing regulations and guidance. Accordingly, we are making conforming changes to the CFR to reflect the statutory amendments made by the Appropriations Act to tobacco product regulations issued in whole or in part under the FD&C Act.[1] Elsewhere in this edition of the **Federal Register**, we are issuing a notice to announce conforming changes to the definition of tobacco product in guidances issued in whole or in part under the FD&C Act.

II. Description of Changes to FDA Regulations

FDA is updating the definition of ''tobacco product'' in regulations issued, in whole or in part, under the FD&C Act, to reflect the amendments made by the Appropriations Act. The definition of ''tobacco product,'' where included in the text of FDA regulations, is being updated to reflect the statutory amendments by adding the phrase ''or containing nicotine from any source'' after the words ''from tobacco,'' and incorporating the exclusion of articles that are foods as defined in section 201(f) of the FD&C Act if such articles contain no nicotine or no more than trace amounts of naturally occurring nicotine. The definition of ''tobacco product'' is being updated in the following sections of the CFR:

[1] The Office of the Federal Register (OFR) has published this document under the category ''Rules and Regulations'' with an action heading of ''technical amendment'' pursuant to its interpretation of 1 CFR 5.9(b). We note that the categorization as such for purposes of publication in the **Federal Register** does not affect the legal content or intent of the document. See, 1 CFR 5.1(c).

TABLE 1—UPDATED REGULATIONS

21 CFR section (part/heading)	OMB control No. (if applicable)[2]
1100.3 (Part 1100—General)	N/A.
1100.202 (Part 1100—Subpart C—Maintenance of Records Demonstrating that a Tobacco Product was Commercially Marketed in the United States as of February 15, 2007).	0910–0775.
1107.12 (Part 1107—Exemption Requests and Substantial Equivalence Reports)	0910–0684 and 0910–0673.
1114.3 (Part 1114—Premarket Tobacco Product Applications)	0910–0879.
1140.3 (Part 1140—Cigarettes, Smokeless Tobacco, and Covered Tobacco Products)	N/A.
1143.1 (Part 1143—Minimum Required Warning Statements)	0910–0768.

FDA is also revising 21 CFR 1100.1 and 1100.2 by adding the phrase ''any tobacco product containing nicotine not made or derived from tobacco'' to the list of tobacco products subject to chapter IX of the FD&C Act without needing to be deemed by regulation. These changes simply reflect amendments made by the Appropriations Act to section 901(b) of the FD&C Act.

III. Paperwork Reduction Act of 1995

The amendments made by the Appropriations Act result in changes to some previously approved collections of information that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The OMB control numbers for these information collections are listed in table 1. FDA has published, and intends to continue publishing, notices concerning proposed changes to the relevant information collection activities in other editions of the **Federal Register**. In addition, in compliance with the PRA, we will submit revisions to the current information collections to OMB for review.

List of Subjects

21 CFR Parts 1100, 1107, and 1114

Administrative practice and procedure, Cigars and cigarettes, Smoking, Tobacco.

21 CFR Part 1140

Advertising, Labeling, Smoking, Tobacco.

21 CFR Part 1143

Advertising, Labeling, Packaging and containers, Smoking, Tobacco.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 1100, 1107, 1114, 1140, and 1143 are amended as follows:

PART 1100—GENERAL

■ 1. The authority citation for part 1100 is revised to read as follows:

Authority: 21 U.S.C. 371, 374, 387a(b), 387e, 387i; Pub. L. 117–103, 136 Stat. 49.

■ 2. Add a heading for subpart A before § 1100.1 to read as follows:

Subpart A—Tobacco Products Subject to FDA Authority

■ 3. Revise § 1100.1 to read as follows:

§ 1100.1 Scope.

In addition to FDA's authority over cigarettes, cigarette tobacco, roll-your-own tobacco, smokeless tobacco, and any tobacco product containing nicotine not made or derived from tobacco, FDA deems all other products meeting the definition of *tobacco product* under section 201(rr) of the Federal Food, Drug, and Cosmetic Act, except accessories of such other tobacco products, to be subject to the Federal Food, Drug, and Cosmetic Act.

§ 1100.2 [Amended]

■ 4. In § 1100.2, in the first sentence, add the words '', and any tobacco product containing nicotine not made or derived from tobacco'' after ''smokeless tobacco''.

■ 5. In § 1100.3, revise the definition of ''Tobacco product'' to read as follows:

§ 1100.3 Definitions.

* * * * *

Tobacco product, as stated in section 201(rr) of the Federal Food, Drug, and Cosmetic Act in relevant part:

(1) Means any product made or derived from tobacco, or containing nicotine from any source, that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product); and

(2) Does not mean an article that is a drug under section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act; a device under section 201(h) of the Federal Food, Drug, and Cosmetic Act; a combination product described in section 503(g) of the Federal Food, Drug, and Cosmetic Act; or a food under 201(f) of the Federal Food, Drug, and Cosmetic Act if such article contains no nicotine or no more than trace amounts of naturally occurring nicotine.

■ 6. In § 1100.202, revise the definition of ''Tobacco product'' to read as follows:

§ 1100.202 Definitions.

* * * * *

Tobacco product means any product made or derived from tobacco, or containing nicotine from any source, that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product). The term ''tobacco product'' does not mean an article that under the Federal Food, Drug, and Cosmetic Act is: a drug (section 201(g)(1)); a device (section 201(h)); a combination product (section 503(g)); or a food (section 201(f)) if such article contains no nicotine or no more than trace amounts of naturally occurring nicotine.

* * * * *

PART 1107—EXEMPTION REQUESTS AND SUBSTANTIAL EQUIVALENCE REPORTS

■ 7. The authority citation for part 1107 is revised to read as follows:

Authority: 21 U.S.C. 371, 374, 387e(j), 387i, 387j; Pub. L. 117–103, 136 Stat. 49.

■ 8. In § 1107.12, revise the definition of ''Tobacco product'' to read as follows:

§ 1107.12 Definitions.

* * * * *

Tobacco product means any product made or derived from tobacco, or containing nicotine from any source, that is intended for human

[2] See Section III for additional information about the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) as it relates to the regulations listed in table 1.

consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product). The term ''tobacco product'' does not mean an article that under the Federal Food, Drug, and Cosmetic Act is: a drug (section 201(g)(1)); a device (section 201(h)); a combination product (section 503(g)); or a food (section 201(f)) if such article contains no nicotine or no more than trace amounts of naturally occurring nicotine.

* * * * *

PART 1114—PREMARKET TOBACCO PRODUCT APPLICATIONS

■ 9. The authority citation for part 1114 is revised to read as follows:

Authority: 21 U.S.C. 371, 374, 387a, 387i, 387j; Pub. L. 117–103, 136 Stat. 49.

■ 10. In § 1114.3, revise the definition of ''Tobacco product'' to read as follows:

§ 1114.3 Definitions.

* * * * *

Tobacco product means any product made or derived from tobacco, or containing nicotine from any source, that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product). The term ''tobacco product'' does not mean an article that under the Federal Food, Drug, and Cosmetic Act is: a drug (section 201(g)(1)); a device (section 201(h)); a combination product (section 503(g)); or a food (section 201(f)) if such article contains no nicotine or no more than trace amounts of naturally occurring nicotine.

* * * * *

PART 1140—CIGARETTES, SMOKELESS TOBACCO, AND COVERED TOBACCO PRODUCTS

■ 11. The authority citation for part 1140 is revised to read as follows:

Authority: 21 U.S.C. 301 *et seq.,* 21 U.S.C. 387a–1, and Pub. L. 117–103, 136 Stat. 49.

■ 12. In § 1140.3, revise the definition of ''Tobacco product'' to read as follows:

§ 1140.3 Definitions.

* * * * *

Tobacco product, as stated in section 201(rr) of the Federal Food, Drug, and Cosmetic Act in relevant part:

(1) Means any product made or derived from tobacco, or containing nicotine from any source, that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product); and

(2) Does not mean an article that is a drug under section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act; a device under section 201(h) of the Federal Food, Drug, and Cosmetic Act; a combination product described in section 503(g) of the Federal Food, Drug, and Cosmetic Act; or a food under 201(f) of the Federal Food, Drug, and Cosmetic Act if such article contains no nicotine or no more than trace amounts of naturally occurring nicotine.

PART 1143—MINIMUM REQUIRED WARNING STATEMENTS

■ 13. The authority citation for part 1143 is revised to read as follows:

Authority: 21 U.S.C. 387a(b), 387f(d), Pub. L. 117–103, 136 Stat. 49.

■ 14. In § 1143.1, revise the definition of ''Tobacco product'' to read as follows:

§ 1143.1 Definitions.

* * * * *

Tobacco product, as stated in section 201(rr) of the Federal Food, Drug, and Cosmetic Act in relevant part:

(1) Means any product made or derived from tobacco, or containing nicotine from any source, that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product); and

(2) Does not mean an article that is a drug under section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act; a device under section 201(h) of the Federal Food, Drug, and Cosmetic Act; a combination product described in section 503(g) of the Federal Food, Drug, and Cosmetic Act; or a food under 201(f) of the Federal Food, Drug, and Cosmetic Act if such article contains no nicotine or no more than trace amounts of naturally occurring nicotine.

Dated: February 22, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–03950 Filed 3–17–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0220]

RIN 1625–AA00

Safety Zone; Atlantic Ocean, Cape Canaveral Offshore Launch Area, FL

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for waters of the Atlantic Ocean, adjacent to Cape Canaveral, FL. This safety zone would implement a special activities provision of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. The Coast Guard is establishing this safety zone for the launch of the Terran 1 rocket, which is being launched by Relativity Space. The temporary safety zone will be located within the Coast Guard District Seven area of responsibility offshore of Cape Canaveral, Florida. This rule prohibits U.S.-flagged vessels from entering the temporary safety zone unless authorized by the District Commander of the Seventh Coast Guard District or a designated representative. Foreign-flagged vessels are encouraged to remain outside the safety zone. This action is necessary to protect vessels and waterway users from the potential hazards created by launch of the Terran 1 rocket, flying over the U.S. Exclusive Economic Zone (EEZ).

DATES: This rule is effective without actual notice from March 20, 2023, through 4 p.m. on March 23, 2023. For the purposes of enforcement, actual notice will be used from 10 a.m. on March 16, 2023, through March 20, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0220 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Ryan Gilbert, District Seven, Waterways Management Branch, U.S. Coast Guard; telephone 305–415–6750, email *Ryan.A.Gilbert@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BNM Broadcast Notice to Mariners
CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
EEZ Exclusive Economic Zone
FAA Federal Aviation Administration
FL Florida
FR Federal Register
MSIB Marine Safety Information Bulletin
NASA National Aeronautics and Space Administration
NM Nautical Mile
NPRM Notice of Proposed Rulemaking
RNA Regulated Navigation Area
§ Section
U.S. United States
U.S.C. United States Code

II. Background Information and Regulatory History

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

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

The Coast Guard has an existing permanent regulated navigation area (RNA) that prevents vessels from operating in the waters adjacent to the Cape Canaveral launch area; however, that area only extends to the limits of the territorial sea.[3] With this temporary final rule, the Coast Guard is establishing a temporary safety zone in the Atlantic Ocean in the U.S. EEZ that will abut the existing RNA near Cape Canaveral, FL. The Coast Guard intends to activate the existing RNA in 33 CFR 165.775 concurrently with the temporary safety zone established by this rule for the launch of the Terran 1 rocket.

The Terran 1 will be the first rocket launched of the Terran Program. Rockets built by Relativity Space for the Terran program are constructed using a novel 3D printing technology that has never been successfully employed in the United States. While the Terran rocket has conducted tests of its engines, it has not yet been launched into low earth orbit. Therefore, this launch presents a higher risk profile than with a typical launch. Based on these factors, it has been determined that the best way to reduce risk is to establish this temporary safety zone abutting the established RNA in § 165.775.

Once the Terran 1 rocket has been launched, the Coast Guard will notify the public through a Broadcast Notice to Mariners (BNM) that any remaining safety zone enforcement times and dates are no longer needed.

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) with respect to this rule because doing so would be impracticable. This safety zone must be established by March 16, 2023, in order to protect vessels and waterway users from the potential hazards associated with the launch of the Terran 1 rocket.

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 rule's objectives of ensuring the protection of vessels and waterway users in the U.S. EEZ from the potential hazards created by the launch operation.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under section 8343 of the Authorization Act. The Seventh District Commander has determined that there are potential hazards in the U.S. EEZ created by the launch of the Terran 1 rocket. The purpose of this rule is to ensure safety of vessels and waterway users before, during, and after the scheduled launch.

IV. Discussion of the Rule

This rule establishes a temporary safety zone that will be subject to enforcement starting on March 16, 2023, through March 23, 2023, from 10 a.m. to 4 p.m. each day, until the Terran 1 rocket is launched. Once the Terran 1 rocket has been launched, the Coast Guard will notify the public that the temporary safety zone has been cancelled, through a BNM.

This temporary safety zone will cover certain navigable waters in the path of the rocket being launched from Cape Canaveral, FL. The safety zone will cover approximately 650 square miles and is roughly shaped like an elongated trapezoid. It will directly abut the RNA established in § 165.775. U.S.-flagged vessels will be prohibited from entering the temporary safety zone unless authorized by the District Commander of the Seventh Coast Guard District or a designated representative. Foreign-flagged vessels are encouraged to remain outside the safety zone. The coordinates of the safety zone are provided in the regulatory text, and a map will be provided in the docket.

No U.S.-flagged vessel or person will be permitted to enter the safety zone without obtaining permission from the District Commander or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and scope of the temporary safety zone. The temporary safety zone is limited in size and location to only to the areas where Terran 1 rocket launch may pose a danger to vessels outside the RNA. The temporary safety zone is limited in scope, as vessel traffic will be able to

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

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

[3] See 33 CFR 165.775.

safely transit around the zone. The safety zone is expected to be enforced for approximately 8 hours. After the launch has been completed, and there is no longer any danger to vessels from the Terran 1 rocket, the Coast Guard will notify waterway users and vessels that the safety zone is no longer subject to enforcement. The safety zone will ensure the protection of vessels and waterway users from the potential hazards created by the launch of the Terran 1 rocket.

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 rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves enforcement of a safety zone for approximately 5 or 6 hours during the duration of the rocket launch of the Terran 1 rocket. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 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.T07–0220 to read as follows:

§ 165.T07–0220 Safety Zone; Atlantic Ocean, Cape Canaveral Offshore Launch Area, Cape Canaveral, FL.

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Ocean, from surface to bottom, encompassed by a line connecting the following points beginning at Point 1: 28°38′19.3″ N 80°21′22.9″ W, thence to Point 2: 28°45′14″ N 79°58′51.2″ W, thence to Point 3: 28°15′39.7″ N 79°58′51.2″ W, thence to Point 4: 28°22′27.7″ N 80°18′59″ W, thence following the 12NM line back to point 1. These coordinates are based on World Geodetic System (WGS) 84.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, U.S. Space Force range safety personnel, and Federal, State, and local officers designated by or assisting the District Commander in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of

this part, U.S.-flagged vessels may not enter the safety zone described in paragraph (a) of this section unless authorized by the District Commander or a designated representative. All foreign-flagged vessels are encouraged to remain outside the safety zone.

(2) To seek permission to enter, transit through, anchor in or remain within the safety zone contact Sector Jacksonville by telephone at (904) 714–7557 or the District Commander's representative via VHF–FM radio on channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the District Commander or a designated representative.

(d) *Notification of enforcement.* (1) The Coast Guard intends to enforce the temporary safety zone for the Terran 1 rocket launch with assets on scene to ensure the temporary safety zone is cleared of persons and vessels.

(2) Once the Terran 1 rocket has been launched, the safety zone will no longer be needed. At that time, the Coast Guard will notify the public of the cancellation of the safety zone through a Broadcast Notice to Mariners on VHF–FM channel 16, and through social media.

(e) *Enforcement period.* This section will be enforced from 10 a.m. on March 16, 2023, through 4 p.m. on March 23, 2023. This section is subject to enforcement from 10 a.m. to 4 p.m. each day.

Dated: March 14, 2023.

Brendan C. McPherson,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2023–05593 Filed 3–17–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

Great Lakes St. Lawrence Seaway Development Corporation

33 CFR Part 402

RIN 2135–AA54

Tariff of Tolls; Correction

AGENCY: Great Lakes St. Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule; correction.

SUMMARY: The Great Lakes St. Lawrence Seaway Development Corporation (GLS) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. On March 13, 2023, GLS published a final rule that set forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the GLS and the SLSMC. Due to a technical problem in production, a footnote was numbered incorrectly. This document corrects the error.

DATES: This correction is effective on March 22, 2023.

FOR FURTHER INFORMATION CONTACT: Carrie Mann Lavigne, Chief Counsel, Great Lakes St. Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662; (315) 764–3200.

SUPPLEMENTARY INFORMATION: The Great Lakes St. Lawrence Seaway Development Corporation (GLS) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls (Schedule of Fees and Charges in Canada) in their respective jurisdictions. A final rule amending 33 CFR part 402 published March 13, 2023, at 88 FR 15274, carried an incorrect footnote designation in a table in § 402.12. This document corrects that error.

Correction

In FR Doc. 2023–05007 appearing on page 15274 in the **Federal Register** of Monday, March 13, 2023, the following correction is made:

■ 1. On page 15276, in table 1 to § 402.12, the entry for item number 4 is corrected to read as follows:

§ 402.12 [Corrected]

TABLE 1 TO § 402.12

Item	Column 1	Column 2	Column 3
	Description of charges	Rate ($) Montreal to or from Lake Ontario (5 locks)	Rate ($) Welland Canal—Lake Ontario to or from Lake Erie (8 locks)
*	* * * * *	*	*
4	A charge per pleasure craft per lock transited for full or partial transit of the Seaway, including applicable Federal taxes [3].	[4] 30.00	30.00

* * * * *

Issued at Washington, DC, under authority delegated at 49 CFR part 1.101 Great Lakes St. Lawrence Seaway Development Corporation.

Carrie Lavigne,

Chief Counsel.

[FR Doc. 2023–05636 Filed 3–17–23; 8:45 am]

BILLING CODE 4910–61–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0075; FRL–9361–01–R4]

Air Plan Approval; Alabama; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the Alabama State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by Alabama and approved by EPA. EPA is also notifying the public of corrections to the Code of Federal Regulations (CFR) tables that identify material incorporated by reference into the Alabama SIP. This update affects the materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office.

DATES: This action is effective March 20, 2023.

ADDRESSES: The SIP materials whose incorporation by reference into 40 CFR part 52 is finalized through this action are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, GA 30303; and *www.regulations.gov.* To view the materials at the Region 4 Office, EPA requests that you email the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. LaRocca can be reached via telephone at (404) 562–8994 and via electronic mail at *larocca.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them and then submit the proposed SIP revisions to EPA. Once these control measures and strategies are approved by EPA, and after notice and comment, they are incorporated into the federally-approved SIP and are identified in part 52—''Approval and Promulgation of Implementation Plans,'' Title 40 of the Code of Federal Regulations (40 CFR part 52). The full text of the state regulation approved by EPA is not reproduced in its entirety in 40 CFR part 52 but is ''incorporated by reference.'' This means that EPA has approved a given state regulation or specified changes to a given regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in a given SIP. The information provided allows EPA and the public to monitor the extent to which a state implements a SIP to attain and maintain the NAAQS and to take enforcement action for violations of the SIP.

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on proposed revisions containing new and/or revised regulations. A submission from a state can revise one or more rules in their entirety or portions of rules. The state indicates the changes in the submission (such as by using redline/strikethrough text) and EPA then takes action on the requested changes. EPA establishes a docket for its actions using a unique Docket Identification Number, which is listed in each action. These dockets and the complete submission are available for viewing on *www.regulations.gov.*

On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference, into the Code of Federal Regulations, materials approved by EPA into each state SIP. These changes revised the format for the identification of the SIP in 40 CFR part 52, streamlined the mechanisms for announcing EPA approval of revisions to a SIP, and streamlined the mechanisms for EPA's updating of the IBR information contained for each SIP in 40 CFR part 52. The revised procedures also called for EPA to maintain ''SIP Compilations'' that contain the federally approved regulations and source-specific permits submitted by each state agency. EPA generally updates these SIP Compilations on an annual basis. Under the revised procedures, EPA must periodically publish an informational document in the rules section of the **Federal Register** notifying the public that updates have been made to a SIP Compilation for a particular state. EPA began applying the 1997 revised procedures to Alabama on December 22, 1998, and is providing this notice in accordance with such procedures. *See* 63 FR 70669.

II. EPA Action

In this action, EPA is providing notice of an update to the materials incorporated by reference into the Alabama SIP as of August 31, 2022 and identified in 40 CFR 52.50(c) and (d). This update includes SIP materials approved by EPA since the last IBR update. *See* 83 FR 13658 (March 30, 2018). In addition, EPA is providing notice of the following corrections to 40 CFR 52.50(c) and (d):

Changes Applicable to Paragraph (c), EPA-Approved Alabama Regulations

A. Correcting the header of paragraph (c) from ''*(c) EPA Approved Alabama Regulations*'' to ''*(c) EPA-Approved Alabama Regulations*''
B. Correcting **Federal Register** citations throughout to reflect the beginning page of the preamble as opposed to that of the regulatory text
C. Correcting a typographical error under Section 335–3–5-.01, by changing the title, ''Fuel Combustions'' to ''Fuel Combustion''
D. Correcting a typographical error under Section 335–3–5-.10, by changing the title, ''TR SO_2 Trading Program—computation of time'' to ''TR SO_2 Trading Program—Computation of Time''
E. Correcting Section 335–3–6-.17, by changing the title, ''Manufacture of Pneumatic Tires'' to read ''Manufacture of Pneumatic Rubber Tires''
F. Correcting Section 335–3–6-.34, by changing the title, ''Cutback Asphalt'' to ''Cutback and Emulsified Asphalt''
G. Revising Section 335–3–6-.38, by changing the title, ''Manufacture of Pneumatic Tires'' to ''Reserved,'' the state effective date from ''6/22/1989'' to ''7/31/1991'', and by changing the EPA approval date from ''3/19/1990, 55 FR 10062'' to ''9/27/1993, 58 FR 50262''
H. Revising Section 335–3–6-.42, by changing the title, ''Leaks from Petroleum Refinery Equipment'' to ''Reserved,'' the state effective date from ''10/15/1996,'' to ''7/31/1991'', and by changing the EPA approval date from ''6/6/1997, 62 FR 30991'' to ''9/27/1993, 58 FR 50262''
I. Revising Section 335–3–6-.46, by changing the title, ''Aerospace Assembly and Component and Component Coatings Operation'' to ''Reserved,'' the state effective date from ''6/22/1989'' to ''7/31/1991'', and by changing the EPA approval date from ''6/6/1997, 62 FR 30991'' to ''9/27/1993, 58 FR 50262''
J. Correcting a typographical error under Section 335–3–6-.47, by changing the title from ''Leaks from Coke by-Product Recovery Plant Equipment'' to ''Leaks From Coke By-product Recovery Plant Equipment''
K. Correcting a typographical error under Section 335–3–6-.48, by changing the title from ''Emissions from Coke by-Product Recovery Plant Coke Oven Gas Bleeder'' to ''Emissions From Coke By-product Recovery Plant Coke Oven Gas Bleeder''
L. Correcting a typographical error under Section 335–3–7-.01, by

changing title from ''Metals Productions'' to ''Metals Production''

M. Correcting a typographical error under Section 335–3–9-.01, by changing the title from ''Visible Emission Restriction for Motor Vehicles'' to ''Visible Emission Restrictions for Motor Vehicles''

N. Amending Section 335–3–13-.01 as follows:

1. Changing the title from ''General'' to ''Definitions''
2. Changing the state effective date from ''10/15/1996'' to ''2/28/1978''
3. Changing the EPA approval date from ''6/6/1997, 62 FR 30991'' to ''2/22/1982, 47 FR 7666''

O. Correcting Section 335–3–13-.04, by changing the title from ''Superphosphoric Acid Plants'' to ''Triple Superphosphate Plants''

P. Correcting Section 335–3–14-.04, by changing the title from ''Air Permits Authorizing Construction in in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)] to ''Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)]''

Changes Applicable to Paragraph (d), EPA-Approved Alabama Source-Specific Requirements

A. Correcting the header of paragraph (d) from ''(d) *EPA approved Alabama source specific requirements*'' to ''*(d) EPA-Approved Alabama Source-Specific Requirements*''

B. Correcting Table (d)'s title from ''EPA Approved Alabama Source Specific Requirements'' to ''EPA-Approved Alabama Source Specific Requirements''

III. Good Cause Exemption

EPA has determined that this action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs, makes typographical/ministerial revisions to the tables in the CFR, and makes ministerial changes to the prefatory heading to the tables in the CFR. Under section 553(b)(3)(B) of the APA, an agency may find good cause where procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Public comment for this administrative action is ''unnecessary'' and ''contrary to the public interest'' since the codification (and corrections) only reflect existing law. Immediate notice of this action in the **Federal Register** benefits the public by providing the public notice of the updated Alabama SIP Compilation and notice of corrections to the Alabama ''Identification of Plan'' portion of the CFR. Further, pursuant to section 553(d)(3), making this action immediately effective benefits the public by immediately updating both the SIP Compilation and the CFR ''Identification of plan'' section (which includes table entry corrections).

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of previously EPA-approved regulations promulgated by Alabama and federally effective prior to August 31, 2022. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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 they meet the criteria of the CAA. Accordingly, this final rule and notification of administrative change 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 (Pub. L. 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);
- 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 CAA; 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

EPA also believes that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. This is because prior EPA rulemaking actions for each individual component of the Alabama SIP Compilation previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate

circuit within 60 days of such rulemaking action. Thus, EPA believes judicial review of this action under section 307(b)(1) of the CAA is not available.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 9, 2023.

Daniel Blackman,

Regional Administrator, Region 4.

40 CFR part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401 et seq. Subpart B—Alabama

■ 2. § 52.50, paragraphs (b), (c), and (d), are revised to read as follows:

§ 52.50 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to August 31, 2022, for Alabama was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Materials are incorporated as it exists on the date of the approval and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after August 31, 2022, for Alabama will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of the dates referenced in paragraph (b)(1) of this section.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street SW, Atlanta, GA 30303. To obtain the material, please call (404) 562–9022. You may also inspect the material with an EPA approval date prior to August 31, 2021, for Alabama, at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, please email *fedreg.legal@nara.gov* or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(c) *EPA-Approved Alabama Regulations.*

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED ALABAMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Chapter No. 335–1–1 Organization				
Section 335–1–1–.03	Organization and Duties of the Commission	12/8/2017	7/6/2018, 83 FR 31454.	
Section 335–1–1–.04	Organization of the Department	12/8/2017	7/6/2018, 83 FR 31454.	
Chapter No. 335–3–1 General Provision				
Section 335–3–1–.01	Purpose	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–1–.02	Definitions	4/13/2020	9/21/2020, 85 FR 59192.	
Section 335–3–1–.03	Ambient Air Quality Standards	10/13/1998	3/1/1999, 64 FR 9918.	
Section 335–3–1–.04	Monitoring, Records, and Reporting	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–1–.05	Sampling and Testing Methods	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–1–.06	Compliance Schedule	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–1–.07	Maintenance and Malfunctioning of Equipment; Reporting.	10/15/1989	3/19/1990, 55 FR 10062.	
Section 335–3–1–.08	Prohibition of Air Pollution	8/10/2000	12/8/2000, 65 FR 76938.	
Section 335–3–1–.09	Variances	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–1–.10	Circumvention	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–1–.11	Severability	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–1–.12	Bubble Provision	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–1–.13	Credible Evidence	4/13/1999	11/3/1999, 64 FR 59633.	
Section 335–3–1–.15	Emissions Inventory Reporting Requirements	4/3/2003	4/24/2003, 68 FR 20077.	
Chapter No. 335–3–2 Air Pollution Emergency				
Section 335–3–2–.01	Air Pollution Emergency	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–2–.02	Episode Criteria	8/10/2000	12/8/2000, 65 FR 76938.	
Section 335–3–2–.03	Special Episode Criteria	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–2–.04	Emission Reduction Plans	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–2–.05	Two Contaminant Episode	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–2–.06	General Episodes	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–2–.07	Local Episodes	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–2–.08	Other Sources	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–2–.09	Other Authority Not Affected	6/22/1989	3/19/1990, 55 FR 10062.	
Chapter No. 335–3–3 Control of Open Burning and Incineration				
Section 335–3–3–.01	Open Burning	1/22/2008	9/15/2008, 73 FR 53134.	
Section 335–3–3–.02	Incinerators	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–3–.03	Incineration of Wood, Peanut, and Cotton Ginning Waste.	8/10/2000	12/8/2000, 65 FR 76938.	
Chapter No. 335–3–4 Control of Particulate Emissions				
Section 335–3–4–.01	Visible Emissions	9/30/2008	10/15/2008, 73 FR 60957.	
Section 335–3–4–.02	Fugitive Dust and Fugitive Emissions	10/15/1996	6/6/1997, 62 FR 30991.	

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED ALABAMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 335–3–4–.03	Fuel Burning Equipment	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–4–.04	Process Industries—General	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–4–.05	Small Foundry Cupola	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–4–.06	Cotton Gins	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–4–.07	Kraft Pulp Mills	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–4–.08	Wood Waste Boilers	6/9/2017	10/13/2017, 82 FR 47631.	
Section 335–3–4–.09	Coke Ovens	8/10/2000	12/8/2000, 65 FR 76938.	
Section 335–3–4–.10	Primary Aluminum Plants	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–4–.11	Cement Plants	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–4–.12	Xylene Oxidation Process	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–4–.13	Sintering Plants	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–4–.14	Grain Elevators	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–4–.15	Secondary Lead Smelters	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–4–.17	Steel Mills Located in Etowah County	10/15/1996	6/6/1997, 62 FR 30991.	
	Chapter No. 335–3–5 Control of Sulfur Compound Emissions			
Section 335–3–5–.01	Fuel Combustion	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–5–.02	Sulfuric Acid Plants	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–5–.03	Petroleum Production	8/10/2000	12/8/2000, 65 FR 76938.	
Section 335–3–5–.04	Kraft Pulp Mills	8/10/2000	12/8/2000, 65 FR 76938.	
Section 335–3–5–.05	Process Industries—General	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–5–.06	TR SO_2 Trading Program—Purpose and Definitions.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.07	TR SO_2 Trading Program—Applicability	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.08	TR SO_2 Trading Program—Retired Unit Exemption.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.09	TR SO_2 Trading Program—Standard Requirements.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.10	TR SO_2 Trading Program—Computation of Time.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.11	Administrative Appeal Procedures	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.12	SO_2 Trading Budgets and Variability Limits	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.13	TR SO_2 Allowance Allocations	12/7/2018	3/12/2020, 85 FR 14418.	
Section 335–3–5–.14	Authorization of Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.15	Responsibilities of Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.16	Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.17	Certificate of Representation	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.18	Objections Concerning Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.19	Delegation by Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.21	Establishment of Compliance Accounts, Assurance Accounts, and General Accounts.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.22	Recordation of TR SO_2 Allowance Allocations and Auction Results.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.23	Submission of TR SO_2 Allowance Transfers	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.24	Recordation of TR SO_2 Allowance Transfers	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.25	Compliance with TR SO_2 Emissions Limitation	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.26	Compliance with TR SO_2 Assurance Provisions.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.27	Banking	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.28	Account Error	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.29	Administrator's Action on Submissions	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.31	General Monitoring, Recordkeeping, and Reporting Requirements.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.32	Initial Monitoring System Certification and Recertification Procedures.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.33	Monitoring System Out–of–Control Periods	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.34	Notifications Concerning Monitoring	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.35	Recordkeeping and Reporting	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–5–.36	Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements.	11/24/2015	8/31/2016, 81 FR 59869.	
	Chapter No. 335–3–6 Control of Organic Emissions			
Section 335–3–6–.01	Applicability	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.02	VOC Water Separation	4/15/1987	9/27/1993, 58 FR 50262.	
Section 335–3–6–.03	Loading and Storage of VOC	4/15/1987	9/27/1993, 58 FR 50262.	
Section 335–3–6–.04	Fixed-Roof Petroleum Liquid Storage Vessels	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.05	Bulk Gasoline Plants	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.06	Bulk Gasoline Terminals	8/10/2000	12/8/2000, 65 FR 76938.	
Section 335–3–6–.07	Gasoline Dispensing Facilities—Stage I	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.08	Petroleum Refinery Sources	6/22/1989	3/19/1990, 55 FR 10062.	

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED ALABAMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 335–3–6–.09	Pumps and Compressors	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–6–.10	Ethylene Producing Plants	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–6–.11	Surface Coating	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.12	Solvent Metal Cleaning	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.13	Cutback Asphalt	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.14	Petition for Alternative Controls	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–6–.15	Compliance Schedules	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.16	Test Methods and Procedures	8/10/2000	12/8/2000, 65 FR 76938.	
Section 335–3–6–.17	Manufacture of Pneumatic Rubber Tires	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.18	Manufacture of Synthesized Pharmaceutical Products.	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.20	Leaks from Gasoline Tank Trucks and Vapor Collection Systems.	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.21	Leaks from Petroleum Refinery Equipment	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.22	Graphic Arts	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.23	Petroleum Liquid Storage in External Floating Roof Tanks.	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.24	Applicability	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.25	VOC Water Separation	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–6–.26	Loading and Storage of VOC	4/15/1987	9/27/1993, 58 FR 50262.	
Section 335–3–6–.27	Fixed-Roof Petroleum Liquid Storage Vessels	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.28	Bulk Gasoline Plants	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.29	Gasoline Terminals	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.30	Gasoline Dispensing Facilities Stage 1	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.31	Petroleum Refinery Sources	4/15/1987	9/27/1993, 58 FR 50262.	
Section 335–3–6–.32	Surface Coating	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.33	Solvent Metal Cleaning	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.34	Cutback and Emulsified Asphalt	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.35	Petition for Alternative Controls	4/15/1987	9/27/1993, 58 FR 50262.	
Section 335–3–6–.36	Compliances Schedules	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.37	Test Methods and Procedures	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–.38	Reserved	7/31/1991	9/27/1993, 58 FR 50262.	
Section 335–3–6–39	Manufacture of Synthesized Pharmaceutical Products.	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–41	Leaks from Gasoline Tank Trucks and Vapor Collection Systems.	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–42	Reserved	7/31/1991	9/27/1993, 58 FR 50262.	
Section 335–3–6–43	Graphic Arts	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–44	Petroleum Liquid Storage in External Floating Roof Tanks.	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–45	Large Petroleum Dry Cleaners	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–46	Reserved	7/31/1991	9/27/1993, 58 FR 50262.	
Section 335–3–6–47	Leaks From Coke By-product Recovery Plant Equipment.	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–48	Emissions From Coke By-product Recovery Plant Coke Oven Gas Bleeder.	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–49	Manufacture of Laminated Countertops	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–50	Paint Manufacture	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–6–53	List of EPA Approved and Equivalent Test Methods and Procedures for the Purpose of Determining VOC Emissions.	10/15/1996	6/6/1997, 62 FR 30991.	
Chapter No. 335–3–7 Carbon Monoxide Emissions				
Section 335–3–7–01	Metals Production	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–7–02	Petroleum Processes	6/22/1989	3/19/1990, 55 FR 10062.	
Chapter No. 335–3–8 Control of Nitrogen Oxide Emissions				
Section 335–3–8–01	Standards for Portland Cement Kilns	4/6/2001	7/17/2001, 66 FR 36919.	
Section 335–3–8–02	Nitric Acid Manufacturing	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–8–03	NO_X Emissions from Electric Utility Generating Units.	10/24/2000	11/7/2001, 66 FR 56223.	
Section 335–3–8–04	Standards for Stationary Reciprocating Internal Combustion Engines.	3/22/2005	12/28/2005, 70 FR 76694.	
Section 335–3–8–05	New Combustion Sources	1/16/2012	7/7/2021, 86 FR 35610.	
Section 335–3–8–07	TR NO_X Annual Trading Program—Purpose and Definitions.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–08	TR NO_X Annual Trading Program—Applicability.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–09	TR NO_X Annual Trading Program—Retired Unit Exemption.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–10	TR NO_X Annual Trading Program—Standard Requirements.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–11	TR NO_X Annual Trading Program—Computation of Time.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–12	Administrative Appeal Procedures	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–13	NO_X Annual Trading Budgets and Variability Limits.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–14	TR NO_X Annual Allowance Allocations	12/7/2018	3/12/2020, 85 FR 14418.	

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED ALABAMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 335–3–8–16	Authorization of Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–17	Responsibilities of Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–18	Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–19	Certificate of Representation	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–20	Objections Concerning Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–21	Delegation by Designated Representative and Alternate Designated Representative.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–23	Establishment of Compliance Accounts, Assurance Accounts, and General Accounts.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–24	Recordation of TR NO_X Annual Allowance Allocations and Auction Results.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–25	Submission of TR NO_X Annual Allowance Transfers.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–26	Recordation of TR NO_X Annual Allowance Transfers.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–27	Compliance with TR NO_X Annual Emissions Limitation.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–28	Compliance with TR NO_X Annual Assurance Provisions.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–29	Banking	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–30	Account Error	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–31	Administrator's Action on Submissions	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–33	General Monitoring, Recordkeeping, and Reporting Requirements.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–34	Initial Monitoring System Certification and Recertification Procedures.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–35	Monitoring System Out-of-Control Periods	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–36	Notifications Concerning Monitoring	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–37	Recordkeeping and Reporting	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–38	Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements.	11/24/2015	8/31/2016, 81 FR 59869.	
Section 335–3–8–39	TR NO_X Ozone Season Group 2 Trading Program—Purpose and Definitions.	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–40	TR NO_X Ozone Season Group 2 Trading Program—Applicability.	10/5/2018	3/12/2020, 85 FR 14418.	
Section 335–3–8–41	TR NO_X Ozone Season Group 2 Trading Program—Retired Unit Exemption.	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–42	TR NO_X Ozone Season Group 2 Trading Program—Standard Requirements.	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–43	TR NO_X Ozone Season Group 2 Trading Program—Computation of Time.	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–44	Administrative Appeal Procedures	11/24/2015	10/6/2017, 82 FR 46674.	
Section 335–3–8–45	NO_X Ozone Season Group 2 Trading Budgets and Variability Limits.	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–46	TR NO_X Ozone Season Group 2 Allowance Allocations.	12/7/2018	3/12/2020, 85 FR 14418.	
Section 335–3–8–48	Authorization of Designated Representative and Alternate Designated Representative.	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–49	Responsibilities of Designated Representative and Alternate Designated Representative.	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–50	Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source.	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–51	Certificate of Representation	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–52	Objections Concerning Designated Representative and Alternate Designated Representative.	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–53	Delegation by Designated Representative and Alternate Designated Representative.	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–55	Establishment of Compliance Accounts, Assurance Accounts, and General Accounts.	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–56	Recordation of TR NO_X Ozone Season Group 2 Allowance Allocations and Auction Results.	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–57	Submission of TR NO_X Ozone Season Group 2 Allowance Transfers.	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–58	Recordation of TR NO_X Ozone Season Group 2 Allowance Transfers.	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–59	Compliance with TR NO_X Ozone Season Group 2 Emissions Limitation.	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–60	Compliance with TR NO_X Ozone Season Group 2 Assurance Provisions.	6/9/2017	10/6/2017, 82 FR 46674.	

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED ALABAMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 335–3–8–61	Banking	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–62	TR NO_X Ozone Season Group 2 Trading Program—Account Error.	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–63	TR NO_X Ozone Season Group 2 Trading Program—Administrator's Action on Submissions.	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–65	General Monitoring, Recordkeeping, and Reporting Requirements.	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–66	Initial Monitoring System Certification and Recertification Procedures.	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–67	Monitoring System Out-of-Control Periods	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–68	Notifications Concerning Monitoring	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–69	Recordkeeping and Reporting	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–70	Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements.	6/9/2017	10/6/2017, 82 FR 46674.	
Section 335–3–8–71	NO_X Budget Program	4/13/2020	7/7/2021, 86 FR 35610.	
Section 335–3–8–72	NO_X Budget Program Monitoring and Reporting.	12/13/2021	7/11/2022, 87 FR 41061.	
Chapter No. 335–3–9 Control of Emissions from Motor Vehicles				
Section 335–3–9–01	Visible Emission Restrictions for Motor Vehicles.	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–9–02	Ignition System and Engine Speed	8/10/2000	12/8/2000, 65 FR 76938.	
Section 335–3–9–03	Crankcase Ventilation Systems	8/10/2000	12/8/2000, 65 FR 76938.	
Section 335–3–9–04	Exhaust Emission Control Systems	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–9–05	Evaporative Loss Control Systems	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–9–06	Other Prohibited Acts	8/10/2000	12/8/2000, 65 FR 76938.	
Section 335–3–9–07	Effective Date	10/15/1996	6/6/1997, 62 FR 30991.	
Chapter No. 335–3–12 Continuous Monitoring Requirements for Existing Sources				
Section 335–3–12–01	General	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–12–02	Emission Monitoring and Reporting Requirements.	2/17/1998	9/14/1998, 63 FR 49005.	
Section 335–3–12–03	Monitoring System Malfunction	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–12–04	Alternate Monitoring and Reporting Requirements.	6/22/1989	3/19/1990, 55 FR 10062.	
Section 335–3–12–05	Exemptions and Extensions	6/22/1989	3/19/1990, 55 FR 10062.	
Chapter No. 335–3–13 Control of Fluoride Emissions				
Section 335–3–13–01	Definitions	2/28/1978	2/22/1982, 47 FR 7666.	
Section 335–3–13–02	Superphosphoric Acid Plants	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–13–03	Diammonium Phosphate Plants	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–13–04	Triple Superphosphate Plants	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–13–05	Granular Triple Superphosphoric Storage Facilities.	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–13–06	Wet Process Phosphoric Acid Plants	10/15/1996	6/6/1997, 62 FR 30991.	
Chapter No. 335–3–14 Air Permits				
Section 335–3–14–01	General Provisions	6/9/2017	12/14/2018, 83 FR 64285.	
Section 335–3–14–02	Permit Procedures	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–14–03	Standards for Granting Permits	5/23/2011	9/26/2012, 77 FR 59100.	
Section 335–3–14–04	Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)].	10/5/2018	7/3/2019, 84 FR 31741	Except for changes to 335–3–14–04(2)(w)1., state effective July 11, 2006, which lists a 100 ton per year significant net emissions increase for regulated NSR pollutants not otherwise specified at 335–3–14–04(2)(w). Except for the significant impact levels at 335–3–14–04(10)(b) which were withdrawn from EPA consideration on October 9, 2014. Except for the second sentence of paragraph 335–3–14–04(2)(bbb)2., as well as the second and fourth sentences of paragraph 335–3–14–04(2)(bbb)3., which include changes from the vacated federal ERP rule and were withdrawn from EPA consideration by the State on May 5, 2017.

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED ALABAMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 335–3–14–05	Air Permits Authorizing Construction in or Near Nonattainment Areas.	6/9/2017	12/14/2018, 83 FR 64285 ...	With the exception of: The portion of 335–3–14–05(1)(k) stating ''excluding ethanol production facilities that produce ethanol by natural fermentation''; and 335–3–14–05(2)(c)3 (addressing fugitive emission increases and decreases). Also with the exception of the state-withdrawn elements: 335–3–14–05(1)(h) (the actual-to-potential test for projects that only involve existing emissions units); the last sentence at 335–3–14–05(3)(g), stating ''Interpollutant offsets shall be determined based upon the following ratios''; and the NNSR interpollutant ratios at 335–3–14–05(3)(g)1–4.
Chapter No. 335–3–15 Synthetic Minor Operating Permits				
Section 335–3–15–01	Definitions	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–15–02	General Provisions	8/10/2000	12/8/2000, 65 FR 76938.	
Section 335–3–15–03	Applicability	11/23/1993	10/20/1994, 59 FR 52916.	
Section 335–3–15–04	Synthetic Minor Operating Permit Requirements.	10/15/1996	6/6/1997, 62 FR 30991.	
Section 335–3–15–05	Public Participation	6/9/2017	12/14/2018, 83 FR 64285.	
Chapter No. 335–3–17 Conformity of Federal Actions to State Implementation Plans				
Section 335–3–17–01	Transportation Conformity	5/28/2013	10/12/2017, 82 FR 47383.	
Section 335–3–17–02	General Conformity	5/23/2011	9/26/2012, 77 FR 59100.	

(d) EPA-Approved Alabama Source-Specific Requirements.

TABLE 2 TO PARAGRAPH (d)—EPA-APPROVED ALABAMA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
Lafarge Cement Kiln	AB70004_1_01	2/6/2008	7/30/2009, 74 FR 37945	Certain provisions of the permit.
Lehigh Cement Kiln	4–07–0290–03	2/6/2008	7/30/2009, 74 FR 37945	Certain provisions of the permit.

* * * * *

[FR Doc. 2023–05239 Filed 3–17–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0021; FRL–9363–01–R4]

Air Plan Approval; Georgia; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the Georgia State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by Georgia and approved by EPA. In this notice, EPA is also notifying the public of corrections and clarifying changes to the Code of Federal Regulations (CFR) tables that identify material incorporated by reference into the Georgia SIP. This update affects the materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office.

DATES: This action is effective March 20, 2023.

ADDRESSES: The SIP materials whose incorporation by reference into 40 CFR part 52 is finalized through this action are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, GA 30303; and *www.regulations.gov.* To view the materials at the Region 4 Office, EPA requests that you email the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. LaRocca can be reached via telephone at (404) 562–8994 or via electronic mail at *larocca.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them and then submit the proposed SIP revisions to EPA. Once these control measures and strategies are approved by EPA, and after notice and comment, they are incorporated into the federally-approved SIP and are identified in part 52—''Approval and Promulgation of Implementation Plans,'' Title 40 of the Code of Federal Regulations (40 CFR part 52). The full text of the state regulation approved by EPA is not reproduced in its entirety in 40 CFR part 52 but is ''incorporated by reference.'' This means that EPA has approved a given state regulation or specified changes to a given regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in a given SIP. The information provided allows EPA and the public to monitor the extent to which a state implements a SIP to attain and maintain the NAAQS and to take enforcement action for violations of the SIP.

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on proposed revisions containing new or revised state regulations. A submission from a state can revise one or more rules in their entirety or portions of rules. The state indicates the changes in the submission (such as by using redline/strikethrough text), and EPA then takes action on the requested changes. EPA establishes a docket for its actions using a unique Docket Identification Number, which is listed in each action. These dockets and the complete submission are available for viewing on *www.regulations.gov.*

On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference, into the Code of Federal Regulations, materials approved by EPA into each SIP. These changes revised the format for the identification of the SIP in 40 CFR part 52, streamlined the mechanisms for announcing EPA approval of revisions to a SIP, and streamlined the mechanisms for EPA's updating of the IBR information contained for each SIP in 40 CFR part 52. The revised procedures also called for EPA to maintain ''SIP Compilations'' that contain the federally approved regulations and source-specific permits submitted by each state agency.

EPA generally updates these SIP Compilations on an annual basis. Under the revised procedures, EPA must periodically publish an informational document in the rules section of the **Federal Register** notifying the public that updates have been made to a SIP Compilation for a particular state. EPA began applying the 1997 revised procedures to Georgia on May 21, 1999, and is providing this notice in accordance with such procedures. *See* 64 FR 27699.

II. EPA Action

In this action, EPA is providing notice of an update to the materials incorporated by reference into the Georgia SIP as of August 31, 2022, and identified in 40 CFR 52.570(c) and (d). This update includes SIP materials approved by EPA since the last IBR update. *See* 84 FR 45910 (September 3, 2019). In addition, EPA is providing notice of the following corrections and clarifying changes to 40 CFR 52.570(c) and (d):

Changes Applicable to Paragraph (c), EPA Approved Georgia Regulations

A. Correcting Table (c)'s title, from ''*(c) EPA Approved Georgia Regulations*'' to ''*(c) EPA-Approved Georgia Regulations*''

B. Correcting the header of paragraph (c), from ''EPA Approved Georgia Regulations'' to ''EPA-Approved Georgia Regulations''

C. Under 391–3–1–02(a), the explanation is revised from, ''Except for paragraph 391–3–1–02(a)1 (as approved on 3/16/2006).'' to ''Except for paragraph 391–3–1–02(2)(a)1.''

D. Under 391–3–1–.02(2)(nnn), ''NO_X Emissions from Large Stationary Gas Turbines,'' the state effective date is revised from ''2/16/2000'' to ''4/20/2003'' and the EPA approval date is revised from ''7/10/2001, 66 FR 35906'' to ''5/28/2019, 84 FR 24393''

E. Under 391–3–1–.02(5), ''Open Burning,'' the EPA approval date is revised from ''2/9/2010, 75 FR 6309'' to ''5/28/2019, 84 FR 24393'' and a note is added in the explanation column to read: ''Except subparagraph 391–3–1–.02(5)(c), which was approved on July 10, 2001, with a state effective date of August 16, 2000.''

F. Under 391–3–1–.01, 391–3–1–.02(5), 391–3–1–.02(6), 391–3–1–.03(13), the phrases ''State-effective'' and ''state-effective'' are revised to remove the hyphen.

Changes Applicable to Paragraph (d), EPA Approved Georgia Source-Specific Requirements

A. Correcting the header of paragraph (d), from ''EPA Approved Georgia Source-Specific Requirements'' to ''EPA-Approved Georgia Source-Specific Requirements''

B. The Plant Atkinson permits, specifically 4922–033–1319–0, 4911–033–1320–0, 4911–033–1321–0, 4911–033–1322–0, and 4911–033–6949, have been reordered to be in sequential order.

III. Good Cause Exemption

EPA has determined that this action falls under the ''good cause'' exemption in the section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs, makes typographical/ministerial revisions to the tables in the CFR, and makes ministerial changes to the prefatory heading to the tables in the CFR. Under section 553(b)(3)(B) of the APA, an agency may find good cause where procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Public comment for this administrative action is ''unnecessary'' and ''contrary to the public interest'' since the codification (and corrections) only reflect existing law. Immediate notice of this action in the **Federal Register** benefits the public by providing the public notice of the updated Georgia SIP Compilation and notice of corrections to the Georgia ''Identification of Plan'' portion of the CFR. Further, pursuant to section 553(d)(3), making this action immediately effective benefits the public by immediately updating both the SIP compilation and the CFR ''Identification of plan'' section (which includes table entry corrections).

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of previously EPA-approved regulations promulgated by Georgia and federally effective prior to August 31, 2022. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 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 CAA. Accordingly, this final rule and notification of administrative change 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 (Pub. L. 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);
- 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 CAA; 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

EPA also believes that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. This is because prior EPA rulemaking actions for each individual component of the Georgia SIP compilations previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA believes judicial review of this action under section 307(b)(1) of the CAA is not available.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 9, 2023.

Daniel Blackman,

Regional Administrator, Region 4.

Accordingly, for reasons stated in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart L—Georgia

■ 2. In § 52.570 paragraphs (b), (c), and (d) are revised to read as follows:

§ 52.570 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to August 31, 2022, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraph (c) and (d) of this section with EPA approval dates after August 31, 2022, for Georgia will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of the dates referenced in paragraph (b)(1) of this section.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street SW, Atlanta, GA 30303. To obtain the material, please call (404) 562–9022. You may also inspect the material with an EPA approval date prior to August 31, 2022, for Georgia, at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, please email *fedreg.legal@nara.gov* or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(c) *EPA-Approved Georgia Regulations.*

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
391–3–1–.01	Definitions	7/29/2020	4/5/2022, 87 FR 19643	Except the first paragraph, sections (a)–(nn), (pp)–(ccc), (eee)–(jjj), (nnn)–(bbbb), (dddd)–(kkkk), (mmmm), (rrrr)–(ssss), approved on 12/4/2018 with a state effective date of 7/20/2017; sections (ddd) and (cccc) approved on 2/2/1996 with a state effective date of 11/20/1994; (nnnn), approved on 1/5/2017 with a state effective date of 8/14/2016; and sections (oooo), (pppp), which are not in the SIP.
391–3–1–.02	Provisions			
391–3–1–.02(1)	General Requirements	3/20/1979	9/18/1979, 44 FR 54047.	
391–3–1–.02(2)	Emission Standards			
391–3–1–.02(2)(a)	General Provisions	8/1/2013	7/28/2017, 82 FR 35106	Except for paragraph 391–3–1–.02(2)(a)1.
391–3–1–.02(2)(b)	Visible Emissions	1/17/1979	9/18/1979, 44 FR 54047.	
391–3–1–.02(2)(c)	Incinerators	7/23/2018	11/22/2019, 84 FR 64427.	
391–3–1–.02(2)(d)	Fuel-burning Equipment	7/20/2005	2/9/2009, 75 FR 6309.	
391–3–1–.02(2)(e)	Particulate Emission from Manufacturing Processes.	8/1/2013	7/28/2017, 82 FR 35106.	
391–3–1–.02(2)(f)	Normal Superphosphate Manufacturing Facilities.	1/17/1979	9/18/1979, 44 FR 54047.	
391–3–1–.02(2)(g)	Sulfur Dioxide	7/17/2002	7/9/2003, 68 FR 40786.	
391–3–1–.02(2)(h)	Portland Cement Plants	1/17/1979	9/18/1979, 44 FR 54047.	
391–3–1–.02(2)(i)	Nitric Acid Plants	1/17/1979	9/18/1979, 44 FR 54047.	
391–3–1–.02(2)(j)	Sulfuric Acid Plants	1/17/1979	9/18/1979, 44 FR 54047.	
391–3–1–.02(2)(k)	Particulate Emission from Asphaltic Concrete Hot Mix Plants.	1/17/1979	9/18/1979, 44 FR 54047.	
391–3–1–.02(2)(n)	Fugitive Dust	1/17/1979	9/18/1979, 44 FR 54047.	
391–3–1–.02(2)(p)	Particulate Emissions from Kaolin and Fuller's Earth Processes.	8/1/2013	7/28/2017, 82 FR 35106.	
391–3–1–.02(2)(q)	Particulate Emissions from Cotton Gins	8/1/2013	7/28/2017, 82 FR 35106.	
391–3–1–.02(2)(r)	Particulate Emissions from Granular and Mixed Fertilizer Manufacturing Units.	1/27/1972	5/31/1972, 37 FR 10842.	
391–3–1–.02(2)(t)	VOC Emissions from Automobile and Light Duty Truck Manufacturing.	3/7/2012	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(u)	VOC Emissions from Can Coating	9/16/1992	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(v)	VOC Emissions from Coil Coating	9/16/1992	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(w)	VOC Emissions from Paper Coating	3/7/2012	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(x)	VOC Emissions from Fabric and Vinyl Coating.	9/16/1992	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(y)	VOC Emissions from Metal Furniture Coating	3/7/2012	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(z)	VOC Emissions from Large Appliance Surface Coating.	3/7/2012	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(aa)	VOC Emissions from Wire Coating	9/16/1992	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(bb)	Petroleum Liquid Storage	1/9/1991	10/13/1992, 57 FR 46780.	
391–3–1–.02(2)(cc)	Bulk Gasoline Terminals	1/9/1991	10/13/1992, 57 FR 46780.	
391–3–1–.02(2)(dd)	Cutback Asphalt	1/17/1979	9/18/1979, 44 FR 54047.	
391–3–1–.02(2)(ee)	Petroleum Refinery	1/9/1991	10/13/1992, 57 FR 46780.	
391–3–1–.02(2)(ff)	Solvent Metal Cleaning	5/29/1996	4/26/1999, 64 FR 20186.	
391–3–1–.02(2)(gg)	Kraft Pulp Mills	8/1/2013	7/28/2017, 82 FR 35106.	
391–3–1–.02(2)(hh)	Petroleum Refinery Equipment Leaks	6/24/1994	2/2/1996, 61 FR 3817.	
391–3–1–.02(2)(ii)	VOC Emissions from Surface Coating of Miscellaneous Metal Parts and Products.	3/7/2012	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(jj)	VOC Emissions from Surface Coating of Flat Wood Paneling.	3/7/2012	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(kk)	VOC Emissions from Synthesized Pharmaceutical Manufacturing.	12/18/1980	11/24/1981, 46 FR 57486.	
391–3–1–.02(2)(ll)	VOC Emissions from the Manufacture of Pneumatic Rubber Tires.	12/18/1980	11/24/1981, 46 FR 57486.	
391–3–1–.02(2)(mm)	VOC Emissions from Graphic Arts Systems	3/7/2012	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(nn)	VOC Emissions from External Floating Roof Tanks.	12/18/1980	11/24/1981, 46 FR 57486.	
391–3–1–.02(2)(oo)	Fiberglass Insulation Manufacturing Plants	12/18/1980	11/24/1981, 46 FR 57486.	
391–3–1–.02(2)(pp)	Bulk Gasoline Plants	6/8/2008	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(qq)	VOC Emissions from Large Petroleum Dry Cleaners.	4/3/1991	10/13/1992, 57 FR 46780.	
391–3–1–.02(2)(rr)	Gasoline Dispensing Facilities—Stage I	6/8/2008	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(ss)	Gasoline Transport Systems and Vapor Collection Systems.	8/1/2013	7/28/2017, 82 FR 35106.	
391–3–1–.02(2)(tt)	VOC Emissions from Major Sources	6/8/2008	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(uu)	Visibility Protection	10/31/1985	1/28/1986, 51 FR 3466.	
391–3–1–.02(2)(vv)	Volatile Organic Liquid Handling and Storage	4/12/2009	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(yy)	Emissions of Nitrogen Oxides from Major Sources.	4/12/2009	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(ccc)	VOC Emissions from Bulk Mixing Tanks	4/12/2009	9/28/2012, 77 FR 59554.	

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED GEORGIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
391–3–1–.02(2)(ddd)	VOC Emissions from Offset Lithography and Letterpress.	3/7/2012	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(eee)	VOC Emissions from Expanded Polystyrene Products Manufacturing.	4/12/2009	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(fff)	Particulate Matter Emissions from Yarn Spinning Operations.	6/15/1998	12/2/1999, 64 FR 67491.	
391–3–1–.02(2)(hhh)	Wood Furniture Finishing and Cleaning Operations.	4/12/2009	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(jjj)	NO_X Emissions from Electric Utility Steam Generating Units.	3/12/2007	11/27/2009, 74 FR 62249.	
391–3–1–.02(2)(kkk)	VOC Emissions from Aerospace Manufacturing and Rework Facilities.	2/17/2019	3/11/2020, 85 FR 14145.	
391–3–1–.02(2)(lll)	NO_X Emissions from Fuel-burning Equipment	4/12/2009	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(mmm)	NO_X Emissions from Stationary Gas Turbines and Stationary Engines used to Generate Electricity.	5/4/2014	9/1/2015, 80 FR 52627.	
391–3–1–.02(2)(nnn)	NO_X Emissions from Large Stationary Gas Turbines.	4/20/2003	5/28/2019, 84 FR 24393.	
391–3–1–.02(2)(rrr)	NO_X Emissions from Small Fuel-Burning Equipment.	4/12/2009	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(vvv)	VOC Emissions from Coating Miscellaneous Plastic Parts and Products.	3/7/2012	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(yyy)	VOC Emissions from the Use of Miscellaneous Industrial Adhesives.	3/7/2012	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(zzz)	VOC Emissions from Fiberglass Boat Manufacturing.	3/7/2012	9/28/2012, 77 FR 59554.	
391–3–1–.02(2)(aaaa)	Industrial Cleaning Solvents	3/7/2012	9/28/2012, 77 FR 59554.	
391–3–1–.02(3)	Sampling	6/15/1998	12/2/1999, 64 FR 67491.	
391–3–1–.02(4)	Ambient Air Standards	7/23/2018	10/29/2019, 84 FR 57824	Except paragraphs (a), (c), (d), (e), (f), (g), and (h), approved on 12/4/2018 with a state effective date of 7/20/2017.
391–3–1–.02(5)	Open Burning	7/13/2006	5/28/2019, 84 FR 24393	Except subparagraph 391–3–1–.02(5)(c), which was approved on July 10, 2001, with a state effective date of August 16, 2000.
391–3–1–.02(6)	Source Monitoring	8/1/2013	7/28/2017, 82 FR 35108	Except paragraph (a)4., approved on 3/9/2022, with a state effective date of 10/25/2021.
391–3–1–.02(7)	Prevention of Significant Deterioration of Air Quality (PSD).	7/20/2017	9/16/2020, 85 FR 57707	Except for the automatic rescission clause at 391–3–1–.02(7)(a)(2)(iv), which EPA disapproved on March 4, 2016. Except for portions of Rule 391–3–1–.02(7) incorporating by reference 40 CFR 52.21(b)(2)(v), and 40 CFR 52.21(b)(3)(iii)(c), because those CFR provisions were indefinitely stayed by the Fugitive Emissions Rule in the March 30, 2011 rulemaking and have not been approved into the Georgia SIP.
391–3–1–.02(11)	Compliance Assurance Monitoring	6/15/1998	12/2/1999, 64 FR 67491.	
391–3–1–.02(12)	Cross State Air Pollution Rule NO_X Annual Trading Program.	7/23/2018	2/18/2020, 85 FR 8749.	
391–3–1–.02(13)	Cross State Air Pollution Rule SO_2 Annual Trading Program.	7/23/2018	2/18/2020, 85 FR 8749.	
391–3–1–.02(14)	Cross State Air Pollution Rule NO_X Ozone Season Trading Program.	7/23/2018	2/18/2020, 85 FR 8749.	
391–3–1–.03	Permits			
391–3–1–.03(1)	Construction (SIP) Permit	8/17/1994	8/30/1995, 60 FR 45048.	
391–3–1–.03(2)	Operating (SIP) Permit	12/26/2001	7/11/2002, 67 FR 45909	Except subparagraph (e), which is not approved into the SIP.
391–3–1–.03(3)	Revocation, Suspension, Modification or Amendment of Permits.	2/23/1979	9/18/1979, 44 FR 54047.	
391–3–1–.03(4)	Permits Not Transferable	11/20/1975	8/20/1976, 41 FR 35184.	
391–3–1–.03(5)	Permits Public Records	10/28/1992	2/2/1996, 61 FR 3819.	
391–3–1–.03(6)	Exemptions	7/29/2020	4/5/2022, 87 FR 19643	With the exception of Rule 391–3–1–.03(6)(b)16.
391–3–1–.03(7)	Combined Permits and Applications	2/23/1979	9/18/1979, 44 FR 54047.	
391–3–1–.03(8)	Permit Requirements	9/26/2019	9/16/2020, 85 FR 57694.	
391–3–1–.03(11)	Permit by Rule	7/23/2018	11/22/2019, 84 FR 64427	Except sections (a)–(b)(5) and (b)(7)–(b)(10), approved on 2/9/2010 with a state effective date of 7/20/2005; section (b)(6), approved on 3/13/2000 with a state effective date of 12/25/1997; and the phrase ''or enforceable as a practical matter'' in section .03(11)(b)11.(i), which is not in the SIP.
391–3–1–.03(12)	Generic Permit	8/17/1994	8/30/1995, 60 FR 45048.	

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED GEORGIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
391–3–1–.03(13)	Emission Reduction Credits	9/26/2019	9/22/2020, 85 FR 59436	Except subparagraph 391–3–1–.03(13)(f), which was approved into the SIP with a state effective date of 7/18/2001, and subparagraphs (b), (c), (e), (g), and (i), which were approved into the SIP with a state effective date of 2/16/2000.
391–3–1–.04	Air Pollution Episodes	11/20/1975	8/20/1976, 41 FR 35184.	
391–3–1–.07	Inspections and Investigations	11/20/1975	8/20/1976, 41 FR 35184.	
391–3–1–.08	Confidentiality of Information	11/20/1975	8/20/1976, 41 FR 35184.	
391–3–1–.09	Enforcement	11/22/1992	2/2/1996, 61 FR 3819.	
391–3–1–.10	Continuance of Prior Rules	11/22/1992	2/2/1996, 61 FR 3819.	
391–3–1–.15	Georgia Transportation Conformity and Consultation Interagency Rule.	10/6/2010	6/15/2012, 77 FR 35866.	
391–3–20	Enhanced Inspection and Maintenance			
391–3–20–.01	Definitions	4/13/2021	9/22/2022, 87 FR 57834.	
391–3–20–.02	Covered Counties	1/9/2005	5/24/2007, 72 FR 29075.	
391–3–20–.03	Covered Vehicles; Exemptions	2/17/2019	8/24/2020, 85 FR 52047.	
391–3–20–.04	Emission Inspection Procedures	4/13/2021	9/22/2022, 87 FR 57834.	
391–3–20–.05	Emission Standards	4/13/2021	9/22/2022, 87 FR 57834.	
391–3–20–.06	On-Road Testing of Exhaust Emissions by Remote Sensing Technology or Other Means.	2/17/2019	8/24/2020, 85 FR 52047.	
391–3–20–.07	Inspection Equipment System Specifications	4/13/2021	9/22/2022, 87 FR 57834.	
391–3–20–.08	Quality Control and Equipment Calibration Procedures.	3/28/2018	8/24/2020, 85 FR 52047.	
391–3–20–.09	Inspection Station Requirements	4/13/2021	9/22/2022, 87 FR 57834.	
391–3–20–.10	Certificates of Authorization	3/28/2018	8/24/2020, 85 FR 52047.	
391–3–20–.11	Inspector Qualifications and Certification	4/13/2021	9/22/2022, 87 FR 57834.	
391–3–20–.12	Schedules for Emission Inspections	6/19/2014	4/10/2017, 82 FR 17128.	
391–3–20–.13	Certificate of Emission Inspection	3/28/2018	8/24/2020, 85 FR 52047.	
391–3–20–.15	Repairs and Retests	3/28/2018	8/24/2020, 85 FR 52047.	
391–3–20–.16	Extensions and Reciprocal Inspections	6/19/2014	4/10/2017, 82 FR 17128.	
391–3–20–.17	Waivers	2/17/2019	8/24/2020, 85 FR 52047.	
391–3–20–.18	Sale of Vehicles	3/28/2018	8/24/2020, 85 FR 52047.	
391–3–20–.19	Management Contractor	6/19/2014	4/10/2017, 82 FR 17128.	
391–3–20–.20	Referee Program	3/28/2018	8/24/2020, 85 FR 52047.	
391–3–20–.21	Inspection Fees	6/19/2014	4/10/2017, 82 FR 17128.	
391–3–20–.22	Enforcement	6/19/2014	4/10/2017, 82 FR 17128.	

(d) *EPA-Approved State Source Specific Requirements.*

TABLE 2 TO PARAGRAPH (d)—EPA-APPROVED GEORGIA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Comments
Georgia Power Plant Bowen	EPD–AQC–180	11/17/1980	8/17/1981, 46 FR 41498.	
Georgia Power Plant Harllee Branch.	4911–117–6716–0	4/23/1980	5/5/1981, 46 FR 25092.	
ITT Rayonier, Inc.	2631–151–7686–C	11/4/1980	8/14/1981, 46 FR 41050.	
Georgia Power Plant Bowen	EPD–AQC–163	5/16/1979	1/3/1980, 45 FR 781.	
Union Camp	2631–025–7379–0	12/18/1981	4/13/1982, 47 FR 15794.	
Blue Bird Body Company	3713–111–8601	1/27/1984	1/7/1985, 50 FR 765.	
Plant McDonough	4911–033–5037–0 conditions 10 through 22	12/27/1995	3/18/1999, 64 FR 13348.	
Plant Yates	4911–038–4838–0 conditions 19 through 32	12/27/1995	3/18/1999, 64 FR 13348.	
Plant Yates	4911–038–4839–0 conditions 16 through 29	12/27/1995	3/18/1999, 64 FR 13348.	
Plant Yates	4911–038–4840–0 conditions 16 through 29	12/27/1995	3/18/1999, 64 FR 13348.	
Plant Yates	4911–038–4841–0 conditions 16 through 29	12/27/1995	3/18/1999, 64 FR 13348.	
Plant Atkinson	4911–033–1319–0 conditions 8 through 13	11/15/1994	3/18/1999, 64 FR 13348.	
Plant Atkinson	4911–033–1320–0 conditions 8 through 13	11/15/1994	3/18/1999, 64 FR 13348.	
Plant Atkinson	4911–033–1321–0 conditions 8 through 13	11/15/1994	3/18/1999, 64 FR 13348.	
Plant Atkinson	4911–033–1322–0 conditions 8 through 13	11/15/1994	3/18/1999, 64 FR 13348.	
Plant Atkinson	4911–033–6949 conditions 5 through 10	11/15/1994	3/18/1999, 64 FR 13348.	
Plant McDonough	4911–033–6951 conditions 5 through 10	11/15/1994	3/18/1999, 64 FR 13348.	
Atlanta Gas Light Company	4922–028–10902 conditions 20 and 21	11/15/1994	3/18/1999, 64 FR 13348.	
Atlanta Gas Light Company	4922–031–10912 conditions 27 and 28	11/15/1994	3/18/1999, 64 FR 13348.	
Austell Box Board Corporation	2631–033–11436 conditions 1 through 5	11/15/1994	3/18/1999, 64 FR 13348.	
Emory University	8922–044–10094 conditions 19 through 26	11/15/1994	3/18/1999, 64 FR 13348.	
General Motors Corporation	3711–044–11453 conditions 1 through 6 and Attachment A	11/15/1994	3/18/1999, 64 FR 13348.	
Georgia Proteins Company	2077–058–11226 conditions 16 through 23 and Attachment A	11/15/1994	3/18/1999, 64 FR 13348.	
Owens-Brockway Glass Container, Inc.	3221–060–10576 conditions 26 through 28 and Attachment A	11/15/1994	3/18/1999, 64 FR 13348.	

TABLE 2 TO PARAGRAPH (d)—EPA-APPROVED GEORGIA SOURCE-SPECIFIC REQUIREMENTS—Continued

Name of source	Permit No.	State effective date	EPA approval date	Comments
Owens-Corning Fiberglass Corporation.	3296–060–10079 conditions 25 through 29	11/15/1994	3/18/1999, 64 FR 13348.	

* * * * *

[FR Doc. 2023–05241 Filed 3–17–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0729; FRL–10603–01–OCSPP]

Azoxystrobin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of azoxystrobin in or on mango, papaya, and oil palm. Syngenta Crop Protection, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 20, 2023. Objections and requests for hearings must be received on or before May 19, 2023 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0729, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Daniel Rosenblatt, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–2875; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0729 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before May 19, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0729, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of May 20, 2022 (87 FR 30856) (FRL–9410–13), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1F8946) by Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR 180.507 be amended by establishing an import tolerance for residues of the fungicide azoxystrobin, methyl (E)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate, in or on palm, oil at 0.06 parts per million (ppm). The petition also requested to amend tolerances in 40 CFR 180.507 for residues of the fungicide azoxystrobin in or on mango at 4 ppm and papaya at 6 ppm. The May 20, 2022, notice of filing referenced a summary of the petition prepared by Syngenta Crop Protection, LLC, the registrant, which is available in the docket, *https://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for azoxystrobin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with azoxystrobin follows.

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections that repeat what has been previously published for tolerance rulemakings of the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemakings and republishing the same sections is unnecessary. EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking.

EPA has previously published a tolerance rulemaking for azoxystrobin, most recently on November 15, 2018, in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to azoxystrobin and established tolerances for residues of that pesticide chemical. EPA is incorporating previously published sections from the 2018 rulemaking as described further in this rulemaking, as they remain unchanged.

A. Toxicological Profile

For a discussion of the toxicological profile of azoxystrobin, see Unit III.A. of the 2018 rulemaking (83 FR 57333) (FRL–9985–45).

B. Toxicological Points of Departure/ Levels of Concern

For a summary of the toxicological points of departure/levels of concern used for the safety assessment, see Unit III.B. of the 2018 rulemaking.

C. Exposure Assessment

Much of the exposure assessment remains the same, although updates have occurred to accommodate exposures from the petitioned-for tolerances. The updates are discussed in this section; for a description of the rest of the EPA approach to and assumptions for the exposure assessment, see Unit III.C. of the 2018 rulemaking.

Dietary exposure from food and feed uses. EPA's dietary exposure assessments have been updated to include the increased exposure from the amended tolerances of azoxystrobin on mango and papaya and the additional exposure associated with the import tolerance on palm oil. For the acute dietary exposure assessment, EPA used tolerance-level residues for all commodities, except citrus fruits (which used the highest residues from residue trials), 100 percent crop treated (PCT) for all commodities, and default processing factors with the Dietary Exposure Evaluation Model (DEEM) for all commodities except where tolerances were established for processed commodities. For the chronic dietary exposure assessment, EPA used tolerance-level residues for all commodities, 100 PCT for all commodities, and default processing factors with DEEM for all commodities except where tolerances were established for processed commodities.

Anticipated residue and percent crop treated (PCT) information. EPA did not use anticipated residue and/or PCT information in the dietary assessment for azoxystrobin. Tolerance-level residues and/or 100 PCT were assumed for all food commodities.

Drinking water, non-occupational, and cumulative exposures. Drinking water exposures and residential (non-occupational) exposures are not impacted by the amended uses and import tolerance in this action. Since the last rulemaking in 2018, Registration Review was completed for azoxystrobin, resulting in updated estimated drinking water concentrations (EDWCs). The dietary risk assessment for this petition used the updated surface water EDWCs of 69.4 ppb for acute exposure and 20.7 ppb for chronic exposure, which were calculated with the Surface Water Concentration Calculator (SWCC).

Azoxystrobin is currently registered for use on turf, ornamentals, and antimicrobial uses as a materials preservative in paints and plastics that could result in residential exposures. The residential risk estimate that was used in the aggregate assessment is hand-to-mouth incidental oral exposures to preserved vinyl flooring for children aged 1 to less than 2 years old. EPA's conclusions concerning cumulative risk remain unchanged from the 2018 rulemaking.

D. Safety Factor for Infants and Children

EPA continues to conclude that there is reliable data to support the reduction of the Food Quality Protection Act (FQPA) safety factor to 1X for all exposure scenarios except acute exposure. For assessing acute dietary risk, EPA continues to retain an FQPA factor of 3X. See Unit III.D. of the 2018 rulemaking for a discussion of the Agency's rationale for that determination.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate points of departure (PODs) to ensure that an adequate margin of exposure (MOE) exists.

Acute dietary risks are below the Agency's level of concern of 100% of the aPAD; they are 29% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Chronic dietary risks are below the Agency's level of concern of 100% of the cPAD; they are 66% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

The Agency analyzed short-term aggregate risk by aggregating chronic dietary (food and drinking water) exposure with incidental oral hand-to-mouth post-application exposure to children 1 to <2 years old from preserved vinyl flooring. EPA has concluded the combined short-term

food, water, and residential exposures result in an aggregate MOE of 200 for children 1 to <2 years old. Because EPA's level of concern for azoxystrobin is an MOE of less than 100; this MOE is not of concern.

As stated in Unit III. E. of the 2018 rulemaking, azoxystrobin is not expected to pose an intermediate-term risk; therefore, the intermediate-term aggregate risk would be equivalent to the chronic dietary exposure estimate.

Based on the lack of evidence of carcinogenicity in two acceptable rodent carcinogenicity studies, azoxystrobin is not expected to pose a cancer risk to humans.

Therefore, based on these risk assessments and information described above, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to azoxystrobin residues. More detailed information can be found at *https://www.regulations.gov* in the document titled ''Azoxystrobin. Human Health Risk Assessment for the Establishment of Tolerances for Residues in/on Mango and Papaya and Establishment of a Tolerance for Residues in/on Imported Palm Oil.'' in docket ID number EPA–HQ–OPP–2021–0729.

IV. Other Considerations

A. Analytical Enforcement Methodology

For a discussion of the available analytical enforcement method, see Unit IV.A. of the 2018 rulemaking.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex.

The Codex has established MRLs for azoxystrobin in or on mango at 0.7 ppm and papaya at 0.3 ppm, which are lower than the current U.S. tolerances for residues of azoxystrobin in or on mango at 2.0 ppm and papaya at 2.0 ppm. The petitioner requested increasing the tolerance for mango to 4 ppm and the tolerance for papaya to 6 ppm to support the import of these commodities from other countries. The residue data support the increased tolerances. Codex has not established an MRL for residues of azoxystrobin in or on palm oil.

V. Conclusion

Therefore, an import tolerance is established for residues of azoxystrobin, methyl (E)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate, in or on palm, oil at 0.06 ppm, and existing tolerances are amended for azoxystrobin residues in or on mango at 4 ppm and papaya at 6 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 14, 2023.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.507, in paragraph (a)(1) amend the table by:
■ a. Adding a heading for the table;
■ b. Revising the entry for ''Mango'';
■ c. Adding in alphabetical order the entry ''Palm, oil'';
■ d. Revising the entry for ''Papaya''; and
■ e. Adding footnote 2 at the end of the table.

The additions and revisions read as follows:

§ 180.507 Azoxystrobin; tolerances for residues.

(a) * * *
(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
* * * * *	
Mango	4
* * * * *	
Palm, oil[2]	0.06
Papaya	6
* * * * *	

* * * * * * *

[2] There are no U.S. registrations on palm, oil as of March 20, 2023.

* * * * *

[FR Doc. 2023–05597 Filed 3–17–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. FMC–2023–0008]

RIN 3072–AC95

Civil Penalty Amendments to Rules of Practice and Procedure

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (Commission) amends its Rules of Practice and Procedure governing the compromise, assessment, mitigation, settlement, and collection of civil penalties. These changes to the Commission regulations align with the statutory changes in the Ocean Shipping Reform Act of 2022 on penalties or refunds.

DATES: The effective date is April 19, 2023.

FOR FURTHER INFORMATION CONTACT: William Cody, Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

On June 16, 2022, the President signed the Ocean Shipping Reform Act of 2022 (''OSRA 2022'') into law,[1] which amended various provisions of the Shipping Act.[2] Section 8 of OSRA 2022 amended two Shipping Act provisions: 46 U.S.C. 41107 for monetary penalties or refunds; and 46 U.S.C. 41109 for assessment of penalties.

Before OSRA 2022, section 41107 stated that any person that violates the Shipping Act or a regulation or order of the Commission issued under the Shipping Act is liable for a civil penalty. OSRA 2022 changed the language in this section governing potential liability of a violator by adding the phrase ''or, in addition to or in lieu of a civil penalty, is liable for the refund of a charge'' immediately after the term civil penalty. Accordingly, the Commission may now order that a person is liable for ''a civil penalty or, in addition to or in lieu of a civil penalty, is liable for the refund of a charge'' for any violation of the Shipping Act, Commission regulations, or Commission order.

As a result, the term ''refund'' now appears in two key provisions of the Shipping Act. First, in addition to appearing in sections 41107 and 41109 (as amended by OSRA 2022), the term ''refund'' also appears in newly enacted section 41310, which explicitly addresses the issue of charge complaints. That provision specifies, among other things, that upon a finding by the Commission that a carrier's charges do not comply with the Shipping Act, the Commission shall promptly order the refund of those charges paid. *See* 46 U.S.C. 41310(c). Second, the term ''refund'' appears in 46 U.S.C. 40503, which was not amended by OSRA 2022. This part of the Shipping Act addresses tariffs and service contracts. Under section 40503, the Commission may permit a common carrier or a conference to refund a portion of freight charges or to waive collection of a portion of such charges from shippers for certain errors in tariffs or tariff publications. The Commission's regulation at 46 CFR 502.271 (Special docket application for permission to refund or waive freight charges) implements this tariff refund provision. This provision, however, only applies to a refund or waiver of freight charges by a common carrier's own application to the Commission and does not include other types of charges. Further, the special docket application procedure does not provide for assessment of penalties. Therefore, when viewed against this backdrop, it is the Commission's opinion that Congress amended section 41107, in part, to make it consistent with the Commission's newly enacted authority to order a refund of charges paid under a charge complaint proceeding in section 10 of OSRA 2022, codified at 46 U.S.C. 41310.

OSRA 2022 also made identical changes to 46 U.S.C. 41109. Section 41109 provides how to assess civil penalties and how to determine their amounts. Section 41109 as amended by OSRA 2022 states that the Commission may, after notice and opportunity for a hearing, ''assess a civil penalty'' or ''in addition to, or in lieu of a civil penalty . . . order a refund of money.'' 46 U.S.C. 41109(a)(1). OSRA 2022 also amended section 41109 by specifying the factors in determining ''the amount of a civil penalty assessed or refund of money ordered.'' 46 U.S.C. 41109(b)(1). While section 41109 now applies for assessment of penalties or refund, the Commission believes that section 41109's revised factors are applicable only to assessment of penalties.

OSRA 2022 also provided that if the Commission orders a refund of money in addition to a civil penalty, the amount of civil penalty must be decreased by any additional amounts included in the refund of money in excess of the ''actual injury'' as defined in the Shipping Act at 46 U.S.C. 41305(a). *See* 46 U.S.C. 41109(b)(2)(A).

Therefore, the Commission makes conforming amendments to its regulations for civil penalties. The Commission is also making one technical change to update a term in 46 CFR 502.605(c).

II. Rulemaking Analyses

Administrative Procedure Act

The Administrative Procedure Act (APA) requires that ''[g]eneral notice of proposed rulemaking shall be published in the **Federal Register**, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law.'' 5 U.S.C. 553(b). The notice of proposed rulemaking requirement, however, does not apply to ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). The notice requirement does not apply to this rule because it only amends the Commission's rules of practice and procedure. Thus, the Commission issues this rule as a final rule.

[1] Public Law 117–146.
[2] 46 U.S.C. 40101–41310.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, provides that whenever an agency publishes a notice of proposed rulemaking under the APA, 5 U.S.C. 553, the agency must prepare and make available for public comment a regulatory flexibility analysis (RFA) describing the impact of the rule on small entities, unless the head of the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603–605. As stated above, however, the APA notice requirement does not apply to this rulemaking for the Commission's practice and procedure. Therefore, the APA does not require the Commission to publish a notice of proposed rulemaking in this instance, and the Commission did not prepare an RFA.

National Environmental Policy Act

The Commission's regulations categorically exclude certain rulemakings from any requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. This rule amends the Commission's rules of practice and procedure at 46 CFR part 502. This rule thus falls within the categorical exclusion for matters related solely to ''[p]romulgation of procedural rules pursuant to 46 CFR part 502.'' 46 CFR 504.4(a)(4). Therefore, no environmental assessment or environmental impact statement is required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. This rule does not contain any collections of information as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at *https://www.reginfo.gov/public/do/eAgendaMain.*

List of Subjects in 46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Federal Maritime Commission amends 46 CFR part 502 as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 502 is revised to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–584; 591–596; 18 U.S.C. 207; 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. 305, 40103–40104, 40304, 40306, 40501–40503, 40701–40706, 41101–41109, 41301–41310, 44101–44106; 5 CFR part 2635.

■ 2. Revise § 502.601 to read as follows:

§ 502.601 Purpose and scope.

The purpose of this subpart is to implement the statutory provisions of section 19 of the Merchant Marine Act, 1920 (46 U.S.C. 42101–42109), section 13 of the Shipping Act of 1984 as amended (46 U.S.C. 41107–41109), and sections 2(c) and 3(c) of Public Law 89–777 (46 U.S.C. 44104) by establishing rules and regulations governing the compromise, assessment, settlement and collection of civil penalties arising under certain designated provisions of the Merchant Marine Act, 1920, the Shipping Act of 1984, Public Law 89–777, and/or any order, rule, or regulation (except for procedural rules and regulations contained in this part) issued or made by the Commission in the exercise of its powers, duties and functions under those statutes.

■ 3. In § 502.602, revise paragraph (h) to read as follows:

§ 502.602 Definitions.

* * * * *

(h) *Violation* includes any violation of sections 19(f)(4), 19(g)(4) and 19(k) of the Merchant Marine Act, 1920 (46 U.S.C. 42104(a), 42104(d), and 42108); any provision of the Shipping Act of 1984 as amended (46 U.S.C. 40101–41310); sections 2 and 3 of Public Law 89–777 (46 U.S.C. 44101–44106); and/or any order, rule or regulation (except for procedural rules and regulations contained in this part) issued or made by the Commission in the exercise of its powers, duties and functions under the Merchant Marine Act, 1920, the Shipping Act of 1984 as amended, or Public Law 89–777.

* * * * *

■ 4. In § 502.603, revise paragraphs (a) and (b) to read as follows:

§ 502.603 Assessment of civil penalties: Procedure; criteria for determining amount; limitations; relation to compromise.

(a) *Procedure for assessment of penalty.* The Commission may assess a civil penalty or, in addition to or in lieu of a civil penalty, a refund of a charge, only after notice and opportunity for hearing. Civil penalty assessment proceedings, including settlement negotiations, shall be governed by the Commission's Rules of Practice and Procedure in this part. All settlements must be approved by the Presiding Officer. The full text of any settlement must be included in the final order of the Commission.

(b) *Determination of amount*—(1) *Factors for consideration.* In determining the amount of a civil penalty assessed pursuant to paragraph (a) of this section, the Federal Maritime Commission shall take into consideration:

(i) The nature, circumstances, extent, and gravity of the violation committed;

(ii) With respect to the violator:

(A) The degree of culpability;

(B) Any history of prior offenses;

(C) The ability to pay; and

(D) Such other matters as justice may require; and

(iii) The amount of any refund of money ordered under 46 U.S.C. 41310.

(2) *Commensurate reduction in civil penalty*—(i) *In general.* In any case in which the Federal Maritime Commission orders a refund of money in addition to assessing a civil penalty, the amount of the civil penalty assessed shall be decreased by any additional amounts included in the refund of money in excess of the actual injury (as defined in 46 U.S.C. 41305(a)).

(ii) *Treatment of refunds.* A refund of money ordered shall be:

(A) Considered to be compensation paid to the applicable claimant; and

(B) Deducted from the total amount of damages awarded to that claimant in a civil action against the violator relating to the applicable violation.

* * * * *

■ 5. In § 502.605, revise paragraph (c) to read as follows:

§ 502.605 Payment of penalty: Method; default.

* * * * *

(c) *Default in payment.* Where a respondent fails or refuses to pay a penalty properly assessed under

§ 502.603, or compromised and agreed to under § 502.604, appropriate collection efforts will be made by the Commission, including, but not limited to referral to the Department of Justice for collection. Where such defaulting respondent is a licensed ocean transportation intermediary, such default also may be grounds for revocation or suspension of the respondent's license, after notice and opportunity for hearing, unless such notice and hearing have been waived by the respondent in writing.

By the Commission.

William Cody,

Secretary.

[FR Doc. 2023–05393 Filed 3–17–23; 8:45 am]

BILLING CODE 6730–02–P

Proposed Rules

Federal Register
Vol. 88, No. 53
Monday, March 20, 2023

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71, 77, 78, and 86

[Docket No. APHIS–2021–0020]

RIN 0579–AE64

Use of Electronic Identification Eartags as Official Identification in Cattle and Bison

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule that would amend the animal disease traceability regulations. The proposed rule would require that eartags applied on or after a date 6 months (180 days) after publication in the **Federal Register** of a final rule following the proposed rule to be both visually and electronically readable in order to be recognized for use as official eartags for interstate movement of cattle and bison covered under the regulations. We also proposed to clarify certain record retention and record access requirements and revise some requirements pertaining to slaughter cattle. This action will allow interested persons additional time to prepare and submit comments.

DATES: The comment period for the proposed rule published on January 19, 2023 (88 FR 3320) is extended. We will consider all comments that we receive on or before April 19, 2023.

ADDRESSES: You may submit comments by either of the following methods: Federal eRulemaking Portal: Go to *www.regulations.gov.* Enter APHIS–2021–0020 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2021–0020, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *Regulations.gov* or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Aaron Scott, Director, National Animal Disease Traceability and Veterinary Accreditation Center, Strategy & Policy, Veterinary Services, APHIS, 2150 Centre Ave., Fort Collins, CO 80526; *traceability@usda.gov;* (970) 494–7249

SUPPLEMENTARY INFORMATION: On January 19, 2023, we published in the **Federal Register** (88 FR 3320, Docket No. APHIS–2021–0020) a proposed rule [1] that would require that eartags applied on or after a date 6 months (180 days) after publication in the **Federal Register** of a final rule following the proposed rule to be both visually and electronically readable in order to be recognized for use as official eartags for interstate movement of cattle and bison covered under the regulations. We also proposed to clarify certain record retention and record access requirements and revise some requirements pertaining to slaughter cattle.

Comments on the proposed rule were required to be received on or before March 20, 2023. We are extending the comment period on Docket No. APHIS–2021–0020 until April 19, 2023. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 14th day of March, 2023.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–05575 Filed 3–17–23; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the proposed rule, supporting documents, and public comments, go to *www.regulations.gov.* Enter APHIS–2021–0020 in the Search field.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0962]

RIN 1625–AA11

Regulated Navigation Area; Tampa Bay, Tampa, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise existing regulations for a Regulated Navigation Area in Tampa Bay, Florida by updating the geographic boundaries of Egmont Channel in the Gulf of Mexico. The proposed change is designed to align the coordinates in the regulation with the coordinates needed to properly control traffic in the Captain of the Port St. Petersburg Zone. The current coordinates do not reflect the Regulated Navigation Area that the Coast Guard intended to put in place. The Coast Guard invites your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 19, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0962 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Marine Science Technician First Class Regina L. Cuevas, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *Regina.L.Cuevas@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
RNA Regulated Navigation Area
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The purpose of this proposed rule is to correct a mistake made by the Coast Guard when listing the geographical coordinates of an RNA. The Coast Guard is proposing this rulemaking under authority in the Ports and Waterways Safety Act, 46 U.S.C. 70034.

On July 27, 2015, the Coast Guard published a final rule entitled, ''Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments.'' 80 FR 44274. This action was taken to make non-substantive technical, organizational, and conforming amendments to existing regulations throughout Title 33 of the Code of Federal Regulations.

In 2022, it was brought to the attention of Coast Guard that there was an error in the coordinates listed in that Final Rule and that the second coordinate was off by approximately four degrees of longitude, which equates to approximately 200 nautical miles. After reviewing the cooridnates and past **Federal Register**s, the approximate position of the Tampa Bay Entrance should be 27°35.2′ N, 083°00.4′ W. With this proposed rule, the Coast Guard is correcting the coordinates needed by the COTP to ensure safety amongst port users and those navigating to and from Tampa Bay.

III. Discussion of Proposed Rule

This rule proposes modifying 33 CFR 165.753(a) to reflect the actual geographic position of the port entrance. The proposed rule would move the current plotted position for the regulated navigation area (RNA) to the actual plotted position of 27°35.2′ N, 083°00.4′ W.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders.

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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on two specific factors: (1) persons and vessels may operate within the RNA when authorized by Captain of the Port of St. Petersburg or a designated representative; and (2) the RNA is already in place, this regulatory action only represents a the correction of an error in the boundaries.

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 proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the Regulated Navigation area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule. If the proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would 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. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination 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 proposed rule involves a correction of a geographic coordinate identifying the entrance Bouy for Tampa Bay. Normally such actions are categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration

supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov*. To do so, go to *https://www.regulations.gov,* type USCG–2022–0962 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

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

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 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. In § 165.753, revise paragraph (a) to read as follows:

§ 165.753 Regulated navigation area; Tampa Bay, Florida.

(a) The following is a regulated navigation area (RNA): All the navigable waters of Tampa Bay, Hillsborough Bay and Old Tampa Bay, including all navigable waterways tributary thereto. Also included are the waters of Egmont Channel, Gulf of Mexico from Tampa Bay, Tampa Bay Entrance, approximate position (27°35.2′ N, 083°00.4′ W).

Dated: 23 January 2023.

Micheal P. Kahle,

Captain, U.S. Coast Guard, Captain of the Port Sector St. Petersburg.

[FR Doc. 2023–05459 Filed 3–17–23; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register
Vol. 88, No. 53
Monday, March 20, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

USAID Information Collection Activities; Submission for OMB Review, Comment Request, Legislative and Public Affairs (LPA) Bureau

AGENCY: USAID.

ACTION: Notice of information collection; request for comment.

SUMMARY: USAID Bureau for Legislative and Public Affairs (LPA) and USAID/Ghana Mission are collaborating to conduct research regarding public perception of USAID programs in Ghana. The goal of this research is to use both qualitative and quantitative methods to gain insights into Ghanaian people's awareness and perceptions of development and USAID assistance programs and activities. The research will also narrow preferred media channels. The research data in the report will be aggregated and not provide PII or other privacy-related information. USAID LPA invites the general public and other Federal agencies to take this opportunity to comment on the following new information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Comments will be accepted until May 5, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please access the survey questionnaire at *https://drive.google.com/file/d/1l0zdb2aPbYGaG_9bAmsIC7jaKQrDQ4Ww/view?usp=sharing,* the interview guide at *https://drive.google.com/file/d/1GHCuNQGl3pExz7aDvRC-VQvTVpZ78wu6/view?usp=sharing,* and the focus group screening questionnaire at *https://drive.google.com/file/d/1m1uC4CgSrv8Pxi9_UwTYv-pAGwxvmVys/view?usp=sharing.* Comments submitted in response to this notice should be submitted electronically through the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Written requests for information or comments submitted by postal mail or delivery should be addressed to Lauren Shaw, the Director of International Communications, at 1300 Pennsylvania Avenue, Suite 6.10A, Washington, DC 20523 or via email at *staffdoc@usaid.gov.* Verbal requests for information or comments submitted can contact 202–712–4300.

SUPPLEMENTARY INFORMATION:

Title of Information Collection: USAID Bureau for Legislative and Public Affairs and USAID/Ghana Public Opinion Research.

Type of Request: Notice for public comment; generic clearance.

Originating Office: USAID Bureau for Legislative and Public Affairs (LPA).

Respondents: Members of the Ghanaian public: women, youths (ages 15–24), farmers, pelagic fishers, service providers, entrepreneurs, rural community leaders, and members of civil society organizations.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 2,266 Ghanaians total (2,200 survey respondents, 48 focus-group participants [eight participants across six sessions], and 18 interviewees).

Average Time per Response: 30 minutes for survey respondents and interviews, 90 minutes for focus groups.

Frequency of response: Approximately every two years.

Total estimated burden: 596 hours.

Total estimated cost: $59,624.55.

We are soliciting public comments to permit USAID to:

- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record.

Lauren Shaw,
Director, International Communications.

[FR Doc. 2023–04681 Filed 3–17–23; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–22–TELECOM–0058]

Notice of Funding Opportunity for the Community Connect Grant Program for Fiscal Year 2023

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funding opportunity.

SUMMARY: The Rural Utilities Service (RUS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), announces the acceptance of applications under the Community Connect Grant (CCG) program for Fiscal Year 2023. The Agency has approximately $79 million for FY 2023. These grant funds will be made available to eligible applicants to construct broadband networks that provide service on a community-oriented connectivity basis in rural areas. All applicants are responsible for any expenses incurred in developing their applications.

DATES: Completed applications for grants must be submitted electronically by no later than 11:59 a.m. Eastern Time (ET), June 20, 2023.

ADDRESSES: All applications must be submitted electronically at: *https://www.rd.usda.gov/community-connect.* This funding opportunity will also be posted to *https://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: Randall Millhiser at *randall.millhiser@usda.gov,* Deputy Assistant Administrator, Office of Loan Origination and Approval, RUS, U.S. Department of Agriculture, 1400 Independence Avenue SW, Mail Stop 1590, Room 4121–S, Washington, DC 20250–1590, or call (202) 578–6926.

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name: Rural Utilities Service.

Funding Opportunity Title: Community Connect Grant Program.

Announcement Type: Notice of Funding Opportunity.

Funding Opportunity Number: RDRUS–CC–2023.

Assistance Listing: 10.863.

Dates: Completed electronic applications must be filed through *https://www.rd.usda.gov/community-connect* by 11:59 a.m. Eastern Time (ET) on June 20, 2023. Late or incomplete applications will not be accepted.

Rural Development Key Priorities: The Agency encourages applicants to consider projects that will advance the following key priorities:

- Assisting rural communities to recover economically through more and better market opportunities and through improved infrastructure.
- Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects.
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

A. Program Description

1. *Purpose of the Program.* The program provides financial assistance to eligible applicants that will provide service at or above the broadband grant speed to all premises in rural, economically-challenged communities where broadband service does not exist. The deployment of broadband services on a ''community-oriented connectivity'' basis stimulates economic development and provides enhanced educational and health care opportunities in rural areas.

2. *Statutory and Regulatory Authority.* The CCG program is authorized under the Rural Electrification Act of 1936 (REAct) and implemented by 7 CFR part 1739.

3. *Definitions.* The definitions applicable to this notice are published at 7 CFR 1739.3 and repeated within the FY 2023 CCG Program Application Guide (Application Guide) available at: *https://www.rd.usda.gov/community-connect.*

4. *Application of Awards.* Awards under the CCG program will be made on a competitive basis using specific review criteria contained in 7 CFR 1739.16. The Agency will review, evaluate and score applications received in response to this notice based on the provisions found in 7 CFR 1739.17 and as indicated in this notice. The Agency advises all interested parties that the applicant bears the full burden in preparing and submitting an application in response to this notice.

B. Federal Award Information

Type of Award: Grants.

Fiscal Year Funds: FY 2023.

Available Funds: The Agency estimates that approximately $79 million will be available for FY 2023. RUS may at its discretion, increase the total level of funding available in this funding round from any available source provided the awards meet the requirements of the statute which made the funding available to the agency.

Minimum Award: $100,000.

Maximum Award: $5,000,000.

Anticipated Award Date: September 2023.

Performance Period: 3 years.

Renewal or Supplemental Awards: While prior Community Connect grants cannot be renewed, existing Community Connect awardees can submit applications for new projects. The Agency will evaluate project proposals from existing awardees as new applications. Only one grant application per applicant is eligible for approval under this grant opportunity.

Type of Assistance Instrument: Grant.

C. Eligibility Information

1. *Eligible Applicants.* Eligible applicants must meet the eligibility requirements of 7 CFR 1739.10. Only entities legally organized as one of the following are eligible for Community Connect Grant Program financial assistance:

(a) Incorporated organization;

(b) Indian tribe or tribal organization, as defined in 25 U.S.C. 5304;

(c) State government;

(d) Local unit of government;

(e) Any other legal entity, including a cooperative, private corporation, or limited liability company organized on a for-profit or not-for-profit basis.

References in this program to a state, state government, or state agency are meant to include the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Palau, and the Marshall Islands.

Applicants must have the legal capacity and authority to enter into contracts, to comply with applicable federal statutes and regulations, and to own and operate the broadband facilities as proposed in their application. Corporations that have been convicted of a federal felony within the past 24 months are not eligible. Any corporation that has been assessed to have any unpaid federal tax liability, for which all judicial and administrative remedies have been exhausted or have lapsed and is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance.

2. *Cost Sharing or Matching.* The Program requires matching contributions as specified in 7 CFR 1739.14. The Application Guide provides additional information on required matching contributions.

3. *Other.* All submitted proposals must meet the eligibility requirements listed at 7 CFR 1739.11. For FY 2023 applications, the additional eligibility requirements apply:

(a) Proposed Funded Service Area (PFSA). The applicant must define a contiguous geographic, area located entirely within an eligible rural area, in which Broadband Service does not exist and where the applicant proposes to offer service at the Broadband Grant Speed to all residential and business customers. The PFSA may consist of multiple municipalities and may be located in more than one state.

(i) RUS will validate that broadband service does not exist in areas that applicants describe as having no broadband access or access that is less than 25 Megabits per second (Mbps) downstream plus 3 Mbps upstream.

(ii) The broadband grant speed is 100 Mbps downstream and 20 Mbps upstream for fixed terrestrial broadband service, whether fixed or wireless.

(iii) A PFSA must not overlap with service areas of current RUS borrowers and grantees.

(iv) Areas receiving, or areas that have received final approval for, other federal funding to construct terrestrial facilities providing at least 25/3 Mbps service in the project Proposed Funded Service Area as of the date of this notice, and which have been reported to the agency, are ineligible. As a result, no Community Connect funds may be used to duplicate costs, services, connections, facilities, or equipment that have been authorized under such areas. Applicants submitting a project to serve an area in which the same entity has already received final approval for other federal funding must explain in the application why Community Connect funding is being requested and why RUS should provide additional funding, as funds must not be used for duplicative purposes. Awardees that receive both other federal funds and Community Connect funding must submit a statement certifying that the funds requested from Community Connect have not and will not be reimbursed by another federal award nor used to reimburse another federal award, and that the Awardee will keep separate

accounts for each source of funding to track the uses of the funding to support the certification statement submitted with the Community Connect application. RUS can consider adjusting the service area or award amount of a project selected for Community Connect funding if in the course of evaluating an application, the Agency learns that the service area or a portion of it is already sufficiently served or has received final approval for federal funding to construct facilities that will provide sufficient access to broadband as defined under this notice.

(v) A certification from the appropriate tribal official is required if service is being proposed over or on Tribal Lands. The appropriate tribal official is the Tribal Council of the Tribal Government with jurisdiction over the Tribal Lands at issue. Any applicant that fails to provide a certification to provide service on the Tribal Lands identified in the PFSA will not be considered for funding. Tribal Lands are identified on the GIS layers included in the Community Connect mapping tool located at *https://www.rd.usda.gov/community-connect.*

(vi) The Consolidated Appropriations Act, 2022 (Pub. L. 117–103) and the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), included funding under the ReConnect Program for Community Project Funding/Congressionally Directed Spending projects. The proposed service areas for these projects are not eligible for funding under this FOA. A GIS layer of the proposed service areas for these projects will be made available in the Community Connect mapping tool located at: *https://www.rd.usda.gov/community-connect.*

(b) Essential Community Facilities. The applicant must propose to offer free service at the Broadband Grant Speed to all participating Essential Community Facilities located within the PFSA for at least two years.

(c) Community Center. The applicant must provide a Community Center within the PFSA with a minimum of 2, and up to 10, computer access points and wireless access at the Broadband Grant Speed, free of all charges, to all users for at least two years. Grant funds used for the improvement, expansion, construction, or acquisition of a community center must not exceed the lesser of 10 percent of the requested grant amount or $150,000.

D. Application and Submission Information

1. *Address To Request Application Package.* The Application Guide, copies of necessary forms and resources are available at: *https://www.rd.usda.gov/community-connect.* Application information is also available at *https://www.grants.gov/.*

2. *Content and Form of Application Submission.*

(a) *Application Completion.* Carefully review the Application Guide and 7 CFR part 1739, which detail all relevant forms and worksheets. The components of a complete application can be found at 7 CFR 1739.15, and the Application Guide and Community Connect Application Checklist.

(b) *Submission of Application Items.* Given the high volume of program interest, applicants should submit the application items in the order indicated in the Application Guide. Applications that are not assembled and tabbed in the specified order prevent timely determination of eligibility. For FY 2023, one proposal per applicant is eligible for approval. If an applicant submits more than one proposal, then the Agency will only consider the application with the highest score.

3. *System for Award Management and Unique Entity Identifier.*

(a) At the time of application, each applicant must have a Unique Entity Identifier (UEI) and an active registration in the System for Award Management (SAM) before submitting its application in accordance with 2 CFR part 25. Instructions for obtaining the UEI are available at *https://sam.gov/content/entity-registration.*

(b) Applicant must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a federal awarding agency.

(c) Applicant must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

(d) Applicants must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110.

(e) The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a federal award and use that determination as a basis for making a federal award to another applicant.

4. *Submission Dates and Times.*

(a) *Application Technical Assistance:* Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to the closing of the application window.

(b) *Application Deadline Date:* Completed electronic applications must be filed through *https://www.rd.usda.gov/community-connect* by 11:59 a.m. Eastern Time (ET) on June 20, 2023.

(c) *Applications Received After Deadline Date:* If completed applications are not received by the application deadline date provided in Section D.4(b) above, the application will neither be reviewed nor considered for funding under any circumstances.

5. *Funding Restrictions.* Ineligible grant purposes are listed at 7 CFR 1739.13. Grant funds may not be used to finance the duplication of lines, facilities, or systems providing broadband service.

6. *Other Submission Requirements.* Applications will *not* be accepted via mail, fax or electronic mail. Electronic applications for grants must be submitted through the Community Connect Portal. The Community Connect Portal can be found on the Community Connect website at: *https://www.rd.usda.gov/community-connect.*

The Community Connect Portal requires all users to obtain Level II eAuthentication accounts and for applicant users to submit an Authorized Representative Request (ARR) and a resolution in order to access the portal to submit an application. These procedures may take several business days to complete; therefore, the applicant should complete the registration, credentialing, and authorization procedures before submitting an application. Instructions on creating a Level II eAuthentication account are available at: *https://www.eauth.usda.gov/home/.* If system errors or technical difficulties occur, use the Contact Us Form available on the Community Connect website at: *https://www.rd.usda.gov/programs-services/telecommunications-programs/community-connect-grants#contact.*

RUS also reserves the right to ask applicants for clarifying information and additional verification of assertions in the application.

E. Application Review Information

1. *Criteria.*

(a) *Scoring Criteria.* All scoring criteria is outlined in 7 CFR 1739.17 and in the Application Guide.

(b) *Ineligible Areas.* RUS will not fund projects located in an area that does not meet the definition of ''rural area'' found in 7 CFR 1739.3.

(c) *Pending Applications.* RUS will not fund more than one project that

proposes to provide broadband service in the same geographic area. If a project overlaps the PFSA of an application already submitted to the Rural eConnectivity Program (ReConnect Program), the Telecommunications Infrastructure Loan and Loan Guarantee Program, or the Rural Broadband Access Loan and Loan Guarantee Program, the project will not be considered until a determination is made on the previously submitted application.

(d) *Substantially Underserved Trust Areas (SUTA).* Applicants seeking assistance may request consideration under the SUTA provisions in 7 U.S.C. 936f.

(i) If the Administrator determines that a community within ''trust land'' (as defined in 38 U.S.C. 3765) has a high need for the benefits of the Program, the Administrator may designate the community as a ''substantially underserved trust area'' (as defined in section 306F of the REAct).

(ii) To receive consideration under SUTA, the applicant must submit to the Agency a completed application that includes all information requested in 7 CFR part 1700, subpart D. In addition, the application must identify the discretionary authorities within Subpart D that it seeks to have applied to its application.

2. *Review and Selection Process.* Once the Agency has received the application, the Agency will publish a public notice of each application in accordance with 7 CFR 1739.15(l). The CCG Public Notice Filings for each application may be found at *https://www.rd.usda.gov/community-connect* and clicking the ''Public Notice Filings'' button. The Agency will use the information submitted to determine if there is sufficient access to broadband in any part of the proposed funded service area. Notwithstanding non-responses by actual and potential providers, the Agency will use all information available in evaluating the feasibility of the project.

Grants are awarded in rank order, subject to the availability of funds and consistent with 7 CFR 1739.16 and 7 CFR 1739.17. It should be noted that an application receiving fewer points can be selected over an application receiving more points in the event that there are insufficient funds available to cover the costs of the higher scoring application or if the higher scoring application would consume a disproportionate amount of funds available relative to its ranking., as stated in 7 CFR 1739.16(f).

The Agency reserves the right to offer the applicant a lower amount than the amount proposed in the application, as stated in 7 CFR 1739.16(g).

If the Agency receives more than one proposal from the same applicant, then the Agency will only consider the application with the highest score, except in accordance with 7 CFR 1739.16(f).

F. Federal Award Administration Information

1. *Federal Award Notices.*

(a) RUS notifies applicants whose projects are selected for awards by mailing and/or emailing a copy of an award letter. The receipt of an award letter does not authorize the applicant to commence performance under the award. After sending the award letter, the Agency will send an agreement that contains all the terms and conditions for the grant.

(b) An applicant must execute and return the grant agreement, accompanied by any additional items required by the agreement, within the number of days specified in the selection notice letter.

2. *Administrative and National Policy Requirements.* The items listed in this announcement, the CCG program regulation, the Application Guide, and program resources implement the appropriate administrative and national policy requirements, which include but are not limited to:

(a) Executing a CCG Agreement.

(b) Using Form SF 270, ''Request for Advance or Reimbursement,'' to request reimbursements (along with the submission of receipts for expenditures, timesheets, and any other documentation to support the request for reimbursement).

(c) Ensuring that records are maintained to document all activities and expenditures utilizing CCG funds and matching funds (receipts for expenditures are to be included in this documentation).

(d) Complying with policies, guidance, and requirements as described in the following applicable Code of Federal Regulations, and any successor regulations:

(i) 2 CFR parts 200 and 400 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). The government must be provided an exclusive first lien on all grant assets during the service obligation of the grant, and thereafter any sale or disposition of grant assets must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, codified in 2 CFR part 200. Note that this part will apply to ALL grant funds of an Awardee, regardless of the entity status or type of organization.

(ii) 2 CFR parts 417 and 180 (Governmentwide Nonprocurement Debarment and Suspension).

(iii) Complying with Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency.'' For information on limited English proficiency and agency-specific guidance, go to *https://www.LEP.gov.*

(iv) Accountability and Compliance with Civil Rights Laws. The regulation found at 7 CFR part 1901 Subpart E contains policies and procedures for implementing the regulations of the Department of Agriculture issued pursuant to Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Title IX, Section 504 of the Rehabilitation Act of 1973, Executive Order 13166, Executive Order 11246, and the Equal Credit Opportunity Act of 1974, as they relate to Rural Development. Nothing herein shall be interpreted to prohibit preference to American Indians on Indian Reservations.

(*1*) The policies contained in this subpart apply to recipients. As recipients of federal financial assistance, awardees are required to comply with the applicable federal, state and local laws. Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act prohibits discrimination by recipients of federal financial assistance. Recipients are required to adhere to specific outreach activities. These outreach activities include contacting community organizations and leaders that include minority leaders; advertising in local newspapers and other media throughout the entire service area; and including the nondiscrimination slogan, ''This is an Equal Opportunity Program. Discrimination is prohibited by Federal Law,'' in methods that may include, but not be limited to, advertisements, public broadcasts, and printed materials, such as brochures and pamphlets. All recipients must submit and have on file a valid Form RD 400–1 (Equal Opportunity Agreement); and RD Form 400–4 (Assurance Agreement).

(*2*) By completing the SAM Certification and Representations, recipients affirm they will operate the program free from discrimination. The recipient will maintain the race and ethnic data on the board members and beneficiaries of the program. The recipient will provide alternative forms of communication to persons with limited English proficiency. The Agency will conduct Civil Rights Compliance Reviews on recipients to identify the collection of racial and ethnic data on

program beneficiaries. In addition, the Compliance Review will ensure that equal access to the program benefits and activities are provided for persons with disabilities and language barriers.

3. *Reporting.*

(a) *Annual Project Performance Activity Report.* All recipients of Community Connect financial assistance must provide annual project performance activity reports to RUS until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last annual report. The final report must include an evaluation of the success of the project in meeting the Community Connect Grant Program objectives. See 7 CFR 1739.19 for additional information on these reporting requirements.

(b) *Annual Performance Report.* For three years starting the first January 31st after Project Completion, the Awardee must submit the following information utilizing RUS' online reporting system:

(i) Existing network service improvements and facility upgrades, as well as new equipment and capacity enhancements that support high-speed broadband access for educational institutions, health care providers, and public safety service providers;

(ii) The estimated number of end users who are currently using or forecasted to use the new or upgraded infrastructure;

(iii) The progress towards fulfilling the objectives for which the assistance was granted;

(iv) The speed and average price of the most subscribed tier of the Awardee's broadband service offerings in the Project's service area; and

(v) The average price of broadband service in the Project's service area;

(c) *Annual Map Reporting.* No later than thirty (30) calendar days after the end of the Calendar Year, the Awardee shall be required to submit an updated Approved Project Service Area map through RUS' online mapping tool showing the areas where construction has been completed and geospatial location of residences and businesses that are receiving new broadband service until the entire Approved Project Service Area can receive the broadband service.

(d) *Financial Reporting.* All recipients of Community Connect financial assistance must provide an annual audit, consistent with the Community Connect grant agreement, and the applicable USDA audit regulations at 7 CFR 1739.20, 7 CFR part 1773, or 2 CFR part 200, subpart F, as applicable.

(e) *Recipient and Sub-recipient Reporting.* The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier subawards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 in the event the applicant receives funding, unless such applicant is exempt from such reporting requirements pursuant to 2 CFR 170.110(b). The reporting requirements under the Transparency Act pursuant to 2 CFR part 170 are as follows:

(i) First Tier Subawards of $25,000 or more (unless they are exempt under 2 CFR part 170) must be reported by the recipient to *https://www.fsrs.gov* no later than the end of the month following the month the obligation was made. There is currently underway a consolidation of eight federal procurement systems, including the Federal Subaward Reporting System (FSRS), into one system, the System for Award Management (SAM). As a result, the FSRS will soon be consolidated into and accessed through *https://www.sam.gov.*

(ii) The total compensation of the recipient's executives (the five most highly compensated executives) must be reported by the recipient (if the recipient meets the criteria under 2 CFR part 170) to *https://www.sam.gov* by the end of the month following the month in which the award was made.

(iii) The total compensation of the subrecipient's executives (the five most highly compensated executives) must be reported by the subrecipient (if the subrecipient meets the criteria under 2 CFR part 170) to the recipient by the end of the month following the month in which the subaward was made.

(f) *Record Keeping and Accounting.* The agreement will contain provisions related to record keeping and accounting requirements.

G. Federal Awarding Agency Contacts

The CCG website maintains up-to-date resources and contact information for the CCG Program. The CCG has a Contact page located at *https://www.rd.usda.gov/programs-services/telecommunications-programs/community-connect-grants#contact.* For inquiries regarding eligibility concerns, please contact your General Field Representative (GFR) at: *https://www.rd.usda.gov/contact-us/telecom-gfr.* Persons with disabilities that require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice) or the 711 Relay Service.

H. Build America, Buy America

1. *Funding to Non-Federal Entities.* Awardees that are Non-Federal Entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of Section 70914 of the Build America, Buy America Act (BABAA) within the Infrastructure Investment and Jobs Act, Public Law 117–58. Any requests for waiver of these requirements must be submitted pursuant to USDA's guidance available online at: *https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver.*

2. *Funding to All Other Entities.* Awardees that are not Non-Federal Entities shall be governed by the Agency's Buy American requirement at 7 CFR part 1787. Any requests for waiver of these requirements must be submitted pursuant to those regulations.

I. Other Information

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements associated with the programs, as covered in this notice, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0572–0127.

National Environmental Policy Act

All recipients under this Notice are subject to the requirements of 7 CFR part 1970.

Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25, must be registered in SAM and have a UEI number as stated in Section D.3 of this notice. All recipients of Federal financial assistance are required to report information about first-tier subawards and executive total compensation in accordance with 2 CFR part 170.

Civil Rights Act

All grants made under this notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964) and Section 504 of the Rehabilitation Act of 1973, Title VIII of the Civil Rights Act of 1968, Title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246,

and the Equal Credit Opportunity Act of 1974.

Nondiscrimination Statement

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, 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/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.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the 711 Relay Service.

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

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

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

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

USDA is an equal opportunity provider, employer, and lender.

Andrew Berke,

Administrator, Rural Utilities Service, USDA Rural Development.

[FR Doc. 2023–05549 Filed 3–17–23; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Georgia Advisory Committee to the U.S. Commission on Civil Rights

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 Georgia 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 discuss post-report activities and review proposed topics from the Committee for their next civil rights project.

DATES: Wednesday, April 5, 2023, from 1 p.m.–2 p.m. ET.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1619903271

Join by Phone (Audio Only): 1–833–435–1820 USA Toll Free; Meeting ID: 161 990 3271#

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, Acting DFO, at *vmoreno@usccr.gov.*

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the meeting link or telephone number listed above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, 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. Closed captions will be provided. 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 details found through the web link above. To request additional accommodations, please email *svillanueva@usccr.gov* at least ten (10) business days prior to the meeting.

Members of the public are also 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 Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–202–769–2843.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination 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, Georgia 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 Coordination Unit at the above email.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Announcements and Updates
IV. Discussion: Post-Report Activities
V. Discussion: Proposed Civil Rights Topics
VI. Next Steps
VII. Public Comment
VIII. Adjournment

Dated: March 14, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–05521 Filed 3–17–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the North Carolina Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business 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 North Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 12:00 p.m. ET on Tuesday, April 18, 2023. The purpose of this meeting is to continue revising the report on Legal Financial Obligations in the state.

DATES: The meeting will take place on Tuesday, April 18, 2023, from 12:00 p.m.–1:30 p.m. ET.

ADDRESSES:

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1601707311.

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 160 170 7311.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, DFO, at *vmoreno@usccr.gov* or (434) 515–0204.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, 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. Closed captions will be provided for individuals who are deaf, deafblind, or hard of hearing. To request additional accommodations, please email *vmoreno@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are also 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 Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, 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, North Carolina 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 Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Committee Discussion
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: March 15, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–05656 Filed 3–17–23; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the California Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business 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 (FACA) that the California Advisory Committee (Committee) will hold a series of virtual business meetings via *ZoomGov* on the following dates and times listed below. These meetings are for the purpose of reviewing and discussing the latest draft of their report on the civil rights implications of AB5.

DATES: These meetings will take place on:

- Tuesday, April 18, 2023, from 1:00 p.m.–2:30 p.m. PT.
- Tuesday, May 16, 2023, from 1:00 p.m.–2:30 p.m. PT.
- Friday, June 16, 2023, from 1:00 p.m.–2:30 p.m. PT.

ADDRESSES: Zoom Link to Join:

- *Tuesday, April 18th: https://www.zoomgov.com/meeting/register/vJIsf-CtrjwoGa_vs2HbfL6gjvtJv6-pu9M.*
- *Tuesday, May 16th: https://www.zoomgov.com/meeting/register/vJIsf-CtrjwoGa_vs2HbfL6gjvtJv6-pu9M.*
- *Friday, June 16th: https://www.zoomgov.com/meeting/register/vJItdemgrTIoH3ECxG_1nKQsiTklnVcYIUE.*

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO) at *bpeery@usccr.gov* or by phone at (202) 701–1376. Persons with hearing impairments 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.

SUPPLEMENTARY INFORMATION: Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery (DFO) at *bpeery@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkUAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Committee Discussion
III. Public Comment
IV. Adjournment

Dated: March 15, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–05654 Filed 3–17–23; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee

AGENCY: 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 (FACA) that a meeting of the Tennessee Advisory Committee to the Commission will convene by Zoom on Wednesday, April 12, 2023, at 3 p.m. (CT). The purpose of the meeting is to discuss the Committee's project on voting rights in the state.

DATES: The meeting will take place on Wednesday, April 12, 2023, from 3 p.m.–4:30 p.m. (CST).

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1619548431?pwd=N25vVzhOd0MrNDNlbnF3dXAxWlp6UT09

Telephone (Audio Only): Dial (833) 568–8864 USA Toll Free; Access Code: 161 954 8431

FOR FURTHER INFORMATION CONTACT: Victoria Moreno at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting is available to the public

through the Zoom link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and 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 call-in number found through registering at the web link provided above for the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov.* All written comments received will be available to the public.

Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Wednesday, April 12, 2023, at 3 p.m. (CT)

1. Welcome & Roll Call
2. Chair's Comments
3. Discussion on Project
4. Next Steps
5. Public Comment
6. Adjourn

Dated: March 14, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–05520 Filed 3–17–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Utah Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business 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 Utah Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 12:00 p.m. MT on Monday, April 17, 2023. The purpose of this meeting is to discuss potential projects of study.

DATES: The meeting will take place on Monday, April 17, 2023, from 12:00 p.m.–1:00 p.m. MT.

ADDRESSES:

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1612370111.

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 161 237 0111.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or (202) 656–8937.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, 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. Closed captions will be provided for individuals who are deaf, deafblind, or hard of hearing. To request additional accommodations, please email *dbarreras@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are also 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 Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, 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, Utah 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 Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Discussion: Project Proposal Submissions
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: March 14, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–05528 Filed 3–17–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the California Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business 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 (FACA) that the California Advisory Committee (Committee) will hold a series of virtual business meetings via *ZoomGov* on the following dates and times listed below. These meetings are for the purpose of reviewing and discussing the latest draft of their report on the civil rights implications of AB5.

DATES: These meetings will take place on:

- Tuesday, July 11, 2023, from 1:00 p.m.–2:30 p.m. PT.
- Friday, August 11, 2023, from 1:00 p.m.–2:30 p.m. PT.

ADDRESSES: Zoom Link to Join:

- *Tuesday, July 11th: https://www.zoomgov.com/meeting/register/vJIsf-CtrjwoGa_vs2HbfL6gjvtJv6-pu9M.*
- *Friday, August 11th: https://www.zoomgov.com/meeting/register/vJItdemgrTIoH3ECxG_1nKQsiTklnVcYIUE.*

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO) at *bpeery@usccr.gov* or by phone at (202) 701–1376. Persons with hearing impairments 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.

SUPPLEMENTARY INFORMATION: Members of the public are entitled to make comments during the open period at the

end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery (DFO) at *bpeery@usccr.gov*.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkUAAQ*.

Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Committee Discussion
III. Public Comment
IV. Adjournment

Dated: March 15, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–05653 Filed 3–17–23; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Arizona Advisory Committee; Update

AGENCY: Commission on Civil Rights.

ACTION: Notice; update to meeting time.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** on Friday, December 2, 2022, concerning a meeting of the Arizona Advisory Committee. The meeting time has since changed.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota (DFO), *kfajota@usccr.gov.*

Correction: In the **Federal Register** on Friday, December 2, 2022, in FR Document Number 2022–26295, on page 74124, first and second columns, change the April 7, 2023, meeting time from 12:15 p.m. to 1:15 p.m. Arizona Time. In addition, the link to join will remain the same: *https://tinyurl.com/mr2cycdf.*

Dated: March 15, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–05652 Filed 3–17–23; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–058, A–428–845, A–533–873, A–475–838, A–580–892, A–441–801]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the People's Republic of China, the Federal Republic of Germany, India, Italy, the Republic of Korea, and Switzerland: Final Results of the Expedited First Sunset Review of the Antidumping Duty Orders

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

SUMMARY: As a result of these expedited sunset reviews, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on certain cold-drawn mechanical tubing of carbon and alloy steel from the People's Republic of China (China), the Federal Republic of Germany (Germany), India, Italy, the Republic of Korea (Korea), and Switzerland would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Reviews'' section of this notice.

DATES: Applicable March 20, 2023.

FOR FURTHER INFORMATION CONTACT: Whitley Herndon, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6274.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 2023, Commerce published the notice of initiation of the sunset review of the AD orders on certain cold-drawn mechanical tubing of carbon and alloy steel from China, Germany, India, Italy, Korea, and Switzerland [1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2]

On January 17, 2023, ArcelorMittal Tubular Products, Michigan Seamless Tube, LLC, PTC Alliance Corp., Webco Industries, Inc., and Zekelman Industries, Inc. (collectively, the domestic interested parties) notified Commerce of their intent to participate within the 15-day period specified in 19 CFR 351.218(d)(1)(i).[3] The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as producers of domestic like product in the United States.

On February 1, 2023, Commerce received complete substantive responses to the *Notice of Initiation* with respect to the *Orders* from the domestic interested parties within the 30-day period specified in 19 CFR 351.218(d)(3)(i).[4] Commerce did not receive a substantive response from any other interested parties with respect to the *Orders* covered by these sunset reviews. On February 24, 2023, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested

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

[2] *See Initiation of Five-Year (Sunset) Reviews,* 88 FR 63 (January 3, 2023) (*Notice of Initiation*).

[3] *See* Domestic Interested Parties' Letters, ''Five-Year (''Sunset'') Review of Antidumping Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from China—Notice of Intent to Participate,'' dated January 17, 2023; ''Five-Year (''Sunset'') Review of Antidumping Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Germany—Notice of Intent to Participate,'' dated January 18, 2023; ''Five-Year (''Sunset'') Review of Antidumping Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From India—Notice of Intent to Participate,'' dated January 17, 2023; ''Five-Year (''Sunset'') Review of Antidumping Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Italy—Notice of Intent to Participate,'' dated January 17, 2023; ''Five-Year (''Sunset'') Review of Antidumping Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From Korea—Notice of Intent to Participate,'' dated January 18, 2023; and ''Five-Year (''Sunset'') Review of Antidumping Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Switzerland—Notice of Intent to Participate,'' dated January 18, 2023 (collectively, Notices of Intent to Participate).

[4] *See* Domestic Interested Parties' Letters, ''First Sunset Review of the Antidumping Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Substantive Response to Notice of Initiation,'' dated February 1, 2023; ''First Sunset Review of the Antidumping Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany: Substantive Response to Notice of Initiation,'' dated February 2, 2023; ''First Sunset Review of the Antidumping Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Substantive Response to Notice of Initiation,'' dated February 1, 2023; ''First Sunset Review of the Antidumping Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Italy: Substantive Response to Notice of Initiation,'' dated February 1, 2023; ''First Sunset Review of the Antidumping Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Republic of Korea: Substantive Response to Notice of Initiation,'' dated February 2, 2023; and ''First Sunset Review of the Antidumping Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Switzerland: Substantive Response to Notice of Initiation,'' dated February 1, 2023.

parties in any of these sunset reviews.[5] As a result, pursuant to section 751(c)(3)(8) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited (120-day) sunset reviews of the *Orders.*

Scope of the Orders

The scope of the *Orders* is certain cold-drawn mechanical tubing of carbon and alloy steel from China, Germany, India, Italy, Korea, and Switzerland. For a complete description of the scope of the *Orders, see* Appendix II to this notice.

Analysis of Comments Received

A complete discussion of all issues raised in these sunset reviews is provided in the accompanying Issues and Decision Memorandum.[6] A list of the issues discussed in the Issues and Decision Memorandum is attached at Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Orders* would likely lead to a continuation or recurrence of dumping and that the magnitude of the dumping margins likely to prevail would be weighted-average margins up to 186.89 percent for China, up to 209.06 percent for Germany, up to 33.80 percent for India, up to 68.95 percent for Italy, up to 48.00 percent for Korea, and up to 30.48 percent for Switzerland.

Administrative Protective Orders

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely 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 sanctionable violation.

Notification to Interested Parties

We are issuing and publishing the results in accordance with sections 751(c), 752(c), and 771(i)(1) of the Act and 19 CFR 351.218.

Dated: March 14, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. History of the *Orders*
IV. Legal Framework
V. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Margins of Dumping Likely To Prevail
VI. Final Results of Sunset Reviews
VII. Recommendation

Appendix II

Scope of the Orders

The products covered by these orders are cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) of circular cross-section, 304.8 mm or more in length, in actual outside diameters less than 331mm, and regardless of wall thickness, surface finish, end finish or industry specification. The subject cold-drawn mechanical tubing is a tubular product with a circular cross-sectional shape that has been cold-drawn or otherwise cold-finished after the initial tube formation in a manner that involves a change in the diameter or wall thickness of the tubing, or both. The subject cold-drawn mechanical tubing may be produced from either welded (*e.g.,* electric resistance welded, continuous welded, etc.) or seamless (*e.g.,* pierced, pilgered or extruded, etc.) carbon or alloy steel tubular products. It may also be heat treated after cold working. Such heat treatments may include, but are not limited to, annealing, normalizing, quenching and tempering, stress relieving or finish annealing. Typical cold-drawing methods for subject merchandise include, but are not limited to, drawing over mandrel, rod drawing, plug drawing, sink drawing and similar processes that involve reducing the outside diameter of the tubing with a die or similar device, whether or not controlling the inside diameter of the tubing with an internal support device such as a mandrel, rod, plug or similar device. Other cold-finishing operations that may be used to produce subject merchandise include cold-rolling and cold-sizing the tubing.

Subject cold-drawn mechanical tubing is typically certified to meet industry specifications for cold-drawn tubing including but not limited to:

(1) American Society for Testing and Materials (ASTM) or American Society of Mechanical Engineers (ASME) specifications ASTM A–512, ASTM A–513 Type 3 (ASME SA513 Type 3), ASTM A–513 Type 4 (ASME SA513 Type 4), ASTM A–513 Type 5 (ASME SA513 Type 5), ASTM A–513 Type 6 (ASME SA513 Type 6), ASTM A–519 (cold-finished);

(2) SAE International (Society of Automotive Engineers) specifications SAE J524, SAE J525, SAE J2833, SAE J2614, SAE J2467, SAE J2435, SAE J2613;

(3) Aerospace Material Specification (AMS) AMS T–6736 (AMS 6736), AMS 6371, AMS 5050, AMS 5075, AMS 5062, AMS 6360, AMS 6361, AMS 6362, AMS 6371, AMS 6372, AMS 6374, AMS 6381, AMS 6415;

(4) United States Military Standards (MIL) MIL–T–5066 and MIL–T–6736;

(5) foreign standards equivalent to one of the previously listed ASTM, ASME, SAE, AMS or MIL specifications including but not limited to:

(a) German Institute for Standardization (DIN) specifications DIN 2391–2, DIN 2393–2, DIN 2394–2);

(b) European Standards (EN) EN 10305–1, EN 10305–2, EN 10305–4, EN 10305–6 and European national variations on those standards (*e.g.,* British Standard (BS EN), Irish Standard (IS EN) and German Standard (DIN EN) variations, etc.);

(c) Japanese Industrial Standard (JIS) JIS G 3441 and JIS G 3445; and

(6) proprietary standards that are based on one of the above-listed standards.

The subject cold-drawn mechanical tubing may also be dual or multiple certified to more than one standard. Pipe that is multiple certified as cold-drawn mechanical tubing and to other specifications not covered by this scope, is also covered by the scope of these orders when it meets the physical description set forth above.

Steel products included in the scope of these orders are products in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

For purposes of this scope, the place of cold-drawing determines the country of origin of the subject merchandise. Subject merchandise that is subject to minor working in a third country that occurs after drawing in one of the subject countries including, but not limited to, heat treatment, cutting to length, straightening, nondestruction testing, deburring or chamfering, remains within the scope of these orders.

All products that meet the written physical description are within the scope of these orders unless specifically excluded or covered by the scope of an existing order. Merchandise that meets the physical description of cold-drawn mechanical tubing above is within the scope of these orders even if it is also dual or multiple certified to an otherwise excluded specification listed below. The following products are outside of, and/or specifically excluded from, the scope of these orders:

(1) Cold-drawn stainless steel tubing, containing 10.5 percent or more of chromium

[5] *See* Commerce's Letter, ''Sunset Reviews for January 2023,'' dated February 24, 2023.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China, the Federal Republic of Germany, India, Italy, the Republic of Korea, and Switzerland,'' dated concurrently with, and hereby adopted by, this notice.

by weight and not more than 1.2 percent of carbon by weight;

(2) products certified to one or more of the ASTM, ASME or American Petroleum Institute (API) specifications listed below:

ASTM A–53;
ASTM A–106;
ASTM A–179 (ASME SA 179);
ASTM A–192 (ASME SA 192);
ASTM A–209 (ASME SA 209);
ASTM A–210 (ASME SA 210);
ASTM A–213 (ASME SA 213);
ASTM A–334 (ASME SA 334);
ASTM A–423 (ASME SA 423);
ASTM A–498;
ASTM A–496 (ASME SA 496);
ASTM A–199;
ASTM A–500;
ASTM A–556;
ASTM A–565;
API 5L; and
API 5CT

except that any cold-drawn tubing product certified to one of the above excluded specifications will not be excluded from the scope if it is also dual- or multiple-certified to any other specification that otherwise would fall within the scope of these orders.

The products subject to these orders are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.31.3000, 7304.31.6050, 7304.51.1000, 7304.51.5005, 7304.51.5060, 7306.30.5015, 7306.30.5020, 7306.50.5030. Subject merchandise may also enter under numbers 7306.30.1000 and 7306.50.1000. The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of these orders are dispositive.

[FR Doc. 2023–05619 Filed 3–17–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–073]

Common Alloy Aluminum Sheet From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) continues to determine that Alcha International Holdings Limited (Alcha International), Jiangsu Alcha Aluminum Group Co., Ltd (Jiangsu Alcha), and Baotou Alcha Aluminum Co., Ltd. (Batou Alcha) (collectively, Alcha), the only entity subject to this administrative review of the antidumping duty (AD) order on common alloy aluminum sheet (aluminum sheet) from the People's Republic of China (China), is part of the China-wide entity. The period of review (POR) is February 1, 2021, through January 31, 2022.

DATES: Applicable March 20, 2023.

FOR FURTHER INFORMATION CONTACT: Frank Schmitt, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4880.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the preliminary results of this administrative review on November 16, 2022.[1] We invited interested parties to comment on the *Preliminary Results.*[2] No party submitted comments. Accordingly, the final results are unchanged from the *Preliminary Results.* Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [3]

The merchandise covered by the *Order* is common alloy aluminum sheet from China. For a full description of the scope of the *Order, see* the *Preliminary Results.*[4]

Final Results of Administrative Review

We received no comments concerning, and we have made no changes to, the *Preliminary Results.* We continue to find that Alcha,[5] the only entity subject to this review, did not demonstrate its eligibility for a separate rate. Therefore, for these final results, we determine that Alcha is part of the China-wide entity.

Because no party requested a review of the China-wide entity, and we did not self-initiate a review, the China-wide entity rate (*i.e.,* 59.72 percent) [6] is not subject to change as a result of this review.

Assessment Rates

Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review in accordance with section 751(a)(2)(C) of the Act. For Alcha, we will instruct CBP to apply the China-wide rate of 59.72 percent to all entries of subject merchandise during the POR. 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 administrative review for all 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 previously investigated or reviewed Chinese and non-Chinese exporters that are not under review in this segment of the proceeding but have separate rates, the cash deposit rate will continue to be the exporter's existing cash deposit rate; (2) for all Chinese exporters of subject merchandise that do not have a separate rate, including Alcha, the cash deposit rate will be the China-wide rate of 59.72 percent; and (3) for all non-Chinese exporters of subject merchandise that do not have a separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter(s) that supplied the non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

[1] *See Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Recission of Antidumping Administrative Review; 2021–2022,* 87 FR 68677 (November 16, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *Id.,* 87 FR at 68678–79.

[3] *See Common Alloy Aluminum Sheet from the People's Republic of China: Antidumping Duty Order,* 84 FR 2813 (February 8, 2019) (*Order*).

[4] *See Preliminary Results* PDM at 3.

[5] Commerce previously determined that the following companies should be treated as a single entity: Alcha International); Jiangsu Alcha; and Baotou Alcha. Additionally, Commerce previously determined that Jiangsu Alcha Aluminum Group Co., Ltd is the successor-in-interest to Jiangsu Alcha. *See Common Alloy Aluminum Sheet from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Successor-In-Interest Determination, and Final Determination of No Shipments; 2018–2020,* 86 FR 74066, 74067 (December 29, 2021), unchanged in *Common Alloy Aluminum Sheet from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review, 2018–2020,* 87 FR 6504 (February 4, 2022); *see also Common Alloy Aluminum Sheet from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 54975 (September 8, 2022), as corrected by *Common Alloy Aluminum Sheet from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2020–2021; Correction,* 87 FR 59059 (September 29, 2022). Accordingly, we are treating the single entity of Alcha International, Jiangsu Alcha, and Baotou Alcha (collectively, Alcha) as the companies under review in this proceeding.

[6] *See Order.*

Notification to Importers

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

Administrative Protective Order

This notice also serves as 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, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 351.221(b)(5).

Dated: March 10, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–05552 Filed 3–17–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–911]

Paper File Folders From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With the Final Antidumping Duty Determination

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of paper file folders from India for the period of investigation (POI) January 1, 2021, through December 31, 2021. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 20, 2023.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, 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) 482–3936.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this countervailing duty (CVD) investigation on November 8, 2022.[1] On December 28, 2022, Commerce postponed the preliminary determination of this investigation until March 13, 2023.[2] For a complete description of events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The product covered by this investigation is paper file folders from India. For a complete description of the scope of the investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.,* scope).[5] We received comments concerning the scope of the antidumping duty (AD) and CVD investigations of paper file folders as it appeared in the *Initiation Notice.* We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determinations of the companion AD investigations, the deadline for which is May 10, 2023.[6] We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determination for this investigation after considering any relevant comments submitted in scope case and rebuttal briefs.[7]

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found to be countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[8]

Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that one respondent, and also (in certain instances) the Government of India, did not act to the best of their ability to respond to Commerce's requests for information. Consequently, Commerce has drawn an adverse inference where appropriate in selecting from among the facts otherwise available.[9] For further information, *see* the ''Use of Facts Otherwise Available and Adverse Inferences'' section in the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final

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[1] *See Paper File Folders from India: Initiation of Countervailing Duty Investigations,* 87 FR 67447 (November 8, 2022) (*Initiation Notice*).

[2] *See Paper File Folders from India: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 87 FR 79858 (December 28, 2022).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Countervailing Duty Investigation of Paper File Folders from India,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 87 FR at 67448.

[6] *See Paper File Folders from the People's Republic of China, India, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 88 FR 9226, 9227 (February 13, 2023).

[7] The deadline for interested parties to submit scope case and rebuttal briefs will be established in the preliminary scope decision memorandum.

[8] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[9] *See* sections 776(a) and (b) of the Act.

determination in the companion AD investigation of paper file folders from India based on a request made by the petitioner.[10] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than July 24, 2023, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. Pursuant to section 705(c)(5)(A)(i) of the Act, this rate shall normally be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, the only individually calculated rate that is not zero, *de minimis* or based entirely on facts otherwise available is the rate calculated for Navneet Education Limited (Navneet).[11] Consequently, the rate calculated for Navneet is also assigned as the rate for all other producers and exporters not individually examined in this investigation.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
Navneet Education Limited	3.65
Lotus Global Pvt. Ltd	[12] 59.26
All Others	3.65

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, in accordance with 19 CFR 351.244(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

A timeline for the submission of case briefs and written comments will be notified to interested parties at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline for case briefs.[13] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[14] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of paper file folders from India are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act, and 19 CFR 351.205(c).

Dated: March 13, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The products within the scope of this investigation are file folders consisting primarily of paper, paperboard, pressboard, or other cellulose material, whether coated or uncoated, that has been folded (or creased in preparation to be folded), glued, taped, bound, or otherwise assembled to be suitable for holding documents. The scope includes all such folders, regardless of color, whether or not expanding, whether or not laminated, and with or without tabs, fasteners, closures, hooks, rods, hangers, pockets, gussets, or internal dividers. The term ''primarily'' as used in the first sentence of this scope means 50 percent or more of the total product weight, exclusive of the weight of fasteners, closures, hooks, rods, hangers, removable tabs, and similar accessories, and exclusive of the weight of packaging.

Subject folders have the following dimensions in their folded and closed position: lengths and widths of at least 8 inches and no greater than 17 inches, regardless of depth. The scope covers all varieties of folders, including but not limited to manila folders, hanging folders, fastener folders, classification folders, expanding folders, pockets, jackets, and wallets. Excluded from the scope are:

- mailing envelopes with a flap bearing one or more adhesive strips that can be used permanently to seal the entire length of a side such that, when sealed, the folder is closed on all four sides;
- binders, with two or more rings to hold documents in place, made from paperboard or pressboard encased entirely in plastic;
- non-expanding folders with a depth exceeding 2.5 inches and that are closed or closeable on the top, bottom, and all four sides (*e.g.,* boxes or cartons);
- expanding folders that have (1) 13 or more pockets, (2) a flap covering the top, (3) a latching mechanism made of plastic and/

[10] The petitioner is Coalition of Domestic Folder Manufacturers. *See* Petitioner's Letter, ''Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination,'' dated February 24, 2023.

[11] Commerce has assigned a rate to the non-responsive company (*i.e.,* Lotus Global Pvt. Ltd.) based entirely on facts available, using adverse inferences, under section 776 of the Act.

[12] Commerce has assigned a rate to Lotus Global Pvt. Ltd. based entirely on facts available, using adverse inferences, under section 776 of the Act. For details regarding the calculation of this rate, *see* the Preliminary Decision Memorandum at the Appendix.

[13] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[14] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

or metal to close the flap, and (4) an affixed plastic or metal carry handle;

• expanding folders that have an outer surface (other than the gusset, handles, and/or closing mechanisms) that is covered entirely with fabric, leather, and/or faux leather;

• fashion folders, which are defined as folders with all of the following characteristics: (1) plastic lamination covering the entire exterior of the folder, (2) printing, foil stamping, embossing (*i.e.,* raised relief patterns that are recessed on the opposite side), and/or debossing (*i.e.,* recessed relief patterns that are raised on the opposite side), covering the entire exterior surface area of the folder, (3) at least two visible and printed or foil stamped colors other than the color of the base paper, and other than the printing of numbers, letters, words, or logos, each of which separately covers no less than 10 percent of the entire exterior surface area, and (4) patterns, pictures, designs, or artwork covering no less than thirty percent of the exterior surface area of the folder;

• portfolios, which are folders having (1) a width of at least 16 inches when open flat, (2) no tabs or dividers, and (3) one or more pockets that are suitable for holding letter size documents and that cover at least 15 percent of the surface area of the relevant interior side or sides; and

• report covers, which are folders having (1) no tabs, dividers, or pockets, and (2) one or more fasteners or clips, each of which is permanently affixed to the center fold, to hold papers securely in place.

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) category 4820.30.0040. Subject imports may also enter under other HTSUS classifications. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Injury Test
VI. Subsidies Valuation Information
VII. Use of Facts Otherwise Available and Adverse Inferences
VIII. Analysis of Programs
IX. Recommendation

[FR Doc. 2023–05553 Filed 3–17–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0021]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 15-Day information collection notice.

SUMMARY: Consistent with the Paperwork Reduction Act of 1995 and its implementing regulations, this document provides notice DoD is submitting an Information Collection Request to the Office of Management and Budget (OMB) to collect information on Active Duty, Reserve, and National Guard used in evaluating existing policies and programs, establishing baseline measures before implementing new policies and programs, and monitoring the progress of policies/programs that make a difference in the lives of Service members and their families. DoD requests emergency processing and OMB authorization to collect the information after publication of this notice for a period of 18 months.

DATES: Comments must be received by April 4, 2023.

ADDRESSES: The Department has requested emergency processing from OMB for this information collection request by 15 days after publication of this notice. Interested parties can access the supporting materials and collection instrument as well as submit comments and recommendations to OMB at *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. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION: In 2021, the White House identified a priority goal to reduce military and veteran suicide by advancing evidence-based approaches to improve Lethal Means Safety (LMS). This priority goal focuses on increasing time and space between a person in crisis and their access to lethal means, including firearms, medications, ligature points, and other lethal objects. No systematic evidence currently exists on how to best integrate effective education about lethal means safety into early military career training settings to ensure maximum receptiveness and subsequent adoption of safe storage practices. This project directly addresses DoDI 6400.09, DoD Policy on Integrated Primary Prevention of Self-Directed Harm and Prohibited Abuse or Harm (2020), which outlines a plan for a holistic prevention system that includes data-driven strategies. The purpose of the study is to conduct a needs assessment to determine the optimal approach for encouraging greater adoption of LMS within the military culture. The goal is to encourage Service members to store firearms securely, in a way that avoids misuse, accidents, self-inflicted injuries, and suicide. Focus groups will be conducted to help collect information that allows the DoD to understand when, where, and how Service members are introduced to principles of lethal means safety, particularly around safe handling of firearms, and to identify potential opportunities to capitalize on existing training and safety practices to enhance adoption of safe storage practices. This study is being conducted by Peraton, a DoD contractor, and is being sponsored by the Defense Suicide Prevention Office, in partnership with the Defense Personnel Assessment Center. Peraton will conduct up to 34 focus groups or key informant interviews, with up to 340 Service members and civilian support personnel, across all Services. The study findings will help inform DoD and the Service level plans to encourage greater adoption of lethal means safety practices among Service members by seamlessly inculcating education about the importance of lethal means safety within early military career training. Introducing these concepts early in Service members' careers aims to enhance receptiveness and adoption of lethal means safety practices that can contribute to reduced injuries and deaths including suicides, accidents, unauthorized use, and domestic violence.

Title; Associated Form; and OMB Number: Incorporating Lethal Means Safety into the Early Military Career Training Pipeline to Mitigate Suicide Risk; OMB Control Number 0704–ILMS.

Type of Request: New.

Number of Respondents: 340.

Responses per Respondent: 1.

Annual Responses: 340.

Average Burden per Response: 90 minutes.

Annual Burden Hours: 510.

Affected Public: Individuals or households.

Frequency: Once.

Respondent's Obligation: Voluntary.

Request for Comments: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of DOD, including whether

the information collected has practical utility; (2) the accuracy of DOD's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Dated: March 15, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–05647 Filed 3–17–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0022]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 5-Day emergency information collection notice.

SUMMARY: The DoD has submitted to Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 27, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 5 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: The Defense Advisory Committee on Women in the Services (DACOWITS) Focus Groups; OMB Control Number 0704–DCWS.

Type of Request: New.

Number of Respondents: 575.

Responses per Respondent: 1.

Annual Responses: 575.

Average Burden per Response: 90 minutes.

Annual Burden Hours: 750.

Needs and Uses: DACOWITS provides independent advice and recommendations to the Secretary of Defense on matters and policies relating to the recruitment, retention, employment, integration, well-being, and treatment of women in the Armed Forces of the United States, via a comprehensive annual report. DACOWITS collects qualitative data from focus groups and interactions with Service members during installation visits. The focus groups will be conducted with Service members (both male and female; officer and enlisted) from each of the Military Services. The research and data gathered through focus group responses will be analyzed in order to provide the Committee with vital information and input needed to create, support, and provide justification and reasoning for their recommendations.

Affected Public: Individuals or households.

Frequency: Once.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: March 15, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–05650 Filed 3–17–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–HA–0020]

Proposed Collection; Comment Request

AGENCY: Defense Health Agency (DHA), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the DHA announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 19, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Department of Defense, Washington Headquarters Services, ATTN: Executive Services Directorate, Directives Division, 4800 Mark Center

Drive, Suite 03F09–09, Alexandria, VA 22350–3100, Angela Duncan, 571–372–7574.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Utilization of the Novel ECC Eagle External Condom Catheter System; OMB Control Number 0720–EECC.

Needs and Uses: There are numerous methods to manage urinary incontinence, from pads/diapers to condom catheters to invasive urethral foley catheters. Pads or diapers can lead to skin irritation due to their occlusive barriers which can leave skin moist and lead to breakdown. Current condom catheters can be difficult to size and cause skin breakdown and infections. They can also fall off in patients with a large suprapubic fat pad and a shorter penis. Foley catheters can be uncomfortable and can lead to urinary tract infections. Thus, there is a need for a better way to manage urinary incontinence in men. The ECC Eagle is a novel design for a condom catheter that is intended to be more comfortable and secure than current models. We need to ask patients questions on their experience with the ECC Eagle, the degree of urinary symptoms they experience and the impact this has on their lives. This information is vital to the development of this product.

Affected Public: Individuals and households.

ECC Eagle Patient Satisfaction Questionnaire

Annual Burden Hours: 0.8.
Number of Respondents: 10.
Responses per Respondent: 1.
Annual Responses: 10.
Average Burden per Response: 5 minutes.

Male Urinary Symptom Impact Questionnaire (MUSIQ)

Annual Burden Hours: 3.3.
Number of Respondents: 10.
Responses per Respondent: 2.
Annual Responses: 20.
Average Burden per Response: 10 minutes.

PROMIS General Life Satisfaction Questionnaire

Annual Burden Hours: 1.7.
Number of Respondents: 10.
Responses per Respondent: 2.
Annual Responses: 20.
Average Burden per Response: 5 minutes.

The respondents will be adult men with stress urinary incontinence. They will be responding to this information collection because this is required if they want to trial the novel ECC Eagle external condom catheter. Each collection instrument will be done electronically via Qualtrics, a secure web-based survey platform. Patients will access this via their smartphone. The results will automatically be received via Qualtrics when they submit the responses.

Participants in the ECC Eagle trial will get to keep the external condom catheter they used for the study. There is no other gift, payment, or incentive to participate.

Dated: March 15, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–05643 Filed 3–17–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

[Docket ID COE–2023–0003]

ZRIN 0710–ZA18

Water Resources Development Act 2020, Section 165 Pilot Program for Continuing Authority Projects in Small or Disadvantaged Communities Draft Environmental Assessment, Notice of Availability for Comment

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability for public comment.

SUMMARY: The Department of the Army is publishing this notice to solicit comment on an environmental assessment of implementation of Section 165 of the Water Resources Development Act of 2020 which directs the Secretary of the Army to establish and implement a pilot program carrying out continuing authority projects in small or disadvantaged communities.

DATES: Comments must be received by April 19, 2023.

ADDRESSES: You may submit comments, identified by docket number COE–2023–0003, using any of these methods:

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

2. *Email: usarmy.pentagon.hqda-asa-cw.mbx.asa-cw-reporting@army.mil* and include the docket number, COE–2023–0003, in the subject line of the message.

3. *Mail:* HQ, U.S. Army Office of the Assistant secretary of the Army, ATTN: Mr. Gib Owen, at U.S. Army, 108 Army Pentagon, Washington, DC 20310–0108.

4. *Hand Delivery/Courier:* Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2023–0003. The public docket will include all comments exactly as submitted and without change and may be made available on-line at *http://www.regulations.gov.* This will include any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information where disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *regulations.gov* or email. The *regulations.gov* website is an anonymous access system, which means we 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 the U.S. Army without going through *regulations.gov,* your email address will be automatically captured and included as part of the comment placed in the public docket and made available on the internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment. No alternative media thumb drive or CD–ROM can be submitted. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as 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.

FOR FURTHER INFORMATION CONTACT: Mr. Gib Owen at *usarmy.pentagon.hqda-asa-cw.mbx.asa-cw-reporting@army.mil* or 571–274–1929.

SUPPLEMENTARY INFORMATION: The Department of the Army is publishing this notice to solicit comment on an environmental assessment prepared to support the implementation of Section 165 of the Water Resources Development Act (WRDA) of 2020 (Pub. L. 116–260). Section 165(a) of the

WRDA of 2020, as amended, directs the Secretary to implement a pilot program for carrying out continuing authority projects in small or disadvantaged communities at 100% Federal costs. It requires the Secretary to issue a **Federal Register** notice to solicit proposals from non-federal interests for a project under a continuing authority program (CAP) for an economically disadvantaged community. A description of each CAP is provided in Engineer Pamphlet (EP) 1105–2–58, Continuing Authorities Program. A separate **Federal Register** notice soliciting qualified non-Federal interests to submit project proposals will be published at a later date. The notice would be published upon implementation of the Section 165 Pilot Program. A copy of the draft environmental assessment can be found at: *https://www.usace.army.mil/Missions/Civil-Works/Water-Resources-Development-Act/.*

The contents of the documents do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or departmental policies.

Procedural Requirements

a. *Review under the National Environmental Policy Act.* As required by the National Environmental Policy Act (NEPA), the Department of Army prepares appropriate environmental analysis for its activities affecting the quality of the human environment. We have preliminarily determined that this proposed Section 165 Pilot Program if finalized, would not constitute a major Federal Action significantly affecting the quality of the human environment because actions will be taken, during the planning to avoid, minimize, or compensatory mitigate for any adverse impacts that could occur as a result of the implementation of the recommended plan. The preliminary determination that an Environmental Impact Statement (EIS) will not be required for the issuance of this significant guidance will be reviewed in consideration of the comments received.

b. *Unfunded Mandates Reform Act.* The Unfunded Mandates Reform Act does not apply to the Section 165 Pilot Program because the guidance associated with this action provides policy for the Commanding General of the U.S. Army Corps of Engineers to conduct Continuing Authority Program projects at 100% Federal expense. The Assistant Secretary of the Army for Civil Works has found that small governments will not be significantly and uniquely affected by this guidance.

c. *National Technology Transfer and Advancement Act.* This Section 165 Pilot Program does not involve technical standards and as such there are no anticipated requirements under this Act.

d. *Executive Order 12866.* Executive Order 12866 (58 FR 51735, October 4, 1993), defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. In addition, per 32 CFR 339.7 (85 FR 32299), the same tests for significance also apply to guidance documents. This proposed Section 165 Pilot program has been found not to be a significant guidance action.

e. *Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).* The proposed Section 165 Pilot Program does not impose any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act is required.

f. *Executive Order 13132: Federalism.* This proposed Section 165 Pilot Program will not have substantial direct effects on the states, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

g. *Regulatory Flexibility Act.* The Regulatory Flexibility Act (RFA), as amended (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of the proposed rule on small entities, a small entity is defined as: (1) A small business based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Although this is not a rulemaking action, the Assistant Secretary of the Army for Civil Works nonetheless certifies that this proposed Section 165 Pilot Program does not have a significant economic impact on a substantial number of small entities. The proposed Section 165 Pilot Program does not place any regulatory burdens on small entities or have a significant economic impact on such entities.

h. *Congressional Review Act (5 U.S.C. 801 et seq.).* Pursuant to the Congressional Review Act, this proposed Section 165 Pilot Program has not been designated a major rule, as defined by 5 U.S.C. 804(2), as it is not a rulemaking action. However, analyzing the same parameters for this proposed significant guidance, the Assistant Secretary of the Army for Civil Works has determined that this proposed Section 165 Pilot Program is not considered ''major'' as defined by 5 U.S.C. 804(2), because it is not likely to result in: (1) An annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

i. *Executive Order 13175, Consultation and Coordination with Indian Tribal Governments.* Under Executive Order 13175, the Federal government may not issue a regulation that has substantial, direct effects on one or more Tribal Nation, on the relationship between the Federal government and Tribal Nation, or on the distribution of powers and responsibilities between the Federal government and Tribal Nations, and imposes substantial direct compliance costs on those communities, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the Tribal Nation governments, or we consult with those governments. If complying by consulting, Executive Order 13175 requires us to provide the Office of Management and Budget, in a separately

identified section of the preamble to the rule, a description of the extent of prior consultation with representatives of affected Tribal Nation governments, a summary of the nature of Tribal Nation concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13175 requires that agencies develop an effective process permitting elected officials and other representatives of Tribal Nation governments an opportunity to provide timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities. This proposed Section 165 Pilot Program does not impose significant compliance costs on any Tribal Nation or otherwise have substantial direct effects on the same. The proposed Section 165 Pilot Program would not have any adverse physical impacts to human environment as the expected result of the Assistant Secretary of the Army for Civil Works actions will be the development and construction of CAP projects. In the event that any Tribal Nations may have concerns with the proposed Section 165 Pilot Program, the Assistant Secretary of the Army for Civil Works encourages them to submit comments through the public comment process and/or to request government-to-government consultation.

Michael L. Connor,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 2023–05551 Filed 3–17–23; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, U.S. Department of Defense (DoD).

ACTION: Notice of Partially Closed Meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the U.S. Naval Academy Board of Visitors, hereafter ''Board,'' will take place.

DATES: Open to the public, March 21, 2023, from 9 a.m. to 11 a.m. Closed to the public, March 21, 2023, from 11 a.m. to noon (12 p.m.).

ADDRESSES: This meeting will be held at the U.S. Naval Academy in Annapolis, Maryland (MD). Pending prevailing health directives, the meeting will be handicap accessible. Escort is required.

FOR FURTHER INFORMATION CONTACT: Major Alexandra Fitzgerald, USMC, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503, *afitzger@usna.edu,* or visit *https://www.usna.edu/PAO/Superintendent/bov.php*.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 United States Code (U.S.C.)), Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), the General Services Administration's (GSA) Federal Advisory Committee Management Final Rule (41 Code of Federal Regulations (CFR) part 102–3).

Purpose of Meeting: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board deems necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy.

Agenda

Proposed meeting agenda for March 21, 2023.

0900 Call to Order (Open to Public)
0900–1055 Business Session (Open to Public)
1055–1100 Break (Open to Public)
1100–1200 Executive Session (Closed to Public)

Current details on the board of visitors may be found at *https://www.usna.edu/PAO/Superintendent/bov.php*.

The executive session of the meeting from 11 a.m. to 12 p.m. on March 21, 2023, will consist of discussions of new and pending administrative or minor disciplinary infractions and non-judicial punishments involving midshipmen attending the Naval Academy to include but not limited to, individual honor or conduct violations within the Brigade, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public, as the discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy, in consultation with the Department of the Navy General Counsel, has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11 a.m. to noon (12 p.m.) will be concerned with matters protected under sections 552b(c)(5), (6), and (7) of title 5, U.S.C.

Due to circumstances beyond the control of the Designated Federal Officer, the United States Naval Academy Board of Visitors was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its March 21, 2023 meeting. Accordingly, the Advisory Committee Management Officer for the DoD, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Authority: 5 U.S.C. 552b.

Meeting Accessibility: Pursuant to FACA and 41 CFR 102–3.140, this meeting is open to the public. Any public attendance at the meeting will be governed by prevailing health directives at the United States Naval Academy. Please contact the Executive Secretary five business days prior the meeting to coordinate access to the meeting.

Written Statements: Per Section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration at any time, but should be received by the Designated Federal Officer at least 5 business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written statements should be submitted via mail to 121 Blake Rd, Annapolis, MD 21402. Please note that since the Board operates under the provisions of the FACA, as amended, all submitted comments and public presentations may be treated as public documents and may be made available for public inspection, including, but not limited to, being posted on the board website.

Dated: March 14, 2023.

A.R. Holt,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2023–05556 Filed 3–17–23; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2023–SCC–0047]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Native American Language (NAL@ED) Application Package (1894–0001)

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before April 19, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Donna Sabis-Burns, 202–453–7077.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Native American Language (*NAL@ED*) Application Package (1894–0001).

OMB Control Number: 1810–0731.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 50.

Total Estimated Number of Annual Burden Hours: 1,500.

Abstract: The Office of Indian Education (OIE) of the U.S. Department of Education (ED) requests an extension of the information collection clearance for the Native American Language Program Grant Application (ALN84.415B), a competitive grant program authorized under Title VI, Part A, of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

The grant applications submitted for this program are evaluated on the basis of how well an applicant addresses the selection criteria and are used to determine applicant eligibility and amount of award for projects selected for funding. The criteria are not expected to change prior to a future competition.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: March 14, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–05525 Filed 3–17–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0005]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of Finance and Operations (OFO), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before April 19, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0005. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Stephanie Valentine, (202) 550–7416.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 1880–0542.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Individuals and households.

Total Estimated Number of Annual Responses: 450,000.

Total Estimated Number of Annual Burden Hours: 225,000.

Abstract: This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs.

Dated: March 15, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–05595 Filed 3–17–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0050]

Agency Information Collection Activities; Comment Request; Consolidation Loan Rebate Fee Report

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 19, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0050. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–3018.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Consolidation Loan Rebate Fee Report.

OMB Control Number: 1845–0046.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 3,108.

Total Estimated Number of Annual Burden Hours: 3,367.

Abstract: The Department of Education is submitting for approval the Consolidation Loan Rebate Fee Report, ED Form 4–619. This request is for an extension of a currently approved collection. The information collected on the Consolidation Loan Rebate Fee Report will be used to document Federal Consolidation loans held by lenders who are responsible for sending interest payment rebate fees to the Secretary of Education.

Dated: March 14, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–05558 Filed 3–17–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Application for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to State Entities (State Entity)

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for fiscal year (FY) 2023 for CSP Grants to State Entities, Assistance Listing Number (ALN) number 84.282A. This notice relates to the approved information collection under OMB control number 1810–0767.

DATES:

Applications Available: March 20, 2023.

Deadline for Transmittal of Applications: June 5, 2023.

Deadline for Intergovernmental Review: August 2, 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: Adrienne Hawkins, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–5970. Telephone: (202)453–5638. Email: *FY2023_SE_Competition@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 CSP State Entity program, ALN 84.282A, is authorized under Title IV, Part C of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA) (20 U.S.C. 7221–7221j). Through the CSP State Entity competition, the Department awards grants to State entities that, in turn, award subgrants to eligible applicants for the purpose of opening new charter schools and replicating and expanding high-quality charter schools. State entities also may use grant funds to provide technical assistance to eligible applicants and authorized public chartering agencies in opening new charter schools and replicating and expanding high-quality charter schools, and to work with authorized public chartering agencies in the State to improve authorizing quality, including developing capacity for, and conducting, fiscal oversight and auditing of charter schools. State Entity grant funds may also be used for grant administration, which may include technical assistance and monitoring of subgrants for performance and fiscal and regulatory compliance, as required under 2 CFR 200.332(d).

The CSP State Entity program provides financial assistance to State entities to support charter schools that serve elementary and secondary school students in States with a specific State statute authorizing the granting of charters to schools. Charter schools receiving funds under the CSP State Entity program may also serve students in early childhood education programs or postsecondary students.

Background: The major purposes of the CSP are to expand opportunities for all students, particularly traditionally underserved students, to attend public charter schools and meet challenging State academic standards; provide financial assistance for the planning, program design, and initial implementation of charter schools; increase the number of high-quality charter schools available to students across the United States; evaluate the impact of charter schools on student achievement, families, and communities; share best practices between charter schools and other public schools; encourage States to provide facilities support to charter schools; and support efforts to strengthen the charter school authorizing process.

On July 6, 2022, the Department published in the **Federal Register** a notice of final priorities, requirements, definitions, and selection criteria (2022 NFP). The 2022 NFP supplements the program statute and is intended to help ensure the creation, replication, and expansion of high-quality charter schools that promote positive student outcomes, educator and community empowerment, promising practices, and school diversity. The 2022 NFP promotes greater fiscal and operational transparency and accountability for CSP-funded charter schools. The application requirements and assurances associated with subgrant monitoring and the review of subgrant applications help facilitate the proper peer review and evaluation of CSP grant applications. The priorities, application requirements, assurances, selection criteria, and definitions in this notice are designed to increase access to high-quality, diverse, and equitable learning opportunities, which should be a goal of all public schools.

Priorities: This notice includes one absolute priority, five competitive preference priorities, and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priority and competitive preference priorities are from section 4303(g)(2) of the ESEA (20 U.S.C. 7221b(g)(2)).

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 the absolute priority.

This priority is:

Best Practices for Charter School Authorizers.

To meet this priority, an applicant must demonstrate that the State entity has taken steps to ensure that all authorized [1] public chartering agencies implement best practices for charter school authorizing.

Competitive Preference Priorities: For FY 2023, and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award 1 additional point to an application that meets Competitive Preference Priority 1; up to 2 additional points to an application depending on how well it meets Competitive Preference Priority 2; up to 2 additional points to an application depending on how well it meets Competitive Preference Priority 3; up to 2 additional points to an application depending on how well it meets Competitive Preference Priority 4; and up to 3 additional points to an application depending on how well it meets Competitive Preference Priority 5.

An applicant must identify on the abstract form and in the project narrative section of its application the priority or priorities it wishes the Department to consider for purposes of earning competitive preference priority points. The Department will not review or award points for any competitive preference priority that an applicant fails to clearly identify as a competitive preference priority or priorities it wishes the Department to consider for purposes of earning competitive preference priority points. An application may receive a total of up to 10 additional points under the competitive preference priorities.

These priorities are:

Competitive Preference Priority 1—At Least One Authorized Public Chartering Agency Other than a Local Educational Agency, or an Appeals Process (0 or 1 points).

To meet this priority, the State entity must demonstrate that it is located in a State that—

(a) Allows at least one entity that is not a local educational agency (LEA) to be an authorized public chartering agency for developers seeking to open a charter school in the State; or

(b) In the case of a State in which LEAs are the only authorized public chartering agencies, the State has an appeals process for the denial of an application for a charter school.

Competitive Preference Priority 2—Equitable Financing (up to 2 points).

To be eligible to receive points under this priority, the State entity must demonstrate that it is located in a State that ensures equitable financing, as compared to traditional public schools, for charter schools and students in a prompt manner.

Competitive Preference Priority 3—Best Practices to Improve Struggling Schools and LEAs (up to 2 points).

To be eligible to receive points under this priority, the State entity must demonstrate that it is located in a State that uses best practices from charter schools to help improve struggling schools and LEAs.

Competitive Preference Priority 4—Charter School Facilities (up to 2 points).

[1] Although the statute utilizes the term ''authorizing'' the term was modified to ''authorized'' in this notice.

To be eligible to receive points under this priority, the State entity must demonstrate that it is located in a State that provides charter schools one or more of the following:

(a) Funding for facilities.

(b) Assistance with facilities acquisition.

(c) Access to public facilities.

(d) The ability to share in bonds or mill levies.

(e) The right of first refusal to purchase public school buildings.

(f) Low- or no-cost leasing privileges.

Competitive Preference Priority 5—Serving At-Risk Students (up to 3 points).

To be eligible to receive points under this priority, the State entity must demonstrate that it supports charter schools that serve at-risk students through activities such as dropout prevention, dropout recovery, or comprehensive career counseling services.

Invitational 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 invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Invitational Priority—Collaborations between Charter Schools and Traditional Public Schools or Districts that Benefit Students and Families across Schools.

(a) The Secretary is particularly interested in funding applications that propose to encourage, but not require, eligible applicants for subgrants to propose projects that include a new collaboration, or the continuation of an existing collaboration, with at least one traditional public school or traditional school district that is designed to benefit students or families served by at least one member of the collaboration, is designed to lead to increased and improved educational opportunities for students served by at least one member of the collaboration, and includes implementation of one or more of the following:

(1) Co-developed or shared curricular and instructional resources or academic course offerings.

(2) Professional development opportunities for teachers and other educators, which may include professional learning communities, opportunities for teachers to earn additional certifications, such as in a high-need area or national board certification, and partnerships with educator preparation programs to support teaching residencies.

(3) Evidence-based (as defined in section 8101(21) of the ESEA) practices to improve academic performance for underserved students.

(4) Policies and practices to create safe, supportive, and inclusive learning environments, such as systems of positive behavioral intervention and support.

(5) Transparent enrollment and retention practices and processes that include clear and consistent disclosure to families of policies or requirements (*e.g.,* discipline policies, purchasing and wearing specific uniforms and other fees, or family participation), and any services that are or are not provided that could impact a family's ability to enroll or remain enrolled (*e.g.,* transportation services or participation in the National School Lunch Program).

(6) A shared transportation plan and system that reduces transportation costs for members of the collaboration and takes into consideration various transportation options, including public transportation and district-provided or shared transportation options, cost-sharing or free or reduced-cost fare options, and any distance considerations for prioritized bus services.

(7) A shared special education collaborative designed to address a significant barrier or challenge faced by participating charter schools and traditional public schools in improving academic or developmental outcomes and services for students with disabilities (as defined in section 8101 of the ESEA).

(8) A shared English learner collaborative designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in improving academic outcomes for English learners (as defined in section 8101 of the ESEA).

(9) Other collaborations, such as the sharing of innovative and best practices, designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools and designed to improve academic outcomes for all students served by members of the collaboration.

(b) The State entity certifies that it will ask each eligible applicant that proposes a project that includes such a collaboration to—

(1) Provide in its subgrant application a description of the collaboration that—

(i) Describes each member of the collaboration and whether the collaboration would be a new or existing commitment;

(ii) States the purpose and duration of the collaboration;

(iii) Describes the anticipated roles and responsibilities of each member of the collaboration;

(iv) Describes how the collaboration will benefit one or more members of the collaboration, including how it will benefit students or families affiliated with a member and lead to increased or improved educational opportunities for students, and meet specific and measurable, if applicable, goals;

(vi) Describes the resources members of the collaboration will contribute; and

(vii) Contains any other relevant information; and

(2) Within 120 days of receiving a subgrant award or within 120 days of the date the collaboration is scheduled to begin, whichever is later, provide evidence of participation in the collaboration (which may include, but is not required to include, a memorandum of understanding).

Application Requirements:

These application requirements are from section 4303(f) of the ESEA (20 U.S.C. 7221b(f)) and from the 2022 NFP. The Department will not fund an application that does not meet each application requirement.

In addressing the application requirements, applicants must clearly identify which application requirement they are addressing. An applicant must address requirements (a)(1)(i), (a)(1)(vii), (a)(1)(ix), (a)(2)(ii), and (a)(2)(iii) in its response to paragraph (a)(1) of the Quality of the Project Design selection criterion; requirement (a)(8) in its response to paragraph (a)(4) of the Quality of the Project Design selection criterion; requirements (a)(1)(ii), (a)(1)(xiii), (a)(3)(i), (a)(3)(ii), (a)(3)(iii), (a)(5), and (a)(7) in its response to the Quality of Eligible Subgrant Applicants selection criterion; requirements (a)(1)(vi), (a)(1)(x), and (a)(9) in its response to paragraph (c)(1) of the State Plan selection criterion; requirements (a)(1)(iii), (a)(1)(iv), (a)(1)(viii), and (a)(1)(xi) in its response to paragraph (c)(3) of the State Plan selection criterion; and requirement (a)(4) in its response to paragraph (d)(1) of the Quality of the Management Plan selection criterion. An applicant must respond to the application requirements in paragraph (a) that are not listed above in the Project Narrative.

Applications for funding under the CSP State Entity program must contain the following:

(a) Description of Program—A description of the State entity's objectives in running a quality charter school program and how the objectives

of the program will be carried out, including—

(1) A description of how the State entity will—

(i) Support the opening of charter schools through the startup of new charter schools and, if applicable, the replication of high-quality charter schools, and the expansion of high-quality charter schools (including the proposed number of new charter schools to be opened, high-quality charter schools to be opened as a result of the replication of a high-quality charter school, or high-quality charter schools to be expanded under the State entity's program) (4303(f));

(ii) Inform eligible charter schools, developers, and authorized public chartering agencies of the availability of funds under the program (4303(f));

(iii) Work with eligible applicants to ensure that the eligible applicants access all Federal funds that such applicants are eligible to receive, and help the charter schools supported by the applicants and the students attending those charter schools—

(A) Participate in the Federal programs in which the schools and students are eligible to participate;

(B) Receive the commensurate share of Federal funds the schools and students are eligible to receive under such programs; and

(C) Meet the needs of students served under such programs, including students with disabilities and English learners (4303(f));

(iv) Ensure that authorized public chartering agencies, in collaboration with surrounding LEAs where applicable, establish clear plans and procedures to assist students enrolled in a charter school that closes or loses its charter to attend other high-quality schools (4303(f));

(v) In the case of a State entity that is not a State educational agency (SEA)—

(A) Work with the SEA and charter schools in the State to maximize charter school participation in Federal and State programs for which charter schools are eligible; and

(B) Work with the SEA to operate the State entity's program under section 4303 of the ESEA, if applicable (4303(f));

(vi) Ensure that each eligible applicant that receives a subgrant under the State entity's program—

(A) Is using funds provided under this program for one of the activities described in section 4303(b)(1) of the ESEA; and

(B) Is prepared to continue to operate charter schools funded under section 4303 of the ESEA in a manner consistent with the eligible applicant's application for such subgrant once the subgrant funds under this program are no longer available (4303(f));

(vii) Support—

(A) Charter schools in LEAs with a significant number of schools identified by the State for comprehensive support and improvement under section 1111(c)(4)(D)(i) of the ESEA; and

(B) The use of charter schools to improve struggling schools, or to turn around struggling schools (4303(f));

(viii) Work with charter schools on—

(A) Recruitment and enrollment practices to promote inclusion of all students, including by eliminating any barriers to enrollment for educationally disadvantaged students (who include foster youth and unaccompanied homeless youth); and

(B) Supporting all students once they are enrolled to promote retention, including by reducing the overuse of discipline practices that remove students from the classroom (4303(f));

(ix) Share best and promising practices between charter schools and other public schools (4303(f));

(x) Ensure that charter schools receiving funds under the State entity's program meet the educational needs of their students, including children with disabilities and English learners (4303(f));

(xi) Support efforts to increase charter school quality initiatives, including meeting the quality authorizing elements described in section 4303(f)(2)(E) of the ESEA (4303(f));

(xii)(A) In the case of a State entity that is not a charter school support organization, a description of how the State entity will provide oversight of authorizing activity, including how the State will help ensure better authorizing, such as by establishing authorizing standards that may include approving, monitoring, and re-approving or revoking the authority of an authorized public chartering agency based on the performance of the charter schools authorized by such agency in the areas of student achievement, student safety, financial and operational management, and compliance with all applicable statutes and regulations; and

(B) In the case of a State entity that is a charter school support organization, a description of how the State entity will work with the State to support the State's system of technical assistance and oversight of the authorizing activity of authorized public chartering agencies, as described in application requirement (a)(1)(xii)(A) (4303(f)); and

(xiii) Work with eligible applicants receiving a subgrant under the State entity's program to support the opening of new charter schools or charter school models described in application requirement (a)(1)(i) that are high schools (4303(f));

(2) A description of the extent to which the State entity—

(i) Is able to meet and carry out Competitive Preference Priorities 1 through 5; [2]

(ii) Is working to develop or strengthen a cohesive statewide system to support the opening of new charter schools and, if applicable, the replication of high-quality charter schools, and the expansion of high-quality charter schools; and

(iii) Is working to develop or strengthen a cohesive strategy to encourage collaboration between charter schools and LEAs on the sharing of best practices (4303(f));

(3) A description of how the State entity will award subgrants, on a competitive basis, including—

(i) A detailed description of how the State entity will review applications from eligible applicants, including—

(A) How eligibility will be determined;

(B) How peer reviewers will be recruited and selected, including efforts the applicant will make to recruit peer reviewers from diverse backgrounds and underrepresented groups;

(C) How subgrant applications will be reviewed and evaluated;

(D) How cost analyses and budget reviews will be conducted to ensure that costs are necessary, reasonable, and allocable to the subgrant;

(E) How applicants will be assessed for risk (*i.e.,* fiscal, programmatic, compliance); and

(F) How funding decisions will be made (2022 NFP);

(ii) A description of the application each eligible applicant desiring to receive a subgrant will be required to submit, which application must include the following:

(A) A description of the roles and responsibilities of eligible applicants, partner organizations, and charter management organizations (CMO), including the administrative and contractual roles and responsibilities of such partners (4303(f));

(1) For any existing or proposed contract between a charter and a for-

[2] In accordance with 34 CFR 105(c)(2)(i), applications are not required to address competitive preference priorities but may receive additional points if they do so. However, to meet this application requirement, the *State entity* must describe the extent to which it is able to meet and carry out competitive preference priorities 1 through 5. If the *State entity* is unable to meet and carry out one or more of these competitive preference priorities, the description for that priority should state that the *State entity* is unable to meet or carry out the priority.

profit management organization (including a nonprofit management organization operated by or on behalf of a for-profit entity), without regard to whether the management organization or its related entities exercises full or substantial administrative control over the charter school or the CSP project, the applicant must provide the following information or equivalent information that the applicant has submitted to the authorized public chartering agency—

(A) A copy of the existing contract with the for-profit management organization or a description of the terms of the contract, including the name and contact information of the management organization; the cost (*i.e.,* fixed costs and estimates of any ongoing costs or fees), including the amount of CSP funds proposed to be used toward such cost, and the percentage such cost represents of the school's overall funding; the duration; roles and responsibilities of the management organization; and steps the applicant will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization, makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant in accordance with 34 CFR 75.701;

(B) A description of any business or financial relationship between the charter school developer and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities that will be used by the charter school;

(C) The name and contact information for each member of the governing board of the charter school and a list of the management organization's officers, chief administrator, or other administrators, and any staff involved in approving or executing the management contract; and a description of any actual or perceived conflicts of interest, including financial interests, and how the applicant will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c);

(D) A description of how the applicant will ensure that members of the governing board of the charter school are not selected, removed, controlled, or employed by the management organization and that the charter school's legal, accounting, and auditing services will be procured independently from the management organization;

(E) An explanation of how the applicant will ensure that the management contract is severable, severing the management contract will not cause the proposed charter school to close, the duration of the management contract will not extend beyond the expiration date of the school's charter, and renewal of the management contract will not occur without approval and affirmative action by the governing board of the charter school; and

(F) A description of the steps the applicant will take to ensure that it maintains control over all student records and has a process in place to provide those records to another public school or school district in a timely manner upon the transfer of a student from the charter school to another public school, including due to closure of the charter school, in accordance with section 4308 of the ESEA (2022 NFP).

(G) A description of the quality controls agreed to between the eligible applicant and the authorized public chartering agency involved, such as a contract or performance agreement; how a school's performance in the State's accountability system and impact on student achievement (which may include student academic growth) will be one of the most important factors for renewal or revocation of the school's charter; and how the State entity and the authorized public chartering agency involved will reserve the right to revoke or not renew a school's charter based on financial, structural, or operational factors involving the management of the school (4303(f));

(H) A description of how the autonomy and flexibility granted to a charter school is consistent with the definition of charter school in section 4310 of the ESEA (4303(f));

(I) A description of how the eligible applicant will solicit and consider input from parents and other members of the community on the implementation and operation of each charter school that will receive funds under the State entity's program (4303(f));

(J) A description of the eligible applicant's planned activities and expenditures of subgrant funds to support opening and preparing for the operation of new charter schools, opening and preparing for the operation of replicated high-quality charter schools, or expanding high-quality charter schools, and how the eligible applicant will maintain financial sustainability after the end of the subgrant period (4303(f));

(K) A description of how the eligible applicant will support the use of effective parent, family, and community engagement strategies to operate each charter school that will receive funds under the State entity's program (4303(f)); and

(L) A needs analysis and description of the need for the proposed project, including how the proposed project would serve the interests and meet the needs of students and families in the communities the charter school intends to serve. The needs analysis, which may consist of information and documents previously submitted to an authorized public chartering agency to address need, must include, but is not necessarily limited to, the following:

(1) Descriptions of the local community support, including information that demonstrates interest in, and need for, the charter school; benefits to the community; and other evidence of demand for the charter school that demonstrates a strong likelihood the charter school will achieve and maintain its enrollment projections. Such information may include information on waiting lists for the proposed charter school or existing charter schools or traditional public schools, data on access to seats in high-quality public schools in the districts from which the charter school expects to draw students, and family interest in specialized instructional approaches proposed to be implemented at the charter school.

(2) Information on the proposed charter school's projected student enrollment and evidence to support the projected enrollment based on the needs analysis and other relevant data and factors, such as the methodology and calculations used.

(3) An analysis of the proposed charter school's projected student demographics and a description of the demographics of students attending public schools in the local community in which the charter school would be located and the school districts from which the students are, or would be, drawn to attend the charter school; a description of how the applicant plans to establish and maintain a racially and socio-economically diverse student body, including proposed strategies (that are consistent with applicable legal requirements) to recruit, admit, enroll, and retain a diverse student body. An applicant that is unlikely to establish and maintain a racially and socio-economically diverse student body at the proposed charter school because the charter school would be located in a racially or socio-economically segregated or isolated community, or due to the charter school's specific education mission, must describe—

(A) Why it is unlikely to be able to establish and maintain a racially and socio-economically diverse student body at the proposed charter school;

(B) How the anticipated racial and socio-economic makeup of the student body would promote the purposes of the CSP to provide high-quality educational opportunities to all students, which may include a specialized educational program or mission; and

(C) The anticipated impact of the proposed charter school on the racial and socio-economic diversity of the public schools and school districts from which students would be drawn to attend the charter school.

(4) A robust family and community engagement plan designed to ensure the active participation of families and the community that includes the following:

(A) How families and the community were, are, or will be engaged in determining the vision and design for the charter school, including specific examples of how families' and the community's input was, is, or is expected to be incorporated into the vision and design for the charter school.

(B) How the charter school will meaningfully engage with both families and the community to create strong and ongoing partnerships.

(C) How the charter school will foster a collaborative culture that involves the families of all students, including underserved students, in ensuring their ongoing input in school decision-making.

(D) How the charter school's recruitment, admissions, enrollment, and retention processes will engage and accommodate families from various backgrounds, including English learners, students with disabilities, and students of color, including by holding enrollment and recruitment events on weekends or during non-standard work hours, making interpreters available, and providing enrollment and recruitment information in widely accessible formats (*e.g.,* hard copy and online in multiple languages; as appropriate, large print or braille for visually impaired individuals) through widely available and transparent means (*e.g.,* online and at community locations).

(E) How the charter school has engaged or will engage families and the community to develop an instructional model to best serve the targeted student population and their families, including students with disabilities and English learners.

(5) How the plans for the operation of the charter school will support and reflect the needs of students and families in the community, including consideration of district or community assets and how the school's location, or anticipated location if a facility has not been secured, will facilitate access for the targeted student population (*e.g.,* access to public transportation or other transportation options, the demographics of neighborhoods within walking distance of the school, and transportation plans and costs for students who are not able to walk or use public transportation to access the school).

(6) A description of the steps the applicant has taken or will take to ensure that the proposed charter school (A) would not hamper, delay, or negatively affect any desegregation efforts in the community in which the charter school would be located and the public school districts from which students are, or would be, drawn to attend the charter school, including efforts to comply with a court order, statutory obligation, or voluntary efforts to create and maintain desegregated public schools; and (B) to ensure that the proposed charter school would not otherwise increase racial or socio-economic segregation or isolation in the schools from which the students are, or would be, drawn to attend the charter school. (2022 NFP).

(iii)(A) A description of how the State entity, in awarding subgrants to eligible applicants, will give priority to eligible applicants that propose projects that include the creation, replication, or expansion of a high-quality charter school that is developed and implemented—

(1) With meaningful and ongoing engagement with current or former teachers and other educators; and

(2) Using a community-centered approach that includes an assessment of community assets, informs the development of the charter school, and includes the implementation of protocols and practices designed to ensure that the charter school will use and interact with community assets on an ongoing basis to create and maintain strong community ties.

(B) In its application, an eligible applicant must provide a high-quality plan that demonstrates how its proposed project would meet the requirements in paragraph (a)(6)(iii)(A) of these application requirements, accompanied by a timeline for key milestones that span the course of planning, development, and implementation of the charter school.

(4) In the case of a State entity that partners with an outside organization to carry out the State entity's quality charter school program, in whole or in part, a description of the roles and responsibilities of the partner (4303(f));

(5) A description of how the State entity will ensure that each charter school receiving funds under the State entity's program has considered and planned for the transportation needs of the school's students (4303(f));

(6) A description of how the State in which the State entity is located addresses charter schools in the State's open meetings and open records laws (4303(f));

(7) A description of how the State entity will support diverse charter school models, including models that serve rural communities (4303(f));

(8) Evidence to support the requested funds and projected enrollment, such as explanations regarding the methodology and calculations (2022 NFP); and

(9) A description, including a timeline, of how the State entity will monitor and report on subgrant performance in accordance with 2 CFR 200.329, and address and mitigate subgrantee risk, including—

(i) How subgrantees will be selected for in-depth monitoring, including factors that indicate higher risk (*e.g.,* charter schools that have management contracts with for-profit education management organizations, virtual charter schools, and charter schools with a history of poor performance);

(ii) How identified subgrantee risk will be addressed;

(iii) How subgrantee expenditures will be monitored;

(iv) How monitors will be trained;

(v) How monitoring findings will be shared with subgrantees;

(vi) How corrective action plans will be used to resolve monitoring findings;

(vii) How the State entity will ensure transparency so that monitoring findings and corrective action plans are available to families and the public; and

(viii) How the State entity will work with authorized public chartering agencies to share information regarding the monitoring of subgrantees, including in areas related to fiscal protocols and organizational governance, for the purpose of reducing the reporting burden on charter schools (2022 NFP).

(b) Assurances—Assurances by the State entity that—

(1) Each charter school receiving funds through the State entity's program will have a high degree of autonomy over budget and operations, including autonomy over personnel decisions (4303(f));

(2) The State entity will support charter schools in meeting the educational needs of their students, including children with disabilities and English learners (4303(f));

(3) The State entity will ensure that the authorized public chartering agency of any charter school that receives funds under the State entity's program adequately monitors each charter school under the authority of such agency in recruiting, enrolling, retaining, and meeting the needs of all students, including children with disabilities and English learners (4303(f));

(4) The State entity will provide adequate technical assistance to eligible applicants to meet the objectives described in application requirement (a)(1)(8) (4303(f));

(5) The State entity will promote quality authorizing, consistent with State law, such as through providing technical assistance to support each authorized public chartering agency in the State to improve such agency's ability to monitor the charter schools authorized by the agency, including by—

(i) Assessing annual performance data of the schools, including, as appropriate, graduation rates, student academic growth, and rates of student attrition;

(ii) Reviewing the schools' independent, annual audits of financial statements prepared in accordance with generally accepted accounting principles and ensuring that any such audits are publicly reported; and

(iii) Holding charter schools accountable to the academic, financial, and operational quality controls agreed to between the charter school and the authorized public chartering agency involved, such as renewal, non-renewal, or revocation of the school's charter (4303(f));

(6) The State entity will work to ensure that charter schools are included with the traditional public schools in decision-making about the public school system in the State (4303(f));

(7) The State entity will ensure that each charter school receiving funds under the State entity's program makes publicly available, consistent with the dissemination requirements of the annual State report card under section 1111(h) of the ESEA, including on the website of the school, information to help parents make informed decisions about the education options available to their children, including—

(i) Information on the educational program;

(ii) Student support services;

(iii) Parent contract requirements (as applicable), including any financial obligations or fees;

(iv) Enrollment criteria (as applicable); and

(v) Annual performance and enrollment data for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such disaggregation of performance and enrollment data shall not be required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student (4303(f)).

(8) The State Entity will ensure that each charter school receiving CSP funding has not and will not enter into a contract with a for-profit management organization, including a nonprofit management organization operated by or on behalf of a for-profit entity, under which the management organization, or its related entities, exercises full or substantial administrative control over the charter school and, thereby, the CSP project (2022 NFP).

(9) Each charter school receiving CSP funding will provide an assurance that any management contract between the charter school and a for-profit management organization, including a nonprofit CMO operated by or on behalf of a for-profit entity, guarantees or will guarantee that—

(i) The charter school maintains control over all CSP funds, makes all programmatic decisions, and directly administers or supervises the administration of the subgrant;

(ii) The management organization does not exercise full or substantial administrative control over the charter school (and, thereby, the CSP project), except that this does not limit the ability of a charter school to enter into a contract with a management organization for the provision of services that do not constitute full or substantial control of the charter school project funded under the CSP (*e.g.,* food services or payroll services) and that otherwise comply with statutory and regulatory requirements;

(iii) The charter school's governing board has access to financial and other data pertaining to the charter school, the management organization, and any related entities; and

(iv) The charter school is in compliance with applicable Federal and State laws and regulations governing conflicts of interest, and there are no actual or perceived conflicts of interest between the charter school and the management organization (2022 NFP).

(10) Each charter school receiving CSP funding will post on its website, on an annual basis, a copy of any management contract between the charter school and a for-profit management organization, including a nonprofit management organization operated by or on behalf of a for-profit entity, and report information on such contract to the State entity, including—

(i) A copy of the existing contract with the for-profit organization or a detailed description of the terms of the contract, including the name and contact information of the management organization, the cost (*i.e.,* fixed costs and estimates of any ongoing cost), including the amount of CSP funds proposed to be used toward such cost, and the percentage such cost represents of the charter school's total funding, the duration, roles and responsibilities of the management organization, and the steps the charter school is taking to ensure that it makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant or subgrant in accordance with 34 CFR 76.701;

(ii) A description of any business or financial relationship between the charter school developer or CMO and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities to be used by the charter school;

(iii) The names and contact information for each member of the governing boards of the charter school and a list of management organization's officers, chief administrator, and other administrators, and any staff involved in approving or executing the management contract; and a description of any actual or perceived conflicts of interest, including financial interests, and how the applicant resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c); and

(iv) A description of how the charter school ensured that such contract is severable and that a change in management companies will not cause the proposed charter school to close (2022 NFP).

(11) Each charter school receiving CSP funding will disclose, as part of the enrollment process, any policies and requirements (*e.g.,* purchasing and wearing specific uniforms and other fees, or requirements for family participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled in the school (*e.g.,* transportation services or participation in the National School Lunch Program) (2022 NFP).

(12) Each charter school receiving CSP funding will hold or participate in a public hearing in the local community in which the proposed charter school would be located to obtain information

and feedback regarding the potential benefit of the charter school, which shall at least include information about how the proposed charter school will increase the availability of high-quality public school options for underserved students, promote racial and socio-economic diversity in such community or have an educational mission to serve primarily underserved students, and not increase racial or socio-economic segregation or isolation in the school districts from which students would be drawn to attend the charter school (consistent with applicable laws). Applicants must ensure that the hearing (and notice thereof) is accessible to individuals with disabilities and limited English proficient individuals as required by law, actively solicit participation in the hearing (*i.e.,* provide widespread and timely notice of the hearing), make good faith efforts to accommodate as many people as possible (*e.g.,* hold the hearing at a convenient time for families or provide virtual participation options), and submit a summary of the comments received as part of the application. The hearing may be conducted as part of the charter authorizing process, provided that it meets the requirements above. (2022 NFP).

(13) No eligible applicant receiving funds under the State entity's program will use implementation funds for a charter school until after the charter school has received a charter from an authorized public chartering agency and has a contract, lease, mortgage, or other documentation indicating that it has a facility in which to operate. Consistent with sections 4303(b)(1), 4303(h)(1)(B), and 4310(6) of the ESEA, an eligible applicant may use CSP planning funds for post-award planning and design of the educational program of a proposed new or replicated high-quality charter school that has not yet opened, which may include hiring and compensating teachers, school leaders, and specialized instructional support personnel; providing training and professional development to staff; and other critical planning activities that need to occur prior to the charter school opening when such costs cannot be met from other sources. (2022 NFP).

Note: The Department recognizes that the charter approval process may exceed the 18-month planning period for CSP grants and subgrants, as prescribed under section 4303(d)(1)(B) of the ESEA. In such a case, applicants may request approval from the State entity to amend their application to request an extension of the 18-month planning period. Under section 4303(d)(5) of the ESEA, the Secretary, in his discretion, may waive any statutory or regulatory requirement over which he exercises administrative authority, except the requirements related to the definition of ''charter school'' in section 4310(2), provided that the waiver is requested in an approved application and the Secretary determines that granting the waiver will promote the purposes of the CSP. It is also worth noting that a subgrantee may request approval from the State entity to amend its approved application and budget to cover additional planning costs that it may incur due to an unexpected delay in the charter approval process.

(14) Within 120 days of the date of any subgrant award notifications, the grantee will post on its website:

(i) A list of the charter schools slated to receive CSP funds, including the following for each school:

(A) The name, address, and grades served.

(B) A description of the education model.

(C) If the charter school has contracted with a for-profit management organization, the name of the management organization, the amount of CSP funding the management organization will receive from the school, and a description of the services to be provided.

(D) The award amount, including any funding that has been approved for the current year and any additional years of the CSP grant for which the school will receive support.

(E) The grant or subgrant application (redacted as necessary).

(F) The peer review materials, including reviewer comments and scores (redacted as necessary) from the subgrant competition (2022 NFP).

(c) Waivers—Requests for information about waivers, including—

(1) A request and justification for waivers of any Federal statutory or regulatory provisions that the State entity believes are necessary for the successful operation of the charter schools that will receive funds under the State entity's program under section 4303 of the ESEA or, in the case of a State entity that is a charter school support organization, a description of how the State entity will work with the State to request such necessary waivers, where applicable; and

(2) A description of any State or local rules, generally applicable to public schools, that will be waived or otherwise not apply to such schools.

Definitions:

The following definitions are from sections 4303(a), 4310, and 8101 of the ESEA (20 U.S.C. 7221b(a), 7221i, and 7801); 34 CFR 77.1; and the 2022 NFP.

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).

Authorized public chartering agency means an SEA, LEA, or other public entity that has the authority pursuant to State law and approved by the Secretary to authorize or approve a charter school (section 4310(1) of the ESEA).

Baseline means the starting point from which performance is measured and targets are set (34 CFR 77.1).

Charter management organization means a nonprofit organization that operates or manages a network of charter schools linked by centralized support, operations, and oversight (section 4310(3) of the ESEA).

Charter school means a public school that—

(1) In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(2) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(3) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(4) Provides a program of elementary or secondary education, or both;

(5) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution; [3]

(6) Does not charge tuition;

(7) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities

[3] The Department will apply this element of the definition of ''charter school'' consistent with applicable U.S. Supreme Court precedent, including *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S.Ct. 2012 (2017), *Espinoza* v. *Montana Department of Revenue,* 140 S.Ct. 2246 (2020), and *Carson* v. *Makin,* 596 U.S. __ (2022).

Act of 1990 (42 U.S.C. 12101 *et seq.*), section 444 of GEPA (20 U.S.C. 1232g) (commonly referred to as the ''Family Educational Rights and Privacy Act of 1974''), and part B of the Individuals with Disabilities Education Act (IDEA);

(8) Is a school to which parents choose to send their children, and that—

(i) Admits students on the basis of a lottery, consistent with section 4303(c)(3)(A) of the ESEA, if more students apply for admission than can be accommodated; or

(ii) In the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in paragraph (i);

(9) Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are waived by the State;

(10) Meets all applicable Federal, State, and local health and safety requirements;

(11) Operates in accordance with State law;

(12) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school; and

(13) May serve students in early childhood education programs or postsecondary students (section 4310(2) of the ESEA).

Charter school support organization means a nonprofit, nongovernmental entity that is not an authorized public chartering agency and provides, on a statewide basis—

(1) Assistance to developers during the planning, program design, and initial implementation of a charter school; and

(2) Technical assistance to operating charter schools (section 4310(4) of the ESEA).

Child with a disability means—

(1) A child (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to as ''emotional disturbance''), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services.

(2) For a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the LEA, include a child (i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (ii) who, by reason thereof, needs special education and related services (section 8101(4) of the ESEA).

Community assets means resources that can be identified and mobilized to improve conditions in the charter school and community. These assets may include—

(1) Human assets, including capacities, skills, knowledge base, and abilities of individuals within a community; and

(2) Social assets, including networks, organizations, businesses, and institutions that exist among and within groups and communities (2022 NFP).

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).

Developer means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out (section 4310(5) of the ESEA).

Disconnected youth means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution (2022 NFP).

Early childhood education program means—

(1) A Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 *et seq.*), including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives State funding;

(2) A State licensed or regulated child care program; or

(3) A program that (i) serves children from birth through age 6 that addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and (ii) is (A) a State prekindergarten program, (B) a program authorized under section 619 (20 U.S.C. 1419) or part C of the IDEA, or (C) a program operated by an LEA (section 8101(16) of the ESEA).

Educator means an individual who is an early learning educator, teacher, principal or other school or district leader, specialized instructional support personnel (*e.g.,* school psychologist, counselor, school social worker, early intervention service personnel), paraprofessional, or faculty (2022 NFP).

Educationally disadvantaged student means a student in one or more of the categories described in section 1115(c)(2) of the ESEA, which include children who are economically disadvantaged, children with disabilities, migrant students, English learners, neglected or delinquent students, homeless students, and students who are in foster care (2022 NFP).

Eligible applicant means a developer that has—

(1) Applied to an authorized public chartering authority to operate a charter school; and

(2) Provided adequate and timely notice to that authority (section 4310(6) of the ESEA).

English learner, when used with respect to an individual, means an individual—

(1) Who is aged 3 through 21;

(2) Who is enrolled or preparing to enroll in an elementary school or secondary school;

(3)(i) Who was not born in the United States or whose native language is a language other than English;

(ii)(A) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(B) 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

(4) Whose difficulties in speaking, reading, writing, or understanding the

English language may be sufficient to deny the individual—

(i) The ability to meet the 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(20) of the ESEA).

Expand, when used with respect to a high-quality charter school, means to significantly increase enrollment or add one or more grades to the high-quality charter school (section 4310(7) of the ESEA).

High-quality charter school means a charter school that—

(1) Shows evidence of strong academic results, which may include strong student academic growth, as determined by a State;

(2) Has no significant issues in the areas of student safety, financial and operational management, or statutory or regulatory compliance;

(3) Has demonstrated success in significantly increasing student academic achievement, including graduation rates where applicable, for all students served by the charter school; and

(4) Has demonstrated success in increasing student academic achievement, including graduation rates where applicable, for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such demonstration is not required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student (section 4310(8) of the ESEA).

Logic model (also referred to as 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).

Parent includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare) (section 8101(38) of the ESEA).

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance (34 CFR 77.1).

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).

Replicate, when used with respect to a high-quality charter school, means to open a new charter school, or a new campus of a high-quality charter school, based on the educational model of an existing high-quality charter school, under an existing charter or an additional charter, if permitted or required by State law (section 4310(9) of the ESEA).

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas (section 8101(48) of the ESEA).

State educational agency means the agency primarily responsible for the State supervision of public elementary schools and secondary schools (section 8101(49) of the ESEA).

State entity means—

(1) A State educational agency;

(2) A State charter school board;

(3) A Governor of a State; or

(4) A charter school support organization (section 4303(a) of the ESEA).

Underserved student means a student in one or more of the following subgroups:

(1) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(2) A student of color.

(3) A student who is a member of a federally recognized Indian Tribe.

(4) An English learner (as defined in section 8101 of the ESEA).

(5) A child or student with a disability (as defined in section 8101 of the ESEA).

(6) A disconnected youth.

(7) A migrant student.

(8) A student experiencing homelessness or housing insecurity.

(9) A student who is in foster care.

(10) A pregnant, parenting, or caregiving student.

(11) A student impacted by the justice system, including a formerly incarcerated student.

(12) A student performing significantly below grade level (2022 NFP).

Program Authority: Title IV, part C of the ESEA (20 U.S.C. 7221–7221j).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 76, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide 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 as regulations of the Department in 2 CFR part 3474. (d) The 2022 NFP.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $173,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $2,000,000 to $20,000,000 per year.

Estimated Average Size of Awards: $8,000,000 per year.

Maximum Award: See section III.4(a) of this notice, *Reasonable and Necessary Costs,* for information regarding the maximum amount of funds that State Entities may award for each charter school receiving subgrant funds.

Estimated Number of Awards: 8–10.

Note: The Department is not bound by any estimates in this notice. The estimated range and average size of awards are based on a single 12-month budget period. We may use FY 2023 funds to support multiple 12-month budget periods for one or more grantees.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Entities:* State entities in States with a specific State statute authorizing the granting of charters to schools.

Under section 4303(e)(1) of the ESEA, no State entity may receive a grant under this competition for use in a State in which a State entity is currently using a CSP State Entity grant.

Accordingly, State entities located in States in which a State entity has a current CSP State Entity grant that is not in its final budget period (or is in its final budget period, but the grantee plans to request a one-time no-cost extension in accordance with 34 CFR 75.261 and 2 CFR 200.308(e)(2)[4]) (*i.e.,* Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Massachusetts, Michigan, Mississippi, Nevada, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas, and Washington) are ineligible to apply for a CSP State Entity grant under this competition.

State entities located in States in which a State entity has a current CSP State Entity grant that is operating under a no-cost extension (*i.e.,* Indiana, Maryland, Minnesota, New Mexico, Ohio, Oklahoma, Rhode Island, and Wisconsin), or that is not operating under a no-cost extension but is in its final budget period and has notified the Department that it does not intend to request a no-cost extension (*i.e.,* Idaho), however, are eligible to apply for a CSP State Entity grant under this competition. The Department will accept applications from current State entity grantees located in these States as well as from State entities located in these States that do not have a current CSP State Entity grant.

Consistent with section 4303(e)(1), if a State entity is approved for a new CSP State Entity grant under this competition for use in a State in which a State entity has a current CSP State Entity grant that is operating under a no-cost extension (or that is in its final budget period and does not request a no-cost extension at least 10 calendar days before the end of the performance period specified in the Federal award in accordance with 2 CFR 200.308(e)(2)), the current State entity grantee must either (a) obligate all grant funds prior to the end of the current budget period; or (b) request a waiver under section 4303(d)(5) of the ESEA to enable it to complete grant activities. In the absence of an approved waiver, the current State entity grantee must complete all grant activities and begin the grant closeout process (*i.e.,* liquidating the grant and not incurring new costs) prior to the expiration date of the no-cost extension (or the end of the performance period for a grantee that is in its final budget period and did not request a no-cost extension). Likewise, if multiple State entities in a State submit applications that receive high enough scores to be recommended for funding under this competition, only the highest scoring application among such State entities would be funded.

State entities in States in which an SEA has a current CSP Grant for SEAs that was awarded under the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (*i.e.,* prior to FY 2017) are eligible to apply for a CSP State Entity grant under this competition, as long as no other State entity in the State has a current CSP State Entity grant that is not in its final budget period nor operating under a no-cost extension.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* A State Entity receiving a grant under this section shall not reserve more than 3 percent of funds for administrative costs, which may include technical assistance.

3. *Subgrantees:* (a) Under section 4303(b) and (c)(2) of the ESEA, a State entity may award subgrants to eligible applicants and technical assistance providers.

(b) Under section 4303(d)(2) of the ESEA, when awarding subgrants to eligible applicants, a State Entity must use a peer review process to review applications.

Note: An eligible applicant (*i.e.,* charter school developer or charter school) in a State in which no State entity has an approved grant application under section 4303 of the ESEA may apply for funding directly from the Department under the CSP Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer) (ALN numbers 84.282B and 84.282E) program. Additional information about the CSP Developer program is available at *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/charter-school-programs/charter-schools-program-non-state-educational-agencies-non-sea-planning-program-design-and-initial-implementation-grant/.*

4. *Other:* (a) *Reasonable and Necessary Costs:* The Secretary may elect to impose maximum limits on the amount of subgrant funds that a State Entity may award to an eligible applicant per new charter school created or replicated, per charter school expanded, or per new school seat created.

For this competition, the maximum amount of subgrant funds a State Entity may award to a subgrantee per new charter school, replicated high-quality charter school, or expanded high-quality charter school over a 5-year subgrant period is $2,000,000.

Note: Applicants must ensure that all costs included in the proposed budget are necessary and reasonable to meet the goals and objectives of the proposed project. Any costs determined by the Secretary to be unreasonable or unnecessary will be removed from the final approved budget.

(b) *Audits:* (i) A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR part 200. (2 CFR 200.501(a))

(ii) A non-Federal entity that expends less than $750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office. (2 CFR 200.501(d)).

IV. Application and Submission Information

1. *Application Submission Instructions:* 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.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the CSP State Entity grant competition, your application may include business

[4] Under 34 CFR 75.261, a grantee may extend the project period of an award one time for up to 12 months without the prior approval of the Department if the grantee meets the requirements for extension in 2 CFR 200.308(d)(2), and Department statutes, regulations, and the terms of the award do not prohibit the extension. *See also* 2 CFR 200.308(e)(2).

information that you consider proprietary. In 34 CFR 5.11, we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information, please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program 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.

4. *Funding Restrictions:* In accordance with section 4303(c) of the ESEA, a State entity receiving a grant under this program shall (a) use not less than 90 percent of the grant funds to award subgrants to eligible applicants, in accordance with the quality charter school program described in the State entity's application pursuant to section 4303(f), for activities related to opening and preparing for the operation of new charter schools and replicated high-quality charter schools, or expanding high-quality charter schools; (b) reserve not less than 7 percent of the grant funds to provide technical assistance to eligible applicants and authorized public chartering agencies in carrying out such activities, and to work with authorized public chartering agencies in the State to improve authorizing quality, including developing capacity for, and conducting, fiscal oversight and auditing of charter schools; and (c) reserve not more than 3 percent of the grant funds for administrative costs, which may include technical assistance. The State entity's application should include a description of the State entity's objectives in providing technical assistance to eligible applicants and authorized public chartering agencies under section 4303(b)(2) of the ESEA, and the activities identified to provide such technical assistance, including any activities related to serving students with disabilities and English learners. A State entity may use a grant received under this program to provide technical assistance and to work with authorized public chartering agencies to improve authorizing quality under section 4303(b)(2) of the ESEA directly or through grants, contracts, or cooperative agreements.

Limitation on Grants and Subgrants: Under section 4303(d) of the ESEA, a grant awarded by the Secretary to a State entity under this competition shall be for a period of not more than 5 years.

A subgrant awarded by a State entity under this program shall be for a period of not more than 5 years, of which an eligible applicant may use not more than 18 months for planning and program design. An eligible applicant may not receive more than one subgrant under this program for each individual charter school for a 5-year period, unless the eligible applicant demonstrates to the State entity that such individual charter school has at least 3 years of improved educational results for students enrolled in such charter school, with respect to the elements described in section 4310(8)(A) and (D) of the ESEA.[5]

Other CSP Grants: A charter school that previously received funds for opening or preparing to operate a new charter school, or replicating or expanding a high-quality charter school, under the CSP State Entity program (ALN number 84.282A), the CSP Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO) program (ALN number 84.282M), or the CSP Developer program (ALN numbers 84.282B and 84.282E) may not use funds under this program to carry out the same or substantially similar activities. However, such charter school may be eligible to receive funds under this competition to expand the charter school beyond the existing grade levels or student count.

Likewise, a charter school that previously was awarded a subgrant from a State entity under this program (or the former CSP Grants for State Educational Agencies program) is ineligible to receive funds to carry out the same activities under the CMO program (ALN number 84.282M) or Developer program (ALN numbers 84.282B and 84.282E), including for opening or preparing to operate a new charter school, or for replication or expansion.

Uses of Subgrant Funds: Under section 4303(b) of the ESEA, State entities awarded grants under this competition shall award subgrants to eligible applicants to enable such eligible applicants to—

(a) Open and prepare for the operation of new charter schools;

(b) Open and prepare for the operation of replicated high-quality charter schools; or

(c) Expand high-quality charter schools.

Under section 4303(h) of the ESEA, an eligible applicant receiving a subgrant under this program shall use such funds to support activities related to opening and preparing for the operation of new charter schools or replicating or expanding high-quality charter schools, which shall include one or more of the following:

(a) Preparing teachers, school leaders, and specialized instructional support personnel, including through paying costs associated with—

(i) Providing professional development; and

(ii) Hiring and compensating, during the eligible applicant's planning period specified in the application for subgrant funds, one or more of the following:

(A) Teachers.

(B) School leaders.

(C) Specialized instructional support personnel.

(b) Acquiring supplies, training, equipment (including technology), and educational materials (including developing and acquiring instructional materials).

(c) Carrying out necessary renovations to ensure that a new school building complies with applicable statutes and regulations, and minor facilities repairs (excluding construction).

(d) Providing one-time, startup costs associated with providing transportation to students to and from the charter school.

(e) Carrying out community engagement activities, which may include paying the cost of student and staff recruitment.

(f) Providing for other appropriate, non-sustained costs related to opening, replicating, or expanding high-quality charter schools when such costs cannot be met from other sources.

Diversity of Projects: Per section 4303(d)(4) of the ESEA, each State entity awarding subgrants under this competition shall award subgrants in a manner that, to the extent practicable and applicable, ensures that such subgrants—

[5] Section 4303(e)(2) of the ESEA prescribes the circumstances under which an *eligible applicant* may be eligible to apply to a *State entity* for a second subgrant for an individual *charter school* for a 5-year period. The *eligible applicant* still would have to meet all program requirements, including the requirements for *replicating* or *expanding* a *high-quality charter school.*

(a) Are distributed throughout different areas, including urban, suburban, and rural areas; and

(b) Will assist charter schools representing a variety of educational approaches.

Award Basis: In determining whether to approve a grant award and the amount of such award, the Department will consider, among other things, the applicant's performance and use of funds under a previous or existing award under any Department program (34 CFR 75.217(d)(3)(ii) and 233(b)). In assessing the applicant's performance and use of funds under a previous or existing award, the Secretary will consider, among other things, the outcomes the applicant has achieved and the results of any Departmental grant monitoring, including the applicant's progress in remedying any deficiencies identified in such monitoring.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit and English Language Requirement:* The application narrative (Part III of the application) is where you, the applicant, address the priorities, selection criteria, and application requirements that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 60 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, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

Applications must be in English, and peer reviewers will only consider supporting documents submitted with the application that are in English.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

6. *Pre-Application Webinar Information:* The Department will hold a pre-application meeting via webinar designed to provide technical assistance to interested applicants. Detailed information regarding this webinar will be provided at *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/charter-school-programs/state-entities/application-info-and-eligibility/*. There is no registration fee for attending this meeting.

For further information about the pre-application meeting, contact Adrienne Hawkins, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–5970. Telephone: (202) 453–4538. Email: *fy2023_se_competition@ed.gov.*

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from section 4303(g)(1) of the ESEA (20 U.S.C. 7221b(g)(1)), the 2022 NFP, and 34 CFR 75.210. The maximum possible total score an application can receive for addressing the criteria is 100 points. The maximum possible score for addressing each criterion is indicated in parentheses following the criterion.

(a) *Quality of the Project Design (up to 35 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:

(1) The extent to which the proposed project demonstrates a rationale (34 CFR 75.210(c)(2)(xxix)) (up to 5 points);

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce both quantitative and qualitative data to the extent possible (34 CFR 75.210(h)(2)(iv)) (up to 5 points);

(3) The ambitiousness of the State entity's objectives for the quality charter school program carried out under the CSP State Entity program (section 4303(g)(1)(B) of the ESEA (20 U.S.C. 7221b(g)(1)(B)) (up to 5 points);

(4) The extent to which the projected number of subgrant awards for each grant project year is supported by evidence of demand and need, and the extent to which the proposed average subgrant award amount is supported by evidence of the need of applicants (2022 NFP) (up to 20 points).

(b) *Quality of Eligible Applicants Receiving Subgrants (up to 15 points):* The likelihood that the eligible applicants receiving subgrants under the program will meet the State entity's objectives for the quality charter school program and improve educational results for students (section 4303(g)(1)(C) (20 U.S.C. 7221b(g)(1)(C))).

(c) *State Plan (up to 35 points):* The State entity's plan to—

(1) Adequately monitor the eligible applicants receiving subgrants under the State entity's program (section 4303(g)(1)(D)(i) (20 U.S.C. 7221b(g)(1)(D)(i))) (up to 10 points);

(2) Work with the authorized public chartering agencies involved to avoid duplication of work for the charter schools and authorized public chartering agencies (section 4303(g)(1)(D)(ii) (20 U.S.C. 7221b(g)(1)(D)(ii))) (up to 5 points);

(3) Provide technical assistance and support for—

(i) The eligible applicants receiving subgrants under the State entity's program; and

(ii) Quality authorizing efforts in the State (section 4303(g)(1)(D)(iii) of ESEA (20 U.S.C. 7221b(g)(1)(D)(iii))) (up to 10 points);

(4) The State entity's plan to solicit and consider input from parents and other members of the community on the implementation and operation of charter schools in the State (section 4303(g)(1)(E) of ESEA (20 U.S.C. 7221b(g)(1)(E))) (up to 5 points); and

(5) The degree of flexibility afforded by the State's charter school law and how the State entity will work to maximize the flexibility provided to charter schools under such law (section 4303(g)(1)(A) of ESEA (20 U.S.C. 7221b(g)(1)(A))) (up to 5 points).

(d) *Quality of the Management Plan (up to 15 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:

(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 (34 CFR 75.210(g)(2)(i)) (up to 10 points);

(2) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project (34 CFR 75.210(g)(2)(ii)) (up to 3 points); and

(3) 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 (34 CFR 75.210(g)(2)(iv)) (up to 2 points).

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 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).

3. *Risk Assessment and Specific 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 specific 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. 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); or we may send you an email containing a link to access an electronic version of your 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, including a description of the State entity's objectives in providing technical assistance to eligible applicants and authorized public chartering agencies under section 4303(b)(2) of the ESEA, and the activities identified to provide such technical assistance, including any activities related to serving students with disabilities and English learners; and the impact of the State entity's actions or, if no known impact, an explanation of why. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) In accordance with section 4303(i) of the ESEA, each State entity receiving a grant under this section must submit to the Secretary, at the end of the third year of the 5-year grant period (or at the end of the second year if the grant period is less than 5 years), and at the end of such grant period, a report that includes the following:

(1) The number of students served by each subgrant awarded under this section and, if applicable, the number of new students served during each year of the period of the subgrant.

(2) A description of how the State entity met the objectives of the quality charter school program described in the State entity's application, including—

(A) How the State entity met the objective of sharing best and promising practices as outlined in section 4303(f)(1)(A)(ix) of the ESEA in areas such as instruction, professional development, curricula development, and operations between charter schools and other public schools; and

(B) If known, the extent to which such practices were adopted and implemented by such other public schools.

(3) The number and amount of subgrants awarded under this program to carry out activities described in section 4303(b)(1)(A) through (C) of the ESEA.

(4) A description of—

(A) How the State entity complied with, and ensured that eligible applicants complied with, the assurances included in the State entity's application; and

(B) How the State entity worked with authorized public chartering agencies, and how the agencies worked with the management company or leadership of the schools that received subgrant funds under this program, if applicable.

(d) 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:* For the purposes of reporting under 34 CFR 75.110: (a) The Secretary has established two performance indicators to measure annual progress toward achieving the purposes of the program, which are discussed elsewhere in this notice. The performance indicators are (1) the number of charter schools in operation around the Nation; and (2) the percentage of fourth- and eighth-grade charter school students who are achieving at or above the proficient level on State assessments in mathematics and reading/language arts. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: the Federal cost per student in implementing a successful school (defined as a school in operation for 3 or more consecutive years).

(b) *Project-Specific Performance Measures.* Applicants must propose project-specific performance measures and performance targets consistent with the objectives of the proposed project. Applications must provide the following information as directed under 34 CFR 75.110(b) and (c).

(1) *Performance measures.* How each proposed performance measure would accurately measure the performance of the project and how the proposed performance measure would be consistent with the performance measures established for the program funding the competition.

(2) *Baseline data.* (i) Why each proposed baseline is valid; or (ii) if the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) *Performance targets.* Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

(4) *Data collection and reporting.* (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) 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.

All grantees must submit an annual performance report with information that is responsive to these performance measures.

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, whether the grantee has made substantial progress in achieving 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).

7. *Project Directors' Meeting:* Applicants approved for funding under this competition must attend a meeting for project directors either virtually or at a location to be determined in the continental United States during each year of the project. Applicants may include, if applicable, the cost of attending this meeting in their proposed budgets as allowable administrative costs.

8. Technical Assistance: Applicants approved for funding under this competition will be required to participate in all technical assistance offerings, to include project directors' meetings and other on-site gatherings sponsored by the Department and its contracted technical assistance providers and partners throughout the life of the grant.

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.

James Lane,

Senior Advisor to the Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2023–05612 Filed 3–17–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

List of Correspondence From April 1, 2022, Through December 31, 2022

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary is publishing the following list of correspondence from the U.S. Department of Education (Department) received by individuals during quarters two, three, and four of calendar year 2022. The correspondence describes the Department's interpretations of the Individuals with Disabilities Education Act (IDEA) or the regulations that implement IDEA. The letters and other documents described in this list, with personally identifiable information redacted, as appropriate, can be found at *https://sites.ed.gov/idea/policy-guidance/.*

FOR FURTHER INFORMATION CONTACT: Rebecca Walawender, U.S. Department of Education, 400 Maryland Avenue SW, Room 5103, Potomac Center Plaza, Washington, DC 20202–2500. Telephone: (202) 245–7399. Email: *Rebecca.Walawender@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: The following list identifies correspondence for three quarters, April 1, 2022, through December 31, 2022. Under section 607(f) of IDEA, the Secretary is required to publish this list in the **Federal Register**. The list includes those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law. The list identifies the date and topic of each letter and provides summary information, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been redacted, as appropriate.

2022—Second Quarter

PART B—Assistance for Education of All Children With Disabilities

Section 612—State Eligibility

Topic Addressed: Least Restrictive Environment.

○ Letter dated April 7, 2022, to Garth Tymeson, regarding the provision of physical education, including adapted physical education and the least restrictive environment, to children with disabilities under the Individuals with Disabilities Education Act (IDEA).

Section 615—Procedural Safeguards

Topic Addressed: Impartial Due Process Hearings.

○ Letter dated April 15, 2022, to Perry Zirkel, related to implementation of State complaint, due process complaint, and due process hearing procedures required under the Individuals with Disabilities Education Act (IDEA).

2022—Third Quarter

No letters.

2022—Fourth Quarter

Part B—Assistance for Education of All Children With Disabilities

Section 612—State Eligibility

Topic Addressed: Child Find.

○ Letter dated November 1, 2022, to Virginia Sharpless, addressing child find procedures to assist, and not hinder, parents when they are requesting an initial evaluation of their child for special education and related services.

Topic Addressed: Children In Private Schools.

○ Letter dated November 16, 2022, to Jacquelyn Flanigan, clarifying that any student found eligible under the Individuals with Disabilities Education Act (IDEA) who is enrolled by their parent in a private school, whether or not they have a current or prior individualized education program or services plan, must be counted when calculating the proportionate share of IDEA Part B funds for equitable services to parentally-placed private school children with disabilities. The letter also addressed the use of a Memorandum of Understanding between a public agency and a private school addressing the provision of equitable services.

Accessible Format: On request to the person listed under **FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain a copy of this notice and the letters or other documents described in this notice 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. 2023–05579 Filed 3–17–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Native Hawaiian Education Program; Correction

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice; correction.

SUMMARY: On March 14, 2023, the Department of Education (Department) published in the **Federal Register** a notice inviting applications (NIA) for new awards for fiscal year (FY) 2023 for the Native Hawaiian Education Program, Assistance Listing Number (ALN) 84.362A. We are correcting the deadline for transmittal of applications to May 15, 2023. All other information in the NIA remains the same.

DATES: This correction is applicable March 20, 2023.

FOR FURTHER INFORMATION CONTACT: Joanne Osborne, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E306, Washington, DC 20202. Telephone: (202) 401–1265. Email: *Hawaiian@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 March 14, 2023, we published the NIA in the **Federal Register** (88 FR 15689). In the NIA, we indicated that the deadline for transmittal of applications is April 13, 2023. However, we are correcting the deadline for transmittal of applications to May 15, 2023.

All other information in the NIA remains the same.

Correction:

In FR Doc. 2023–05120 appearing on page 15689 in the **Federal Register** published on March 14, 2023, we make the following correction:

On page 15689, under **DATES** in the middle column, we are revising the Deadline for Transmittal of Applications so that the date reads as follows: May 15, 2023.

Program Authority: Section 6205 of the ESEA (20 U.S.C. 7515); Consolidated Appropriations Act, 2023.

Accessible Format: On request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this notice, the NIA, and a copy of the application 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 this 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.

James F. Lane,

Senior Advisor, Office of the Secretary. Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary Office of Elementary and Secondary Education.

[FR Doc. 2023–05763 Filed 3–17–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: Office of the Under Secretary for Infrastructure, U.S. Department of Energy.

ACTION: Notice and request for comment.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) for clearance, pursuant to the Paperwork Reduction Act of 1995.

DATES: Comments regarding this proposed information collection request (ICR) must be received on or before May 19, 2023. If you anticipate any difficulty in submitting comments within that period, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

ADDRESSES: Written comments may be sent to Julius Goldberg-Lewis, 1000 Independence Ave. SW, Washington, DC 20585, (240) 364–4382, or by email at *julius.goldberg-lewis@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this information collection request, with applicable supporting documentation, may be obtained by contacting Julius Goldberg-Lewis, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585, (240) 364–4382, or by email at *julius.goldberg-lewis@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: *Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This proposed information collection request contains:

(1) *OMB No.:* 1910–5197;

(2) *Information Collection Request Title:* Output and Outcome Metrics for Financial Assistance and Rebates;

(3) *Type of Request:* Extension of an ICR;

(4) *Purpose:* Given the historic level of investment represented by Infrastructure Investment and Jobs Act programs, it is incumbent on DOE to transparently track, report, and communicate the outcomes of DOE's financial assistance and rebate programs. Executive Order 14052 directs federal agencies to prioritize ''investing public dollars efficiently and equitably, working to avoid waste, and focusing on measurable outcomes for the American people.'' This guidance specifies the uniform collection, measurement, and reporting methodologies necessary for a set of key metrics that DOE can use to communicate the outcomes and outputs of funds awarded, ensuring consistency, transparency, and accountability to support Administration and program objectives. This Information Collection addresses a set of key cross-cutting metrics that will track across DOE programs to assess and communicate DOE's progress toward meeting key agency priorities, including creating quality jobs, supporting domestic manufacturing, increasing equity and justice, reducing greenhouse gas (GHG) emissions, and providing pathways to private sector uptake. The metrics will inform transparent and consistent reporting of the key metrics across DOE awards and will include project-level location data covering outcomes and outputs for specific communities, allowing DOE to better understand who is affected by DOE funded programs and how. This approach will enable DOE to report metrics at the agency, office, portfolio, and program levels and will provide data that can help evaluate the efficiency and equity of the programs, educate the design and implementation of future programs, and identify and address potential waste. DOE proposes to collect information through applications and supporting documents information necessary to determine that whether rebate applicants meet the specified statutory criteria to receive payments under the equipment rebate programs;

(5) *Annual Estimated Number of Respondents:* 59,625;

(6) *Annual Estimated Number of Total Responses:* 88,125;

(7) *Annual Estimated Number of Burden Hours:* 98,250;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $6,286,035;

(9) *Statutory Authority:* Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301–6308; section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Signing Authority

This document of the Department of Energy was signed on March 14, 2023, by Kathleen Hogan, Principal Deputy Under Secretary for Infrastructure, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been

authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 14, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–05529 Filed 3–17–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Availability of the Final Waste Incidental To Reprocessing Evaluation for the Test Bed Initiative Demonstration and Waste Incidental To Reprocessing Determination

AGENCY: Office of Environmental Management, U.S. Department of Energy.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Energy (DOE) announces the availability of the *Final Waste Incidental to Reprocessing Evaluation for the Test Bed Initiative Demonstration, U.S. Department of Energy* (Final WIR Evaluation) and associated *Waste Incidental to Reprocessing Determination for the Test Bed Initiative Demonstration at the Hanford Site, Washington* (WIR Determination). The Final WIR Evaluation demonstrates that the waste from DOE's proposed Test Bed Initiative (TBI) Demonstration is waste incidental to reprocessing of spent nuclear fuel, is not high-level radioactive waste (HLW), and may be managed as low-level radioactive waste (LLW). DOE prepared the Final WIR Evaluation pursuant to DOE Order 435.1, *Radioactive Waste Management,* and the criteria in Chapter II.B.(2)(a) of DOE Manual 435.1–1, *Radioactive Waste Management Manual.* DOE consulted with the Nuclear Regulatory Commission (NRC) on the *Draft Waste Incidental to Reprocessing Evaluation for the Test Bed Initiative Demonstration* (Draft WIR Evaluation) and made the Draft WIR Evaluation available for comments from States, Tribal Nations, stakeholders and the public. DOE prepared the Final WIR Evaluation after carefully considering comments received from the NRC, States, Tribal Nations, stakeholders and the public, and after performing revisions of analyses and technical documents. Based on the Final WIR Evaluation, DOE determined that the pretreated and solidified waste is incidental to reprocessing of spent nuclear fuel, is non-HLW, and is to be managed as LLW.

ADDRESSES: The Final WIR Evaluation and WIR Determination are available on the internet at *https://www.hanford.gov/page.cfm/TestBedInitiative* for public review.

FOR FURTHER INFORMATION CONTACT: For further information about the Final WIR Evaluation or WIR Determination, please contact Mr. Richard Valle by mail at U.S. Department of Energy, Office of River Protection, P.O. Box 450, MSIN H6–60, Richland, WA 99352, by phone at (509) 376–7256, or by email at *richard_j_valle@orp.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE currently stores radioactive waste in underground tanks at the Hanford Site in the State of Washington. The waste was generated, in part, by the prior reprocessing of spent nuclear fuel for defense-related activities during the Manhattan Project and Cold War eras. Hanford's current mission focuses on the cleanup and remediation of those wastes and ultimate closure of the site. As part of that mission, DOE is retrieving waste from the Hanford tanks, separating the low-activity waste (LAW) from other waste in the Hanford tanks and vitrifying (immobilizing in a glass matrix) some of the LAW. DOE has not selected a supplemental treatment method for the remaining LAW in the Hanford tanks.[1] The proposed TBI Demonstration would demonstrate a potential supplemental LAW treatment approach.

The Final WIR Evaluation concerns approximately 2,000 gallons of waste from Hanford Tank SY–101, which, under the proposed TBI Demonstration, will be pretreated at the Hanford Site to remove most key radionuclides, then treated and solidified (grouted) at an offsite, permitted, commercial facility and disposed of at a licensed and permitted mixed low-level radioactive waste disposal facility outside the State of Washington. For the proposed TBI Demonstration, about 2,000 gallons of Tank SY–101 supernate (the uppermost liquid layer of the tank waste that contains low levels of insoluble, long-lived radionuclides) will be pretreated using: in-tank settling, followed by decanting, filtering, and processing through ion exchange media. The decanting (pumping without disturbing the underlying saltcake layer), filtering and ion exchange pretreatment will take place within an In Tank Pretreatment System, installed in Tank SY–101. The pretreated liquid will be transferred into totes (Type A shipping packages). Trucks will transport the shipping packages to a commercial treatment facility, either Perma-Fix Northwest in Richland, Washington, Energy*Solutions,* near Clive, Utah, Perma-Fix Diversified Scientific Services Inc., in Kingston, Tennessee, or Waste Control Specialists LLC, near Andrews, Texas. At the offsite treatment facility, the waste will be solidified in a grout matrix. DOE plans to dispose of the treated and solidified waste as mixed LLW at either the Energy*Solutions* disposal facility near Clive, Utah or the Waste Control Specialists Federal Waste Facility (WCS FWF), near Andrews, Texas.

Implementation of the proposed offsite treatment and offsite disposal is contingent upon completion of analysis and issuance of a decision document as required by the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321, *et seq.* (NEPA). DOE prepared a Draft Environmental Assessment for the proposed TBI Demonstration, *Draft Environmental Assessment of the Test Bed Initiative Demonstration* (DOE/EA–2086) (Draft EA) and provided it to the host and affected States and Indian Tribes, for a 14-day comment period, on August 17, 2021. The Draft EA evaluated DOE's proposal to transport and solidify the pretreated liquid LAW at licensed and permitted commercial treatment facilities off the Hanford Site. The Draft EA also evaluated DOE's proposal to dispose of the solidified waste at an offsite, licensed and permitted commercial disposal facility. The Draft EA also evaluated the No Action Alternative. DOE has prepared the *Final Environmental Assessment of the Test Bed Initiative Demonstration* (DOE/EA–2086), after considering comments received on the Draft EA. The Final EA will be made available at *https://energy.gov/nepa.*

DOE issued DOE Order 435.1 and DOE Manual 435.1–1 under the authority of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.,* the Energy Reorganization Act, 42 U.S.C. 5801 *et seq.,* and the Department of Energy Organization Act, 42 U.S.C. 7101, *et. seq.* Section II.B.(2)(a) of DOE Manual 435.1–1 sets forth criteria for determining, based on an evaluation, whether waste is incidental to reprocessing, is not HLW, and may be managed as LLW. Those criteria, in relevant part, are that the wastes: ''(1) have been processed, or will be processed, to remove key radionuclides to the maximum extent that is

[1] See *Record of Decision for the Final Tank Closure and Waste Management Environmental Impact Statement for the Hanford Site, Richland, Washington.* 78 FR 75913 (Dec. 13, 2013).

technically and economically practical; (2) will be managed to meet safety requirements comparable to the performance objectives, set out in 10 CFR part 61, subpart C, *Performance Objectives;* and (3) are to be managed, pursuant to DOE's authority under the *Atomic Energy Act of 1954,* as amended, in accordance with the provisions in Chapter IV [of Manual 435.1–1], provided the waste will be incorporated into a solid physical form at a concentration that does not exceed the applicable concentration limits for Class C LLW, as set out in 10 CFR 61.55, Waste Classification.''

The Final WIR Evaluation, including its appendices and supporting references, documents and demonstrates that the criteria in Section II.B.(2)(a) of DOE Manual 435.1–1 will be met. As to the first criterion, key radionuclides will be removed to the maximum extent technically and economically practical. Pretreatment will remove approximately 98.8% of the key radionuclides (including cesium-137 and its daughter, barium-137m) from the approximately 2,000 gallons of Tank SY–101 supernate. About 1.8 curies will remain in the pretreated waste. Regarding the second criterion, the solidified waste will meet the waste acceptance criteria for the Energy*Solutions* disposal facility or the WCS FWF, as applicable, which will ensure that the performance objectives, including doses, will be met for LLW disposal as set forth in the *Utah Administrative Code* and the *Texas Administrative Code* respectively, which are comparable to the NRC performance objectives at 10 CFR part 61, subpart C. With respect to the third criterion, the pretreated and grouted waste will be in a solid physical form, will be well below the concentration limits for Class C LLW, and is expected to meet concentration limits for Class A LLW.

DOE consulted with the NRC and received comments from States, Tribal Nations, stakeholders and the public. After carefully considering NRC consultative advice and comments received, DOE prepared the Final WIR Evaluation. Based on the Final WIR Evaluation, DOE determined, as documented in the associated WIR Determination, that the waste is incidental to reprocessing, is not HLW, and will be managed as LLW. Additionally, DOE determined the pretreated LAW from Tank SY–101—from which key radionuclides will have been removed to the maximum extent technically and economically practical—will be managed as LLW, subject to the analysis and commitments in the Final WIR Evaluation and WIR Determination.

Signing Authority

This document of the Department of Energy was signed on March 14, 2023, by R. M. Hendrickson, Acting Associate Principal Deputy Assistant Secretary for Regulatory and Policy Affairs, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 15, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–05586 Filed 3–17–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR23–38–000.
Applicants: ONEOK Texas Gas Storage, L.L.C.
Description: OTGS 2023 Periodic Rate Review to be effective N/A.
Filed Date: 3/14/23.
Accession Number: 20230314–5000.
Comment Date: 5 p.m. ET 4/4/23.

Docket Numbers: RP23–566–000.
Applicants: Cheniere Corpus Christi Pipeline, L.P.
Description: Annual Operations Transactions Report of Cheniere Corpus Christi Pipeline, L.P.
Filed Date: 3/13/23.
Accession Number: 20230313–5168.
Comment Date: 5 p.m. ET 3/27/23.

Docket Numbers: RP23–567–000.
Applicants: Cheniere Creole Trail Pipeline, L.P.
Description: Annual Operations Transactions Report of Cheniere Creole Trail Pipeline, L.P.
Filed Date: 3/13/23.
Accession Number: 20230313–5170.
Comment Date: 5 p.m. ET 3/27/23.

Docket Numbers: RP23–568–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Agreements Update (NTUA 2023) to be effective 4/1/2023.
Filed Date: 3/13/23.
Accession Number: 20230313–5180.
Comment Date: 5 p.m. ET 3/27/23.

Docket Numbers: RP23–570–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Removal of Agreements (CSU Apr 23) to be effective 4/15/2023.
Filed Date: 3/14/23.
Accession Number: 20230314–5060.
Comment Date: 5 p.m. ET 3/27/23.

Docket Numbers: RP23–571–000.
Applicants: Bluewater Gas Storage, LLC.
Description: § 4(d) Rate Filing: Filing to Update Contact Information to be effective 4/13/2023.
Filed Date: 3/14/23.
Accession Number: 20230314–5061.
Comment Date: 5 p.m. ET 3/27/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *https://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: March 14, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05607 Filed 3–17–23; 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 exempt wholesale generator filings:

Docket Numbers: EG23–89–000.
Applicants: San Jacinto Grid, LLC.
Description: San Jacinto Grid, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 3/13/23.
Accession Number: 20230313–5158.
Comment Date: 5 p.m. ET 4/3/23.

Docket Numbers: EG23–90–000.
Applicants: Ortega Grid, LLC.
Description: Ortega Grid, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 3/13/23.
Accession Number: 20230313–5163.
Comment Date: 5 p.m. ET 4/3/23.

Docket Numbers: EG23–91–000.
Applicants: Baldy Mesa Solar, LLC.
Description: Baldy Mesa Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 3/13/23.
Accession Number: 20230313–5166.
Comment Date: 5 p.m. ET 4/3/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–1685–001.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Compliance filing: Order 864 Compliance Filing to be effective 2/25/2020.
Filed Date: 3/13/23.
Accession Number: 20230313–5099.
Comment Date: 5 p.m. ET 4/3/23.

Docket Numbers: ER21–1706–001.
Applicants: Tri-State Generation and Transmission Association, Inc., Southwest Power Pool, Inc.
Description: Compliance filing: Tri-State Generation and Transmission Association, Inc. submits tariff filing per 35: Tri-State Generation and Transmission, Inc. Supplemental Order 864 Compliance to be effective 1/27/2020.
Filed Date: 3/13/23.
Accession Number: 20230313–5105.
Comment Date: 5 p.m. ET 4/3/23.

Docket Numbers: ER23–474–001.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2023–03–13 Washington WEIM Greenhouse Gas Compliance Filing to be effective 12/31/9998.
Filed Date: 3/13/23.
Accession Number: 20230313–5171.
Comment Date: 5 p.m. ET 4/3/23.

Docket Numbers: ER23–580–002.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment to WMPA, SA No. 5591; Queue No. AE2–054 (amend) to be effective 2/7/2023.
Filed Date: 3/13/23.
Accession Number: 20230313–5047.
Comment Date: 5 p.m. ET 4/3/23.

Docket Numbers: ER23–625–001.
Applicants: System Energy Resources, Inc.
Description: Tariff Amendment: SERI Deficiency Response ER23–625 to be effective 1/1/2023.
Filed Date: 3/13/23.
Accession Number: 20230313–5139.
Comment Date: 5 p.m. ET 4/3/23.

Docket Numbers: ER23–659–002.
Applicants: Upper Missouri G. & T. Electric Cooperative, Inc.
Description: Tariff Amendment: Second Amendment to Revisions to FERC Elec. Tariff No. 1 to be effective 1/1/2023.
Filed Date: 3/13/23.
Accession Number: 20230313–5055.
Comment Date: 5 p.m. ET 4/3/23.

Docket Numbers: ER23–831–001.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: 2045R12 Evergy Kansas Central, Inc. NITSA NOA to be effective 1/1/2023.
Filed Date: 3/13/23.
Accession Number: 20230313–5130.
Comment Date: 5 p.m. ET 4/3/23.

Docket Numbers: ER23–1318–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Bigleaf Solar LGIA Filing to be effective 2/27/2023.
Filed Date: 3/13/23.
Accession Number: 20230313–5089.
Comment Date: 5 p.m. ET 4/3/23.

Docket Numbers: ER23–1319–000.
Applicants: Baldy Mesa Solar, LLC.
Description: Baseline eTariff Filing: Baldy Mesa Solar, LLC MBR Tariff to be effective 5/1/2023.
Filed Date: 3/13/23.
Accession Number: 20230313–5116.
Comment Date: 5 p.m. ET 4/3/23.

Docket Numbers: ER23–1323–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 70 to be effective 5/12/2023.
Filed Date: 3/13/23.
Accession Number: 20230313–5140.
Comment Date: 5 p.m. ET 4/3/23.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF23–789–000.
Applicants: IIV001-Za, LLC.
Description: Form 556 of IIV001-Za, LLC.
Filed Date: 3/10/23.
Accession Number: 20230310–5071.
Comment Date: 5 p.m. ET 3/31/23.

Docket Numbers: QF23–790–000.
Applicants: NBC003–0, LLC.
Description: Form 556 of NBC003–0, LLC.
Filed Date: 3/10/23.
Accession Number: 20230310–5157.
Comment Date: 5 p.m. ET 3/31/23.

Docket Numbers: QF23–791–000.
Applicants: SMH000–0, LLC.
Description: Form 556 of SMH000–0, LLC.
Filed Date: 3/10/23.
Accession Number: 20230310–5160.
Comment Date: 5 p.m. ET 3/31/23.

Docket Numbers: QF23–794–000.
Applicants: IIV002–A, LLC.
Description: Form 556 of IIV002–A, LLC.
Filed Date: 3/10/23.
Accession Number: 20230310–5270.
Comment Date: 5 p.m. ET 3/31/23.

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: March 13, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05534 Filed 3–17–23; 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 & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–563–000.
Applicants: EOG Resources, Inc., Rowdy Pipeline, LLC.

Description: Joint Petition for Temporary Waiver of Capacity Release Regulations, et al. of EOG Resources, Inc., et al.

Filed Date: 3/9/23.

Accession Number: 20230309–5126.

Comment Date: 5 p.m. ET 3/21/23.

Docket Numbers: RP23–564–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: § 4(d) Rate Filing: Housekeeping Filing to be effective 4/10/2023.

Filed Date: 3/10/23.

Accession Number: 20230310–5024.

Comment Date: 5 p.m. ET 3/22/23.

Docket Numbers: RP23–565–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: Compliance filing: Annual Report of Operational Purchases and Sales 2023 to be effective N/A.

Filed Date: 3/13/23.

Accession Number: 20230313–5084.

Comment Date: 5 p.m. ET 3/27/23.

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: RP23–545–000.

Applicants: Crossroads Pipeline Company.

Description: Report Filing: Supplement to 2023 TRA Filing to be effective N/A.

Filed Date: 3/9/23.

Accession Number: 20230309–5157.

Comment Date: 5 p.m. ET 3/16/23.

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: March 13, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05533 Filed 3–17–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD23–5–000]

Roundtable on Environmental Justice and Equity in Infrastructure Permitting; Second Supplemental Notice of Roundtable

As announced in the Notice of Roundtable and Request for Panelists issued in this proceeding on January 27, 2023, the Federal Energy Regulatory Commission (Commission or FERC) will convene a Commissioner-led roundtable to discuss environmental justice and equity in its jurisdictional infrastructure permitting processes. The roundtable will be held on Wednesday, March 29, 2023, from 9:30 a.m. to 3:30 p.m. Eastern time, in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The roundtable will be publicly webcasted.

The roundtable will be open for the public to attend both in-person and virtually. Registration is not required and there is no fee for attendance. In-person seating will be provided on a first-come, first-serve basis on the day of the event and overflow rooms will be available. A link to the public webcast will be available the day of the event on the Commission's website, *www.ferc.gov.* Written comments can be filed in Docket No. AD23–5–000 until May 15, 2023.

Attached to this Supplemental Notice is a revised agenda for this event with the confirmed panelists and potential discussion topics.

Simultaneous Spanish translation will be available for virtual attendees. The event will be recorded, and English and Spanish recordings will be posted within one day of the event. English and Spanish transcriptions will also be made available following the event at no charge.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. American Sign Language Interpretation will be provided for in-person attendees and the live stream will feature closed captioning. For additional accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this roundtable, please contact *EnvironmentalJusticeRoundtable@ferc.gov.* For information related to logistics, please contact Sarah McKinley at *sarah.mckinley@ferc.gov* or (202) 502–8368.

Dated: March 14, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05608 Filed 3–17–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1304–000]

MFT Energy US 1 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of MFT Energy US 1 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 3, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the

Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: March 13, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05531 Filed 3–17–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2426–236]

California Department of Water Resources; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Application for Temporary Variance of Flow Release Limit Requirement.

b. *Project No:* 2426–236.

c. *Date Filed:* February 15, 2023.

d. *Applicant:* California Department of Water Resources.

e. *Name of Project:* South SWP Hydropower Hydroelectric Project.

f. *Location:* The project is located on the State Water Project in San Bernardino and Los Angeles counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Jeremiah McNeil, Acting Manager, California Department of Water Resources, P.O. Box 942836, Sacramento, California 94236, (916) 557–4555, *Jeremiah.McNeil@water.ca.gov.*

i. *FERC Contact:* Jonathan Schram, (202) 502–8264, *jonathan.schram@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests: April 12, 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 the docket number P–2426–236. 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 licensee requests a temporary variance of its flow release limit requirement from Pyramid Lake. Specifically, the licensee proposes to temporarily forego its maximum limit for annually delivering water to the United Water Conservation District (United) between November 1 and the end of February via middle Piru Creek from Pyramid Dam. The licensee proposes to temporarily increase this requirement from the current limit of 3,150 acre-feet of water per year, to no more than 25,000 acre-feet. The licensee proposes to deliver their supplemental water to United through middle Piru Creek from Pyramid Dam from November 1, 2023 through February 29, 2024. The licensee requests the variance in order to utilize excess water accumulated during multiple rainstorms in early January 2023 to improve groundwater conditions in the local area, which have been severely depleted due to ongoing drought conditions and restrictions on United's diversion facilities.

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: March 13, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–05540 Filed 3–17–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–494–000]

Boardwalk Storage Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed BSC Compression Replacement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the BSC Compression Replacement Project, proposed by Boardwalk Storage Company, LLC (BSC) in the above-referenced docket. BSC requests authorization to abandon by removal one existing electric driven 10,000 horsepower (HP) compression unit, place one existing electric driven 10,000 hp compressor unit on standby, and install a new electric driven 9,000 hp compressor unit, station piping, and other auxiliary facilities at the Choctaw Compressor Station in Iberville Parish, Louisiana.

The environmental assessment (EA) assesses the potential environmental effects of the construction and operation of the BSC Compression Replacement Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The Commission mailed a copy of the *Notice of Availability* of the EA 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 EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's 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.* CP22–494). 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 EA 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 EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on April 12, 2023.

For your convenience, there are three methods you can use to file your comments to the Commission. 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 (*www.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 also file your comments electronically using the eFiling feature 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 must select the type of filing you are making. If you are filing a comment on a particular project, please select ''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 (CP22–494–000) 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.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/how-intervene.*

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 which allows you to keep track of all formal issuances and submittals in 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: March 13, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05532 Filed 3–17–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1121–136]

Pacific Gas and Electric Company; Notice of Waiver Period for Water Quality Certification Application

On March 8, 2023, Pacific Gas and Electric Company submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with the California State Water Resources Control Board, in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 5.23(b) of the Commission's regulations,[1] we hereby notify the California State Water Resources Control Board of the following:

Date of Receipt of the Certification Request: March 8, 2023.

Reasonable Period of Time to Act on the Certification Request: One year (March 8, 2024).

If the California State Water Resources Control Board fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: March 13, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–05538 Filed 3–17–23; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 5.23(b) (2022).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–84–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on March 03, 2023, Columbia Gas Transmission (Columbia), 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.216(b) of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA), and Columbia's blanket certificate issued in Docket No. CP83–76–000,[1] for authorization to abandon one injection/withdrawal well, connecting pipe, and appurtenant facilities located at the Lanham Storage Field in Kanawha County, West Virginia, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application should be directed to David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, at (832) 320–5477 or *david_alonzo@tcenergy.com.*

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[2] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

[1] *Columbia Gas Transmission Corporation (predecessor to Columbia Gas Transmission, LLC), 22 FERC ¶ 62,029 (1983).*

[2] 18 CFR (Code of Federal Regulations) 157.9.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5 p.m. Eastern Time on May 12, 2023. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[3] any person[4] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[5] and must be submitted by the protest deadline, which is May 12, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[6] and the regulations under the NGA[7] by the intervention deadline for the project, which is May 12, 2023. As described further in Rule 214, your

[3] 18 CFR 157.205.

[4] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[5] 18 CFR 157.205(e).

[6] 18 CFR 385.214.

[7] 18 CFR 157.10.

motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before May 12, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–84–000 in your submission:

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. 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; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [8]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–84–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, TX 77002–2700 or *david_alonzo@tcenergy.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be 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 as described above. 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 which allows you to keep track of all formal issuances and submittals in 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. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

[8] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

Dated: March 13, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–05545 Filed 3–17–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8315–017]

Eagle Creek Sartell Hydro, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 8315–017.

c. *Date filed:* February 28, 2023.

d. *Applicant:* Eagle Creek Sartell Hydro, LLC (Eagle Creek).

e. *Name of Project:* Sartell Hydroelectric Project.

f. *Location:* On the Mississippi River in Stearns and Benton Counties, Minnesota. No federal lands are located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David H. Fox, Senior Director, Regulatory Affairs, Eagle Creek Sartell Hydro, LLC, 7315 Wisconsin Avenue, Suite 1100W, Bethesda, Maryland 20814; phone: (201) 306–5616; *David.Fox@eaglecreekre.com.*

i. *FERC Contact:* Michael Davis at (202) 502–8339, *Michael.Davis@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the

application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* April 29, 2023.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* 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. All filings must clearly identify the project name and docket number on the first page: Sartell Hydroelectric Project (8315–017).

m. The application is not ready for environmental analysis at this time.

n. *The Sartell Hydroelectric Project consists of the following existing facilities:* (1) a 46-foot-high dam with four sections; (2) a powerhouse containing 11 generating units; (3) a radial Tainter-type gate section and bascule gate section; (4) a concrete non-overflow dam section; (5) an overflow spillway; (6) an earthen embankment; (7) a step-up transformer; and (8) a 715-foot-long transmission line. The reservoir encompasses approximately 2,350.5 acres with a gross storage capacity of 15,278.3 acre-feet at the reservoir surface elevation of 1,015 feet National Geodetic Vertical Datum 1929 (NGVD). The project has a combined total rated capacity of 8.95 megawatts.

o. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (*e.g.,* license application) via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the documents (P–8315). At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support.

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, contact FERC Online Support.

p. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary)—May 2023
Request Additional Information (if necessary)—May 2023
Issue Scoping Document 1 for comments—November 2023
Issue Scoping Document 2 (if necessary)—February 2024

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: March 13, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–05537 Filed 3–17–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14851–003]

White Pine Waterpower, LLC; Notice of Application Tendered for Filing With the Commission, Requesting Cooperating Agencies, and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Filing:* Original major license.

b. *Project No.:* 14851–003.

c. *Date Filed:* February 27, 2023.

d. *Submitted By:* rPlus Hydro, LLLP, on behalf of White Pine Waterpower, LLC (White Pine Waterpower).

e. *Name of Project:* White Pine Pumped Storage Project.

f. *Location:* The project would be located approximately 8 miles northeast of the City of Ely, in White Pine County, Nevada. The project would occupy 1,095.76 acres of federal land managed by the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Greg Copeland, Program Manager for rPlus Hydro, LLLP. Address: White Pine Waterpower, LLC c/o rPlus Hydro, LLLP, 201 S Main St., Suite 2100, Salt Lake City, Utah 84111. Phone: (801) 759–2223.

i. *FERC Contact:* Evan Williams, (202) 502–8462 or *evan.williams@ferc.gov.*

j. *Determination under the Fixing America's Surface Transportation Act (FAST–41):* On February 27, 2023, the project sponsor submitted a FAST–41 Initiation Notice to the Federal Permitting Improvement Steering Council for the proposed project. On March 13, 2023, Commission staff determined that the proposed project qualifies as a covered project under FAST–41, as is defined in 42 U.S.C. 4370m(6).

k. *Cooperating agencies:* Under 42 U.S.C. 4370m–2(a)(2)(A), as the lead agency, the Commission is required to: (1) identify all federal and non-federal agencies and governmental entities likely to have financing, environmental review, authorization, or other responsibilities with respect to the project; and (2) invite all federal agencies under (1) to become a cooperating or participating agency, as appropriate. Commission staff have identified the Bureau of Land Management, National Park Service, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, Nevada Division of Environmental Protection, Nevada Department of Wildlife, Nevada Department of Conservation and Natural Resources, and Nevada State Historic Preservation Office as the relevant agencies under (1) above. With this notice, we invite the Bureau of Land Management, National Park Service, U.S. Fish and Wildlife Service, and U.S. Army Corps of Engineers to be cooperating agencies under (2) above. Under 42 U.S.C. 4370m–2(a)(3)(A), each invited federal agency above will be designated as a cooperating agency unless the agency responds in writing to the Commission and the Executive Director of the Federal Permitting Improvement Steering Council within 14 days of this notice stating that the agency: (1) has no jurisdiction or authority with respect to the proposed project; or (2) does not intend to exercise authority related to, or submit comments on, the proposed project.

The federal agencies invited to cooperate above and any other federal, state, local, and tribal agencies with

jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the filing instructions described in item m below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

l. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Native-American Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Native-American Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

m. Deadline under 42 U.S.C. 4370m–2(a)(2)(B) for responses from the specific federal agencies invited to cooperate in item k: March 27, 2023.

Deadline for filing additional study requests and deadline for agencies, other than the specific federal agencies invited to cooperate in item k, to file requests for cooperating agency status: April 28, 2023.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* 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. All filings must clearly identify the project name and docket number on the first page: White Pine Pumped Storage Project (P–14851–003).

n. The application is not ready for environmental analysis at this time.

o. The proposed pumped storage project would involve constructing the following new facilities: (1) a 5,695-foot-long lined compacted rock-fill dam that would create a 46.8-acre upper reservoir that would be lined with an impermeable polyvinylchloride liner to reduce leakage and would be surrounded by a 10-foot-high wildlife and security fence; (2) a 6,629-foot-long compacted earth-fill embankment dam that would create a 62.8-acre lower reservoir that would be lined with an impermeable liner to reduce leakage and would be surrounded by a 10-foot-high wildlife and security fence; (3) a water conveyance system connecting the upper and lower reservoirs that consists of the following structures: (a) an ungated vertical inlet/outlet bellmouth-type structure located at the bottom of the upper reservoir with a 65-foot-deep conical transition to provide flow into a 20-foot-diameter, 2,260-foot-high reinforced concrete-lined vertical headrace shaft; (b) a 20-foot-diameter, 240-foot-long horizontal steel-lined high-pressure headrace tunnel; (c) three 11-foot-diameter, 134- to 200-foot-long steel-lined underground penstocks, each with a turbine main inlet valve just upstream of each pump-turbine unit; (d) three 13-foot-diameter, 352- to 448-foot-long steel-lined draft tube tunnels of, that transition to concrete-lined tunnels of unknown length, downstream of the transformer cavern; (e) a 22-foot-diameter, 7,610-foot-long concrete-lined tailrace tunnel that terminates at the inlet/outlet structure; and (f) an approximately 92.5-foot-wide intake/outlet structure with trashracks, designed as a horizontal fan-shaped diffusor, that extends more than 100 feet from the tailrace tunnel and isolates the lower reservoir from the tailrace tunnel by a pair of 10.5-foot by 25-foot stoplogs in slots extending down from the intake/outlet structure; (4) a 367-foot-long, 83-foot-wide, 191-foot-high underground powerhouse cavern containing three 333-megawatt Francis pump-turbines and three generator-motors; (5) a 300-foot-long, 62-foot-wide, 93-foot-high underground transformer cavern containing three-phase step-up transformers connected to the powerhouse cavern by three busbar tunnels of unknown dimensions; (6) three 345-kilovolt underground circuits connecting from the unit transformers in the transformer cavern through a 4,950-foot-long, 24-foot-diameter, D-shaped cable tunnel to the new switchyard; (7) a 400-foot-long by 370-foot-wide fenced outdoor switchyard where the circuits would be combined into a single 345-kilovolt transmission line; (8) a 25-mile-long, 345-kilovolt overhead transmission line that connects to the grid at the existing NV Energy Robinson Summit substation (the point of interconnection); (9) a 5,108-foot-long 30-foot-diameter, D-shaped shotcrete-lined main access tunnel to provide access to the powerhouse and transformer caverns; (10) six other secondary access tunnels for accessing the transformer and powerhouse caverns (4 tunnels), the tailrace, and the headrace; (11) access roads, including: (a) 4,872-foot-long lower reservoir perimeter road; (c) a 572-foot-long switchyard access road; (d) a 37,300-foot-long, permanent, dual-lane paved upper reservoir access road; (e) a 6,200-foot-long upper reservoir perimeter road; and (f) an unknown number of access roads for transmission line access; (12) a gated, signed, and signaled railroad crossing for construction vehicle traffic across the active Nevada Northern Railway HiLine track; (13) a permanent, approximately 1,005,000-cubic-yard spoil disposal site; (14) an unknown number of temporary explosives storage facilities of unknown dimensions; and (15) appurtenant facilities. A new, alternative upper reservoir access road is being considered that would utilize an approximately 3.5-mile long, permanent, dual-lane paved roadway that would connect the proposed upper reservoir location to White Pine County Road 29 (NV–486), through the Duck Creek Range and across Duck Creek. Additionally, a gated, signed, and signaled railroad crossing for construction vehicle traffic across the currently inactive Nevada Northern Railway Mainline track is also being considered, if the track is reactivated.

The project would also utilize existing portions of unknown lengths of U.S. highway 93 and an existing unimproved, unpaved vehicle track as the proposed western access road, and an unknown number of existing access roads and tracks of unknown length to access the proposed transmission line and temporary explosives storage facilities. Additionally, an unknown number of existing power distribution lines would need to be re-routed and upgraded before construction of the project to avoid impacts as a result of lower reservoir construction and to facilitate crossings at the western access road. Further, an unidentified ridge road of unknown length would need to be rerouted to bypass construction and permanent facilities. NV Energy would also need to design and construct a new bay at the Robinson Summit Substation for the interconnection of the project.

The water used for construction, to initially fill the new lower reservoir, and to provide make-up water would come from four new groundwater wells in the Steptoe Valley, located to the south of the lower reservoir. The initial volume of water necessary to fill the

lower reservoir is estimated to be 5,000 acre-feet and would be filled over a 12- to 18-month period. It is estimated that the project would need approximately 560 acre-feet of water each year to replenish water lost through seepage, leakage, and evaporation. Once the lower reservoir is filled, approximately 4,082 acre-feet could be cycled between the lower reservoir and upper reservoir each day. The project is designed to generate electricity on demand for up to 8 hours each day at the maximum generating capacity. The estimated annual generation is 2,400 gigawatt-hours per year.

p. 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 via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TYY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

q. *Procedural schedule:* Consistent with the requirements in FAST–41, a procedural schedule for processing the license application will be developed in consultation with the relevant agencies and subsequently posted to the docket.

r. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: March 13, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–05543 Filed 3–17–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–950–001.

Applicants: Macquarie Energy LLC.

Description: Tariff Amendment: Amendment to Revised Market-Based Rate Tariffs to be effective 1/28/2023.

Filed Date: 3/14/23.

Accession Number: 20230314–5073.

Comment Date: 5 p.m. ET 4/4/23.

Docket Numbers: ER23–951–001.

Applicants: Macquarie Energy Trading LLC.

Description: Tariff Amendment: Amendment to Revised Market-Based Rate Tariffs to be effective 1/28/2023.

Filed Date: 3/14/23.

Accession Number: 20230314–5076.

Comment Date: 5 p.m. ET 4/4/23.

Docket Numbers: ER23–1028–001.

Applicants: PacifiCorp.

Description: Tariff Amendment: Load Service Contract with the City of Hurricane, UT, Amendment to 2/1/23 Filing to be effective 2/1/2023.

Filed Date: 3/14/23.

Accession Number: 20230314–5067.

Comment Date: 5 p.m. ET 4/4/23.

Docket Numbers: ER23–1325–000.

Applicants: Duke Energy Indiana, LLC.

Description: § 205(d) Rate Filing: 2023 Annual Reconciliation filing—DEI Rate Schedule No. 253 to be effective 7/1/2022.

Filed Date: 3/13/23.

Accession Number: 20230313–5190.

Comment Date: 5 p.m. ET 4/3/23.

Docket Numbers: ER23–1326–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA & ICSA, SA Nos. 5361 & 5362; Queue No. AB2–099/AE2–346 (amend) to be effective 5/14/2023.

Filed Date: 3/14/23.

Accession Number: 20230314–5002.

Comment Date: 5 p.m. ET 4/4/23.

Docket Numbers: ER23–1327–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 6814; Queue No. NQ–171 to be effective 2/14/2023.

Filed Date: 3/14/23.

Accession Number: 20230314–5004.

Comment Date: 5 p.m. ET 4/4/23.

Docket Numbers: ER23–1332–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: § 205(d) Rate Filing: 2023–3–14 OTP FSA Lake Preston 729–NSP to be effective 3/15/2023.

Filed Date: 3/14/23.

Accession Number: 20230314–5034.

Comment Date: 5 p.m. ET 4/4/23.

Docket Numbers: ER23–1343–000.

Applicants: San Diego Gas & Electric Company.

Description: § 205(d) Rate Filing: Service Agreement No. 65 to be effective 3/15/2023.

Filed Date: 3/14/23.

Accession Number: 20230314–5100.

Comment Date: 5 p.m. ET 4/4/23.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD22–4–001.

Applicants: Registration of Inverter-based Resources.

Description: North American Electric Reliability Corporation submits Petition for Approval of Proposed Amendment to Inverter-Based Resources Work Plan and Errata to Whitepaper.

Filed Date: 3/13/23.

Accession Number: 20230313–5249.

Comment Date: 5 p.m. ET 3/20/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *https://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: March 14, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05606 Filed 3–17–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10777–01–OMS]

Request for Nominations to the Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates to be considered for appointment to its Good Neighbor Environmental Board. Approximately ten vacancies are expected to be filled by December 2023. For appointment

consideration, nominations should be submitted by May 31, 2023. Sources in addition to this **Federal Register** Notice may also be utilized in the solicitation of nominees.

FOR FURTHER INFORMATION CONTACT: Eugene Green, Designated Federal Officer, Office of Resources and Business Operations, Federal Advisory Committee Management Division, U.S. Environmental Protection Agency, telephone 202–564–2432.

SUPPLEMENTARY INFORMATION:

Background: GNEB is a federal advisory committee chartered under the Federal Advisory Committee Act, Public Law 92–463. GNEB was created in 1992 by the Enterprise for the Americas Initiative Act, Public Law 102–532, 7 U.S.C. 5404. Implementing authority was delegated to the Administrator of EPA under Executive Order 12916 and was continued under the authority of Executive Order 14048, dated September 30, 2021. The GNEB is charged by statute with submitting an annual report to the President on the need for implementation of environmental and infrastructure projects within the states contiguous to the U.S.-Mexico border. The statute calls for the GNEB to have representatives from U.S. Government agencies; the governments of the states of Arizona, California, New Mexico, and Texas; and tribal and private organizations with experience in environmental and infrastructure issues along the U.S.-Mexico border. Members are appointed by the EPA Administrator for a two-year term. The GNEB meets approximately three times annually and the average workload for committee members is approximately 10 to 15 hours per month. Members serve on the committee in a voluntary capacity. Although we are unable to offer compensation or an honorarium, members may receive travel and per diem allowances, according to applicable Federal travel regulations and the agency's budget.

The EPA is seeking nominations from a variety of sectors along the U.S.-Mexico border including representatives from business and industry, academia, non-governmental organizations, local, county, and Tribal governments.

According to the mandates of FACA, committees are required to support diversity across a broad range of constituencies, sectors, and groups. In accordance with Executive Order 14035 (June 25, 2021) and consistent with law, EPA values and welcomes opportunities to increase diversity, equity, inclusion, and accessibility on its federal advisory committees. EPA's federal advisory committees strive to have a workforce that reflects the diversity of the American people.

To learn more about the GNEB, please visit *https://www.epa.gov/faca/gneb*.

The following criteria will be used to evaluate nominees:

- Representative of a sector or group that helps to shape border-region environmental policy or represents a group that is affected by border region environmental policy
- Has extensive professional knowledge and experience with the issues that the GNEB examines (*i.e.,* environmental and infrastructure issues), including the bi-national dimension of these issues
- Demonstrates senior level experience that will bring a new and relevant approach to the board's deliberations
- Ability to work in a consensus building process with a wide range of representatives from diverse constituencies
- Ability to contribute approximately 10 to 15 hours per month to the GNEB's activities, including the attendance at meetings and participating in the development of advice letters/reports
- Demonstrate the potential for active and constructive involvement in the GNEB's work

How to Submit Nominations: Any interested person or organization may nominate qualified individuals to be considered for an appointment to serve on the GNEB. Individuals may self-nominate.

- Nominations must include: (1) a statement of interest, (2) resume or curriculum vitae (CV) and (3) a short biography describing professional and educational qualifications, including a list of relevant activities and any current or previous service on advisory committees as well as the nominee's current business address, email address, and daytime telephone number. The statement of interest should describe how the nominee's background, knowledge, and experience would add value to the committee's work, and how the individual's qualifications would contribute to the overall diversity of the GNEB. To help the Agency in evaluating the effectiveness of its outreach efforts, please include in the statement of interest how you learned of this opportunity.
- Nominees from the academic sector should also provide a letter of support authorizing the applicant to represent the views of a particular school/college (*e.g.,* School of Environmental Science or College of Engineering) within the institution's system
- Please be aware that EPA's policy is that, unless otherwise prescribed by statute, members generally are appointed for a two-year term. For appointment consideration, interested nominees should submit the application materials electronically via email to Eugene Green at *green.eugene@epa.gov* with the subject line GNEB, COMMITTEE APPLICATION PACKAGE 2023 for (Name of Nominee) by May 31, 2023.

Dated: March 14, 2023.

Eugene Green,

Program Analyst.

[FR Doc. 2023–05596 Filed 3–17–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2022–0132; FRL–10581–02–OCSPP]

Certain New Chemicals; Receipt and Status Information for February 2023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 2/1/2023 to 2/28/2023.

DATES: Comments identified by the specific case number provided in this document must be received on or before April 19, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2022–0132, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically

any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Jim Rahai, Project Management and Operations Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 2/01/2023 to 2/28/2023. The Agency is providing notice of receipt of PMNs, SNUNs, and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

B. What is the Agency's authority for taking this action?

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: *https://www.epa.gov/inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN, or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *https://www.epa.gov/chemicals-under-tsca.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending, or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (see the **Federal Register** of May 12, 1995 (60 FR 25798) (FRL–4942–7)). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that

such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 02/01/2023 TO 02/28/2023

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J–23–0004	1	02/08/2023	Danisco US, Inc	(G) Production of a chemical substance.	(G) Genetically modified microorganism for the production of a chemical substance.
P–19–0095A	8	02/07/2023	CBI	(G) Consumer Disposables, Polymer Sheet, Durable Goods.	(G) Poly hydroxy alkanoate.
P–21–0086A	5	02/02/2023	Croda, Inc	(G) Industrial Rolling oil, Compressor oil, hydraulic oil, Industrial turbine oil, Industrial gear oil, Automotive gear oil, Refrigeration oil, Industrial drilling oil, Marine engine oil additive, Automotive engine oil additive, polymer additive, Greases, Metal working fluid.	(S) Isooctadecanamide, N,N-bis(2-ethylhexyl).
P–21–0086A	6	02/27/2023	Croda, Inc	(G) Industrial Rolling oil, Compressor oil, hydraulic oil, Industrial turbine oil, Industrial gear oil, Automotive gear oil, Refrigeration oil, Industrial drilling oil, Marine engine oil additive, Automotive engine oil additive, polymer additive, Greases, Metal working fluid.	(S) Isooctadecanamide, N,N-bis(2-ethylhexyl).
P–22–0054A	3	02/01/2023	CBI	(G) Additive for paint and coatings	(G) Graphene nanoplatelets.
P–22–0071A	4	02/24/2023	Lamberti USA, Inc	(G) Industrial Surfactant	(S) D-Glucopyranose, oligomeric, maleates, C9–11-alkyl glycosides, sulfonated, potassium salts.
P–22–0072A	4	02/24/2023	Lamberti USA, Inc	(G) Industrial Surfactant	(S) D-Glucopyranose, oligomeric, maleates, decyl octyl glycosides, sulfonated, potassium salts.
P–22–0073A	4	02/24/2023	Lamberti USA, Inc	(G) Industrial Surfactant	(S) D-Glucopyranose, oligomeric, maleates, C10–16-alkyl glycosides, sulfonated, potassium salts.
P–22–0095A	3	02/03/2023	Locus Fermentation Solutions.	(G) Surfactant for consumer, industrial, and commercial applications.	(G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates.
P–22–0096A	3	02/03/2023	Locus Fermentation Solutions.	(G) Surfactant for consumer, industrial, and commercial applications.	(G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates.
P–22–0097A	3	02/03/2023	Locus Fermentation Solutions.	(G) Surfactant for consumer, industrial, and commercial applications.	(G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates.
P–22–0098A	3	02/03/2023	Locus Fermentation Solutions.	(G) Surfactant for consumer, industrial, and commercial applications.	(G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates.
P–22–0099A	3	02/03/2023	Locus Fermentation Solutions.	(G) Surfactant for consumer, industrial, and commercial applications.	(G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates.
P–22–0100A	3	02/03/2023	Locus Fermentation Solutions.	(G) Surfactant for consumer, industrial, and commercial applications.	(G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates.
P–22–0119A	4	02/15/2023	CBI	(G) Resin for packaging, Binding agent	(G) Polyhydroxyalkanoate.
P–22–0120A	4	02/15/2023	CBI	(G) Resin for packaging materials, Binder.	(G) Polyhydroxyalkanoate.
P–22–0151A	2	02/01/2023	CBI	(G) Surfactant for commercial applications.	(G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates.
P–22–0151A	3	02/03/2023	CBI	(G) Surfactant for commercial applications.	(G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates.
P–22–0151A	4	02/15/2023	CBI	(G) Surfactant for commercial applications.	(G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 02/01/2023 TO 02/28/2023—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–23–0063	1	01/08/2023	CBI	(G) Dyestuff	(G) 3-Heteromonocycle methanesulfonic acid, 5-[2-[5-[[4-chloro-6-[[3(or 4)-sulfo-carbomonocyclic]amino]heteromonocyclic]amino]-2-sulfocarbomonocyclic]diazenyl]-1-ethyl-6-hydroxy-4-methyl-2-oxo-, sodium salt (1:3).
P–23–0066A	2	02/06/2023	CBI	(G) An antioxidant additive	(G) alkylated phenyl-naphthalene amine.
P–23–0067	2	02/01/2023	CBI	(G) cleaner	(G) Ethoxylated Fatty Acid Amide.
P–23–0067A	3	02/23/2023	CBI	(G) Cleaner	(G) Ethoxylated Fatty Acid Amide.
P–23–0068A	5	02/21/2023	US Polymers Accurez, LLC.	(S) Ingredient in industrial primers and topcoats.	(S) 1,3-Isobenzofurandione, hexahydro-, polymer with 1,4-cyclohexanedimethanol, isononanoate.
P–23–0069	2	02/07/2023	CBI	(S) Encapsulating Shell Polymer for Fragrance Encapsulates for Industrial or Household Consumer Products such as Detergents and Fabric Softeners.	(G) Pea extract, glycerol, carboxymethyl cellulose sodium salt, sodium hyaluronate, maltodextrin and tannins crosslinked polymer with linear and cyclic aliphatic isocyanates.
P–23–0072	2	01/31/2023	Allnex USA, Inc	(S) UV resin for offset lithographic printing on plastic substrates.	(G) Halosubstituted carbopolycycle, polymer with substituted carbomonocycles and oxybis[alkanol].
P–23–0077	2	02/06/2023	CBI	(G) Additive for industrial applications	(G) Alkanepolyoxy acid, alkyl substituted.
P–23–0078	3	02/15/2023	Huntsman International, LLC.	(S) Polyester polyol which will be used in combination with other ingredients to make the B side of a spray polyurethane foam formulation. The A side (isocyanate) and B side are reacted together to produce a polyurethane foam that is used as insulation in buildings.	(G) soybean oil polymer with alkylene glycol- and glycerol- and alkylene glycol- and alkylene glycol-depolymd. poly(alkylene terephthalate), hydroxy-(hydroxyalkyl)-alkylalkanoic acid phthalic anhydride.
P–23–0080	1	02/06/2023	CBI	(G) Photoacid generator (PAG) for use in semiconductor industry.	(G) Aromatic sulfonium tricyclo fluoroalkyl sulfonic acid salt.
P–23–0081	2	02/15/2023	Ashland, Inc	(S) Polymer used as non-ionic surfactant in wood coating formulations.	(G) Alkyl glycidyl ether, polymer with Poly(oxy-1,2-ethanediyl).
P–23–0083	1	02/08/2023	CBI	(G) Photolithography	(G) Sulfonium, tricarbocyclic-, [polyhydroalkyl-(polyfluoro-2-heteroatom substituted)-alkano-heteromonocyclic] alkyl ester (1:1).
P–23–0084	1	02/09/2023	Colonial Chemical, Inc	(S) Lubricant additive, water based cutting fluids, institutional cleaning products, and cleaning in place applications, Surfactant used in personal care products such as body cleansers, shower gels, shampoos, etc. Aids foam boosting, foam stabilization, viscosity control, skin emolliency, wetting, detergency, emulsification, and solubilization in solid actives.	(G) amides, vegetable oil, hydroxylated amine.
P–23–0084A	2	02/16/2023	Colonial Chemical, Inc	(S) Lubricant additive, water based cutting fluids, institutional cleaning products, and cleaning in place applications, Surfactant used in personal care products such as body cleansers, shower gels, shampoos, etc. Aids foam boosting, foam stabilization, viscosity control, skin emolliency, wetting, detergency, emulsification, and solubilization in solid actives.	(G) amides, vegetable oil, hydroxylated amine.
P–23–0085	1	02/09/2023	Colonial Chemical, Inc	(S) Lubricant additive, water based cutting fluids, institutional cleaning products, and cleaning in place applications (G) Personal care surfactant.	(G) amides, soya, hydroxylated amine.
P–23–0085A	2	02/16/2023	Colonial Chemical, Inc	(S) Lubricant additive, water based cutting fluids, institutional cleaning products, and cleaning in place applications, Surfactant used in personal care products such as body cleansers, shower gels, shampoos, etc. Aids foam boosting, foam stabilization, viscosity control, skin emolliency, wetting, detergency, emulsification, and solubilization in solid actives. (G) Personal care surfactant.	(G) amides, soya, hydroxylated amine.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 02/01/2023 TO 02/28/2023—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–23–0087	1	02/10/2023	Evonik Corporation	(S) Adhesives and Sealants for various applications.	(S) Oxirane, 2-methyl-, polymer with 2-[[3-(triethoxysilyl)propoxy]methyl]oxirane, monoether with -butyl—hydroxypoly[oxy(methyl-1,2-ethanediyl)].
P–23–0093	2	02/23/2023	CBI	(G) Photoacid generator (PAG) for use in semiconductor industry.	(G) Aromatic Dibenzothiophenium fluoroalkyl carbopolycycle sulfonic acid salt.
P–23–0094	1	02/24/2023	Sika Corporation	(S) Reactive polymer for use in surface pre-treatment..	(G) Polymer of benzenedicarboxylic acid, substituted-benzenedicarboxylic acid, branched-alkyldiol, alkyldiol and triisocyanate.
SN–22–0006A	3	02/13/2023	MacDermid Enthone, Inc	(G) Catalyst (contained use)	(S) Tungstate (W12(OH)2O386-), sodium (1:6).

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCS APPROVED * FROM 02/01/2023 TO 02/28/2023

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P–13–0471	02/01/2023	01/24/2023	N	(G) Methylene diisocyanate polymer with polypropylene glycol and diols (generic).
P–14–0069	02/07/2023	01/13/2023	N	(G) Polymer of substituted-naphthalene, substituted-benzenecarboxylic acid, benzenediol and substituted-naphthalene.
P–16–0495	02/02/2023	02/02/2023	N	(G) 2-pentanol, 4-methyl-, reaction products with phosphorus oxide (p2o5), compounds with alkylamine.
P–19–0076	02/02/2023	01/10/2023	N	(G) Sulfonium, bis(dihalocarbomonocycle) carbomonocycle, salt with dihalo substituted alkyl carbopolycyclic carboxylate (1:1).
P–19–0188	02/13/2023	02/01/2023	N	(G) Octadecenamide, n,n-alkyl, modified.
P–21–0077	02/21/2023	12/10/2022	N	(G) Alkylene sulfate.
P–21–0187A	02/14/2023	09/14/2022	Amendment requested by EPA regarding CBI request reasoning.	(G) Glycerine, alkoxylated alkyl acid esters.
P–21–0199	02/28/2023	01/30/2023	N	(G) 1,6-disubstituted hexane (see cover letter).
P–21–0202	02/02/2023	01/10/2023	N	(G) Sulfonium, carbomonocycle bis[(trihaloalkyl)carbomonocycle], substituted carbomonocyclic ester.
P–22–0009	02/15/2023	02/12/2023	N	(S) Alkanes, c4-c9-branched and linear.
P–22–0017	02/13/2023	02/07/2023	N	(S) 1-eicosanol, manuf. of, distn., residues.

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: March 14, 2023.

Pamela Myrick,

Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2023–05598 Filed 3–17–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2023–0061; FRL–10581–13–OCSPP]

Certain New Chemicals; Receipt and Status Information for January 2023; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice, extension of comment period.

SUMMARY: In the **Federal Register** of February 17, 2023, announced the receipt and status information for certain new chemical actions that are currently under EPA review or have recently concluded review as required by the Toxic Substances Control Act (TSCA). That document also provided an opportunity for public comment and this document extends the comment period for 60 days from March 20, 2023, to May 19, 2023.

DATES: The comment period for the notice that published on February 17, 2023, at 88 FR 10320, is extended. Comments must be received on or before May 19, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2023–0061,

through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Jim Rahai, Project Management and Operations Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** of February 17, 2023 (88 FR 10320) (FRL–10581–02–OCSPP) for 60 days, from March 20, 2023, to May 19, 2023. In that document, the Agency provided notice of receipt of new chemical actions and a periodic status report of actions that are currently under EPA review or have recently concluded review. Information about cases reviewed under the amended TSCA is also available on the EPA website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* The information is updated on a weekly basis. The **Federal Register** of February 17, 2023, identifies the new chemical actions and solicitation of comment to which this extension applies.

EPA received requests to extend the comment period and believes it is appropriate to do so in order to give stakeholders additional time to review the notices and prepare comments. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: March 16, 2023.

Pamela Myrick,

Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2023–05760 Filed 3–17–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 132141]

Deletion of Additional Items From March 16, 2023 Open Meeting

March 14, 2023.

The following items were adopted by the Commission on March 14, 2023 and deleted from the list of items scheduled for consideration at the Thursday, March 16, 2023, Open Meeting. The items were previously listed in the Commission's Sunshine Notice on Thursday, March 9, 2023.

Item No.	Bureau	Subject
7	Enforcement	*Title:* Enforcement Bureau Action. *Summary:* The Commission will consider an enforcement action.
8	Enforcement	*Title:* Enforcement Bureau Action. *Summary:* The Commission will consider an enforcement action.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–05555 Filed 3–17–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1149; FR ID 131918]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 19, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1149.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, Business or other for-profit, not-for-profit institutions, and State, local, or Tribal government.

Number of Respondents and Responses: 259,600 respondents and 259,600 responses.

Estimated Time per Response: .166 hours (10 minutes).

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Voluntary.

Total Annual Burden: 43,267 hours.

Total Annual Cost: No cost.

Needs and Uses: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or change in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods of assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–05627 Filed 3–17–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than April 3, 2023.

A. Federal Reserve Bank of San Francisco (Joseph Cuenco, Assistant Vice President, Formations & Transactions) 101 Market Street, San Francisco, California 94105–1579. Comments can also be sent electronically to: *sf.fisc.comments.applications@sf.frb.org.*

1. *BAWAG Group AG, Vienna, Austria;* to retain voting shares of Marlette Holdings, Inc., Wilmington, Delaware; and thereby engage in extending credit and servicing loans, activities related to brokering or servicing loans or other extensions of credit, financial and investment advisory activities, and data processing activities pursuant to section 225.28(b)(1), (b)(2), (b)(6), and (b)(14) of the Board's Regulation Y. This item supplements notice 87 FR 52778 (August 29, 2022).

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–05524 Filed 3–17–23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than April 3, 2023.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Neal D. Logan, West Des Moines, Iowa;* to acquire additional voting shares of Garrett Bancshares, Ltd., and thereby indirectly acquire voting shares of Success Bank, both of Bloomfield, Iowa.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–05523 Filed 3–17–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation for Nominations for Appointment to the Board of Scientific Counselors, National Institute for Occupational Safety and Health

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), within the Department of Health and Human Services (HHS), is seeking nominations for membership on the Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH). The BSC, NIOSH consists of 15 experts in fields associated with occupational safety and health.

DATES: Nominations for membership on the BSC, NIOSH must be received no later than April 19, 2023. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be mailed to NIOSH Docket 278, c/o Ms. Pauline Benjamin, Committee Management Specialist, NIOSH, CDC, 1600 Clifton Road NE, Mailstop V24–4, Atlanta, Georgia 30329–4027 or emailed to *nioshdocket@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Maria Strickland, M.P.H., Designated Federal Officer, Board of Scientific Counselors, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Patriots Plaza 1, 395 E Street SW, Suite 9200, Washington, District of Columbia 20201. Telephone: (202) 245–0649; Email: *MStrickland2@cdc.gov.*

SUPPLEMENTARY INFORMATION: Nominations are sought for individuals who have the expertise and qualifications necessary to contribute to the accomplishment of the objectives of the BSC, NIOSH. Nominees will be selected based on expertise in pertinent disciplines involved in occupational safety and health, such as occupational medicine, occupational nursing, industrial hygiene, occupational safety, engineering, toxicology, chemistry, safety and health education, ergonomics, epidemiology, biostatistics, psychology, wellness, research translation, and evaluation. Federal employees will not be considered for membership. Members may be invited to serve for up to four-year terms. Selection of members is based on candidates' qualifications to contribute to the accomplishment of BSC, NIOSH objectives (*http://www.cdc.gov/niosh/BSC/default.html.*)

HHS policy stipulates that committee membership be balanced in terms of points of view represented and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens and cannot be full-time employees of the U.S. Government. Current participation on Federal workgroups or prior experience serving on a Federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning of and annually during their terms. CDC reviews potential candidates for BSC, NIOSH membership each year and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in January 2024, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year. Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address)
- Cover letter, including a description of the candidate's qualifications and why the candidate would be a good fit for the BSC, NIOSH
- At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services. Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, NIH, FDA).

Nominations may be submitted by the candidate or by the person/organization recommending the candidate.

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. 2023–05640 Filed 3–17–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC–2022–0078; Docket Number NIOSH–345–A]

Final American Indian and Alaska Native Worker Safety and Health Strategic Plan

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) in the Centers for Disease Control and Prevention (CDC), an Operating Division of the Department of Health and Human Services (HHS), announces the availability of the final American Indian and Alaska Native Worker Safety and Health Strategic Plan.

DATES: The final document was published on March 10, 2023 on the CDC website.

ADDRESSES: The document is found in the Supplemental Materials tab of the docket (CDC–2022–0078) and at *https://www.cdc.gov/niosh/docs/2023-123/.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Dalsey, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Mailstop P–16, W 6th Ave. and Kipling St., Denver, CO 80225. Telephone (303) 236–5955 (not a toll-free number). Email: *edalsey@cdc.gov.*

SUPPLEMENTARY INFORMATION: On June 28, 2022, NIOSH published a request for public review in the **Federal Register** [87 FR 38408] on the draft version of the American Indian and Alaska Native Worker Safety and Health Strategic Plan. We received one set of comments from the general public. Although the comments provided feedback on potential partners to collaborate with and suggestions on how to implement the plan, they were outside the scope of the request. However, NIOSH reviewed

the comments and will use them to help disseminate and implement the plan.

Dated: March 15, 2023.

John J. Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2023–05602 Filed 3–17–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Injury Prevention and Control

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with regulatory provisions, the Centers for Disease Control and Prevention (CDC) announces the following meeting for the Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC, NCIPC or Board). This meeting is partially open to the public.

DATES: The meeting will be held on May 3, 2023, from 1 p.m. to 3 p.m., EDT (CLOSED); and May 4, 2023, from 9:30 a.m. to 3:30 p.m., EDT (OPEN). The public comment period will be at the end of the open session of the meeting on May 4, 2023, from 3:10 p.m. to 3:25 p.m., EDT.

ADDRESSES: Webinar, Atlanta, Georgia. All participants must register by using the following link to attend the open session: *https://cdc.zoomgov.com/meeting/register/vJIsfuqtrT4pE4H6-oCKSs9t2KHS69o3yHo.*

FOR FURTHER INFORMATION CONTACT: Christopher R. Harper, Ph.D., Senior Epidemiologist, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE, Mailstop S–1069, Atlanta, Georgia 30341. Telephone: (404) 718–8330; Email: *ncipcbsc@cdc.gov.*

SUPPLEMENTARY INFORMATION: Portions of the meeting referenced above will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463 (5 U.S.C. 1009), as amended.

Purpose: The Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC, NCIPC or Board) will: (1) conduct, encourage, cooperate with, and assist other appropriate public health authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases, and other impairments; (2) assist States and their political subdivisions in preventing and suppressing communicable and non-communicable diseases and other preventable conditions and in promoting health and well-being; and (3) conduct and assist in research and control activities related to injury. The BSC, NCIPC makes recommendations regarding policies, strategies, objectives, and priorities; reviews progress toward injury prevention goals; and provides evidence in injury prevention-related research and programs. The Board also provides advice on the appropriate balance of intramural and extramural research, as well as the structure, progress, and performance of intramural programs. The Board provides guidance on extramural scientific program matters, including the: (1) review of extramural research concepts for funding opportunity announcements; (2) conduct of Secondary Peer Review of extramural research grant applications, cooperative agreement applications, and contract applications received in response to funding opportunity announcements as they relate to the Center's programmatic balance and mission; (3) submission of secondary review recommendations to the Center Director of applications to be considered for funding support; (4) review of research portfolios; and (5) review of program proposals.

Matters To Be Considered: The closed session of the meeting (Day 1) will focus on the Secondary Peer Review of extramural research grant applications received in response to two (2) Notices of Funding Opportunity: RFA–CE–20–001—''Evaluating Practice-based Programs, Policies, and Practices from CDC's Rape Prevention and Education (RPE) Program: Expanding the Evidence to Prevent Sexual Violence (U01)''; and RFA–CE–23–008—''Research Grants to Develop and Validate a Prognostic Tool of Mental Health Sequelae After Traumatic Brain Injury for Adolescent Patients'' (U01).'' The open session of the meeting (Day 2) will include discussions on Improving the Quality and Reach of Extramural Research Notices of Funding Opportunity; Updated and Expanded CDC Guidance for the Identification and Response of Suicide Clusters; Developing a Cascade of Care Framework and Surveillance Indicators to Measure Linkage and Retention to Care for Substance Use Disorders; and Moving Science and Data to Violence Prevention Action. Agenda items are subject to change as priorities dictate.

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. 2023–05638 Filed 3–17–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10488]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of

information technology to minimize the information collection burden.

DATES: Comments must be received by May 19, 2023.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *https://www.regulations.gov*. Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, *Attention:* Document Identifier/OMB Control Number:_____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10488 Consumer Experience Survey Data Collection

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of currently approved collection; *Title of Information Collection:* Consumer Experience Survey Data Collection; *Use:* Section 1311(c)(4) of the Affordable Care Act requires the Department of Health and Human Services (HHS) to develop an enrollee satisfaction survey system that assesses consumer experience with qualified health plans (QHPs) offered through an Exchange. It also requires public display of enrollee satisfaction information by the Exchange to allow individuals to easily compare enrollee satisfaction levels between comparable plans. HHS established the QHP Enrollee Experience Survey (QHP Enrollee Survey) to assess consumer experience with the QHPs offered through the Marketplaces. The survey includes topics to assess consumer experience with the health care system such as communication skills of providers and ease of access to health care services.

CMS developed the survey using the Consumer Assessment of Health Providers and Systems (CAHPS®) principles (*https://www.ahrq.gov/cahps/about-cahps/principles/index.html*) and established an application and approval process for survey vendors who want to participate in collecting QHP enrollee experience data. The QHP Enrollee Survey, which is based on the CAHPS® Health Plan Survey, will be used to (1) help consumers choose among competing health plans, (2) provide actionable information that the QHPs can use to improve performance, (3) provide information that regulatory and accreditation organizations can use to regulate and accredit plans, and (4) provide a longitudinal database for consumer research. CMS completed two rounds of developmental testing including 2014 psychometric testing and 2015 beta testing of the QHP Enrollee Survey.

The psychometric testing helped determine psychometric properties and provided an initial measure of performance for Marketplaces and QHPs to use for quality improvement. Based on psychometric test results, CMS further refined the questionnaire and sampling design to conduct the 2015 beta test of the QHP Enrollee Survey. CMS previously obtained clearance for the 2016–2023 administrations of the QHP Enrollee Survey. At this time, CMS is requesting to renew approval for the information collection related to the QHP Enrollee Experience Survey in 2024–2026. These activities are necessary to ensure that CMS fulfills legislative mandates established by section 1311(c)(4) of the Affordable Care Act to develop an ''enrollee satisfaction survey system'' and provide such information on Marketplace websites. CMS is also seeking approval to remove the flu vaccine question and revise the race and ethnicity questions to align with the 2011 HHS Data Collection Standard for the QHP Enrollee Survey 2024 administration. *Form Number:* CMS–10488 (OMB control number: 0938–1221); *Frequency:* Annually; *Affected Public Sector:* (Individuals and Households), Private Sector (Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 97,505; *Total Annual Responses:* 97,505; *Total Annual Hours:* 16,290. (For policy questions regarding this collection contact Nidhi Singh Shah at 301–492–5110).

Dated: March 14, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–05557 Filed 3–17–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS–P–0015A]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our

burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by May 19, 2023.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–P–0015A Medicare Current Beneficiary Survey

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of currently approved collection; *Title of Information Collection:* Medicare Current Beneficiary Survey; *Use:* CMS is the largest single payer of health care in the United States. The agency plays a direct or indirect role in administering health insurance coverage for more than 120 million people across the Medicare, Medicaid, CHIP, and Exchange populations. A critical aim for CMS is to be an effective steward, major force, and trustworthy partner in supporting innovative approaches to improving quality, accessibility, and affordability in healthcare. CMS also aims to put patients first in the delivery of their health care needs.

The Medicare Current Beneficiary Survey (MCBS) is the most comprehensive and complete survey available on the Medicare population and is essential in capturing data not otherwise collected through our operations. The MCBS is a nationally-representative, longitudinal survey of Medicare beneficiaries that we sponsor and is directed by the Office of Enterprise Data and Analytics (OEDA). MCBS data collection includes both in-person and phone interviewing. The survey captures beneficiary information whether aged or disabled, living in the community or facility, or serviced by managed care or fee-for-service. Data produced as part of the MCBS are enhanced with our administrative data (*e.g.,* fee-for-service claims, prescription drug event data, enrollment, etc.) to provide users with more accurate and complete estimates of total health care costs and utilization. The MCBS has been continuously fielded for more than 30 years, encompassing over 1.2 million interviews and more than 140,000 survey participants. Respondents participate in up to 11 interviews over a four-year period. This gives a comprehensive picture of health care costs and utilization over a period of time.

The MCBS continues to provide unique insight into the Medicare program and helps CMS and our external stakeholders better understand and evaluate the impact of existing programs and significant new policy initiatives. In the past, MCBS data have been used to assess potential changes to the Medicare program. For example, the MCBS was instrumental in supporting the development and implementation of the Medicare prescription drug benefit by providing a means to evaluate prescription drug costs and out-of-pocket burden for these drugs to Medicare beneficiaries. Beginning in 2024, this proposed revision to the clearance will add a few new measures to existing questionnaire sections and will remove COVID–19-related content that is no longer relevant for administration. Updated respondent materials are also included in this request. The revisions will result in a net decrease in respondent burden as compared to the current clearance due to the removal of COVID–19 items. *Form Number:* CMS–P–0015A (OMB control number: 0938–0568); *Frequency:* Occasionally; *Affected Public Sector:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 13,568; *Total Annual Responses:* 35,015; *Total Annual Hours:* 34,380. (For policy questions regarding this collection contact Bill Long at 410–786–7927).

Dated: March 15, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–05628 Filed 3–17–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–3261]

Definition of the Term ''Tobacco Product'' in Guidances Issued Under the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing conforming changes to its guidances issued under the Federal Food, Drug, and Cosmetic Act (FD&C

Act) as required by the Consolidated Appropriations Act of 2022, which amended the term ''tobacco product'' in the FD&C Act to include products that contain nicotine from any source.

DATES: Conforming changes to reflect the changes to FDA's guidance are made beginning March 20, 2023.

ADDRESSES: You may submit comments on any guidance at any time 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 name of the guidance(s) that the comments address and the docket number for the guidance(s) (see table 1). Received comments will be placed in the docket(s) 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 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 (see table 1) 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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Paul Hart or Laura Chilaka, Center for Tobacco Products (CTP), Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993, 877–287–1373, *AskCTP@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) was enacted on June 22, 2009, amending the FD&C Act and providing FDA with the authority to regulate tobacco products. Section 201(rr) of the FD&C Act (21 U.S.C. 321(rr)), as amended by the Tobacco Control Act, defined the term ''tobacco product'' to mean any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product). It further stated that the term ''tobacco product'' does not mean an article that is a drug under section 201(g)(1), a device under section 201(h), or a combination product described in section 503(g) of the FD&C Act (21 U.S.C. 353(g)).

The Consolidated Appropriations Act of 2022 (the Appropriations Act) (Pub. L. 117–103), enacted on March 15, 2022, amended the definition of the term ''tobacco product'' in section 201(rr) of the FD&C Act to include products that contain nicotine from any source. It further amended the definition to exclude articles that are foods under section 201(f) of the FD&C Act if such articles contain no nicotine or no more than trace amounts of naturally occurring nicotine. The Appropriations Act also amended section 901(b) of the FD&C Act (21 U.S.C. 387a(b)), which concerns FDA authority over tobacco products, by adding a sentence stating chapter IX of the FD&C Act shall also apply to any tobacco product containing nicotine that is not made or derived from tobacco. As a result, tobacco products that contain non-tobacco nicotine (NTN), including synthetic nicotine, are now subject to the provisions in chapter IX of the FD&C Act (21 U.S.C. 387 to 387t), including but not limited, to the:

• Adulteration and misbranding provisions (sections 902 and 903 of the FD&C Act);

• Required submission of ingredient listing and reporting of harmful and potentially harmful constituents for all tobacco products (section 904 of the FD&C Act);

• Required establishment registration and product listing (section 905 of the FD&C Act);

• Prohibition of selling tobacco products to individuals under 21 years of age (section 906(d)(5) of the FD&C Act);

• Requirement that new tobacco products have an FDA marketing order (section 910 of the FD&C Act) in effect; and

• Requirement that modified risk tobacco products have a modified risk order in effect (section 911 of the FD&C Act).

The Appropriations Act further states that products that are tobacco products under the amended definition in section 201(rr) of the FD&C Act shall be subject to all requirements of regulations for tobacco products and specifies that the term ''tobacco product'' in regulations and guidance issued, in whole or in part, under the FD&C Act shall have the meaning of, and shall be deemed amended to reflect the meaning of, the amended definition in section 201(rr). As a result, beginning April 14, 2022, tobacco products that contain NTN, including synthetic nicotine, are subject to the provisions that apply to tobacco products in FDA's regulations, including, but not limited to:

• Refuse to accept criteria for premarket submissions (21 CFR 1105.10);

• Content and format requirements for premarket tobacco product applications (21 CFR part 1114);

• Exemption from substantial equivalence requirements (21 CFR part 1107, subpart A); and

• Prohibition of the distribution of free samples (21 CFR 1140.16(d)).

The Appropriations Act directs FDA to publish a notice in the **Federal Register** to update the Code of Federal Regulations (CFR) to reflect the deemed amendment to existing regulations and guidance. Accordingly, in this notice we are making conforming changes to reflect the statutory amendments made by the Appropriations Act to tobacco product guidance issued in whole or in part under the FD&C Act. Elsewhere in this edition of the **Federal Register**, we are issuing a final amendment to make conforming changes to regulations to reflect the statutory amendments made by the Appropriations Act.

II. Description of Changes to FDA Guidances

FDA is updating the definition of ''tobacco product'' in guidances issued, in whole or in part, under the FD&C Act, to reflect the amendments made by the Appropriations Act. The definition of ''tobacco product,'' where included in the text of FDA guidance, is being updated to reflect the statutory amendments by adding the phrase ''or containing nicotine from any source'' after the words ''from tobacco,'' and incorporating the exclusion of articles that are foods as defined in section 201(f) of the FD&C Act if such articles contain no nicotine or no more than trace amounts of naturally occurring nicotine.

The guidance documents listed in table 1 are, or will be,[1] updated to reflect the statutory amendments made by the Appropriations Act. In certain cases, FDA is also making Level 2 changes to these guidance documents for clarity in light of the statutory amendments.

TABLE 1—UPDATED GUIDANCE DOCUMENTS

Title of guidance	Docket No.	OMB control No. (if applicable) [1]
FDA Deems Certain Tobacco Products Subject to FDA Authority, Sales and Distribution Restrictions, and Health Warning Requirements for Packages and Advertisements*.	FDA–2014–N–0189	N/A.
Premarket Tobacco Product Applications for Electronic Nicotine Delivery Systems.	FDA–2015–D–2496	Refers to previously approved FDA collections of information.
Interpretation of and Compliance Policy for Certain Label Requirements; Applicability for Certain Federal Food, Drug, and Cosmetic Act Requirements to Vape Shops.	FDA–2017–D–0120	N/A.
Listing of Ingredients in Tobacco Products*	FDA–2009–D–0524	0910–0650.
Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments*.	FDA–2009–D–0508	0910–0650.
Health Document Submission Requirements for Tobacco Products*	FDA–2009–D–0600	0910–0654.
Prohibition of Distributing Free Samples of Tobacco Products	FDA–2017–D–0113	N/A.
Civil Money Penalties and No-Tobacco-Sale Orders for Tobacco Retailers	FDA–2010–D–0431	N/A.
Demonstrating the Substantial Equivalence of a New Tobacco Product: Responses to Frequently Asked Questions.	FDA–2011–D–0147	0910–0673.
Determination of the Period Covered by a No-Tobacco-Sale Order and Compliance with an Order.	FDA–2015–D–0404	N/A.
Establishing That a Tobacco Product Was Commercially Marketed in the United States as of February 15, 2007*.	FDA–2011–D–0125	0910–0775.
Small Entity Compliance Guide: Further Amendments to General Regulations of the Food and Drug Administration to Incorporate Tobacco Products.	FDA–2011–N–0121	N/A.

[1] See section III of this document for additional information about the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) as it relates to these guidance documents.

These revised final guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115) and represent the current thinking of FDA on the topic discussed in each guidance. They do not establish any legally enforceable rights or responsibilities for any person and are not legally binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. You may submit comments on any guidance at any time (see **ADDRESSES**).

III. Paperwork Reduction Act of 1995

The amendments made by the Appropriations Act result in changes to

[1] Guidance titles in table 1 marked with an asterisk will be published in updated form as changes are finalized or when the associated information collections are updated in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

some previously approved collections of information that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The OMB control numbers for these information collections are listed in table 1. FDA has published, and intends to continue publishing, notices concerning proposed changes to the relevant information collection activities in other editions of the **Federal Register**. In addition, in compliance with the PRA, we will submit revisions to the current information collections to OMB for review.

IV. Electronic Access

Persons with access to the internet may obtain an electronic version of the guidance documents at *https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/guidance, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: February 22, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–03951 Filed 3–17–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–E–1941]

Determination of Regulatory Review Period for Purposes of Patent Extension; JIVI

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 JIVI and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application 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 biological 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 May 19, 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 September 18, 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 May 19, 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 No. FDA–2019–E–1941 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; JIVI.'' 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 section 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 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 biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological 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 biological 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 biologic product JIVI (antihemophilic factor (recombinant), PEGylated-aucl). JIVI is indicated for use in previously treated adults and adolescents (12 years of age and older) with hemophilia A (congenital Factor VIII deficiency) for: (1) on-demand treatment and control of bleeding episodes; (2) perioperative management of bleeding; and (3) routine prophylaxis to reduce the frequency of bleeding episodes. Subsequent to this approval, the USPTO received a patent term restoration application for JIVI (U.S. Patent No. 7,632,921) from Bayer HealthCare LLC, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 12, 2019, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of JIVI 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 JIVI is 2,991 days. Of this time, 2,626 days occurred during the testing phase of the regulatory review period, while 365 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 (21 U.S.C. 355(i)) became effective:* June 23, 2010. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on June 23, 2010.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* August 30, 2017. FDA has verified the applicant's claim that the biologics license application (BLA) for JIVI (BLA 125661) was initially submitted on August 30, 2017.

3. *The date the application was approved:* August 29, 2018. FDA has verified the applicant's claim that BLA 125661 was approved on August 29, 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 application for patent extension, this applicant seeks 1,677 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 section 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 section 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with section 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: March 13, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–05570 Filed 3–17–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–2856]

Pharmacogenomic Data Submissions; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Pharmacogenomic Data Submissions.'' This draft guidance is intended to facilitate progress in the field of pharmacogenomics and the use of pharmacogenomic data in drug development. The draft guidance is intended to clarify the contexts in which pharmacogenomic study findings and data must be included in submissions related to investigational new drug applications (INDs), new drug applications (NDAs), and biologics license applications (BLAs) based on the FDA's regulations. In addition, this document provides recommendations to sponsors and applicants on the format and content of the pharmacogenomic data submissions.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by June 20, 2023.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–2856 for ''Pharmacogenomic Data Submissions.'' Received comments 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 office 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 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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002 or the Center for Biologics Evaluation and Research, Office of Communication, Outreach, and Development, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20903. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

For Center of Drug Evaluation and Research: Michael Pacanowski, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2132, Silver Spring, MD 20993, 301–796–3919.

For Center of Biologics Evaluation and Research: Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Pharmacogenomic Data Submissions.'' The draft guidance outlines FDA's expectations for the submission of data from pharmacogenomic studies considering the advances in genomics research that have occurred since FDA published final guidance on ''Pharmacogenomic Data Submissions'' in 2005. This guidance, when finalized, will replace the 2005 final guidance.

Pharmacogenomic studies that evaluate the effect of variations in DNA or RNA characteristics on drug concentrations or response have the potential to help identify sources of inter-individual variability and characterize the pharmacologic effects of a drug. In some cases, pharmacogenomic studies can identify biomarkers that make it possible to individualize therapy. In addition, pharmacogenomic biomarkers that have well-accepted mechanistic and clinical significance are currently being integrated into drug development (*e.g.,* enriched clinical trial designs) and clinical practice (*e.g.,* clinical testing to determine dose).

Sponsors submitting or holding INDs, NDAs, or BLAs are subject to FDA requirements for submitting data to the Agency that are relevant to drug safety and effectiveness (including 21 CFR 312, 314, and 601). However, the regulations were developed before the advent of widespread animal or human genetic testing (*e.g.,* high-throughput DNA sequencing) or gene expression testing and do not specifically address when such data must be submitted. This document, when final, will constitute FDA's current thinking about pharmacogenomic study results and the associated data required to be submitted in an IND, NDA, or BLA, as well as the FDA's recommendations as to the level of detail and format for reporting.

In addition, this draft guidance has also removed references to the Voluntary Genomic Data Submission program (VGDS; later referred to as Voluntary eXploratory Data Submission program, or VXDS). The VGDS program created a pathway for voluntary exchanges between FDA and the pharmaceutical industry or other stakeholders regarding genomic and other biomarker studies in the context of individual drug development programs. The program helped the Agency gain knowledge regarding genomics research in the context of drug development and

practical experience with data submission and analysis. Since it was first introduced in 2003, the VXDS program has received over 50 voluntary submissions. In recent years, FDA has established additional pathways to interact with stakeholders on biomarker development, such as the Biomarker Qualification Program and Critical Path Innovation Meetings. Given the availability of these programs and decreasing use of the program, FDA is considering ending the program, and references to the VGDS program have been removed from this draft guidance. However, FDA seeks public feedback on the following specific issues:

- The VGDS program created a pathway and infrastructure for stakeholders to voluntarily submit genomic or other data to FDA, when such data are not otherwise required to be submitted to FDA. Such a submission pathway could support regulatory science initiatives (*e.g.,* aggregating data from multiple programs to support endpoint development). While it is FDA's plan to discontinue the VGDS program in its current form, FDA requests feedback on the utility of maintaining a voluntary submission pathway that is of value to both FDA and the pharmaceutical industry.
- FDA requests public input on particular platforms or technologies that would benefit most from standardization.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on pharmacogenomic data submissions to the Agency. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR parts 50 and 56 pertaining to informed consent have been approved under OMB control number 0910–0130. The collections of information in 21 CFR part 312 pertaining to submissions of investigational new drug applications (IND), including clinical trial design and study protocols, IND Safety Reports, Annual Reports and voluntary pharmacogenomic data have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 pertaining to submissions of new drug applications have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 pertaining to submissions of biologics license applications have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, *https://www.fda.gov/regulatory-information/search-fda-guidance-documents, https://www.regulations.gov*, or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics*.

Dated: March 14, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–05561 Filed 3–17–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–E–2805]

Determination of Regulatory Review Period for Purposes of Patent Extension; IC–8 APTHERA INTRAOCULAR LENS

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 IC–8 APTHERA INTRAOCULAR LENS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

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 May 19, 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 September 18, 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 May 19, 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:

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- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and

identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–E–2805 for Determination of Regulatory Review Period for Purposes of Patent Extension; IC–8 APTHERA INTRAOCULAR LENS. 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 section 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 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 medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (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 medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device IC–8 APTHERA INTRAOCULAR LENS. IC–8 APTHERA INTRAOCULAR LENS is indicated for unilateral implantation for the visual correction of aphakia and to create monovision in patients age 22 or older who have been diagnosed with bilateral operable cataract, who have up to 1.5D of astigmatism in the implanted eye and who do not have a history of retinal disease and who are not predisposed to experiencing retinal disease in the future. Subsequent to this approval, the USPTO received a patent term restoration application for IC–8 APTHERA INTRAOCULAR LENS (U.S. Patent No. 9,005,281) from AcuFocus, Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 10, 2023, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of IC–8 APTHERA INTRAOCULAR LENS 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 IC–8 APTHERA INTRAOCULAR LENS is 1,341 days. Of this time, 827 days occurred during the testing phase of the regulatory review period, while 514 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)) became effective:* November 21, 2018. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) for human tests to begin, as required under section 520(g) of the FD&C Act, became effective November 21, 2018.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* February 24, 2021. FDA has verified the applicant's claim that the premarket approval application (PMA) for IC–8 APTHERA INTRAOCULAR LENS (PMA 210005) was initially submitted February 24, 2021.

3. *The date the application was approved:* July 22, 2022. FDA has verified the applicant's claim that PMA 210005 was approved on July 22, 2022.

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 application for patent extension, this applicant seeks 928 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 section 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 section 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with section

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: March 14, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–05641 Filed 3–17–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Security Assistant Deputy Secretary of National Security Statement of Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Deputy Secretary for National Security within the Office of the Secretary (OS), Immediate Office of the Secretary (IOS), Office of National Security (ONS), the authorities vested in me as the Secretary of Health and Human Services for managing the Controlled Unclassified Information Program under Executive Order 13556, now and hereafter.

This authority may be redelegated, but only within ONS. Exercise of this authority shall be in accordance with established policies, procedures, guidelines, and regulations as prescribed by the E.O. 13556 and 32 CFR part 2002 ''Controlled Unclassified Information.''

This delegation of authority is effective immediately upon signature.

Dated: March 15, 2023.

Xavier Becerra,

Secretary.

[FR Doc. 2023–05637 Filed 3–17–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

COVID–19 Emergency Use Authorization Declaration

ACTION: Notice of amendment.

SUMMARY: The Secretary of Health and Human Services (HHS) is issuing this notice pursuant to section 564 of the Federal Food, Drug, and Cosmetic (FD&C) Act. On March 15, 2023, the Secretary amended the February 4, 2020 determination made pursuant to section 564 of the FD&C Act and determined pursuant to his authority under section 564(b)(1)(C) that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of United States citizens living abroad and that involves a biological agent, namely the novel (new) coronavirus (nCoV) first detected in Wuhan City, Hubei Province, China in 2019 (2019–nCoV, or SARS–CoV–2).

DATES: The section 564(b)(1)(C) determination that was originally issued on February 4, 2020, is amended as of March 15, 2023.

FOR FURTHER INFORMATION CONTACT: Paige Ezernack: 202–260–0365, *paige.ezernack@hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 564 of the FD&C Act, the Commissioner of the Food and Drug Administration (FDA), acting under delegated authority from the Secretary of HHS, may issue an EUA authorizing (1) the emergency use of an unapproved drug, an unapproved or uncleared device, an unlicensed biological product, or an unapproved animal drug; or (2) an unapproved use of an approved drug, approved or cleared device, licensed biological product, or conditionally approved animal drug. Before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of four determinations: (1) a determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a chemical, biological, radiological, or nuclear (''CBRN'') agent or agents; (2) the identification of a material threat by the Secretary of Homeland Security pursuant to section 319F–2 of the Public Health Service (PHS) Act sufficient to affect national security or the health and security of United States citizens living abroad; (3) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to United States military forces, including personnel operating under the authority of title 10 or title 50, of attack with (i) a CBRN agent or agents; or (ii) an agent or agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to United States military forces; or (4) a determination by the Secretary that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of United States citizens living abroad, and that involves a CBRN agent or agents, or a disease or condition that may be attributable to such agent or agents.

Based on any of these four determinations, the Secretary of HHS may then issue a declaration(s) that circumstances exist that justify the issuance of an EUA(s), at which point the FDA Commissioner may issue an EUA(s) for certain products if the criteria for issuance under section 564 of the FD&C Act are met. The section 564 declaration(s) terminate only when the Secretary of HHS determines that the termination requirements of section 564(b)(2)(A) of the FD&C Act are met. Additionally, section 564(b)(3) provides that the Secretary shall provide advance notice, by publication in the **Federal Register**, that a declaration(s) under section 564 will be terminated.

II. Determination by the Secretary of Health and Human Services

On February 4, 2020, pursuant to his authority under section 564 of the FD&C Act, the Secretary of HHS determined that the circumstances in section 564(b)(1) exist because ''there is a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves a novel (new) coronavirus (nCoV) first detected in Wuhan City, Hubei Province, China in 2019 (2019–nCoV).'' 85 FR 7316.

It is now well established that SARS–CoV–2 is constantly evolving and continues to be an ongoing challenge. As of January 30, 2023, SARS–CoV–2 has led to over 753 million cases of COVID–19, including 6.8 million deaths worldwide. This is due, in part, to variations in the virus that may allow it to spread more easily or make it resistant to treatments or decreased vaccine effectiveness. There is also a risk that eventually a variant will emerge that will escape the protection provided by the current generation of vaccines against severe disease. For example, the SARS–CoV–2 Omicron variant has continued to evolve into sublineages with additional mutations in the spike glycoprotein and the

receptor binding domain. Evolution of the virus also raises similar concerns about the continued efficacy of certain categories of therapeutics, such as monoclonal antibodies. The distribution of Omicron sublineages varies at different points in time in different regions of the world. The large number of mutations in the Omicron variant sublineages and the ongoing evolution of the virus remain a concern for potential evasion of vaccine immunity.

In light of this, I have now amended the February 4, 2020 determination to recognize the fact that there is ''a public health emergency, *or a significant potential for a public health emergency,* that affects, or has a significant potential to affect, national security or the health and security of United States citizens living abroad'' and that involves a biological agent, namely the novel (new) coronavirus (nCoV) first detected in Wuhan City, Hubei Province, China in 2019 (2019–nCoV, or SARS–CoV–2). (Emphasis added). If the current conditions change such that there is no longer a ''public health emergency'' within the meaning of section 564, the section 564(b)(1)(C) determination would remain in place because I have determined that there is also a ''significant potential for a public health emergency'' under that section. This avoids the need to issue a new determination under section 564 when there is no longer a ''public health emergency,'' but there is still a ''significant potential for a public health emergency'' involving SARS–CoV–2.

The four previously-issued section 564 declarations that refer to the February 4, 2020 determination have not been terminated by the Secretary because, among other things, the circumstances described in section 564(b)(1) continue to exist—*i.e.,* COVID–19, a disease attributable to SARS–CoV–2, continues to present a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of United States citizens living abroad. Consistent with section 564(f), the currently-in-effect Emergency Use Authorizations (EUAs) issued under those section 564 declarations remain in effect until the earlier of the termination of relevant section 564 declarations under section 564(b), or revocation of the EUAs. Therefore, these EUAs continue in effect.

III. Declarations of the Secretary of Health and Human Services; EUAs Issued Under the Declarations

Based on the February 4, 2020 determination, in February and March 2020, the Secretary of HHS, pursuant to section 564 of the FD&C Act and subject to the terms of any authorization issued under that section, declared that circumstances exist justifying the authorization of emergency use of: (1) in vitro diagnostics for detection and/or diagnosis of this novel coronavirus, 85 FR 7316; (2) personal respiratory protective devices, 85 FR 13907; (3) other medical devices including alternative products used as medical devices, 85 FR 17335; and (4) drugs and biological products, 85 FR 18250.

These section 564 declarations continue in effect. Specifically, under section 564(b)(2)(A), a declaration made under section 564 will not terminate unless the Secretary determines that ''the circumstances described in [section 564(b)(1)] have ceased to exist,'' or there is ''a change in the approval status of the [authorized] product such that the circumstances described in subsection (a)(2) have ceased to exist.'' Section 564(b)(2)(A) of the FD&C Act. The first basis for termination is not met because the circumstances described in section 564(b)(1) have not ceased to exist; to the contrary, as described above, I have determined that the circumstances described in section 564(b)(1)(C) continue to exist. The second basis for termination is not met because each declaration covers many products, or emergency uses of products, at least some of which remain ''unapproved'' within the meaning of section 564(a)(2).

Consistent with section 564(f), the EUAs issued under these declarations remain in effect until the earlier of the termination of relevant section 564 declarations or revocation of the EUAs. Accordingly, the currently-in-effect EUAs issued under the section 564 determination/declarations for COVID–19 also continue in effect.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–05609 Filed 3–17–23; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel; Care Quality Across the Lifespan.

Date: March 28, 2023.

Time: 12:00 p.m. to 5:00 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: Mary Kate Baker, DRPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–5117, *katie.baker2@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. 93.306, 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: March 15, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05631 Filed 3–17–23; 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 the following meeting.

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 purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for the treatment of cancer. The outcome of the evaluation will provide information to

internal NCI committees that will decide whether NCI should support requests and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; FEB2023 Cycle 43 NExT SEP Committee Meeting.

Date: April 27, 2023.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To evaluate the NCI Experimental Therapeutics Program Portfolio.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Room 3A44, Bethesda, Maryland 20892 (WebEx Meeting).

Contact Persons: Barbara Mroczkowski, Ph.D., Executive Secretary, Discovery Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, Maryland 20817, 301–496–4291, *mroczkowskib@mail.nih.gov*.

Toby Hecht, Ph.D., Executive Secretary, Development Experimental Therapeutics Program, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 3W110, Rockville, Maryland 20850, 240–276–5683, *toby.hecht2@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: March 15, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05604 Filed 3–17–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Advisory Committee for Women's Services (ACWS); Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Advisory Committee for Women's Services (ACWS) on April 25, 2023.

The meeting will include discussions on assessing SAMHSA's current strategies, including the mental health and substance use needs of the women and girls population. Additionally, the ACWS will be addressing priorities regarding the impact of COVID–19 on the behavioral health needs of women and children and directions around behavioral health services and access for women and children.

The meeting is open to the public and will be held at 5600 Fishers Lane, Rockville, Maryland 20857. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions should be forwarded to the contact person by April 15, 2023. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact person on or before April 15, 2023. Up to five minutes will be allotted for each presentation as time allows.

The meeting may be accessed via telephone or web meeting. To obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at *https://snacregister.samhsa.gov,* or communicate with SAMHSA's Designated Federal Officer, Ms. Valerie Kolick.

Substantive meeting information and a roster of ACWS members may be obtained either by accessing the SAMHSA Committees' Web, *https://www.samhsa.gov/about-us/advisory-councils/acws,* or by contacting Ms. Kolick.

Committee Name: Substance Abuse and Mental Health Services Administration Advisory Committee for Women's Services (ACWS).

Date/Time/Type: Tuesday, April 25, 2023, from: 9 a.m. to 4:30 p.m. EDT (OPEN).

Place: SAMHSA, 5600 Fishers Lane, Rockville, MD 20857.

Contact: Valerie Kolick, Designated Federal Officer, SAMHSA's Advisory Committee for Women's Services, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (240) 276–1738, Email: *Valerie.kolick@samhsa.hhs.gov*.

Dated: March 13, 2023.

Carlos Castillo,

CAPT, USPHS, Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 2023–05568 Filed 3–17–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Meeting of the Substance Abuse and Mental Health Services Administration, Center for Mental Health Services National Advisory Council

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the meeting on April 25, 2023, of the Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services National Advisory Council (CMHS NAC).

The meeting is open to the public and will include consideration of the meeting minutes from the August 18, 2022, SAMHSA, CMHS NAC meeting; updates from the CMHS Director; a discussion from SAMHSA's Assistant Secretary; a discussion on Certified Community Behavioral Health Clinic; a discussion on School Based Mental Health Services; a discussion on Mental Health Block Grant; a discussion on Black Youth Suicide Prevention Activities; and a discussion on CMHS/SAMHSA Response to Disasters.

The meeting will be held at SAMHSA, 5600 Fishers Lane, 5N54, Rockville, MD 20857. Attendance by the public will be limited to space available and will be limited to the open sessions of the meeting. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Council. Presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making public comment must notify the contact person, Pamela Foote, CMHS NAC Designated Federal Officer (DFO) on or before April 14, 2023. Up to three minutes will be allotted for each public comment as time permits. Written comments received in advance of the meeting will be considered for inclusion in the official record.

The open meeting session may also be accessed virtually. Please register on-line at *https://snacregister.samhsa.gov,* to attend on either on site or virtually, submit written or brief oral comments, or request special accommodations for persons with disabilities. To communicate with the CMHS NAC DFO please see the contact information below. Meeting information and a roster of Council members may be obtained by accessing the SAMHSA Committee

website at *https://www.samhsa.gov/about-us/advisory-councils/cmhs-national-advisory-council* or by contacting the DFO.

Council Name: SAMHSA's Center for Mental Health Services National Advisory Council.

Date/Time/Type: April 25, 2023, 9 a.m. to 4:30 p.m. EDT, Open.

Place: SAMHSA, 5600 Fishers Lane, Rockville, Maryland 20857.

Contact: Pamela Foote, Designated Federal Officer, CMHS National Advisory Council, 5600 Fishers Lane, Rockville, Maryland 20857 (mail), Telephone: (240) 276–1279, Email: *pamela.foote@samhsa.hhs.gov.*

Dated: March 13, 2023.

Carlos Castillo,

Committee Management Officer, SAMHSA.

[FR Doc. 2023–05564 Filed 3–17–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: TSA Canine Training Center Adoption Application

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0067, abstracted below, to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves gathering information from individuals who wish to adopt a TSA canine through the TSA Canine Training Center (CTC) Adoption Program.

DATES: Send your comments by April 19, 2023. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on November 10, 2022, 87 FR 67933.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *https://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: TSA Canine Training Center Adoption Application.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0067.

Forms(s): TSA Form 433.

Affected Public: Individuals seeking to adopt a TSA canine.

Abstract: The TSA Canine Program is a Congressionally-mandated program that operates as a partnership among TSA; aviation, mass transit, and maritime sectors; and state and local law enforcement. TSA operates the CTC Adoption Program in accordance with the Federal Management Regulations. TSA developed the CTC to train and deploy explosive detection canine teams for TSA and for local, state, and federal agencies in support of daily activities that protect the transportation domain. Canines that leave the program and are not repurposed for other government uses may be placed for adoption. TSA created the TSA CTC Adoption Program to find suitable individuals or families to adopt the canines and to provide good homes. Individuals seeking to adopt a TSA canine must complete the TSA CTC Adoption Application. This collection of information allows the CTC to collect personal information from the applicants to determine their suitability to adopt a TSA canine.

Number of Respondents: 300.

Estimated Annual Burden Hours: An estimated 50 hours annually.

Dated: March 13, 2023.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2023–05438 Filed 3–17–23; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6343–N–02]

Fair Market Rents for the Housing Choice Voucher Program, Moderate Rehabilitation Single Room Occupancy Program, and Other Programs Fiscal Year 2023; Revised

AGENCY: Office of the Assistant Secretary for Policy Development and Research, Department of Housing and Urban Development, HUD.

ACTION: Notice of Revised Fiscal Year (FY) 2023 Fair Market Rents (FMRs).

SUMMARY: This notice updates the FY 2023 FMRs for five areas based on new survey data.

DATES: Effective Date: The revised FY 2023 FMRs for these five areas are applicable on April 19, 2023.

FOR FURTHER INFORMATION CONTACT: Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800–245–2691 (toll-free), email the Program Parameters and Research Division via *pprd@hud.gov,* or access the information on the HUD USER website: *http://www.huduser.gov/portal/datasets/fmr.html.* 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: On September 1, 2022, HUD published the FY 2023 FMRs, requested comments on the FY 2023 FMRs, and outlined procedures for requesting a reevaluation of an area's FY 2023 FMRs (87 FR 53761). This notice revises FY 2023 FMRs for five areas based on data provided to HUD.

I. Revised FY 2023 FMRs

The updated FY 2023 FMRs appear in the following table. The FMRs are based on surveys conducted by the area public housing agencies (PHAs) and reflect the estimated 40th percentile rent levels trended to FY 2023.

The FMRs for the affected areas are revised as follows:

2023 Fair market rent area	FMR by number of bedrooms in unit				
	0 BR	1 BR	2 BR	3 BR	4 BR
Grand Rapids-Wyoming, MI HUD Metro FMR Area	$1,044	$1,101	$1,326	$1,726	$1,928
Hawaii County, HI	1,281	1,449	1,901	2,446	2,582
Hood River County, OR	1,147	1,304	1,716	2,439	2,923
Seattle-Bellevue, WA HUD Metro FMR Area	2,042	2,100	2,455	3,297	3,847
Wasco County, OR	1,112	1,165	1,457	2,046	2,482

HUD has published these revised FMR values on the HUD USER website at: *http://www.huduser.gov/portal/datasets/fmr.html.* In addition, HUD has updated the FY 2023 Small Area FMRs (SAFMRs) for metropolitan areas with revised FMRs, which can be found at *https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html.* HUD has also updated the 50th percentile rents for all FMR areas, which are published at *http://www.huduser.gov/portal/datasets/50per.html.*

II. Environmental Impact

This notice involves establishment of a rate and does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Solomon Greene,

Principal Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2023–05630 Filed 3–17–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7066–N–05; OMB Control No. 2506–new]

60-Day Notice of Proposed Information Collection: Youth Homeless Systems Improvement (YHSI) Program

AGENCY: HUD Office of Community Planning and Development, 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:* May 19, 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 8210, Washington, DC 20410–5000; telephone 202–402–3400 for Colette (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: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at email or *Colette.Pollard@hud.gov,* telephone contact number or 202–402–3400 for Colette. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Youth Homeless Systems Improvement (YHSI).

OMB Approval Number: 2506–PENDING.

Type of Request: New.

Form Number: N/A.

Description of the need for the information and proposed use: Congress appropriated funds to the Department of Housing and Urban Development in FY2022 and in FY2023 to competitively award funds to selected communities to develop projects that implement systems infrastructure to better address youth homelessness. The YHSI projects will focus on systems change to create and build capacity for Youth Action Boards; collect and use data from different systems to improve the youth homeless response system; develop strong leaders within a community; and improve the coordination, communication, operation, and administration of homeless assistance projects, including prevention and diversion strategies. This information collection proposal is to competitively award YHSI funds to communities and monitor the progress of the funded project.

Respondents: Not-for-profit institutions; State, Local or Tribal Governments.

Estimated Number of Respondents: 150. *Estimated Number of Responses:* 190. *Average Hours per Response:* 27. *Frequency of Response:* Biannual. *Total Estimated Burdens:* 2,670.

Submission documents / Information collection	Number of respondents	Responses frequency (average)	Total annual responses	Burden hours per response	Total hours	Hourly rate	Burden cost per instrument
Component 1. Project Selection:							
YHSI Project Selection Narratives	100	1	100	22	2200	$53.67	$118,074.00
SF–424—Application for Federal Assistance	100	1	100	0	0	53.67	0.00
SF–424B Assurances for Non-Construction Programs	100	1	100	0	0	53.67	0.00
OMB–SF—LLL Disclosure of Lobbying Activities (where applicable)	100	1	100	0	0	53.67	0.00
Nonprofit Certification	50	1	50	0	0	53.67	0.00
Organizations Code of Conduct	100	1	100	0	0	53.67	0.00
Youth Action Board Letter of Support	100	1	100	1	100	53.67	5,367.00
Letter of Support—partner agency	100	1	100	1	100	53.67	5,367.00
Subtotal	100		100	24	2,400		128,808.00
Component 2. Milestone Reporting							
Narrative update on project progress	40	2	80	2	160	53.67	8,587.20
Updated milestone chart	10	1	10	1	10	53.67	536.70
Subtotal	50		90	3	270		9,123.90
Total Application Collection	150		190	27	2,670		137,931.90

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.

Principal Deputy Assistant Secretary for Community Planning and Development, Marion McFadden, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Aaron Santa Anna, who is the Federal Register Liaison for HUD, for purposes of publication in the **Federal Register**.

Aaron Santa Anna,

Federal Register Liaison for the Department of Housing and Urban Development.

[FR Doc. 2023–05584 Filed 3–17–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–14]

30-Day Notice of Proposed Information Collection: Single Family Premium Collections Subsystem-Upfront; OMB Control No.: 2502–0423

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* April 19, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on January 6, 2023 at 88 FR 1088.

A. Overview of Information Collection

Title of Information Collection: Single Family Premium Collections Subsystem-Upfront.

OMB Approval Number: 2502–0423.

OMB Expiration Date: April 30, 2023.

Type of Request: Revision.

Description of the need for the information and proposed use: SFPCS–U strengthens HUD's ability to manage

and process upfront single-family mortgage insurance premium collections and corrections to submit data. It also improves data integrity for the Single Family Mortgage Insurance Program. FHA approved lenders use Automated Clearing House (ACH) applications for all transmissions with SFPCS–U. The collection of information is used to update HUD's Single Family Insurance System. The information collection is also used in calculating refunds due to former FHA mortgagors when they apply for homeowner refunds of the unearned portion of the mortgage insurance premium, 24 CFR 203.283, as appropriate. Without this information the premium collection/monitoring process would be severely impeded, and program data would be unreliable. In general, lender respondents use the ACH applications to remit the upfront premium through SFPCS–U to obtain mortgage insurance for the homeowner.

Respondents: Business or other for profit.

Estimated Number of Respondents: 2,365.

Estimated Number of Responses: 20,788.

Frequency of Response: 8.79.

Average Hours per Response: .15.

Total Estimated Burden: 3,188.

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 information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–05589 Filed 3–17–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–13; OMB Control No.: 2502–0462]

30-Day Notice of Proposed Information Collection: Section 811 Supportive Housing for Persons With Disabilities Capital Advance

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* April 19, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on December 21, 2022, at 87 FR 78123.

A. Overview of Information Collection

Title of Information Collection: Capital Advance Section 811 Grant Application for Supportive Housing for Persons with Disabilities.

OMB Approval Number: 2502–0462.

Type of Request: Reinstatement of a discontinued collection with change.

Form Number: HUD–92016–CA, HUD–92041, HUD–92042, HUD–92043, HUD–2880, HUD–2991, HUD–2530, HUD 424–B Standard grant forms: SF–424, SF–LLL.

Description of the need for the information and proposed use: This collection was discontinued in 2015 due to no funding being appropriated since 2011. The program received new funding in 2018 and 2019, and there was an attempt to reinstate the collection, but the process was not completed. With renewed funding for Fiscal Year 2022 and anticipated funding in the future, the Office of Asset Management and Portfolio Oversight (OAMPO) is submitting this request again. The information requested is necessary to the Department to assist HUD in determining applicant eligibility and ability to develop and operate, through the project owner, housing for persons with disabilities within statutory and program criteria. The program also provides project rental subsidies in the form of a Project Rental Assistance Contract (''PRAC'') to maintain ongoing affordability over the next forty years. A thorough evaluation of an applicant's submission is necessary to protect the government's financial interest.

Information collection	Number of respondents	Frequency of response	Response per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Legal Status of Sponsor	99	1	99	2	2	$26.00	$5,148
Sponsor's purpose community ties, and experience	99	1	99	10	10	26.00	25,740

Information collection	Number of respondents	Frequency of response	Response per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Project Information	99	1	99	15	15	26.00	38,610
Supportive Services Plan	99	1	99	20	20	26.00	51,480
List of applications submitted in response to this NOFO	99	1	99	1	1	26.00	2,574
A statement that identifies occupants and relocation costs	99	1	99	4	4	26.00	10,296
SF–424	99	1	99	0	0	0	
HUD–424B	99	1	99	0	0	0	
SF–LLL	99	1	99	0	0	0	
HUD–2880	99	1	99	0	0	0	
HUD–92016–CA	99	1	99	1	1	26.00	2,574
HUD–92041	99	1	99	.4	.4	26.00	1,029.60
HUD–92042	99	1	99	.4	.4	26.00	1,029.60
HUD–92043	99	1	99	.4	.4	26.00	1,029.60
HUD–2991	99	1	99	3	3	26.00	7,772
HUD–2530	99	1	99	3	3	26.00	7,772
Total	99	1	99	60.2	60.2	5,959.80	154,954.80

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology. HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–05583 Filed 3–17–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R6–NWRS–2023–0036; FF06R05000–XXX–FVRS31100600000; OMB Control Number 1018–New]

Agency Information Collection Activities; U.S. Fish and Wildlife Service Grassland Easements

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 Office of Management and Budget (OMB) approval.

DATES: Interested persons are invited to submit comments on or before May 19, 2023.

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods (please reference ''1018-Grassland Easements'' in the subject line of your comments):

- *Internet (preferred): https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R6–NWRS–2023–0036.
- *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: Vast grasslands once covered much of North America. Settlement, agriculture, and development have reduced prairie habitats to a patchwork of isolated grasslands surrounded by croplands, roads, and cities. Loss of grasslands is detrimental to people as well as to wildlife. Grasslands help reduce soil erosion caused by wind and water. They also filter chemicals, thus protecting our water supplies. Vegetation such as grass, forbs, and shrubs helps trap snow and rain. This allows a more regulated flow of precipitation to seep into the ground, recharging water supplies. Grasslands also provide season-long forage for livestock. Many wildlife species depend on grasslands for food, cover, and nesting sites. Protecting grasslands ensures that wildlife will be there for future generations to enjoy.

In the United States, the Prairie Pothole Region is located within the northern Great Plains, in parts of Iowa, Minnesota, Montana, North Dakota, and South Dakota. Characterized by thousands of shallow, glacially formed wetlands known as potholes, the Prairie Pothole Region provides habitat for globally significant populations of breeding waterfowl. In addition, the Prairie Pothole Region is important as breeding and migratory habitat for many species of grassland and wetland-dependent birds. The Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718d(b)(3)) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act (Pub. L. 109–59, section 1119) authorize the U.S. Fish and Wildlife Service (Service) to enter into grassland easements with private landowners. The Service acquires easements from willing sellers only. Once approved, the easements are a permanent (perpetual) easement between the Service and all present and future landowners.

A grassland easement is a legal agreement signed with the United States of America, through the Service, that pays the landowner to permanently keep their land in grass. Eligible property must lie within an approved county and have potential value to wildlife. Highest priority lands are large tracts of grassland with high wetland densities, and native prairie or soils most likely to be converted to cropland. Landowners retain the right to open or close their lands to hunting and trapping, as they have in the past. In addition, subsurface rights such as oil, gas, and minerals are not affected. However, the easement may limit enrollment or participation in U.S. Department of Agriculture programs where base acres of cropland are used to determine program eligibility, such as the Conservation Reserve Program. Landowners should contact their local Farm Service Agency for information regarding eligibility. Property subject to a grassland easement remains on local tax rolls. By selling easements, landowners receive funds to pay down debt, reinvest in capital improvements, or buy other lands to maintain and/or expand working lands.

Landowners who sell a grassland easement to the Service agree to maintain permanent vegetative cover such as forbs, grasses, and low shrubs. The value the Service pays is affected by the easement type and the permitted uses. Land encumbered by a grassland easement may not be cultivated. If the landowner retains grazing rights, grazing is allowed anytime during the year. However, mowing, haying, and grass seed harvesting are restricted, and may be delayed until after July 15 each year. This specific restriction is designed to help grassland nesting species, such as ducks and pheasants, complete their nesting before the grass is disturbed.

The Service collects the following information in conjunction with the administration of grassland easements:

Application Process

To apply for the Grassland Easement Program, landowners must contact the Service to speak to a realty specialist or field biologist, who can explain the program and answer questions from the landowner. If the landowner decides they would like to participate in the program, a site inspection will be scheduled.

A Service realty specialist estimates the value of the easement based on the assessed value of the proposed land. In situations where a landowner is purchasing the land under a contract for deed, in order for an easement to be placed on the property, both the purchaser and the contract seller, who holds the legal title, must sign the easement agreement. When the Service accepts the easement, the landowner will receive a letter, sent via certified mail, notifying them of the acceptance of the easement being recorded at the county courthouse. A copy of the easement will be included with the certified letter.

Typically, within 8–12 months after the easement is signed, the Service makes one single lump-sum payment to the landowner, in the form of an electronic funds transfer (EFT) from the U.S. Treasury, for the full amount specified in the easement. The Interior Business Center will issue an IRS Form 1099–S at the end of the calendar year. The payment may not be taxable; however, it should be reported on the landowner's Federal income tax return.

The Service is required to monitor easements annually. It is the responsibility of the refuge manager to monitor and inspect easements for compliance, maintain communications with landowners, and ensure habitat values lost or damaged as a result of easement violations are restored. To avoid easement violations, landowners must contact their local Service representative before performing any alterations that may impact vegetation or wetlands within the easement boundary. Violation of easement terms may result in legal prosecution, fines, and restitution.

Should the quality of the grassland easement deteriorate, the landowner may obtain a Special Use Permit (FWS Form 3–1383–G) to replant or rejuvenate tame (non-native) grassland habitat. The Service encourages grasses suitable to the landowner's needs and also to the long-term benefit of wildlife. Cost-sharing or donated seed may be available through Federal, State, or private organizations. Form 3–1383–G is currently approved under OMB Control No. 1018–0102.

Correction of Title Defects

The Service obtains title information from the abstracter at no cost to the landowner. The title is checked to determine that all owners of record have signed the easement. Service attorneys review the case and furnish an opinion of title. If the opinion indicates any title defects, Service personnel assist the landowner in correcting the defects before the Service accepts the easement. The process usually takes 6 to 9 months.

Subordination Agreements

Usually, mortgages do not affect easement transactions. If the mortgage holder needs to consent to the easement, we will ask the mortgage holder for a signed statement known as a subordination agreement, which subordinates the rights of the mortgage to those of the easement. Payment of easements where there is a mortgage or contract for deed is dependent on the mortgage holder or the contract seller and the terms of the landowner's agreement with them. They may require that all or part of the money be applied to the mortgage or contract balance, or they may allow the entire payment to go to the landowner.

Requests for Approval—Other Improvements

Existing farm sites and other permanent structures are excluded from grassland easements. Planning for future improvements or expansions of existing farm sites or structures is important and should be considered at the time the easement is executed, when practical. Requests for improvements may be allowed and will require prior Service approval. To avoid easement violations, landowners must contact their local Service representative before manipulating permanent vegetative cover on easement lands.

Requests for Approval—Mowing Before July 15th

Mowing before July 15 to control weeds is prohibited without prior written approval by the Service.

Notification Requirement—Sale or Transfer of Lands

Easements, and the associated covenants and agreements, run with the land and are binding on all persons and entities who come into ownership or possession of the lands subject to the easement. The landowner must notify the Regional Director in writing of any sale or transfer at least 30 days following the sale or transfer of any portion of the lands subject to this easement.

Recordkeeping Requirements

Landowners may be required to maintain and/or furnish documentation such as records of ownership, sales, property characteristics, and corresponding assessed values of record, upon request, as part of the application process or associated information collections.

Non-Hour Cost Burdens on Landowners

Landowners are responsible for the management of and costs associated with noxious weed and pest control, and must also pay any fees associated with subordination agreements. They may file a claim for reimbursement from the Government.

Title of Collection: U.S. Fish and Wildlife Service Grassland Easements.

OMB Control Number: 1018-New.

Form Number: None.

Type of Review: New information collection in use without OMB approval.

Respondents/Affected Public: Individuals/households and private sector.

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

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $2,100,000 (associated with noxious and pest control requirements).

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response	Estimated annual burden hours
Application Process:					
Individuals	525	1	525	2	1,050
Private Sector	525	1	525	4	2,100
Correction of Title Defects:					
Individuals	525	1	525	3	1,575
Private Sector	525	1	525	5	2,625
Subordination Agreements:					
Individuals	500	1	500	2	1,000
Private Sector	500	1	500	5	2,500
Request for Approval—Other Improvements:					
Individuals	175	1	175	3	525
Private Sector	200	1	200	2	400
Request for Approval—Mowing Before July 15th:					
Individuals	50	1	50	1	50
Private Sector	50	1	50	1	50
Notification Requirement—Sale or Transfer of Lands:					
Individuals	20	1	20	2	40
Private Sector	20	1	20	2	40
Totals	*3,615*	.....	*3,615*	.....	*11,955*

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. 2023–05591 Filed 3–17–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2023–N018; FXES11130100000–234–FF01E00000]

Endangered Species; Receipt of Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit application; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application for a permit to conduct activities intended to enhance the propagation and survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on this application. Before issuing the requested permit, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before April 19, 2023.

ADDRESSES:

Document availability and comment submission: Submit a request for a copy of the application and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name and application number (*i.e.,* Zoological Society of San Diego, ES060179):

- *Email: permitsR1ES@fws.gov.*
- *U.S. Mail:* Marilet Zablan, Regional Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Karen Colson, Acting Regional Recovery Permit Coordinator, Ecological Services, (208) 685–6956 (telephone); *permitsR1ES@fws.gov* (email). 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: We, the U.S. Fish and Wildlife Service, invite the public to comment on an application for a permit under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permit would allow the applicant to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit request are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing this permit. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to this application. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
ES060179	Zoological Society of San Diego, San Diego, CA.	ʻĀkohekohe (*Palmeria dolei*), Maui Parrotbill/Kiwikiu (*Pseudonestor xanthophrys*), Akikiki (*Oreomystis bardii*).	Hawaii	Increase in the number of individuals taken from the wild for captive holding and breeding.	Amend.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit to the applicant listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Marilet A. Zablan,

Regional Program Manager for Restoration and Endangered Species Classification, Pacific Region.

[FR Doc. 2023–05573 Filed 3–17–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2023–N012; FXES11130900000/234/FF09E32000; OMB Control Number 1018–0095]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Endangered and Threatened Wildlife, Experimental Populations

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 existing information collection without change.

DATES: Interested persons are invited to submit comments on or before April 19, 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 ''1018–0095'' in the subject line of your comments.

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.

On October 4, 2022, we published in the **Federal Register** (87 FR 60197) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on December 5, 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–HQ–ES–2022–0140) 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 the following comments in response to that notice:

Comment 1: Electronic comment received via *Regulations.gov* (FWS–HQ–ES–2022–0140–0002) from Jean Publiee on October 7, 2022. The comment did not address the information collection requirements.

Agency Response to Comment 1: No response required.

Comment 2: Anonymous electronic comment received via *Regulations.gov* (FWS–HQ–ES–2022–0140–0003) on October 19, 2022. The comment did not address the information collection requirements.

Agency Response to Comment 2: No response required.

Comment 3: Anonymous electronic comment received via *Regulations.gov* (FWS–HQ–ES–2022–0140–0004) on December 5, 2022. The comment did not address the information collection requirements.

Agency Response to Comment 3: No response required.

Comment 4: Electronic comment received via *Regulations.gov* (FWS–HQ–ES–2022–0140–0005) from Francisco Santiago-Avila on December 2, 2022. Mr. Santiago-Avila supports this information collection and provides suggestions on ways to enhance the quality, utility, and clarity of the information to be collected. Specifically, he suggests collaboration with volunteers to perform monitoring, recommends publication of specific mortality data, and recommends analyzing the effectiveness of management interventions.

Agency Response to Comment 4: We appreciate Mr. Santiago-Avila's suggestions and acknowledge that many of the recommended actions are already under way. This information collection includes all experimental population monitoring and reporting requirements described by regulation under 50 CFR 17.84, where species-specific requirements are described in further detail. It is the responsibility of the lead office for an experimental population to engage with the public for any assistance needed for the monitoring of these populations, if appropriate. The lead field office tracks, manages, and analyzes mortality data, as appropriate for the species, as part of the requirement to periodically evaluate the success or failure of the reintroduction. The requirements for the periodic evaluation of effectiveness are also specified in each species-specific experimental population final rule.

Publishing location-specific mortality information, as the commenter suggested, is not feasible because it could result in an increased risk of illegal/unauthorized take. Furthermore, for monitoring the effectiveness of management interventions, it is not always feasible to measure effectiveness of indirect preventative techniques due to the variability in year-to-year variation in where experimental populations overlap with livestock, and landowners are not required to report on their use of indirect preventative techniques to the Service as they are often voluntary measures.

Comment 5: Electronic comment received via *Regulations.gov* (FWS–HQ–ES–2022–0140–0006) from Michael Robinson on December 5, 2022. Mr. Robinson suggested additional categories of information that could be collected under this information collection, including: (1) preventative techniques implemented to protect livestock from predation by animals in an experimental population, (2) time elapsed between initial and subsequent predations on livestock by a particular animal of an experimental population, (3) information regarding illegal take of animals of experimental populations, and (4) identities of individuals having or intending to illegally take animals of experimental populations.

Agency Response to Comment 5: Mr. Robinson's suggestions for information collection include data that are already collected and tracked by Service employees as specified in 50 CFR part 17 subpart H (existing data collections approved under OMB Control Number 1018–0095), as well as in each species-specific final rule issued by the Service establishing an experimental population. If we issue a permit for take of a listed animal of an experimental population relative to depredation prevention, the reporting requirements would be specified under the permit's terms and conditions and be covered under OMB Control Number 1018–0094. The Service acknowledges the importance of this type of information and affirms that this information is being collected in this collection or within 1018–0094.

Additionally, the commenter's third and fourth suggestions request information regarding investigations performed by the Service's Office of Law Enforcement. This information cannot be shared during ongoing investigations; however, once investigations are resolved, the outcomes of cases may be shared at *https://www.fws.gov/program/office-of-law-enforcement/news*.

Comment 6: Electronic comment received via *Regulations.gov* (FWS–HQ–ES–2022–0140–0007) from Joe Bushyhead on December 5, 2022. Mr. Bushyhead supports the renewal and

suggests that the information collection include mandatory reporting and that information collection should be conducted at regular intervals with subsequent public disclosure, as appropriate.

Agency Response to Comment 6: The Service cannot require the public or its partners to report on information broadly. However, if we issue a permit for take of a listed animal of an experimental population, the reporting requirements would be specified under the permit's terms and conditions and be covered under OMB Control Number 1018–0094. Where specific reporting requirements exist with regards to permits, especially as to whether the reporting is mandatory, would be contained in that permit's terms and conditions. Failure to adhere to the terms of the permit could result in permit revocation or non-renewal. The required timing interval for reporting of take, if any, is specified in each species' specific regulations under 50 CFR 17.84.

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: Section 10(j) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), authorizes the Secretary of the Interior to establish experimental populations of endangered or threatened species. Because the ESA protects individuals of experimental populations, the information we collect is important for monitoring the success of reintroduction and recovery efforts. This is a nonform collection (meaning there is no designated form associated with this collection). Regulations at 50 CFR 17.84 contain information collection requirements for experimental populations of vertebrate endangered and threatened species. These regulations identify and describe the three categories of information we collect, which include:

(1) *General take or removal.* ''Take'' is defined by the ESA as ''[to] harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' In this information collection, take most commonly is considered to be in the form of human-related mortality, including:

a. Unintentional taking incidental to otherwise lawful activities (*e.g.,* highway mortalities);

b. Animal husbandry actions authorized to manage the population (*e.g.,* translocation or providing aid to sick, injured, or orphaned individuals);

c. Take in defense of human life;

d. Take related to defense of property (if authorized); or

e. Take in the form of authorized harassment.

(2) *Depredation-related take.* Involves take for management purposes of documented livestock depredation, and may include authorized harassment or authorized lethal take of experimental population animals in the act of attacking livestock. See 50 CFR 17.84 for specific provisions of harassment for each species within this section.

The information that we collect includes:

a. Name, address, and phone number of reporting party,

b. Species involved,

c. Type of incident,

d. Quantity of take,

e. Location and time of the reported incident, and

f. Description of the circumstances related to the incident.

(3) *Specimen collection, recovery, or reporting of dead individuals.* This information documents incidental or authorized scientific collection. Most of the information collected addresses the reporting of sightings of experimental population animals or the inadvertent discovery of an injured or dead individual.

Service recovery specialists use this information to determine the success of reintroductions in relation to established recovery plan goals for the experimental populations of vertebrate endangered and threatened species involved. In addition, this information helps us to assess the effectiveness of control activities in order to develop better means to reduce problems with livestock for those species where depredation is a problem.

Title of Collection: Endangered and Threatened Wildlife, Experimental Populations, 50 CFR 17.84.

OMB Control Number: 1018–0095.

Form Numbers: None.

Type of Review: Extension without change of a currently approved collection.

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

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Annual number of respondents	Total annual responses	Completion time per response	Total annual burden hours *
Notification—General Take or Removal				
Individuals	12	12	.5	6
Private Sector	7	7	.5	4

Requirement	Annual number of respondents	Total annual responses	Completion time per response	Total annual burden hours *
Government	29	29	.5	15
Notification—Depredation-Related Take				
Individuals	25	25	.5	13
Private Sector	2	2	.5	1
Government	9	9	.5	5
Notification—Specimen Collection				
Individuals	3	3	.5	2
Private Sector	2	2	.5	1
Government	16	16	.5	8
Totals	105	105		55

* 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. 2023–05550 Filed 3–17–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2023–0031; FF09S00000/XXX/FXSC42050900000/4205; OMB Control Number 1018—New]

Agency Information Collection Activities; Big Cat Public Safety Act Registration

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 emergency clearance of a new collection of information.

DATES: Interested persons are invited to submit comments on or before May 19, 2023.

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods (reference ''1018–BCPSA Registration'' in the subject line of your comment):

- *Internet (preferred): https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–IA–2023–0031.
- *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 may 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 intends to seek emergency clearance of a new information collection under the authority of 16 U.S.C. 3372(e), pursuant to the Big Cat Public Safety Act (BCPSA), Public Law 117–243, December 20, 2022, 136 Stat. 2336 (amending the Captive Wildlife Safety Act, and Lacey Act Amendments of

1981, 16 U.S.C. 3371–3374 and 3376, and 7 U.S.C. 1997). ''Prohibited wildlife species'' (also referred to as ''big cats'') is defined as ''any live species of lion, tiger, leopard, cheetah, jaguar, or cougar or any hybrid of such species'' (16 U.S.C. 3371(h)). This includes any of the following species, or hybrids of any of these species: Lion (*Panthera leo*), tiger (*Panthera tigris*), leopard (*Panthera pardus*), snow leopard (*Uncia uncia*), clouded leopard (*Neofelis nebulosa*), jaguar (*Panthera onca*), cheetah (*Acinonyx jubatus*), cougar (*Puma concolor*) (50 CFR 14.252).

The BCPSA makes it unlawful for any person to—(A) import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce, or in a manner substantially affecting interstate or foreign commerce, or (B) breed or possess any live prohibited wildlife species (16 U.S.C. 3372(e)(1)). The BCPSA also makes it unlawful for any person to attempt to commit any of these acts with prohibited wildlife species (16 U.S.C. 3372(a)(4)). Violators of the BCPSA are subject to civil and criminal penalties (16 U.S.C. 3373), and big cats bred, possessed, imported, exported, transported, sold, received, acquired, or purchased contrary to the provisions of the BCPSA shall be subject to forfeiture to the United States (16 U.S.C. 3374).

The BCPSA also authorizes a limited exception from the prohibition on possession for a person or entity to register live specimens of prohibited wildlife species if certain requirements are met and continue to be met (16 U.S.C. 3372(e)(2)(E)). The exception is intended to allow current owners of big cats at the time of enactment of the BCPSA to keep their big cats; however, they must register with the Service; are not allowed to breed, acquire, or sell big cats; and cannot allow direct contact between the public and their big cats (H. Rept. No. 117–428, p. 17 (July 22, 2022)). By registering their big cats no later than the statutory deadline (June 18, 2023), the person or entity (registrant) may continue to possess registered big cats that were born before the date of enactment (December 20, 2022) and legally in their possession on or before the date of enactment, as long as the registrant meets and continues to meet all requirements of 16 U.S.C. 3372(e)(2)(E).

To qualify to continue to possess live specimens of prohibited wildlife species (also referred to as ''big cats'') under 16 U.S.C. 3372(e)(2)(E), a registrant must register all live specimens of prohibited wildlife species in their possession with the United States Fish and Wildlife Service no later than June 18, 2023. The purpose of the registration form is to enable owners of big cats who want to continue to possess their big cats in accordance with 16 U.S.C. 3372(e)(2)(E) to register all live specimens of big cats in their possession with the Service no later than June 18, 2023. The Service will use the information collected to verify eligibility to possess big cats under the BCPSA in accordance with 16 U.S.C. 3372(e)(2)(E).

Big cats bred or possessed in violation of the BCPSA and any big cat that is not registered on or before June 18, 2023, shall be subject to forfeiture for violation of the BCPSA prohibition on possession, unless another limited exception applies in accordance with the BCPSA. (16 U.S.C. 3372(e)(2)(A)–(D), 3374(a)). These other exceptions apply only to qualifying entities exhibiting big cats to the public under a Class C license from the Department of Agriculture, or a Federal facility registered with the Department of Agriculture that exhibits animals; State colleges, State universities, State agencies, or State-licensed veterinarians; qualifying wildlife sanctuaries; or qualifying transporters only when in custody of any big cat solely for the purpose of expeditiously transporting the big cat to a person who qualifies for an exception under the BCPSA.

To meet the requirements for an exception from the prohibition on possession under 16 U.S.C. 3372(e)(2)(E), the registrant must:

- Register each individual big cat in their possession with the U.S. Fish and Wildlife Service by no later than 180 days after the date of enactment of the BCPSA, December 20, 2022 (*i.e.,* no later than June 18, 2023) (16 U.S.C. 3372(e)(2)(E)(i));
- Not breed, acquire, or sell any big cat after the date of the enactment of the BCPSA, December 20, 2022 (The requirement that the registrant not breed, acquire, or sell any prohibited wildlife species after December 20, 2022, applies regardless of whether the activity is intrastate, interstate, or international) (16 U.S.C. 3372(e)(2)(E)(ii)); and
- Not allow direct contact between the public and any big cat after the date of the enactment of the BCPSA, December 20, 2022 (16 U.S.C. 3372(e)(2)(E)(iii).

To meet the requirements under 16 U.S.C. 3372(e)(2)(E), the big cat(s) in the registrant's possession must:

- Have been born before the date of enactment of the BCPSA, December 20, 2022 (16 U.S.C. 3372(e)(2)(E));
- Not have been acquired by the registrant after the date of enactment, December 20, 2022 (*i.e.,* legally in the registrant's possession on or before December 20, 2022, and have remained continually in the registrant's possession) (16 U.S.C. 3372(e)(2)(E)(ii)); and
- Have been registered by the owner with the U.S. Fish and Wildlife Service by no later than 180 days after the date of enactment of the BCPSA, December 20, 2022 (*i.e.,* no later than June 18, 2023) (16 U.S.C. 3372(e)(2)(E)(i)).

The Service recognizes that there may have been big cats bred before the effective date of the BCPSA, that were subsequently born on or after the effective date of the BCPSA. The text of the BCPSA only allows big cats born before the effective date of the BCPSA to be registered under 16 U.S.C. 3372(e)(2)(E). If a big cat is not registered, then it may not be possessed by its owner under the limited exception of 16 U.S.C. 3372(e)(2)(E); and, if each big cat owned by a registrant is not registered by the statutory deadline (*i.e.,* no later than June 18, 2023), then the registrant does not qualify to possess any of their big cats under 16 U.S.C. 3372(e)(2)(E). However, the BCPSA does not specifically address big cats born on or after the effective date of the BCPSA from breeding that occurred before the effective date of the BCPSA. As noted above, the exception is intended to allow current owners of big cats to keep big cats that were legally in their possession at the time of enactment of the BCPSA, if they register their big cats and comply with the BCPSA, including by not breeding any big cats on or after the effective date of the BCPSA. (H. Rept. No. 117–428, p. 17 (July 22, 2022).) The BCPSA was not intended to retroactively prohibit breeding that occurred before the enactment of the BCPSA. Recognizing these intentions, and to avoid a reading of the BCPSA that would lead to an impossibility for some current owners of big cats both to comply with the law and possess big cats that are born on or after the effective date of the BCPSA from breeding that occurred before the effective date of the BCPSA, such big cats will be considered eligible for registration. In addition to meeting all the other requirements above, such big cats may be registered if the registrant includes documentation demonstrating that the breeding of the big cat occurred before December 20, 2022 (the effective date of the BCPSA). The gestation period for all big cats is substantially less than the 180-day registration period provided in the BCPSA, meaning that any owners of big cats that are affected still must meet the statutory deadline to register (June 18, 2023). Accordingly,

except as provided by the BCPSA (16 U.S.C. 3372(e)(2)(A)–(D)), possession of any big cat born on or after December 20, 2022, violates the BCPSA, unless: documentation is provided to prove the big cat was born on or after December 20, 2022, from breeding that occurred before December 20, 2022, and all other registration requirements of 16 U.S.C. 3372(e)(2)(E) are met as described above.

It remains the responsibility of registrants to follow all local, State, and Federal laws and regulations for possession of and other activities with prohibited wildlife species, and registration under the BCPSA does not constitute authorization to engage in any activity prohibited by such laws and regulations. For example, most big cats are listed as either endangered or threatened under the Endangered Species Act and take of such species and their offspring is prohibited, with limited exceptions for take authorized by statute, regulation, or permit (16 U.S.C. 1531 *et seq.;* 50 CFR part 17).

To comply with the requirements of the BCPSA, the Service will seek OMB approval of FWS Form 3–200–11, ''Registration Form—Big Cat Public Safety Act (Pub. L. 117–243, December 20, 2022, 136 Stat 2336), which will collect the following information:

- Name, birth date, and contact information of individual applicant;
- Name, tax ID number, and contact information of business, corporation, or trust, if applicable;
- Information for officer of business, corporation, or trust, if applicable;
- Detailed information for big cats possessed (not including hybrids), to include:

—Common name of big cat;
—Name given to individual big cat, if applicable,
—Genus, species, and subspecies;
—Birthdate and date of acquisition, including supporting documentation;
—Unique identifier information (*i.e.,* microchip or tattoo);
—Sex;
—Description (*e.g.,* eye color, scars, ear tags);
—Photographs of big cat
—Physical location of individual big cat (if different from registrant's contact information);
—Protocols taken to prevent breeding;
—Protocols taken to prevent direct contact between public and prohibited wildlife species; and
—Copies of all local, State, or Federal licenses held in relation to the big cats, if applicable.

- Detailed information for hybrid big cats possessed, to include:

—Name of hybrid big cat;
—Name given to individual big cat, if applicable,
—Genus, species, and subspecies;
—Birthdate and date of acquisition, including supporting documentation;
—Unique identifier information (*e.g.,* microchip or tattoo);
—Sex;
—Description (*e.g.,* eye color, scars, ear tags);
—Photographs of big cat
—Physical location of big cat (if different from registrant's contact information);
—Protocols taken to prevent breeding;
—Protocols taken to prevent direct contact between public and prohibited wildlife species; and
—Copies of all local, State, or Federal licenses held in relation to the big cats, if applicable.

- Information collected to amend original registration, to include:

—Genus, species, subspecies, name of big cat, and unique identifier;
—Information for new location when individual big cat is relocated after registration;
—Description of any changes in protocols to prevent breeding as previously described in original registration;
—Description of any changes in protocols to prevent direct contact between the public and the prohibited wildlife as previously described in original registration;
—Change in unique identifier (*i.e.,* microchip or tattoo);
—Contact information for new owner;
—Notification of big cat's death, to include date; and
—The manner of disposal of big cat's remains (requires documentation from veterinarian or other authority describing cause of death and how the remains were disposed).

A copy of FWS Form 3–200–11 is available to the public by submitting a request to the Service Information Collection Clearance Officer using one of the methods identified in the **ADDRESSES** section of this notice.

Title of Collection: Big Cat Public Safety Act Registration.

OMB Control Number: 1018—New.

Form Number: 3–200–11.

Type of Review: Emergency clearance of a new collection of information.

Respondents/Affected Public: Individuals and private sector.

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	Estimated annual burden hours
Initial Registration (Form 3–200–11):					
Individuals	2,000	1.25	2,500	1	2,500
Private Sector	2,000	1.25	2,500	1	2,500
Amendments (Form 3–200–11):					
Individuals	250	1	250	0.2	50
Private Sector	250	1	250	0.2	50
Totals	4,500		5,500		5,500

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. 2023–05590 Filed 3–17–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R7–MB–2023–0001; FF07M01000–234–FXMB12310700000; OMB Control Number 1018–0168]

Agency Information Collection Activities; Alaska Native Handicrafts

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act, we, the U.S. Fish and Wildlife Service, are proposing to renew an information collection without change.

DATES: Interested persons are invited to submit comments on or before May 19, 2023.

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods (reference Office of Management and Budget (OMB) Control Number 1018–0168 in the subject line of your comment):

- *Internet (preferred): https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R7–MB–2023–0001.
- *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 Migratory Bird Treaty Act of 1918 (16 U.S.C. 712(1)) authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to ''issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during the Alaska spring and summer migratory bird subsistence harvest seasons so as to provide for the preservation and maintenance of stocks of migratory birds.'' Article II(4)(b) of the Protocol between the United States and Canada amending the 1916 Convention for the Protection of Migratory Birds in Canada and the United States (Protocol) provides a legal basis for Alaska Native people to be able to sell handicrafts that contain the inedible parts of birds taken for food during the Alaska spring and summer migratory bird subsistence harvest. The Protocol also dictates that sales would be allowed in strictly limited situations, pursuant to a regulation by a competent authority in cooperation with management bodies. The Protocol does not authorize the taking of migratory birds for commercial purposes.

In 2017, we issued a final rule (July 24, 2017, 82 FR 34263), developed under a co-management process involving the Alaska Department of Fish and Game and Alaska Native representatives, that amended the permanent migratory bird subsistence harvest regulations at 50 CFR 92.6 to enable Alaska Native people to sell authentic native articles of handicraft or clothing that contain inedible byproducts from migratory birds that were taken for food during the Alaska migratory bird subsistence harvest season. Article II(4)(b) of the Protocol dictates that sales will be under strictly limited situations. The sale by Alaska Native people of a limited number of handicrafts containing inedible migratory bird parts provides a small source of additional income that we conclude is necessary for the ''essential needs'' of Alaska Native people in predominantly rural Alaska. This limited opportunity for sale is consistent with the language of the Protocol and is expressly noted in the Letter of Submittal dated May 20, 1996, for the Treaty Protocol, specifically Article II(4)(b) of the Protocol, to be consistent with the customary and traditional uses of Alaska Native people. The activity by Alaska Native people is also consistent with the preservation and maintenance of migratory bird stocks.

Alaska Native artists will show eligibility with a Tribal enrollment card, Bureau of Indian Affairs card, or membership in the Silver Hand program. The State of Alaska Silver Hand program helps Alaska Native artists promote their work in the marketplace and enables consumers to identify and purchase authentic Alaska

Native art. The insignia indicates that the artwork on which it appears is created by hand in Alaska by an individual Alaska Native artist. Only original contemporary and traditional Alaska Native artwork, not reproductions or manufactured work, may be identified and marketed with the Silver Hand insignia. To be eligible for a 2-year Silver Hand permit, an Alaska Native artist must be a full-time resident of Alaska, be at least 18 years old, and provide documentation of membership in a federally recognized Alaska Native tribe. The Silver Hand insignia may only be attached to original work that is produced in the State of Alaska.

The final rule requires that FWS Form 3–2484 (a simple certification which is not subject to the PRA) or a Silver Hand insignia accompany each Alaska Native article of handicraft or clothing that contains inedible migratory bird parts. It also requires all consignees, sellers, and purchasers to retain this documentation with each item and produce it upon the request of a law enforcement officer. The final rule also requires that artists maintain adequate records of the certification or Silver Hand insignia with each item and requires artists and sellers/consignees to provide the documentation to buyers. These recordkeeping and third-party notification requirements are subject to the PRA and require OMB approval.

The public may request copies of a Form 3–2484 contained in this information collection by sending a request to the Service Information Collection Clearance Officer (see **ADDRESSES**).

Title of Collection: Alaska Native Handicrafts, 50 CFR 92.6.

OMB Control Number: 1018–0168.

Form Numbers: 3–2484.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals and businesses.

Total Estimated Number of Annual Respondents: 2 (placeholder of 1 respondent associated with the regulatory requirement for each respondent category).

Total Estimated Number of Annual Responses: 2.

Estimated Completion Time per Response: 5 minutes.

Total Estimated Number of Annual Burden Hours: 0.

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

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. 2023–05574 Filed 3–17–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–35463; 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 March 4, 2023, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by April 4, 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 March 4, 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.

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

FLORIDA

Sarasota County

Manasota Beach Club Historic District, 7660 Manasota Key Rd., Englewood vicinity, SG100008818

MARYLAND

Baltimore Independent City

Jackson, Lillie Carroll, House (Civil Rights in Baltimore, Maryland, 1831–1976 MPS), 1320 Eutaw Pl., Baltimore, MP100008816

MICHIGAN

Oakland County

Grace, John, School, 21030 Indian St., Southfield, SG100008828

Wayne County

Saint Matthew Parish, 6021 Whittier Ave., Detroit, SG100008814

OHIO

Cuyahoga County

Cleveland Jewish Center-Cory United Methodist Church (Twentieth-Century African American Civil Rights Movement in Ohio MPS), 1117 East 105th St., Cleveland, MP100008829

Guernsey County

Scott, Matthew, House, 210 Fair Ave., Fairview, SG100008837

UTAH

Weber County

Aultorest Memorial Park Historic District, 836 36th St., Ogden, SG100008813

VIRGINIA

Southampton County

Rotherwood, 5410 Southhampton Pkwy., Capron, SG100008835

WEST VIRGINIA

Calhoun County

Calhoun County High School, 101–103 School St., Grantsville, SG100008819

Jefferson County

Osbourn, James, Farm, 1901 Trough Rd., Sheperdstown vicinity, SG100008820

Kanawha County

Tiskelwah School, 600 Florida St., Charleston, SG100008821

Ohio County

Dimmeydale Historic District, Bounded by Cyprus Ave., Wheeling Cr., Veron Ave., and the alley just east of Greenwood Ave., Wheeling, SG100008822

Pocahontas County

Huntersville Old County Jail, Barlow Lane Rd., Huntersville, SG100008823

Putnam County

Eleanor Historic District, Fir, Gum, Beech, Dogwood, Cherry, Chestnut, Cypress, Ivywood, Hemlock, Juniper, Kapok, Locust, Maple, and Nutmeg Sts., Park Rd., Eleanor and Ash Cirs., Roosevelt Blvd., Eleanor, SG100008824

Raleigh County

New Salem Baptist Church, 2197 McAlpin Rd., Tams, SG100008836

Wayne County

Dunlow Norfolk & Western Railway Depot, 63 Old Railroad Rd., Dunlow, SG100008825

Additional documentation has been received for the following resource:

TENNESSEE

Davidson County

Nashville City Cemetery (Additional Documentation), 1001 South 4th Ave., Nashville, AD72001235

Nomination submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

NEW JERSEY

Essex County

Thomas Edison National Historical Park, 211 Main St. and 12 Honeysuckle Ave., West Orange, SG100008826

Authority: Section 60.13 of 36 CFR part 60.

Dated: March 8, 2023.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2023–05546 Filed 3–17–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2023–0016]

Notice of Determination of No Competitive Interest (DNCI) in a Proposed Research Lease Area on the Gulf of Maine Outer Continental Shelf (OCS)

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of no competitive interest determination.

SUMMARY: BOEM provides notice of its determination that competitive interest does not exist in the area identified in ''Research Lease on the [OCS] in the Gulf of Maine, Request for Competitive Interest (RFCI)'' published in the **Federal Register** on August 19, 2022. BOEM published that RFCI after receiving an OCS renewable energy research lease application from the State of Maine Governor's office in October 2021. BOEM received complete submissions in response to the RFCI from two qualified entities. Upon review of the whole record, including the two responses, BOEM determined that any interest in the lease area is not competitive.

DATES: Effective March 20, 2023.

FOR FURTHER INFORMATION CONTACT: Luke Feinberg, Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road (VAM–OREP), Sterling, Virginia 20166, *Luke.Feinberg@boem.gov* or (571) 474–7616.

SUPPLEMENTARY INFORMATION:

Authority

This DNCI is made pursuant to subsection 8(p)(3) of the OCS Lands Act (43 U.S.C. 1337(p)(3)) and its implementing regulations at 30 CFR 585.239. Subsection 8(p)(3) of the OCS Lands Act requires that an OCS renewable energy lease, easement, or right-of-way (ROW) be issued ''on a competitive basis unless the Secretary [of the Interior] determines after public notice of a proposed lease, easement, or [ROW] that there is no competitive interest.'' The Secretary delegated the authority to make such determinations to BOEM.

Determination and Next Steps

This DNCI provides public notice that BOEM determined competitive interest does not exist in the proposed research lease area. This determination does not guarantee that the State of Maine will receive a research lease. After publication of this notice, BOEM may proceed with the research leasing process using the procedures described in 30 CFR 585.239. The next steps in that process include initiating an environmental review of potential impacts from leasing activities associated with the proposed research lease, siting the lease within the area identified in the RFCI, and negotiating lease terms.

Map of the Area

A map of Maine's proposed research lease area can be found at: *https://www.boem.gov/renewable-energy/maine/state-activities/gulf-maine/state-maine-research-lease-application.*

Elizabeth Klein,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2023–05639 Filed 3–17–23; 8:45 am]

BILLING CODE 4340–98–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain LED Landscape Lighting Devices, Components Thereof, and Products Containing Same DN 3672;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised

that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Wangs Alliance Corporation d/b/a WAC Lighting on March 10, 2023. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain LED landscape lighting devices, components thereof, and products containing same. The complaint names as respondent: Hinkley Lighting, Inc. of Avon Lake, OH. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondent alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3672) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). 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. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: March 14, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–05563 Filed 3–17–23; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On March 14, 2023, the Department of Justice lodged a proposed Agreement and Consent Decree Concerning Distribution of Certain Assets Among Claimants (''Consent Decree'') with the United States District Court for the Eastern District of New York in a lawsuit entitled *United States* v. *Gerald Cohen, Lawrence Aviation Industries, Inc. and 125 Acres More or Less,* Civil Action No. CV–06–4818 (JMA)(AYS).

In this action, the United States obtained a judgement for recovery of response costs as provided under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), from Lawrence Aviation Industries, Inc., and Gerald Cohen, related to their historical operations at Lawrence Aviation Industries, Inc., in Port Jefferson, New York (''the Site''). The proposed Consent Decree resolves the United States' remaining claim against Defendant 125 Acres of Land More or Less (''Defendant 125 Acres''), which comprises six parcels of land.

Under the proposed Consent Decree, Defendant 125 Acres will be sold and the United States and other persons that have filed claims in rem with respect to Defendant 125 Acres will receive proceeds from the sale as described in Appendix B to the proposed Consent Decree. Potential uses of the various parcels of land following the sale are described in Section VI of the Consent Decree. The sale will be effected by SCLB Holdings, LLC, a domestic limited liability company created by the Suffolk County Landbank Corporation (the ''Landbank''). The sale will follow foreclosure on Suffolk County tax liens by SCLB Holdings, LLC. Neither the Landbank nor SCLB Holdings, LLC have claims against Defendant 125 Acres.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Gerald Cohen, Lawrence Aviation Industries, Inc. and 125 Acres More or Less,* Civil Action No. CV–06–4818 (JMA)(AYS), D.J. Ref. No. 90–11–2–08707. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* A paper copy of the Consent Decree will be provided upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $13.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–05634 Filed 3–17–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0046]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection

AGENCY: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Criminal Justice Information Services (CJIS) Division, Federal Bureau of Investigation (FBI), Department of Justice (DOJ) 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. Friction Ridge Cards: Arrest and Institution FD–249; Applicant FD–258; Identity History Summary Request FD–1164; FBI Standard Palm Print FD–884; Supplemental Finger and Palm Print FD–884a; Voluntary Appeal File Fingerprint FD–1212; Firearm-Related Challenge Fingerprint FD–1211.

DATES: The DOJ encourages public comment and will accept input until May 19, 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 Larry E. Cotton-Zinn, Management and Program Analyst, Criminal History Information and Policy Unit, CJIS, FBI, BTC–3, 1000 Custer Hollow Road; Clarksburg, WV 26306; phone: 304–625–5590 or email *fbi-iii@fbi.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 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 quality, utility, and clarity of the information to be collected and 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: Revision of a currently approved collection.

Title of the Form/Collection: Friction Ridge Cards: Arrest and Institution; Applicant; Identity History Summary Request; FBI Standard Palm Print; Supplemental Finger and Palm Print; Voluntary Appeal File Fingerprint; Firearm-Related Challenge Fingerprint. Agency form number, if any, and the applicable component of the Department sponsoring the collection: Agency form number: Forms FD–249 (Arrest and Institution), FD–258 (Applicant), and FD–1164 (Identity History Summary Request); FD–884 (FBI Standard Palm Print); FD–884a (Supplemental Finger and Palm Print); FD–1212 (Voluntary Appeal File Fingerprint); FD–1211 (Firearm-Related Challenge Fingerprint) encompassed under OMB 1110–0046; CJIS Division, FBI, DOJ.

Affected public who will be asked or required to respond, as well as a brief abstract: Primary: City, county, state, Federal and tribal law enforcement agencies; civil entities requesting security clearance and background checks. This collection is needed to collect information on individuals requesting background checks, security clearance, or those individuals who have been arrested for or accused of criminal activities. Acceptable data is stored as part of the Next Generation Identification System (NGI) of the FBI.

An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 460,762 respondents will complete each form within approximately 10 minutes. A respondent may submit multiple forms thus resulting in 69.2 million total annual responses.

An estimate of the total public burden (in hours) associated with the collection: There are an estimated 11.5 million total annual burden hours associated with this collection.

If additional information is required contact: John Carlson, Department Clearance Officer, United States

Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Dated: March 14, 2023.

John Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–05605 Filed 3–17–23; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice on Reallotment of Workforce Innovation Opportunity Act Title I Formula Allotted Funds for Dislocated Worker Activities for Program Year 2022

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Workforce Innovation Opportunity Act (WIOA), requires the Secretary of Labor (Secretary) to conduct reallotment of certain WIOA formula allotted funds based on ETA–9130 financial reports submitted by states at of the end of the prior Program Year (PY). This notice publishes the Dislocated Worker PY 2022 funds for recapture by state and the amount to be reallotted to eligible states.

DATES: This notice is effective March 20, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Vitelli, Administrator, U.S. Department of Labor, Office of Workforce Investment, Employment and Training Administration, Room C–4510, 200 Constitution Avenue NW, Washington, DC. Telephone (202) 693–3639 (this is not a toll-free number) or fax (202) 693–3981.

SUPPLEMENTARY INFORMATION: In the Fiscal Year (FY) 2022 Consolidated Appropriations Act, Congress appropriated WIOA PY 2022 funds in two portions: (1) funds available for obligation July 1, 2022 (*i.e.,* PY 2022 ''base'' funds), and (2) funds available for obligation October 1, 2022 (*i.e.,* FY 2023 ''advance'' funds). Together, these two portions make up the complete PY 2022 WIOA funding. Training and Employment Guidance Letter (TEGL) No. 09–21 announced WIOA allotments based on this appropriation and TEGL No. 19–20 alerted states to the recapture and reallotment of funds' provisions based on obligations of PY 2021 funding, as required under WIOA Section 132(c). This section and 127(c) of WIOA requires the Secretary to conduct reallotment of excess unobligated WIOA Adult, Youth, and Dislocated Worker formula funds based on ETA 9130 financial reports submitted by states at the end of the prior program year (*i.e.,* PY 2021).

WIOA regulations at 20 CFR 683.135 describe the procedures the Secretary uses for recapture and reallotment of funds. ETA will not recapture any PY 2022 funds for the Adult and Youth programs because there are no states where PY 2021 unobligated funds exceed the statutory requirements of 20 percent of state allotted funds. However, for the Dislocated Worker program, Ohio and Puerto Rico had unobligated PY 2021 funds in excess of 20 percent of their allotments. Therefore, ETA will recapture a total of $4,957,289 from PY 2022 funding from Ohio and Puerto Rico and reallot those funds to the remaining eligible states, as required by WIOA Section 132(c).

ETA will issue a Notice of Award to the states to reflect the recapture and reallotment of these funds. The adjustment of funds will be made to the FY 2023 advance portion of the PY 2022 allotments, which ETA issued in October 2022. The attached tables display the net changes to PY 2022 formula allotments.

WIOA and its implementing regulations do not provide specific requirements by which states must distribute realloted funds, so states have flexibility to determine the methodology used. For any state subject to recapture of funds, WIOA Section 132(c)(5) requires the Governor to prescribe equitable procedures for reacquiring funds from the state and local areas.

As mentioned, the recapture/reallotment adjustments will be made to the FY 2023 advance portion of the PY 2022 allotment. Therefore, for reporting purposes, states must reflect the recapture/reallotment amount (decrease or increase) in the ''Total Federal Funds Authorized'' line of any affected FY 2023 ETA 9130 financial reports (State Dislocated Worker Activities, Statewide Rapid Response, Local Dislocated Worker Activities) in a manner consistent with the method of distribution of these amounts to state and local areas used by the state. The state must include an explanation of the adjustment in the remarks section of the adjusted reports.

As part of ETA's transition away from legacy systems, the new Payment Management System (PMS) Financial Reporting System will go live for ETA grant recipients' submission of the quarterly ETA 9130 financial reports on April 3, 2023. PMS is operated by the U.S. Department of Health and Human Services, which will conduct training for ETA grant recipients on the use of the new reporting system. Additional guidance and information on the access and use of the PMS Financial Reporting System for the submission of future ETA 9130 quarterly financial reports is provided in Training and Employment Notice (TEN) No. 16–22. The PMS Financial Reporting System training sessions will be recorded and available for future reference.

I. Attachment A

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION WIOA DISLOCATED WORKER ACTIVITIES, PY 2022 REALLOTMENT TO STATES

	Calculating reallotment amount *			Impact on PY 2022 allotments		
	Excess unobligated PY 2021 funds to be recaptured from PY 2022 funds	Eligible states' PY 2021 [1] dislocated worker allotments	Reallotment amount for eligible states (based on eligible states' share of PY 2021 allotments)	Total original PY 2022 [2] allotments before reallotment	Recapture/ reallotment adjustment to PY 2022 allotments	Revised total PY 2022 allotments
Alabama	$0	$15,761,092	$81,695	$14,354,136	$81,695	$14,435,831
Alaska	0	7,633,946	39,569	6,952,482	39,569	6,992,051
Arizona **	0	36,105,314	187,146	32,882,281	187,146	33,069,427
Arkansas	0	5,494,558	28,480	5,004,071	28,480	5,032,551

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION WIOA DISLOCATED WORKER ACTIVITIES, PY 2022 REALLOTMENT TO STATES—Continued

	Calculating reallotment amount *			Impact on PY 2022 allotments		
	Excess unobligated PY 2021 funds to be recaptured from PY 2022 funds	Eligible states' PY 2021 [1] dislocated worker allotments	Reallotment amount for eligible states (based on eligible states' share of PY 2021 allotments)	Total original PY 2022 [2] allotments before reallotment	Recapture/ reallotment adjustment to PY 2022 allotments	Revised total PY 2022 allotments
California	0	149,732,614	776,113	172,716,686	776,113	173,492,799
Colorado	0	12,160,847	63,034	15,998,009	63,034	16,061,043
Connecticut	0	12,338,774	63,956	13,434,048	63,956	13,498,004
Delaware	0	3,066,469	15,895	2,792,814	15,895	2,808,709
District of Columbia	0	10,071,146	52,202	9,172,120	52,202	9,224,322
Florida	0	51,295,094	265,879	46,716,550	265,879	46,982,429
Georgia	0	33,422,525	173,240	30,438,974	173,240	30,612,214
Hawaii	0	2,119,251	10,985	2,787,961	10,985	2,798,946
Idaho	0	2,028,258	10,513	1,847,221	10,513	1,857,734
Illinois	0	51,363,593	266,234	46,778,485	266,234	47,044,719
Indiana	0	14,964,374	77,565	13,628,787	77,565	13,706,352
Iowa	0	4,937,925	25,595	4,497,235	25,595	4,522,830
Kansas	0	4,545,136	23,559	4,139,435	23,559	4,162,994
Kentucky	0	14,549,507	75,415	13,250,923	75,415	13,326,338
Louisiana	0	18,465,924	95,715	16,817,514	95,715	16,913,229
Maine	0	2,323,143	12,042	2,242,181	12,042	2,254,223
Maryland	0	13,614,694	70,569	17,212,091	70,569	17,282,660
Massachusetts	0	20,200,899	104,708	22,669,765	104,708	22,774,473
Michigan	0	34,359,104	178,095	31,292,714	178,095	31,470,809
Minnesota	0	10,349,918	53,647	9,426,224	53,647	9,479,871
Mississippi	0	15,299,204	79,301	13,933,482	79,301	14,012,783
Missouri	0	12,029,945	62,355	10,956,060	62,355	11,018,415
Montana	0	1,753,385	9,088	1,596,891	9,088	1,605,979
Nebraska	0	2,203,229	11,420	2,006,552	11,420	2,017,972
Nevada	0	15,075,456	78,141	14,994,671	78,141	15,072,812
New Hampshire	0	2,326,467	12,059	2,118,850	12,059	2,130,909
New Jersey	0	33,934,712	175,895	36,473,636	175,895	36,649,531
New Mexico **	0	16,391,301	84,962	14,928,088	84,962	15,013,050
New York	0	65,472,584	339,366	82,585,211	339,366	82,924,577
North Carolina	0	25,756,798	133,506	23,457,549	133,506	23,591,055
North Dakota	0	864,897	4,483	813,070	4,483	817,553
Ohio	262,751	0	0	30,695,154	(262,751)	30,432,403
Oklahoma	0	6,651,637	34,478	6,139,713	34,478	6,174,191
Oregon	0	11,193,029	58,017	10,443,575	58,017	10,501,592
Pennsylvania	0	47,142,465	244,355	42,934,413	244,355	43,178,768
Puerto Rico	4,694,538	0	0	62,908,530	(4,694,538)	58,213,992
Rhode Island	0	3,900,614	20,218	3,552,454	20,218	3,572,672
South Carolina	0	12,934,317	67,043	11,779,701	67,043	11,846,744
South Dakota	0	1,451,589	7,524	1,322,041	7,524	1,329,565
Tennessee	0	15,843,405	82,122	14,429,101	82,122	14,511,223
Texas	0	65,624,473	340,153	83,358,322	340,153	83,698,475
Utah **	0	3,863,062	20,024	3,518,216	20,024	3,538,240
Vermont	0	1,103,986	5,722	1,005,465	5,722	1,011,187
Virginia	0	15,539,343	80,546	14,152,452	80,546	14,232,998
Washington	0	24,435,839	126,659	22,254,509	126,659	22,381,168
West Virginia	0	11,650,017	60,386	10,610,160	60,386	10,670,546
Wisconsin	0	11,940,594	61,892	10,874,839	61,892	10,936,731
Wyoming	0	1,104,141	5,723	1,005,588	5,723	1,011,311
State Total	4,957,289	956,390,594	4,957,289	1,071,901,000	0	1,071,901,000

* Including prior year recapture/reallotment amounts.
** Includes funds allocated to the Navajo Nation.
[1] PY 2021 allotment amounts are used to determine the reallotment amount eligible states receive of the recaptured amount.
[2] PY 2022 allotment amounts are original allotment amounts per TEGL 09–21.

II. Attachment B

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION WIOA DISLOCATED WORKER ACTIVITIES, PY 2022 REVISED ALLOTMENTS WITH REALLOTMENT—PY/FY SPLIT

	Total allotment			Available 7/1/22			Available 10/1/22		
	Original	Recapture/ reallotment	Revised	Original	Recapture/ reallotment	Revised	Original	Recapture/ reallotment	Revised
Alabama	14,354,136	81,695	14,435,831	2,886,533		2,886,533	11,467,603	81,695	11,549,298
Alaska	6,952,482	39,569	6,992,051	1,398,103		1,398,103	5,554,379	39,569	5,593,948
Arizona *	32,882,281	187,146	33,069,427	6,612,434		6,612,434	26,269,847	187,146	26,456,993
Arkansas	5,004,071	28,480	5,032,551	1,006,289		1,006,289	3,997,782	28,480	4,026,262
California	172,716,686	776,113	173,492,799	34,732,312		34,732,312	137,984,374	776,113	138,760,487
Colorado	15,998,009	63,034	16,061,043	3,217,106		3,217,106	12,780,903	63,034	12,843,937
Connecticut	13,434,048	63,956	13,498,004	2,701,508		2,701,508	10,732,540	63,956	10,796,496
Delaware	2,792,814	15,895	2,808,709	561,619		561,619	2,231,195	15,895	2,247,090
District of Columbia	9,172,120	52,202	9,224,322	1,844,460		1,844,460	7,327,660	52,202	7,379,862
Florida	46,716,550	265,879	46,982,429	9,394,424		9,394,424	37,322,126	265,879	37,588,005
Georgia	30,438,974	173,240	30,612,214	6,121,099		6,121,099	24,317,875	173,240	24,491,115
Hawaii	2,787,961	10,985	2,798,946	560,643		560,643	2,227,318	10,985	2,238,303
Idaho	1,847,221	10,513	1,857,734	371,465		371,465	1,475,756	10,513	1,486,269
Illinois	46,778,485	266,234	47,044,719	9,406,879		9,406,879	37,371,606	266,234	37,637,840
Indiana	13,628,787	77,565	13,706,352	2,740,669		2,740,669	10,888,118	77,565	10,965,683
Iowa	4,497,235	25,595	4,522,830	904,368		904,368	3,592,867	25,595	3,618,462
Kansas	4,139,435	23,559	4,162,994	832,416		832,416	3,307,019	23,559	3,330,578
Kentucky	13,250,923	75,415	13,326,338	2,664,683		2,664,683	10,586,240	75,415	10,661,655
Louisiana	16,817,514	95,715	16,913,229	3,381,903		3,381,903	13,435,611	95,715	13,531,326
Maine	2,242,181	12,042	2,254,223	450,889		450,889	1,791,292	12,042	1,803,334
Maryland	17,212,091	70,569	17,282,660	3,461,250		3,461,250	13,750,841	70,569	13,821,410
Massachusetts	22,669,765	104,708	22,774,473	4,558,757		4,558,757	18,111,008	104,708	18,215,716
Michigan	31,292,714	178,095	31,470,809	6,292,781		6,292,781	24,999,933	178,095	25,178,028
Minnesota	9,426,224	53,647	9,479,871	1,895,558		1,895,558	7,530,666	53,647	7,584,313
Mississippi	13,933,482	79,301	14,012,783	2,801,941		2,801,941	11,131,541	79,301	11,210,842
Missouri	10,956,060	62,355	11,018,415	2,203,199		2,203,199	8,752,861	62,355	8,815,216
Montana	1,596,891	9,088	1,605,979	321,125		321,125	1,275,766	9,088	1,284,854
Nebraska	2,006,552	11,420	2,017,972	403,506		403,506	1,603,046	11,420	1,614,466
Nevada	14,994,671	78,141	15,072,812	3,015,340		3,015,340	11,979,331	78,141	12,057,472
New Hampshire	2,118,850	12,059	2,130,909	426,088		426,088	1,692,762	12,059	1,704,821
New Jersey	36,473,636	175,895	36,649,531	7,334,634		7,334,634	29,139,002	175,895	29,314,897
New Mexico *	14,928,088	84,962	15,013,050	3,001,951		3,001,951	11,926,137	84,962	12,011,099
New York	82,585,211	339,366	82,924,577	16,607,401		16,607,401	65,977,810	339,366	66,317,176
North Carolina	23,457,549	133,506	23,591,055	4,717,175		4,717,175	18,740,374	133,506	18,873,880
North Dakota	813,070	4,483	817,553	163,504		163,504	649,566	4,483	654,049
Ohio	30,695,154	(262,751)	30,432,403	6,172,615		6,172,615	24,522,539	(262,751)	24,259,788
Oklahoma	6,139,713	34,478	6,174,191	1,234,660		1,234,660	4,905,053	34,478	4,939,531
Oregon	10,443,575	58,017	10,501,592	2,100,142		2,100,142	8,343,433	58,017	8,401,450
Pennsylvania	42,934,413	244,355	43,178,768	8,633,859		8,633,859	34,300,554	244,355	34,544,909
Puerto Rico	62,908,530	(4,694,538)	58,213,992	12,650,536		12,650,536	50,257,994	(4,694,538)	45,563,456
Rhode Island	3,552,454	20,218	3,572,672	714,378		714,378	2,838,076	20,218	2,858,294
South Carolina	11,779,701	67,043	11,846,744	2,368,829		2,368,829	9,410,872	67,043	9,477,915
South Dakota	1,322,041	7,524	1,329,565	265,855		265,855	1,056,186	7,524	1,063,710
Tennessee	14,429,101	82,122	14,511,223	2,901,608		2,901,608	11,527,493	82,122	11,609,615
Texas	83,358,322	340,153	83,698,475	16,762,869		16,762,869	66,595,453	340,153	66,935,606
Utah *	3,518,216	20,024	3,538,240	707,493		707,493	2,810,723	20,024	2,830,747
Vermont	1,005,465	5,722	1,011,187	202,193		202,193	803,272	5,722	808,994
Virginia	14,152,452	80,546	14,232,998	2,845,975		2,845,975	11,306,477	80,546	11,387,023
Washington	22,254,509	126,659	22,381,168	4,475,251		4,475,251	17,779,258	126,659	17,905,917
West Virginia	10,610,160	60,386	10,670,546	2,133,641		2,133,641	8,476,519	60,386	8,536,905
Wisconsin	10,874,839	61,892	10,936,731	2,186,866		2,186,866	8,687,973	61,892	8,749,865
Wyoming	1,005,588	5,723	1,011,311	202,218		202,218	803,370	5,723	809,093
State Total	1,071,901,000		1,071,901,000	215,553,000		215,553,000	856,348,000		856,348,000

* Includes funds allocated to the Navajo Nation.

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–05567 Filed 3–17–23; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Job Corps Hall of Fame

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL or Department) Employment and Training Administration (ETA) is soliciting comments concerning a proposed revision for the authority to conduct the information collection request (ICR) titled, ''Job Corps Hall of Fame.'' 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 May 19, 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*.

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.

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 1205–0546.

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 Hall of Fame.

Forms: ETA 9199, ETA 9200, ETA 9201, ETA 9202.

OMB Control Number: 1205–0546.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 800.

Frequency: Once.

Total Estimated Annual Responses: 800.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 1000 hours.

Total Estimated Annual Other Cost Burden: $0.

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–05565 Filed 3–17–23; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Lead in General Industry Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before April 19, 2023.

ADDRESSES: 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.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this standard and its information collection requirements is to provide protection for workers from the adverse effects associated with

occupational exposure to the carcinogen lead. Employers must monitor exposure to lead, provide medical surveillance, train employees about the hazards of lead, and establish and maintain accurate records of worker exposure to lead. These records are used by employers, workers, physicians, and the Government to ensure that workers are not being harmed by exposure to lead. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 09, 2022 (87 FR 75666).

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 the OMB approves it 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 OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Lead in General Industry Standard.

OMB Control Number: 1218–0092.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 56,906.

Total Estimated Number of Responses: 3,886,840.

Total Estimated Annual Time Burden: 1,134,438 hours.

Total Estimated Annual Other Costs Burden: $145,080,120.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–05562 Filed 3–17–23; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Legal Services Corporation Technology Baselines; Request for Comments

AGENCY: Legal Services Corporation.

ACTION: Request for comments.

SUMMARY: The Legal Services Corporation (LSC) seeks public comment on draft revisions to its *Technology Baselines: Technologies that Should Be in Place in a Legal Office Today* (Baselines). The Baselines address the use of technology in providing high-quality legal services to clients. They provide guidance for LSC grantees and a resource for LSC during reviews of grantees' program quality. They are not minimum requirements. LSC last updated the Baselines in 2015.

DATES: April 21, 2023, at 11:59 p.m. Eastern Time is the deadline for all comments to be submitted to LSC. LSC will not consider comments submitted after the deadline.

ADDRESSES: Comments must be submitted as follows:

- Acrobat PDF format.
- *Emailed as an attachment to a transmittal message sent to: techgrants@lsc.gov.*
- *Emailed with the subject line:* Comments on Technology Baselines.

FOR FURTHER INFORMATION CONTACT: Questions should be sent to *techgrants@lsc.gov* with the subject line: Questions about Technology Baselines Comments. Questions about this notice can be sent to Mark Freedman, Senior Associate General Counsel, 202–295–1623.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation (LSC) seeks comment on draft revisions to its *Technology Baselines: Technologies that Should Be in Place in a Legal Office Today* (Baselines). The draft revisions are posted online at: *www.lsc.gov/matters-comment.* LSC will also host a webinar regarding these draft revisions on March 29, 2023. Information about the webinar will also be posted at *www.lsc.gov/matters-comment.*

LSC first adopted the Baselines in 2008 and revised them in 2015. The Baselines address the use of technology in providing high-quality legal services to clients. They set out the technology capacities that LSC grantees should have in place or have available to them through a vendor or a partner. They also serve as a resource for LSC during reviews of grantees' program quality. They are not minimum requirements.

The draft revisions reflect the significant changes in the way legal services are delivered because of the COVID–19 pandemic as well as the growth in cybersecurity threats since 2015. They include consideration of remote/hybrid work environments, cloud computing and policies, new security baselines for networks and data, document management strategies, social media policy, and the use of web and video conferencing systems. A summary of significant updates by section can be found in the draft document.

LSC issues this notice pursuant to 42 U.S.C. 2996g(e).

Dated: March 15, 2023.

Mark Freedman,

Senior Associate General Counsel.

[FR Doc. 2023–05594 Filed 3–17–23; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Notice of Availability of 2022 Disaster Supplemental Project and Incurred Costs Grants

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) issues this Notice describing the application and award process for up to $19,000,000 in grants to support the delivery of legal services related to the consequences of hurricanes, flooding, wildfires, severe storms, and other extreme weather that occurred in calendar year 2022.

DATES: On or before May 1, 2023, *by 11:59 p.m. (Eastern Time)* all Pre-Applications must be complete and submitted through the LSC grants management system *GrantEase.* LSC requires Pre-Applications for all 2022 Disaster Supplemental Appropriation Project and Incurred Costs. LSC will not consider Pre-Applications submitted after the deadline.

ADDRESSES: Pre-applications for 2022 Disaster Supplemental Project and Incurred Costs Grants must be submitted through LSC's grants management system *GrantEase.* LSC will not accept hard-copy applications. Instructions for using *GrantEase* and submitting the necessary materials will be available at *www.lsc.gov/disastergrants* on or before March 30, 2022.

FOR FURTHER INFORMATION CONTACT: We strongly encourage you to email LSC's Disaster Team at *LSCdisastergrants@lsc.gov* for technical assistance while completing your Pre-Application. Instructions and other information will be available in the Notice of Funds Availability at *www.lsc.gov/disastergrants.* Technical assistance meetings will be held prior to the deadlines for all interested applicants. Questions about this notice can be directed to Mark Freedman, Senior Associate General Counsel, at 202–295–1623.

SUPPLEMENTARY INFORMATION: LSC will have $19,000,000 available for 2022 Disaster Supplemental Appropriation

grants to support delivery of legal services related to the consequences of hurricanes, flooding, wildfires, severe storms, and other extreme weather that occurred during calendar year 2022. Grant awards for these funds will begin in July of 2023. LSC has created a list of eligible disasters and posted it at *www.lsc.gov/disastergrants.* The eligible disasters list includes all areas covered by the Federal Emergency Management Agency's (FEMA) Major Disaster Declarations that include Individual Assistance and/or Public Assistance. LSC relies on data from FEMA's website. See *https://www.fema.gov/disaster/declarations.*

LSC Disaster Project Grants include a new opportunity this year. Any LSC Grantee, regardless of whether they have an eligible disaster in their service area, that has extensive experience in disaster response and preparation may apply for a Project Grant to provide mentorship and collaboration services to other 2022 Disaster Supplemental Appropriations Grantees.

LSC will award two types of grants under the 2022 Disaster Supplemental Appropriation funding opportunity: Project Grants and Incurred Costs Grants. Applicants are encouraged to apply for both Project and Incurred Costs grants, if applicable.

(1) *Project Grants* are available to for up to a 36-month term starting July 1, 2023.

(2) *Incurred Costs Grants* are available to reimburse grantees for costs incurred prior to July 1, 2023 (including estimated incurred costs through June 30, 2023).

Applicants can apply for any grant amount above $25,000. There is no cap amount on the funds an eligible applicant can request for grants that are within the total funding available.

Eligible Applicants

Applicants must be current LSC grantees receiving Basic Field—General, Basic Field—Agricultural Worker, or Basic Field—Native American funding.

In addition, any LSC Grantee, regardless of whether they have an eligible disaster in their service area, that has extensive experience in disaster response and preparation may apply for a Project Grant to provide mentorship and collaboration services to other 2022 Disaster Supplemental Appropriations Grantees.

Organizations and entities that are not current LSC grantees are not eligible to apply directly to LSC for these grants. Nonetheless, collaborations between LSC grantees and project partner organizations can strengthen disaster delivery systems and avoid duplication of services and are therefore encouraged.

If you are unsure if your organization is eligible to apply or have questions about the eligible disasters list, please contact the LSC Disaster Team at *LSCdisastergrants@lsc.gov.*

Eligible Activities and Expenses

Applicants are permitted to use Project and Incurred Costs Grant funds for any activities and expenses that are allowable pursuant to the LSC Act if they are related to the consequences of hurricanes, flooding, wildfires, severe storms, and other extreme weather that occurred in the calendar year 2022.

Funds from these grants cannot be used for disaster preparedness activities for future disasters, except insofar as funded activities undertaken to respond to the listed disasters will also have continuing value in preparing for and responding to future disasters.

In addition to hiring and supporting staff, eligible activities can include, but are not limited to, the leasing of new office space in an area hard-hit by a disaster and adjacent to survivors with legal needs related to the disaster, purchasing office equipment and supplies, hiring a project or grant manager, or hiring of other administrative support staff—if the activities and expenses are related to the consequences of eligible disasters.

Before submitting an application involving a subgrant or third-party contract with grant funds, applicants should be familiar with LSC's subgrant and contracting requirements at 45 CFR parts 1627 (Subgrants) and 1630 (Cost Standards), particularly as they pertain to paying third-parties to conduct programmatic activities. Certain contracts and all subgrants require prior approval under 45 CFR parts 1627 (Subgrants) and 1630 (Cost Standards). Applicants must also consider arrangements with other organizations as part of their compliance with the program integrity requirements of 45 CFR 1610.8.

LSC issues this notice pursuant to 42 U.S.C. 2996g(e).

Dated: March 15, 2023.

Mark F. Freedman,

Senior Associate General Counsel.

[FR Doc. 2023–05626 Filed 3–17–23; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2023–022]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is proposing to request that the Office of Management and Budget (OMB) reinstate a discontinued information collection and renew three other information collections. The reinstated information collection is used by companies and organizations that want to digitize archival holdings with privately-owned equipment. The first renewal information collection is prepared by organizations that want to make paper-to-paper copies of archival holdings with their personal copiers at the National Archives at the College Park facility. The second renewal is used to advise requesters of (1) the correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law, and (2) what kinds of information they must provide NARA so the agency can find those records. The third renewal information collection is used when veterans, dependents, and other authorized individuals request information from or copies of documents in military personnel, military medical records, and dependent medical records. We invite you to comment on this proposed information collection.

DATES: We must receive written comments on or before May 19, 2023.

ADDRESSES: Send comments to Paperwork Reduction Act Comments (MP), Room 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, or email them to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Tamee Fechhelm by telephone at 301–837–1694 with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite the public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) whether we need the proposed information collection to properly perform our agency functions;

(b) our estimate of the burden of the proposed information collection and its accuracy; (c) ways we could enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether this collection affects small businesses. We will summarize any comments you submit and include the summary in our request for OMB approval. All comments will become a matter of public record.

In this notice, we solicit comments concerning the following information collections:

1. *Title:* Request to Digitize Records.
OMB number: 3095–0017.
Agency form number: None.
Type of review: Regular.
Affected public: Companies and organizations that wish to digitize archival holdings in the National Archives of the United States or a Presidential library for micropublication.
Estimated number of respondents: 10.
Estimated time per response: 5 hours.
Frequency of response: On occasion (when respondent wishes to request permission to digitize records).
Estimated total annual burden hours: 50.
Abstract: The information collection is prescribed by 36 CFR 1254.92. The collection is prepared by companies and organizations that wish to digitize archival holdings with privately-owned equipment. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.94, to evaluate the records for digitization, and to schedule use of the limited space available for digitizing.

2. *Title:* Request to use personal paper-to-paper copiers at the National Archives at the College Park facility.
OMB number: 3095–0035.
Agency form number: None.
Type of review: Regular.
Affected public: Business or other for-profit.
Estimated number of respondents: 5.
Estimated time per response: 3 hours.
Frequency of response: On occasion.
Estimated total annual burden hours: 15 hours.
Abstract: The information collection is prescribed by 36 CFR 1254.86. Respondents are organizations that want to make paper-to-paper copies of archival holdings with their personal copiers. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.86 and to schedule the limited space available.

3. *Title:* Court Order Requirements.
OMB number: 3095–0038.
Agency form number: NA Form 13027.
Type of review: Regular.
Affected public: Veterans and former Federal civilian employees, their authorized representatives, state and local governments, and businesses.
Estimated number of respondents: 5,000.
Estimated time per response: 15 minutes.
Frequency of response: On occasion.
Estimated total annual burden hours: 1,250 hours.
Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT), the NPRC also administers military service records of veterans after discharge, retirement, and death, and the medical records of these veterans, current members of the Armed Forces, and dependents of Armed Forces personnel. The NA Form 13027, Court Order Requirements, is used to advise requesters of (1) the correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law and (2) the information to be provided so that records may be identified.

4. *Title:* Authorization for Release of Military Medical Patient Records, Request for Information Needed to Locate Medical Records, Request for Information Needed to Reconstruct Medical Data, and Questionnaire about Military Service, and Check the Status of a Clinical & Medical Treatment Records Request.
OMB number: 3095–0039.
Agency form number: NA Forms 13036, 13042, 13055, 13075, and 13177.
Type of review: Regular.
Affected public: Veterans, their authorized representatives, state and local governments, and businesses.
Estimated number of respondents: 79,800.
Estimated time per response: 5 minutes.
Frequency of response: On occasion (when respondent wishes to request information from a military personnel, military medical, and dependent medical record).
Estimated total annual burden hours: 6,650 hours.
Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT, U.S. Coast Guard), the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers military personnel and medical records of veterans after discharge, retirement, and death. In addition, NRPC administers the medical records of dependents of service personnel. When veterans, dependents, and other authorized individuals request information from or copies of documents in military personnel, military medical, and dependent medical records, they must provide on forms or in letters certain information about the veteran and the nature of the request. A major fire at the NPRC on July 12, 1973, destroyed numerous military records. If individuals' requests involve records or information from records that may have been lost in the fire, requesters may be asked to complete NA Form 13075, Questionnaire about Military Service, or NA Form 13055, Request for Information Needed to Reconstruct Medical Data, so that NPRC staff can search alternative sources to reconstruct the requested information. Requesters who ask for medical records of dependents of service personnel and hospitalization records of military personnel are asked to complete NA Form 13042, Request for Information Needed to Locate Medical Records, so that NPRC staff can locate the desired records. Certain types of information contained in military personnel and medical records are restricted from disclosure unless the veteran provides a more specific release authorization than is normally required. Veterans are asked to complete NA Form 13036, Authorization for Release of Military Medical Patient Records, to authorize release to a third party of a restricted type of information found in the desired record. For those who have already made a request, and want to check the status, they can use NA Form 13177, Check the Status of a Clinical & Medical Treatment Records Request.

Sheena Burrell,
Executive for Information Services/CIO.

[FR Doc. 2023–05646 Filed 3–17–23; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

NAME AND COMMITTEE CODE: Advisory Committee for Mathematical and Physical Sciences (#66).

DATE AND TIME: April 19, 2023; 10:15 a.m. to 4:30 p.m., April 20, 2023: 9 a.m. to 3:05 p.m.

PLACE: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314.

Hybrid participation for AC Members and Presenters. Other visitors and guests will be able to virtually attend the meeting.

To attend the virtual meeting, please send your request for the virtual meeting link to Michelle Bushey at the following email address: *mbushey@nsf.gov.*

TYPE OF MEETING: Open.

CONTACT PERSON: Ciara Dalton, National Science Foundation, 2415 Eisenhower Avenue, Room C 9000, Alexandria, Virginia 22314; Telephone: 703/292–4328.

MEETING INFORMATION: *http://www.nsf.gov/mps/advisory.jsp.*

PURPOSE OF MEETING: To provide advice, recommendations and counsel on major goals and policies pertaining to MPS programs and activities.

Agenda

Wednesday, April 19, 2023

- Call to Order and Official Opening of the Meeting
- Approval of Prior Meeting Minutes—MPSAC Chair
- MPS Update by Assistant Director
- Science Highlight
- Division of Physics Committee of Visitors Report
- Research Security
- Budget Update and Drivers
- Preparation for discussion With NSF Chief Operating Officer and Chief of Staff
- Closing Remarks and Adjourn Day 1

Thursday, April 20, 2023

- Welcome and Overview of Agenda
- Science Highlight
- MPS Facilities and AC Subcommittees
- Advisory Committee on Environmental Research and Education
- Partnerships Programs' Principal Investigators and Teams
- Committee on Equal Opportunities in Science and Engineering
- Preparation for Discussion With NSF Chief Operating Officer and Chief of Staff
- Meeting and Discussion With NSF Chief Operating Officer and Chief of Staff
- Closing Remarks and Adjourn

Dated: March 15, 2023.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2023–05599 Filed 3–17–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: 2024 and 2025 Survey of Earned Doctorates

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation (NSF) has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and two comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite E7400, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

Comments: Comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Copies of the submission may be obtained by calling 703–292–7556. NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Comments: As required by 5 CFR 1320.8(d), comments on the information collection activities were solicited through publication of a 60-day notice in the **Federal Register** on 9 December 2022 at 87 FR 75670. NCSES received two questions about whether there will be any content changes in the 2024–25 SED. We responded to both comments that the content changes planned for the 2024 SED are inclusion of experimental sets of biological sex at birth, sexual orientation and gender identity (SOGI) questions, and the experiment data will be used to determine the most appropriate set of questions that best meets the data needs while ensuring confidentiality of the SOGI data for the 2025 SED.

Title of Collection: Survey of Earned Doctorates.

OMB Control Number: 3145–0019.

Summary of Collection: The Survey of Earned Doctorates (SED) is part of NCSES' survey system that collects data on individuals in an effort to provide information on science and engineering education and careers in the United States. The SED has been conducted annually since 1958 and is jointly sponsored by four Federal agencies (NSF/NCSES, National Institutes of Health, U.S. Department of Education/National Center for Education Statistics, and National Endowment for the Humanities) to avoid duplication of effort in collecting such data. The

authority to collect information for the Survey of Earned Doctorates (SED) is established under the National Science Foundation Act of 1950, as amended, Public Law 507 (42 U.S.C. 1862), Section 3(a)(6), which directs the NSF ''. . . to provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources and to provide a source of information for policy formation by other agencies of the Federal government.''

This request to extend the information collection for three years is to cover the 2024 and 2025 SED survey cycles. Data are obtained primarily via Web survey from each person earning a research doctorate at the time they receive the degree. Graduate schools help distribute the SED to their graduating doctorate recipients. Nonrespondents to the web survey are followed up by computer-assisted telephone interviewing.

The survey will be collected in conformance with the NSF Act of 1950, as amended, and the Privacy Act of 1974. Responses from individuals are voluntary. Data are collected on their field of specialty, educational background, sources of support in graduate school, debt level, postgraduation plans, and demographic characteristics. NCSES will ensure that all individually identifiable information collected will be kept strictly confidential and will be used for research or statistical purposes, analyzing data, and preparing scientific reports and articles.

Use of the Information: NCSES, as the lead agency, publishes statistics from the survey in several reports, but primarily in the annual publication series reporting on all fields of study, titled *Doctorate Recipients from U.S. Universities.* Information from the SED is also used to prepare congressionally mandated reports such as *Science and Engineering Indicators* and *Women, Minorities and Persons with Disabilities in Science and Engineering.*

Expected Respondents: The SED is a census of all individuals receiving a research doctorate from an accredited U.S. academic institution in an academic year (AY) beginning 1 July and ending 30 June of the following year. Based on the historical trend, NCSES expects that approximately 57,000 individuals will receive a research doctorate from U.S. institutions in AY2024, and approximately 58,000 in AY2025. NCSES estimates the response rate will be 92 percent for both the 2024 and 2025 SED survey cycles. In addition to the survey completion of individuals receiving their research doctorates, the SED requires the collection of administrative data such as graduation lists from approximately 620 Institutional Coordinators at the participating institutions who help to distribute the Web survey link, track survey completions, and submit information to the SED survey contractor.

Estimate of Burden: Based on an average Web survey completion time of 21 minutes, the respondent burden for completing the SED is estimated at 18,354 hours in 2024 (57,000 doctorate recipients × 92% response × 21 minutes) and 18,676 hours in 2025 (58,000 doctorate recipients × 92% response × 21 minutes). With about 620 schools expected to participate in the 2024 and 2025 SED, the estimated burden to Institutional Coordinators is 12,400 hours for each survey cycle. Therefore, the total burden for the SED is estimated to be 30,754 (18,354 + 12,400) hours in the 2024 survey cycle and 31,076 (18,676 + 12,400) hours in the 2025 survey cycle. NCSES estimates that the average annual burden for the 2024 and 2025 survey cycles over the course of the three-year OMB clearance period will be no more than 20,610 hours [(30,754 hours + 31,076 hours)/3 years].

Dated: March 15, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023–05642 Filed 3–17–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: National Science Foundation (NSF) Directorate for Technology, Innovation and Partnerships (TIP) Reviewer Request Form

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

Comments: Comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Copies of the submission may be obtained by calling 703–292–7556. NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: National Science Foundation (NSF) Directorate for Technology, Innovation and Partnerships (TIP) Reviewer Request Form.

OMB Control No.: 3145–New.

Abstract: NSF has advanced the full spectrum of fundamental research and education in all fields of science, technology, engineering and mathematics, or STEM, for more than 70 years—from foundational, curiosity-driven research that has led to new knowledge about our world, to use-

inspired, solution-oriented research that has directly impacted people's everyday lives. At every stage, investments across this spectrum have been deeply intertwined.

NSF's Directorate for Technology, Innovation, and Partnerships (TIP) doubles down on the agency's commitment to support use-inspired research and the translation of research results to the market and society. In doing so, the new directorate strengthens the intense interplay between foundational and use-inspired work, enhancing the full cycle of discovery and innovation. This is best illustrated through the programs within the TIP Directorate portfolio—America's Seed Fund, Convergence Accelerator, Innovation Corps (I-Corps), Partnerships for Innovation, Pathways to Enable Open-Source Ecosystems, and Regional Innovation Engines—all reflect and represent the various phases of the technology transition/translation spectrum, while accentuating the core theme of use-inspired and solution-oriented research.

Due to the specialized nature of these programs, it is necessary for the TIP Directorate to refine its reviewer recruitment efforts and reach out to individuals that have the adequate and appropriate combinations of expertise and experience to serve as proposal reviewers for these programs. To recruit cognizant reviewers that have the set of unique skills and credentials—ones that meet and align well with the needs of these programs, the NSF TIP Directorate requests the Office of Management and Budget (OMB) approval of a customizable, directorate-wide *Reviewer Request Form* to collect information that is germane and bespoke to each program within the TIP Directorate.

There are two parts to the Form. The first part is similar to the agency-wide Reviewer Request Form (NSF 428A), in that information pertaining to the individual's name, contact information, demographics, education level, and professional experience will be asked. The second part will vary based on the program, as some programs in TIP are more topically-driven, and/or theme-focused than others. The information collected on the second part encompasses, but is not limited to, the following areas: type of employing institutions, areas of expertise, provision of the individual's LinkedIn or professional web page, and potential conflict of interests. Such data collection will enable the Program Directors to better assess whether the combination of experience, expertise, and skills of the interested individuals are adequate and well-suited to help the programs to evaluate proposals through the merit review criteria as set forth by the agency and the National Science Board. (For more information on NSF merit review principles and criteria, please consult the NSF Proposal & Award Policies & Procedures Guides (PAPPG), Chapter III.A.)

Following standard OMB requirements, NSF will require OMB approval in advance and provide OMB with a copy of the form containing these questions and/or data fields. Data collected will be used strictly for reviewer recruiting purposes. The data collection burden to the individuals will be limited to no more than 10 minutes of the respondents' time in each instance.

Respondents: The respondents generally have the education and/or experience level commensurate to a university assistant professor.

Estimated Number of Annual Respondents: 5,000.

Burden on the Public: The respondents of the *NSF TIP Reviewer Request Form,* albeit with varying education level and professional experience, are generally doctorate degree holders. According to a study conducted by U.S. Bureau of Labor Statistics in 2021, the median income for doctorate degree holders was around $99,268 (''Education pays, 2021,'' Career Outlook, U.S. Bureau of Labor Statistics, May 2022). Using that as the basis for the calculation—divide that median income by the number of standard annual work hours (2,080), which calculates to approximately $48 per hour, the annualized estimate of cost to the respondents is around $40,000 per year.

Respondent type	Number of respondents	Burden hours per respondent	Average hourly rate	Estimated annual cost
PIs	5,000	0.167	$48	$40,000
Total		835		40,000

Dated: March 14, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023–05560 Filed 3–17–23; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of March 20, 27, April 3, 10, 17, 24, 2023. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public and closed.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of March 20, 2023

There are no meetings scheduled for the week of March 20, 2023.

Week of March 27, 2023—Tentative

Tuesday, March 28, 2023

10:00 a.m. Briefing on the Annual Threat Environment (Closed Ex. 1)

Thursday, March 30, 2023

9:00 a.m. Briefing on Nuclear Regulatory Research Program

(Public Meeting); (Contact: Nicholas Difrancesco: 301–415–1115)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of April 3, 2023—Tentative

There are no meetings scheduled for the week of April 3, 2023.

Week of April 10, 2023—Tentative

There are no meetings scheduled for the week of April 10, 2023.

Week of April 17, 2023—Tentative

Thursday, April 20, 2023

9:00 a.m. Strategic Programmatic Overview of the Fuel Facilities and the Spent Fuel Storage and Transportation Business Lines (Public Meeting); (Contact: Kellee Jamerson: 301–415–7408)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of April 24, 2023—Tentative

There are no meetings scheduled for the week of April 24, 2023.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: March 16, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–05776 Filed 3–16–23; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–528, STN 50–529, STN 50–530, and 72–44; NRC–2021–0031]

In the Matter of Arizona Public Service Company and Public Service Company of New Mexico; Palo Verde Nuclear Generating Station, Units 1, 2, and 3, and Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Indirect transfer of licenses; extending effectiveness of order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order to extend until May 25, 2024, the effectiveness of a May 25, 2021, order, which approved the indirect transfer of Public Service Company of New Mexico's interests in Renewed Facility Operating License Nos. NPF–41, NPF–51, and NPF–74 for the Palo Verde Nuclear Generating Station (Palo Verde), Units 1, 2, and 3, respectively, and the associated general license for the Palo Verde independent spent fuel storage installation to Avangrid, Inc.

DATES: The order was issued on March 14, 2023, and was effective upon issuance.

ADDRESSES: Please refer to Docket ID NRC–2021–0031 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0031. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The written application for extending the effectiveness of the indirect transfer order is available in ADAMS under Accession No. ML23041A441. The order extending the effectiveness of the approval of the indirect transfer of licenses is available in ADAMS under Accession No. ML23045A355.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis J. Galvin, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6256, email: *Dennis.Galvin@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the order is attached.

Dated: March 15, 2023.

For the Nuclear Regulatory Commission.

Dennis J. Galvin,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Order Extending the Effectiveness of the Approval of the Indirect Transfer of Licenses

United States of America

Nuclear Regulatory Commission

In the Matter of: Arizona Public Service Company, Public Service Company of New Mexico, Palo Verde Nuclear Generating Station, Units 1, 2, 3, and Independent Spent Fuel Storage Installation.

Docket Nos.: STN 50–528, STN 50–529, STN 50–530, and 72–44

License Nos.: NPF–41, NPF–51, and NPF–74

Order Extending the Effectiveness of the Approval of the Indirect Transfer of Licenses

I

Arizona Public Service Company (APS) is the licensed operator and a licensed co-owner of Renewed Facility Operating License Nos. NPF–41, NPF–51, and NPF–74 for the Palo Verde Nuclear Generating Station (Palo Verde), Units 1, 2, and 3, respectively, and the associated general license for the Palo Verde independent spent fuel storage installation (the licenses). Palo Verde is located in Maricopa County, Arizona. The other licensed co-owners (tenants-in-common), Salt River Project Agricultural Improvement and Power District; Southern California Edison Company; El Paso Electric Company;

Public Service Company of New Mexico (PNM); Southern California Public Power Authority; and Los Angeles Department of Water and Power, hold possession-only rights for the licenses (*i.e.,* they are not licensed to operate the facility).

II

By application dated December 2, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20337A344), as supplemented by letters dated February 26, 2021, and May 14, 2021 (ML21061A156 and ML21134A244, respectively), APS, on behalf of PNM, Avangrid, Inc. (Avangrid), and their corporate affiliates (together, the applicants), requested, pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) Sections 50.80, ''Transfer of licenses,'' and 72.50, ''Transfer of license,'' that the U.S. Nuclear Regulatory Commission (NRC, the Commission) consent to the indirect transfer of PNM's 10.2 percent tenant-in-common interest and possession-only rights in the licenses to Avangrid. By indirect transfer order dated May 25, 2021, the Commission consented to this indirect transfer. By its terms, the indirect transfer order becomes null and void if the transfer is not completed within 1 year (*i.e.,* by May 25, 2022), provided, however, that upon written application and for good cause shown, such date may be extended by order. On May 10, 2022, the NRC issued an order extending the effectiveness of the indirect transfer order from May 25, 2022, to May 25, 2023 (ML22101A266) in response to a request dated February 8, 2022 (ML22040A068).

III

By letter dated February 10, 2023 (ADAMS Accession No. ML23041A441), the applicants submitted a written application to further extend the effectiveness of the indirect transfer order by 1 year, until May 25, 2024. As stated in the application, by order dated December 8, 2021, the New Mexico Public Regulation Commission (NMPRC) declined to issue the regulatory approvals necessary for the applicants to consummate the proposed indirect transfer. The applicants have obtained all other required regulatory approvals, but they cannot proceed with the transfer without the approval of the NMPRC. On January 3, 2022, the applicants filed a Notice of Appeal of the NMPRC order to the Supreme Court of New Mexico. It is not expected, however, that these further legal proceedings will be resolved within the 1-year effectiveness of the extended indirect transfer order (*i.e.,* by May 25, 2023). The extension would allow adequate time for the applicants to obtain the required regulatory approval and consummate the transfer.

Based on the above, the NRC staff has determined that the applicants have shown good cause for extending the effectiveness of the indirect transfer order by 1 year, as requested.

IV

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80 and 10 CFR 72.50, *it is hereby ordered* that the effectiveness of the indirect transfer order dated May 25, 2021, is extended until May 25, 2024. Should the subject indirect license transfer from PNM to Avangrid not be completed by May 25, 2024, the indirect transfer order shall become null and void, provided, however, that upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the written application for extension dated February 10, 2023, which is available electronically through ADAMS in the NRC Library at *https://www.nrc.gov/reading-rm/adams.html* under Accession No. ML23041A441. Persons who encounter problems with ADAMS should contact the NRC's Public Document Room reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by email to *PDR.Resource@nrc.gov*.

Dated: March 14, 2023.

For the Nuclear Regulatory Commission.

/RA/

Gregory F. Suber,
Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–05592 Filed 3–17–23; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97134; File No. SR–C2–2023–007]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Fees Schedule

March 14, 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 February 28, 2023, Cboe C2 Exchange, Inc. (''Exchange'' or ''C2'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to update its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Cboe Data Services, LLC (''CDS'') section of its Fees Schedule.[3] Particularly, the Exchange proposes to (i) reformat the section of its Fees Schedule pertaining to market data fees, (ii) harmonize various market data related definitions to align with the definitions used by the Exchange's affiliates and (iii) modify its fees relating to the distribution of the BBO data feed.[4]

Reformatting

The Exchange first proposes to eliminate references to CDS and rename the section ''Market Data Fees'' to align with the heading of its affiliates, BZX Options and EDGX Options. The Exchange notes that no substantive changes are being made with the elimination of the references to CDS fees. Rather, the proposed change more accurately reflects the Exchange's role as it relates to its market data products as CDS is merely an affiliate that is the Cboe contracting entity for all U.S. equities and options market data products, but the data products themselves are made available by the Exchange. The Exchange also proposes to reformat the layout of the fees under the Cboe Data Services, LLC (''CDS'') section of the Fees Schedule to align with formatting of the corresponding section in the fees schedules of the Exchange's options exchanges, Cboe BZX Exchange, Inc. (''BZX Options'') and Cboe EDGX Exchange, Inc. (''EDGX Options''), including adding a new ''Definitions'' section under the CDS Fees (or as proposed, the Market Data Fees) section.

Definitions

In order to provide consistent rules and terminology amongst the Exchange and its affiliated options exchanges, Cboe Options Exchange, Inc. (''Cboe Options''), Cboe BZX Exchange, Inc. (''BZX Options'') and Cboe EDGX Exchange, Inc. (''EDGX Options'') (collectively, ''Affiliates'') the Exchange is proposing to amend various definitions and product names to harmonize with such terms used by its affiliates BZX Options and EDGX Options, specifically.[5] As such, the proposed rule change deletes a defined term, adds certain defined terms, and makes certain non-substantive changes to existing definitions, as further described in the table below. The proposed rule change makes these changes throughout the market data fee language to conform to the proposed defined terms and the Exchange uses the proposed updated terms herein.

Defined term	Provision	Current location	Description of change
Customer	A ''Customer'' is any person, company or other entity that, pursuant to a market data agreement with CDS, is entitled to receive data, either directly from CDS or through an authorized redistributor (i.e., a Customer or an extranet service provider), whether that data is distributed externally or used internally. A third-party vendor of an Approved Third-Party Device, as defined in the CDS Fee Schedule, is not a Customer unless it has a market data agreement in place with CDS. A Floor Broker User, as defined in the CDS Fee Schedule, is not a Customer unless it has a market data agreement in place with CDS.	Section I of the Cboe Data Services, LLC (''CDS'') Section of the Fees Schedule.	Deletes defined term to align terms with BZX Options and EDGX Options. The concept of ''Customer'' is also better captured through the proposed new term ''Distributor''.
Distributor	A Distributor of an Exchange Market Data product is any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.	N/A	Codifies definition of ''Distributor'' under new ''Definitions'' section of the C2 Options Fees Schedule. Definition is identical to the definition used by BZX Options and EDGX Options and substantially similar to the language in the first sentence of the definition of ''Customer'' in the Fees Schedule.
Internal Distributor.	An Internal Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity.	N/A	Codifies definition of '' Internal Distributor under new ''Definitions'' section of the C2 Options Fees Schedule. Definition is identical to the definition used by BZX Options and EDGX Options.
External Distributor.	An External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.	N/A	Codifies definition of ''External Distributor'' under new ''Definitions'' section of the C2 Options Fees Schedule. Definition is identical to the definition used by BZX Options and EDGX Options.

[3] The Exchange initially filed the proposed fee changes on January 3, 2023 (SR–C2–2023–001). On February 28, 2023, the Exchange withdrew that filing and submitted this proposal.

[4] The BBO Data Feed is a real-time data feed that includes the following information: (i) outstanding quotes and standing orders at the best available price level on each side of the market; (ii) executed trades time, size, and price; (iii) totals of customer versus non-customer contracts at the best bid and offer (''BBO''); (iv) all-or-none contingency orders priced better than or equal to the BBO; (v) expected opening price and expected opening size; (vi) end-of-day summaries by product, including open, high, low, and closing price during the trading session; (vi) recap messages any time there is a change in the open, high, low or last sale price of a listed option; (vii) COB information; and (viii) product IDs and codes for all listed options contracts. The quote and last sale data contained in the BBO data feed is identical to the data sent to the Options Price Reporting Authority (''OPRA'') for redistribution to the public.

[5] Cboe Options will be submitting a similar filing to harmonize its definitions and products names to align with those of BZX Options and EDGX Options as well.

Defined term	Provision	Current location	Description of change
User	A User of an Exchange Market Data product is a natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data.	N/A	Codifies definition of ''User'' under new ''Definitions'' section of the C2 Options Fees Schedule. Definition is identical to one used by BZX Options and EDGX Options.
Non-Professional User.	A ''Non-Professional User'' is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.	Sections I and III	Relocates definition under new ''Definitions'' section of the C2 Options Fees Schedule and updates the rule reference to ''Section 201(11)'' of the Investment Advisors Act of 1940 to ''Section 202(a)(11)''.
Professional User.	A Professional User of an Exchange Market Data product is any natural person recipient of an Exchange Market Data product who is not a Non-Professional User.	Sections I and III	Relocates definition under new ''Definitions'' section of the C2 Options Fees Schedule
Display Only Service.	A ''Display Only Service'' allows a natural person end-user to view and manipulate data using the Distributor's computerized service, but not to save, copy, export or transfer the data or any results of the manipulation to any other computer hardware, software or media, except for printing it to paper or other non-magnetic media.	Section I	Relocates definition under new ''Definitions'' section of the C2 Options Fees Schedule
Device	A ''Device'' means any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form.	N/A	Adds new definition under new ''Definitions'' section of the C2 Options Fees Schedule. Definition is identical to one used by Cboe Options.

The Exchange also proposes to rename the following market data products and fees and use the proposed names herein, in order to align with the naming convention used by the Exchange's affiliates, BZX Options, EDGX Options and Cboe Options, as applicable for similar data products and fees.[6]

Current name	Proposed name
BBO Data Feed	C2 Options Top.
Book Depth Data Feed.	C2 Options Depth.
Complex Order Book (COB) Data Feed.	C2 Complex Order Book (COB).
Port Fee	Data Access Fee.

The Exchange believes the proposed changes to eliminate, modify and adopt the terms discussed above will add additionally transparency to the Fees Schedule and will protect investors, as the changes provide more clarity within the rule and more harmonized rule language across the Fees Schedules of the Cboe affiliated options exchanges. Further, the Exchange notes that the changes are non-substantive changes or provide additional detail in the rule regarding current market participants that purchase or use the Exchange's market data products. None of these differences impact the manner in which any of the terms and corresponding fees apply, including how the Exchange would have otherwise characterized a Distributor or User (Professional or Non-Professional).

C2 Options Top Fee Changes

The Exchange first proposes to modify its current User Fees. The Exchange currently charges a ''User Fee'' of $50 per month per Device or user ID for use of the data in the C2 Options Top Data Feed by ''Display Only Service'' users. The current User fee is payable only for ''external'' Display Only Service users who receive C2 Options Top.[7] Internal Distributors may currently distribute C2 Options Top Data to an unlimited number of internal users and Devices within the Distributor at no further cost. The Exchange proposes to eliminate the current C2 Options Top User fee and in its place adopt Professional and Non-Professional User fees for C2 Options Top that would apply to both Internal and External Distributors for all Professional and Non-Professional Users. Particularly, the Exchange proposes to charge C2 Options Top Distributors a monthly fee of $5.00 per Professional Users User and a monthly fee of $0.10 per Non-Professional User.[8]

The Exchange lastly proposes to establish a $10,000 per month Enterprise Fee that will permit a Distributor to purchase a monthly (and optional) Enterprise license to receive the C2 Options Top Data for distribution

[6] *See* BZX Options Exchange Fees Schedule, Market Data Fees and EDGX Options Exchange Fees Schedule, Market Data Fees. *See also* Cboe Data Services, LLC Fees Schedule, Section V. System Fees.

[7] Pursuant to the Cboe Global Markets North American Data Policies, Distributors must report the number of authorized external devices that receive C2 Options Top data during a calendar month within 15 days after such month in the manner and format specified by the Exchange from time to time to determine applicable fees.

[8] Distributors that receive C2 Options Top Data will be required to count every Professional User and Non-Professional User to which they provide the data feed.

to an unlimited number of Professional and Non-Professional Users. The Enterprise Fee is an alternative to Professional and Non-Professional User fees and will permit a Distributor to pay a flat fee to receive the data for an unlimited number of Professional and Non-Professional Users, which the Exchange proposes to make clear in the Fee Schedule. Like User fees, the Enterprise Fee would be assessed in addition to the Distribution Fees. The Enterprise Fee may provide an opportunity to reduce fees. For example, if a Distributor has 10,000 Professional Users who each receive C2 Options Top at $5.00 per month (as proposed), then that Distributor will pay $50,000 per month in Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license, it would alternatively pay a flat fee of $10,000 for an unlimited number of Professional and Non-Professional Users. A Distributor must pay a separate Enterprise Fee for each entity that controls the display of C2 Options Top if it wishes for such Users to be covered by an Enterprise Fee rather than by per User fees.[9] A Distributor that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. Rather, every six months, the recipient firm must provide the Exchange with a count of the total number of Professional and Non-Professional Users users of C2 Options Top.[10] The Exchange notes that the purchase of an Enterprise license is voluntary, and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number of Users to benefit from purchase of the license need not do so.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[11] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] requirements that the rules of an exchange be 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 regulating, clearing, settling, processing information with respect to, and 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 consistent with Section 6(b)(4) of the Act,[13] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange first notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 17% of the market share.[14] The Exchange believes top-of-book quotation and transaction data is highly competitive as national securities exchanges compete vigorously with each other to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. Indeed, there are several competing products offered by other national securities exchanges today, not counting products offered by the Exchange's affiliates, and each of the Exchange's affiliated U.S. options exchanges also offers similar top-of-book data.[15] Each of those exchanges offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the C2 Options Top Feed. Further, the quote and last sale data contained in the C2 Options Data Feed is identical to the data sent to OPRA for redistribution to the public.[16] Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

Moreover, the C2 Options Top Data Feed is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Additionally, only those Distributors that deem a product to be of sufficient overall value and usefulness would purchase them for distribution to Users. Further, Distributors are not required to distribute, and Users are not required to receive, any one particular data product and may choose to receive none, one, or several of the Exchange's market data products. Indeed less than 25% of the Exchange's market data subscriptions is for C2 Options Top. As described above, market participants have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers. Moreover, persons (including broker-dealers) who subscribe to any exchange proprietary data feed must also have equivalent access to consolidated Options Information[17] from OPRA for the same classes or series of options that are included in the proprietary data feed, and proprietary data feeds cannot be used to meet that particular requirement.[18] As such, all proprietary data feeds are optional.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance

[9] For example, if a Distributor that distributes C2 Options Top to Retail Brokerage Firm A and Retail Brokerage Firm B and wishes to have the Users under each firm covered by an Enterprise license, the Distributor would be subject to two Enterprise Fees.

[10] *See* Cboe Global Markets North American Data Policies.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(4).

[14] *See* Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (February 24, 2023), available at *https://markets.cboe.com/us/options/market_statistics/.*

[15] *See e.g.,* NYSE Arca Options Proprietary Market Data Fees Schedule, MIAX Options Exchange, Fee Schedule, Section 6 (Market Data Fees), Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees) and Cboe Data Services, LLC Fees Schedule.

[16] The Exchange notes that it makes available the BBO data and last sale data that is included in the C2 Options Top Data Feed no earlier than the time at which the Exchange sends that data to OPRA.

[17] ''Consolidated Options Information'' means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA. Access to consolidated Options Information is deemed ''equivalent'' if both kinds of information are equally accessible on the same terminal or work station. *See* Limited Liability Company Agreement of Options Price Reporting Authority, LLC (''OPRA Plan''), Section 5.2(c)(iii). The Exchange notes that this requirement under the OPRA Plan is also reiterated under the Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies, which subscribers to any exchange proprietary product must sign and are subject to, respectively. Additionally, the Exchange's Data Order Form (used for requesting the Exchange's market data products) requires confirmation that the requesting market participant receives data from OPRA.

[18] *Id.*

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.'' [19] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of C2 Options Top Data.

The Exchange believes the proposed changes to adopt new Professional and Non-Professional User fees are reasonable as the User fees continue to be to be in line with User fees assessed by other exchanges for similar data.[20] Moreover, External users will now be subject to lower fees as the Exchange proposes to significantly reduce the monthly User fees from $50 per External User to $5.00 per Professional User or $0.10 per Non-Professional User. Although External Distributors are currently only subject to fees for external users, the fee for external users (which are likely to be Non-Professional Users) are significantly lower (*i.e.,* $0.10 per Non-Professional User) than the current $50 fee for external users. Moreover, the proposed fee structure of differentiated Professional and Non-Professional fees that are paid by both Internal and External Distributors has long been used by other exchanges, including the Exchange, for their proprietary data products, and by the OPRA plan in order to reduce the price of data to retail investors and make it more broadly available.[21] The Exchange also believes offering C2 Options Top to Non-Professional Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Although Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Distributors for their Professional and Non-professional Users.

The proposed Enterprise Fee for C2 Options Top Feed is equitable and reasonable as the proposed fee could result in a fee reduction for Distributors with a large number of Professional and Non-Professional Users. If a Distributor has a smaller number of Professional Users of C2 Options Top Data, then it may continue using the per User structure and benefit from the proposed per C2 Options Top User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute C2 Options Top Data, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count Professional and Non-Professional users every six months, which is a significant reduction in administrative burden. Finally, as described above the Enterprise Fee is entirely optional. A firm that does not have a sufficient number of Users to benefit from purchase of the license need not do so.

The Exchange lastly believes the proposed changes relating to the defined terms and terminology will provide additional specificity and clarity, while also harmonizing the various definition with that of its affiliates. Doing so would ensure consistent terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion amongst market data subscribers of the Exchange's and its affiliates' market data products. Additionally, the proposed new terms are identical to the terms already used by the Exchange's affiliates BZX Options and EDGX Options. Similarly, the Exchange believes the proposal to reformate the fees will provide for a more streamlined fees schedule, thereby reducing potential confusion. Accordingly, the Exchange believes the proposed changes remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price top-of-book data is constrained by competition among exchanges that offer similar data products to their customers. Top-of-book data is broadly disseminated by competing U.S. options exchanges and through OPRA. There are therefore a number of alternative products available to market participants and investors, including products offered by certain competing exchanges, as well as OPRA. In this competitive environment potential Distributors are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as market data customers look to purchase cheaper data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants.

[19] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[20] *See e.g.,* Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees), which provides for a fee of $40 per month to professional users and $1.00 per month to non-professional users to cover the usage of PHLX Options (TOPO) Data, TOPO Plus Orders, PHLX Orders and PHLX Depth Data feeds. *See also* NYSE American Options Proprietary Market Data Fees schedule, which provides for a fee of $50 per month to professional users and $1.00 per month to non-professional users of American Options Top Data, American Options Deep and American Options Complex products. By comparison, the total Professional User fee for C2 Options Top and C2 Options COB is in line, and in fact lower than the above Professional User fee at $30 per Professional User (*i.e.,* $5 per Professional Users of C2 Options Top, as proposed, and $25 per Professional User of C2 Options COB). The Exchange's combined Non-Professional User Fee at $0.10 per Non-Professional User (*i.e.,* $0.30 per Non-Professional User of C2 Options Top, as proposed, and $0 per Non-Professional User of C2 Options COB) is lower than PHLX's and NYSE American's aforementioned Non-Professional User fees. C2 Options Depth does not charge users based on Professional or Non-Professional classification and market participants have always been subject to separate User fees across C2 Options market data products.

[21] *See, e.g.,* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131) (establishing the $15 Non-Professional User Fee (Per User) for NYSE OpenBook); *See, e.g.,* Securities Exchange Act Release No. 67589 (August 2, 2012), 77 FR 47459 (August 8, 2012) (revising OPRA's definition of the term ''Nonprofessional''); and *See* Securities Exchange Act Release No. 70683 (October 15, 2013), 78 FR 62798 (October 22, 2013) (SR–CBOE–2013–087) (establishing Professional and Non-Professional User fees for Cboe Options COB Data Feed).

As discussed, the proposed fees would apply to all similarly situated recipient firms of C2 Options Top on an equal and non-discriminatory basis. The Exchange believes the differentiated fees for Professional and Non-Professional Users of C2 Options Top is appropriate given Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Non-Professional Users too can receive significant financial benefits through their participation in the markets, however the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets. The Exchange therefore believes that the proposed fee neither favors nor penalizes one or more categories of market participants in a manner that would impose an undue burden on competition.

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, market participants are not forced to subscribe to C2 Options Top Data, or any of the Exchange's data feeds, as described above. As noted, the quote and last sale data contained in the Exchange's C2 Option Top feed is identical to the data sent to OPRA for redistribution to the public. Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

Because market data customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product. These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [22] and paragraph (f) of Rule 19b–4 [23] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2023–007 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–C2–2023–007. 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–C2–2023–007 and should be submitted on or before April 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

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[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97129; File No. SR–NSCC–2022–009]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Adopt Intraday Volatility Charge and Eliminate Intraday Backtesting Charge

March 13, 2023.

I. Introduction

On July 7, 2022, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2022–009 (the ''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on July 20, 2022,[3] and the Commission has received comments on the Proposed Rule Change.[4]

On September 1, 2022, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[6] On October 14,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95286 (July 14, 2022), 87 FR 43355 (July 20, 2022) (File No. SR–NSCC–2022–009) (''Notice of Filing'').

[4] Comments are available at *https://www.sec.gov/comments/sr-nscc-2022-009/srnscc2022009.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] Securities Exchange Act Release No. 95650 (Sept. 1, 2022), 87 FR 55054 (Sept. 8, 2022) (File No. SR–NSCC–2022–009).

2022, the Commission instituted proceedings, pursuant to Section 19(b)(2)(B) of the Act,[7] to determine whether to approve or disapprove the Proposed Rule Change.[8] On January 10, 2023, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the Proposed Rule Change.[9]

For the reasons discussed below, the Commission is approving the Proposed Rule Change.[10]

II. Description of the Proposed Rule Change

NSCC provides clearing, settlement, risk management, central counterparty services, and a guarantee of completion for virtually all broker-to-broker trades involving equity securities, corporate and municipal debt securities, and unit investment trust transactions in the U.S. markets. A key tool that NSCC uses to manage its credit exposure to its members is collecting an appropriate Required Fund Deposit (*i.e.,* margin) from each member.[11] A member's margin is designed to mitigate potential losses to NSCC associated with liquidation of the member's portfolio in the event of that member's default.[12] The aggregate of all NSCC members' margin deposits (together with certain other deposits required under the Rules) constitutes NSCC's clearing fund, which NSCC would access should a member default and that member's margin, upon liquidation, be insufficient to satisfy NSCC's losses.[13]

A member's margin consists of a number of applicable components, each of which addresses specific risks faced by NSCC.[14] Each member's start of day required margin is calculated overnight, based on the member's prior end-of-day net unsettled positions, and notified to members early the following morning to be deposited by approximately 10:00 a.m.[15] In this Proposed Rule Change, NSCC would make two changes to its margin methodology.

First, NSCC would add an intraday volatility charge to its margin requirement, which would increase the margin it collects from members whose trading portfolios experience large and unexpected intraday volatility. NSCC performed an impact study with respect to this change that reviewed member positions at 4:00 p.m. between January 3, 2020 and May 28, 2021. The study showed that the proposal would have resulted in approximately eight intraday volatility charges collected on an average day during that time period, at an average of $31.6 million, ranging in size from $251,000 to $1.35 billion.[16]

Second, NSCC would amend its margin requirement to eliminate the intraday backtesting charge because the charge relies upon an assumption that may lead to undercounting potential backtesting deficiencies.[17] NSCC will retain the backtesting charge it collects as margin at the start of each business day.[18] The proposed changes to its margin requirements are the result of NSCC's regular review of its margin methodology to evaluate whether margin levels are commensurate with the particular risk attributes of each relevant product, portfolio, and market.[19] NSCC performed an impact analysis looking at both the proposal's impact on end of day backtesting and intraday backtesting between February 2021 and February 2022, during which time period NSCC collected a daily average of $30 million from 15 members in intraday backtesting charges. Although NSCC would not have collected these amounts under the proposal, the study showed that the end of day backtesting would have remained above the 99% coverage target during that time period, and this aspect of the proposal would have had an immaterial impact on intraday backtesting results, causing backtesting to drop below the 99% coverage target slightly in only two instances.[20]

A. Background Regarding Specific Aspects of NSCC's Margin Methodology

Volatility Component: Generally, the largest portion of an NSCC member's margin is the volatility component. The volatility component is designed to reflect the amount of money that could be lost on a portfolio over a given period within a 99th percentile level of confidence. This component represents the amount assumed necessary for NSCC to absorb losses while liquidating the member's portfolio.

NSCC's methodology for calculating the volatility component of a member's required margin depends on the type of security and whether the security has sufficient pricing or trading history for NSCC to robustly estimate the volatility component using statistical techniques. Generally, for most securities (that is, equity securities), NSCC calculates the volatility component using, among other things, a parametric Value at Risk (''VaR'') model, which results in a ''VaR Charge.'' [21] In addition, for securities that do not have sufficient pricing or trading history to perform the statistical analysis employed in the VaR model, NSCC applies a haircut to calculate the volatility component, in lieu of the VaR-based calculation.[22] The volatility component of a member's required margin is the sum of the VaR-based and the haircut-based calculations.

Margin requirement differential (''MRD'') charge: NSCC may assess an MRD charge, which is designed to capture the unpredictability of a member's historical trading activity, as measured, in part, by the variability in a member's volatility charge over a 100-day lookback period.[23]

Backtesting charge: NSCC employs daily backtesting to determine the sufficiency of each member's margin, by simulating the liquidation gains or losses using the actual unsettled positions in the member's portfolio, and

[7] 15 U.S.C. 78s(b)(2)(B).

[8] Securities Exchange Act Release No. 96088 (Oct. 14, 2022), 87 FR 63845 (Oct. 20, 2022) (File No. SR–NSCC–2022–009).

[9] Securities Exchange Act Release No. 96621 (Jan. 10, 2023), 88 FR 2688 (Jan. 17, 2023) (File No. SR–NSCC–2022–009).

[10] Capitalized terms not defined herein are defined in NSCC's Rules & Procedures (''Rules''), *available at https://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[11] *See* Rule 4 and Procedure XV of the Rules, *supra* note 10.

[12] Under NSCC's Rules, a default would generally be referred to as a ''cease to act'' and could encompass a number of circumstances, such as a member's failure to make a margin deposit in a timely fashion. *See* Rule 46, *supra* note 10.

[13] *See id.*

[14] *See* Procedure XV of the Rules, *supra* note 10.

[15] *See* Procedure XV, Sections II(B) of the Rules, *supra* note 10. The Rules provide that required deposits to the clearing fund are due within one hour of demand, unless otherwise determined by NSCC.

[16] *See* Notice of Filing, *supra* note 3, at 43360–61.

[17] *See id.* at 43357.

[18] *See* Procedure XV, Section I.B(3) of the Rules, *supra* note 10.

[19] *See* Notice of Filing, *supra* note 3, at 43357.

[20] *See id.* at 43361.

[21] Specifically, NSCC calculates the VaR Charge as the greatest of (1) the larger of two separate calculations that utilize the VaR model, (2) a gap risk measure calculation based on the largest non-index position in a portfolio that exceeds a concentration threshold, which addresses concentration risk that can be present in a member's portfolio, or (3) a portfolio margin floor calculation based on the market values of the long and short positions in the portfolio, which addresses risks that might not be adequately addressed with the other volatility component calculations. *See* Procedure XV, Sections I(A)(1)(a)(i) and I(A)(2)(a)(i) of the Rules, *supra* note 10.

[22] Securities that are subject to the haircut-based calculation include unit investment trusts, corporate and municipal bonds and Illiquid Securities. *See* Rule 1 and Procedure XV, Sections I(A)(1)(a)(iii) and (2)(a)(iii) of the Rules, *supra* note 10.

[23] Specifically, MRD is calculated as the sum of an exponentially weighted moving average (''EWMA'') of positive day over day changes over a 100-day look back period in member's (1) mark-to-market charge and (2) volatility charge, times a multiplier calibrated based on backtesting results. *See* Procedure XV, Sections I(A)(1)(e) and (2)(d) of the Rules, *supra* note 10.

the actual historical returns for each security held in the portfolio.[24] A backtesting deficiency would result if the liquidation losses were greater than the member's margin. NSCC investigates the causes of any backtesting deficiencies, paying particular attention to members with backtesting deficiencies that bring the results for that member below the 99 percent confidence target (*i.e.,* greater than two backtesting deficiency days in a rolling twelve-month period) to determine if there is an identifiable cause of repeat backtesting deficiencies.[25] NSCC also evaluates whether multiple members may experience backtesting deficiencies for the same underlying reason.[26]

Based on that daily testing, NSCC may assess a backtesting charge, which is designed to collect additional margin generally from any member whose 12-month trailing backtesting coverage falls below or risks falling below the 99 percent confidence level.[27] Currently, this charge may be assessed on an intraday or regular basis.[28] If assessed, a member's start-of-day backtesting charge is generally equal to that member's third largest deficiency,[29] and a member's intraday backtesting charge is generally equal to that member's fifth largest deficiency, that occurred during the previous 12 months.[30] NSCC calculates the backtesting charge monthly and, based on those calculations, may either continue to impose an existing backtesting charge, impose a new or remove an existing backtesting charge, or it may either increase or decrease a member's existing backtesting charge as necessary to maintain its target backtesting coverage.[31]

B. Proposed Intraday Volatility Charge

NSCC proposes to implement an intraday volatility charge that would be part of its members' margin requirement to better address the volatility risks presented by members' intraday net unsettled positions between the collections of margin at the start of each business day.[32] NSCC states that through its regular monitoring, it has occasionally observed significant intraday changes to market price volatility and significant changes to the size and composition of members' portfolios of net unsettled positions that could cause the amount collected as the volatility charge at the start of that business day (''start of day volatility charge'') to no longer be sufficient to mitigate the volatility risks that such positions present to NSCC.[33] The proposed intraday volatility charge would be designed to address this risk.

Application of the intraday volatility charge: An intraday volatility charge generally would apply when the difference between a member's start of day volatility charge and a calculation of the volatility charge based on that member's intraday net unsettled positions exceeds 100 percent, and when the amount of the charge is greater than $250,000.

NSCC states that, on days when there is increased volatility in the market, it would provide notice to its members that an intraday volatility charge may be collected. If NSCC determines to collect an intraday volatility charge, NSCC would issue a notice by electronic mail to those members who are subject to that charge, who would be able to view the amount to be collected in NSCC's clearing fund management system.[34] This notification and collection process would be identical to the current process that is followed for the notification and collection of the intraday mark-to-market charges.[35] Members who receive that notice would be required to fund the amount of the intraday volatility charge within one hour of that notice, pursuant to Section II(B) of Procedure XV of the Rules.[36]

Calculation of the intraday volatility charge: The amount of intraday volatility charge would be equal to the difference between the start of day volatility charge and the intraday calculation of that volatility charge, reduced by the volatility portion of the MRD charge collected from that member at the start of the business day.[37] NSCC states that, although the MRD charge is intended to capture the same type of risk (*i.e.,* variability in the volatility charge), it believes the proposed intraday volatility charge would provide it with a better measure of the significant intraday volatility swings in a member's positions, which may be inconsistent with a member's historical trading activity.[38] NSCC states, therefore, it would not be necessary for NSCC to collect as part of the intraday volatility charge any amounts that it has already collected as the volatility portion of the MRD charge for that business day.[39]

When calculating the intraday volatility charge, NSCC proposes to adjust the net unsettled positions by excluding any position for which shares have either been delivered to the CNS System which is used by NSCC to account for and settle transactions or received by the member from the CNS System to satisfy all or any portion of that position. NSCC states it believes that, for purposes of this calculation, it would be appropriate to assume the positions for which the shares have been delivered and received would settle at the end of the day, so that the calculation would be more effectively driven by any significant intraday changes to the volatility risks presented by members' adjusted intraday net unsettled positions.[40]

Thresholds in Applying the Charge: As described above, NSCC proposes to only assess an intraday volatility charge if two thresholds are met (1) when the difference between the two calculations of the volatility charge exceeds 100 percent, and (2) the amount that would be calculated as an intraday volatility charge is greater than $250,000. NSCC states it believes the 100 percent threshold is appropriate because, in normal market conditions, intraday changes in volatility that are lower than this threshold are more likely due to normal market fluctuations, and NSCC believes that, based on past observations, only an increase that is larger than 100 percent of the start of day volatility charge and that is greater

[24] Backtesting is an ex-post comparison of actual outcomes with expected outcomes derived from the use of margin models. *See* 17 CFR 240.17Ad–22(a)(1).

[25] *See* Notice of Filing, *supra* note 3, at 43356.

[26] *See id.*

[27] *See* Procedure XV, Section I(B)(3) of the Rules, *supra* note 10. *See also* Securities Exchange Act Release No. 79167 (Oct. 26, 2016), 81 FR 75883 (Nov. 1, 2016) (File Nos. SR–FICC–2016–006; SR–NSCC–2016–004).

[28] *See* Procedure XV, Section I(B)(3) of the Rules, *supra* note 10.

[29] *See id.*

[30] *See id.*

[31] *See id.*

[32] NSCC states that it did not believe that an intraday volatility charge was necessary in 2017, when it accelerated the time of its trade guarantee (from midnight of one day after trade date to either the point of trade comparison and validation, for bilateral submissions, or the point of trade validation, for locked-in submissions), because it did not believe that such a charge was necessary to address the risks presented by the accelerated trade guarantee. *See* Notice of Filing, *supra* note 3, at 43357. *See also* Securities Exchange Act Release No. 79598 (Dec. 19, 2016), 81 FR 94462 (Dec. 23, 2016) (File No. SR–NSCC–2016–005); Addendum K of the Rules, *supra* note 10.

[33] *See* Notice of Filing, *supra* note 3, at 43357.

[34] *See id.* at 43359.

[35] *See id.*

[36] *See* Procedure XV, Section II(B) of the Rules, *supra* note 10.

[37] To avoid doublecounting the risks captured by any intraday mark-to-market charges NSCC may assess (*see* Procedure XV, Section I(B)(5) of the Rules, *supra* note 10), NSCC would use the same end of day price returns as used in the start of day volatility charge.

[38] *See* Notice of Filing, *supra* note 3, at 43358.

[39] *See id.*

[40] *See id.*

than $250,000 would require mitigation through the intraday volatility charge.[41]

NSCC proposes to retain the discretion within its Rules to lower this threshold if it determines that a reduction would be appropriate to mitigate risks to NSCC, for example, during volatile market conditions or market events that cause increases in trading volume, or when NSCC believes a lower threshold is appropriate to mitigate risks presented by members whose portfolios may present relatively greater risks to NSCC on an overnight basis.[42] In circumstances when NSCC determines it is appropriate to reduce the threshold, the reduced threshold would apply to all members. NSCC states that this discretion would allow NSCC to collect an intraday volatility charge earlier in light of increased levels of volatility risks, and in these circumstances, a lower threshold would allow NSCC to more proactively preserve the coverage of its required fund deposit.[43]

Exceptions to Collecting an Intraday Volatility Charge: NSCC proposes two exceptions to collecting an intraday volatility charge from a particular member or members, which are instances where (a) trades submitted later in the day would offset trades submitted earlier in the day, such that the thresholds would not have been met if such activity had been submitted earlier in the day, or (b) the threshold was met due to the submission of an erroneous trade that can be corrected.

NSCC monitors volatility in 15-minute increments throughout the business day.[44] When the threshold is exceeded during normal market conditions earlier in the trading day, NSCC states it would typically not collect an intraday volatility charge until later in the day when members have had an opportunity to submit trading activity that would be expected to offset trades submitted earlier in the day that caused the thresholds to be met,[45] or a system issue or other error could cause a delay in the submission of activity.[46] NSCC states that it believes an intraday volatility charge would not be necessary in these circumstances because the risk presented by the temporary increase in volatility would be expected to be mitigated by other clearing activity or corrected submissions later in the day.[47]

In determining whether to collect an intraday volatility charge, after the occurrence of a threshold trigger, NSCC would utilize the same escalation procedures that are currently in place when making similar determinations with respect to its current authority to impose intraday mark-to-market charges. Specifically, NSCC would utilize a predetermined escalation matrix that identifies the level of the required approver within the NSCC Market Risk group based on the amount of the calculated intraday volatility charge that would be collected.[48] A decision to collect the charge would be made based on documentation provided to the required approver regarding the circumstances of the calculated charge.[49]

Application to Positions in Securities Financing Transactions: NSCC has established a clearing service for securities financing transactions to make central clearing available at NSCC for equity securities financing transactions (''SFTs'').[50] NSCC proposes to include the intraday volatility charge among the margin charges that are applicable to SFT positions cleared through NSCC.

C. Proposed Elimination of the Intraday Backtesting Charge

NSCC is also proposing to eliminate the intraday backtesting charge. NSCC states that, in connection with recent regulatory feedback, it has determined that the current methodology for calculating the intraday backtesting charge relies upon an assumption that NSCC would cease to act for a member that has paid all of its intraday margin requirements, when it is possible that would not be the case.[51] That is, NSCC could cease to act for a member that has not paid all of its intraday margin requirements, meaning that the member would have provided less margin to NSCC and may therefore present additional losses. As a result, this methodology may underestimate a member's backtesting losses and undercount potential backtesting deficiencies, whereas a calculation that disregards intraday margin collections would penalize members for making intraday margin deposits and be considered double margining.[52]

More specifically, if NSCC collects margin from a member intraday, but does not include that amount as part of the member's margin when backtesting, resulting in a backtesting deficiency and a subsequent intraday backtesting charge, that member would have covered its risk to NSCC twice—first as intraday margin collected from that member and second as an intraday backtesting charge.[53] Therefore, given these deficiencies and in light of the proposed intraday volatility charge, NSCC proposes to eliminate the intraday backtesting charge.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[54] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. After carefully considering the Proposed Rule Change, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC. In particular, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F)[55] of the Act and Rules 17Ad–22(e)(4)(i), (e)(6)(i), and (e)(23)(ii) thereunder.[56]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act[57] requires that the rules of a clearing agency, such as NSCC, be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is

[41] NSCC states it believes amounts below this threshold, which is the minimum required deposit to the clearing fund, would be immaterial to address any increased risk. *See id.*

[42] *See id.*

[43] *See id.* As part of the Proposed Rule Change, NSCC filed Exhibit 3c—NSCC Market Risk Management Procedures (marked excerpt), which includes NSCC's internal criteria that would be applied to determine whether to adjust the threshold. Pursuant to 17 CFR 240.24b–2, NSCC requested confidential treatment of Exhibit 3c. Based on its review of those materials, the Commission understands that NSCC would provide notice to its members of any changes to the threshold.

[44] *See* Notice of Filing, *supra* note 3, at 43357.

[45] NSCC further states that off-setting trading activity may be submitted to NSCC later in the day in connection with a member's business model or trading practices. *See id.* at 43359.

[46] *See id.*

[47] *See id.*

[48] As part of the Proposed Rule Change, NSCC filed Exhibit 3c—NSCC Market Risk Management Procedures (marked excerpt), which includes NSCC's internal escalation procedures that will be applicable to a determination to waive a member's intraday volatility charge or to alter the applicable threshold. Pursuant to 17 CFR 240.24b–2, NSCC requested confidential treatment of Exhibit 3c.

[49] *See* Notice of Filing, *supra* note 3, at 43359.

[50] *See* Rule 56, *supra* note 10.

[51] *See* Notice of Filing, *supra* note 3, at 43360.

[52] *See id.*

[53] *See id.*

[54] 15 U.S.C. 78s(b)(2)(C).

[55] 15 U.S.C. 78q–1(b)(3)(F).

[56] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(i), and (e)(23)(ii).

[57] 15 U.S.C. 78q–1(b)(3)(F).

responsible.[58] The Commission believes that the proposal is consistent with Section 17A(b)(3)(F) of the Act for the reasons stated below.

As described above in Section II.B, NSCC proposes to add an intraday volatility charge to its margin requirements that NSCC may collect when certain thresholds are met. As discussed in more detail in Section III.C *infra,* the Commission believes that this proposed change to NSCC's margin methodology would help NSCC ensure that it collects sufficient margin to cover its credit exposure to its members in times of intraday market volatility.

Moreover, as described above in Section II.C, NSCC proposes to eliminate the intraday backtesting charge because it is based on an unreasonable assumption and is not necessary, in light of the proposed intraday volatility charge, for NSCC to address its intraday market risk exposures and backtesting coverage metrics. NSCC provided information regarding the impact of the proposed intraday backtesting charge elimination on its backtesting coverage.[59] The results of the analysis showed that, despite not collecting intraday backtesting charges, NSCC's end of day backtesting would have remained above the 99 percent coverage target during that time period, and that this aspect of the proposal would have had an immaterial impact on intraday backtesting results, causing backtesting to drop below the 99 percent coverage target slightly in only two instances.[60] The Commission has reviewed NSCC's analysis and agrees that its results indicate that NSCC's proposal to eliminate the intraday backtesting charge would not materially impact NSCC's margin coverage, and because the proposed intraday volatility charge would, when applicable, allow NSCC to collect additional amounts which would more accurately reflect the intraday changes to market volatility or the size of a member's portfolio.

With respect to both aspects of this proposal, the Commission believes that, by allowing NSCC to collect sufficient margin, the proposal should help ensure that, in the event of a member default, NSCC's operation of its critical clearance and settlement services would not be disrupted because of insufficient financial resources. Accordingly, the Commission finds that NSCC's proposal should help NSCC to continue providing prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.

Moreover, as described in Section II above, NSCC would access the mutualized clearing fund should a defaulted member's own margin be insufficient to satisfy losses to NSCC caused by the liquidation of that member's portfolio. Because NSCC's proposal to adopt an intraday volatility charge should help ensure that NSCC has collected sufficient margin from members, the proposed changes would also help minimize the likelihood that NSCC would have to access the clearing fund, thereby limiting non-defaulting members' exposure to mutualized losses. The Commission believes that by helping to limit the exposure of NSCC's non-defaulting members to mutualized losses, the proposed changes should help NSCC assure the safeguarding of securities and funds which are in its custody or control, consistent with Section 17A(b)(3)(F) of the Act.[61]

B. Consistency With Rule 17Ad–22(e)(4)(i) Under the Act

Rule 17Ad–22(e)(4)(i) under the Act requires that each covered clearing agency, such as NSCC, establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.[62] The Commission believes that the proposal is consistent with Rule 17Ad–22(e)(4)(i) under the Act for the reasons stated below.[63]

The proposed change to adopt an intraday volatility charge would allow NSCC to better manage its credit exposures to members by maintaining sufficient resources to cover those credit exposures fully with a high degree of confidence. Specifically, and as discussed further in Section III.C *infra,* the proposed intraday volatility charge would allow NSCC to collect additional margin on an intraday basis to help NSCC effectively mitigate the risks related to intraday increases in volatility and would address the increased risks NSCC may face related to liquidating a member's portfolio following that member's default.

Moreover, the proposed change to eliminate the intraday backtesting charge set forth in Section II.C would eliminate a charge that is currently calculated based on an unreasonable assumption and is not necessary for NSCC to address its intraday market risk exposures and backtesting coverage metrics. As discussed above,[64] the Commission has reviewed and analyzed the results of NSCC's backtesting analysis and believes that this proposal would allow NSCC to continue to collect margin to meet its coverage requirements.

Therefore, for the reasons discussed above, the Commission finds that the Proposed Rule Change is reasonably designed to enable NSCC to effectively identify, measure, monitor, and manage its credit exposure to members, and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each member fully with a high degree of confidence consistent with Rule 17Ad–22(e)(4)(i).[65]

C. Consistency With Rule 17Ad–22(e)(6)(i) Under the Act

Rule 17Ad–22(e)(6)(i) under the Act requires that each covered clearing agency that provides central counterparty services, like NSCC, establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[66]

As described above in Section II, each member's margin consists of a number of applicable components, each of which is calculated to address specific risks faced by NSCC. The Commission agrees that the proposal to adopt an intraday volatility charge set forth in Section II.B should enable NSCC to more effectively address the risks presented by significant intraday changes to market volatility or a member's portfolio of net unsettled positions. NSCC provided information regarding the impact of the proposed intraday volatility charge on its margin collection.[67] Specifically, a recent

[58] *Id.*

[59] As part of the Proposed Rule Change, NSCC filed Exhibit 3b—NSCC Intraday Backtesting Charge Impact Study Data, comparing the current and proposed margin collections. Pursuant to 17 CFR 240.24b–2, NSCC requested confidential treatment of Exhibit 3b. The confidential information provided more granular support for this analysis.

[60] *See id.*

[61] 15 U.S.C. 78q–1(b)(3)(F).

[62] 17 CFR 240.17Ad–22(e)(4)(i).

[63] *Id.*

[64] *See* notes 59–60 *supra* and accompanying text.

[65] 17 CFR 240.17Ad–22(e)(4)(i).

[66] 17 CFR 240.17Ad–22(e)(6)(i).

[67] As part of the Proposed Rule Change, NSCC filed Exhibit 3a—NSCC Intraday Volatility Charge

Continued

impact study shows that the proposal would have resulted in approximately eight intraday volatility charges collected on an average day during that time period, and such charges would have been an average of $31.6 million, ranging in size from $251,000 to $1.35 billion.[68] The Commission has reviewed NSCC's analysis and agrees that its results indicate that NSCC's proposal results in margin levels commensurate with the credit exposures to better reflect the intraday changes to market volatility or the size of a member's portfolio.

One commenter raised concerns with respect to the analysis cited by NSCC in the Proposed Rule Change, stating that NSCC did not provide any data to support its assertion that it occasionally observed significant intraday changes to market price volatility.[69] Consistent with NSCC's statement regarding observing volatility, the Commission notes that this time period includes periods of significant intraday market volatility, including, for example, the initial Covid–19 volatility in March 2020 and the meme stock trading in January 2021. Moreover, the Commission believes that the information submitted by NSCC confidentially provides an overview of how the proposed charge would have helped NSCC address any intraday exposures related to such market volatility. For each trading date during the January 2020 through March 2021 time period, the data provided to the Commission indicates the start of day VaR collected by NSCC across all members, what the intraday VaR need is for all of NSCC as of 4 p.m., the MRD offset, what the intraday volatility charge would have been, and the number of members affected by a call. Based on its review of this data, which indicates what NSCC's intraday exposures would have been during this timeframe by comparing the start of day VaR amounts to the intraday VaR charge based on the day's trading activity, the Commission believes that the proposed intraday volatility charge would help NSCC address significant intraday exposures. Moreover, the commenter indicates that its own analysis showed that it would have incurred an intraday volatility charge approximately once per week.[70] The Commission does not disagree that such a frequency could be possible depending on the commenter's portfolio and any intraday market volatility, and the Commission does not believe that this information renders the proposed intraday volatility charge unreasonable.

As set forth in the proposed rule text filed with this Proposed Rule Change,[71] the proposed intraday volatility charge would provide NSCC the authority to reduce the applicable threshold of 100 percent ''if [NSCC] determines that a reduction of the threshold is appropriate to mitigate risks to [NSCC] by accelerating the collection of anticipated additional margin from those Members whose portfolios may present relatively larger risks to [NSCC] on an overnight basis,'' including, for example, during volatile market conditions or market events that cause increases in trading volumes. The Commission believes that this ability is reasonable and consistent with NSCC's need to manage the risks arising from intraday volatility because it would allow NSCC to respond to market stress in a manner appropriate to the circumstances.

One commenter stated that the proposal did not specify how far NSCC could reduce the intraday volatility charge threshold.[72] The Commission does not believe that the lack of a floor for the threshold is unreasonable. NSCC could only lower the threshold, if NSCC determines that a reduction of the threshold is appropriate to mitigate risks to NSCC by accelerating the collection of anticipated additional margin from members whose portfolios may present relatively larger risks to NSCC on an overnight basis, for example, during volatile market conditions or market events that cause increases in trading volumes, and as approved consistent with its internal procedures, which the Commission has reviewed as part of the materials submitted confidentially.[73] and the Commission does not believe that a floor is necessary to ensure transparency. In addition, the Commission understands that members would be informed of any changes to the threshold, based on its review of the confidential materials submitted in connection with this Proposed Rule Change.[74] The Commission also notes that NSCC has similar authority with respect to its intraday mark-to-market charge in its existing Rules.[75] Moreover, as discussed in Section III.D *infra,* the Commission believes that the increased transparency arising from the Proposed Rule Change with respect to intraday volatility should overall improve a member's ability to understand the potential charges to which it may be subject.

Moreover, given the deficiencies in the current calculation of the intraday backtesting charge, the Commission believes NSCC's proposal to eliminate the intraday backtesting charge would continue to allow NSCC to maintain a risk-based margin system that considers, and produces margin levels commensurate with the risks of its members' portfolios.

Accordingly, the Commission finds the proposal is consistent with Rule 17Ad–22(e)(6)(i) under the Act because it is designed to assist NSCC in maintaining a risk-based margin system that considers, and produces margin levels commensurate with, the risks of portfolios that experience significant volatility on an intraday basis.[76]

D. Consistency With Rule 17Ad–22(e)(23)(ii) Under the Act

Rule 17Ad–22(e)(23)(ii) under the Act requires that each covered clearing agency, like NSCC, establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in NSCC.[77] The Commission believes that the proposal is consistent with Rule 17Ad–22(e)(23)(ii) under the Act for the reason stated below.

As described above in Section II.B, NSCC is proposing to amend its Rules to include a description of the intraday volatility charge, including the thresholds that would trigger the collection of the charge, the exceptions to the collection of the charge when the thresholds are met, the method by which NSCC would calculate that charge, and NSCC's discretion to reduce the percent threshold that triggers the collection of the charge, including the circumstances when NSCC may exercise this discretion. Additionally, NSCC represents that members would be able to continue to use existing tools, including the ability to view the calculated volatility charge in 15-minute increments throughout the business day

Impact Study Data, comparing the current and proposed margin collections. Pursuant to 17 CFR 240.24b–2, NSCC requested confidential treatment of Exhibit 3a. The confidential information provided more granular support for this analysis.

[68] *See id.* and Notice of Filing, *supra* note 3, at 43361.

[69] Letter from John S. Markle, VP and Deputy General Counsel, Robinhood Securities LLC, at 2 (Aug. 23, 2022), *available at https://www.sec.gov/comments/sr-nscc-2022-009/srnscc2022009-20137444-307937.pdf* (''Robinhood Letter'').

[70] Robinhood Letter at 2, *supra* note 69.

[71] *See* proposed Section I(B)(6) of Procedure XV, available at *https://www.sec.gov/rules/sro/nscc/2022/34-95286-ex5.pdf.*

[72] Robinhood Letter at 2, *supra* note 69.

[73] *See* notes 48 and 71 *supra.*

[74] *See* note 43 *supra.*

[75] *See* Procedure XV, Section I(B)(5) of the Rules, *supra* note 10.

[76] 17 CFR 240.17Ad–22(e)(6)(i).

[77] 17 CFR 240.17Ad–22(e)(23)(ii).

and the VaR margin calculator available on NSCC's Risk Client Portal, to monitor their positions and anticipate any potential intraday charges. For these reasons, the Commission believes the Proposed Rule Change would provide members with sufficient information regarding when and how NSCC may collect additional amounts to address the risks of portfolios that experience significant volatility on an intraday basis. The Commission also believes that the specificity regarding how and when NSCC would calculate the intraday volatility charge provides additional transparency over the ''special charge'' in NSCC's Rules that allows NSCC to collect a special charge in times of market volatility or price fluctuations. As NSCC states, ''[w]hen the intraday volatility charge is triggered, a special charge would not also be required from a Member to address the same volatility risks.'' [78]

Finally, one commenter asserted that the proposal failed to provide any information regarding what would happen if a member fails to meet an intraday volatility charge.[79] However, NSCC's Rules address a member's requirement to meet its obligations with respect to required margin, as determined by NSCC, and set forth NSCC's authority if a member does not meet its obligations.[80] Therefore, the Commission disagrees that this proposal should have provided more information on what happens if a member does not meet this type of margin call.

Accordingly, the Commission finds that the Proposed Rule Change would enable NSCC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide sufficient information to enable members to identify and evaluate the risks, fees, and other material costs they incur as NSCC members, consistent with Rule 17Ad–22(e)(23)(ii).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [81] and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [82] that proposed rule change SR–NSCC–2022–009, be, and hereby is, *approved*.[83]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[84]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05447 Filed 3–17–23; 8:45 am]

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[78] *See* Notice of Filing, *supra* note 3, at 43359–60.

[79] Robinhood Letter at 2–3, *supra* note 69.

[80] *See* Rule 4, Section 1 and Procedure XV, Section II(B) of the Rules, *supra* note 10. *See also* Letter from Timothy Hulse, Managing Director, DTCC, at 1–2 (Sept. 27, 2022), *available at https://www.sec.gov/comments/sr-nscc-2022-009/srnscc2022009-20144273-309218.pdf.*

[81] 15 U.S.C. 78q–1.

[82] 15 U.S.C. 78s(b)(2).

[83] In approving the Proposed Rule Change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[84] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, March 22, 2023 at 10:00 a.m.

PLACE: The meeting will be webcast on the Commission's website at *www.sec.gov.*

STATUS: The meeting will begin at 10:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to adopt amendments to Form PF, the confidential reporting form for certain registered investment advisers to private funds, to require current reporting for certain private fund advisers and revise certain reporting requirements.

2. The Commission will consider whether to:

a. Propose to require the electronic filing or submission on the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system, using structured data where appropriate, of several forms, notices, and reports required under the Exchange Act;

b. Propose to rescind Form 19b–4(e) and require the information currently contained in Form 19b–4(e) instead to be publicly posted on the listing self-regulatory organization's website; and remove the requirement in Form 19b–4 for a manual signature and the related manual signature retention requirement;

c. Propose to amend the Commission's Informal and Other Procedures to reflect that Form 1 and Form 1–N would be submitted electronically and to make certain technical revisions;

d. Propose to amend the requirement for supplemental materials for registered clearing agencies to require that a clearing agency post to its website the required supplemental information, rather than submit such material in paper copy to the Commission;

e. Propose to allow electronic signatures in certain broker-dealer filings and proposing amendments regarding the Financial and Operational Combined Uniform Single Report (Form X–17A–5) to harmonize with other rules, make technical corrections, and provide clarifications; and

f. Propose to require that notices made pursuant to Rule 3a71–3(d)(1)(vi) be withdrawn in specified circumstances.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: March 15, 2023.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–05694 Filed 3–16–23; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97136; File No. SR–CboeEDGX–2023–020]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

March 14, 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 March 10, 2023, Cboe EDGX Exchange, Inc. (''Exchange'' or ''EDGX'') 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 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

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX Options'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to modify its market data fees for EDGX Options Top.[3] Particularly, the Exchange proposes to modify the Professional and Non-Professional User Fees, adopt a new Enterprise Fee for EDGX Options Top, and make other clarifying, non-substantive changes.[4]

The Exchange first proposes to reduce the rates for Professional and Non-Professional User fees for EDGX Options Top. The Exchange currently charges Internal Distributors and External Distributors that redistribute any of the EDGX Options Data Feeds different fees for their Professional Users[5] and Non-Professional Users.[6] The Exchange currently assesses a monthly fee for Professional Users of $10.00 per User and a monthly fee of $1.00 per Non-Professional User.[7] Further, the Fee Schedule provides that Distributors and Users of any one of EDGX Options market data products (*i.e.,* EDGX Options Top, EDGX Options Depth, EDGX Options Auction Feed, EDGX Options Complex Depth, EDGX Options Complex Top, and EDGX Options Complex Auction Fees) may receive, at no additional charge, access to any or all of the other market data products listed. The Exchange proposes to reduce the rates for the User fees for EDGX Options Top. Particularly, the Exchange proposes to reduce the monthly (i) Professional User fee from $10 per user to $5 per user and (ii) Non-Professional User fee from $1.00 per user to $0.10 per user. The Exchange also proposes to start charging separate User fees for EDGX Options Top. User Fees for the Exchange's remaining market data products will continue to receive, at no additional charge, access to any or all of the other market data products listed (with the exception of EDGX Options Top). The Exchange has reformatted the Market Data Fees tables to make this clear.[8]

The Exchange lastly proposes to establish a $20,000 per month Enterprise Fee that will permit a Distributor to purchase a monthly (and optional) Enterprise license to receive the EDGX Options Top Data for distribution to an unlimited number of Professional and Non-Professional Users. The Enterprise Fee is an alternative to Professional and Non-Professional User fees and will permit a Distributor to pay a flat fee to receive the data for an unlimited number of Professional and Non-Professional Users, which the Exchange proposes to make clear in the Fee Schedule. The Enterprise Fee may provide an opportunity to reduce fees. For example, if a Distributor distributes EDGX Options Top to 15,000 Professional Users who each receive EDGX Options Top at $5.00 per month (as proposed), then that Distributor will pay $75,000 per month in Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license, then it would alternatively pay a flat fee of $20,000 for an unlimited number of Professional and Non-Professional Users. A Distributor must pay a separate Enterprise Fee for each entity that controls the display of EDGX Options Top if it wishes for such Users to be covered by the Enterprise Fee rather than by per User fees.[9] A Distributor that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. Rather, every six months, it must provide the Exchange with a count of the total number of Professional and Non-Professional users of EDGX Options Top.[10] The Exchange notes that the purchase of an Enterprise license is voluntary and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number of Users to benefit from purchase of the license need not do so.

The Exchange lastly proposes to modify the definition of Professional User under the definitions section of the Market Data Fees section to clarify that a Professional ''User'' is any natural person recipient of an Exchange Market Data product who is not a Non-Professional User. The proposed modification also aligns the definition with that of the definition used by the

[3] EDGX Options Top is an uncompressed data feed that offers top of book quotations and execution information based on options orders entered into the System. Uncompressed data is disseminated ''as is'' in the native format by the Exchange, with no compression.

[4] The Exchange initially filed the proposed fee changes on January 3, 2023 (SR–CboeEDGX–2023–001). On February 28, 2023, the Exchange submitted SR–CboeEDGX–2023–015 in place of SR–CboeEDGX–2023–001, which the Exchange withdrew on March 1, 2023. On March 10, 2023 the Exchange withdrew CboeEDGX–2023–015 and submitted this proposal.

[5] A Professional User of an Exchange Market Data product is any User other than a Non-Professional User. The Exchange proposes to amend the definition of ''Professional User'' in the Fee Schedule to further clarify that a Professional User is a natural person recipient of an Exchange Data product who is not a Non-Professional User.

[6] A ''Non-Professional User'' of an Exchange Market Data product is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

[7] Distributors that receive EDGX Options Data Feeds are required to count every Professional User and Non-Professional User to which they provide the market data product(s).

[8] The Exchange is not proposing any changes to the current User Fee rates for its other market data products at this time and Users of any one of the remaining market data products may continue to receive, at no additional charge, access to any or all of the other market data products listed (*i.e.,* except for EDGX Options Top).

[9] For example, if a Distributor that distributes EDGX Options Top to Retail Brokerage Firm A and Retail Brokerage Firm B and wishes to have the Users under each firm covered by an Enterprise license, the Distributor would be subject to two Enterprise Fees.

[10] *See* Cboe Global Markets North American Data Policies.

Exchange's affiliates Cboe Exchange, Inc. and Cboe C2 Exchange, Inc.[11]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be 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 regulating, clearing, settling, processing information with respect to, and 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 consistent with Section 6(b)(4) of the Act,[14] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange first notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 17% of the market share.[15] The Exchange believes top-of-book quotation and transaction data is highly competitive as national securities exchanges compete vigorously with each other to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. Indeed, there are several competing products offered by other national securities exchanges today, not counting products offered by the Exchange's affiliates, and each of the Exchange's affiliated U.S. options exchanges also offers similar top-of-book data.[16] Each of those exchanges offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the EDGX Options Top Feed. Further, the quote and last sale data contained in the EDGX Options Top Feed is identical to the data sent to OPRA for redistribution to the public.[17] Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

Moreover, the EDGX Options Top is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. As described above, market participants have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers. Moreover, persons (including broker-dealers) who subscribe to any exchange proprietary data feed must also have equivalent access to consolidated Options Information[18] from OPRA for the same classes or series of options that are included in the proprietary data feed, and proprietary data feeds cannot be used to meet that particular requirement.[19] As such, all proprietary data feeds are optional.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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.''[20] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of EDGX Options Top Data.

The Exchange believes the proposed changes to reduce the rates of the current Professional and Non-Professional User fees are reasonable as Distributors will be subject to lower rates for EDGX Options Top User fees. Additionally, the User fees continue to be in line with and/or lower than User fees assessed by other exchanges for similar data.[21]

The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Distributors who distribute EDGX Options Top. The Exchange also believes continuing to offer EDGX Options Top Data to Non-Professional

[11] *See* Cboe Data Services, LLC Fees Schedule and Cboe C2 Options Fees Schedule.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(4).

[15] *See* Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (February 24, 2023), available at *https://markets.cboe.com/us/options/market_statistics/*.

[16] *See e.g.*, NYSE Arca Options Proprietary Market Data Fees Schedule, MIAX Options Exchange, Fee Schedule, Section 6 (Market Data Fees), Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees) and Cboe Data Services, LLC Fees Schedule.

[17] The Exchange notes that it makes available the top-of-book and last sale data that is included in the EDGX Options Top Data Feed no earlier than the time at which the Exchange sends that data to OPRA.

[18] ''Consolidated Options Information'' means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA. Access to consolidated Options Information is deemed ''equivalent'' if both kinds of information are equally accessible on the same terminal or work station. *See* Limited Liability Company Agreement of Options Price Reporting Authority, LLC (''OPRA Plan''), Section 5.2(c)(iii). The Exchange notes that this requirement under the OPRA Plan is also reiterated under the Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies, which subscribers to any exchange proprietary product must sign and are subject to, respectively. Additionally, the Exchange's Data Order Form (used for requesting the Exchange's market data products) requires confirmation that the requesting market participant receives data from OPRA.

[19] *Id.*

[20] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[21] *See e.g.*, Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees), which provides for a fee of $40 per month to professional users and $1.00 per month to non-professional users to cover the usage of PHLX Options (TOPO) Data, TOPO Plus Orders, PHLX Orders and PHLX Depth Data feeds. *See also* NYSE American Options Proprietary Market Data Fees schedule, which provides for a fee of $50 per month to professional users and $1.00 per month to non-professional users of American Options Top Data, American Options Deep and American Options Complex products. By comparison, the total combined Professional User fee for the Exchange's market data products is significantly lower at $11 per Professional User (*i.e.,* $1 per Professional Users of EDGX Options Top, as proposed, and $10 per Professional User of any of the remaining EDGX Options market data products). The Exchange's combined Non-Professional User Fee at $1.10 per Non-Professional User (*i.e.,* $0.10 per Non-Professional User of EDGX Options Top, as proposed, and $1 per Non-Professional User of any of the remaining EDGX Options market data products) is still in line with, and not a significant departure from, PHLX's and NYSE American's aforementioned Non-Professional User fees.

Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Although Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more for those Users who are more directly engaged in the markets.

The Exchange next notes it is not required to charge a single User fee to cover all its available data products, but none-the-less has opted to not charge for separate User Fees for both feeds since EDGX Options Top was adopted in January 2018.[22] However, the Exchange now wishes to have separate User fees for EDGX Options Top. The Exchange believes the proposed change is reasonable, equitable and not unfairly discriminatory as all of EDGX Options data products are purely optional. Only those Distributors that deem the products to be of sufficient overall value and usefulness would purchase them for distribution to Users. Further, Distributors are not required to distribute, and Users are not required to receive, any one particular data product and may choose to receive none, one, or several of the Exchange's market data products. Indeed, less than 25% of the Exchange's market data subscriptions is for EDGX Options Top. Additionally, the Exchange is not required to provide any fee waiver to Distributors of EDGX Options Top. The Exchange believes the proposed change is equitable and not unfairly discriminatory as it will apply uniformly to Distributors.

The proposed Enterprise Fee for EDGX Options Top Feed is equitable and reasonable as the proposed fee could result in a fee reduction for Distributors with a large number of Professional and Non-Professional Users. If a Distributors has a smaller number of Professional Users of EDGX Options Top Data, then it may continue using the per User structure and benefit from the proposed per EDGX Options Top User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute EDGX Options Top Data, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count Professional and Non-Professional Users every six months, which is a significant reduction in administrative burden. Finally, as described above the Enterprise Fee is entirely optional. A firm that does not have a sufficient number of Users to benefit from purchase of the license need not do so.

The Exchange lastly believes the proposed non-substantive clarifying changes will alleviate potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price top-of-book data is constrained by competition among exchanges that offer similar data products to their customers. Top-of-book data is broadly disseminated by competing U.S. options exchanges and through OPRA. There are therefore a number of alternative products available to market participants and investors, including products offered by certain competing exchanges, as well as OPRA. In this competitive environment potential Distributors are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as market data customers look to purchase cheaper data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed fees would apply to all similarly situated recipient firms of EDGX Options Top on an equal and non-discriminatory basis. The Exchange believes the differentiated fees for Professional and Non-Professional Users of EDGX Options Top is appropriate given Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Non-Professional Users too can receive significant financial benefits through their participation in the markets, however the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets. The Exchange therefore believes that the proposed fee neither favors nor penalizes one or more categories of market participants in a manner that would impose an undue burden on competition.

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, market participants are not forced to subscribe to EDGX Options Top Data, or any of the Exchange's data feeds, as described above. As noted, the quote and last sale data contained in the Exchange's EDGX Options Top feed is identical to the data sent to OPRA for redistribution to the public. Accordingly, Exchange top-of-book data is therefore widely available today from a number of different sources.

Because market data customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product. These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

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) of the Act [23] and paragraph (f) of Rule 19b–4 [24] 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

[22] *See* Securities Exchange Act Release No. 82462 (January 8, 2018), 83 FR 1647 (January 12, 2018) (SR–CboeEDGX–2017–010).

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f).

the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2023–020 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–CboeEDGX–2023–020. 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–CboeEDGX–2023–020 and should be submitted on or before April 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05535 Filed 3–17–23; 8:45 am]

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[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97137; File No. SR–CBOE–2023–013]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update the Cboe Data Services, LLC Fee Schedule

March 14, 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 February 28, 2023, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to update the Cboe Data Services, LLC Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fees set forth in the Cboe Data Services, LLC (''CDS'') Fee Schedule.[3] The Exchange proposes to (i) relocate the fees in the CDS Fees Schedule to the Exchange's Fees Schedule (ii) harmonize various definitions to align with the definitions used by the Exchange's affiliates, and (iii) modify its fees relating to the distribution of the BBO data feed.[4]

Relocation of CDS Fees

The Exchange first proposes to consolidate the Cboe Data Services, LLC (CDS) Fee Schedule and the Cboe Options Fees Schedule. Historically, the CDS Fee Schedule set forth fees relating to real-time Cboe Options market data products and has been maintained separately from the Cboe Options Fees Schedule. The Exchange proposes to eliminate the CDS Fee Schedule in its entirety and relocate the fees under the CDS Fees Schedule to the Cboe Options Fees Schedule. The Exchange believes this provides a more streamlined fee schedule for Cboe Options fees and allows TPHs to more readily and easily find all fees applicable to Cboe Options. The Exchange notes that no substantive changes are being made with the relocation of the CDS fees other than those discussed further below. The Exchange lastly notes that each of its affiliated options exchanges also reflect

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee changes on January 3, 2023 (SR–CBOE–2023–001). On February 28, 2023, the Exchange withdrew that filing and submitted this proposal.

[4] The BBO Data Feed is a real-time data feed that includes the following information: (i) outstanding quotes and standing orders at the best available price level on each side of the market; (ii) executed trades time, size, and price; (iii) totals of customer versus non-customer contracts at the best bid and offer (''BBO''); (iv) all-or-none contingency orders priced better than or equal to the BBO; (v) expected opening price and expected opening size; (vi) end-of-day summaries by product, including open, high, low, and closing price during the trading session; (vi) recap messages any time there is a change in the open, high, low or last sale price of a listed option; (vii) COB information; and (viii) product IDs and codes for all listed options contracts. The quote and last sale data contained in the BBO data feed is identical to the data sent to the Options Price Reporting Authority (''OPRA'') for redistribution to the public.

their respective fees for their respective real-time exchange market data products in the respective exchange's fees schedule (instead of being maintained separately), including the Exchange's affiliate Cboe C2 Exchange, Inc., (''C2 Options''), which relocated its CDS fees schedule into the C2 Options Exchange Fees Schedule in 2018.[5] The Exchange also believes the proposed change more accurately reflects the Exchange's role as it relates to its market data products as CDS is merely an affiliate that is the Cboe contracting entity for all U.S. equities and options market data products, but the data products themselves are made available by the Exchange.

Definitions

In order to provide consistent rules and terminology amongst the Exchange and its affiliated options exchanges, C2 Options, Cboe BZX Exchange, Inc. (''BZX Options'') and Cboe EDGX Exchange, Inc. (''EDGX Options'') (collectively, ''Affiliates'') the Exchange is proposing to amend various definitions and product names to harmonize with such terms used by its affiliates BZX Options and EDGX Options, specifically.[6] As such, the proposed rule change deletes a defined term, adds certain defined terms, and makes certain non-substantive changes to existing definitions, as further described in the table below. The proposed rule change makes these changes throughout the market data fee language to conform to the proposed defined terms and the Exchange uses the proposed updated terms herein.

Defined term	Provision	Current CDS location	Description of change
Customer	A ''Customer'' is any person, company or other entity that, pursuant to a market data agreement with CDS, is entitled to receive data, either directly from CDS or through an authorized redistributor (i.e., a Customer or an extranet service provider), whether that data is distributed externally or used internally. A third-party vendor of an Approved Third-Party Device, as defined in the CDS Fee Schedule, is not a Customer unless it has a market data agreement in place with CDS. A Floor Broker User, as defined in the CDS Fee Schedule, is not a Customer unless it has a market data agreement in place with CDS.	Section I	Deletes defined term to align terms with BZX Options and EDGX Options. The concept of ''Customer'' is also better captured through the proposed new term ''Distributor''.
Distributor	A Distributor of an Exchange Market Data product is any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.	N/A	Codifies definition of ''Distributor'' in Footnote 49 of the Cboe Options Fees Schedule. Definition is identical to the definition used by BZX Options and EDGX Options and substantially similar to the language in the first sentence of the definition of ''Customer'' in the CDS Fees Schedule.
Internal Distributor.	An Internal Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity.	N/A	Codifies definition of ''Internal Distributor'' in Footnote 49 of the Cboe Options Fees Schedule. Definition is identical to the definition used by BZX Options and EDGX Options.
External Distributor.	An External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.	N/A	Codifies definition of ''External Distributor'' in Footnote 49 of the Cboe Options Fees Schedule. Definition is identical to the definition used by BZX Options and EDGX Options.
User	A User of an Exchange Market Data product is a natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data.	N/A	Codifies definition of ''User'' in Footnote 49 of the Cboe Options Fees Schedule. Definition is identical to one used by BZX Options and EDGX Options.

[5] *See* BZX Options Exchange Fees Schedule EDGX Options Exchange Fees Schedule and C2 Options Exchange Fees Schedule. *See also* Securities Exchange Act Release No. 83409 (June 12, 20118), 83 FR 28302 (June 18, 2018) (SR–C2–2018–012).

[6] C2 Options will be submitting a similar filing to harmonize its definitions and products names to align with those of BZX Options and EDGX Options as well.

Defined term	Provision	Current CDS location	Description of change
Non-Professional User.	A "Non-Professional User" is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.	Sections I and III	Relocates definition to Footnote 49 of the Cboe Options Fees Schedule and updates the rule reference to "Section 201(11)" of the Investment Advisors Act of 1940 to "Section 202(a)(11)".
Professional User.	A Professional User of an Exchange Market Data product is any natural person recipient of an Exchange Market Data product who is not a Non-Professional User.	Sections I and III	Relocates definition to Footnote 49 of the Cboe Options Fees Schedule.
Display Only Service.	A "Display Only Service" allows a natural person end-user to view and manipulate data using the Distributor's computerized service, but not to save, copy, export or transfer the data or any results of the manipulation to any other computer hardware, software or media, except for printing it to paper or other non-magnetic media.	Section I	Relocates definition to Footnote 49 of the Cboe Options Fees Schedule.
Device	A "Device" means any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form.	Section I under "Display Only User Fees".	Relocates definition to Footnote 49 of the Cboe Options Fees Schedule.
Approved Third-Party Device.	An "Approved Third-Party Device" means any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form that has been provided by a third-party and that has been approved, by Cboe Options, for use on the Cboe Options trading floor.	Section I under "Floor Broker User Fees".	Relocates definition to Footnote 49 of the Cboe Options Fees Schedule.
Floor Broker User.	A "Floor Broker User" is a person or entity registered with Cboe Options as a floor broker pursuant to Cboe Options Rules.	Section I under "Floor Broker User Fees".	Relocates definition to Footnote 49 of the Cboe Options Fees Schedule.

The Exchange also proposes to rename the following market data products and use the proposed names herein, in order to align with the naming convention used by the Exchange's affiliates, BZX Options and EDGX Options, for similar data products.[7]

Current name	Proposed name
BBO Data Feed	Cboe Options Top.
Book Depth Data Feed.	Cboe Options Depth.
Complex Order Book (COB) Data Feed.	Cboe Complex Order Book (COB).
FLEX Options Data Feed.	Cboe Options FLEX Options.

The Exchange believes the proposed changes to eliminate, modify and adopt the terms discussed above will add additionally transparency to the Fees Schedule and will protect investors, as the changes provide more clarity within the rule and more harmonized rule language across the Fees Schedules of the Cboe affiliated options exchanges. Further, the Exchange notes that the changes are non-substantive changes or provide additional detail in the rule regarding current market participants that purchase or use the Exchange's market data products. None of these differences impact the manner in which any of the terms and corresponding fees apply, including how the Exchange would have otherwise characterized a Distributor or User (Professional or Non-Professional).

Cboe Options Top Fee Changes

The Exchange next proposes to modify the current monthly Data Fee for Cboe Options Top. Currently, the Exchange assesses a "Data Fee" of $9,000 per month for internal use and external redistribution of the Cboe Options Top Data Feed. A Distributor receiving the Cboe Options Top Data Feed from another entity or directly from the Exchange is assessed the Data Fee by the Exchange and is entitled to use the Data internally and/or distribute it externally. The Exchange now proposes to adopt separate fees for internal and external distribution. Specifically, the Exchange proposes to maintain the current monthly fee of $9,000 for internal distribution but adopt a lower fee of $5,000 per month for external distribution.

The Exchange next proposes to modify its current User Fees. The Exchange currently charges a "User Fee" of $50 per month per Device or user ID for use of the data in the Cboe Options Top Data Feed by "Display Only Service" users. The current User fee is payable only for "external" Display Only Service users who receive Cboe Options Top.[8] Internal Distributors may currently distribute Cboe Options Top Data to an unlimited number of

[7] *See* BZX Options Exchange Fees Schedule, Market Data Fees and EDGX Options Exchange Fees Schedule, Market Data Fees.

[8] Pursuant to the Cboe Global Markets North American Data Policies, Distributors must report the number of authorized external devices that receive Cboe Options Top data during a calendar month within 15 days after such month in the manner and format specified by the Exchange from time to time to determine applicable fees.

internal users and Devices within the Distributor at no further cost. The Exchange proposes to eliminate the current Cboe Options Top User fee and in its place adopt Professional and Non-Professional User fees for Cboe Options Top that would apply to both Internal and External Distributors for all Professional and Non-Professional Users. The Exchange proposes to charge Cboe Options Top Distributors a monthly fee of $15.50 per Professional User and a monthly fee of $0.30 per Non-Professional User.[9]

Next, the Exchange proposes to eliminate a fee waiver for Customers of Cboe Options Top Data. In particular, the CDS Fee Schedule currently provides that the monthly data fee of $9,000 per month for the Cboe Options Depth feed [10] is waived for Cboe Options Top Data Customers. The Exchange proposes to eliminate the fee waiver for Cboe Options Depth for External Distributors of Cboe Options Top (*i.e.,* the monthly $9,000 data fee for Book Depth Data will only continue to be waived for Internal Distributors of Cboe Options Top Data).

The Exchange lastly proposes to establish a $300,000 per month Enterprise Fee that will permit a Distributor to purchase a monthly (and optional) Enterprise license to receive the Cboe Options Top Data for distribution to an unlimited number of Professional and Non-Professional Users. The Enterprise Fee is an alternative to Professional and Non-Professional User fees and will permit a Distributor to pay a flat fee to receive the data for an unlimited number of Professional and Non-Professional Users, which the Exchange proposes to make clear in the Fee Schedule. Like User fees, the Enterprise Fee would be assessed in addition to the Distribution Fees. The Enterprise Fee may provide an opportunity to reduce fees. For example, if a Distributor has 20,000 Professional Users who each receive Cboe Options Top at $15.50 per month (as proposed), then that Distributor will pay $310,000 per month in Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license, it would alternatively pay a flat fee of $300,000 for an unlimited number of Professional and Non-Professional Users. A Distributor must pay a separate Enterprise Fee for each entity that controls the display of Cboe Options Top if it wishes for such Users to be covered by the Enterprise Fee rather than by per User fees.[11] A Distributor that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. Rather, every six months, the recipient firm must provide the Exchange with a count of the total number of Professional and Non-Professional Users of Cboe Options Top Data.[12] The Exchange notes that the purchase of an Enterprise license is voluntary, and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number of Users to benefit from purchase of the license need not do so.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[13] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [14] requirements that the rules of an exchange be 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 regulating, clearing, settling, processing information with respect to, and 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 consistent with Section 6(b)(4) of the Act,[15] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange first notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 17% of the market share.[16] The Exchange believes top-of-book quotation and transaction data is highly competitive as national securities exchanges compete vigorously with each other to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. Indeed, there are several competing products offered by other national securities exchanges today, not counting products offered by the Exchange's affiliates, and each of the Exchange's affiliated U.S. options exchanges also offers similar top-of-book data.[17] Each of those exchanges offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the Cboe Options Top Feed. Further, the quote and last sale data contained in the Cboe Options Data Feed is identical to the data sent to OPRA for redistribution to the public, including data relating to the Exchange's proprietary and exclusively listed products.[18] Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

Moreover, the Cboe Options Top Data Feed is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. As described above, market participants have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Further, the Exchange is not required to make any proprietary data products available or to

[9] Distributors that receive Cboe Options Top Data will be required to count every Professional User and Non-Professional User to which they provide the data feed.

[10] The Cboe Options Depth feed is a real-time, low latency data feed that includes all data contained in the Cboe Options Top feed (as described above) plus outstanding quotes and standing orders for an additional four price levels on each side of the market, with aggregate size (''Book Depth''). The data in the Cboe Options Depth feed is refreshed periodically during the trading session.

[11] For example, if a Distributor that distributes Cboe Options Top to Retail Brokerage Firm A and Retail Brokerage Firm B and wishes to have the Users under each firm covered by an Enterprise license, the Distributor would be subject to two Enterprise Fees.

[12] *See* Cboe Global Markets North American Data Policies.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

[16] *See* Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (February 24, 2023), available at *https://markets.cboe.com/us/options/market_statistics/.*

[17] *See e.g.,* NYSE Arca Options Proprietary Market Data Fees Schedule, MIAX Options Exchange, Fee Schedule, Section 6 (Market Data Fees), Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees) and C2 Options Exchange Fees Schedule, Cboe Data Services, LLC Fees.

[18] The Exchange notes that it makes available the BBO data and last sale data that is included in the Cboe Options Top Data Feed no earlier than the time at which the Exchange sends that data to OPRA.

offer any specific pricing alternatives to any customers. Moreover, persons (including broker-dealers) who subscribe to any exchange proprietary data feed must also have equivalent access to consolidated Options Information [19] from OPRA for the same classes or series of options that are included in the proprietary data feed (including for exclusively listed products), and proprietary data feeds cannot be used to meet that particular requirement.[20] As such, all proprietary data feeds are optional.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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.'' [21] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of Cboe Options Top Data.

The Exchange believes the proposed External Distribution fee is reasonable as it would represent a decreased fee for any Distributor who is only interested in distributing Cboe Options Top externally. By providing an opportunity for lower cost access to U.S. options market data, Cboe Options Top benefits a wide range of investors that participate in the national market system and makes it more broadly available. The Exchange believes the proposed fees for external distribution of Cboe Options Top will also continue to be allocated fairly and equitably, and are not unfairly discriminatory, as the proposed fee will apply equally to all Distributors that choose to subscribe to Cboe Options Top and distribute that data to external Users. More specifically, as proposed, all External Distributors of Cboe Options Top will be subject to the same external distribution fee, regardless of the type of business that they operate, or the use they plan to make of the data feed. Thus, all External Distributors would have access to Cboe Options Top for purposes of external distribution on the same equitable and non-discriminatory terms.

The Exchange believes that it is also fair and equitable, and not unfairly discriminatory to charge different fees for internal and external distribution of the Cboe Options Top. Although the proposed distribution fee charged to External Distributors will be lower than the existing distribution fee charged to Internal Distributors, External Distributors are subject to Non-Professional user fees to which Internal Distributors are not subject, in addition to Professional User fees (or alternatively the proposed Enterprise Fee). Furthermore, the proposal is designed to incentivize External Distributors to subscribe to Cboe Options Top Data. Moreover, as noted above, Internal Distributors of Cboe Options Top will still have the benefit of receiving Cboe Options Depth at no additional cost, whereas such waiver will not be available for External Distributors of Cboe Options Top. The Exchange also notes that Cboe Options Depth is more likely to be used by Professional Users, including employees of Distributors, whereas Cboe Options Top is more likely to be used by Non-Professional Users who, by definition, do not receive the data for commercial purposes (*e.g.,* retail investors).

The Exchange believes the proposed changes to adopt new Professional and Non-Professional User fees are reasonable as the User fees continue to be in line with User fees assessed by other exchanges for similar data.[22] Moreover, External Distributors will now be subject to lower fees as the Exchange proposes to significantly reduce the monthly User fees from $50 per External User to $15.50 per Professional User or $0.30 per Non-Professional User. Although External Distributors are currently only subject to fees for external users, the fee for external users (which are likely to be Non-Professional Users) are significantly lower (*i.e.,* $0.30 per Non-Professional User) than the current $50 fee for external users. Moreover, the proposed fee structure of differentiated Professional and Non-Professional fees that are paid by both Internal and External Distributors has long been used by other exchanges, including the Exchange, for their proprietary data products, and by the OPRA plan in order to reduce the price of data to retail investors and make it more broadly available.[23] The Exchange also believes offering Cboe Options Top Data to Non-Professional Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Although Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets. The Exchange believes that the

[19] ''Consolidated Options Information'' means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA. Access to consolidated Options Information is deemed ''equivalent'' if both kinds of information are equally accessible on the same terminal or work station. *See* Limited Liability Company Agreement of Options Price Reporting Authority, LLC (''OPRA Plan''), Section 5.2(c)(iii). The Exchange notes that this requirement under the OPRA Plan is also reiterated under the Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies, which subscribers to any exchange proprietary product must sign and are subject to, respectively. Additionally, the Exchange's Data Order Form (used for requesting the Exchange's market data products) requires confirmation that the requesting market participant receives data from OPRA.

[20] *Id.*

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[22] *See e.g.,* Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees), which provides for a fee of $40 per month to professional users and $1.00 per month to non-professional users to cover the usage of PHLX Options (TOPO) Data, TOPO Plus Orders, PHLX Orders and PHLX Depth Data feeds. *See also* NYSE American Options Proprietary Market Data Fees schedule, which provides for a fee of $50 per month to professional users and $1.00 per month to non-professional users of American Options Top Data, American Options Deep and American Options Complex products. By comparison, the total Professional User fee for Cboe Options Top and Cboe Options COB is in line with the above Professional User fee at $40.50 per Professional User (*i.e.,* $15.50 per Professional Users of Cboe Options Top, as proposed, and $25 per Professional User of Cboe Options COB). The Exchange's combined Non-Professional User Fee at $0.30 per Non-Professional User (*i.e.,* $0.30 per Non-Professional User of Cboe Options Top, as proposed, and $0 per Non-Professional User of Cboe Options COB) is lower than PHLX's and NYSE American's aforementioned Non-Professional User fees. As discussed above, Cboe Options Depth does not charge users based on Professional or Non-Professional classification and market participants were always subject to separate User fees across Cboe Options market data products.

[23] *See, e.g.,* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131) (establishing the $15 Non-Professional User Fee (Per User) for NYSE OpenBook); *See, e.g.,* Securities Exchange Act Release No. 67589 (August 2, 2012), 77 FR 47459 (August 8, 2012) (revising OPRA's definition of the term ''Nonprofessional''); and *See* Securities Exchange Act Release No. 70683 (October 15, 2013), 78 FR 62798 (October 22, 2013) (SR–CBOE–2013–087) (establishing Professional and Non-Professional User fees for Cboe Options COB Data Feed).

proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Distributors for their Professional and Non-professional Users.

The Exchange next notes it is not required to charge a single distribution fee to cover more than one of its available data products, but none-the-less has opted to not charge for separate data fees for Cboe Options Depth and Cboe Options COB for Distributors of Cboe Options Top, since such waiver was adopted in January 1, 2015.[24] However, the Exchange no longer wishes to maintain a fee waiver of Cboe Options Depth and Cboe Options COB for External Distributors of Cboe Options Top. Although External Distributors will not receive the benefit of the fee waiver, they will be subject to a lower distribution fee as compared to Internal Distributors who will continue to be charged the higher fee of $9,000. Moreover, Distributors are less likely to distribute Cboe Options Depth externally, as such data feed is generally used more often by Professional Users. Moreover, the Cboe Options Depth feed and Cboe Options COB, like all of the Exchange's market data products, are purely optional. Only those Distributors that deem the product to be of sufficient overall value and usefulness would purchase them for distribution to Users. Further, Distributors are not required to distribute, and Users are not required to receive, any one particular data product and may choose to receive none, one, or several of the Exchange's market data products. Indeed, only approximately 30% of the Exchange's market data subscriptions is for Cboe Options Top. Additionally, the Exchange is not required to provide any such waiver to any Distributors of Cboe Options Top. The Exchange believes the proposed change is equitable and not unfairly discriminatory as it will apply uniformly to External Distributors.

The proposed Enterprise Fee for Cboe Options Top Feed is equitable and reasonable as the proposed fee could result in a fee reduction for Distributors with a large number of Professional and Non-Professional Users. If a Distributor has a smaller number of Professional Users of Cboe Options Top Data, then it may continue using the per User structure and benefit from the proposed per Cboe Options Top User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute Cboe Options Top Data, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count Professional and Non-Professional users every six months, which is a significant reduction in administrative burden. Finally, as described above the Enterprise Fee is entirely optional. A firm that does not have a sufficient number of Users to benefit from purchase of the license need not do so.

The Exchange lastly believes the proposed changes relating to the defined terms and terminology will provide additional specificity and clarity, while also harmonizing the various definition with that of its affiliates. Doing so would ensure consistent terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion amongst market data subscribers of the Exchange's and its affiliates' market data products. Additionally, the proposed new terms are identical to the terms already used by the Exchange's affiliates BZX Options and EDGX Options. Similarly, the Exchange believes the proposal to relocate the fees in the CDS Fees Schedule to the Cboe Options Fees Schedule will provide for a more streamlined fees schedule and allow TPHs to more readily and easily find all fees applicable to Cboe Option, thereby reducing potential confusion. Further, the Exchange is the only exchange of the Cboe options exchanges that currently maintains a separate fees schedule for its market data product fees. Accordingly, the Exchange believes the proposed changes remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price top-of-book data is constrained by competition among exchanges that offer similar data products to their customers. Top-of-book data is broadly disseminated by competing U.S. options exchanges and through OPRA. There are therefore a number of alternative products available to market participants and investors, including products offered by certain competing exchanges, as well as OPRA. Further, the Exchange's proposal to eliminate the waiver for the Cboe Options Depth data fee for External Distributors of Cboe Options Top does not modify the existing fee amounts, but simply eliminates a waiver to receive such data free of charge that the Exchange is not required to maintain. Other exchanges are free to adopt a similar waiver if they choose. In this competitive environment potential Distributors are free to choose which competing product to purchase to satisfy their respective needs for market information. Often, the choice comes down to price, as market data participants look to purchase cheaper data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed fees and eliminated waiver would apply to all similarly situated Distributors of Cboe Options Top on an equal and non-discriminatory basis. The Exchange believes the reduced fees for External Distributors and not Internal Distributors of Cboe Options Top is appropriate given External Distributors are subject to the proposed Non-Professional user fees to which Internal Distributors are not subject, in addition to the proposed Professional User fees. Additionally, Internal Distributors will continue to receive the benefit of a fee waiver for Cboe Options Depth, which is the more commonly used product for internal distribution amongst Professional Users. The Exchange believes the differentiated fees for Professional and Non-Professional Users of Cboe options Top is appropriate given Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Non-Professional Users too can receive significant financial benefits through their participation in the markets, however the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets. The Exchange therefore believes that the proposed fee neither favors nor penalizes one or more categories of market participants in a

[24] *See* Securities Exchange Act Release No. 70683 (October 15, 2013), 78 FR 62798 (October 22, 2013) (SR–CBOE–2013–087).

manner that would impose an undue burden on competition.

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, market participants are not forced to subscribe to Cboe Options Top Data, or any of the Exchange's data feeds, as described above. As noted, the quote and last sale data contained in the Exchange's Cboe Options Top feed is identical to the data sent to OPRA for redistribution to the public, including data relating to the Exchange's proprietary and exclusively listed products. Accordingly, Exchange top-of-book data is therefore widely available today from a number of different sources.

Because market data customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product. These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [25] and paragraph (f) of Rule 19b–4 [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 Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f).

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–CBOE–2023–013 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–CBOE–2023–013. 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–CBOE–2023–013 and should be submitted on or before April 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Sherry R. Haywood,

Assistant Secretary.

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[27] 17 CFR–200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97133; File No. SR–Phlx–2023–08]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 4 Regarding Multiply Listed Options Fees

March 14, 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 March 1, 2023, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx's Pricing Schedule at Options 7, Section 4, ''Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY).''

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

Phlx proposes to amend its Pricing Schedule at Options 7, Section 4, ''Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY).''

Recently, Phlx established a QCC Growth Tier Rebate within section B of Options 7, Section 4 to encourage Phlx members and member organizations to transact a greater number of QCC Orders on Phlx. In order to qualify for the QCC Growth Tier Rebate, a member's or member organization's total floor transaction,[3] and electronic QCC Orders and Floor QCC Orders volume (''QCC transaction volume'') must exceed 12,500,000 contracts in a given month. In addition to the aforementioned criteria, the member's or member organization's respective Phlx House Account[4] must execute QCC transaction volume of 250,000 or more contracts in excess of the member's or member organization's QCC transaction volume in January 2023. For members or member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 250,000 or more contracts in a given month.

Further, a member or member organization may alternatively achieve the QCC Growth Tier Rebate if a member's or member organization's Open Outcry Floor Transaction[5] volume in a given month exceeds 500,000 contracts. In addition to the aforementioned criteria, a member's or member organization's respective Phlx House Account must execute QCC transaction volume of 2,500,000 or more contracts in excess of the member's or member organization's QCC transaction volume in January 2023. For members or member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 2,500,000 or more contracts in a given month.

Today, the Exchange pays the QCC Growth Tier Rebates per Phlx House Account. Specifically, the Exchange pays a $0.20 per contract QCC Growth Tier Rebate on a QCC Order comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. Further, the Exchange pays a $0.26 per contract QCC Growth Tier Rebate on a QCC Order comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side.[6]

At this time, the Exchange proposes to continue to pay the QCC Growth Tier Rebate on all qualifying executed electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), except where the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional; (iii) Professional-to-Professional; or (iv) a dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions (as defined in Options 7, Section 4).

The proposed exclusions are similar to the exclusions for payments on QCC Rebates in section A of Options 7, Section 4. Of note, currently, QCC Growth Tier Rebates are not paid on Customer-to-Customer, Customer-to-Professional, or Professional-to-Professional QCC Orders because the QCC Growth Tier Rebate specifies it is only paid on a QCC Order comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, and a QCC Order comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. The Exchange is including these exclusions to the QCC Growth Tier Rebate to mirror the exclusions within QCC Rebates in section A.

Notwithstanding, the limitation on eligible orders to receive a QCC Growth Tier Rebate, the Exchange believes that the QCC Growth Tier Rebate will continue to encourage market participants to send QCC orders to Phlx for execution in an effort to earn higher QCC Rebates.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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, while adopting a series of steps to improve the current market model, 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.''[9]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission*[10] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[11] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.''[12]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S.

[3] The term ''floor transaction'' is a transaction that is effected in open outcry on the Exchange's trading floor. *See* Phlx Options 7, Section 1(c). Of note, the term ''floor transaction'' is more broadly defined than the term ''Open Outcry Floor Transaction'' which is discussed herein and is a subset of the term ''floor transaction.''

[4] Each Phlx member or member organization is required to establish one Phlx House Account with the Exchange's Membership Department. Only one Phlx House Account is required to transact business on Phlx. The Exchange assesses a $50.00 a month account fee for this account as provided for within Options 7, Section 8A. A Phlx member or member organization has the option of acquiring multiple Phlx House Accounts depending on a member's or member organization's business model and how they elect to organize their business.

[5] The term ''Open Outcry Floor Transaction'' includes all transactions executed in open outcry on Phlx's trading floor except: (1) dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions as defined in this Options 7, Section 4; (2) Cabinet Transactions as defined in Options 8, Section 33; and (3) Customer-to-Customer transactions.

[6] Members and member organizations are entitled to one QCC Rebate in a given month, either the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[10] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[11] *See NetCoalition,* at 534–535.

[12] *Id.* at 537.

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' . . . .'' [13] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange's proposal to amend the QCC Growth Tier Rebate to pay the QCC Growth Tier on all qualifying executed electronic QCC Orders except where the transaction is either Customer-to-Customer; Customer-to-Professional; Professional-to-Professional; or a dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions (as defined in Options 7, Section 4) is reasonable because despite the limitation on eligible orders to receive a QCC Growth Tier Rebate, the Exchange believes that this rebate will continue to provide incentives for members and member organizations to engage in substantial amounts of trading activity which would serve to bring additional open outcry liquidity to the trading floor and additional QCC Order Flow to Phlx. This incentive may also encourage members and member organizations to commence sending such order flow to Phlx for the opportunity to earn this rebate. The proposed exclusions are similar to the exclusions for payments on QCC Rebates in section A of Options 7, Section 4.[14]

The Exchange's proposal to amend the QCC Growth Tier Rebate to pay the QCC Growth Tier on all qualifying executed electronic QCC Orders except where the transaction is either Customer-to-Customer; Customer-to-Professional; Professional-to-Professional; or a dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions (as defined in Options 7, Section 4) is equitable and not unfairly discriminatory because any member or member organization may qualify for the QCC Growth Tier Rebate. Further, the Exchange will uniformly apply the proposed exceptions for eligible QCC Orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-Market Competition

The proposed amendments do not impose an undue burden on intra-market competition. In terms of intra-market competition, the Exchange does not believe that its proposals will place any category of market participant at a competitive disadvantage. The Exchange believes that the proposed amendments to the QCC Rebate Growth Tier Rebates will continue to provide incentives for members and member organizations to engage in substantial amounts of trading activity which would serve to bring additional open outcry liquidity to the trading floor and additional QCC Order Flow to Phlx.

The Exchange's proposal to amend the QCC Growth Tier Rebate to pay the QCC Growth Rebates on all qualifying executed electronic QCC Orders except where the transaction is either Customer-to-Customer; Customer-to-Professional; Professional-to-Professional; or a dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions (as defined in Options 7, Section 4) does not impose an undue burden on competition because any member or member organization may qualify for the QCC Growth Tier Rebate. Further, the Exchange will uniformly apply the proposed exceptions for eligible QCC Orders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[15]

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2023–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2023–08. This file number should be included on the

[13] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[14] Of note, currently, QCC Growth Tier Rebates are not paid on Customer-to-Customer, Customer-to-Professional, or Professional-to-Professional QCC Orders because the QCC Growth Tier Rebate specifies it is only paid on a QCC Order comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, and a QCC Order comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. The Exchange is including these exclusions to the QCC Growth Tier Rebate to mirror the exclusions within QCC Rebates in section A.

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

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–Phlx–2023–08 and should be submitted on or before April 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05542 Filed 3–17–23; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Time and Date: 2:00 p.m. on Thursday, March 23, 2023.

Place: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

Status: This meeting will be closed to the public.

Matters To Be Considered: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

Contact Person for More Information: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: March 16, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–05750 Filed 3–16–23; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97139; File No. SR–CboeEDGX–2023–014]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Sponsored Participant Rules 11.3(a) and 11.3(b)(2)

March 14, 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 February 28, 2023, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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 Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend Exchange Rules 11.3(a)–(b), to: (1) define the term ''Sponsored Access''; (2) provide that the Sponsored Participant rules of the Exchange apply only to the trading of equities; and (3) to codify that the agreement required by and between the Sponsoring Member and Sponsored Participant must include a provision that any Sponsored Access relationship must follow the requirements of SEC Rule 15c3–5, the Market Access Rule (''MAR'').[5] The text of the proposed rule change is provided below and in Exhibit 5.[6]

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.15c3–5—Risk management controls for brokers or dealers with market access.

[6] The Exchange proposes to implement the proposed changes to Rule 11.3(a)–(b)(1)–(3) on a date that will be announced via Cboe Trade Desk, notifying both existing and prospective Sponsoring Members and Sponsored Participants, of the new rule language and required contractual provisions.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Exchange Rule 11.3(a)–(b) to: (1) define the term ''Sponsored Access''; (2) provide that the Sponsored Participant rules of the Exchange apply only to the trading of equities; and (3) to codify that the agreement required by and between the Sponsoring Member and Sponsored Participant must include a provision that any Sponsored Access relationship must follow the requirements of the MAR.

Sponsored Access Definition

Per current Exchange rules a ''Sponsored Participant'' [7] may be a Member [8] or non-Member of the Exchange whose direct electronic access to the Exchange is authorized by a Sponsoring Member [9] pursuant to the requirements set forth in Exchange Rule 11.3(b)(1)–(3), ''Sponsored Participants''. The Exchange proposes to amend Rule 11.3(a) to include the following definition, ''Sponsored Access shall mean an arrangement whereby a Member permits its Sponsored Participants to enter orders into the Exchange's System that bypass the Member's trading system and are routed directly to the Exchange, including through a service bureau or other third-party technology provider.'' The Exchange notes that the proposed definition of Sponsored Access is identical to that adopted [10] by the Nasdaq Stock Market, LLC (''Nasdaq''), General 2 in Section 22, Sponsored Participants, of their General Equity and Options Rules.[11] The Exchange believes defining Sponsored Access will provide Sponsoring Members with greater clarity in understanding which types of market access relationships are subject to Exchange Rule 11.3(a)–(b),[12] and what obligations Sponsoring Members and Sponsored Participants must satisfy when establishing a Sponsored Access relationship.

Sponsored Access—Equities Market Only

Additionally, the Exchange seeks to amend Rule 11.3(a) to provide that the application of the Exchange's Sponsored Participant rule applies only to Sponsored Members of the Exchange's equities market and does not apply to Options Members [13] of the Exchange's options market. The Exchange does not currently have any Options Members registered to act as Sponsoring Members for any Sponsored Participants who would electronically trade options and, to date, has not received such a request for an options-based Sponsoring Member-Sponsored Participant relationship. Accordingly, the Exchange believes it appropriate to provide that the Sponsored Access program will apply only to Sponsoring Members providing Sponsored Participants direct electronic access to the Exchange's equities market (not the Exchange's options market) and does not believe that making such change will result in unfair discrimination between equity Members and Options Members.

Market Access Rule

The Exchange seeks to codify that the agreement currently required under Exchange Rule 11.3(b)(2), by and between the Sponsoring Member and Sponsored Participant, must include a provision that any Sponsored Access relationship must follow the requirements of the MAR. While Sponsoring Members have existing obligations under the MAR because they are providing market access to their Sponsored Participants, the Exchange believes the proposed amendment will help to reinforce such obligations. Sponsored Participants will now be required to contractually agree with their Sponsoring Members to follow the requirements of the MAR.

The Exchange believes that the proposed addition of 11.3(b)(2)(J) will reinforce to Sponsoring Members that Sponsored Access relationships must comply with the SEC's MAR, as well as Exchange rules regarding the provision of market access. As noted above, such relationships generally include where a broker-dealer allows its customer to use the broker-dealer's market participant identifier (''MPID'') or other mechanism or mnemonic to enter orders into the Exchange's System that bypass the Sponsoring Member's order handling system and are electronically routed directly to the Exchange by the Sponsored Participant, including through a service bureau or other third-party technology provider.

The Exchange notes further that the proposed addition of 11.3(b)(2)(J) is non-substantive in nature for Sponsoring Members because as broker-dealers providing market access, Sponsoring Members are already required to comply with the MAR, as well as with existing Exchange Rules regarding market access. Indeed, per the Exchange's current Sponsored Participant rules the Sponsoring

[7] The term ''Sponsored Participant'' shall mean a person which has entered into a sponsorship arrangement with a Sponsoring Member pursuant to Rule 11.3. *See* Exchange Rule 1.5(z), definition of ''Sponsored Participant''.

[8] The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. *See* Exchange Rule 1.5(n), definition of ''Member''.

[9] The term ''Sponsoring Member'' shall mean a broker-dealer that has been issued a membership by the Exchange who has been designated by a Sponsored Participant to execute, clear and settle transactions from the System. The Sponsoring Member shall be either (i) a clearing firm with membership in a clearing agency registered with the Commission that maintains facilities through which transactions may be cleared or (ii) a correspondent firm with a clearing arrangement with any such clearing firm. *See* Exchange Rule 1.5(aa), definition of ''Sponsoring Member''.

[10] *See* Securities and Exchange Act Release No. 34–76449) (November 27, 2015) 80 FR 73011 (November 23, 2015) (SR–NASDAQ–2015–140) (Notice of Filing and Immediate Effectiveness of the Proposed Rule Change Relating to Sponsored Access) ('Sponsored Access shall mean an arrangement whereby a member permits its customers to enter orders into the Exchange's System that bypass the member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third party technology provider.'')

[11] *See* General Equity and Options Rule, General 2: General Provisions, Section 22(a), available at: *https://listingcenter.nasdaq.com/rulebook/Nasdaq/rules*.

[12] Consistent with the proposed definition, such relationships generally include where a broker-dealer allows its customer—such as a hedge fund, mutual fund, bank or insurance company, an Exchange registered market maker, an individual, or another broker-dealer—to use the broker-dealer's market participant identifier (''MPID'') or other mechanism or mnemonic to enter orders into the Exchange's System that bypass the Sponsoring Member's order handling system and are electronically routed directly to the Exchange by the Sponsored Participant, including through a service bureau or other third-party technology provider. For the avoidance of doubt, in a scenario where a Sponsored Participant is also an Exchange Member (*e.g.,* where a Sponsored Member provides market access to an Exchange Member Market Maker), (i) the Sponsored Participant will be subject to all Exchange rules and regulations applicable to *Members* acting in their own capacity, whether the Sponsored Participant accesses the Exchange via their own Membership or via a Sponsored Access arrangement; and (ii) the Sponsoring Member will be responsible for the Sponsored Participant activity just as it would for any other non-Member Sponsored Participant under Rule 11.3(b), including compliance with the MAR requirements and for compliance with the applicable Member-related activity electronically routed to the Exchange via the Sponsored Access arrangement (*e.g.,* the Sponsoring Member would be required to hold appointments and would be subject to applicable requirements as an Exchange Market Maker in the products for which the Sponsored Participant Market Maker is registered and routes orders/quotes via the Sponsored Access arrangement).

[13] The term ''Options Members'' means a firm, or organization that is registered with the Exchange pursuant to Chapter XVII of these Rules for purposes of participating in options trading on EDGX Options as an ''Options Order Entry Firm'' or ''Options Market-Maker''. *See* Rule 16.1, definition of ''Options Member''.

Member is already responsible for all its Sponsored Participant's activity on the Exchange [14] and is required to comply with the Exchange's Certificate of Incorporation, By-Laws, Rules, and procedures.[15] This includes compliance with Rule 2.2, which requires, among other things, compliance with the Act and the regulations thereunder, including the MAR.

The proposed addition of Rule 11.3(b)(2)(J) is potentially substantive in nature to Sponsored Participants in that the proposed amendment adds a requirement to the agreement by and between the Sponsoring Member and Sponsored Participant, requiring the Sponsored Participant to contractually agree to follow the requirements of the MAR. Importantly, as part of their obligation to comply with Exchange Rules and procedures, existing Sponsoring Members will be expected to amend any existing contractual arrangements with their Sponsored Participants to include the new contractual provision proposed by the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [17] requirements that the rules of an exchange be 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 regulating, clearing, settling, processing information with respect to, and 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 consistent with the Section 6(b)(5) [18] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Defining Sponsored Access

As noted above, the Exchange believes that defining Sponsored Access will provide Sponsoring Members with greater clarity as to which types of market access relationships [19] are subject to Exchange Rule 11.3(a)–(b)(1)–(3), and what obligations Sponsoring Members and Sponsored Participants must satisfy when establishing a Sponsored Access relationship. As such, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and serves to promote just and equitable principles of trade.

The proposed change will also help to reduce confusion by codifying a definition for such activity on the Exchange that is consistent with other industry practices currently in place elsewhere. The Exchange further notes that the proposed Sponsored Access definition is reasonable and does not affect investor protection because the proposed change does not present any novel or unique issues, as the proposed Sponsored Access definition has previously been adopted by Nasdaq.[20]

Sponsored Access—Equities Market Only

Furthermore, the Exchange believes that limiting Exchange Rule 11.3(a)–(b)(1)–(3) to Sponsoring Members providing direct electronic access to Sponsored Participants of the Exchange's equities market will contribute to the protection of investors and the public interest by simplifying the Exchange's rules and making them easier for Members and Options Members to understand, thus bolstering their collective understanding of the Exchange's rules. Moreover, as noted above, the Exchange currently has no Options Members registered as Sponsoring Members and has yet to receive a request from Options Members to establish a Sponsored Access relationship. Accordingly, the Exchange does not believe that this proposed rule change will significantly alter Options Members' relationship with the Exchange or impose upon them any new obligations, and no longer wishes to have its Sponsored Access program apply to its options market.

Market Access Rule

As noted above, the proposed addition of 11.3(b)(2)(J) will reinforce to Sponsoring Members that Sponsored Access relationships must comply with the SEC's MAR, as well as Exchange Rules regarding the provision of market access. Also, by adding proposed paragraph 11.3(b)(2)(J), Sponsored Participants are now required to contractually agree that their Sponsored Access to the Exchange must follow the requirements of the MAR.

In this regard, the proposed amendment will help to ensure that by and between the Sponsoring Member and Sponsored Participant that all orders entered onto the Exchange pursuant to a Sponsored Access relationship will follow the requirements of the MAR. As discussed, the Exchange believes the proposed addition of 11.3(b)(2)(J) is non-substantive in nature for Sponsoring Members because as broker-dealers providing market access, Sponsoring Members are already required to comply with the MAR, as well as with existing Exchange Rules regarding market access. The proposed addition of Rule 11.3(b)(2)(J) is potentially substantive in nature to Sponsored Participants in that the proposed amendment adds a new requirement to the relationship by and between the Sponsoring Member and Sponsored Participant, requiring the Sponsored Participant to contractually agree to follow the requirements of the MAR.

Accordingly, the proposed rule change will help to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

For the reasons noted below, the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Defining Sponsored Access

The proposed Sponsored Access definition does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed definition merely seeks to make clear to Sponsoring Members that Sponsored Access is a relationship subject to Exchange Rule 11.3(a)–(b)(1)–(3). Moreover, Sponsored Access is a voluntary arrangement that a Sponsoring Member voluntarily elects to enter with its Sponsoring Participant. A Member is not required to become a Sponsoring Member, and in fact, may decline to enter such a relationship with its customers.

Sponsored Access—Equities Market Only

Moreover, providing that Exchange Rule 11.3(a)–(b)(1)–(3) will only apply

[14] *See* Rule 11.3(b)(2)(B)(1)–(2).

[15] *See* Rule 11.3(b)(2)(C).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

[19] *Supra* note 12.

[20] *Supra* note 10.

to Sponsoring Members providing direct electronic access to Sponsored Participants to the Exchange's equities market does not unduly burden Options Members because as noted above, the Exchange is historically yet to receive any Sponsored Access registrations from Options Members, and there are currently no Options Members registered as Sponsoring Members.

Market Access Rule

Additionally, the Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Notably, other exchanges have in place similar rules and documentation requirements applicable to sponsored participants and their sponsoring members.[21] Moreover, the proposed Sponsored Access definition is identical to that adopted by Nasdaq [22] and currently codified in their rulebook.[23]

The proposed rule change to explicitly cite the MAR in Rule 11.3(b)(2)(J) does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, this change is non-substantive as Sponsoring Members are currently responsible for complying with the MAR with respect to their provision of Sponsored Access to Sponsored Participants. While the proposed addition of Rule 11.3(b)(2)(J) is potentially substantive in nature to Sponsored Participants because it requires a Sponsored Participant to contractually agree with its Sponsoring Member to follow the requirements of the MAR, the Exchange notes the proposed contractual requirement also exists in the Nasdaq rulebook [24] and as such, should not raise any new or novel issues for consideration by Sponsored Participants.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [25] and Rule 19b–4(f)(6) [26] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [27] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[28] the Commission may designate a shorter time of such action is consistent with the protection of investor and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that the proposed rule change could immediately benefit market participants by clarifying for Sponsoring Members which relationships are subject to the Exchange's Sponsored Access rules and promoting just and equitable principles of trade. The Exchange also states that the proposed rule change could immediately bolster Sponsoring Members and Options Members collective understanding of the Exchange's Sponsored Participant rules, thereby contributing to the protection of investors and public interest. The Exchange also states the proposed addition of 11.3(b)(2)(J) will reinforce to Sponsoring Members their obligation to comply with MAR. Because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[29]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeEDGX–2023–014 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–CboeEDGX–2023–014. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish

[21] *Supra* note 11.

[22] *Supra* note 10.

[23] *Supra* note 11.

[24] *Id.*

[25] 15 U.S.C. 78s(b)(3)(A)(iii).

[26] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[27] 17 CFR 240.19b–4(f)(6).

[28] 17 CFR 240.19b–4(f)(6)(iii).

[29] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2023–014 and should be submitted on or before April 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05536 Filed 3–17–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34853; 812–15440]

The RBB Fund, Inc., et al.

March 14, 2023.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order (''Order'') that permits: (a) the Funds (as described in the Reference Order (as defined below)) to issue shares (''Shares'') redeemable in large aggregations only (''creation units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value; (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; and (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of creation units. The relief in the Order would incorporate by reference terms and conditions of the same relief of a previous order granting the same relief sought by applicants, as that order may be amended from time to time (''Reference Order'').[1]

APPLICANTS: The RBB Fund, Inc., The RBB Fund Trust, Quasar Distributors LLC, and F/m Investments LLC, DBA North Slope Capital LLC.

FILING DATES: The application was filed on February 28, 2023.

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 SEC'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 April 10, 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.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Steven Plump, *splump@rbbfund.com,* Michael W. Mundt, *mmundt@stradley.com.*

FOR FURTHER INFORMATION CONTACT: Trace W. Rakestraw, Senior Special Counsel, 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' application, dated February 28, 2023, 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 *https://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. 2023–05527 Filed 3–17–23; 8:45 am]

BILLING CODE 8011–01–P

[30] 17 CFR 200.30–3(a)(12), (a)(59).

[1] Blue Tractor ETF Trust and Blue Tractor Group, LLC, Investment Company Act Rel. Nos. 33682 (November 14, 2019) (notice) and 33710 (December 10, 2019) (order).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97138; File No. SR–CboeBZX–2023–016]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

March 14, 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 February 28, 2023, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX Options'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fees Fee Schedule to modify its market data fees for BZX Options Top.[3] Particularly, the Exchange proposes to modify the Professional and Non-Professional User Fees, modify the Enterprise Fee for BXZ Options Top and make other clarifying, non-substantive changes.[4]

The Exchange first proposes to reduce the rates for Professional and Non-Professional User fees for BZX Options Top. The Exchange currently charges Internal Distributors and External Distributors that redistribute any of the BZX Options Data Feeds different fees for their Professional Users [5] and Non-Professional Users.[6] The Exchange currently assesses a monthly fee for Professional Users of $30.00 per User and a monthly fee of $1.00 per Non-Professional User.[7] One User fee allows access to the BZX Options Top Feed and the BZX Options Depth Feed.[8] The Exchange proposes to reduce the rates for the User fees for BZX Options Top. Particularly, the Exchange proposes to reduce the monthly (i) Professional User fee from $30 per user to $5 per user and (ii) Non-Professional User fee from $1.00 per user to $0.10 per user. The Exchange also proposes to start charging separate User fees for BZX Options Top and BZX Options Depth Feed. The Exchange therefore proposes to eliminate the language under the BZX Options Top table and BZX Options Depth Feed table that states one User fee allows access to the BZX Options Top Feed and the BZX Options Depth Feed.[9]

The Exchange next proposes to increase the current monthly Enterprise Fee. The Enterprise Fee permits a recipient firm (*i.e.,* a Distributor) to purchase a monthly (and optional) Enterprise license to receive the BZX Options Top Feed for distribution to an unlimited number of Professional and Non-Professional Users.[10] The Enterprise Fee is an alternative to Professional and Non-Professional User fees and permits a Distributor to pay a flat fee for unlimited number of Professional and Non-Professional Users. Like User fees, it is also assessed in addition to the Distribution Fee.[11] Currently, the Exchange assesses an Enterprise Fee of $3,500 per month. The Exchange proposes to increase the Enterprise Fee to $20,000 per month. For example, if a Distributor distributes BZX Options Top to 15,000 Professional Users who each receive BZX Options Top at $5.00 per month (as proposed), then that Distributor will pay $75,000 per month in Professional Users fees. Under the proposed Enterprise Fee, it will pay a flat fee of $20,000 for an unlimited number of Professional and Non-Professional Users. A Distributor must pay a separate Enterprise Fee for each entity that controls the display of BZX Options Top if it wishes for such User to be covered by the Enterprise Fee rather than by per User fees.[12] A Distributor that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. However, every six months, it must provide the Exchange with a count of the total number of Professional and Non-Professional Users of BZX Options Top.[13]

The Exchange lastly proposes to add references to ''Depth'' in the description of the Distribution Fees and Enterprise Fee under the BZX Options Depth Feed table to clarify which data feed such fees currently applies to, thereby alleviating potential confusion. The Exchange also proposes to replace references to ''Recipient firm'' with ''Distributors'' to more accurately reflect the type of market participants the fees are applicable to, thereby alleviating potential confusion. Lastly, the Exchange proposes to modify the definition of Professional User under the definitions section of the Market Data Fees section to clarify that a Professional ''User'' is any natural person recipient of an Exchange Market Data product who is not a Non-Professional User. The proposed modification also aligns the definition with that of the definition used by the Exchange's affiliates Cboe Exchange, Inc. and Cboe C2 Exchange, Inc.[14]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[15] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [16] requirements that the rules of an exchange be 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 regulating, clearing, settling, processing information with respect to, and 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 consistent with

[3] BZX Options Top is an uncompressed data feed that offers top of book quotations and execution information based on options orders entered into the System. Uncompressed data is disseminated ''as is'' in the native format by the Exchange, with no compression.

[4] The Exchange initially filed the proposed fee changes on January 3, 2023 (SR–CboeBZX–2023–001). On February 28, 2023, the Exchange withdrew that filing and submitted this proposal.

[5] A Professional User of an Exchange Market Data product is any User other than a a Non-Professional User. The Exchange proposes to amend the definition of ''Professional User'' in the Fee Schedule to further clarify that a Professional User is a natural person recipient of an Exchange Data product who is not a Non-Professional User.

[6] A ''Non-Professional User'' of an Exchange Market Data product is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

[7] Distributors that receive BZX Options Data are required to count every Professional User and Non-Professional User to which they provide the data feed(s).

[8] BZX Options Depth is an uncompressed data feed that offers depth of book quotations and execution information based on options orders entered into the System.

[9] The Exchange is not proposing any changes to the current User Fee amounts for BZX Options Depth Feed at this time.

[10] The Exchange proposes to amend the description relating to the Enterprise Fees under the BZX Options Top and Depth fee tables to clarify that Distributors are the market participant that would be purchasing the monthly Enterprise license for purposes of distribution to Professional and Non-Professional Users.

[11] The Exchange also proposes to clarify in the descriptions relating to the Enterprise Fees that (i) it is an alternative to ''Professional and Non-Professional'' User fees and (ii) is in addition to the Distribution Fee.

[12] For example, if a Distributor that distributes BZX Options Top to Retail Brokerage Firm A and Retail Brokerage Firm B and wishes to have the Users under each firm covered by an Enterprise license, the Distributor would be subject to two Enterprise Fees.

[13] *See* Cboe Global Markets North American Data Policies.

[14] *See* Cboe Data Services, LLC Fees Schedule and Cboe C2 Options Fees Schedule.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

Section 6(b)(4) of the Act,[17] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange first notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 17% of the market share.[18] The Exchange believes top-of-book quotation and transaction data is highly competitive as national securities exchanges compete vigorously with each other to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. Indeed, there are several competing products offered by other national securities exchanges today, not counting products offered by the Exchange's affiliates, and each of the Exchange's affiliated U.S. options exchanges also offers similar top-of-book data.[19] Each of those exchanges offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the BZX Options Top Feed. Further, the quote and last sale data contained in the BZX Options Top Feed is identical to the data sent to OPRA for redistribution to the public.[20] Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

Moreover, the BZX Options Top is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. As described above, market participants have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers. Moreover, persons (including broker-dealers) who subscribe to any exchange proprietary data feed must also have equivalent access to consolidated Options Information[21] from OPRA for the same classes or series of options that are included in the proprietary data feed, and proprietary data feeds cannot be used to meet that particular requirement.[22] As such, all proprietary data feeds are optional.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of BZX Options Top Data.

The Exchange believes the proposed changes to reduce the rates of the current Professional and Non-Professional User fees are reasonable as Distributors will be subject to lower BZX Options Top User fees. Additionally, the User fees continue to be in line with and/or lower than User fees assessed by other exchanges for similar data.[24]

The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The Exchange also believes continuing to offer BZX Options Top Data to Non-Professional Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Although Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets.

The Exchange next notes it is not required to charge a single User fee to cover all its available data products, but none-the-less has not charged separate User Fees for both BZX Options Top and BZX Options Depth since BZX Options Top was adopted in March 2018.[25] However, the Exchange no longer wishes to continue to have a single fee. The Exchange believes the proposed change is reasonable, equitable and not unfairly discriminatory as the Top and Book Depth Data Feeds are purely optional. Only those Distributors that deem the products to be of sufficient overall value and usefulness would purchase them for purposes of distribution to Users.

[17] 15 U.S.C. 78f(b)(4).

[18] *See* Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (February 24, 2023), available at *https://markets.cboe.com/us/options/market_statistics/*.

[19] *See e.g.,* NYSE Arca Options Proprietary Market Data Fees Schedule, MIAX Options Exchange, Fee Schedule, Section 6 (Market Data Fees), Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees) and Cboe Data Services, LLC Fees Schedule.

[20] The Exchange notes that it makes available the top-of-book and last sale data that is included in the BZX Options Top Data Feed no earlier than the time at which the Exchange sends that data to OPRA.

[21] ''Consolidated Options Information'' means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA. Access to consolidated Options Information is deemed ''equivalent'' if both kinds of information are equally accessible on the same terminal or work station. *See* Limited Liability Company Agreement of Options Price Reporting Authority, LLC (''OPRA Plan''), Section 5.2(c)(iii). The Exchange notes that this requirement under the OPRA Plan is also reiterated under the Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies, which subscribers to any exchange proprietary product must sign and are subject to, respectively. Additionally, the Exchange's Data Order Form (used for requesting the Exchange's market data products) requires confirmation that the requesting market participant receives data from OPRA.

[22] *Id.*

[23] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[24] *See e.g.,* Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees), which provides for a fee of $40 per month to professional users and $1.00 per month to non-professional users to cover the usage of PHLX Options (TOPO) Data, TOPO Plus Orders, PHLX Orders and PHLX Depth Data feeds. *See also* NYSE American Options Proprietary Market Data Fees schedule, which provides for a fee of $50 per month to professional users and $1.00 per month to non-professional users of American Options Top Data, American Options Deep and American Options Complex products. By comparison, the total combined Professional User fee for the Exchange's market data products is still lower at $35 per Professional User (*i.e.,* $5 per Professional Users of BZX Options Top, as proposed, and $30 per Professional User of BZX Options Depth). The Exchange's combined Non-Professional User Fee at $1.10 per Non-Professional User (*i.e.,* $0.10 per Non-Professional User of BZX Options Top, as proposed, and $1 per Non-Professional User of BZX Options Depth) is still in line with, and not a significant departure from, PHLX's and NYSE American's aforementioned Non-Professional User fees.

[25] *See* Securities Exchange Act Release No. 82874 (March 14, 2018), 83 FR 12210 (March 20, 2018) (SR–CboeBZX–2018–017).

Further, Distributors are not required to distribute, and Users are not required to receive, any one particular data product and indeed may choose to receive none, one, or several of the Exchange's market data products. Indeed, less than 25% of the Exchange's market data subscriptions is for BZX Options Top. Additionally, the Exchange is not required to provide any fee waiver to Distributors of BZX Options Top. The Exchange believes the proposed change is equitable and not unfairly discriminatory as it will apply uniformly to Distributors.

The proposed increased Enterprise Fee for BZX Options Top Feed is equitable and reasonable as the proposed fee could still result in a fee reduction for Distributors with a large number of Professional and Non-Professional Users. If a Distributor has a smaller number of Professional Users of BZX Options Top, then it may continue using the per User structure and benefit from the proposed per BZX Options Top User Fee reductions. By reducing prices Distributors with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute BZX Options Top Data, thereby expanding the distribution of this market data for the benefit of investors. The Exchange notes that currently no Distributors have purchased an Enterprise license. The Exchange believes however, that the proposed lower User fees for BZX Options Top may incentivize additional External Distributors to distribute BZX Options Top an enlist additional Users. As noted, as a Distributor's User base grows, it may make sense for a Distributor to purchase the alternative Enterprise license to cap its fees. In connection with this potential increase in Users, the Exchange believes it is therefore also reasonable to increase the Enterprise Fee. That said, as described above, the Enterprise Fee is entirely optional. A firm that does not have a sufficient number of Users to benefit from purchase of the license need not do so.

The Exchange further believes that the Enterprise Fee, even as amended, is reasonable because it simplifies reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee do have to report the number of Users on a monthly basis as they currently do, but rather only have to count authorized users every six months, which is a significant reduction in administrative burden.

The Exchange lastly believes the proposed non-substantive clarifying changes will alleviate potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price top-of-book data is constrained by competition among exchanges that offer similar data products to their customers. Top-of-book data is broadly disseminated by competing U.S. options exchanges and through OPRA. There are therefore a number of alternative products available to market participants and investors, including products offered by certain competing exchanges, as well as OPRA. In this competitive environment potential Distributors are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as market data customers look to purchase cheaper data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed fees would apply to all similarly situated Distributors of BZX Options Top on an equal and non-discriminatory basis. The Exchange believes the differentiated fees for Professional and Non-Professional Users of BZX Options Top is appropriate given Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Non-Professional Users too can receive significant financial benefits through their participation in the markets, however the Exchange believes it is reasonable to charge more for those Users who are more directly engaged in the markets. The Exchange therefore believes that the proposed fee neither favors nor penalizes one or more categories of market participants in a manner that would impose an undue burden on competition.

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, market participants are not forced to subscribe to BZX Options Top, or any of the Exchange's data feeds, as described above. Also as described above, there are numerous substitute products offered by other national securities exchanges, as well as OPRA. Because market data customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product. These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

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) of the Act [26] and paragraph (f) of Rule 19b–4 [27] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2023–016 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–CboeBZX–2023–016. 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–CboeBZX–2023–016 and should be submitted on or before April 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05539 Filed 3–17–23; 8:45 am]

BILLING CODE 8011–01–P

[28] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before May 19, 2023.

ADDRESSES: Send all comments to Takeisha Hodge, Program Support Manager, Office of HUBZone Program, Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Takeisha Hodge, Program Support Manage, Office of HUBZone Program, 202–255–7022, *takeisha.dubosehodge@sba.gov* or Curtis B. Rich, Agency Clearance Officer, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: This collection is essential to the Agency's mission because if SBA designates an area as a Governor-designated covered area, based on the information provided by the State Governor, additional small businesses may become eligible for certification as HUBZone small business concerns, which in turn will provide them with more contracting opportunities. These additional contracting opportunities create incentives for individuals to start small businesses and allow existing small businesses to grow. SBA has taken all practicable steps to consult with interested agencies and members of the public to minimize the burden of this information collection. SBA intends to make available on its Website a list of the areas within each State that meet the statutory definition of ''covered area'' according to the most recent Bureau of the Census data. This will minimize the burden on State governments by eliminating the need to gather this data and do the necessary analysis to determine which areas may meet the definition of ''covered area.'' Finally, pursuant to 5 CFR 1320.13(d), SBA also requests a waiver from the requirement to publish a 60-day notice in the **Federal Register** requesting comments on this information collection. SBA will publish the required notice as part of the standard submission process before the emergency approval expires.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

OMB Control Number: 3245–0403.

Title: HUBZone Program Petition for Governor-Designated Covered Areas.

Description of Respondents: Governor-designated covered areas.

Form Number: N/A.

Total Estimated Annual Responses: 63.

Total Estimated Annual Hour Burden: 265.

Curtis B. Rich,

Agency Clearance Officer.

[FR Doc. 2023–05580 Filed 3–17–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before May 19, 2023.

ADDRESSES: Send all comments to Paul Kirwan, Financial Analyst, Office of Credit Risk Management, Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Paul Kirwans, Office of Credit Risk Management, Office of Financial Assistance, *paul.kirwan@sba.gov* 202–205–7261, or Curtis B. Rich, Agency Clearance Officer, 202–202–7030, *curtis.rich@sba.gov;*

SUPPLEMENTARY INFORMATION: This information collection consists of SBA

Form 2233 and SBA Form 2234, Parts A, B, and C. A statutory change on December 22, 2015 in the Consolidated Appropriations Act, 2016, made debt refinance a permanent part of the 504 loan program. Slight revisions to the currently approved forms are required to reinstate the debt refinance program requirements that were previously removed due to the expiration of the authority for that program in 2012.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

OMB Control Number: 3245–0346.

Title: PCLP Quarterly Loan Loss Reserve Report and PCLP Guarantee Request.

Description of Respondents:

Form Number: SBA Form 2233.

Total Estimated Annual Responses: 20.

Total Estimated Annual Hour Burden: 30.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2023–05582 Filed 3–17–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Dona Ana County International Jetport, Santa Teresa, New Mexico

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Dona Ana County International Jetport under the provisions of Section 23 of the Airport and Airway development Act of 1970.

DATES: Comments must be received April 19, 2023.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Justin Barker, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Louisiana/New Mexico Airports Development Office, ASW–640, Fort Worth, Texas, 76177.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. William Provance, Airport Director, at the following address: 8014 Airport Road, Santa Teresa, New Mexico 88008.

FOR FURTHER INFORMATION CONTACT: Ms. Heidi Higginbotham, Program Manager, Federal Aviation Administration, Louisiana/New Mexico Airports Development Office, ASW–640, 10101 Hillwood Parkway, Fort Worth, Texas 76177, Telephone: (817) 222–5144, Email: *Heidi.M.Higginbotham@FAA.gov,* Fax: (817) 222–5989

SUPPLEMENTARY INFORMATION: The Dona Ana County International Jetport under the provisions of Section 23 of the Airport and Airway development Act of 1970.

The following is a brief overview of the request:

The County of Dona Ana requests the release of 5.68 acres of land requested which consists of two parcels of vacant land with a combined land area. Parcel #1 contains 4.645-acres and is triangular with frontage along Airport Road. Parcel #2 contains 1.035-acres and is triangular, north of Airport Road in Santa Teresa, New Mexico. The land was acquired by Deed conveyed to the city from the United States of America Bureau of Land Management Section 23 of the Airport and Airway development Act of 1970. The land proposed for release will be swapped for 12.027 acres by Paseo Del Norte, LLC. The property to be released will ultimately be sold to Franklin Mountain for the development of a logistics park. The benefit to civil aviation has long-term impacts from the logistics park with plans to construct an air cargo handling facility.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Dona Ana County Legal/Risk Department, telephone number (575) 647–7200.

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

Ignacio Flores,

Director, Office of Airports Southwest Region.

[FR Doc. 2023–05548 Filed 3–17–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2022–1564]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 22, 2022. The collection involves the recordkeeping requirement for owners/operators of aircraft issued a special airworthiness certificate in the light-sport aircraft category (SLSA) to keep the current status of applicable safety directives, and transfer these records with the aircraft at the time the aircraft is sold. The information to be collected is necessary to determine and ensure the SLSA aircraft is in a condition for safe flight prior to aircraft operation. The title of this collection is being revised from ''Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft'' to ''Special Light-Sport Aircraft (SLSA) Safety Directive Records'', to better reflect the purpose of the information collected.

DATES: Written comments should be submitted by April 19, 2023.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's

performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Tanya Glines by email at: *Tanya.glines@faa.gov;* phone: 202–380–5896.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0730.

Title: Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft.

Form Numbers: Aircraft maintenance records/logs.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 22, 2022 (87 FR 71392). Title 14 CFR, part 91, § 91.327(b)(4) states that aircraft issued a special airworthiness certificate in the light-sport category (SLSA) cannot be operated unless the owner or operator complies with each safety directive applicable to the aircraft. Section 91.417(a)(2)(v) requires each registered owner or operator to retain records containing the current status of applicable safety directives including, for each, the method of compliance, the safety directive number and revision date. Additionally, if the safety directive involves recurring action, the record must include the time (*e.g.,* aircraft total time) and date when the next action is required.

Recording safety directive compliance and retaining these records is necessary to determine if unsafe conditions have been corrected on SLSA aircraft, which assists in ensuring that an SLSA aircraft is in a condition safe for flight prior to its operation within the national airspace.

Respondents include owners/operators of SLSA, aircraft mechanics, and LSA repairmen with a maintenance rating. The records of SLSA safety directive compliance are retained by the aircraft owner/operator, who must keep the records for the life of the SLSA aircraft and transfer them to the new owner at the time the aircraft is sold. The burden estimates are based on the current number of registered SLA and a projected future growth rate.

Respondents: 3224 owners/operators of SLSA aircraft.

Frequency: On occasion.

Estimated Average Burden per Response: 2 Hours.

Estimated Total Annual Burden: 6,448 hours of annual burden.

Issued in Washington, DC, on March 15, 2023.

Tanya A. Glines,

Aviation Safety Inspector, Office of Safety Standards, Aircraft Maintenance Division, Airmen Section.

[FR Doc. 2023–05633 Filed 3–17–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of John F. Kennedy International Airport (JFK) Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of approval of the John F. Kennedy International Airport (JFK) noise compatibility program.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings for the noise compatibility program submitted by JFK. See **SUPPLEMENTARY INFORMATION** for details. On May 19, 2017, the FAA determined that the noise exposure maps submitted by JFK were in compliance with applicable requirements. On September 16, 2022, the FAA determined that the noise compatibility program submitted by JFK would be initiating final review for approval or disapproval. On March 14, 2023, the FAA approved the JFK noise compatibility program. The noise compatibility program contained 22 recommended measures, including seven noise abatement measures, three land use measures, and 12 program management measures. Of the measures proposed, 15 were approved, four were approved as voluntary, two were disapproved, and one was determined to have no FAA action as continuations of existing mandatory practices at JFK. Three of the seven noise abatement measures proposed at JFK are related to new or revised flight procedures.

DATES: The effective date of the FAA's approval of the JFK noise compatibility program is March 14, 2023.

FOR FURTHER INFORMATION CONTACT: Andrew Brooks, Regional Environmental Program Manager, Airports Division, Federal Aviation Administration, 1 Aviation Plaza, Room 516, Jamaica, NY 11434. Phone Number: 718–553–2511.

SUPPLEMENTARY INFORMATION: This notice announces FAA's approval of the noise compatibility program (NCP) for JFK, effective on March 14, 2023. Per United States Code section 47504 (49 U.S.C. 47504) and Title 14, Code of Federal Regulations (CFR) part 150, an airport sponsor who previously submitted a noise exposure map (NEM) may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport sponsor for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the NEMs. As required by 49 U.S.C. 47504, such programs must be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and the FAA. The FAA does not substitute its judgment for that of the airport sponsor with respect to which measures should be recommended for action. The FAA approval or disapproval of an airports recommendations in their noise compatibility program are made in accordance with the requirements and standards pursuant to 49 U.S.C. 47504 and 14 CFR part 150, which is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of 14 CFR 150.23;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations of FAA's approval of NCPs are delineated in 14 CFR 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an

environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the noise compatibility program nor a determination that all measures covered by the NCP are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests must be submitted to the FAA New York Airports District Office at 1 Aviation Plaza, Room 111, Jamaica, New York 11434.

JFK submitted the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study to the FAA and the FAA determined that the NEMs for JFK were in compliance with applicable requirements under 14 CFR 150, effective May 19, 2017 (Noise Exposure Map Notice for John F. Kennedy International Airport, New York City, New York, 82 FR 24770–24771, May 30, 2017). The FAA formally received the NCP based on the accepted NEMs for JFK on September 7, 2022. The airport operator requested that the FAA review the submitted material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as an NCP. The formal review period, limited by law to a maximum of 180 days with the exception of noise abatement procedures, was initiated on September 16, 2022. Notice of the intent to review the NCP was published in the **Federal Register** on September 21, 2022 (Notice of Receipt and Request for Review of Noise Compatibility Program, 87 FR 57748, September 21, 2022). That **Federal Register** Notice also announced the start of a 60-day period of public review for the NCP documentation. The FAA received no comments from interested parties during the public review period.

The JFK proposed NCP is comprised of actions designed for phased implementation by airport management and adjacent jurisdictions within the next one to five years. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in 49 U.S.C. 47504. The FAA began its review of the program on September 16, 2022 and was required by a provision of 49 U.S.C. 47504 to approve or disapprove the program within 180 days, other than the use of new or modified flight procedures for noise control in accordance with 14 CFR part 150.35(a). Failure to approve or disapprove such program within the 180-day period shall be deemed an approval of such program.

The submitted program contained 22 proposed measures to minimize impacts of aviation noise on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the 49 U.S.C. 47504 and 14 CFR part 150 were satisfied. A Record of Approval for the overall program was issued by the FAA effective March 14, 2023.

The specific program elements and their individual determinations are as follows:

Noise Abatement (NA) Measure 1: Implement ''Tighten SKORR'' Departure Procedure—Approved as Voluntary.

NA Measure 2: Turn Runway 22L and 22R Departures to Heading 240 at Night—Approved as Voluntary.

NA Measure 3: Reduce Runway 31L Intersection Departures at Night—Approved as Voluntary.

NA Measure 4: Combine ''Tighten SKORR'' Departure Procedure with Reduce Runway 31L Intersection Departures at Night—Approved as Voluntary.

NA Measure 5: Implement Noise Abatement Departure Profiles on a Voluntary Basis for Each Runway End—Disapproved for Purposes of Part 150.

NA Measure 6: Implement Nighttime Optimized Profile Descent Procedures—Disapproved for Purposes of Part 150.

NA Measure 7: Continue Existing Mandatory Departure Noise Limit and $250 Penalty—No Action.

Land Use (LU) Measure 1: Sound-Insulate Eligible Dwelling Units—Approved.

LU Measure 2: Sound-Insulate Eligible Non-Residential Noise-Sensitive Structures—Approved.

LU Measure 3: Include Aircraft Noise in Real Estate Disclosures—Approved.

Program Management (PM) Measure 1: Maintain Noise Office—Approved.

PM Measure 2: Maintain Noise and Operations Management System—Approved.

PM Measure 3: Maintain Public Flight Tracking Portal—Approved.

PM Measure 4: Maintain Noise Complaint Management System—Approved.

PM Measure 5: Maintain Noise Office website—Approved.

PM Measure 6: Continue Community Outreach Activities—Approved.

PM Measure 7: Establish and Manage a Fly Quiet Program—Approved as Voluntary.

PM Measure 8: Make Aircraft Noise Contours Available in a Geographic Information System (GIS)—Approved.

PM Measure 9: Update the Noise Exposure Map—Approved.

PM Measure 10: Update the Noise Compatibility Program—Approved.

PM Measure 11: Post Monthly Color-Coded DNL Values on Port Authority website—Approved.

PM Measure 12: The Port Authority to Coordinate with the FAA on Development and Implementation of NextGen Procedures—Approved.

These determinations are set forth in detail in the Record of Approval signed by the FAA Airports Eastern Division Director on March 14, 2023. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above. The Record of Approval also will be available on the internet on the FAA's website at *https://www.faa.gov/airports/environmental/airport_noise/part_150/states/* and the Port Authority of New York and New Jersey's website at *https://panynjpart150.com/JFK_documents.asp.*

Issued in Jamaica, NY, on March 15, 2023.

David A. Fish,

Director, Airports Division, Eastern Region.

[FR Doc. 2023–05577 Filed 3–17–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0223]

Agency Information Collection Activities; Renewal of a Currently Approved Collection Request: Unified Registration System, FMCSA Registration/Updates

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to renew the ICR titled ''Unified Registration System, FMCSA Registration/Updates,'' OMB Control No. 2126–0051. This ICR applies to new registrants seeking initial operating authority from FMCSA. New registrants seeking operating authority must use online Form MCSA–1, accessible via the Unified Registration System (URS).

DATES: Comments on this notice must be received on or before April 19, 2023.

ADDRESSES: 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 information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Secrist, Office of Registration, Chief, Registration, Licensing, and Insurance Division, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; 202–385–2367; *jeff.secrist@dot.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Unified Registration System, FMCSA Registration/Updates.

OMB Control Number: 2126–0051.

Type of Request: Renewal of a currently approved ICR.

Respondents: Carrier compliance officer or equivalent from transportation entities subject to FMCSA's licensing, registration, and certification regulations.

Estimated Number of Respondents: 283,857 (94,619 annualized).

Estimated Time per Response: 1.34 hours.

Expiration Date: April 30, 2023.

Frequency of Response: One-time information collection.

Estimated Total Annual Burden: 380,368 (126,789 annualized).

Background

FMCSA registers for-hire motor carriers of regulated commodities and of passengers, under 49 U.S.C. 13902(a); surface freight forwarders, under 49 U.S.C. 13903; property brokers, under 49 U.S.C. 13904; and certain Mexico-domiciled motor carriers, under 49 U.S.C. 13902(c). These motor carriers may conduct transportation services in the United States only if they are registered with FMCSA. Each registration is effective from the date specified and remains in effect for such period as the Secretary of Transportation determines by regulations.

The final rule titled ''Unified Registration System,'' (78 FR 52608) dated August 23, 2013, implemented statutory provisions for an online registration system for entities that are subject to FMCSA's licensing, registration, and certification regulations. URS streamlines the registration process and serves as a clearinghouse and repository of information on motor carriers, brokers, freight forwarders, intermodal equipment providers, hazardous materials safety permit applicants, and cargo tank facilities required to register with FMCSA. When developing URS, FMCSA planned that the OP–1 series of forms (except for OP–1(MX)) would ultimately be folded into one overarching form (MCSA–1), which would be used by all motor carriers seeking authority.

FMCSA began a phased rollout of URS in 2015. The first phase, which became effective on December 12, 2015, impacts only first-time applicants seeking an FMCSA-issued registration. FMCSA had planned subsequent rollout phases for existing registrants; however, there have been substantial delays, and subsequent phases have not been rolled out to date.

On January 17, 2017, FMCSA issued a final rule titled ''Unified Registration System; Suspension of Effectiveness,'' which indefinitely suspended URS effectiveness dates for existing registrants only (82 FR 5292). Pursuant to this final rule, FMCSA is still accepting forms OP–1, OP–1(P), OP–1(FF), and OP–1(NNA) for existing registrants wishing to apply for additional authorities. Separately, FMCSA requires Form OP–1(MX) for Mexico-domiciled carriers that wish to operate beyond the U.S. municipalities on the U.S.-Mexico border and their commercial zones.

As described above, only first-time applicants seeking an FMCSA-issued registration must apply for authority via URS, using Form MCSA–1. Under URS, all forms described in the current ICR, except OP–1(MX), are folded into Form MCSA–1. Information collection activities associated with the OP–1 series of forms are covered under a different ICR, titled ''Licensing Applications for Motor Carrier Operating Authority,'' OMB Control No. 2126–0016.

Form MCSA–1 requests information to identify the applicant, the nature and scope of its proposed operations, safety-related details, and information regarding the drivers and vehicles it plans to use in U.S. operations. FMCSA and the States use registration information collected via Form MCSA–1 to track motor carriers, freight forwarders, brokers, and other entities they regulate. Registering motor carriers is essential to being able to identify carriers so that their safety performance can be tracked and evaluated. The data make it possible to link individual trucks to the responsible motor carrier, thus implementing the mandate under 49 U.S.C. 31136(a)(1); that is, ensuring that CMVs are maintained and operated safely. In general, registration information collected via Form MCSA–1 informs prioritization of the Agency's activities and aids in assessing and statistically analyzing the safety outcomes of those activities.

The current information collection supports the DOT Strategic Goal of Safety. It streamlines registration processes and ensures that FMCSA can more efficiently track motor carriers, freight forwarders, brokers, and other entities regulated by the Agency.

PUBLIC COMMENTS INVITED: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2023–05585 Filed 3–17–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0079]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Request for Revocation of Authority Granted

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The FMCSA requests approval to renew an ICR titled, ''Request for Revocation of Authority Granted.''

DATES: Comments on this notice must be received on or before May 19, 2023.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2023–0079 using any of the following methods:

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

• *Fax:* 1–202–493–2251.

• *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov,* and follow the online instructions for accessing the docket, or go to the street address listed above.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its decision-making process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''FAQ'' section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Jeff Secrist, Office of Registration and Safety Information, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; 202–385–2367; email *jeff.secrist@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: FMCSA registers for-hire motor carriers of regulated commodities under 49 U.S.C. 13902, surface freight forwarders under 49 U.S.C. 13903, and property brokers under 49 U.S.C. 13904. Each registration is effective from the date specified under 49 U.S.C. 13905 (c). Subsection (d) of 49 U.S.C. 13905 also provides that on application of the registrant, the Secretary may amend or revoke a registration, and hence the registrant's operating authority. Form OCE–46 allows these registrants to apply voluntarily for revocation of their operating authority or parts thereof. If the registrant fails to maintain evidence of the required level of insurance coverage on file with FMCSA, its operating authority will be revoked involuntarily. Although the effect of both types of revocation is the same, some registrants prefer to request voluntary revocation. For various business reasons, a registrant may request revocation of some part, but not all, of its operating authority. This information collection, which supports the DOT Strategic Goal of Safety, is being revised to reflect modified estimates of burden hours and costs. For respondents, the program adjustment has resulted in increased total burden hours and an increase in respondent costs. The burden hour increase is due to an estimated increase in the number of annual filings of Form OCE–46 from 5,901 to 8,699 per year, resulting in an increase of 2,798 responses and 700 burden hours. The estimated annual labor cost for industry resulting from submitting Form OCE–46 is $67,287, an increase of $17,760. The total annual respondent cost has increased by $7,992. This increase is due to the increase in the number of respondents filing paper forms. While the online submission option exists, FMCSA still estimates that approximately 2,310 respondents will continue to file the form by mail, which incurs notarization and postage fees. For the Federal Government, the program costs have increased by $19,707 due to the increase in the number of forms received by FMCSA.

Title: Request for Revocation of Authority Granted.

OMB Control Number: 2126–0018.

Type of Request: Renewal of a currently-approved ICR.

Respondents: For-hire motor carriers, freight forwarders, and property brokers.

Estimated Number of Respondents: 8,699.

Estimated Time per Response: 15 minutes (0.25 hours).

Expiration Date: September 30, 2023.

Frequency of Response: Other (As needed).

Estimated Total Annual Burden: 2,175.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2023–05581 Filed 3–17–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT MARAD 2023–0055]

Request for Comments on the Renewal of a Previously Approved Information Collection: Application and Reporting Elements for Participation in the Tanker Security Program

AGENCY: Maritime Administration, DOT.

ACTION: 60-Day **Federal Register** notice.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 2133–0554 (Application and Reporting Elements for Participation in the Tanker Security Program) will be used to evaluate the eligibility of the applicant for participation in the Tanker Security Program (TSP). A minor change request to include a privacy act statement for the collection of personally identifiable information will be added to the form for this collection. The Paperwork Reduction Act of 1995 requires that we publish this notice in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments must be submitted on or before May 19, 2023.

ADDRESSES: You may submit comments identified by Docket No. DOT–MARAD–2023–0055 through one of the following methods:

• *Federal eRulemaking Portal: www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Comments are invited on: (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: David Hatcher, (202) 366–0688, Office of Sealift Support, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, Email: *David.Hatcher1@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application and Reporting Elements for Participation in the Tanker Security Program.

OMB Control Number: 2133–0554.

Type of Request: Renewal of a previously approved information collection.

Abstract: The National Defense Authorization Act for Fiscal Year 2021 (FY21 NDAA) authorized the Secretary of Transportation to establish the Tanker Security Program (TSP) comprised of a fleet of active, commercially viable, militarily useful, privately owned product tank vessels of the United States. The fleet will meet national defense and other security requirements and maintain a United States presence in international commercial shipping. The National Defense Authorization for Fiscal Year 2022 (FY22 NDAA) made minor adjustments related to the participation of long-term charters in the TSP. OMB 2133–0554 (Application and Reporting Elements for Participation in the Tanker Security Program) provides for enrollment of eligible tank vessels in the program for FY 2022 through FY 2035.

This information collection supports the Department of Transportation's strategic goal for National Security. A fuel tanker study required by the fiscal year 2020 National Defense Authorization Act (FY20 NDAA) examined the sufficiency of the U.S.-flagged tanker fleet to meet National Defense Strategy (NDS) requirements. The report's summary found there to be a substantial risk to the nation's defense associated with a heavy reliance on foreign-flagged tankers, particularly within a contested environment. The location, timing, and specific missions associated with some tanker requirements dictate the need for U.S.-flagged assets, for which there currently are insufficient numbers available. The report's gap analysis found a clear and critical need for a tanker security program to increase U.S.-flagged tanker capacity, to reduce the risk of reliance on foreign-flagged tankers for the most important fuel missions, and to ensure the Department of Defense (DoD) has sufficient tanker capabilities to meet NDS objectives.

In response to the FY20 NDAA Fuel Tanker Study, Congress directed in the FY21 NDAA, with minor adjustments in the FY22 NDAA, that the Secretary of Transportation, in consultation with the Secretary of Defense, establish a fleet of active, commercially viable, militarily useful, privately owned product tanker vessels to meet national defense and other security requirements and maintain a United States presence in international commercial shipping. The Maritime Administration worked with the DoD's United States Transportation Command to identify and shape TSP requirements and timelines.

Respondents: Vessel Owners.

Affected Public: Business Assistance, Water Transportation Operations, Merchant Marine.

Estimated Number of Respondents: 10.

Estimated Number of Responses: 160.

Estimated Hours per Response: 1.75.

Annual Estimated Total Annual Burden Hours: 280.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.49.)

* * * * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–05578 Filed 3–17–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0059]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: NUNYA (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 19, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0059 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0059 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0059, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in

nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov*.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel NUNYA is:

—*Intended Commercial Use of Vessel:* ''owner intends to use the vessel for high end luxury sunset and bay cruises.''

—*Geographic Region Including Base of Operations:* ''California.'' (Base of Operations: San Diego, CA)

—*Vessel Length and Type:* 56.7′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2023–0059 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0059 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov*. Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy*.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–05613 Filed 3–17–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0056]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: AURA (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 19, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0056 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2023–0056 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0056, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel AURA is:

—*Intended Commercial Use of Vessel:* ''Sightseeing, sunset cruise, dining, experience sailing, sail instructions.''

—*Geographic Region Including Base of Operations:* ''Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Maine.'' (Base of Operations: St. Augustine, FL).

—*Vessel Length and Type:* 50.5′ Sail catamaran.

The complete application is available for review identified in the DOT docket as MARAD 2023–0056 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2023–0056 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–05620 Filed 3–17–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0057]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: UNDERDOG (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 19, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0057 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0057 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0057, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel UNDERDOG is:

—*Intended Commercial Use of Vessel:* ''as a charter fishing vessel.''

—*Geographic Region Including Base of Operations:* ''North Carolina.'' (Base of Operations: Southport, NC).
—*Vessel Length and Type:* 37′ Motor.

The complete application is available for review identified in the DOT docket as MARAD 2023–0057 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0057 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121).

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–05621 Filed 3–17–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0065]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: A LITTLE ROMANCE (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 19, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0065 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0065 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0065, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel A LITTLE ROMANCE is:

—*Intended Commercial Use of Vessel:* ''Scenic and sightseeing transportation on the near coastal waters of Southeast Alaska, new Juneau. This will be a family run small business teaching the fundamentals of sailing while viewing the surroundings of Juneau in the daytime with no more than 6 passengers and no overnight excursions. The vessel is documented in the United States and the owners and operator of the vessel is a USA born citizen.''

—*Geographic Region Including Base of Operations:* ''Alaska.'' (Base of Operations: Juneau, AK)
—*Vessel Length and Type:* 38.7′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2023–0065 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0065 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–05622 Filed 3–17–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0064]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: GEM (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 19, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0064 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0064 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0064, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email James.Mead@*dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel GEM is:

—*Intended Commercial Use of Vessel:* ''to allow the vessel to conduct charters.''
—*Geographic Region Including Base of Operations:* ''Rhode Island, Massachusetts, Maine, Connecticut, New York, Florida.'' (Base of Operations: Jamestown, RI)
—*Vessel Length and Type:* 64′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0064 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or

businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0064 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov*. Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy*.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121).

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–05614 Filed 3–17–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0062]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: CADENCE (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 19, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0062 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2023–0062 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0062, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel CADENCE is:

—*Intended Commercial Use of Vessel:* ''Cocktail and dinner cruises for up to 12 passengers and some multi night charters for up to 6 passengers.''

—*Geographic Region Including Base of Operations:* ''Washington.'' (Base of Operations: Portland, ME)

—*Vessel Length and Type:* 75.8′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0062 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise

endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0062 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–05615 Filed 3–17–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0060]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SCORPION (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 19, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0060 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2023–0060 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0060, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel ADAGIO is:

—*Intended Commercial Use of Vessel:* ''UPV 6 person charters from 2 to 8 hours.''

—*Geographic Region Including Base of Operations:* ''Florida.'' (Base of Operations: Riviera Beach, FL)

—*Vessel Length and Type:* 33′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0060 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0060 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov*. Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy*.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–05617 Filed 3–17–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0063]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SERIOUSLY (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 19, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0063 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2023–0063 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0063, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SERIOUSLY is:

—*Intended Commercial Use of Vessel:* ''charters.''

—*Geographic Region Including Base of Operations:* ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida.'' (Base of Operations: St. Pete Beach, FL)

—*Vessel Length and Type:* 38′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2023–0063 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES.** Be advised that it may take a few hours or even

days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0063 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

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(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–05618 Filed 3–17–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0058]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SCORPION (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 19, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0058 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2023–0058 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0058, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SCORPION is:

—*Intended Commercial Use of Vessel:* ''to carry passengers for hire.''
—*Geographic Region Including Base of Operations:* ''Florida.'' (Base of Operations: Miami, FL).
—*Vessel Length and Type:* 45.7′ Sail catamaran.

The complete application is available for review identified in the DOT docket as MARAD 2023–0058 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0058 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

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(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–05625 Filed 3–17–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0061]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SEA JEWEL (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 19, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0061 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2023–0061 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0061, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SEA JEWEL is:

—*Intended Commercial Use of Vessel:* ''owner intends to use the vessel as a platform for beautiful, high end dining experiences and sunset bay charters on San Francisco Bay.''
—*Geographic Region Including Base of Operations:* ''California.'' (Base of Operations: San Francisco, CA).
—*Vessel Length and Type:* 44.6′ Motor.

The complete application is available for review identified in the DOT docket as MARAD 2023–0061 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2023–0061 or visit the Docket

Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–05623 Filed 3–17–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0018]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Request for Comment; Title: FMVSS Considerations for Vehicles With Automated Driving Systems: Seating Preference Study

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a request for approval of a new information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) summarized below will be submitted to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. This is a new collection of information to conduct an experiment to gather both objective and subjective data regarding occupant/passenger seat preference in Automated Driving System-Dedicated Vehicles (ADS–DVs). A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on March 7, 2022. No relevant comments were received.

DATES: Comments must be submitted on or before April 19, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection, including suggestions for reducing burden, should be submitted to the Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain.* To find this particular information collection, select ''Currently under Review—Open for Public Comment'' or use the search function.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Debbie Sweet, Office of Vehicle Safety Research (NVS–010), (202) 366–7179, National Highway Traffic Safety Administration, W46–413, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces that the following information collection request will be submitted OMB.

Title: FMVSS Considerations for Vehicles with Automated Driving Systems: Seating Preference Study.

OMB Control Number: New.

Form Number(s): NHTSA Forms 1624, 1625, and 1626.

TABLE 1—FORMS TO BE USED IN THE STUDY

NHTSA Form 1624	Eligibility Questionnaire—FMVSS Considerations for Vehicles with Automated Driving Systems: Seating Preference Study.
NHTSA Form 1625	Demographic Questionnaire—FMVSS Considerations for Vehicles with Automated Driving Systems: Seating Preference Study.
NHTSA Form 1626	Post Experiment Questionnaire—FMVSS Considerations for Vehicles with Automated Driving Systems: Seating Preference Study.

Type of Request: New collection.

Type of Review Requested: Regular.

Requested Expiration Date of Approval: 3 years from date of approval.

Summary of the Collection of Information:

49 U.S.C. 30181, 30182, and 30183 authorize the Secretary of Transportation (NHTSA by delegation) to conduct research, development, and testing programs, including activities related to new and emerging technologies that impact, or that may impact, motor vehicle safety. NHTSA proposes to collect information from the public regarding occupant/passenger seat preference in Automated Driving System-Dedicated Vehicles (ADS–DVs). Adults aged 18 and older will participate in an on-road study after giving informed consent. Participants will ride in one passenger vehicle and two ADS–DVs on a closed test track. Questionnaire data will be collected at the beginning and end of participation for each participant. Objective data will be collected via the data acquisition systems installed in each study vehicle. The data from each participant will be

combined, stratified by demographic information and analyzed.

There are four information collections for the study. The (1) Eligibility Questionnaire will be used to identify eligible participants for this study; results from this questionnaire will not be kept or analyzed. Candidates who are selected for the study will participate in a single test-track experiment and will complete two additional questionnaires while participating in the experiment. The (2) Demographic Questionnaire will be used for description of the participant sample (*e.g.,* number of males and females in the dataset, final age range for all participants, and driving experience range for all participants). This is necessary to compare the sample collected to the general driving population. The (3) objective data collected via data acquisition systems installed in each study vehicle during the test-track experiment is necessary for collecting information about participants' seat selection, any seat changes during the ride, seat belt use, and how participants interact with the HMI. The (4) Post Experiment Questionnaire will be used to analyze the perceptions and opinions of ADS–DV technology within the participant sample, as well as to gather any comments regarding their seat preference and seat belt use. This data will be used to determine how and why participants choose seating preferences in ADS–DVs.

Description of the Need for the Information and Proposed Use of the Information

The National Highway Traffic Safety Administration's (NHTSA's) mission is to save lives, prevent injuries, and reduce economic losses resulting from motor vehicle crashes. ADS technology is rapidly developing, and current Federal motor vehicle safety standards (FMVSS) and/or NHTSA guidance may need to be adapted to ensure this technology is deployed safely. Many of NHTSA's FMVSS focus on particular seating positions and thus, changes in seating preferences could impact those FMVSS. This study will provide NHTSA information about the seating preferences of occupants in vehicles that do not require a human driver in the left front seat. Several safety outcomes stem from occupant seating preference, which may change in the future as Automated Driving Systems (ADS) change seating configurations and the way people use vehicles. ADS-Dedicated Vehicles (ADS–DVs) are vehicles that lack manually operated driving controls, and therefore do not require a human driver or occupant to drive the vehicle or sit in the left front seat (the ''driver's seat'' in conventional vehicles). In conventional vehicles, there is the basic assumption that a human will always be in the left front seat while the vehicle is operating because a human driver would be necessary to operate those vehicles. ADS–DVs provide the opportunity for occupants to sit in any seat they choose in the vehicle. It is currently unknown where occupants may choose to sit when riding in an ADS–DV. Moreover, new seating configurations for occupants of ADS–DVs may necessitate changes to how and where information is presented to occupants about their responsibilities as occupants (*e.g.,* closing doors, fastening seatbelts). Furthermore, occupants will need a human-machine interface (HMI) to provide input that they are ready for the ride to begin, or to request that the ride stop. At present, no standardized or otherwise commercially produced HMIs exist for this purpose. Therefore, in order to conduct the research, a prototype HMI will be developed. The two main goals for this study are to:

1. Describe the occupant distribution for ADS–DVs (*i.e.,* seating distribution).

2. Use the prototype HMI to evaluate whether occupants would choose to initiate a ride in an ADS–DV without a seatbelt.

60-Day Notice

A **Federal Register** notice with a 60-day comment period soliciting public comments on the information collection was published on March 7, 2022 (87 FR 12772). NHTSA received one comment on the notice that did not address the information collection request or the seating preference study but instead addressed vehicle and road user safety in general. In addition to seeking public comment, NHTSA and the research team have publicized this study for a number of years across industry and consumer events. NHTSA has socialized this study through various means including discussion in the public-facing Annual Modal Research Plan FY2022–2023, discussion during the NHTSA Research Portfolio Fall 2022 public meeting, inclusion in a presentation at the 2021 SAE Government Industry Meeting, and discussion with industry stakeholders through individual meetings and association groups. Feedback regarding the study was positive and supportive and assistive in refinement of the study including the human machine interaction design and presentation.

Affected Public: Adults ages 18 and older who meet eligibility criteria such as holding a valid driver's license and having used a ride- sharing application at least once in the past year.

Estimated Number of Respondents: An expected total of up to 100 participants will be recruited to participate in the study. It is estimated that 200 respondents will be needed to identify 100 eligible participants.

Frequency: One-time collection.

Estimated Total Annual Burden Hours: 268.

The eligibility questionnaire will have a maximum of 28 questions and NHTSA estimates it will take approximately 20 minutes to complete. Therefore, NHTSA estimates the total time associated with completing eligibility questionnaires to be 67 hours (200 responses × 20 minutes = 66.7 hours). Study Intake (reading study information sheet and obtaining participant consent, general study instruction) is expected to take 10 minutes to complete. Both the demographic and post-experiment questionnaires will have a maximum of 20 questions and NHTSA estimates that it will take each eligible participant 10 minutes to complete the demographic questionnaire and 10 minutes to complete the post-experiment questionnaire. Therefore, NHTSA estimates the total burden for Study Intake to be 17 hours (100 responses × 10 minutes = 16.67 hours), Demographic Questionnaire to be 17 hours (100 responses × 10 minutes = 16.67 hours), and the Post Experiment questionnaire to be 17 hours (100 responses × 10 minutes = 16.67 hours). Study participation (*e.g.,* riding in study vehicles on the test track) is expected to take 90 minutes. The total burden hours for study participation are calculated to be 150 hours (100 responses × 90 minutes = 9,000 minutes = 150 hours). Accordingly, NHTSA estimates the total burden hours for this information collection to be 268 hours. Data collection will take less than one year.

The table below shows the estimated burden hours for this information collection, which accounts for the maximum number of expected responses and drop-outs.

ESTIMATED BURDEN HOURS

Instrument	Maximum number of respondents	Estimated individual burden (minutes)	Total estimated burden hours
Eligibility Questionnaire	200	20	67
Study Intake	100	10	17
Demographic questionnaire	100	10	17
Study Participation	100	90	150
Post Experiment Questionnaire	100	10	17
Total			268

Estimated Total Annual Burden Cost: The only cost burdens respondents will incur are costs related to travel to and from the study location. The costs are minimal and are expected to be offset by the honorarium that will be provided to all research participants.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Cem Hatipoglu,

Associate Administrator, Vehicle Safety Research, NHTSA.

[FR Doc. 2023–05569 Filed 3–17–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–OCC–2023–0004]

Mutual Savings Association Advisory Committee

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The OCC announces a meeting of the Mutual Savings Association Advisory Committee (MSAAC).

DATES: A public meeting of the MSAAC will be held on Tuesday, April 4, 2023, beginning at 8:15 a.m. Eastern Daylight Time (EDT). The meeting will be in person and virtual.

ADDRESSES: The OCC will host the April 4, 2023 meeting of the MSAAC at the OCC's offices at 400 7th Street SW, Washington, DC 20219 and virtually.

FOR FURTHER INFORMATION CONTACT: Michael R. Brickman, Deputy Comptroller for Specialty Supervision, (202) 649–5420, Office of the Comptroller of the Currency, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services. You also may access prior MSAAC meeting materials on the MSAAC page of the OCC's website.[1]

SUPPLEMENTARY INFORMATION: Under the authority of the Federal Advisory Committee Act (the Act), 5 U.S.C. 1001 *et seq,* and the regulations implementing the Act at 41 CFR part 102–3, the OCC is announcing that the MSAAC will convene a meeting on Tuesday, April 4, 2023. The meeting is open to the public and will begin at 8:15 a.m. EDT. The purpose of the meeting is for the MSAAC to advise the OCC on regulatory or other changes the OCC may make to ensure the health and viability of mutual savings associations. The agenda includes a discussion of current topics of interest to the industry.

Members of the public may submit written statements to the MSAAC. The OCC must receive written statements no later than 5:00 p.m. EDT on Thursday, March 30, 2023. Members of the public may submit written statements to *MSAAC@occ.treas.gov.*

Members of the public who plan to attend the meeting should contact the OCC by 5:00 p.m. EDT on Thursday, March 30, 2023, to inform the OCC of their desire to attend the meeting and whether they will attend in person or virtually, and to obtain information about participating in the meeting. Members of the public may contact the OCC via email at *MSAAC@OCC.treas.gov* or by telephone at (202) 649–5420. Attendees should provide their full name, email address, and organization, if any. For persons who are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to arrange telecommunications relay services for this meeting.

Michael J. Hsu,

Acting Comptroller of the Currency.

[FR Doc. 2023–05530 Filed 3–17–23; 8:45 am]

BILLING CODE P

[1] *https://occ.gov/topics/supervision-and-examination/bank-management/mutual-savings-associations/mutual-savings-association-advisory-committee.html.*

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2420; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or Assistant Director

for Regulatory Affairs, tel.: 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On March 15, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. MEHMEDAGIC, Osman (a.k.a. ''OSMICA''), Mis Irbina No. 18, Sarajevo 71000, Bosnia and Herzegovina; DOB 01 Nov 1962; POB Sarajevo, Bosnia and Herzegovina; nationality Bosnia and Herzegovina; Gender Male; National ID No. 0111962172659 (Bosnia and Herzegovina) (individual) [BALKANS–EO14033].

Designated pursuant to section 1(a)(v) of Executive Order 14033 of June 8, 2021, ''Blocking Property and Suspending Entry into the United States of Certain Persons Contributing to the Destabilizing Situation in the Western Balkans'' (E.O. 14033), 86 FR 31079 (June 10, 2021), 3 CFR 2021 Comp., p. 591, for being responsible for or complicit in, or to have directly or indirectly engaged in, corruption related to the Western Balkans, including corruption by, on behalf of, or otherwise related to a government in the Western Balkans, or a current or former government official at any level of government in the Western Balkans, such as the misappropriation of public assets, expropriation of private assets for personal gain or political purposes, or bribery.

2. STANKOVIC, Dragan, Bosnia and Herzegovina; DOB 21 Jul 1984; POB Banja Luka, Bosnia and Herzegovina; nationality Bosnia and Herzegovina; citizen Bosnia and Herzegovina; Gender Male (individual) [BALKANS–EO14033].

Designated pursuant to section 1(a)(iii) of E.O. 14033 for being responsible or complicit in, or to have directly or indirectly engaged in, a violation of, or an act that has obstructed or threatened the implementation of, any regional security, peace, cooperation, or mutual recognition agreement or framework or accountability mechanism related to the Western Balkans, including the Prespa Agreement of 2018; the Ohrid Framework Agreement of 2001; United Nations Security Council Resolution 1244; the Dayton Accords; or the Conclusions of the Peace Implementation Conference Council held in London in December 1995, including the decisions or conclusions of the High Representative, the Peace Implementation Council, or its Steering Board; or the International Criminal Tribunal for the former Yugoslavia, or, with respect to the former Yugoslavia, the International Residual Mechanism for Criminal Tribunals.

3. GACANIN, Edin (a.k.a. ''Tito''), Bosnia and Herzegovina; Dubai, United Arab Emirates; Netherlands; DOB 12 Oct 1982; POB Bosnia and Herzegovina; nationality Bosnia and Herzegovina; alt. nationality Netherlands; Gender Male (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of Executive Order 14059 of December 15, 2021, ''Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade,'' 86 FR 71549 (December 17, 2021), 3 CFR 2021 Comp., p. 715, for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

Dated: March 15, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–05611 Filed 3–17–23; 8:45 am]

BILLING CODE 4810–AL–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meetings

Time and Date: March 23, 2023, 12:00 p.m. to 3:00 p.m., Eastern time.

Place: This meeting will be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1–929–205–6099 (US Toll) or 1–669–900–6833 (US Toll), Meeting ID: 983 8666 4360, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/meeting/register/tJwuf--uqD8pHNQlPcBbJw07Q4ZJNYo-nW5K.*

Status: This meeting will be open to the public.

Matters To Be Considered: The Unified Carrier Registration Plan Finance Subcommittee (the ''Subcommittee'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda

I. Call to Order—UCR Finance Subcommittee Chair

The UCR Finance Subcommittee Chair will welcome attendees, call the meeting to order, call roll for the Subcommittee, confirm whether a quorum is present, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by the subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Subcommittee Agenda and Setting of Ground Rules—UCR Finance Subcommittee Chair

For Discussion and Possible Subcommittee Action

The agenda will be reviewed, and the Subcommittee will consider adoption of the agenda.

Ground Rules

➢Subcommittee action only to be taken in designated areas on agenda.

IV. Review and Approval of Subcommittee Minutes from the November 15, 2022 Meeting—UCR Finance Subcommittee Chair

For Discussion and Possible Subcommittee Action

Draft minutes from the November 15, 2022 Subcommittee meeting at the Westin New Orleans will be reviewed. The Subcommittee will consider action to approve.

V. Allocation of Unspent 2022 UCR Administrative Funds and Interest Earned on UCR Administrative Funds—UCR Finance Subcommittee Chair and UCR Depository Manager

For Discussion and Possible Subcommittee Action

The UCR Finance Subcommittee Chair and UCR Depository Manager will lead a discussion on which reserve funds should receive allocations of unspent 2022 administrative funds and interest earned on those funds. The Subcommittee may take action to recommend to the Board allocations of unspent 2022 administrative funds and interest earned on those funds to reserve funds.

VI. Implementation of the UCR Investment Policy—UCR Finance Subcommittee Chair

For Discussion and Possible Subcommittee Action

The UCR Finance Subcommittee Chair will lead a discussion on the implementation of the UCR Investment Policy. The Subcommittee may make changes consistent with the UCR Investment Policy or if required by the Investment Policy to recommend changes to the Board.

VII. Amendments to UCR Policies on the Financial Reserve and the Unbudgeted Expense Reserve—UCR Finance Subcommittee Chair

For Discussion and Possible Subcommittee Action

The UCR Finance Subcommittee Chair will lead a discussion regarding possible amendments to the Financial Reserve Fund Policy and the Unbudgeted Expense Reserve Policy. The Subcommittee may take action to recommend to the Board possible amendments to the Financial Reserve Fund and Unbudgeted Expense Reserve Policies.

VIII. Revenues from 2022 and 2023 UCR Fees—UCR Depository Manager

The UCR Depository Manager will review the revenues received from the 2022 and 2023 plan year fees.

IX. Status of 2024 UCR Fee Recommendation—UCR Finance Subcommittee Chair and UCR Executive Director

The UCR Finance Subcommittee Chair and UCR Executive Director will provide an update on the current status of the 2024 UCR fee recommendations made to FMCSA.

X. 2025 Fee Analysis—UCR Finance Subcommittee Chair and UCR Depository Manager

The UCR Finance Subcommittee Chair and UCR Depository Manager will provide an update on the preliminary analysis of the 2025 fee recommendations.

XI. Management Report—UCR Finance Subcommittee Chair and UCR Depository Manager

The UCR Finance Subcommittee Chair and UCR Depository Manager will provide an update on UCR finances and related topics, to include current market rates on deposits, CDs, and Treasuries.

XII. Other Business—UCR Finance Subcommittee Chair

The UCR Finance Subcommittee Chair will call for any other items Subcommittee members would like to discuss.

XIII. Adjourn—UCR Finance Subcommittee Chair

The UCR Finance Subcommittee Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, March 15, 2023 at: *https://plan.ucr.gov.*

Contact Person for More Information: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2023–05752 Filed 3–16–23; 4:15 pm]

BILLING CODE 4910–YL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0041]

Agency Information Collection Activity: Compliance Inspection Report

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), 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) or 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a previously approved collection for which approval has expired, 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 May 19, 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. 2900–0041'' 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 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0041'' 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: (Public Law 104–13; 44 U.S.C. 3501–21).

Title: Compliance Inspection Report (VA Form 26–1839).

OMB Control Number: 2900–0041.

Type of Review: Revision of an approved collection.

Abstract: Fee-compliance inspectors complete VA Form 26–1839 during their inspection on properties under construction. The inspections provide a level of protection to Veterans by assuring them and VA that the adaptation are in compliance with the plans and specifications for which a specially adapted housing grant is based.

Affected Public: Individuals or households.

Estimated Annual Burden: 910 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Generally, between one and four times per project.

Estimated Number of Respondents: 3,640.

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. 2023–05629 Filed 3–17–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. 10, that the Special Medical Advisory Group (the Committee) will meet on Thursday, April 20, 2023, from 9 a.m. to 3:30 p.m. Eastern Standard Time (EST), at the Board of Veterans Appeals, 425 I St. NW (Conference Room 4E.400) in Washington, DC 20001. Members of the Committee may join in person or virtually. The public may attend virtual and in person. Limited public stakeholder seating will be made available due to on-going safety/health protocols in place in the meeting location.

The meeting is open to the public, except when the Committee is discussing Electronic Health Record Modernization (EHRM) updates between 9:30 a.m. ET–11:30 p.m. EST. The EHRM updates discussion is closed in accordance with 5 U.S.C. 552(c)(2)(4). Any related presentation material will not be available to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs and the Under Secretary for Health on the care and treatment of Veterans, and other matters pertinent to the Veterans Health Administration.

On April 20, 2023, in addition to EHRM updates, the agenda for the meeting will include discussions on clinical practice management optimization best practices, partnering with the community to enroll Veterans in care in support of the PACT Act and

cancer moonshot from a health equity perspective.

The meeting can be joined by phone at 404–397–1596 (Access code: 27601528045) and via Webex at: *https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m0d7a095d00079c9b038bdace87060c3d*. Please contact the point of contact below for assistance connecting.

Members of the public may submit written statements for review by the Committee to: Department of Veterans Affairs, Special Medical Advisory Group—Office of Under Secretary for Health (10), Veterans Health Administration, 810 Vermont Ave. NW, Washington, DC 20420 or by email at *VASMAGDFO@va.gov*. Comments will be accepted until close of business on Tuesday, April 18, 2023.

Any member of the public wishing to attend the meeting or seeking additional information should email *VASMAGDFO@va.gov* or call 202–461–7000.

Dated: March 14, 2023.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–05554 Filed 3–17–23; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. 10, that the Advisory Committee on Prosthetics and Special-Disabilities is having a meeting and site visit to be held on April 18–19, 2023. The meeting sessions will begin and end as follows:

Dates	Times
April 18, 2023 ...	8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST).
April 19, 2023 ...	8:30 a.m. to 1 p.m. EST.

The meeting will be a hybrid meeting, held in-person at the Spinal Cord Injury (SCI) Building. Middle Dining Room, James A. Haley Veterans Hospital, 13000 Bruce B. Downs Boulevard, Tampa, Florida; and virtually via WebEx conferencing. A limited number of public stakeholder seats will be made available due to ongoing health and safety protocols that are enforced at the James A. Haley Veterans Hospital VA Tampa Healthcare System; the public also may attend the meeting virtually via WebEx conferencing. *Masked are required during the meeting*. Sessions will not be open to the public when the Committee is conducting tours of VA facilities. Tours of VA facilities are closed to protect Veterans' privacy and personal information, in accordance with 5 U.S.C. 552b(c)(6).

The purpose of the Committee is to advise the Secretary of Veterans Affairs on VA's prosthetics programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also provides advice to the Secretary on special-disabilities programs, which are defined as any program administered by the Secretary to serve Veterans with spinal cord injuries, blindness or visual impairments, loss of extremities or loss of function, deafness or hearing impairment, and other serious incapacities in terms of daily life functions.

On April 18, 2023, the Committee will convene in open (hybrid) sessions, from 8:30 a.m.–10 a.m. EST, with introductory remarks and a presentation from the Advisory Committee Management Office. The Committee will convene closed sessions from 10 a.m.–3 p.m. EST as the Committee members tour the Tampa Polytrauma Rehabilitation Center; Spinal Cord Injury Center; Amputation Specialty Clinic and Prosthetic Fabrication Lab. Beginning at 3 p.m. EST, the meeting session will reconvene an open (hybrid) session; and the day will conclude with presentations from VA's National Occupational Therapy Program; National Physical Therapy Program; and National Spinal Cord Injury System of Care Program.

On April 19, 2023, the Committee will convene in open sessions at the Spinal Cord Injury (SCI) Building, Middle Dining Room, James A. Haley Veterans Hospital with presentations on VA's National Physical Medicine and Rehabilitation; Polytrauma System of Care; Amputation System of Care; Chiropractic System of Care; and VA's Orthotic and Pedorthic Clinical Services Programs.

The Committee will be in open session for an abbreviated time; therefore, no time will be allocated for receiving oral presentations from the public. Members of the public may submit written statements for review by the Committee in advance of the meeting. Public comments may be received no later than April 11, 2023, for inclusion in the official meeting record. Please send these comments to Dr. Lauren Racoosin, Designated Federal Officer, Rehabilitation and Prosthetic Services, Veterans Health Administration, at *Lauren.Racoosin@va.gov*.

Due to ongoing health and safety protocols, there will be limited seating at this facility. Only those members of the public (first 10 public stakeholders) who confirm their attendance will be allowed to attend in-person. *Masked are required during the meeting*. In order to accommodate your in-person attendance, please notify Dr. Racoosin at *Lauren.Racoosin@va.gov*; also, any member of the public seeking additional information should contact Dr. Racoosin. Members of the public who prefer to attend the meeting virtually may join using the WebEx conferencing link below:

https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=mb4279e783f106b7eefaf3d67e0c17c05.

To join by phone 14043971596/ Access code: 2764 861 8609.

Recordings and transcript of the meeting will be posted on the Advisory Committee on Prosthetics and Special-Disabilities Programs website: *https://www.va.gov/ADVISORY/Advisory_Committee_on_Prosthetics_and_Special_Disabilities_Programs_Statutory.asp* after the meeting.

Dated: March 14, 2023.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–05547 Filed 3–17–23; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 88 Monday,

No. 53 March 20, 2023

Part II

Environmental Protection Agency

40 CFR Parts 60, 63, and 266

EPA Method 23—Determination of Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans From Stationary Sources; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 63, and 266

[EPA–HQ–OAR–2016–0677; FRL–5937–02–OAR]

RIN 2060–AT09

EPA Method 23—Determination of Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans From Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes editorial and technical revisions to the Environmental Protection Agency's (EPA's) Method 23 (Determination of Polychlorinated Dibenzo-*p*-Dioxins, Polychlorinated Dibenzofurans, and Polycyclic Aromatic Hydrocarbons from Stationary Sources). Final revisions include incorporating true, comprehensive, and stable isotope dilution for quantifying target compounds using corresponding carbon-13 labeled compounds for each target compound including most of the polycyclic aromatic hydrocarbons (PAH) and changing the method quality control from the current prescriptive format to a more flexible performance-based approach with specified performance criteria. We are also finalizing revisions that expand the list of target compounds of Method 23 to include PAH and polychlorinated biphenyls (PCB). The final revisions allow facilities and their test teams flexibility when sampling and measuring polychlorinated dibenzo-*p*-dioxins and polychlorinated dibenzofurans (PCDD/PCDF), PAH, and PCB from stationary sources with a comprehensive isotope dilution method while ensuring that the stack testing community can consistently implement the method across emissions sources and facilities.

DATES: This final rule is effective on March 20, 2023. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of March 20, 2023.

ADDRESSES: The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2016–0677. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information 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 either electronically through *https://www.regulations.gov* or in hard copy at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting Coronavirus 2019 (COVID–19). Our Docket Center staff will continue to provide remote customer service via email, phone, and webform.

FOR FURTHER INFORMATION CONTACT: For further questions about this final action, contact Dr. Raymond Merrill, Office of Air Quality Planning and Standards (OAQPS), Air Quality Assessment Division (AQAD), Environmental Protection Agency, Research Triangle Park, NC 27711; mail drop E143–02; telephone number: (919) 541–5225; fax number: (919) 541–0516; email address: *merrill.raymond@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. We use multiple acronyms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

AQAD Air Quality Assessment Division
ASTM American Society for Testing and Materials International
CAA Clean Air Act
CARB California Environmental Protection Agency Air Resources Board
CCV continuing calibration verification
CFR Code of Federal Regulations
EDL estimated detection limit
EPA U.S. Environmental Protection Agency
FR Federal Register
GC gas chromatograph
HRGC high-resolution gas chromatography
HRMS high-resolution mass spectrometry
IBR incorporation by reference
IDC initial demonstration of capability
MDL method detection limit
MS mass spectrometer
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OLEM Office of Land and Emergency Management
OMB Office of Management and Budget
OW Office of Water
PAH polycyclic aromatic hydrocarbons
PCB polychlorinated biphenyls
PCDD polychlorinated dibenzo-*p*-dioxins
PCDPE polychlorinated diphenyl ethers
PCDPF polychlorinated dibenzofurans
PRA Paperwork Reduction Act
QCS Quality Control Sample
RFA Regulatory Flexibility Act
RRF relative response factor
SVOC semivolatile organic compounds
SW solid waste
TTN Technology Transfer Network
UMRA Unfunded Mandates Reform Act

Organization of this document. The information in this preamble is organized as follows:

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I. National Technology Transfer and Advancement Act (NTTAA)
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

K. Congressional Review Act (CRA)
L. Determination Under Clean Air Act Section 307(d)

I. General Information

A. Does this final action apply to me?

The final amendments to Method 23 apply to stationary sources that are subject to certain provisions of 40 CFR parts 60, 62, 63, 79, and 266. The source categories and entities potentially affected are listed in Table 1 of this preamble. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected.

TABLE 1—POTENTIALLY AFFECTED SOURCE CATEGORIES

Category	NAICS [a]	Examples of regulated entities
Industry	332410	Fossil fuel steam generators.
	332410	Industrial, commercial, institutional steam generating units.
	562213	Municipal Waste Combustors.
	322110	Hazardous Waste Combustors.
	325211	Polyvinyl Chloride Resins Manufacturing.
	327310	Portland cement plants.
	324122	Asphalt Shingle and Coating Materials Manufacturing.
	331314	Secondary aluminum plants.
	327120	Clay Building Material and Refractories Manufacturing.
	331410	Nonferrous Metal (except Aluminum) Smelting and Refining.

[a] North American Industry Classification System.

If you have any questions regarding the applicability of the final changes to Method 23, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Where can I get a copy of this document and other related information?

The docket number for this action is Docket ID No. EPA–HQ–OAR–2016–0677. In addition to being available in the docket, an electronic copy of the final method revisions is available on the Technology Transfer Network (TTN) website at *https://www.epa.gov/ttn/emc/methods/*. The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by May 19, 2023. Moreover, under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements. Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for the EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment, (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

The EPA's Method 23 (Determination of Polychlorinated Dibenzo-*p*-Dioxins and Polychlorinated Dibenzofurans from Stationary Sources) is EPA's current reference test method used to determine the amount of polychlorinated dibenzo-*p*-dioxins (PCDD) and polychlorinated dibenzofurans (PCDF) emitted from stationary sources.

The EPA promulgated Method 23 (Appendix A of 40 Code of Federal Regulations (CFR) Part 60, Test Methods) on February 13, 1991 (56 FR 5758). Since promulgation, the ability to measure PCDD and PCDF has evolved as analytical laboratories, EPA, and state entities have developed new standard operating procedures and methods to reflect improvements in sampling and analytical techniques. Examples of newer PCDD/PCDF methods include:

- Office of Land and Emergency Management (OLEM) Solid Waste (SW) SW–846 EPA Method 8290A, Polychlorinated Dibenzo-*p*-Dioxins and Polychlorinated Dibenzofurans (PCDF) by High-Resolution Gas Chromatography/High-Resolution Mass Spectrometry (HRGC/HRMS).
- Office of Water (OW) EPA Method 1613, Tetra- through Octa-Chlorinated Dioxins and Furans by Isotope Dilution HRGC/HRMS.
- California Environmental Protection Agency Air Resources Board (CARB) Method 428, Determination of Polychlorinated Dibenzo-*p*-Dioxin (PCDD), Polychlorinated Dibenzofuran (PCDF), and Polychlorinated Biphenyls Emissions from Stationary Sources.

Beginning in 2016, the EPA held a series of informal discussions with stakeholders to identify technical issues related to the sampling and analysis of PCDD and PCDF and potential revisions to Method 23. The stakeholders consisted of a cross section of interested parties including representatives from state regulatory entities, various EPA offices, analytical laboratories, regulated sources, emission testing firms, analytical standards vendors, instrument vendors, and others with experience in sampling and analysis of PCDD and PCDF and with the equipment, materials, and performance of Method 23 and other PCDD/PCDF methods. In the discussions, EPA also sought stakeholder input regarding their experience combining procedures for sampling and analysis of PCDD and PCDF with procedures for sampling and analysis of PAH and PCB emitted from

stationary sources. The docket contains summaries of the stakeholder discussions. EPA proposed editorial and technical revisions to Method 23 on January 14, 2020 (85 FR 2234). EPA received comments on the proposed revisions to the method and has addressed these in a separate response to comments document, the *Summary of Public Comments and Responses for the Proposed EPA Method 23—Determination of Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans from Stationary Sources.* This final action summarizes the changes made in response to comments.

III. Incorporation by Reference

The EPA is incorporating by reference American Society for Testing and Materials (ASTM) D6911–15 and ASTM D4840–99(2018)e1 in Method 23. ASTM D6911–15 includes a guide for packaging and shipping environmental samples for laboratory analysis and ASTM D4840–99(2018)e1 includes a standard guide for sample chain-of-custody procedures. These standards were developed and adopted by ASTM International and may be obtained from *https://www.astm.org* or from the American Society for Testing and Materials 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959.

IV. Summary of Revisions to Method 23

In this action, we are finalizing technical revisions and editorial changes to clarify and update the requirements and procedures specified in Method 23 and reformatting the method to conform with the current EPA method format (see *https://www.epa.gov/measurements-modeling/method-development#format*). We are also expanding the applicability of Method 23 to include procedures for sampling and analyzing PAH and PCB. In addition, we are finalizing revisions to various sections of the CFR that either require Method 23 or require the analysis of PCDD/PCDF, PAH, or PCB.

Our intent for the final revisions is to ensure that Method 23 is implemented consistently. EPA has updated the method procedures to include many current best practices. We have added flexibility to the method based on meeting quality control requirements.

The primary focus of the final revisions to Method 23 is to change the method from a prescriptive method to a method which allows users to have flexibility in implementing the method (*e.g.,* choice of gas chromatograph (GC) column, the procedures used for sample cleanup) while still meeting performance criteria that the EPA believes are necessary for demonstrating and documenting the quality of the measurements for the target compounds. The final revisions also address concerns over recovery of target compounds from particulate matter by requiring a pre-extraction filter recovery standard procedure and acceptance criteria for the pre-extraction filter recovery standard recovery as a tool to evaluate filter extraction. These new requirements resolve the concerns that led to the criteria in 40 CFR 63.1208 that required Administrator approval prior to use of Method 23 for measurement of PCDD/PCDF.

The EPA's second focus for the final revisions is to modify the method to allow isotope dilution with isotopically labeled compounds for each target compound. Quantitation is based on isotope dilution, moving from nine to 17 labeled compounds for 17 target toxic 2,3,7,8-substituted PCDD/PCDF. These revisions to the method are possible because additional isotopically labeled standards for the target compounds have become available from vendors since the original promulgation of Method 23. The final revisions eliminate biases with recovery correction based on individual corresponding labeled compounds.

The third major focus for the EPA's final revisions to Method 23 is to include options for combining sampling and analysis of PCDD/PCDF with sampling and analysis of PAH and PCB to allow the measurement of these toxic semivolatile organic compounds (SVOC). Therefore, PCB and PAH were added to the list of target compounds measured by Method 23.

The EPA's final amendments to Method 23 in response to public comments are presented below for each section of Method 23. The proposed revisions to sections of Method 23 that EPA is not changing based on public comments are finalized as proposed. A summary of public comments and our responses are provided in a separate response to comments document in the docket for this action.

A. Section 1.0 Scope and Application

In this action, EPA is renaming Section 1.0 from ''Applicability and Principle'' to ''Scope and Application,'' and revising the text to expand the target compounds for Method 23 to include PCB and PAH. We are also adding statements that emphasize the need for working knowledge of the EPA Methods 1 through 5 of Appendices A–1, A–2, and A–3 to 40 CFR part 60, isotope dilution, and the use of high-resolution gas chromatography/high resolution mass spectrometry (HRGC/HRMS) when applying Method 23. We are also adding language to specify that Method 23 is performance-based and allows users to modify parts of the method to overcome interferences or to substitute alternative materials and equipment provided that all performance criteria in the method are met.

B. Section 2.0 Summary of Method

The EPA is renaming Section 2.0 from ''Apparatus'' to ''Summary of Method,'' and revising Section 2.0 to provide an overview of the method's sampling and analytical procedures. We are also moving the current language in Section 2.0, which describes the materials needed to conduct Method 23, to a new Section 6.0 (Equipment and Supplies).

C. Section 3.0 Definitions

The current version of Method 23 does not include definitions of key terms and variables used in Method 23. In this action, we are adding a new Section 3.0 titled ''Definitions.'' We are defining acronyms and technical terms to improve the clarity of the method principles and procedures. We are also moving language from the current Section 3.0 to a new Section 7.0 (Reagents, Media, and Standards).

D. Section 4.0 Interferences

The current version of Method 23 does not discuss the conditions that can potentially interfere with measurements obtained using the method. In this action, we are adding a new Section 4.0 titled ''Interferences,'' that presents the potential causes and recommendations for avoiding or mitigating interferences or sample contamination. We are stating that enhanced selectivity, or confidence in the data, is based on the fractionation, GC separation, HRMS sensitivity, and monitoring for polychlorinated diphenyl ether (PCDPE) interferences. We are also moving language from the current Section 4.0 to a new Section 8.0 (Sample Collection, Preservation, and Storage).

E. Section 5 Safety

Currently, Method 23 does not provide procedures for safety. In this action, we are adding a new Section 5.0 titled ''Safety,'' that presents the health hazards and procedures for minimizing risks to field and laboratory personnel when conducting Method 23. We are also moving language from the current Section 5.0 to a new Section 11.0 (Analysis Procedure).

F. Section 6.0 Equipment and Supplies

In this action, we are renumbering and moving the current language in Section 2.0 (Apparatus) to a new

Section 6.0 titled ''Equipment and Supplies,'' and making clarifying edits and technical revisions to the specifications in Section 6.0. Table 2 of this preamble identifies the new numbering for the subsections currently in Section 2.0 and Table 3 of this preamble identifies new specifications (and the associated subsection) we are including in Section 6.0.

TABLE 2—CROSSWALK FOR REVISIONS TO CURRENT METHOD SECTIONS

Description	Current section	Revised section
Filter holder	2.1.1	6.1.3
Condenser	2.1.2	6.1.7
Water circulating bath	2.1.3	6.1.8
Adsorbent module	2.1.4	6.1.9
Fitting caps	2.2.1	6.2.1
Wash bottles	2.2.2	6.2.2
Filter storage container	2.2.4	6.2.4
Field balance	2.2.5	6.2.5
Aluminum foil	2.2.6	6.2.6
Glass sample storage container	2.2.9	6.2.8
Extraction thimble	2.3.4	6.3.3.3
Pasteur pipettes	2.3.5	6.4.1
GC oven	2.3.10.1	6.5.1.1
GC Temperature monitor	2.3.10.2	6.5.1.2
GC Flow system	2.3.10.3	6.5.1.3
Capillary GC column	2.3.10.4	6.5.2
Mass spectrometer (MS)	2.3.11	6.5.3
MS data system	2.3.12	6.5.4

TABLE 3—ADDITIONAL SPECIFICATIONS FOR SECTION 6.0

Description	Revised section
Probe liner	6.1.2
Filter heating system	6.1.4
Filter temperature sensor	6.1.5
Sample transfer line	6.1.6
Impingers	6.1.10
Soxhlet extraction apparatus	6.3.3.1
Moisture trap of extraction apparatus	6.3.3.2
Heating mantle	6.3.3.4
Kuderna-Danish concentrator	6.3.4
Liquid chromatography columns	6.4.2
GC Injection port	6.5.1.4
PCDD/PCDF GC column	6.5.2.1
PAH GC column	6.5.2.2
PCB GC column	6.5.2.3

In Section 6, we are also finalizing changes to:

- Prohibit the use of brominated flame-retardant coated tape in assembling the sampling train and use of silicon tubing in direct contact with flue gases to avoid sample contamination.
- Revise the specification for a rotary evaporator with a note to use a Kuderna-Danish concentrator for PCB and PAH to avoid the loss of higher vapor pressure target compounds.
- Remove specifications for the graduated cylinder to improve the accuracy of moisture measurements and make Method 23 more consistent with other isokinetic sampling methods.
- Remove the volume requirement for wash bottles to allow greater flexibility in field sample recovery.

We are also moving language from Method 23's current Section 6.0 to new Section 10.0 (Calibration and Standardization).

G. Section 7.0 Reagents, Media, and Standards

In this action, the EPA is renumbering and moving the current language in Section 3.0 (Reagents) to a new Section 7.0 titled ''Reagents, Media, and Standards,'' and making clarifying edits and technical revisions to the specifications. Table 4 of this preamble identifies the new numbering for the subsections currently in Section 3.0 and Table 5 of this preamble identifies new specifications (and the associated subsection) we are including in Section 7.0.

TABLE 4—CROSSWALK FOR REVISIONS TO CURRENT METHOD SECTIONS

Description	Current section	Revised section
Filter	3.1.1	7.1
Adsorbent resin	3.1.2	7.2
Glass wool	3.1.3	7.3
Water	3.1.4	7.4

TABLE 4—CROSSWALK FOR REVISIONS TO CURRENT METHOD SECTIONS—Continued

Description	Current section	Revised section
Silica gel	3.1.5	7.5
Methylene chloride	3.2.2	7.6
Sodium sulfate	3.3.2	7.8.2
Basic alumina	3.3.13	7.8.9.1.2
Silica gel	3.3.14	7.8.9.3
Carbon/Celite®	3.3.17	7.8.9.4
Nitrogen	3.3.18	7.8.10

TABLE 5—ADDITIONAL SPECIFICATIONS FOR SECTION 7.0

Description	Revised section
High-boiling alkanes used as keeper solvents	7.8.8
Liquid column packing materials	7.8.9
Acidic alumina	7.8.9.1.1
Florisil®	7.8.9.2
Helium	7.9.1
Spiking standards	7.9.2
Pre-sampling adsorbent standard	7.9.3
Pre-extraction filter recovery standard	7.9.4
Pre-extraction standard	7.9.5
Pre-analysis standard	7.9.6

We are replacing the filter precleaning procedures of the current method with specifications for conducting a filter quality control check. We are also deleting unnecessary specifications (presented in Table 6 of this preamble) to reflect modern methods. We are renaming the isotopic spiking standard mixtures to better relate the standards to their use in the final method. We are ensuring that the isotopically labeled spiking standards are named consistently throughout the final method.

TABLE 6—DELETIONS OF MATERIAL SPECIFICATIONS IN THE CURRENT METHOD 23

Material	Current section
Chromic acid cleaning solution	3.1.6
Benzene	3.3.7
Ethyl acetate	3.3.8
Cyclohexane	3.3.12
Hydrogen	3.3.19
Internal standard solution	3.3.20
Surrogate standard solution	3.3.21
Recovery standard solution	3.3.22

We are also moving the current Section 7.0 to a new Section 9.0 (Quality Control).

H. Section 8.0 Sample Collection, Preservation, and Storage

In this action, the EPA is renumbering and moving the current language in Section 4.0 (Procedure) to a new Section 8.0 titled ''Sample Collection, Preservation, and Storage,'' and making clarifying edits and technical revisions to the current procedures for sampling and field sample recovery. The new Section 8.0 also includes added requirements for sample storage conditions and holding times.

Under the sampling procedures of Method 23, we are finalizing revisions to the current requirements in Section 4.1.1 for pretest preparations. Table 7 of this preamble identifies the new numbering to revise and replace the requirements in Section 4.1.

TABLE 7—CROSSWALK FOR REVISIONS TO CURRENT METHOD SECTIONS

Description	Current section	Revised section
Glassware cleaning	4.1.1.1	8.1.1.1
Assembling the adsorbent module	4.1.1.2	8.1.1.2
Maintaining the sampling train components	4.1.1.3	8.1.1.3
Silica Gel	4.1.1.4	8.1.1.4
Checking and packing filters	4.1.1.5	8.1.1.5
Field preparation of the sampling train	4.1.3.1	8.1.3.1
Impinger assembly	4.1.3.2	8.1.3.2
Sampling probe and nozzle preparation	4.1.3.4	8.1.3.4

Table 8 of this preamble shows the specifications we are adding to the new Section 8.0. This action finalizes a minimum sample volume and sampling time requirements at each traverse point for continuous industrial processes that align Method 23 with other isokinetic stationary source methods, such as Method 5. The sampling time at each traverse point for batch industrial processes ensure measurements are made for the entire process cycle. The final filter check requirements add details that were absent from the original Method 23 and align the method with the requirements of other isokinetic stationary source methods, such as Methods 5, 26A, and 29, also in Appendix A of this Part. The final adsorbent module orientation requirements clarify the configuration of the adsorbent module to ensure that condensed moisture flows through the module into the water collection impinger. We are adding sampling filter temperature monitoring requirements to align Method 23 with other isokinetic stationary source methods. Also, we are adding adsorbent module temperature monitoring to confirm that the sorbent material was not exposed to elevated temperatures that could bias sample collection and results.

TABLE 8—ADDITIONAL SPECIFICATIONS FOR SECTION 8.1

Description	Revised section
Minimum sample volume	8.1.2.1
Sampling time for continuous processes	8.1.2.2
Sampling time for batch processes	8.1.2.3
Filter assembly	8.1.3.3
Orientation of the condenser and adsorbent module	8.1.3.4
Monitoring the filter temperature	8.1.5.1
Monitoring the adsorbent module temperature	8.1.5.2

Under sample recovery procedures, we are finalizing technical revisions as shown in Table 9 of this preamble. In this action, we are also adding specifications as shown in Table 10 of this preamble.

TABLE 9—CROSSWALK FOR REVISIONS TO CURRENT METHOD SECTIONS

Description	Current section	Revised section
Adsorbent module sample preparation	4.2.2	8.2.5
Preparation of Container No. 2	4.2.3	8.2.6
Rinsing of the filter holder and condenser	4.2.3	8.2.7
Weighing impinger water	4.2.5	8.2.8
Preparation of Container No. 3	4.2.4	8.2.9
Silica gel	4. 2.7	8.2.10

TABLE 10—ADDITIONAL SPECIFICATIONS FOR SECTION 8.2

Description	Revised section
Conducting a post-test leak check	8.2.1
Storage conditions for Container No. 1	8.2.4
Field sample handling, storage, and transport	8.2.11
Sample chain of custody	8.2.12

In the new Section 8.2.6, acetone and toluene rinses are collected in one bottle rather than separately. New Section 8.2.8 measures moisture by weight rather than by volume.

I. Section 9.0 Quality Control

In this action, the EPA is moving and renumbering the current Section 7.0 (Quality Control) to a new Section 9.0 titled ''Quality Control,'' and making clarifying and technical revisions to the new Section 9.0. We are adding an introductory note that addresses maintaining, and documenting quality control compliance required in Method 23. We are adding a new subsection that clarifies the recordkeeping and reporting necessary to demonstrate compliance with quality control requirements of this method. We are also adding specifications for conducting pre-sampling, pre-extraction, and pre-analysis standard recoveries of isotopically-labeled standards and adding specifications for:

- Initial demonstration of capability (IDC).
- Quality Control Sample (QCS).
- Method detection limits (MDL).
- Laboratory method blank (LMB).
- Estimated detection limits (EDL).
- Field train proof blank.

It should be noted that the EDLs as proposed remain in the method and are sample specific. It should also be noted that the second source QCS also serves as an initial calibration verification. We are also moving language from the current Section 9.0 to new Section 12.0 (Data Analysis and Calculations).

J. Section 10.0 Calibration and Standardization

In this action, the EPA is renumbering and moving the text in Section 6.0 (Calibration) of the current method to a new Section 10.0 titled ''Calibration and Standardization,'' and making clarifying and technical revisions to the specifications for calibrating the sampling and the HRGC/HRMS systems. We are adding specifications for tuning the HRMS system, moving the specification for HRMS resolution (currently in Section 5) to this new section, and adding text on the procedures for assessing the relative standard deviation for the mean instrument response factors to bring Method 23 up to date with current laboratory practice. We are also

updating the requirements for ion abundance ratio limits, and resolution checks under the continuing calibration verification to serve as performance indicators for analysis quality. We are adding a specification to prepare the continuing calibration verification (CCV) standard at the same time as the batch of field samples using the same labeled standards. We are also moving language in the current Section 10.0 to a new Section 16.0 (Bibliography).

K. Section 11.0 Analysis Procedure

In this action, the EPA is renumbering and moving the text in Section 5.0 (Analysis) of the current method to a new Section 11.0 titled ''Analysis Procedure,'' and making clarifying and technical revisions to the current specifications for sample extraction and sample cleanup and fractionation. We are also adding a new subsection describing how sample extract aliquots are prepared for cleanup and analysis.

We are also adding the specifications and recommendations for analysis procedures shown in Table 11 of this preamble.

TABLE 11—ADDITIONAL SPECIFICATIONS FOR SECTION 11.0

Description	Revised section
Preparing and operating the extraction apparatus	11.1.7 through 11.1.9.
Allow the extraction apparatus to cool	11.2.1.
Initial extract concentration	11.2.2.
Allow the sample extract to cool	11.2.3.
Recommended minimum volume for PCDD/PCDF analysis	11.2.3.
Further concentration of sample (if needed) for cleanup and analysis	11.2.4.
Sample cleanup and fractionation for PAH and PCDPE	11.3.1.
Sample cleanup and fractionation for PCDD/PCDF and PCB	11.3.2.
Addressing unresolved compounds	11.4.1.2.1.
Relative retention time for PCB	11.4.3.4.5.
Chlorodiphenyl ether interference	11.4.3.4.8.
MS lock-mass ions	11.4.3.4.9.
Identification criteria for PAH	11.4.3.4.10.
Calculations of target mass and mass per dry standard cubic meter	11.4.3.5.1 and 11.4.3.5.2.
Quantifying native PCDD/PCDF	11.4.3.5.3.
Reporting options	11.4.3.5.4 through 11.4.3.5.6.

L. Section 12.0 Data Analysis and Calculations

In this action, the EPA is renumbering and moving the current language in Section 9.0 (Calculations) to a new Section 12.0 titled ''Data Analysis and Calculations,'' and revising the equation variable list. We are revising the equations shown in Table 12 of this preamble.

TABLE 12—EQUATION REVISIONS FOR SECTION 12.0

Current equation	Description	Revised section
23–1	Individual relative response factor (RRF) for each compound	12.2
23–2	Amount of individual target compound i in the extract using the RRF of the CCV	12.7
23–4	Recovery of Labeled Compound Standards	12.9
23–7	Estimated detection limit	12.10
23–8	Total concentration	12.11

This section specifies that the CCV RRFs are used to quantify the target compounds rather than the initial calibration RRFs. We are also removing and replacing the current equations in Method 23 with the equations shown in Table 13 of this preamble to accommodate the final changes to the method procedures.

TABLE 13—ADDITIONAL EQUATIONS FOR SECTION 12.0

New equation	Description	Revised section
23–1	Individual compound RRF for each calibration level	12.2
23–2	Individual compound RRF for pre-extraction standard	12.2
23–4	Percent relative standard deviation of the RRFs for a compound over the calibration levels.	12.4
23–5	Standard deviation of the RRFs for a compound over the calibration levels	12.5
23–6	Percent difference of the RRF of the continuing calibration verification compared to the average RRF from the initial calibration for each target compound.	12.6
23–9	Concentration of the Individual Target Compound or Group i in the Emission Gas.	12.8
23–13	Half range for the prediction interval of results	12.12
23–14	Upper limit for the prediction interval of results	12.12
23–15	Lower limit for the prediction interval of results	12.12

M. Section 13.0 Method Performance

In this action, the EPA is adding a new Section 13.0 titled ''Method Performance,'' that includes the specifications shown in Table 14 of this preamble. The new Section 13 provides the basis for assessing accuracy with LMBs, increases labeled standards, and establishes performance criteria to monitor method performance.

TABLE 14—METHOD PERFORMANCE SPECIFICATIONS FOR SECTION 13.0

Description	Revised section
Background assessment of field train proof blank, LMB, and Materials (filters, adsorbent resin, glass wool, etc.).	13.1.
GC column systems used to measure PCDD/PCDF, PAH, and PCB target compounds	13.2 through 13.5.
Detection limits (Method detection limits and Estimated detection limits)	13.6.
Tuning HRGC/HRMS system	13.7.
MS lock-mass ions	13.8.
Initial calibration and continuing calibration verification	13.9 and 13.10.
QCS analysis	13.11.
Identification of target compounds	13.12 and 13.13.
Pre-sampling and pre-extraction standard recovery requirements	13.14 and 13.15.
Pre-analysis standard sensitivity requirements	13.16.
IDC-Lowest calibration concentration, Demonstration of precision, Demonstration of accuracy	13.17.
Modifications of the method	13.18 and 13.19.

N. Section 14.0 Pollution Prevention

In this action, the EPA is adding a new Section 14.0 titled ''Pollution Prevention,'' that specifies the procedures for minimizing or preventing pollution associated with preparing and using Method 23 standards.

O. Section 15.0 Waste Management

In this action, the EPA is adding a new Section 15.0 titled ''Waste Management,'' that specifies the laboratory responsibilities for managing the waste streams associated with collecting and analyzing Method 23 samples.

P. Section 16.0 Bibliography

In this action, the EPA is renumbering and moving the current language in Section 10.0 (Bibliography) to a new Section 16.0 titled ''Bibliography.'' We are deleting previous reference number 3 which is no longer relevant and adding new citations for the following references:

- Fishman, V.N., Martin, G.D. and Lamparski, L.L. Comparison of a variety of gas chromatographic columns with different polarities for the separation of chlorinated dibenzo-p-dioxins and dibenzofurans by high-resolution mass spectrometry. Journal of Chromatography A 1139 (2007) 285–300.
- International Agency for Research on Cancer. Environmental Carcinogens Methods of Analysis and Exposure Measurement, Volume 11—Polychlorinated Dioxins and Dibenzofurans. IARC Scientific Publications No. 108, 1991.
- Stieglitz, L., Zwick, G., Roth, W. Investigation of different treatment techniques for PCDD/PCDF in fly ash. Chemosphere 15: 1135–1140; 1986.
- U.S. Environmental Protection Agency. Method 8290A—Polychlorinated Dibenzo-p-dioxin (PCDDs) and Polychlorinated Dibenzofurans (PCDFs) by High-Resolution Gas Chromatography/High-Resolution Mass Spectrometry (HRGC/HRMS), Revision 1. February 2007. In: Test Methods for Evaluating Solid Waste. Washington, DC. SW–846.
- U.S. Environmental Protection Agency. Office of Air Programs Publication No. APTD–0576: Maintenance, Calibration, and Operation of Isokinetic Source Sampling Equipment. Research Triangle Park, NC. March 1972.
- U.S. Environmental Protection Agency. Method 1625C—Semivolatile Organic Compounds by Isotope Dilution GCMS.
- U.S Environmental Protection Agency. Method 1613B—Tetra- through Octa-Chlorinated Dioxins and Furans by Isotope Dilution HRGC/HRMS.
- U.S. Environmental Protection Agency. Method 1668C—Chlorinated Biphenyl Congeners in Water, Soil, Sediment, Biosolids, and Tissue by HRGC/HRMS.
- Tondeur, Y., Nestrick, T., Silva, Héctor A., Vining, B., Hart, J. Analytical procedures for the determination of polychlorinated-p-dioxins, polychlorinated dibenzofurans, and hexachlorobenzene in pentachlorophenol. Chemosphere Volume 80, Issue 2, June 2010, pages 157–164.
- U.S. Environmental Protection Agency. Definition and Procedure for the Determination of the Method Detection Limit, Revision 2. EPA 821–R–16–006. December 2016.
- Tondeur Y, Niederhut WJ, Missler SR. A hybrid HRGC/MS/MS Method for the Characterization of Tetrachlorodibenzo-p-Dioxins in Environmental Samples; Bio. Med. and Environ. Mass Spectr. 14, pages 449–456, 1987.
- Gianluca R., Mosca S., Guerriero E., Rotatori M. Development of a new automated clean-up system for the simultaneous analysis of polychlorinated dibenzo-p-dioxins (PCDDs), dibenzofurans (PCDFs) and 'dioxin-like' polychlorinated biphenyls (dl-PCB) in flue gas emissions by GPC–SPE. J. Environ. Monit. 14, pages 1082–1090, 2012.
- U.S. Environmental Protection Agency. The National Dioxin Air Monitoring Network (NDAMN) Report of the Results of Atmospheric Measurements of Polychlorinated Dibenzo-p-Dioxins (PCDDs), Polychlorinated Dibenzofurans (PCDFs), and Dioxin-like Polychlorinated Biphenyl (PCBs) in Rural and Remote Areas of the United States from June 1998 through November 2004. EPA/600/R–13/183F. August 2013.
- Guo, Y., Kannan, K. Analytical Methods for the Measurement of Legacy and Emerging Persistent Organic Pollutants in Complex Sample Matrices. Comprehensive Analytical Chemistry. Vol. 67. January 2015.
- U.S. Environmental Protection Agency. USEPA Contract Laboratory Program (CLP) National Functional Guidelines for Chlorinated Dibenzo-p-Dioxins (CDDs) and Chlorinated Dibenzofurans (CDFs) Data Review. EPA–540–R–11–016. September 2011.

Q. Section 17.0 Tables, Diagrams, Flow Charts, and Validation Data

In this action, the EPA is adding a new Section 17 titled ''Tables, Diagrams, Flow Charts, and Validation Data,'' that contains all tables, diagrams, flow charts, and validation data referenced in Method 23. We are revising Figures 23–1 and 23–2 and renaming and/or renumbering the current Method 23 tables as shown in Table 15 of this preamble.

TABLE 15—REVISIONS TO METHOD 23 TABLES

Current method	Final method
Table 1—Composition of the Sample Fortification and Recovery Standards Solutions.	Table 23–7. Concentration of the Sample Fortification for PCDD and PCDF.
Table 2—Composition of the Initial Calibration Solutions	Table 23–11. Concentration of the Initial Calibration Standard Solutions for PCDD and PCDF.
Table 3—Elemental Compositions and Exact Masses of the Ions Monitored by High Resolution Mass Spectrometry for PCDD's and PCDF's.	Table 23–4. Elemental Compositions and Exact Masses of the Ions Monitored by High-Resolution Mass Spectrometry for PCDD and PCDF.
Table 4—Acceptable Ranges for Ion-Abundance Ratios of PCDD's and PCDF's.	Table 23–15. Recommended Ion Type and Acceptable Ion Abundance Ratios.
Table 5—Minimum Requirements for Initial and Daily Calibration Response Factors.	Table 23–14. Minimum Requirements for Initial and Continuing Calibration Response Factors for Isotopically Labeled and Native Compounds.

We are also adding Figure 23–3 (Soxhlet/Dean-Stark Extractor) and Figure 23–4 (Sample Preparation Flow Chart) and adding the tables listed in Table 16 of this preamble.

TABLE 16—ADDITIONAL TABLES TO METHOD 23

Revised table	Description
23–1	Polychlorinated Dibenzo-*p*-dioxin and Polychlorinated Dibenzofuran Target Analytes.
23–2	Polycyclic Aromatic Hydrocarbon Target Analytes.
23–3	Polychlorinated Biphenyl Target Analytes.
23–5	Elemental Compositions and Exact Masses of the Ions Monitored by High-Resolution Mass Spectrometry for PAH.
23–6	Elemental Compositions and Exact Masses of the Ions Monitored by High-Resolution Mass Spectrometry for PCB.
23–8	Concentration of the Sample Fortification for PAH.
23–9	Concentration of the Sample Fortification for PCB.
23–10	Sample Storage Conditions and Laboratory Hold Times.
23–12	Concentration of the Initial Calibration Standard Solutions for PAH.
23–13	Concentration of the Initial Calibration Standard Solutions for PCB.
23–16	Typical DB5–MS Column Conditions.
23–17	Assignment of Pre-extraction Standards for Quantitation of Target PCB.
23–18	Initial Demonstration of Capability Quality Control (QC) Requirements.

V. Summary of Final Revisions Related to 40 CFR Parts 60, 63, and 266

A. 40 CFR Part 60—Standards of Performance for New Stationary Sources

In 40 CFR 60.17(h), we are incorporating by reference ASTM D4840–99(2018)e1, Standard Guide for Sample Chain-of-Custody Procedures, and amending the reference to ASTM D6911–15, Guide for Packaging and Shipping Environmental Samples for Laboratory Analysis, to include for use in Method 23.

In 40 CFR part 60, subpart CCCC, we are revising 40 CFR 60.2125(g)(2) and (j)(2) to realign the requirement for quantifying isomers to the reorganized Section 11.4.2.4 in the revisions of Method 23.

In 40 CFR part 60, subpart DDDD, we are revising 40 CFR 60.2690(g)(2) and (j)(2) to realign the requirement for identifying isomers to the reorganized Section 11.4.2.4 in the revisions of Method 23.

B. 40 CFR Part 63—National Emission Standards for Hazardous Air Pollutants for Source Categories

In 40 CFR 63.849(a)(13) and (a)(14), we are replacing CARB Method 428 with EPA Method 23 for the measurement of PCB emissions from roof monitors not employing wet roof scrubbers.

In 40 CFR 63.1208(b)(1), we are removing the requirement for administrator's approval to use Method 23 for measuring PCDD/PCDF emissions from hazardous waste combustors.

In 40 CFR 63.1625(b)(10), we are replacing CARB Method 429 with EPA Method 23 for measuring the emissions of PAH from ferromanganese electric arc furnaces.

In Table 3 to Subpart AAAAAAA, we are replacing the requirement for analysis of PAH by SW–846 Method 8270 with a requirement to use EPA Method 23. Specifically, we are deleting ''with analysis by SW–846 Method 8270D'' in row 6 of Table 3 to Subpart AAAAAAA. Because revisions to Method 23 eliminate the use of methylene chloride in field sampling activities, we are also removing footnote ''b'' in Table 3 to Subpart AAAAAAA.

C. 40 CFR Part 266—Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

In 40 CFR 266.104, we are adding EPA Method 23 as an alternative to SW–846 Method 0023A. We proposed to make this change to 40 CFR 266.104. In addition to this specific change, we are making a conforming change in 40 CFR part 266 Appendix IX. EPA considers this conforming change a logical outgrowth of the proposed revisions to Method 23.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. The revisions being promulgated in this action to Method 23 do not add information collection requirements, but make corrections, clarifications, and updates to existing testing methodology.

C. Regulatory Flexibility Act (RFA)

I certify that this action does not have a significant economic impact on a substantial number of small entities under the RFA. This action does not impose any requirements on small entities. The final revisions to Method 23 do not impose any requirements on regulated entities. Rather, the final changes improve the quality of the results when required by other rules to use Method 23. Revisions to Method 23 allow contemporary advances in analysis techniques to be used. Further, the final changes in Method 23 analysis procedures reduce the impact of this method by bringing it into alignment with other agency methods.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538. The action imposes no enforceable duty on any State, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects 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.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on the Indian Tribal Governments, on the relationship between the national government and the Indian Tribal Governments, or on the distribution of power and responsibilities among Indian Tribal Governments and the various levels of government. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in Section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish or revise a standard that provides protection to children against environmental health and safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This action involves technical standards. The EPA will use ASTM D6911–15 (Guide for Packaging and Shipping Environmental Samples for Laboratory Analysis) and ASTM D4840–99(2018)e1 (Standard Guide for Sample Chain-of-Custody Procedures). These ASTM standards cover best practices that guide sample shipping and tracking from collection through analysis.

These standards were developed and adopted by ASTM International. The standard may be obtained from *https://www.astm.org* or from the ASTM at 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color) and low-income populations.

The EPA believes that this type of action does not concern human health or environmental conditions and, therefore, cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. This action updates Method 23, which will improve the quality of the results when required by other rules to use Method 23.

K. Congressional Review Act (CRA)

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

L. Determination Under Clean Air Act Section 307(d)

This final rule is not subject to the provisions of CAA section 307(d). This final rule does not promulgate any of the actions listed in CAA section 307(d)(1).

List of Subjects

40 CFR Part 60

Environmental protection, Air pollution control, Hazardous air pollutants, Incorporation by reference, Method 23, Polychlorinated biphenyls, Polychlorinated dibenzofurans, Polychlorinated dibenzo-p-dioxins, Polycyclic aromatic compounds, Test methods.

40 CFR Part 63

Environmental protection, Air pollution control, Method 23, New source performance, Polychlorinated biphenyls, Polychlorinated dibenzofurans, Polychlorinated dibenzo-p-dioxins, Polycyclic aromatic hydrocarbons, Test methods.

40 CFR Part 266

Environmental protection, Air pollution control, Hazardous air pollutants, Hazardous waste, Method 23, Polychlorinated biphenyls, Polychlorinated dibenzofurans, Polychlorinated dibenzo-p-dioxins, Polycyclic aromatic hydrocarbons, Test methods, Waste management.

Michael S. Regan,
Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency amends Title 40, Chapter I of the Code of Federal Regulations as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart A—General Provisions

■ 2. In § 60.17:

■ a. Redesignate paragraphs (h)(168) through (h)(213) as (h)(169) through (h)(214);

■ b. Add new paragraph (h)(168); and

■ c. Revise newly redesignated paragraph (h)(194).

The addition and revision read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(h) * * *

(168) ASTM D4840–99(2018)e1 Standard Guide for Sample Chain-of-Custody Procedures, approved August 2018; IBR approved for Appendix A–7: Method 23.

* * * * *

(194) ASTM D6911–15 Standard Guide for Packaging and Shipping Environmental Samples for Laboratory Analysis, approved January 15, 2015; IBR approved for Appendix A–7: Method 23; Appendix A–8: Method 30B.

* * * * *

Subpart CCCC—Standards of Performance for Commercial and Industrial Solid Waste Incineration Units

■ 3. In § 60.2125, revise paragraphs (g)(2) and (j)(2) to read as follows:

§ 60.2125 How do I conduct the initial and annual performance test?

* * * * *

(g) * * *

(2) Quantify isomers meeting identification criteria in Section 11.4.3.4 of Method 23, regardless of whether the isomers meet identification criteria in Section 11.4.3.4.1 of Method 23. You must quantify the isomers per Section 11.4.3.5 of Method 23. (Note: You may reanalyze the sample aliquot or split to reduce the number of isomers to meet the identification criteria in Section 11.4.3.4 of Method 23.)

* * * * *

(j) * * *

(2) Quantify isomers meeting identification criteria in Section 11.4.3.4 of Method 23, regardless of whether the isomers meet identification Section 11.4.3.4.1 of Method 23. You must quantify the isomers per Section 11.4.3.5 of Method 23. (Note: You may reanalyze the sample aliquot or split to reduce the number of isomers to meet the identification criteria in Section 11.4.3.4 of Method 23.)

* * * * *

Subpart DDDD—Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units

■ 4. In § 60.2690, revise paragraphs (g)(2) and (j)(2) to read as follows:

§ 60.2690 How do I conduct the initial and annual performance test?

* * * * *

(g) * * *

(2) Quantify isomers meeting identification criteria in Section 11.4.3.4 of Method 23, regardless of whether the isomers meet identification Section 11.4.3.4.1 of Method 23. You must quantify the isomers per Section 11.4.3.5 of Method 23. (Note: You may reanalyze the sample aliquot or split to reduce the number of isomers to meet the identification criteria in Section 11.4.3.4 of Method 23.)

* * * * *

(j) * * *

(2) Quantify isomers meeting identification criteria in Section 11.4.3.4 of Method 23, regardless of whether the isomers meet identification Section 11.4.3.4.1 of Method 23. You must quantify the isomers per Section 11.4.3.5 of Method 23. (Note: You may reanalyze the sample aliquot or split to reduce the number of isomers to meet the identification criteria in Section 11.4.3.4 of Method 23.); and

* * * * *

■ 5. Revise Method 23 of Appendix A–7 to Part 60 to read as follows:

Appendix A–7 to Part 60—Test Methods 19 Through 25E

* * * * *

Method 23—Determination of Polychlorinated Dibenzo-*p*-Dioxins, Polychlorinated Dibenzofurans, Polychlorinated Biphenyls, and Polycyclic Aromatic Hydrocarbons From Stationary Sources

1.0 Scope and Application

1.1 Applicability. This method applies to the measurement of polychlorinated dibenzo-*p*-dioxins and polychlorinated dibenzofurans (PCDD/PCDF), polychlorinated biphenyls (PCB), and/or polycyclic aromatic hydrocarbons (PAH) in emissions from stationary sources. Using this method, you can measure these analyte groups individually or in any combination using a single sample acquisition unless otherwise specified in a rule, regulation, or permit. Tables 23–1 through 23–3 of this method list the applicable target analytes for Method 23. If all 209 PCB are analyzed, the 17 toxic PCB congeners should be resolved and reported while the other PCB can be reported as totals by homolog, for example, total trichlorobiphenyl (TrCB).

1.2 Scope. This method describes the sampling and analytical procedures used to measure selected PCDD and PCDF in stationary sources when required in an applicable subpart. This method also describes how the same sampling and analysis technology can be used to measure selected PCB and PAH from stationary source in combination or as each individual compound class when required in an applicable subpart. However, Method 23 incorporates by reference some of the specifications (*e.g.,* equipment and supplies) and procedures (*e.g.,* sampling and analytical) from other methods in this part that are essential to conducting Method 23. To obtain reliable samples, source sampling teams should be trained and experienced with the following additional EPA test methods: Method 1, Method 2, Method 3, Method 4, and Method 5 of Appendices A–1, A–2, and A–3 to 40 CFR part 60. Laboratory analysis teams should be trained and experienced with Method 1668C (found at: *https://www.epa.gov/sites/production/files/2015-09/documents/method_1668c_2010.pdf)* and Method 1613B of 40 CFR part 136 Appendix A and have a working knowledge of isotope dilution and the use of high-resolution gas chromatography/high-resolution mass spectrometry (HRGC/HRMS).

1.3 The HRGC/HRMS portions of this method are for use by laboratory analysts experienced with HRGC/HRMS analysis of PCDD, PCDF, PCB, and PAH or under the close supervision of such qualified persons. Each source testing team, including the sampling and laboratory organization(s) that use this method, must demonstrate the ability to generate acceptable results that meet the performance criteria in Section 13 of this method.

1.4 This method is ''performance-based'' and includes acceptability criteria for assessing sampling and analytical procedures. Users may modify the method to overcome interferences or to substitute superior materials and equipment, provided that they meet all performance criteria in this method. Section 13 of this method presents requirements for method performance.

2.0 Summary of Method

This method identifies and determines the concentration of specific PCDD, PCDF, PCB, and PAH compounds. Gaseous and particulate bound target pollutants are withdrawn from the gas stream isokinetically and collected in the sample probe, on a glass fiber or quartz filter, and on a packed column of adsorbent material. This method is not intended to differentiate between target compounds in particulate or vapor fractions. The target compounds are extracted from the combined sample collection media. Portions of the extract are chromatographically fractionated to remove interferences, separated into individual compounds or simple mixtures by HRGC, and measured with HRMS. This method uses isotopically labeled standards to improve method accuracy and precision through isotope dilution quantitation.

3.0 Definitions

3.1 Alternate Recovery Standards. A group of isotopically labeled compounds that is not otherwise designated in this method

for quality control (QC) purposes. Alternate recovery standards can be used to assess the recovery of a compound class relative to any step in the sampling and analysis procedure that is not already assessed as a mandatory part of this method, such as the cleanup step.

3.2 Benzo[a]pyrene Toxic Equivalency Quotient (B[a]P–TEQ). One of several schemes that express the toxicity for PAH compounds in terms of the most toxic form of PAH, benzo[*a*]pyrene, as specified in applicable regulations, permits, or other requirements.

3.3 Continuing Calibration Verification (CCV) Standard. A standard prepared at the mid-point concentration of the calibration used to verify the initial calibration. Prepare the CCV standard at the same time as the batch of field samples using the same labeled standards.

3.4 Congener. An individual compound with a common structure (dioxin, furan, or biphenyl), only differing by the number of chlorine or other substituent attached to the structure.

3.5 Estimated Detection Limit (EDL). The minimum qualitatively recognizable signal above background for a target compound. The EDL is a detection limit specific to each sample analysis based on the noise signal measured near the retention time of a target compound or target isomer group. Being sample specific, the EDL is affected by sample size, dilution, recoveries of pre-extraction standard, chemical noise from sample extract, electronic noise from instrument, extract aliquot, relative response of instrument, etc.

3.6 Estimated Maximum Possible Concentration (EMPC). An EMPC is a worst-case estimate of the target compound concentration. Report the results as EMPC when the ion abundance ratio for a target analyte is outside the performance criteria. Calculate the EMPC using both quantitation ions.

3.7 Field Train Proof Blank. A field train proof blank train is a QC sample to evaluate equipment preparation and potential contamination during sample recovery and consists of a fully assembled train at the sampling site, without actual sampling. The field train proof blank train uses glassware from the same preparation batch as the field samples.

3.8 Homolog. A compound belonging to a series of compounds with the same general molecular formula, differing from each other by the number of repeating units of chlorine.

3.9 Isomer. An individual compound with a common structure (dioxin, furan, or biphenyl), only differing by the position of chlorine atoms attached to the structure.

3.10 Isotope Dilution. A means of determining a naturally occurring (native) compound by reference to the same compound in which one or more atoms has been isotopically enriched.

3.11 Laboratory Method Blank (LMB). A quality control sample to assess background contamination or interference from media, reagents, equipment, etc. An LMB is prepared in the laboratory, composed of clean sampling media (filter and XAD–2), using same labeled standards, media, reagents, and materials (sodium sulfate, glass wool, etc.) and processed (extraction, fractionations, cleanup) and analyzed using the same procedures as a field sample.

3.12 Polychlorinated Biphenyl (PCB) congeners. Any or all 209 chlorinated biphenyl congeners. Table 23–3 of this method lists the primary target compounds and Appendix A to this method provides the full list of 209 PCB congeners and isomers.

3.12.1 Monochlorobiphenyl (MoCB). Any or all three monochlorinated biphenyl isomers.

3.12.2 Dichlorobiphenyl (DiCB). Any or all 12 dichlorinated biphenyl isomers.

3.12.3 Trichlorobiphenyl (TrCB). Any or all 24 trichlorinated biphenyl isomers.

3.12.4 Tetrachlorobiphenyl (TeCB). Any or all 42 tetrachlorinated biphenyl isomers.

3.12.5 Pentachlorobiphenyl (PeCB). Any or all 46 pentachlorinated biphenyl isomers.

3.12.6 Hexachlorobiphenyl (HxCB). Any or all 42 hexachlorinated biphenyl isomers.

3.12.7 Heptachlorobiphenyl (HpCB). Any or all 24 heptachlorinated biphenyl isomers.

3.12.8 Octachlorobiphenyl (OcCB). Any or all 12 octachlorinated biphenyl isomers.

3.12.9 Nonachlorobiphenyl (NoCB). Any or all three nonachlorinated biphenyl isomers.

3.12.10 Decachlorobiphenyl (DeCB). Biphenyl fully chlorinated with 10 chlorine atom substituents replacing hydrogen in the parent compound.

3.13 Polychlorinated dibenzo-p-dioxin (PCDD) congeners. Any or all 75 chlorinated dibenzo-*p*-dioxin congeners. There are seven 2,3,7,8 substituted PCDD congeners and four PCDD homolog groups listed in Table 23–1 of this method. This method does not measure mono- through tri-PCDD and includes non-2,3,7,8 substituted congeners in the total homolog categories.

3.13.1 Tetrachlorodibenzo-*p*-dioxin (TeCDD*).* Any or all 22 tetrachlorinated dibenzo-*p*-dioxin isomers.

3.13.2 Pentachlorodibenzo-*p*-dioxin (PeCDD). Any or all 14 pentachlorinated dibenzo-*p*-dioxin isomers.

3.13.3 Hexachlorodibenzo-*p*-dioxin (HxCDD). Any or all 10 hexachlorinated dibenzo-*p*-dioxin isomers.

3.13.4 Heptachlorodibenzo-*p*-dioxin (HpCDD). Any or all two heptachlorinated dibenzo-*p*-dioxin isomers.

3.13.5 Octachlorodibenzo-*p*-dioxin (OCDD). Dibenzodioxin fully chlorinated with eight chlorine atom substituents replacing hydrogen in the parent compound.

3.14 Polychlorinated dibenzofuran (PCDF) congeners. Any or all chlorinated dibenzofuran congeners. There are ten 2,3,7,8 substituted PCDF congeners and four PCDF homolog groups listed in Table 23–1 of this method. This method does not measure mono- through tri-PCDF and includes non-2,3,7,8 substituted congeners in the total homolog categories.

3.14.1 Tetrachlorodibenzofuran (TeCDF). Any or all 38 tetrachlorinated dibenzofuran isomers.

3.14.2 Pentachlorodibenzofuran (PeCDF). Any or all 28 pentachlorinated dibenzofuran isomers.

3.14.3 Hexachlorodibenzofuran (HxCDF). Any or all 16 hexachlorinated dibenzofuran isomers.

3.14.4 Heptachlordibenzofuran (HpCDF). Any or all four heptachlorinated dibenzofuran isomers.

3.14.5 Octachlorodibenzofuran (OCDF). Dibenzofuran fully chlorinated with eight chlorine atom substituents replacing hydrogen in the parent compound.

3.15 Polychlorinated diphenyl ethers (PCDPE). Any or all chlorinated substituted diphenyl ethers.

3.15.1 Hexachlorodiphenyl ether (HxCDPE). Any or all 42 hexachlorinated diphenyl ether isomers.

3.15.2 Heptachlorodiphenyl ether (HpCDPE). Any or all 24 heptachlorinated diphenyl ether isomers.

3.15.3 Octachlorodiphenyl ether (OCDPE). Any or all 12 octachlorinated diphenyl ether isomers.

3.15.4 Nonachlorodiphenyl ether (NCDPE). Any or all three nonachlorinated diphenyl ether isomers.

3.15.5 Decachlorodiphenyl ether (DCDPE).

3.16 Polycyclic Aromatic Hydrocarbons (PAH). Any or all aromatic compounds with two or more fused six-member rings. Table 23–2 of this method lists the target PAH compounds for this method. You may add and analyze additional PAH compounds by adding the appropriate ^{13}C isotopically labeled compound to the pre-extraction standard mixture and by following the other requirements for target PAH compounds in this method.

3.17 Pre-analysis Standard. A group of isotopically labeled compounds added at a known amount immediately prior to analysis and used to monitor instrument response, injection errors, instrument drift and to determine the recovery of the pre-extraction standard compounds. Add pre-analysis standard to every sample (including blank, QC samples, and calibration solutions) at a known amount.

3.18 Pre-extraction Filter Recovery Standard. A group of isotopically labeled compounds added at a known amount to the filter used to indicate the extraction efficiency of the filter media. Add pre-extraction filter recovery standard to the filter samples just prior extraction. The pre-extraction filter recovery standard is not used for quantitating or recovery correction.

3.19 Pre-extraction Standard. A group of isotopically labeled compounds added in a known amount to the XAD–2 adsorbent resin of each sample immediately before extraction and used for quantitation of target and other labeled compounds to correct for extraction, cleanup, and concentration recovery. These isotopically labeled compounds constitute a matrix spike of the resin. Add pre-extraction standard to every sample at the same level (including blank, QC samples, and calibration solutions).

3.20 Pre-sampling Adsorbent Standard. A group of isotopically labeled compounds added in a known amount to the XAD–2 adsorbent prior to sampling used to monitor sampling aspects of the method.

3.21 Pre-transport Standard. Spiking compound from the list of alternative recovery standards that can be added by the laboratory to the sample shipping containers used to transport field equipment rinse and

recovery samples prior to sampling. The measured concentration of the pre-transport recovery standard provides a quality check on potential probe rinse sample spillage or mishandling after sample collection and during shipping.

3.22 Quality Control Sample (QCS). A mid-level standard prepared from a second source standard or prepared from a source of standards different from the source of calibration standards. The purpose of the QCS is to verify the integrity of the primary calibration standards. A QCS is analyzed during the initial demonstration of capability (IDC) and following each initial calibration (at a minimum quarterly) thereafter.

3.23 Relative Response Factor (RRF). The response of the mass spectrometer (MS) to a known amount of an analyte relative to a known amount of an isotopically labeled standard.

3.24 2,3,7,8-Tetrachlorodibenzo-p-dioxin Toxic Equivalency Quotient (2,3,7,8-TeCDD TEQ). A procedure that expresses the toxicity of PCDD, PCDF, and PCB in terms of the most toxic dioxin, as specified in applicable regulations, permits, or other requirements.

4.0 Interferences

Despite interferences, confidence of the data is based on the enhanced selectivity of fractionation, gas chromatograph (GC) separation and detector resolving power, the QC check ions, and monitoring PCDPE.

4.1 PCB and PCDPE have similar molecular weight and chromatographic properties to PCDD and PCDF. PCB may produce fragment ions at interfering mass-to-charge ratios (m/z) when losing chlorine (Cl_2) or 2 Cl_2 during ionization processes. With HRMS, GC separation, and fractionation, PCB should not pose a problem for PCDD/PCDF identification and quantitation. PCDPE, when losing Cl_2, also produce interfering m/z values in the PCDF homolog group with two fewer chlorine atoms (*i.e.,* an octachlorinated PCDPE can interfere with a hexachlorinated PCDF). The latter interferences are potentially detected by monitoring an m/z corresponding to the potentially interfering PCDPE; however, the fragmentation patterns of all PCDPE may not be known, complicating any attempt to quantify the extent of ether interference.

Note: Consider monitoring 328 m/z if high levels of PCB are expected.

4.2 Very high amounts of other organic compounds in the matrix may interfere with the analysis. This method provides examples of column-chromatographic cleanup as procedures to reduce, but not necessarily eliminate, matrix effects due to high concentrations of organic compounds (International Agency for Research on Cancer 1991).

4.3 Target compound contaminants or related organics in solvents, reagents, glassware, isotopically labeled spiking standards, and other sample processing hardware are potential method interferences. Routinely evaluate all these materials to demonstrate that they are either free from interferences under the conditions of the analysis, or that the interference does not compromise the quality of the analysis results. Evaluate chemical interference through the preparation and analysis of an LMB. Use high purity reagents, solvents, and standards to minimize interferences in sample analysis.

4.4 PAH are subject to degradation when exposed to ultraviolet light. Take precautions to shield samples from sunlight or fluorescent light sources during sample collection, recovery, extraction, cleanup, and concentration.

5.0 Safety

Note: Develop a strict laboratory safety program for the handling of PCDD, PCDF, PCB, and/or PAH.

5.1 Compounds in the PCDD and PCDF classes such as 2,3,7,8-TeCDD are aneugenic, carcinogenic, and teratogenic in laboratory animal studies. Other PCDD and PCDF containing chlorine atoms in positions 2,3,7,8 have toxicities comparable to that of 2,3,7,8-TeCDD.

5.2 PCB and benzo[a]pyrene are classified as known or suspected human or mammalian carcinogens. Be aware of the potential for inhalation and ingestion exposure to laboratory analysts.

5.3 This method recommends that the laboratory purchase dilute standard solutions of the analytes required for this method. However, if preparing primary solutions, use a hood or glove box. Laboratory personnel handling primary solutions should wear personal protective equipment including a toxic gas respirator mask fitted with charcoal filters approved by the National Institute for Occupational Safety and Health (NIOSH)/ Mine Safety Health Administration (MSHA) to prevent the inhalation of airborne particulates if not working in an approved hood or glove box.

5.4 The toxicity or carcinogenicity of other reagents or chemicals used in this method is not precisely defined. However, treat each chemical as a potential health hazard and minimize exposure to these chemicals. The laboratory is responsible for maintaining a current awareness file of Occupational Safety and Health Administration (OSHA) regulations regarding the safe handling of the chemicals specified in this method. Ensure that a reference file or list of internet sites that contain safety data sheets (SDS) is available to all personnel involved in the sampling and chemical analysis of samples known or suspected to contain PCDD, PCDF, PCB, and PAH.

6.0 Equipment and Supplies

Note: Brand names, suppliers, and part numbers are for illustration purposes only and no endorsement is implied. Apparatus and materials other than those specified in this method may achieve equivalent performance. Meeting the performance requirements of this method is the responsibility of the source testing team and laboratory team.

6.1 Sampling Apparatus. Figure 23–1 of this method shows a schematic of the Method 23 sampling train. Do not use sealing greases or brominated flame retardant-coated tape in assembling the train. Do not use silicon tubing in direct contact with flue gases. The train is identical to that described in Section 6.1.1 of Method 5 of Appendix A–3 to 40 CFR part 60 with the following additions:

6.1.1 Nozzle. The nozzle must be made of quartz, borosilicate glass, or titanium. Stainless steel nozzles should not be used.

6.1.2 Probe Liner. Use either polytetrafluoroethylene (PTFE), borosilicate, or quartz glass probe liners with a heating system capable of maintaining a probe gas temperature of 120 ± 14 °C (248 ± 25 °F) during sampling, or such other temperature as specified by an applicable subpart of the standards or as approved by the Administrator. Use a PTFE ferrule or single-use PTFE coated O-ring to achieve the seal at the nozzle end of the probe for stack temperatures up to about 300 °C (572 °F). Use a quartz glass liner and integrated quartz nozzle for stack temperatures between 300 and 1,200 °C (572 and 2,192 °F).

6.1.3 Filter Holder. Use a filter holder of borosilicate glass with a PTFE frit or PTFE-coated wire filter support. The holder design should provide a positive seal against leakage from the outside or around the filter. The holder should be durable, easy to load, leak-free in normal applications, and positioned immediately following the probe and cyclone bypass (or cyclone, if used) with the active side of the filter perpendicular to the source of the flow.

6.1.4 Filter Heating System. Use any heating system capable of monitoring and maintaining the temperature around the filter to ensure that the sample gas temperature exiting the filter is 120 ± 14 °C (248 ± 25 °F) during sampling or such other temperature as specified by an applicable subpart of the standards or approved by the Administrator for a particular application.

6.1.5 Filter Temperature Sensor. Install a temperature sensor capable of measuring temperature to within ±3 °C (5.4 °F) so that the sensing tip protrudes at least 1.3 centimeters (cm) (1–2 in.) into the sample gas exiting the filter. Encase the sensing tip of the sensor in glass or PTFE, if needed.

6.1.6 Sample Transfer Line. The sample transfer line transports gaseous emissions from the heated filter holder to the condenser and must be heat traced and constructed of glass or PTFE with connecting fittings that form leak-free, vacuum-tight connections without using sealing greases or tapes. Keep the sample transfer lines as short as possible and maintain the lines at a temperature of 120 °C ± 14 °C (248 °F ± 25 °F) using active heating when necessary. Orient the sample transfer lines with the downstream end lower than the upstream end so that any condensate will flow away from the filter and into the condenser.

6.1.7 Condenser. Glass, water-jacketed, coil-type with compatible fittings. Orient the condenser to cause moisture to flow down to the adsorbent module to facilitate condensate drainage. Figure 23–2 of this method shows a schematic diagram of the condenser.

6.1.8 Water Circulating Bath. Use a bath pump circulating system capable of providing chilled water flow to the condenser and adsorbent module water jackets. Typically, a submersible pump is placed in the impinger ice water bath to circulate the ice water contained in the bath. Verify the function of this system by

measuring the gas temperature at the entrance to the adsorbent module. Maintain this temperature at <20 °C (68 °F).

6.1.9 Adsorbent Module. Use a water-jacketed glass container to hold up to 40 grams (g) of the solid adsorbent. Figure 23–2 of this method shows a schematic diagram of the adsorbent module. Other physical configurations of the adsorbent resin module/condenser assembly are acceptable if the configuration contains the requisite amount of solid adsorbent and maintains the minimum length-to-width adsorbent bed ratio of two-to-one. Orient the adsorbent module vertically to facilitate condensate drainage. The connecting fittings must form leak-free, vacuum-tight seals. Include a coarse glass frit in the adsorbent module to retain the adsorbent.

6.1.10 Impingers. Use five impingers connected in series with leak-free ground glass fittings or any similar leak-free noncontaminating fittings. The first impinger must be a short-stem (water-dropout) design or equivalent. The second, fourth, and fifth impingers must be of the Greenburg-Smith design, modified by replacing the tip with a 1.3 cm (½ in.) inside diameter (ID) glass tube extending to approximately 1.3 cm (½ in.) from the bottom of the flask. The third impinger must be of the Greenburg-Smith design with the standard tip. The second and third impingers must contain known quantities of water, and the fifth impinger must contain a known weight of silica gel or equivalent desiccant. Alternatively, you may omit the first impinger if you do not expect excess moisture in the sample gas.

6.2 Sample Recovery Equipment.

6.2.1 Fitting Caps. Use leak-free ground glass fittings or any similar leak-free non-contaminating fitting to cap the sections of the sampling train exposed to the sample gas. Alternatively, use PTFE tape or contaminant-free aluminum foil for this purpose (see Section 6.2.6 of this method).

6.2.2 Wash Bottles. Use PTFE bottles.

6.2.3 Probe-Liner, Probe-Nozzle, and Filter-Holder Brushes. Use inert bristle brushes with precleaned stainless steel or PTFE handles. Extensions of the probe brush must be made of stainless steel or PTFE and be at least as long as the probe. Use brushes that are properly sized and shaped to remove accumulated material from the nozzle and probe liner if used.

6.2.4 Filter Storage Container. Use a sealed filter holder, wide-mouth amber glass jar with PTFE-lined cap, or glass petri dish sealed with PTFE tape. Purchase precleaned amber glass jars and petri dishes, or clean according to the glassware cleaning procedures listed in Section 8.1.1.1 of this method.

6.2.5 Field Balance. Use a weighing device capable of measurements to an accuracy of 0.5 g.

6.2.6 Aluminum Foil. Use heavy duty aluminum foil cleaned by rinsing three times with hexane or toluene and stored in a pre-cleaned glass petri dish or glass jar. Do not use aluminum foil to wrap or contact filter samples due to the possibility of reaction between the sample and the aluminum.

6.2.7 Silica Adsorbent Storage Container. Use an air-tight container to store silica gel.

6.2.8 Glass Sample Storage Container. Recover samples in amber glass bottles, 500- or 1000-milliliters (mL) with leak-free PTFE-lined caps. Either purchase precleaned bottles or clean containers according to glassware cleaning procedures listed in Section 8.1.1.1 of this method.

6.3 Sample Extraction Equipment.

6.3.1 Sample Container. Use 125- and 250-mL amber glass bottles with PTFE-lined caps.

6.3.2 Test Tubes. Use glass test tubes or small (*e.g.,* 5 to 10 mL) amber vials.

6.3.3 Soxhlet/Dean-Stark Extraction Apparatus.

6.3.3.1 Soxhlet Apparatus. Use 200-mL capacity thimble holder capable of holding 43 × 123-millimeter (mm) extraction thimbles, with receiving flask (typically round-bottom).

6.3.3.2 Moisture Trap. Use Dean-Stark or Barret with fluoropolymer stopcock trap to fit between the Soxhlet extractor body and the condenser as shown in Figure 23–3 of this method.

Note: Dean-Stark or Barret traps are used to remove water with extraction solvents that are less dense and insoluble in water.

6.3.3.3 Extraction Thimble. Use quartz, glass, or glass fiber thimble, typically 43 × 123 mm to fit Soxhlet apparatus. The use of cellulose thimbles for sample extraction in this method is prohibited.

6.3.3.4 Heating Mantle. Use a hemispherical shaped heating mantle to fit round-bottom flask.

6.3.4 Kuderna-Danish (KD) Concentrator. Use an apparatus consisting of a three-ball Snyder column, a flask with leak-free joint to accept the three-ball Snyder column at the top, a leak-free joint to receive a graduated concentration tube at the bottom and a heating mantle.

Note: Rotary evaporation has only been demonstrated when analyzing PCDD/PCDF. The KD with Snyder column is recommended when analyzing for PAH and/or PCB to avoid evaporation loss resulting in failed performance criteria for pre-extraction spike recovery.

6.3.5 Nitrogen Evaporative Concentrator. Use a nitrogen evaporative concentrator equipped with a water bath with the temperature controlled in the range of 30 to 60 °C (86 to 140 °F) (N-Evap Organomation Associates, Inc., South Berlin, MA, or equivalent).

6.3.6 Separatory Funnels. Use glass or PTFE 2-liter separatory funnels.

6.4 Glass Liquid Chromatography Columns.

6.4.1 Pasteur Pipettes. Use disposable pipettes, or glass serological pipettes typically 150 mm long × 6 mm ID.

6.4.2 Liquid Chromatography Columns. 200 to 300 mm long × 20 mm ID with 250-mL reservoir.

6.5 Analytical Equipment.

6.5.1 Gas Chromatograph. Use a gas chromatograph consisting of the following components:

6.5.1.1 GC Oven. Use an oven capable of maintaining the separation column at the proper operating temperature ± 1.0 °C (1.8 °F) and performing programmed increases in temperature at rates of at least 40 °C/min with isothermal hold.

6.5.1.2 GC Temperature Monitor. Use a temperature monitor to measure column oven temperature to ± 1.0 °C (1.8 °F).

6.5.1.3 GC Flow System. Use an electronic pressure control or equivalent gas metering system to control carrier gas flow or pressure.

6.5.1.4 GC Injection Port. Use a split/splitless injection port in the splitless mode or on-column injection port for the capillary column.

6.5.2 Capillary GC Column. Use different columns for the analysis of the different target compound classes in this method, if needed. Perform the resolution checks in Sections 10.2.3.5 and 10.2.3.6 of this method to document the required resolution. Compound separation must meet the resolution specifications in Section 10.2.3.5 of this method and the identification specifications found in Section 11.4.3.4 of this method.

6.5.2.1 PCDD/PCDF Column. Gas chromatographic columns used to measure PCDD/PCDF should be capable of achieving separation of the 17 PCDD/PCDF target compounds from the nearest eluting target compound(s). The valley height resolution between 2,3,7,8-substituted TeCDD and TeCDF and the nearest eluting isomers must not exceed 25% of the taller of the two peaks. The valley height resolution between all other target PCDD/PCDF compounds and the nearest eluting targets (or interference) must not exceed 40% of the taller of the two peaks.

Note: Fishman, et al. (see Section 16.3 of this method) demonstrated that all TEF isomers can be fully differentiated from closely eluting isomers using either of two sets of non-polar and polar stationary phase combinations. One set consisted of 5% phenyl methylpolysiloxane (DB–5, HP–5MS, Rtx-5MS, Equity-5) and 50% cyanopropylmethyl, 50% phenylmethylsiloxane (DB–225, SP 2331) GC columns and the other set consisted of 5% phenyl, 94% methyl, 1% vinyl silicone bonded-phase (DB–5MS, ZB–5MS, VF–5MS, CP-Sil 8 CB LowBleed/MS) with 50% cyanopropylmethyl, 50% phenylmethylsiloxane (SP–2331).

6.5.2.2 PAH Column. Use column systems for measuring PAH that can achieve separation of anthracene and phenanthrene at m/z 178 such that the valley between the peaks does not exceed 50% of the taller of the two peaks, and benzo[*b*]fluoranthene and benzo[*k*]fluoranthene such that the valley between the peaks is less than 60% of the height of the taller peak. These requirements are achievable using a 30-m narrow bore (0.25 mm ID) 5% phenyl polysilphenylene-siloxane (BPX5 or equivalent) bonded-phase, fused-silica capillary column.

6.5.2.3 PCB Column. Use column systems for measuring PCB that can achieve unique resolution and identification of the toxics for determination of a TEQ_{PCB} using toxic equivalency factors (TEF). Resolution is shown by a valley between the peaks not exceeding 40% of the taller of the two peaks. Isomers may be unresolved if they have the same TEF and RRF and if these unresolved isomers are uniquely resolved from all other congeners. These requirements are achievable using several 30-meter (m) narrow

bore (0.25 mm ID) columns including 8% phenyl polycarborane-siloxane (HT8), DB–XLB, and poly (50% n-octyl/50% methyl siloxane) (SPB-Octyl). Quantification of unresolved isomers should use the nearest eluting target PCB pre-extraction standard in Appendix A of this method, unless otherwise specified in applicable rule, regulation, or permit.

Note: If all 209 PCB are analyzed the 17 toxic PCB congeners should be resolved and reported while the other PCB can be reported as totals by homolog, for example, total TrCB.

6.5.3 Mass Spectrometer. Instrument employing 28 to 70 electron volt ionization. The instrument and data system must be capable of repetitive monitoring of at least 12 exact m/z values with a mass resolution defined in Section 10.2.1 within the measurement mass range. The recommended lock-mass ions to be used for mass drift correction are presented in Tables 23–4, 23–5, and 23–6 of this method for PCDD/PCDF, PAH, and PCB, respectively, as applicable to target analytes. Mass drifts of 5 parts per million (ppm) or more can have serious effects on instrument performance.

6.5.4 Mass Spectrometer Data System. Use a data system compatible with the mass spectrometer and capable of sequencing and monitoring multiple groups of selected ions.

6.5.5 Analytical Balance. Use an analytical balance to measure within 0.1 milligram (mg).

7.0 Reagents, Media, and Standards

7.1 Filter. Glass fiber filters, without organic binder, exhibiting at least 99.95% efficiency (<0.05% penetration) on 0.3-micron dioctyl phthalate smoke particles.

7.1.1 Conduct a QC check on the filter lot prior to the field test to demonstrate that filters are free from contamination or interference by extracting and analyzing a minimum of three filters from each lot as follows. Spike with pre-extraction and pre-extraction filter recovery standards for target compounds to be measured and extract each filter separately with toluene as described in Section 11 of this method. After extraction, remove the filters and the solvent from the filters under clean conditions (*e.g.,* a clean nitrogen stream). Analyze the extracts according to the procedures in Section 11 of this method, including adding pre-analysis standard. This filter check analysis must meet the performance requirements in Section 13.1 of this method. Ongoing analysis of LMB can be used to fulfill this check. If criteria are not met for target compounds, repeat with additional filters from the lot or evaluate another lot.

7.2 Adsorbent Resin. Amberlite® XAD–2 resin. All adsorbent resin must meet the cleanliness criteria described for LMB in Section 13.1 of this method following the same extraction, concentration, cleanup, and analysis steps as field samples. This method recommends using the procedures provided in Appendix B to this method to clean the resin before use, if needed. However, this method allows alternative cleanup procedures that use automated extraction equipment if the adsorbent meets the required performance criteria described for LMB in Section 13.1 of this method.

7.2.1 Conduct a QC check on the cleaned adsorbent lot or batch following the extraction and analyses procedures in Section 11 of this method, including adding applicable labeled standards. The cleaned adsorbent must meet the criteria described for LMB in Section 13.1 of this method. An LMB conducted with an adsorbent lot or batch can serve this purpose.

7.2.2 Storage. Store adsorbent in a solvent-rinsed nonporous clean container and secure lid.

7.3 Glass Wool. Clean the glass wool to meet the specifications in Section 13.1 of this method. Glass wool is dried of the solvent and stored in a clean glass container with a PTFE-lined screw cap.

7.4 Water. Use deionized or distilled water meeting requirements in Section 13.1 of this method and store in its original container or in a clean glass container with a PTFE-lined screw cap.

7.5 Silica Gel. Indicating type for sampling, 6–16 mesh. If previously used, dry at 175 °C (347 °F) for two hours. Use new silica gel as received. As an alternative, use other types of desiccants (equivalent or better), subject to the approval of the Administrator.

7.6 Methylene Chloride. Pesticide grade or better.

7.7 Sample Recovery Reagents.

7.7.1 Acetone. Pesticide grade or better.

7.7.2 Toluene. Pesticide grade or better.

7.8 Sample Extraction and Cleanup.

7.8.1 Potassium Hydroxide. American Chemical Society (ACS) grade, 2% (weight/volume) in water.

7.8.2 Sodium Sulfate. Granulated or powdered, reagent grade. Evaluate for cleanliness prior to use with an LMB. The LMB must meet the requirements in Section 13.1 of this method for target compounds. Store in a clean glass container with a PTFE-lined screw cap.

7.8.3 Sulfuric Acid. Reagent grade.

7.8.4 Sodium Hydroxide. 1.0 N. Weigh 40 g of sodium hydroxide into a 1-liter volumetric flask. Dilute to 1 liter with water.

7.8.5 Hexane. Pesticide grade or better.

7.8.6 Methanol. Pesticide grade or better.

7.8.7 Toluene. Pesticide grade or better.

7.8.8 High-Boiling Alkanes Used as Keeper Solvents (*e.g.,* tetradecane, nonane, decane). Pesticide grade. **Note:** Lower homologous series alkanes (nonane or decane) are necessary for higher volatility targets such as MoCB and naphthalene to maintain retention during concentration procedures. However, do not take samples to dryness when using these lower alkane homologs.

7.8.9 Liquid Column Chromatography Packing Materials. Use the following column chromatography packing materials, as needed, to prepare sample extracts by fractionation and removal of interferences. Commercially prepacked cleaning columns may be available for this purpose. The liquid column chromatography packing materials must be adequate to clean the samples to be fit for purpose and meet the performance criteria of this method. All procedures for preparing column chromatography packing materials are recommendations shown to meet the performance specifications required for the recovery of labeled compounds described in Section 13 of this method.

7.8.9.1 Alumina. Use either acidic or basic alumina in the cleanup of sample extracts. Use the same type of alumina for all samples in an analytical sequence, including those used to demonstrate LMB performance.

7.8.9.1.1 Acidic Alumina (Sigma-Aldrich® 199966 or equivalent). Brockmann activity grade 1, 100–200 mesh. Prior to use, activate the alumina by heating for 12 hours at 130 °C (266 °F). Store in a desiccator. You may use pre-activated alumina purchased from a supplier as received.

7.8.9.1.2 Basic Alumina (Sigma-Aldrich® 19943 or equivalent). Brockmann activity grade 1. Activate by heating to 600 °C (1,112 °F) for a minimum of 24 hours. Do not heat to over 700 °C (1,292 °F) because this can lead to reduced capacity for retaining the target compounds. Store at 130 °C (266 °F) in a covered flask. Recommended storage time for acidic alumina is up to five days from baking. Use prepacked alumina columns immediately after opening the vacuum-sealed pouch or container.

7.8.9.2 Florisil®. Activated, 60–100 mesh recommended. Heat previously activated Florisil® in a glass container loosely covered with aluminum foil in an oven at 130 to 150 °C (266 to 302 °F) for a minimum of 24 hours. Allow to cool and store activated Florisil® silica in a desiccator.

7.8.9.3 Silica Gel. Use either activated, acid- or base-coated silica gel in the cleanup of sample extracts. Use the same type of silica gel for all samples in an analytical sequence, including those used to demonstrate LMB performance.

7.8.9.3.1 Activated Silica Gel. Supelco® 1–3651, Bio-Sil® A, 100–200 mesh (or equivalent). Prior to use, silica gel should be activated by solvent rinsing and heat activation. It is recommended to rinse with methylene chloride and activate the silica gel by heating for at least 1 hour at 180 °C (356 °F). After allowing to cool, rinse the silica gel sequentially with methanol and toluene. Heat the rinsed silica gel at 50 °C (122 °F) for 10 minutes, then increase the temperature gradually to 180 °C (356 °F) over 25 minutes and maintain the gel at this temperature for 90 minutes. Allow to cool in a desiccator to room temperature and store in a glass container with a PTFE-lined screw cap. Alternative conditioning procedure may be used if the performance criteria in Section 13.1 are met for target compounds.

7.8.9.3.2 Acidic Silica Gel (30% weight/weight). Combine 100 g of activated silica gel with 44 g of concentrated sulfuric acid in a clean screw-capped glass container and agitate thoroughly. Disperse the solids with a stirring rod until obtaining a uniform mixture of acid-coated silica gel. Store the mixture in a glass container with a PTFE-lined screw cap.

7.8.9.3.3 Basic Silica Gel. Combine 30 g of 1 N sodium hydroxide with 100 g of activated silica gel in a clean screw-capped glass container and agitate thoroughly. Disperse solids with a stirring rod until obtaining a uniform mixture of base-coated silica gel. Store the mixture in glass container with a PTFE-lined screw cap.

7.8.9.4 Carbon/Celite® 545 (or equivalent solid support). Use of a carbon-based column

cleanup material (*e.g.,* one of the many including for example Carbopack® B or C) to further remove non-planar impurities from the samples prior to analysis may be necessary. You must evaluate alternative carbon-based sorbents for this purpose prior to their use. An 18% weight/weight mixture of Carbopack® C and Celite® 545 has been used for this purpose and should be activated at 130 °C (266 °F) for a minimum of 6 hours. Allow to cool and store this mixture in a desiccator.

7.8.10 Nitrogen. 99.999% (ultra-high) purity.

7.9 Sample Analysis.

7.9.1 Helium. 99.999% (ultra-high) purity.

7.9.2 Spiking Standards. Prepare spiking standards quantitatively at a convenient concentration (*e.g.,* 10 nanograms (ng)/mL) or use commercial standards if available, to enable accurate spiking of a labeled standard at various stages of the sample and extract preparation. You may adjust the sample fortification concentrations from those recommended in Tables 23–7, 23–8, and 23–9 of this method to accommodate the concentration of target compounds anticipated in samples if the performance criteria in Section 13 of this method are met.

Note: When adjusting the fortification concentrations in the final sample extract, consider variables such as the aliquot of extract used and injection volume of samples and calibration.

7.9.3 Pre-Sampling Adsorbent Standard. Prepare stock standard solutions in nonane to enable spiking so that the isotopically labeled compounds in the final sample extract are at the concentration shown under the heading ''Pre-sampling Adsorbent Standard'' in Tables 23–7, 23–8, and 23–9 of this method, for applicable target compound classes.

7.9.4 Pre-extraction Filter Recovery Standard. Prepare stock standard solutions in nonane to enable spiking so that the isotopically labeled compounds in the final sample extract are at the concentration shown under the heading ''Pre-extraction Filter Recovery Standard'' in Tables 23–7, 23–8, and 23–9 of this method, for applicable target compound classes.

7.9.5 Pre-extraction Standard. Prepare stock standard solutions in nonane to enable spiking so that the isotopically labeled compounds in the final sample extract are at the concentration shown under the heading ''Pre-extraction Standard'' in Tables 23–7, 23–8, and 23–9 of this method, for applicable target compound classes.

7.9.6 Pre-analysis Standard. Prepare stock standard solutions in nonane to enable spiking so that the isotopically labeled compounds in the final sample extract are at the concentration shown under the heading ''Pre-analysis Standard'' in Tables 23–7, 23–8, and 23–9 of this method, for applicable target compound classes.

8.0 Sample Collection, Preservation, and Storage

8.1 Sampling. This method involves collection and recovery of trace concentrations of target semivolatile organic compounds. Therefore, field sampling and recovery staff should be trained and experienced in the best practices for handling and using organic solvents in field environments to recover and protect samples from contamination.

8.1.1 Pretest Preparation.

8.1.1.1 Cleaning Glassware. Clean glassware thoroughly before using. This section provides a recommended procedure, but any protocol that consistently results in contamination-free glassware meeting the LMB criteria in Section 13.1 of this method is acceptable.

8.1.1.1.1 Soak all glassware in hot soapy water (Alconox® or equivalent).

8.1.1.1.2 Rinse with hot tap water.

8.1.1.1.3 Rinse with deionized/distilled water.

8.1.1.1.4 Rinse with methanol.

8.1.1.1.5 Rinse with toluene.

8.1.1.1.6 Baking glassware up to 400 °C (752 °F) for a minimum of 2 hours may be necessary to remove contaminants or interferents from particularly dirty samples. Allow glassware to cool after baking.

Note: Repeated baking of glassware may cause active sites on the glass surface that may irreversibly adsorb target compounds.

8.1.1.1.7 Cover glassware openings with clean glass fitting caps or cleaned aluminum foil (see Section 6.2.6 of this method).

8.1.1.1.8 Rinse glassware immediately before use with acetone and toluene.

Note: To prepare heavily soiled glassware, remove surface residuals from the glassware by soaking in hot soapy water, rinsing with hot water, then soaking with a non-chromic acid oxidizing cleaning reagent in a strong acid (*e.g.,* NOCHROMIX® prepared according to manufacturer's directions). After the acid soak, rinse with hot water and repeat the cleaning procedures in Section 8.1.1.1 of this method.

8.1.1.2 Adsorbent Module. Load the modules in a clean area to avoid contamination. Fill a module with 20 to 40 g of XAD–2. Spike modules before the sampling event, but do not spike the modules in the field. Add the pre-sampling adsorbent standard to the top quarter of the adsorbent bed rather than onto the top or bottom of the adsorbent bed. Add sufficient spike (picograms (pg)/module) to result in the final sample theoretical concentrations specified in Tables 23–7, 23–8, and 23–9 of this method for PCDD/PCDF, PAH, and PCB, respectively, and to be above the lowest calibration concentration to ensure the standard recovery is quantitative. For samples with known or anticipated target compound concentration significantly higher or lower than the specified concentration in these tables, adjust the pre-sampling adsorbent standard concentration to the expected native compound concentration, but no less than 10 times the method detection limit (MDL). Follow the XAD–2 with cleaned glass wool and tightly cap both ends of the module. For analysis that includes PAH, use spiked modules within 14 days of preparation. See Table 23–10 of this method for storage conditions.

8.1.1.3 Sampling Train. Figure 23–1 of this method shows the complete sampling train. Follow the best practices by maintaining all sampling train components according to the procedure described in APTD–0576 Maintenance, Calibration, and Operation of Isokinetic Source-sampling Equipment (U.S. EPA 1972).

8.1.1.4 Silica Gel. Weigh several 200 to 300 g portions of silica gel in an air-tight container to the nearest 0.5 g. Record the total weight of the silica gel plus container, on the outside of each container. As an alternative, directly weigh the silica gel in its impinger or sampling holder just prior to sampling.

8.1.1.5 Filter. Check each filter against light for irregularities and flaws or pinhole leaks. Pack the filters flat in a clean glass container. Do not mark filters with ink or any other contaminating substance.

8.1.2 Preliminary Determinations. Use the procedures specified in Section 8.2 of Method 5 of Appendix A–3 to 40 CFR part 60.

8.1.2.1 Sample Volume. Unless otherwise specified in an applicable rule, regulation, or permit, sample for a minimum of 2 minutes at each traverse point. This method recommends sampling a minimum of 2.5 dry standard cubic meters (dscm).

8.1.2.2 For continuously operating processes, use the same sampling time at each traverse point. To avoid timekeeping errors, use an integer, or an integer plus one-half minute, for each traverse point.

8.1.2.3 For batch processes, determine the minimum operating cycle duration, dividing the sampling time evenly between the required numbers of traverse points. After sampling all traverse points once, sample each point again for the same duration of time per sampling point in reverse order until the operating cycle is completed. Sample all traverse points at least once during each test run.

8.1.3 Preparation of Sampling Train.

8.1.3.1 During field preparation and assembly of the sampling train, keep all train openings where contamination can enter sealed until just prior to assembly or until sampling is about to begin. To protect the adsorbent module from radiant heat and sunlight, you must wrap the module with aluminum foil or other suitable material capable of shielding the module from light. The XAD–2 adsorbent resin temperature must never exceed 50 °C (122 °F) because thermal decomposition will occur. Clean and prepare a complete set of sampling train components that will contact the sample for each sampling run, including one complete set to be used as a field train proof blank as a tool to evaluate equipment preparation and potential contamination during sample recovery as described in Section 9.6 of this method.

8.1.3.2 Place approximately 100 mL of water in the second and third impingers but leave the first and fourth impingers empty. Transfer approximately 200 g or more of silica gel from its container to the fifth impinger. Weigh each impinger and the adsorbent module, including the fitting caps, to the nearest 0.5 g using the field balance and record the weight for moisture determination. Remove the aluminum foil from the adsorbent module before weighing. Keep the module out of direct sunlight and rewrap the module with foil immediately after recording the module weight.

8.1.3.3 Using tweezers or clean disposable surgical gloves, place a filter in the filter holder. Be sure that the filter is properly centered, and the gasket properly placed, to prevent the sample gas stream from circumventing the filter. Check the filter for tears after completing the assembly.

8.1.3.4 Prepare the inside of the sampling probe and nozzle by brushing each component while rinsing three times each with acetone and toluene. Install the selected nozzle, using the connecting systems described in Section 6.1.2 of this method. Mark the probe with heat resistant tape or by some other method to denote the proper distance into the stack or duct for each sampling point. Assemble the train as shown in Figure 23–1 of this method. Orient the adsorbent module vertically so condensed moisture drains into the first impinger. See APTD–0576 Maintenance, Calibration, and Operation of Isokinetic Source-sampling Equipment (U.S. EPA 1972) for details.

8.1.3.5 Turn on the recirculation pump to the adsorbent module and condenser coil and begin monitoring the temperature of the gas entering the adsorbent module. Ensure proper temperature of the gas entering the adsorbent module before proceeding.

8.1.4 Leak-Check Procedure. Same as Section 8.4 of Method 5 of Appendix A–3 to 40 CFR part 60.

8.1.5 Sampling Train Operation. Same as Sections 8.5.1 through 8.5.9 of Method 5 of Appendix A–3 to 40 CFR part 60.

8.1.5.1 Monitor the filter temperature with a sensor and record the filter temperature during sampling to ensure a sample gas temperature exiting the filter of 120 °C ± 14 °C (248 °F ± 25 °F), or such other temperature as specified by an applicable subpart of the standards or approved by the Administrator for an application of this method.

8.1.5.2 During testing, you must record the temperature of the gas entering the XAD–2 adsorbent module. The temperature of the gas must not exceed 20 °C (68 °F) for efficient capture of the target compounds.

8.2 Sample Recovery. Begin the cleanup procedure as soon as the probe is removed from the stack at the end of the sampling period. Seal the nozzle end of the sampling probe with PTFE tape or clean (*e.g.,* toluene rinsed) aluminum foil.

8.2.1 When the probe can be safely handled, wipe off all external particulate matter near the tip of the probe. Conduct a post-test leak check. Remove the probe from the train and close off both ends with PTFE tape or clean aluminum foil. Seal off the inlet to the train with PTFE tape, a ground glass cap, or clean aluminum foil.

8.2.2 Transfer the probe and impinger assembly to the cleanup area. This method recommends cleaning and enclosing this area to minimize the chances of losing or contaminating the sample. To avoid sample contamination and unnecessary exposure to toxic chemicals, smoking or eating in the sample recovery area shall not be allowed.

8.2.3 Inspect the train prior to and during disassembly. Note and record any abnormal conditions (*e.g.,* broken filters, colored impinger liquid). Recover and prepare samples for shipping as follows in Sections 8.2.4 through 8.2.12 of this method.

8.2.4 Container No. 1. Either seal the filter holder or carefully remove the filter from the filter holder and place it in its identified container. If it is necessary to remove the filter, use a pair of cleaned tweezers to handle the filter. If necessary, fold the filter such that the particulate cake is inside the fold. Carefully transfer to the container any particulate matter and filter fibers that adhere to the filter holder gasket by using a dry inert bristle brush and a sharp-edged blade. Seal the container and store cool (≤20 °C, 68 °F) for transport to the laboratory.

8.2.5 Adsorbent Module Sample. Remove the module from the train, tightly cover both ends with fitting caps and PTFE tape, remove the foil, drain the recirculating water from the module, weigh and record the module weight, and label the adsorbent module. Moisture measurement in the field using the Method 23 train requires weighing the adsorbent module before sampling and after sampling as part of the sample recovery.

8.2.6 Container No. 2. Quantitatively recover material deposited in the nozzle, the front half of the filter holder, and the cyclone, if used, by brushing while rinsing three times with acetone followed by three rinses with toluene. Collect all the rinses in Container No. 2.

8.2.7 Rinse the back half of the filter holder three times with acetone followed by three rinses with toluene. Rinse the sample transfer line between the filter and the condenser three times with acetone followed by three rinses with toluene. If using a separate condenser and adsorbent module, rinse the condenser three times with acetone followed by three rinses with toluene. Collect all the rinses in Container No. 2 and mark the level of the liquid on the container.

8.2.8 Moisture Weight. Weigh the adsorbent module, impingers, and silica gel impinger to within ±0.5 g using the field balance and record the weights. This information is required to calculate the moisture content of the effluent gas. For PCDD/PCDF-only measurements, discard the liquid after measuring and recording the weight.

8.2.9 Container No. 3. You must save and analyze impinger water samples if PAH and/or PCB are the target compounds. Quantitatively recover impinger water samples for analysis if PAH and/or PCB are the target compounds by rinsing three times with acetone followed by three rinses with toluene. Collect impinger water and rinses in Container No. 3 and mark the level of the liquid on the container.

8.2.10 Silica Gel. Note the color of the indicating silica gel to determine if it has been completely spent and report its condition on the field data sheet.

8.2.11 Field Sample Handling, Preservation, Storage, and Transport. Store all field samples temporarily in cool (≤20 °C, 68 °F) and dark conditions prior to transport to the laboratory. Ship samples cool (≤20 °C, 68 °F), shielded from ultraviolet light. In addition, follow the procedures in American Society for Testing and Materials (ASTM) D6911–15 (Guide for Packaging and Shipping Environmental Samples for Laboratory Analysis) for all samples, where appropriate. To avoid contamination of the samples, pay special attention to cleanliness during transport, field handling, sampling, recovery, and laboratory analysis, as well as during preparation of the adsorbent cartridges.

8.2.12 Sample Custody. Proper procedures and documentation for sample chain of custody are critical to ensuring data integrity. Follow the chain of custody procedures in ASTM D4840–99(2018)e1 (Standard Guide for Sample Chain-of-Custody Procedures) for all samples (including field samples and blanks).

8.3 Sample Storage Conditions and Laboratory Hold Times.

8.3.1 Table 23–10 of this method summarizes the sample storage conditions and laboratory hold times.

8.3.2 Store sampling train rinses and filter samples in the dark at the storage conditions in Table 23–10 from the time the laboratory receives the samples until analysis.

8.3.3 You may store adsorbent samples for PCDD/PCDF or PCB analysis prior to extraction in the dark at 6 °C (43 °F) or less for up to one year from the time the laboratory receives the samples.

Note: The hold times listed in this method for adsorbent samples for PCDD/PCDF and PCB are recommendations as these compounds are very stable under the conditions listed in this section.

8.3.4 Protect adsorbent samples destined for PAH analysis from ultraviolet light. You may store adsorbent samples for PAH analysis in the dark at 6 °C (43 °F) or less for up to 30 days from the time the laboratory receives the samples.

8.3.5 Analyze PAH extracts within 40 days of extraction.

8.3.6 You may store sample aliquots including archived extracts of PCDD/PCDF, PAH and/or PCB samples in the dark at −10 °C (14 °F) or less for up to one year. Sample extracts must not be stored with pierced septa.

Note: The hold times listed in this method for sample aliquots for PCDD/PCDF and PCB are recommendations as these compounds are very stable under the conditions listed in this section.

9.0 Quality Control

Note: In recognition of advances that are occurring in sampling and analytical technology, and to allow the test team to overcome analyte sensitivity and matrix interferences, this method allows certain options to increase sample collection volume and to improve separations and the quality of the analysis results for target analytes. It is the laboratory's responsibility to establish the conditions for optimum sample extraction, cleanup, and concentration to meet the performance criteria in this method. However, you may not change the fundamental sampling and analysis techniques, isokinetic sampling with an adsorbent collection media followed by sample extraction, and HRMS detection and isotopic dilution quantification procedures. Section 13 of this method specifies the performance criteria to ensure that options employed for a sample set and analytes of interest are equal to or better than the

specificity of the techniques in this method. The minimum requirements of this method consist of the initial demonstration of capability (IDC) and ongoing QC requirements. The analysis team shall perform an IDC to demonstrate acceptable accuracy and precision with this method as described in Section 9.3. The ongoing QC includes performing CCVs and LMBs to evaluate an individual laboratory's performance against the criteria in this method. The method includes analysis of samples spiked with labeled compounds to evaluate and document data quality. Laboratory performance is compared to established performance criteria to determine if the results of analyses meet the performance characteristics and requirements of the method.

9.1 Record and report data and information that will allow an independent reviewer to validate the determination of each target compound concentration. Record and report the data as described in Sections 9.1.1 through 9.1.7 of this method and performance criteria results required in Section 13 of this method.

9.1.1 Sample numbers and other sample identifiers. Each sample must have a unique identifier.

9.1.2 Field sample volume.

9.1.3 Field sampling date.

9.1.4 Extraction dates.

9.1.5 Analysis dates and times.

9.1.6 Analysis sequence/run chronology.

9.1.7 Quantitation Reports.

9.1.7.1 This method does not consider EMPC-flagged data to be zero concentrations. Calculate and report the EMPC concentrations.

9.1.7.2 In determining compliance with any PCDD and PCDF standard developed using zero for values that are below the EDL of the method, including federal emission standards using Method 23 promulgated under 40 CFR parts 60 and 63 prior to March 20, 2023, use zero for the determination of total and weighted concentrations when the target compound is not detected. For all other circumstances, unless otherwise specified in applicable regulations, permits, or other requirements, when a target compound is measured at or below EDL, use EDL as the concentration for calculating compliance.

9.1.7.3 For each sample you must report EDLs, MDLs, LMBs and Field Train Proof Blank results and target compound analysis results.

9.2 Isotopically Labeled Standard Recovery.

9.2.1 Pre-sampling Adsorbent Standard and Pre-extraction Filter Recovery Standard Recoveries. Pre-sampling adsorbent standard and pre-extraction filter recovery standard recoveries must demonstrate on a per sample basis that recovery of the labeled standard achieved the requirements in Section 13 of this method. Recoveries below the acceptable range for the pre-sampling adsorbent standard may be an indication of breakthrough in the sampling train.

9.2.1.1 If the pre-sampling adsorbent standard average percent recovery is below 70%, the sampling run is not valid, and the stack test must be repeated. As an alternative, you do not have to repeat the stack test for invalid analyses if the pre-sampling adsorbent standard average percent recovery is 25% or more and you divide the final results by the fraction of the pre-sampling adsorbent standard average percent recovery.

9.2.1.2 If the percent recovery of all the pre-extraction filter recovery standard compounds is below 70%, you may reanalyze the sample. If the recovery is still below the limit, the filter sampling extraction is not valid, and you must repeat the stack or vent sampling and subsequent analysis.

9.2.2 Pre-extraction Standard Recoveries. Pre-extraction standard recoveries must demonstrate on a per sample basis that recovery of the labeled standard achieved the requirements in Section 13.15 of this method. If the recovery criteria are not met, you may reanalyze the sample. If the recovery criteria are still not met, the sampling run is not valid, and the stack test must be repeated. Recoveries outside the acceptable range for pre-extraction standard are an indication that sample preparation procedures did not adequately address sample and or sample matrix processing to recover native target compounds.

9.2.3 Pre-analysis Standard Response. Pre-analysis standard recoveries must demonstrate on a per sample basis that adequate labeled standard signal meets the requirements in Section 13.16 of this method. Add pre-analysis standard to every sample (including blanks, QC samples, and calibration solutions) in a known concentration. If the prepared samples do not meet the pre-analysis standard response criteria, you may reanalyze and/or prepare and analyze archive samples to attempt meeting requirements for the compounds that do not meet the pre-analysis standard response criteria. Poor sensitivity compared to initial calibration response may indicate injection errors or instrument drift.

9.3 Initial Demonstration of Capability (IDC). The IDC must be successfully performed prior to analyzing field samples by meeting the QC requirements in Table 23–18. The IDC must be repeated if changes are made to analytical parameters not previously validated during the IDC. This may include, for example, changing the sample volume, selecting alternate quantitation ions, extending the calibration range, adding additional pre-analysis standard, or adding additional pre-extraction standard. The same calibration range used during the IDC must be used for the analysis of field samples.

9.3.1 Perform initial calibration following the procedures in Section 10. The lowest calibration standard used to establish the initial calibration must not be less than three times the MDL. The initial calibration must meet performance criteria in Section 13.9.

9.3.2 Lowest Calibration Concentration Confirmation. Establish a target concentration for the lowest calibration standard based on the intended use of the method. The lowest calibration concentration may be established by a laboratory or programmatic lowest quantitative reporting requirement. The laboratory calibration curve must be set at or below this level. Perform seven replicate analyses of a calibration sample prepared at proposed lowest calibration concentration. The replicate analyses of the lowest calibration concentrations standards must meet the criteria in Sections 13.9 and 13.17.1.

Note: Consider that establishing the lowest calibration concentration too low may cause repeated failure of ongoing QC requirements.

9.3.3 Calculate Lowest Calibration Statistics. Calculate the mean and standard deviation for each analyte in these replicates (those used in Section 9.3.2). Determine the Half Range for the Prediction Interval of Results (HRPIR) using Equation 23–13. Calculate the Upper and Lower Limits for the Prediction Interval of Results (PIR) with Equations 23–14 and 23–15.

9.3.4 Lowest Calibration Point Acceptance Criteria. The laboratory's ability to measure analyte concentrations down to the lowest calibration point is confirmed if the criteria presented in Section 13.17.1 are met. If these criteria are not met, the lowest calibration point as been set too low and must be confirmed at a higher concentration.

9.3.5 Demonstration of Low System Background. Analyze an LMB after the highest standard in the calibration range. If an automated extraction system is used, an LMB must be extracted on each port. Performance criteria are presented in Section 13.1. Note: When using automated systems, the same systems must be used for samples and QC samples, such as blanks and resin checks.

9.3.6 Initial Calibration Verification. A QCS must be analyzed during the IDC, and then following each initial calibration thereafter (at a minimum quarterly). A QCS is a mid-level standard prepared from a second source standard or prepared from a source of standards different from the source of calibration standards. The purpose of the QCS is to verify the integrity of the primary calibration standards. The acceptance criterion is presented in Section 13.11.

9.3.7 MDL. Perform an MDL determination using a minimum of seven spiked combined filter/sorbent media samples, spiked within 2 to 10 times of the expected MDL, and seven LMBs (combined filter/sorbent media) through all the steps of the method following the requirements in 40 CFR part 136 Appendix B. Confirm target compounds meet the qualitative identification criteria in Sections 13.12 and 13.13. The criteria for the MDL determination are presented in Section 13.6.1 of this method.

9.3.8 MDL Confirmation. Confirm newly determined MDLs by preparing a low-level spiked combined filter/sorbent media sample by spiking the sorbent with native target compounds at 1 to 5 times the MDL and pre-extraction standard at the concentration used to analyze field samples and analyze. The criterion for the MDL confirmation is presented in Section 13.6.1 of this method.

9.3.9 Demonstration of Precision. Prepare, extract, and analyze seven replicate spiked samples in a valid Extraction Batch. Fortify the spiked samples near the midpoint of the initial calibration curve. The criterion is presented in Section 13.17.2 and Table 23–18. Demonstration is repeated for failed compounds only.

9.3.10 Demonstration of Accuracy. Using the same set of replicate data generated for

Section 9.3.9 of this method, calculate the average % recovery. The criterion is presented in Section 13.17.3 and Table 23–18. Demonstration is repeated for failed compounds only.

9.4 LMBs. Evaluate background contamination from glassware, equipment, solvents, standards, and media used for sample batches using an LMB prepared and analyzed identically to the field samples, including the same labeled standards, media, sodium sulfate, glass wool, glassware, solvents, etc. An LMB must be extracted with every batch of samples. Analyze an LMB at least once during each analytical sequence or every 12 hours, whichever period is shorter. If multiple LMB are required for an analytical sequence, report the initial LMB associated with each 12 hour analysis period.

9.5 EDL. Calculate the EDL using Equation 23–11 of this method.

Note: If the applicable compliance limit is total dioxin or total furan, report the sum of the EDLs for all the target compounds. If the applicable rule limit is a TEQ value, report the sum of the EDLs for all target compounds multiplied by their corresponding compound specific TEF.

9.6 Field Train Proof Blank Assessment. Conduct at least one field train proof blank for each test series at a single facility. A field train proof blank is used to evaluate equipment preparation and potential contamination during sample recovery and consists of a fully assembled train at the sampling site. Prepare and assemble the field train proof blank train in a manner identical to that described in Sections 8.1.3 and 8.1.4 of this method using glassware from the same preparation batch as the field samples. The field train proof blank train must remain assembled for the same average amount of time samples are collected. Recover the field train proof blank train as described in Section 8.2 of this method. Follow all subsequent steps for field train proof blank train sample preparation and analysis used for field samples including data reporting. Section 13.1 of this method describes the criteria for the field train proof blank.

10.0 Calibration and Standardization

10.1 Sampling System. Same as Sections 6.1 and 10.1 through 10.7 of Method 5 of Appendix A–3 to 40 CFR part 60.

10.2 HRGC/HRMS System.

10.2.1 Mass Resolution. Tune the HRMS instrument to a resolving power of at least 10,000 at 10% percent of the peak height or 25,000 at 50% percent of the peak height. The resolving power for PAH and PCB analysis may be 8,000 at 10% of the peak height or 15,000 at 50% of the peak height. Assess the resolution at three exact m/z's representing the low-, mid-, and high-m/z range of the masses used to measure the target compound class. You may use peak matching and the chosen perfluoro-kerosene (PFK) or perfluorotributylamine (FC43) reference peak to verify that the exact mass is within 5 ppm of the required value.

10.2.2 Initial Calibration. Calibrate the HRGC/HRMS system using a minimum of five concentrations over a range that brackets expected field sample concentrations and the concentration of isotopically labeled standards in spiked samples. Tables 23–11, 23–12, and/or 23–13 of this method show the calibration concentrations recommended by this method, as applicable to the target compound classes. Determine the initial relative response factors for the target compounds and isotopically labeled standards using the initial calibration. Criteria for the initial calibration is in Section 13.9 of this method.

10.2.2.1 Lock-Mass Ions. Tables 23–4, 23–5, and 23–6 of this method present the recommended mass spectrometer lock-mass ions for PCDD/PCDF, PAH, and PCB, respectively. The reference compounds PFK or FC43 have ions that may be selected as your lock-mass and QC check ions. Monitor the QC check ions specified in these tables to verify instrument stability during the analysis (see Section 13.8 for performance criteria). Additional cleanup of the sample extract (or archive extract) and reanalysis is necessary for failure to maintain the lock-mass during analysis.

10.2.2.2 The relative standard deviation (RSD) for the mean calibration relative response factor from each of the unlabeled analytes and isotopically labeled compounds used in an analysis must be less than or equal to the values in Table 23–14 of this method.

10.2.2.3 The signal-to-noise (S/N) ratio for the GC/MS signal present in every selected ion current profile must be greater than or equal to 10 in all concentrations of calibration standards for unlabeled targets and isotopically labeled standards. The ion abundance ratios must be within the control limits in Table 23–15 of this method.

Note: An interference with PFK m/z 223.9872 may preclude meeting 10:1 S/N for the DiCB congeners at the optional Cal 1 level (Table 23–11). If this interference occurs, 10:1 S/N must be met at the Cal 2 level.

10.2.3 Continuing Calibration Verification.

10.2.3.1 Prepare the CCV standard at the same time as the batch of field samples using the same labeled standards. Prepare CCV standards at mid-level of the calibration (C3 level from Tables 23–11, 23–12, or 23–13 of this method). Inject a CCV standard, for the target compound class, at least once every 12 hours during an analysis sequence. Calculate the RRF for each compound and compare each RRF to the corresponding mean RRF obtained during the initial calibration. The RRF for each native compound measured in a CCV must not deviate from the initial calibration RRF by more than the limits shown in Table 23–14.

10.2.3.2 The ion abundance ratios must be within the allowable control limits shown in Table 23–15 of this method.

10.2.3.3 The S/N ratio for the GC/MS signal present in every selected ion current profile must be greater than or equal to 10.

10.2.3.4 Repeat the initial calibration when there is a failure to meet the requirements for acceptable CCV standard analysis.

10.2.3.5 Column Separation Check. Use the results from a CCV to verify and document the resolution required in Section 13.2, 13.3, or 13.4 of this method for the target compound classes analyzed with this method. If target compounds are not sufficiently resolved to meet the requirement, an analysis on a confirmation column is recommended (see Section 13.5 of this method).

10.2.3.6 If you use a confirmation column, perform the resolution check in Section 10.2.3.5 of this method to document the required resolution on the confirmation column. See Section 13.5 of this method on confirmation columns, if needed.

11.0 Analysis Procedure

11.1 Sample Extraction and Concentration. The sample extraction procedures in this method are the same for PCDD, PCDF, PCB and PAH targets. Figure 23–4 provides a flow chart showing sample container combination and extraction steps. Do not allow samples and extracts destined for PAH or PCB analysis to concentrate to dryness because the lower molecular weight PAH and the mono- through tri-chlorobiphenyls may be totally or partially lost. Note: Rotary evaporation is applicable when analyzing for PCDD/PCDF only. Snyder column apparatus is recommended when analyzing for PAH and PCB.

11.1.1 Optional Soxhlet Precleaning. Place an extraction thimble (see Section 6.3.3.3 of this method) and a plug of glass wool into the Soxhlet apparatus equipped with a Dean-Stark trap, charge the apparatus with toluene, and reflux for a minimum of 3 hours. Remove the toluene and discard it. Remove the extraction thimble from the extraction system and place it in a glass beaker to catch the solvent rinses from sample transfer to the extraction thimble. Retain the clean glass wool plug. Alternatively, confirm that the LMB for associated reagents, materials, and media meets the performance requirements in Section 13.1 of this method.

11.1.2 Container No. 1 (Filter) Preparation. Spike the filter with the appropriate pre-extraction filter recovery standard to result in the final sample extract concentrations shown in Tables 23–7, 23–8, and 23–9 of this method taking care that all spike liquid is distributed on the filter. Allow the filter to dry enough to prevent overspill, then transfer the filter and the contents of Container No. 1 directly to the glass extraction thimble in the glass solvent rinse catch beaker so that the filter will be completely immersed in the solvent during extraction.

11.1.3 Adsorbent Module. Spike the adsorbent with the appropriate pre-extraction standard to result in the final sample extract concentrations shown in Tables 23–7, 23–8, and 23–9 of this method, as applicable, spiked into the adsorbent, not on top of the adsorbent. Transfer the adsorbent material to the glass extraction thimble in the glass solvent rinse catch beaker. Rinse the module into the thimble in the beaker with the contents of Container No. 1. Alternatively, suspend the adsorbent module directly over the extraction thimble in a beaker, then, using a wash bottle containing methanol, flush the XAD–2 into the thimble onto the filter. Thoroughly rinse the interior of the glass module that contained the XAD–2 with toluene.

11.1.4 Container No. 2 (Acetone and Toluene Rinses). Concentrate the sample to a volume of no less than 5 mL. Concentrate samples containing toluene using a heating mantle and three-ball Snyder column or a rotary evaporator. Rinse sample Container No. 2 three times with small portions of toluene and add these to the concentrated solution and concentrate further to no less than 5 mL. This residue contains particulate matter removed in the rinse of the train probe and nozzle. Rinse the concentrated material from Container No. 2 into the glass extraction thimble containing the filter and the XAD–2 resin.

11.1.5 Transfer the solvent contained in the glass solvent rinse catch beaker to the extraction apparatus solvent reservoir. Rinse the beaker into the Soxhlet extraction apparatus solvent reservoir three times with small portions of toluene.

11.1.6 Container No. 3 (Impinger Water and Rinses). For PAH and PCB analysis, transfer the contents of Container No. 3 to a separatory funnel. Adjust to pH 2 with 6 N sulfuric acid, if necessary. Rinse the sample container with three successive 10-mL aliquots of the toluene and add these rinses to the separatory funnel. Extract the sample by vigorously shaking the separatory funnel for 5 minutes. After complete separation of the phases, remove the solvent and filter it through a bed of precleaned, dry sodium sulfate into the Soxhlet extraction apparatus solvent reservoir. Repeat the extraction step two additional times. Adjust the pH to 11 with 6 N sodium hydroxide, re-extract the impinger water and rinses, and filter it through a bed of precleaned, dry sodium sulfate into the Soxhlet extraction apparatus solvent reservoir. Rinse the sodium sulfate into the extraction apparatus solvent reservoir with fresh solvent and discard the sodium sulfate.

11.1.7 Add the appropriate pre-extraction standard for the target compound classes (to result in the final sample extract concentrations shown in Tables 23–7, 23–8, and 23–9 of this method) to the extraction thimble containing the combined filter and adsorbent sample fractions. Cover the contents of the extraction thimble with the cleaned glass wool plug to prevent the XAD–2 resin from splashing into the solvent reservoir of the extractor. Place the extraction thimble into the Soxhlet extraction apparatus.

11.1.8 Pour additional toluene to fill the solvent reservoir to approximately two-thirds capacity. Add PTFE boiling chips and assemble the apparatus.

11.1.9 Adjust the heat source to cause the extractor to cycle approximately three times per hour. Extract the sample for sufficient time to meet the pre-extraction standard recovery performance criteria in Section 13.15 of this method. The solvent should cycle completely through the system a minimum of 48 times.

11.2 Sample Aliquots for Cleanup and Analysis.

11.2.1 After extraction, allow the Soxhlet apparatus to cool.

11.2.2 Initial Extract Concentration. You may perform an initial concentration of the sample extract using the techniques (*e.g.,* Kuderna Danish, rotary evaporation, nitrogen blowdown) found to recover the pre-extraction standard sufficient to meet the performance criteria in Section 13.15 of this method. Concentrate initial extracts in toluene using a heating mantle and three-ball Snyder column or a rotary evaporator. Concentrate the field train proof blank and LMB samples in the same manner as samples.

Note: To meet isotopically labeled standard recoveries for low molecular weight PCB and PAH, do not evaporate samples to dryness and do not use a rotary evaporator to concentrate extracts.

11.2.3 Allow the sample extract to cool. You should use a minimum of one half of the sample extract for PCDD/PCDF analysis. You may archive the remaining sample extract or further split the sample extract for PCB and/or PAH analysis and archive.

Note: If using amount other than half the sample extract, adjust the spiking amount of the labeled standards accordingly.

11.2.4 If necessary, further concentrate the sample extract for cleanup and analysis using concentration techniques (*e.g.,* Kuderna Danish, rotary evaporation, nitrogen blowdown) found to recover the pre-extraction standard sufficient to meet the performance criteria in Section 13 of this method.

11.3 Sample Cleanup and Fractionation. You may process a separate aliquot/split of the sample extract for each of the compound classes analyzed by this method. Sample cleanup for each compound class may include techniques in addition to column chromatography such as acid/base back-extraction, Gel Permeation Chromatography, or high-performance liquid chromatography (HPLC) to isolate target compounds from interferences. This section includes a description of column chromatography shown to meet the performance criteria in Sections 9.2 and 13 of this method. The following sample cleanup and fractionation procedures are recommended but not required. You may modify cleanup column dimensions to meet manual or automated cleanup procedures as technology changes and improves. You must evaluate the cleanup and fractionation procedures used to confirm acceptable recovery of isotopically labeled standards. The alternative procedures must provide sufficient cleanup to meet method identification criteria (Section 11.4.3.4 of this method) and recovery criteria (Section 9.2 of this method). Section 13 of this method summarizes the method performance requirements.

Note: Recommendations in this section provide a cleanup approach that may allow multiple compound class measurement from a single aliquot of the original sample extract. Typically, Florisil® and alumina are used to separate PAH and PCDPE from PCDD and PCDF target compounds. Use acid, neutral, and basic silica gel and cleanup procedures to remove nonpolar and polar interferences from samples destined for PCB and PCDD/PCDF analysis. Use Carbopack®/Celite® (or other equivalent carbon-based column material) to remove other nonpolar interferences.

11.3.1 PAH and PCDPE Fractionation and Cleanup. You may use a Florisil® column to remove PAH and PCDPE from the sample extract. You may also fractionate sample extracts using Florisil® as the first cleanup step to separate PAH for analysis.

Note: High concentrations of PAH may interfere, leading to failure of performance criteria for PCDD/PCDF or PCB analysis.

11.3.1.1 Pack a 6-mm ID chromatographic column or equivalent diameter glass pipet with a glass wool plug followed by approximately 1.5 g (approximately 2 mL) of activated Florisil®. Add approximately 1 cm (approximately 1 mL) of anhydrous sodium sulfate followed by a glass wool plug to the head of the column. Pre-elute the column with 10 mL of methylene chloride followed by 10 mL of hexane and discard the eluate.

11.3.1.2 When the solvent is within 1 mm of the packing, transfer the concentrated extract (up to 5 mL) to the top of the Florisil® column, rinse the sample container twice with 1 to 2 mL of hexane, adding each rinse to the column, and elute the column with 35 mL of 5% dichloromethane in hexane. This fraction (Fraction 1) should contain target PCB, and selected hydrocarbons and chlorinated monoaromatic compounds.

11.3.1.3 Elute the column with 35 mL of 15% of dichloromethane in hexane and collect the eluate. This fraction (Fraction 2) should contain target PCDD/PCDF compounds.

11.3.1.4 Elute the column with 50 mL of 50% dichloromethane in hexane. The fraction (Fraction 3) should contain target PAH.

11.3.1.5 If necessary to remove any remaining polar organic compounds, elute the column with 70 mL of 15% acetone in hexane.

11.3.2 PCDD/PCDF and PCB Fractionation and Cleanup. You may remove PAH from the original aliquot of sample extract used for PCDD/PCDF analysis as described in Section 11.3.1 of this method. Design the column cleanup chromatography for PCDD/PCDF and PCB such that two consecutive fractions are collected (one with PCDD/PCDF and one with PCB) without impacting the detection limits. Depending on the source and sample matrix of the original sample, one or more of the following column cleanup approaches may be necessary to further remove polyhalogenated diphenyl ethers. You may use any number of permutations found in the referenced literature for this cleanup if the pre-extraction standard recoveries from field and LMB samples meet the associated performance criteria in Section 13 of this method. Alternatively, you may use an automated cleanup approach that meets the labeled spike recovery requirements in Section 13 of this method.

11.3.2.1 Silica Gel Column Chromatography. Pack one end of a glass column, approximately 20 mm ID × 230 mm long, with glass wool. Add in sequence to the glass column, 1 g of silica gel, 2 g of sodium hydroxide impregnated silica gel, 1 g of silica gel, 4 g of acid-modified silica gel, 1 g of silica gel, and 1 cm layer of anhydrous sodium sulfate. Pre-elute the column with 30 to 50 mL of hexane leaving a small quantity of hexane above the sodium sulfate layer. Discard the pre-elution hexane. Add the

sample extract, dissolved in 5 mL of hexane to the head of the column. Allow the sample to flow into the column leaving a small quantity of hexane above the sodium sulfate layer. Rinse the extract container with two additional 5-mL rinses of hexane and apply each rinse to the column separately as the previous addition elutes. Elute the column with an additional 90 mL of hexane and retain the entire eluate. Concentrate this solution to a volume of about 1 mL using the nitrogen evaporative concentrator (see Section 6.3.5 of this method).

11.3.2.2 Silver Nitrate Silica Gel Column Chromatography. Pack a column (6 mm ID, 150 mm in length) sequentially with 1 g of silica gel and 1 g of 10% silver nitrate silica gel followed by a layer of about 10 mm of sodium sulfate (anhydrous). Wash the column sufficiently with hexane, elute until the liquid level reaches to the upper end of the column, and then transfer the concentrated sample (about 5 mL). Rinse the container several times with a small amount of hexane, elute with 200 mL of hexane at a flow rate about 2.5 mL/min (approximately one drop per second) to elute PCDD/PCDF.

11.3.2.3 Multi-layer Silica Gel Column Chromatography. You may use a multi-layer silica gel column in place of separate silica columns. Pack a column of 20 mm ID and 300 mm in length sequentially by the dry pack method with 0.9 g of silica gel, 3.0 g of 2% potassium hydroxide silica gel, 0.9 g of silica gel, 4.5 g of 44% sulfuric acid silica gel, 6.0 g of 22% sulfuric acid silica gel, 0.9 g of silica gel, 3.0 g of 10% silver nitrate silica gel, 2.0 g of silica gel and 6.0 g of sodium sulfate (anhydrous). Wash the column sufficiently with hexane, elute until the liquid level reaches to the upper end of the column, and then load the sample solution. Rinse the container several times with a small amount of hexane, elute with 150–200 mL of hexane at a flow rate about 2.5 mL/min (approximately one drop per second) to elute PCDD/PCDF.

11.3.2.4 Basic Alumina Column Chromatography. Pack a column (20 mm ID, 300 mm in length) with approximately 6 to 12 g of basic alumina. Pre-elute the column with 50 to 100 mL of hexane. Transfer the concentrated extract from the previous column cleanup to the top of the basic alumina column. Allow the sample to flow into the column leaving a small quantity of solvent above the top of the bed. Rinse the extract container with two additional 1-mL rinses of hexane and apply each rinse to the column separately as the previous addition elutes. Elute the column with 100 mL hexane to remove the interferences. Elute the PCDD/PCDF from the column with 20 to 40 mL of 50% methylene chloride in hexane. The ratio of methylene chloride to hexane may vary depending on the activity of the alumina used in the column preparation. Do not let the head of the column go without solvent. The first 100 mL hexane eluate is not used for subsequent PCDD/PCDF analysis. The eluate is concentrated to approximately 0.5 mL using the nitrogen evaporative concentrator.

11.3.2.5 Carbopack® C/Celite® 545 Column or Equivalent. Cut both ends from a 10 mL disposable Pasteur pipette (see Section 6.4.1 of this method) to produce a 10 cm column. Fire-polish both ends and flare both ends if desired. Insert a glass wool plug at one end and pack the column with 0.55 g of Carbopack®/Celite® (see Section 7.8.9.4 of this method) to form an adsorbent bed approximately 2 cm long. Insert a glass wool plug on top of the bed to hold the adsorbent in place. Pre-elute the column with 5 mL of toluene followed by 2 mL of methylene chloride:methanol:toluene (15:4:1 volume/volume (v/v)), 1 mL of methylene chloride:cyclohexane (1:1 v/v), and 5 mL of hexane. If the flow rate of eluate exceeds 0.5 mL/minute, discard the column. Do not let the head of the column go without solvent. Add the sample extract to the column. Rinse the sample container twice with 1 mL portions of hexane and apply separately to the column. Apply 2 mL of hexane to the head of the column to complete the transfer. Elute the interfering compounds with two 3 mL portions of hexane, 2 mL of methylene chloride:cyclohexane (1:1 v/v), and 2 mL of methylene chloride:methanol:toluene (15:4:1 v/v). Discard the eluate. Invert the column and elute the PCDD/PCDF with 20 mL of toluene. If carbon particles are present in the eluate, filter through glass-fiber filter paper. Concentrate the eluate to approximately 0.5 mL using the nitrogen evaporative concentrator for further cleanup or analysis by HRGC/HRMS.

11.4 PCDD, PCDF, PCB and PAH Analysis.

11.4.1 Analyze the sample extract with an HRGC/HRMS using the instrumental parameters in Sections 11.4.2 and 11.4.3 of this method.

11.4.1.1 Immediately prior to analysis, add an aliquot (typically 20 microliters (µl)) of the pre-analysis standard to result in the final sample extract concentrations in Tables 23–7, 23–8, and 23–9 of this method to each sample as appropriate for the compounds you are measuring by this method.

11.4.1.2 Inject an aliquot of the sample extract into the GC, typically 1 µl. You may perform separate analyses using different GC columns for each of the target compound classes. Perform calibration and sample analysis for each target compound class using the same instrument operating conditions including injection volume.

11.4.1.2.1 If target compounds are not resolved sufficiently from other target compounds or interferences in the sample to meet the requirements in Section 10.2.3.5 or 10.2.3.6 of this method, as applicable to the compound class being analyzed, or as otherwise specified in an applicable regulation, permit, or other requirement, analyze sample (or another aliquot of the sample) using an alternative column that provides elution order to uniquely quantify the target compounds subject to interference on the first GC column.

11.4.1.2.2 You may use column systems other than those recommended in this method provided the analyst is able to demonstrate, using calibration and CCVs, that the alternative column system is able to meet the applicable specifications of Section 10.2.3.5 or 10.2.3.6 of this method.

11.4.2 Example Gas Chromatograph Operating Conditions.

11.4.2.1 Injector. Configured for capillary column, splitless, 250 °C (482 °F).

11.4.2.2 Carrier Gas. Helium, 1 to 2 mL/min.

11.4.2.3 Oven. Optimize the GC temperature program to achieve the required separation and target compound recovery for the GC column in use. Table 23–16 of this method presents the typical conditions for a DB5–MS column.

11.4.3 High-Resolution Mass Spectrometer.

11.4.3.1 Ionization Mode. Electron ionization.

11.4.3.2 Source Temperature. Maintain the source temperature in the range of 250 to 300 °C (482 to 572 °F).

11.4.3.3 Ion Monitoring Mode. Tables 23–4, 23–5, and 23–6 of this method summarize the various ions to be monitored for PCDD/PCDF, PAH, and PCB, respectively.

11.4.3.4 Identification Criteria for Target Compounds. Use the following identification criteria for the characterization of target compounds in this method. The available native and isotopically labeled standards allow the unique identification of all PCDD/PCDF, PAH, and selected PCB congeners analyzed in this method. Also see Sections 13.12 and 13.13 of this method for identification criteria for PCDD/PCDF/PCB and PAH target compounds, respectively.

11.4.3.4.1 For PCDD/PCDF and PCB, Table 23–15 of this method provides acceptance limits for the integrated ion abundance ratio of primary and secondary target compound ions. When the ion abundance ratio for a target analyte is outside the performance criteria, you may reanalyze samples on an alternative GC column to resolve chemical interferences, tune the mass spectrometer to operate at a higher mass resolution to discriminate against the interference(s), and/or further cleanup an archived sample to remove the interference(s). Report analysis results as an EMPC when a response meets identification criteria except the ion abundance ratio criteria or when a peak representing a PCDPE has been detected at the retention time. This method does not consider EMPC-flagged data to be zero concentrations.

Note: Some EMPCs may be caused by poor ion statistics when the concentration of the target compound is at or near the DL.

11.4.3.4.2 The retention time for the analytes must be within 3 seconds of the corresponding labeled pre-extraction standard.

11.4.3.4.3 The signals for the two exact masses in Tables 23–4 and 23–6 of this method for PCDD/PCDF and PCB, respectively, must be present and must reach their maximum response within two seconds of each other.

11.4.3.4.4 Identify and quantify specific target compounds or isomers that do not have corresponding pre-extraction standard compounds by comparing to the pre-extraction standard of the same compound class with the nearest retention time to target compound.

11.4.3.4.5 For the identification of specific PCB congeners, the retention time of the native congener must be within 0.006 relative retention time (RRT) units of the pre-extraction standard.

11.4.3.4.6 For qualitative identification, the S/N ratio for the GC signal present in every selected ion current profile for native compound response must be greater than or equal to 2.5.

11.4.3.4.7 The separation of target compounds, including 2,3,7,8–TeCDD and 2,3,7,8–TeCDF, must satisfy the separation criteria in Section 10.2.3.5 of this method and all the identification criteria specified in Sections 11.4.3.4.1 through 11.4.3.4.6 of this method. See Section 13.5 of this method on confirmation columns, if needed.

11.4.3.4.8 Chlorodiphenyl Ether Interference. If chromatographic peaks are detected at the retention time of any PCDF in any of the m/z channels used to monitor PCDPE, there is evidence of a positive interference and you may opt to flag data noting the interference and keep the value to calculate PCDF concentration as EMPC or reanalyze to remove or shift the interference. This method recommends alumina (see Section 11.3.2.4 of this method) and Florisil® (see Section 11.3.1 of this method) liquid column chromatography packing materials for removal of PCDPE during sample cleanup.

11.4.3.4.9 The recommended MS lock-mass ions are specified in Tables 23–4, 23–5, and 23–6 of this method for PCDD/PCDF, PAH, and PCB, respectively. Monitor the QC check ions to verify instrument stability during the analysis. If the QC check ion signal varies by more than 25% from the average response across the run, flag results for all isomers at corresponding retention time as the lock-mass ions or QC check ions. You have the option to reanalyze after additional cleanup on the sample (or an archived portion of the sample if the archive is available), or after dilution of the sample. Alternately, determine through additional quality review whether the target analyte and its corresponding isotopically labeled standard are equally affected by the change in lock-mass ions and/or QC check ions. When you reanalyze a sample, ensure all concentration calculations are reported from the reanalyzed sample.

11.4.3.4.10 For the identification of PAH, the RRT of each native to its labeled compound must be within 0.006 RRT units compared to the corresponding RRTs in the continuing calibration. The signals for the characteristic ion listed in Table 23–5 of this method must be present.

11.4.3.5 Quantitation. Measure the response of each native target compound and the corresponding pre-extraction standard. Using the CCV RRF, calculate the mass of each target compound, using equations in Section 12.7 of this method. Use the pre-extraction standard to correct the native target compounds result for variations in performance of the extraction, cleanup, and concentration steps of the analysis. Recovery of pre-extraction standard must meet the minimum specifications in Section 9.2. of this method to ensure that the method performance and reliability have not been compromised by unacceptable losses during sample processing. Table 23–17 of this method shows the assignments for pre-extraction standard compounds for use in calculating the response factor and the concentrations of PCB. Recoveries of all labeled standard compounds must meet the minimum recovery specifications in Section 13 of this method. Note: Unacceptably low recoveries can be an indication of a sample processing step that caused the low recoveries, such as spiking errors.

11.4.3.5.1 Use Equation 23–7 to calculate the amount of each target compound or group in the sample.

11.4.3.5.2 Use Equation 23–8 to calculate the concentration per dscm of each target compound or group in the gas.

11.4.3.5.3 Quantify native PCDD and PCDF in its homologous series using the corresponding native and pre-extraction standard response in its homologous series. For example, use $^{13}C_{12}$-2,3,7,8-TeCDD to calculate the concentrations of all other tetra chlorinated isomers.

11.4.3.5.4 As an option or as required or specified in applicable regulations, permits, or other requirements, you may quantify any or all other PCB congeners as resolved or coeluting combinations using the RRF of the nearest eluting native target PCB in the same homolog group and the pre-extraction standard assigned in Appendix A to this method.

11.4.3.5.5 As an option or as required or specified in applicable regulations, permits, or other requirements, report the total concentration of congeners at a given level of chlorination (homolog; *i.e.,* total TrCB, total PeCB, total HxCB, etc.) by summing the concentrations of all congeners identified in the retention time window for the homologs as assigned in Appendix A to this method.

11.4.3.5.6 As an option or if required in an applicable regulation, permit or other requirement, total PCB may be reported by summing all congeners identified at all window-defining congeners (WDCs) as assigned in Appendix A to this method.

12.0 Data Analysis and Calculations

Note: Same as Section 12 of Method 5 of Appendix A–3 to 40 CFR part 60, with the following additions.

12.1 Nomenclature.

$A1_n$ = Integrated ion current of the primary m/z values for the target native compound.

$A1_{pe}$ = Integrated ion current of the primary m/z values for the pre-extraction standard compound (assigned in Tables 23–4, 23–5, and 23–6 of this method).

$A1_{pa}$ = Integrated ion current of the primary m/z values for the pre-analysis standard compound.

$A2_n$ = Integrated ion current of the secondary m/z values for the target native compound. For PAH $A2_n = 0$.

$A2_{pe}$ = Integrated ion current of the secondary m/z's for the pre-extraction standard compound. For PAH $A2_l = 0$.

$A2_{pa}$ = Integrated ion current of the secondary m/z values for the pre-analysis standard compound.

C_i = Mass of compound i in the sample, pg.

C_{idscm} = Concentration of target native compound i in the emission gas, pg/dscm.

C_T = Total mass of target compounds in the sample, pg/sample.

dscm = Dry standard cubic meters of gas volume sample measured by the dry gas meter, corrected to standard conditions.

H_{ai} = Summed heights of the noise for each quantitation ion for native target compounds.

H_{ci} = Summed heights of the noise at the primary and secondary m/z's of the pre-extraction standard i.

L_{PIR} = Lower limit for the prediction interval of results.

n = Number of values.

PD = Percent Difference in the RRF of the continuing calibration verification compared to the average RRF of the initial calibration, %.

Q_n = Quantity of the target native compound, pg.

Q_{pe} = Quantity of the pre-extraction standard, pg.

Q_{pa} = Quantity of the pre-analysis standard, pg.

R = Recovery of pre-sampling adsorbent standard and pre-extraction filter recovery standard, %.

R_{pe} = Recovery of pre-extraction standard, %.

RRF_i = Relative response factor of a native target compound or pre-sampling adsorbent standard and pre-extraction filter recovery standard at calibration level i.

RRF_{pe} = Relative response factor of a pre-extraction standard compound.

RRF_{ccv} = Relative response factor of a native target compound or pre-sampling adsorbent standard and pre-extraction filter recovery standard in the continuing calibration verification.

RSD = Relative standard deviation, in this case, of RRFs over the calibration levels, %.

SD = Standard deviation.

SD_{RRF} = Standard deviation of initial calibration RRFs.

U_{PIR} = Upper limit for the prediction interval of results.

WDC = Window-defining congener representing an isotopically labeled compound that defines the beginning or end of a retention time window bracketing a target homolog.

12.2 Individual Compound RRF for Each Calibration Level i. Equation 23–1 for the response factor of each target native compound relative to its labeled pre-extraction standard analog includes the integrated ion current of both the primary and secondary m/z values for each compound in the calibration standard, excluding PAH, which use only primary m/z values. Use Equation 23–2 to calculate the RRF for pre-extraction standard.

$$RRF_i = \frac{(A1_n + A2_n)Q_{pe}}{(A1_{pe} + A2_{pe})Q_n} \quad \text{Eq. 23-1}$$

$$RRF_{pe} = \frac{(A1_{pe} + A2_{pe})Q_{pa}}{(A1_{pa} + A2_{pa})Q_{pe}} \quad \text{Eq. 23-2}$$

Note: the units for Q_{pe} and Q_n in Eq. 23–1 and the units for Q_{pa} and Q_{pe} in Equation 23–2 must be the same.

12.3 Average RRF for Each Compound Over the Minimum of Five Calibration Levels.

$$\overline{RRF} = \frac{1}{n}\sum_{i=1}^{n} RRF_i \quad \text{Eq. 23-3}$$

12.4 Percent RSD of the RRFs for a Compound Over the Calibration Levels. The requirement for the initial calibration RSD is in Section 13.9 and Table 23–14 of this method.

$$\%RSD = \frac{SD_{RRF}}{\overline{RRF}} x\ 100\% \quad \text{Eq. 23-4}$$

12.5 Standard Deviation of the RRFs for a Compound Over the Calibration Levels.

$$SD_{RRF} = \sqrt{\sum_{i=1}^{n} \frac{(x_i - \bar{x})^2}{n-1}} \quad \text{Eq. 23-5}$$

12.6 Percent Difference of the RRF of the Continuing Calibration Verification Compared to the Average RRF from the Initial Calibration for Each Target Compound. Use Equation 23–1 to calculate the RRF for the continuing calibration verification for comparison to the average RRF from the initial calibration. The requirement for the continuing calibration verification % difference is in Section 13.10 and Table 23–14 of this method.

$$PD = \frac{RRF_{ccv} - \overline{RRF}}{\overline{RRF}} x\ 100\% \quad \text{Eq. 23-6}$$

12.7 Amount of Individual Target Compound i in the Sample by Isotope Dilution (pg). This equation corrects for the target native compound recovery based on its labeled pre-extraction standard analog. This equation is also used to calculate the amount of pre-sampling adsorbent standard and pre-extraction filter recovery standard recovered.

$$C_i = \left[\frac{Q_{pe}\,(A1_n + A2_n)}{(A1_{pe} + A2_{pe})RRF_{CCV}}\right] \quad \text{Eq. 23-7}$$

Note: For the quantitation of the pre-sampling adsorbent standard and the pre-extraction filter recovery standard, use a corresponding pre-extraction isomer (or homolog) with the closest retention time.

12.8 Concentration of the Individual Target Compound or Group i in the Emission Gas (pg/dscm). The total concentration of a target compound group in the sample can be calculated by substituting C_T from Eq. 23–12 for C_i in Equation 23–8.

$$C_{idscm} = \frac{C_i}{dscm} \quad \text{Eq. 23-8}$$

12.9 Recovery of Labeled Compound Standards. Use Equation 23–9 to determine the recovery of pre-sampling adsorbent standard and the pre-extraction filter recovery standard. Use Equation 23–10 to determine the recovery of the pre-extraction standard. The recovery performance criteria for these standards are in Sections 13.14, 13.15, and 13.16 of this method.

$$R = \frac{conc.\ found}{conc.\ spiked}\ x\ 100\% \qquad \text{Eq. 23-9}$$

$$R_{pe} = \left[\frac{Q_{pa}\,(A1_{pe}+A2_{pe})}{(A1_{pa}+A2_{pa})(Q_{pe})(RRF_{pe})}\right] x\ 100\% \qquad \text{Eq. 23-10}$$

Note: Recovery may be calculated based on mass instead of concentration, as needed.

Note: R_{pe} must be corrected for the fraction of the original sample extract used for analysis. (*e.g.,* if half of the extract is used for analysis of the target class, R_{pe} must be multiplied by a factor of 2).

12.10 Estimated Detection Limit (EDL).

$$EDL = \frac{2.5\ (H_{ai})\ Q_{pe}}{H_{ci}\ x\ RRF_{CCV}} \qquad \text{Eq. 23-11}$$

12.11 Total Target Compound Mass.

$$C_T = \sum_{i=1}^{n} C_i \qquad \text{Eq. 23-12}$$

Note: Unless otherwise specified in applicable regulations, permits or other requirements, count any target compounds reported as non-detected as EDL when calculating the concentration of target compounds in the sample.

12.12 Upper and Lower Limits for the Prediction Interval of Results (PIR)

Half Range (HR) for the Predication Interval of Results

$$HR_{PIR} = (3.963)(S) \qquad \text{Eq. 23-13}$$

Note: 3.963 is a constant value for seven replicates.

Upper and Lower Limits for the Prediction Interval of Results

$$U_{PIR} = \left[\frac{(Mean+HR_{PIR})}{Spike\ Concentration}\right] 100\% \qquad \text{Eq. 23-14}$$

$$L_{PIR} = \left[\frac{(Mean-HR_{PIR})}{Spike\ Concentration}\right] 100\% \qquad \text{Eq. 23-15}$$

13.0 Method Performance

Data generated with this method must be fit for purpose. Applicable results of method performance criteria in this section must be reported. Consequences of failed quality criteria are provided with the criteria in this section.

13.1 Background Assessment—Field Train Proof Blank, LMB and Materials. Determine the contribution to target compound concentration from reagents, media and glassware used to make target compound measurements. Conduct at least one field train proof blank for each test series at a single facility. Analyze at least one LMB sample during an analytical sequence or every 12 hours, whichever is shorter. Native target compound concentrations in the field train proof blank, LMB and materials assessment must be less than or equal to three times the EDL of the method or 10 times lower than the quantitation limit required by the end use of the data (*e.g.,* compliance limit or other limits set by consent decree or permit), whichever is higher. The field train proof blank, LMB and materials assessment must also meet the performance specifications in Tables 23–7, 23–8, and 23–9, as applicable to the compound target list.

13.2 GC column or column systems used to measure PCDD/PCDF must meet the column separation requirements in Section 6.5.2.1 of this method and the applicable requirements in Sections 10.2.3.5 and 11.4.3.4 of this method using the continuing calibration verification. Failure to meet this chromatographic resolution criterion requires data from this analysis to be flagged explaining the potential bias of the results.

13.3 GC column or column systems used to measure PAH must meet the column separation requirements in Section 6.5.2.2 of this method and the applicable requirements in Sections 10.2.3.5 and 11.4.3.4 of this method using the continuing calibration check. Failure to meet this chromatographic resolution criterion requires data from this analysis to be flagged explaining the potential bias of the results.

13.4 GC column or column systems used to measure PCB must meet the column separation requirements in Section 6.5.2.3 of this method and the applicable requirements in Sections 10.2.3.5 and 11.4.3.4 of this method using the continuing calibration check and be able to achieve unique resolution and identification of the toxics for determination of a $TEQ_{PCB.}$ The rule requiring the use of this method will establish which WHO TEF to use. Failure to meet this chromatographic resolution criterion requires data from this analysis to be flagged explaining the potential bias of the results.

13.5 Confirmation Column. If target compounds are not sufficiently resolved from other target compounds or interferences in the sample to meet the requirements for target compounds in Sections 13.2, 13.3, and/or 13.4 of this method, analyze sample (or another aliquot of the sample) using an alternative column that provides elution order to uniquely quantify the target compounds subject to interference on the first GC column. When using a confirmation column, document the required resolution.

13.6 Detection Limits.

13.6.1 MDL. The MDLs are determined following the procedures in Section 9.3.7 of this method. MDLs are confirmed by

preparing and analyzing a spiked sample (spiked at 1 to 5 times the determined MDL, see Section 9.3.8), then confirm that the target compounds meet the qualitative identification criteria in Section 11.4.3.4 of this method. If the MDL confirmation criteria are not met, the MDL determination is repeated with a higher spike concentration until criteria are met.

13.6.2 EDL. If the sample specific EDLs are less than 50% of the emission standard, the EDLs are acceptable.

13.7 Tune. The groups of monitored ions are listed in Tables 23–4, 23–5, and 23–6 of this method, as applicable for the target compound class. Tune the instrument to meet the required resolving power in Section 10.2.1 for the desired target compound class. Assess the resolution at three exact m/z's representing the low-, mid-, and high-m/z range of the masses used to measure the target compound class. You may use peak matching and the chosen PFK (or FC43) reference peak to verify that the exact mass is within 5 ppm of the required value.

13.8 Lock-Mass Ions. The MS lock-mass and QC check ions in Tables 23–4, 23–5, and 23–6 of this method are recommended for PCDD/PCDF, PCB, or PAH, respectively. The reference compounds PFK or FC43 have ions that may be selected as your lock-mass and QC check ions. Monitor the QC check ions specified in these tables to verify instrument stability during the analysis; these must not vary >25% from the average response. Additional cleanup on sample extract (or archive extract) and reanalysis is necessary for failure to maintain lock-mass during analysis.

13.9 Initial Calibration.

13.9.1 The RSD for mean RRF from each of the target analytes and labeled standards in the calibration samples must not exceed the values in Table 23–14 of this method.

13.9.2 The S/N in every selected ion current profile must be ≥10 for all unlabeled targets and labeled standards in the calibration samples.

13.9.3 The ion abundance ratios must be within the control limits in Table 23–15 of this method.

13.10 Continuing Calibration Verification.

13.10.1 The RRF for each unlabeled and labeled compound measured in a CCV must not deviate from the initial calibration RRF by more than the limits shown in Table 23–14 of this method.

13.10.2 The ion abundance ratios must be within the control limits in Table 23–15 of this method.

13.10.3 The S/N ratio for the GC/MS signal present in every selected ion current profile must be greater than or equal to 10.

13.10.4 Repeat the initial calibration when there is a failure to meet the requirements for an acceptable CCV analysis.

13.10.5 Column Separation Check. Use the results from a CCV to verify and document the resolution required in Sections 13.2, 13.3, or 13.4 of this method for the target compound classes analyzed with this method. The separation criteria are applicable to all the compounds in a target class whether analyzed by a single or multiple GC columns. If a confirmation column is used, document required resolution (see Section 13.5).

13.11 QCS. A QCS must be analyzed during the IDC and after initial calibrations (at a minimum quarterly). The acceptance criterion for the QCS is 70–130% of the true value. If the accuracy for any analyte fails the recovery criterion, prepare a fresh standard dilution and repeat. If the freshly prepared QCS fails, determine the cause, recalibrate the instrument if necessary and reanalyze the QCS.

13.12 Compound Identification for PCDD/PCDF and PCB.

13.12.1 Target compounds must have ion abundance ratios within the control limits in Table 23–15 of this method. PAH target compounds have single ion identifiers with no ion abundance ratio requirement. Report analysis results as an EMPC when a response meets identification criteria but fails the ion abundance ratio criteria or when a peak representing a PCDPE has been detected at the target compound retention time.

13.12.2 The retention time for the analytes must be within 3 seconds of the corresponding pre-extraction standard.

13.12.3 The monitored ions, shown in Table 23–4 of this method for a given PCDD/PCDF, must reach their maximum response within 2 seconds of each other.

13.12.4 The monitored ions, shown in Table 23–6 of this method for a given PCB, must reach their maximum response within 2 seconds of each other.

13.12.5 For the identification of specific PCB, the RRT of the native congener must be within 0.006 RRT units of the pre-extraction standard RRT.

13.12.6 The S/N ratio for the monitored ions for native compounds must be greater than or equal to 2.5.

13.12.7 Identify and quantify isomers that do not have corresponding pre-extraction standard compounds by comparing to the pre-extraction standard of the same compound class with the nearest retention time to the target compound.

13.12.8 If chromatographic peaks are detected at the retention time of any PCDD/PCDF in any of the m/z channels used to monitor PCDPE, there is evidence of interference and positive bias. Data must be flagged to indicate an interference. You may report the total with bias for the affected target. To reduce the bias, you may use a confirmatory column or perform additional clean up on an archived sample followed by reanalysis.

13.13 Compound Identification for PAH.

13.13.1 The signals for the characteristic ion listed in Table 23–5 of this method must be present.

13.13.2 The RRT between each native and labeled compound must be within 0.006 RRT units.

13.14 Pre-sampling Adsorbent Standard and Pre-extraction Filter Recovery Standard Recovery. Recoveries of pre-sampling adsorbent standard added to the sample and pre-extraction filter recovery standard added to the filter must be between 70 and 130% (see Tables 23–7, 23–8, and 23–9 of this method).

13.14.1 If the recovery of all the pre-sampling adsorbent standard compounds is below 70%, the sampling runs are not valid, and you must repeat the stack or vent sampling. As an alternative, you do not have to repeat the test if the average pre-sampling adsorbent standard recovery is 25% or more and you divide the final results by the average fraction of pre-sampling adsorbent standard recovery.

13.14.2 If the recovery of all the pre-extraction filter recovery standard compounds is below 70%, you may reanalyze the sample. If the recovery criteria are still not met, the sampling recovery is not valid, and you must repeat the stack or vent sampling.

13.15 Pre-extraction Standard Recovery. Recoveries of all pre-extraction standard compounds added to the sample must be between 20 to 130% for PCDD/PCDF and PAH (see Tables 23–7 and 23–8 of this method) and between 20 to 145% for PCB (see Table 23–9 of this method). If the recovery criteria are not met, you may reanalyze the sample and/or prepare and analyze the archive sample. If the recovery criteria are still not met, the sampling run is not valid, and the stack test must be repeated.

13.16 Pre-analysis Standard Response. Response of all pre-analysis standard compounds must show a S/N for every selected ion current profile of ≥ 10. If the minimum response is not met, you must reanalyze the sample. Poor sensitivity compared to initial calibration response may indicate injection errors or instrument drift.

13.17 IDC—Lowest calibration concentration, Demonstration of precision, Demonstration of accuracy.

13.17.1 Lowest calibration concentration. The Upper PIR Limit must be less than, or equal, to 150%; and the Lower PIR Limit must be greater than, or equal to, 50%. If these criteria are not met, the lowest calibration point has been set too low and must be confirmed at a higher concentration.

13.17.2 Demonstration of precision. The percent relative standard deviation (%RSD) of the concentrations from the replicate analyses must be less than 20% for all target analytes. Demonstration would be repeated for failed compounds only.

13.17.3 Demonstration of accuracy. The average % recovery for each target analyte must be within 70 to 130%. Demonstration would be repeated for failed compounds only.

13.18 Requirements for Equivalency. The Administrator considers any modification of this method, beyond those expressly permitted in this method as options, to be a major modification subject to application and approval of alternative test procedures following EPA Guidance Document 22 currently found at: *https://www.epa.gov/emc/emc-guideline-documents.*

13.19 Records. As part of the laboratory's quality system, the laboratory must maintain records of modifications to this method.

14.0 Pollution Prevention

The target compounds used as standards in this method are prepared in extremely small amounts and pose little threat to the environment when managed properly. Prepare standards in volumes consistent with laboratory use to minimize the disposal of excess volumes of expired standards.

15.0 Waste Management

15.1 The laboratory is responsible for complying with all federal, state, and local regulations governing waste management, particularly the hazardous waste identification rules and land disposal restrictions, and for protecting the air, water, and land by minimizing and controlling all releases from fume hoods and bench operations. The laboratory must also comply with any sewage discharge permits and regulations. The EPA's *Environmental Management Guide for Small Laboratories* (EPA 233–B–98–001) provides an overview of requirements.

15.2 Samples containing hydrogen chloride or sulfuric acid to pH <2 are hazardous and must be handled and disposed in accordance with federal, state, and local regulations.

15.3 For further information on waste management, consult *The Waste Management Manual for Laboratory Personnel* and *Less is Better-Laboratory Chemical Management for Waste Reduction,* available from the American Chemical Society's Department of Government Relations and Science Policy, 1155 16th Street NW, Washington, DC 20036.

16.0 Bibliography

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17.0 Tables, Diagrams, Flowcharts, and Validation Data

TABLE 23–1—POLYCHLORINATED DIBENZO-*p*-DIOXIN AND POLYCHLORINATED DIBENZOFURAN TARGET ANALYTES

Polychlorinated dibenzo-*p*-dioxins	CAS [a] Registry No.	Polychlorinated dibenzofurans	CAS[a] Registry No.
2,3,7,8-TeCDD	1746–01–6	2,3,7,8-TeCDF	51207–31–9
1,2,3,7,8-PeCDD	40321–76–4	1,2,3,7,8-PeCDF	57117–41–6
1,2,3,4,7,8-HxCDD	39227–28–6	2,3,4,7,8-PeCDF	57117–31–4
1,2,3,6,7,8-HxCDD	57653–85–7	1,2,3,4,7,8-HxCDF	70648–26–9
1,2,3,7,8,9-HxCDD	19408–74–3	1,2,3,6,7,8-HxCDF	57117–44–9
1,2,3,4,6,7,8-HpCDD	35822–46–9	1,2,3,7,8,9-HxCDF	72918–21–9
Total TeCDD	41903–57–5	2,3,4,6,7,8-HxCDF	60851–34–5
Total PeCDD	36088–22–9	1,2,3,4,6,7,8-HpCDF	67562–39–4
Total HxCDD	34465–46–8	1,2,3,4,7,8,9-HpCDF	55673–89–7
Total HpCDD	37871–00–4	Total TeCDF	55722–27–5
OCDD	3268–87–9	Total PeCDF	30402–15–4
		Total HxCDF	55684–94–1
		Total HpCDF	38998–75–3
		OCDF	39001–02–0

[a] Chemical Abstract Service.

TABLE 23–2—POLYCYCLIC AROMATIC HYDROCARBON TARGET ANALYTES

Polycyclic aromatic hydrocarbons	CAS [a] Registry No.	Polycyclic aromatic hydrocarbons	CAS [a] Registry No.
Naphthalene	91–20–3	Chrysene	218–01–9
2-Methylnaphthalene	91–57–6	Benzo[*b*]fluoranthene	205–99–2
Acenaphthylene	208–96–8	Benzo[*k*]fluoranthene	207–08–9
Acenaphthene	83–32–9	Perylene	198–55–8
Fluorene	86–73–7	Benzo[*a*]pyrene	50–32–8
Anthracene	120–12–7	Benzo[*e*]pyrene	192–97–2
Phenanthrene	85–01–8	Benzo[*g,h,i*]perylene	191–24–2
Fluoranthene	206–44–0	Indeno[*1,2,3-cd*]pyrene	193–39–5
Pyrene	129–00–0	Dibenz[*a,h*]anthracene	53–70–3
Benz[*a*]anthracene	56–55–3		

[a] Chemical Abstract Service.

TABLE 23–3—POLYCHLORINATED BIPHENYL TARGET ANALYTES

PCB congener	BZ No.[a]	CAS [b] Registry No.	PCB congener	BZ No.[a]	CAS [b] Registry No.
2,4′-DiCB	8	34883–43–7	2,2′,3,3′,4,4′-HxCB	128	38380–07–3
2,2′,5-TrCB	18	37680–65–2	2,2′,3,4,4′,5′-HxCB	138	35065–28–2
2,4,4′-TrCB	28	7012–37–5	2,2′,4,4′,5,5′-HxCB	153	35065–27–1
2,2′,3,5′-TeCB	44	41464–39–5	2,3,3′,4,4′,5-HxCB	156	38380–08–4
2,2′,5,5′-TeCB	52	35693–99–3	2,3,3′,4,4′,5′-HxCB	157	69782–90–7
2,3′,4,4′-TeCB	66	32598–10–0	2,3′,4,4′,5,5′-HxCB	167	52663–72–6
3,3′,4,4′-TeCB	77	32598–13–3	3,3′,4,4′,5,5′-HxCB	169	32774–16–6
3,4,4′,5-TeCB	81	70362–50–4	2,2′,3,3′,4,4′,5-HpCB	170	35065–30–6
2,2′,4,5,5′-PeCB	101	37680–73–2	2,2′,3,4,4′,5,5′-HpCB	180	35065–29–3
2,3,3′,4,4′-PeCB	105	32598–14–4	2,2′,3,4′,5,5′,6-HpCB	187	52663–68–0
2,3,4,4′,5-PeCB	114	74472–37–0	2,3,3′,4,4′,5,5′-HpCB	189	39635–31–9
2,3′,4,4′,5-PeCB	118	31508–00–6	2,2′,3,3′,4,4′,5,6-OcCB	195	52663–78–2
2′,3,4,4′,5-PeCB	123	65510–44–3	2,2′,3,3′,4,4′,5,5′,6-NoCB	206	40186–72–9
3,3′,4,4′,5-PeCB	126	57465–28–8	2,2′,3,3′,4,4′,5,5′,6,6′-DeCB	209	2051–24–3

[a] BZ No.: Ballschmiter and Zell 1980, or International Union of Pure and Applied Chemistry (IUPAC) number.
[b] Chemical Abstract Service.

TABLE 23–4—ELEMENTAL COMPOSITIONS AND EXACT MASSES OF THE IONS MONITORED BY HIGH-RESOLUTION MASS SPECTROMETRY FOR PCDD AND PCDF

Mass [a]	Ion type [b]	Elemental composition	Target analyte [b]	Mass [a]	Ion type [b]	Elemental composition	Target analyte [b]
263.9871	LOCK	$C_5F_{10}N$	FC43	383.8639	M	$^{13}C_{12}H_2{}^{35}Cl_6O$	HxCDF (S).
292.9825	LOCK	C_7F_{11}	PFK	385.8610	M+2	$^{13}C_{12}H_2{}^{35}Cl_5{}^{37}ClO$	HxCDF (S).
303.9016	M	$C_{12}H_4{}^{35}Cl_4O$	TeCDF	389.8157	M+2	$C_{12}H_2{}^{35}Cl_5{}^{37}ClO_2$	HxCDD.
305.8987	M+2	$C_{12}H_4{}^{35}Cl{}^{37}ClO$	TeCDF	391.8127	M+4	$C_{12}H_2{}^{35}Cl_4{}^{37}Cl_2O_2$	HxCDD.
313.9839	QC	$C_6F_{12}N$	FC43	392.9760	LOCK	C_9F_{15}	PFK.
315.9419	M	$^{13}C_{12}H_4{}^{35}Cl_4O$	TeCDF (S)	401.8559	M+2	$^{13}C_{12}H_2{}^{35}Cl_5{}^{37}ClO_2$	HxCDD (S).
316.9745	M+2	$^{13}C_{12}H_4{}^{35}Cl_3{}^{37}ClO$	TeCDF (S)	403.8529	M+4	$^{13}C_{12}H_2{}^{35}Cl_4{}^{37}Cl_2O$	HxCDD (S).
317.9389	M+2	$^{13}C_{12}H_4{}^{35}Cl_2{}^{37}ClO$	TeCDF (S)	425.9775	QC	$C_9F_{16}N$	FC43.
319.8965	M	$C_{12}H_4{}^{35}Cl_4O_2$	TeCDD	445.7555	M+4	$C_{12}H_2{}^{35}Cl_6{}^{37}Cl_2O$	OCDPE.
321.8936	M+2	$C_{12}H_4{}^{35}Cl_3{}^{37}ClO_2$	TeCDD	407.7818	M+2	$C_{12}H^{35}Cl_6{}^{37}ClO$	HpCDF.
325.9839	QC	$C_7F_{12}N$	FC43	409.7789	M+4	$C_{12}H^{35}Cl_5{}^{37}Cl_2O$	HpCDF.
330.9792	QC	C_7F_{13}	PFK	417.8253	M	$^{13}C_{12}H^{35}Cl_7O$	HpCDF (S).
331.9368	M	$^{13}C_{12}H_4{}^{35}Cl_4O_2$	TeCDD (S)	419.8220	M+2	$^{13}C_{12}H^{35}Cl_6{}^{37}ClO$	HpCDF (S).
333.9339	M+2	$^{13}C_{12}H_4{}^{35}Cl_3{}^{37}ClO_2$	TeCDD (S)	423.7766	M+2	$C_{12}H^{35}Cl_6{}^{37}ClO_2$	HpCDD.
339.8597	M+2	$C_{12}H_3{}^{35}Cl_4{}^{37}ClO$	PeCDF	425.7737	M+4	$C_{12}H^{35}Cl_5{}^{37}Cl_2O_2$	HpCDD.
341.8567	M+4	$C_{12}H_3{}^{35}Cl_3{}^{37}Cl_2O$	PeCDF	430.9729	QC	C_9F_{17}	PFK.
354.9792	LOCK	C_9F_{13}	PFK	435.8169	M+2	$^{13}C_{12}H^{35}Cl_6{}^{37}ClO_2$	HpCDD (S).
351.9000	M+2	$^{13}C_{12}H_3{}^{35}Cl_4{}^{37}ClO$	PeCDF (S)	437.8140	M+4	$^{13}C_{12}H^{35}Cl_5{}^{37}Cl_2O_2$	HpCDD (S).
353.8970	M+4	$^{13}C_{12}H_3{}^{35}Cl_3{}^{37}Cl_2O$	PeCDF (S)	442.9728	LOCK	$C_{10}F_{17}$	PFK.
355.8546	M+2	$C_{12}H_3{}^{35}Cl_4{}^{37}ClO_2$	PeCDD	479.7165	M+4	$C_{12}H^{35}Cl_7{}^{37}Cl_2O$	NCPDE.
357.8516	M+4	$C_{12}H_3{}^{35}Cl_3{}^{37}Cl_2O_2$	PeCDD	430.9729	LOCK	C_9F_{17}	PFK.
367.8949	M+2	$^{13}C_{12}H_3{}^{35}Cl_4{}^{37}ClO_2$	PeCDD (S)	441.7428	M+2	$C_{12}{}^{35}Cl_7{}^{37}ClO$	OCDF.
369.8919	M+4	$^{13}C_{12}H_3{}^{35}Cl_3{}^{37}Cl_2O_2$	PeCDD (S)	443.7399	M+4	$C_{12}{}^{35}Cl_6{}^{37}Cl_2O$	OCDF.
375.9807	QC	$C_8F_{14}N$	FC43	457.7377	M+2	$C_{12}{}^{35}Cl_7{}^{37}ClO_2$	OCDD.
375.8364	M+2	$C_{12}H_4{}^{35}Cl_5{}^{37}ClO$	HxCDPE	459.7348	M+4	$C_{12}{}^{35}Cl_6{}^{37}Cl_2O_2$	OCDD.
409.7974	M+2	$C_{12}H_3{}^{35}Cl_6{}^{37}ClO$	HpCPDE	463.9743	QC	$C_9F_{18}N$	FC43.
373.8208	M+2	$C_{12}H_2 35Cl_5{}^{37}ClO$	HxCDF	469.7779	M+2	$^{13}C_{12}{}^{35}Cl_7{}^{37}ClO_2$	OCDD (S).
375.8178	M+4	$C_{12}H_2{}^{35}Cl_4{}^{37}Cl_2O$	HxCDF	471.7750	M+4	$^{13}C_{12}{}^{35}Cl_6{}^{37}Cl_2O_2$	OCDD (S).
375.9807	QC	$C_8F_{14}N$	FC43	513.6775	M+4	$C_{12}{}^{35}Cl_8{}^{37}Cl_2O_2$	DCDPE.
				442.9728	QC	$C_{10}F_{17}$	PFK.

[a] The following nuclidic masses were used to calculate exact masses: H = 1.007825, C = 12.000000, ^{13}C = 13.003355, F = 18.9984, O = 15.994915, ^{35}C l= 34.968853, ^{37}Cl = 36.965903.
[b] (S) = Labeled Standard. LOCK = Lock-Mass Ion PFK or FC43. QC = Quality Control Check Ion. Note: Consider monitoring 328 m/z if a high level of PCB is expected.

TABLE 23–5—ELEMENTAL COMPOSITIONS AND EXACT MASSES OF THE IONS MONITORED BY HIGH-RESOLUTION MASS SPECTROMETRY FOR PAH

Aromatic ring No.	Mass [a]	Ion type [b]	Elemental composition	Target analyte
2	128.0624	M	$C_{10}H_8$	Naphthalene.
	130.9920	LOCK		PFK/FC43.
2	134.0828	M	$^{13}C_6{}^{12}C_4H_8$	$^{13}C_6$-Naphthalene.
2	142.078	M	$C_{11}H_{10}$	2-Methylnaphthalene.
2	148.0984	M	$^{13}C_6{}^{12}C_5H_{10}$	$^{13}C_6$-2-Methylnaphthalene.
2	152.0624	M	$C_{12}H_8$	Acenaphthylene.
2	158.0828	M	$^{13}C_6{}^{12}C_6H_8$	$^{13}C_6$-Acenaphthylene.
2	154.078	M	$C_{12}H_{10}$	Acenaphthene.
2	160.078	M	$^{13}C_6{}^{12}C_6H_{10}$	$^{13}C_6$-Acenaphthene.
2	166.078	M	$C_{13}H_{10}$	Fluorene.
	169.988	QC		PFK/FC43.
2	172.0984	M	$^{13}C_6{}^{12}C_7H_{10}$	$^{13}C_6$-Fluorene.
3	178.078	M	$C_{14}H_{10}$	Phenanthrene.
3	184.0984	M	$^{13}C_6\ {}^{12}C_8H_{10}$	$^{13}C_6$-Phenanthrene.
3	178.078	M	$C_{14}H_{10}$	Anthracene.
3	184.078	M	$^{13}C_6{}^{12}C_8H_{10}$	$^{13}C_6$-Anthracene.
3	202.078	M	$C_{16}H_{10}$	Fluoranthene.
	204.9888	QC		PFK.
3	208.0984	M	$^{13}C_6{}^{12}C_{10}H_{10}$	$^{13}C_6$-Fluoranthene.
4	202.078	M	$C_{16}H_{10}$	Pyrene.
4	205.078	M	$^{13}C_3{}^{12}C_{13}H_{10}$	$^{13}C_3$-Pyrene.
	213.9898	QC		FC43.
	218.9856	LOCK		FC43.
4	228.0936	M	$C_{18}H_{12}$	Benz[*a*]anthracene.
	230.9856	LOCK		PFK.
4	234.114	M	$^{13}C_6C_{12}H_{12}$	$^{13}C_6$-Benz[*a*]anthracene.
4	228.0936	M	$C_{18}H_{12}$	Chrysene.
4	234.114	M	$^{13}C_6{}^{12}C_{12}H_{12}$	$^{13}C_6$-Chrysene.
4	252.0936	M	$C_{20}H_{12}$	Benzo[*b*]fluoranthene.
4	258.114	M	$^{13}C_6{}^{12}C_{14}H_{12}$	$^{13}C_6$-Benzo[*b*]fluoranthene.
4	252.32	M	$C_{20}H_{12}$	Benzo[*k*]fluoranthene.
4	258.114	M	$^{13}C_6{}^{12}C_{14}H_{12}$	$^{13}C_6$-Benzo[*k*]fluoranthene.
5	252.0936	M	$C_{20}H_{12}$	Benzo[*e*]pyrene.
5	256.1072	M	$^{13}C_4\ {}^{12}C_{16}H_{12}$	$^{13}C_4$-Benzo[*e*]pyrene.
5	256.1072	M	$^{13}C_4\ {}^{12}C_{16}H_{12}$	$^{13}C_4$-Benzo[*a*]pyrene.
5	252.0936	M	$C_{20}H_{12}$	Benzo[*a*]pyrene.
5	252.0936	M	$C_{20}H_{12}$	Perylene.
5	264.1692	M	$C_{20}D_{12}$	d_{12}-Perylene.
	268.9824	QC		PFK.
	263.9871	LOCK		FC43.
6	276.0936	M	$C_{22}H_{12}$	Indeno[*1,2,3-cd*]pyrene.
6	282.114	M	$^{13}C_6\ {}^{12}C_{16}H_{12}$	$^{13}C_6$-Indeno[*1,2,3,cd*]pyrene.
5	278.1092	M	$C_{22}H_{14}$	Dibenz[*a,h*]anthracene.
	280.9824	LOCK		PFK.
5	284.1296	M	$^{13}C_6\ {}^{12}C_{16}H_{14}$	$^{13}C_6$-Dibenz[*a,h*]anthracene.
6	276.0936	M	$C_{22}H_{12}$	Benzo[*g,h,i*]perylene.
6	288.1344	M	$^{13}C_{12}\ {}^{12}C_{10}H_{12}$	$^{13}C_{12}$-Benzo[*g,h,i*]perylene.
	313.9839	QC		FC43.

[a] Isotopic masses used for accurate mass calculation: ^{1}H = 1.0078, ^{12}C = 12.0000, ^{13}C = 13.0034, ^{2}H = 2.0141.
[b] LOCK = Lock-Mass Ion PFK or FC43. QC = Quality Control Check Ion.

TABLE 23–6—ELEMENTAL COMPOSITIONS AND EXACT MASSES OF THE IONS MONITORED BY HIGH-RESOLUTION MASS SPECTROMETRY FOR PCB

Chlorine substitution	Mass [a]	Ion type [b]	Elemental composition	Target analyte	Chlorine substitution	Mass [a]	Ion type [b]	Elemental composition	Target analyte
Fn-1; Cl-1	188.0393	M	$^{12}C_{12}H_9{}^{35}Cl$	Cl-1 PCB	Fn-5; Cl-5,6,7	323.8834	M	$^{12}C_{12}H_5{}^{35}Cl_5$	Cl-5 PCB.
	190.0363	M+2	$^{12}C_{12}H_9{}^{37}Cl$	Cl-1 PCB		325.8804	M+2	$^{12}C_{12}H_5{}^{35}Cl_4{}^{37}Cl$	Cl-5 PCB.
	200.0795	M	$^{13}C_{12}H_9{}^{35}Cl$	$^{13}C_{12}$ Cl-1 PCB		327.8775	M+4	$^{12}C_{12}H_5{}^{35}Cl_3{}^{37}Cl_2$	Cl-5 PCB.
	202.0766	M+2	$^{12}C_{12}H_9{}^{37}Cl$	$^{13}C_{12}$ Cl-1 PCB		337.9207	M+2	$^{13}C_{12}H_5{}^{35}Cl_4{}^{37}Cl$	$^{13}C_{12}$ Cl-5 PCB.
	218.9856	LOCK	C_4F_9	PFK		339.9178	M+4	$^{13}C_{12}H_5{}^{35}Cl_3{}^{37}Cl_2$	$^{13}C_{12}$ Cl-5 PCB.
Fn-2; Cl-2,3	222.0003	M	$^{12}C_{12}H_8{}^{35}Cl_2$	Cl-2 PCB		354.9792	LOCK	C_9F_{13}	PFK.
	223.9974	M+2	$^{12}C_{12}H_8{}^{35}Cl{}^{37}Cl$	Cl-2 PCB		359.8415	M+2	$^{12}C_{12}H_4{}^{35}Cl_5{}^{37}Cl$	Cl-6 PCB.
	225.9944	M+4	$^{12}C_{12}H_8{}^{37}Cl_2$	Cl-2 PCB		361.8385	M+4	$^{12}C_{12}H_4{}^{35}Cl_4{}^{37}Cl_2$	Cl-6 PCB.
	234.0406	M	$^{13}C_{12}H_8{}^{35}Cl_2$	$^{13}C_{12}$ Cl-2 PCB		363.8356	M+6	$^{12}C_{12}H_4{}^{35}Cl_3{}^{37}Cl_3$	Cl-6 PCB.
	236.0376	M+2	$^{13}C_{12}H_8{}^{35}Cl{}^{37}Cl$	$^{13}C_{12}$ Cl-2 PCB		371.8817	M+2	$^{13}C_{12}H_4{}^{35}Cl_5{}^{37}Cl$	$^{13}C_{12}$ Cl-6 PCB.
	242.9856	LOCK	C_4F_9	PFK		373.8788	M+4	$^{13}C_{12}H_4{}^{35}Cl_4{}^{37}Cl_2$	$^{13}C_{12}$ Cl-6 PCB.
	255.9613	M	$^{12}C_{12}H_7{}^{35}Cl_3$	Cl-3 PCB		393.8025	M+2	$^{12}C_{12}H_3{}^{35}Cl_6{}^{37}Cl$	Cl-7 PCB.

TABLE 23–6—ELEMENTAL COMPOSITIONS AND EXACT MASSES OF THE IONS MONITORED BY HIGH-RESOLUTION MASS SPECTROMETRY FOR PCB—Continued

Chlorine substitution	Mass [a]	Ion type [b]	Elemental composition	Target analyte	Chlorine substitution	Mass [a]	Ion type [b]	Elemental composition	Target analyte
	257.9584	M+2	$^{12}C_{12}H_7{}^{35}Cl_2{}^{37}Cl$	Cl-3 PCB		395.7995	M+4	$^{12}C_{12}H_3{}^{35}Cl_5{}^{37}Cl_2$	Cl-7 PCB.
	268.0016	M	$^{13}C_{12}H_7{}^{35}Cl_3$	$^{13}C_{12}$ Cl-3 PCB		397.7966	M+6	$^{12}C_{12}H_3{}^{35}Cl_4{}^{37}Cl_3$	$^{37}Cl_3$ Cl-7 PCB.
	269.9986	M+2	$^{13}C_{12}H_7{}^{35}Cl_2{}^{37}Cl$	$^{13}C_{12}$ Cl-3 PCB		405.8428	M+2	$^{13}C_{12}H_3{}^{35}Cl_6{}^{37}Cl$	$^{13}C_{12}$ Cl-7 PCB.
Fn-3; Cl-3,4,5	255.9613	M	$^{12}C_{12}H_7{}^{35}Cl_3$	Cl-3 PCB		407.8398	M+4	$^{13}C_{12}H_3{}^{35}Cl_5{}^{37}Cl_2$	$^{13}C_{12}$ Cl-7 PCB.
	257.9584	M+2	$^{12}C_{12}$ $H_7{}^{35}Cl_2{}^{37}Cl$	Cl-3 PCB		454.9728	QC	$C_{11}F_{17}$	PFK.
	259.9554	M+4	$^{12}C_{12}H_7{}^{35}Cl^{37}Cl_2$	Cl-3 PCB	Fn-6; Cl-7,8,9,10	393.8025	M+2	$^{12}C_{12}H_3{}^{35}Cl_6{}^{37}Cl$	Cl-7 PCB.
	268.0016	M	$^{13}C_{12}H_7{}^{35}Cl_3$	$^{13}C_{12}$ Cl-3 PCB		395.7995	M+4	$^{12}C_{12}H_3{}^{35}Cl_5{}^{37}Cl_2$	Cl-7 PCB.
	269.9986	M+2	$^{13}C_{12}H_7{}^{35}Cl_2{}^{37}Cl$	$^{13}C_{12}$ Cl-3 PCB		397.7966	M+6	$^{12}C_{12}H_3{}^{35}Cl_4{}^{37}Cl_3$	Cl-7 PCB.
	280.9825	LOCK	C_6F_{11}	PFK		405.8428	M+2	$^{13}C_{12}H_3{}^{35}Cl_6{}^{37}Cl$	$^{13}C_{12}$ Cl-7 PCB.
	289.9224	M	$^{12}C_{12}H_6{}^{35}Cl_4$	Cl-4 PCB		407.8398	M+4	$^{13}C_{12}H_3{}^{35}Cl_5{}^{37}Cl_2$	$^{13}C_{12}$ Cl-7 PCB.
	291.9194	M+2	$^{12}C_{12}H_6{}^{35}Cl_3{}^{37}Cl$	Cl-4 PCB		427.7635	M+2	$^{12}C_{12}H_2{}^{35}Cl_7{}^{37}Cl$	Cl-8 PCB.
	293.9165	M+4	$^{12}C_{12}H_6{}^{35}Cl_2{}^{37}Cl_2$	Cl-4 PCB		429.7606	M+4	$^{12}C_{12}H_2{}^{35}Cl_6{}^{37}Cl_2$	Cl-8 PCB.
	301.9626	M	$^{13}C_{12}H_6{}^{35}Cl_4$	$^{13}C_{12}$ Cl-4 PCB		431.7576	M+6	$^{12}C_{12}H_2{}^{35}Cl_5{}^{37}Cl_3$	Cl-8 PCB.
	303.9597	M+2	$^{13}C_{12}H_6{}^{35}Cl_3{}^{37}Cl$	$^{13}C_{12}$ Cl-4 PCB		439.8038	M+2	$^{13}C_{12}H_2{}^{35}Cl_7{}^{37}Cl$	$^{13}C_{12}$ Cl-8 PCB.
	323.8834	M	$^{12}C_{12}H_5{}^{35}Cl_5$	Cl-5 PCB		441.8008	M+4	$^{13}C_{12}H_2{}^{35}Cl_6{}^{37}Cl_2$	$^{13}C_{12}$ Cl-8 PCB.
	325.8804	M+2	$^{12}C_{12}H_5{}^{35}Cl_4{}^{37}Cl$	Cl-5 PCB		454.9728	QC	$C_{11}F_{17}$	PFK.
	327.8775	M+4	$^{12}C_{12}H_5{}^{35}Cl_3{}^{37}Cl_2$	Cl-5 PCB		427.7635	M+2	$^{12}C_{12}H_2{}^{35}Cl_7{}^{37}Cl$	Cl-8 PCB.
	337.9207	M+2	$^{13}C_{12}H_5{}^{35}Cl_4{}^{37}Cl$	$^{13}C_{12}$ Cl-5 PCB		429.7606	M+4	$^{12}C_{12}H_2{}^{35}Cl_6{}^{37}Cl_2$	Cl-8 PCB.
	339.9178	M+4	$^{13}C_{12}H_5{}^{35}Cl_3{}^{37}Cl_2$	$^{13}C_{12}$ Cl-5 PCB		431.7576	M+6	$^{12}C_{12}H_2{}^{35}Cl_5{}^{37}Cl_3$	Cl-8 PCB.
Fn-4; Cl-4,5,6	289.9224	M	$^{12}C_{12}H_6{}^{35}Cl_4$	Cl-4 PCB		439.8038	M+2	$^{13}C_{12}H_2{}^{35}Cl_7{}^{37}Cl$	$^{13}C_{12}$ Cl-8 PCB.
	291.9194	M+2	$^{12}C_{12}H_6{}^{35}Cl_3{}^{37}Cl$	Cl-4 PCB		441.8008	M+4	$^{13}C_{12}H_2{}^{35}Cl_6{}^{37}Cl_2$	$^{13}C_{12}$ Cl-8 PCB.
	293.9165	M+4	$^{12}C_{12}H_6{}^{35}Cl_2{}^{37}Cl_2$	Cl-4 PCB		442.9728	QC	$C_{10}F_{17}$	PFK.
	301.9626	M+2	$^{13}C_{12}H_6{}^{35}Cl_3{}^{37}Cl$	$^{13}C_{12}$ Cl-4 PCB		454.9728	LOCK	$C_{11}F_{17}$	PFK.
	303.9597	M+4	$^{13}C_{12}H_6{}^{35}Cl_2{}^{37}Cl_2$	$^{13}C_{12}$ Cl-4 PCB		461.7246	M+2	$^{12}C_{12}H_1{}^{35}Cl_8{}^{37}Cl$	Cl-9 PCB.
	323.8834	M	$^{12}C_{12}H_5{}^{35}Cl_5$	Cl-5 PCB		463.7216	M+4	$^{12}C_{12}H_1{}^{35}Cl_7{}^{37}Cl_2$	Cl-9 PCB.
	325.8804	M+2	$^{12}C_{12}H_5{}^{35}Cl_4{}^{37}Cl$	Cl-5 PCB		465.7187	M+6	$^{12}C_{12}H_1{}^{35}Cl_6{}^{37}Cl_3$	Cl-9 PCB.
	327.8775	M+4	$^{12}C_{12}H_5{}^{35}Cl_3{}^{37}Cl_2$	Cl-5 PCB		473.7648	M+2	$^{13}C_{12}H_1{}^{35}Cl_8{}^{37}Cl$	$^{13}C_{12}$ Cl-9 PCB.
	330.9792	LOCK	C_7F_{15}	PFK		475.7619	M+4	$^{13}C_{12}H_1{}^{35}Cl_7{}^{37}Cl_2$	$^{13}C_{12}$ Cl-9 PCB.
	337.9207	M+2	$^{13}C_{12}H_5{}^{35}Cl_4{}^{37}Cl$	$^{13}C_{12}$ Cl-5 PCB		495.6856	M+2	$^{13}C_{12}H_4$ $^{5}Cl_9{}^{37}Cl$	Cl-10 PCB.
	339.9178	M+4	$^{13}C_{12}H_5{}^{35}Cl_3{}^{37}Cl_2$	$^{13}C_{12}$Cl-5 PCB		499.6797	M+6	$^{12}C_{12}H_4{}^{35}Cl_8{}^{37}Cl_2$	Cl-10 PCB.
	359.8415	M+2	$^{13}C_{12}H_4{}^{35}Cl_5{}^{37}Cl$	Cl-6 PCB		501.6767	M+8	$^{12}C_{12}H_4{}^{35}Cl_7{}^{37}Cl_3$	Cl-10 PCB.
	361.8385	M+4	$^{13}C_{12}H_4{}^{35}Cl_4{}^{37}Cl_2$	Cl-6 PCB		507.7258	M+2	$^{13}C_{12}H_4{}^{35}Cl_9{}^{37}Cl$	$^{13}C_{12}$ Cl-10 PCB.
	363.8356	M+6	$^{12}C_{12}H_4{}^{35}Cl_3{}^{37}Cl_3$	Cl-6 PCB		509.7229	M+4	$^{13}C_{12}H_4{}^{35}Cl_8{}^{37}Cl_2$	$^{13}C_{12}$ Cl-10 PCB.
	371.8817	M+2	$^{13}C_{12}H_4{}^{35}Cl_5{}^{37}Cl$	$^{13}C_{12}$ Cl-6 PCB		511.7199	M+6	$^{13}C_{12}H_4{}^{35}Cl_7{}^{37}Cl_3$	$^{13}C_{12}$ Cl-10 PCB.
	373.8788	M+4	$^{13}C_{12}H_4{}^{35}Cl_4{}^{37}Cl_2$	$^{13}C_{12}$ Cl-6 PCB					

[a] Isotopic masses used for accurate mass calculation: ^{1}H = 1.0078, ^{12}C = 12.0000, ^{13}C = 13.0034, ^{35}Cl = 34.9689, ^{37}Cl = 36.9659, ^{19}F = 18.9984. An interference with PFK m/z 223.9872 may preclude meeting 10:1 S/N for the DiCB congeners at optional Cal 1 level (Table 23–11). If this interference occurs, 10:1 S/N must be met at the Cal 2 level.

[b] LOCK = Lock-Mass Ion PFK or FC43. QC = Quality Control Check Ion.

TABLE 23–7—CONCENTRATION OF THE SAMPLE FORTIFICATION FOR PCDD AND PCDF [a]

Compound	pg/µL in final extract [b]	Spike recovery
Pre-sampling Adsorbent Standard		
$^{13}C_{12}$-1,2,3,4-TeCDD	50	70–130%
$^{13}C_{12}$-1,2,3,4,7-PeCDD	50	70–130%
$^{13}C_{12}$-1,2,3,4,6-PeCDF	50	70–130%
$^{13}C_{12}$-1,2,3,4,6,9-HxCDF	50	70–130%
$^{13}C_{12}$-1,2,3,4,6,8,9-HpCDF	50	70–130%
Pre-extraction Filter Recovery Standard		
$^{13}C_{12}$-1,2,7,8-TeCDF	50	70–130%
$^{13}C_{12}$-1,2,3,4,6,8-HxCDD	50	70–130%
Pre-extraction Standard		
$^{13}C_{12}$-2,3,7,8-TeCDD	50	20–130%
$^{13}C_{12}$-2,3,7,8-TeCDF	50	20–130%
$^{13}C_{12}$-1,2,3,7,8-PeCDD	50	20–130%
$^{13}C_{12}$-1,2,3,7,8-PeCDF	50	20–130%
$^{13}C_{12}$-2,3,4,7,8-PeCDF	50	20–130%
$^{13}C_{12}$-1,2,3,4,7,8-HxCDD	50	20–130%
$^{13}C_{12}$-1,2,3,6,7,8-HxCDD	50	20–130%
$^{13}C_{12}$-1,2,3,7,8,9-HxCDD	50	20–130%
$^{13}C_{12}$-1,2,3,4,7,8-HxCDF	50	20–130%

TABLE 23–7—CONCENTRATION OF THE SAMPLE FORTIFICATION FOR PCDD AND PCDF [a]—Continued

Compound	pg/µL in final extract [b]	Spike recovery
$^{13}C_{12}$-1,2,3,6,7,8-HxCDF	50	20–130%
$^{13}C_{12}$-2,3,4,6,7,8-HxCDF	50	20–130%
$^{13}C_{12}$-1,2,3,7,8,9-HxCDF	50	20–130%
$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDD	50	20–130%
$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDF	50	20–130%
$^{13}C_{12}$-1,2,3,4,7,8,9-HpCDF	50	20–130%
$^{13}C_{12}$-OCDD	100	20–130%
$^{13}C_{12}$-OCDF	100	20–130%
Pre-analysis Standard		
$^{13}C_{12}$-1,3,6,8-TeCDD	50	S/N≥10
$^{13}C_{12}$-1,2,3,4-TeCDF	50	S/N≥10
$^{13}C_{12}$-1,2,3,4,6,7-HxCDD	50	S/N≥10
$^{13}C_{12}$-1,2,3,4,6,7,9-HpCDD	50	S/N≥10
Alternate Recovery Standard		
$^{13}C_{12}$-1,3,7,8-TeCDD	50	20–130%
$^{13}C_{12}$-1,2,4,7,8-PeCDD	50	20–130%

[a] Changes in the amounts of labeled standards added to the sample or its representative extract will necessitate an adjustment of the calibration solutions to prevent the introduction of inconsistencies. Spike concentration assumes 1 µL sample injection volume for analysis or the injection volume for calibration standards and samples is the same.

[b] Labeled standard concentrations are recommendations (equivalent mass per sample of 25 pg pre-extraction standard, as an example, based on a 200 µL extract volume split in half before cleanup with a 20 µL aliquot of a 500 pg/µL spiking solution). Recommendations are based on assumption that half of the extract will be archived before cleanup. Spike levels may be adjusted for different split levels.

Note: all standards used should be reported.

TABLE 23–8—CONCENTRATION OF THE SAMPLE FORTIFICATION FOR PAH [a]

Compound	pg/µL in final extract [b]	Spike recovery
Pre-sampling Adsorbent Standard		
$^{13}C_6$-Benzo[*c*]fluorene	100	70–130%
$^{13}C_{12}$-Benzo[*j*]fluoranthene	100	70–130%
Pre-extraction Filter Recovery Standard		
d_{10}-Anthracene	100	70–130%
Pre-extraction Standard		
$^{13}C_6$-Naphthalene	100	20–130%
$^{13}C_6$-2-Methylnaphthalene	100	20–130%
$^{13}C_6$-Acenaphthylene	100	20–130%
$^{13}C_6$-Acenaphthene	100	20–130%
$^{13}C_6$-Fluorene	100	20–130%
$^{13}C_6$-Phenanthrene	100	20–130%
$^{13}C_6$-Anthracene	100	20–130%
$^{13}C_6$-Fluoranthene	100	20–130%
$^{13}C_3$-Pyrene	100	20–130%
$^{13}C_6$-Benz[*a*]anthracene	100	20–130%
$^{13}C_6$-Chrysene	100	20–130%
$^{13}C_6$-Benzo[*b*]fluoranthene	100	20–130%
$^{13}C_6$-Benzo[*k*]fluoranthene	100	20–130%
$^{13}C_4$-Benzo[*e*]pyrene	100	20–130%
$^{13}C_4$-Benzo[*a*]pyrene	100	20–130%
d_{12}-Perylene	100	20–130%
$^{13}C_6$-Indeno[*1,2,3-cd*]pyrene	100	20–130%
$^{13}C_6$-Dibenz[*a,h*]anthracene	100	20–130%
$^{13}C_{12}$-Benzo[*g,h,i*]perylene	100	20–130%
Pre-analysis Standard		
d_{10}-Acenaphthene	100	S/N≥10
d_{10}-Pyrene	100	S/N≥10
d_{12}-Benzo[*e*]pyrene	100	S/N≥10

[a] Changes in the amounts of labeled standards added to the sample or its representative extract will necessitate an adjustment of the calibration solutions to prevent the introduction of inconsistencies.

[b] Labeled standard concentrations are recommendations (equivalent mass per sample of 25 pg pre-extraction standard, as an example, based on a 200 µL extract volume split in half before cleanup with a 20 µL aliquot of a 1000 pg/µL spiking solution). Recommendations are based on assumption that half of the extract will be archived before cleanup. Spike levels may be adjusted for different split levels.

Note: all standards used should be reported.

TABLE 23–9—CONCENTRATION OF THE SAMPLE FORTIFICATION FOR PCB [a]

Compound	BZ No.[b]	pg/µL in final extract [c]	Spike recovery
Pre-sampling Adsorbent Standard			
$^{13}C_{12}$-3,3′-DiCB	11L	100	70–130%
$^{13}C_{12}$-2,4′,5-TrCB	31L	100	70–130%
$^{13}C_{12}$-2,2′,3,5′,6-PeCB	95L	100	70–130%
$^{13}C_{12}$-2,2′,4,4′,5,5′-HxCB	153L	100	70–130%
Pre-extraction Filter Recovery Standard			
$^{13}C_{12}$-2,3,3′,4,5,5′-HxCB	159L	100	70–130%
Pre-extraction Standard			
$^{13}C_{12}$-2-MoCB (WDC)	1L	100	20–145%
$^{13}C_{12}$-4-MoCB (WDC)	3L	100	20–145%
$^{13}C_{12}$-2,2′-DiCB (WDC)	4L	100	20–145%
$^{13}C_{12}$-4,4′-DiCB (WDC)	15L	100	20–145%
$^{13}C_{12}$-2,2′,6-TrCB (WDC)	19L	100	20–145%
$^{13}C_{12}$-3,4′,4′-TrCB (WDC)	37L	100	20–145%
$^{13}C_{12}$-2,2′,6,6′-TeCB (WDC)	54L	100	20–145%
$^{13}C_{12}$-3,3′,4,4′-TeCB (WDC) (WHOT) (NOAAT)	77L	100	20–145%
$^{13}C_{12}$-3,4,4′,5-TeCB (WHOT)	81L	100	20–145%
$^{13}C_{12}$-2,2′,4,6,6′-PeCB (WDC)	104L	100	20–145%
$^{13}C_{12}$-2,3,3′,4,4′-PeCB (WHOT)	105L	100	20–145%
$^{13}C_{12}$-2,3,4,4′,5-PeCB (WHO)	114L	100	20–145%
$^{13}C_{12}$-2,3′,4,4′,5-PeCB (WHOT)	118L	100	20–145%
$^{13}C_{12}$-2′,3,4,4′,5-PeCB (WHOT)	123L	100	20–145%
$^{13}C_{12}$-3,3′,4,4′,5-PeCB (WDC) (WHOT)	126L	100	20–145%
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB (WDC)	155L	100	20–145%
$^{13}C_{12}$-2,3,3′,4,4′,5-HxCB (WHOT)	156L	100	20–145%
$^{13}C_{12}$-2,3,3′,4,4′,5′-HxCB (WHOT)	157L	100	20–145%
$^{13}C_{12}$-2,3′,4,4′,5,5′-HxCB (WHOT)	167L	100	20–145%
$^{13}C_{12}$-3,3′,4,4′,5,5′-HxCB (WDC) (WHOT) (NOAAT)	169L	100	20–145%
$^{13}C_{12}$-2,2′,3,3′,4,4′,5′-HpCB (NOAAT)	170L	100	20–145%
$^{13}C_{12}$-2,2′,3,4,4′,5,5′-HpCB (NOAAT)	180L	100	20–145%
$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB (WDC)	188L	100	20–145%
$^{13}C_{12}$-2,3,3′,4,4′,5,5′-HpCB (WDC) (WHOT)	189L	100	20–145%
$^{13}C_{12}$-2,2′,3′,3′,5,5′,6,6′-OcCB (WDC)	202L	100	20–145%
$^{13}C_{12}$-2,3′,3′,4,4′,5,5′,6-OcCB (WDC)	205L	100	20–145%
$^{13}C_{12}$-2,2′,3,3′,4,4′,5,5′,6-NoCB (WDC)	206L	100	20–145%
$^{13}C_{12}$-2,2′,3,3′,4,5,5′,6,6′-NoCB (WDC)	208L	100	20–145%
$^{13}C_{12}$-DeCB (WDC)	209L	100	20–145%
Pre-analysis Standard			
$^{13}C_{12}$-2,5-DiCB	9L	100	S/N≥10
$^{13}C_{12}$-2,2′,5,5′-TeCB (NOAAT)	52L	100	S/N≥10
$^{13}C_{12}$-2,2′,4,5,5′-PeCB (NOAAT)	101L	100	S/N≥10
$^{13}C_{12}$-2,2′,3,4,4′,5′-HxCB (NOAAT)	138L	100	S/N≥10
$^{13}C_{12}$-2,2′,3,3′,4,4′,5,5′-OcCB	194L	100	S/N≥10
Optional Cleanup Standard			
$^{13}C_{12}$-2-MoCB (NOAAT)	28L	100	20–130%
$^{13}C_{12}$-2,2′,4,5,5′-PeCB	111L	100	20–130%
$^{13}C_{12}$-2,2′,3,3′,5,5′,6,6′-OcCB	178L	100	20–130%
Alternate Recovery Standard			
$^{13}C_{12}$-2,3′,4′,5-TeCB	70L	100	20–130%
$^{13}C_{12}$-2,3,4,4′-TeCB	60L	100	20–130%
$^{13}C_{12}$-3,3′,4,5,5′-PeCB	127L	100	20–130%

[a] Changes in the amounts of spike standards added to the sample or its representative extract will necessitate an adjustment of the calibration solutions to prevent the introduction of inconsistencies.

[b] BZ No.: Ballschmiter and Zell 1980, or IUPAC number.

[c] Labeled standard concentrations are recommendations (equivalent mass per sample of 25 pg pre-extraction standard, as an example, based on a 200 µL extract volume split in half before cleanup with a 20 µL aliquot of a 1000 pg/µL spiking solution). Recommendations are based on assumption that half of the extract will be archived before cleanup. Spike levels may be adjusted for different split levels.
NOAAT = PCB considered toxic by the National Oceanic and Atmospheric Administration.
WHOT = PCB considered toxic by the World Health Organization.
Note: all standards used should be reported.

TABLE 23–10—SAMPLE STORAGE CONDITIONS [a] AND LABORATORY HOLD TIMES [b]

Sample type	PCDD/PCDF	PAH	PCB
Field Storage and Shipping Conditions			
All Field Samples	≤20 °C, (68 °F)	≤20 °C, (68 °F)	≤20 °C, (68 °F).
Laboratory Storage Conditions			
Sampling Train Rinses and Filters	≤6 °C (43 °F)	≤6 °C (43 °F)	≤6 °C (43 °F).
Adsorbent	≤6 °C (43 °F)	≤6 °C (43 °F)	≤6 °C (43 °F).
Extract and Archive	<26 °C (79 °F) [c]	< − 10 °C (14 °F)	< − 10 °C (14 °F).
Laboratory Hold Times			
Extract and Archive	One year	45 Days	One year.

[a] Samples and extracts must be stored in the dark.
[b] Hold times begin from the time the laboratory receives the sample.
[c] Room temperature is acceptable if PCDD/PCDF are the only target compounds.
Note: Hold times for PCDD/PCDF and PCB are recommendations.

TABLE 23–11—CONCENTRATION OF THE INITIAL CALIBRATION STANDARD SOLUTIONS FOR PCDD AND PCDF [a]

[pg/µL]

Standard compound	Cal 1 (optional)	Cal 2	Cal 3	Cal 4	Cal 5	Cal 6	Cal 7 (optional)
Target (Unlabeled) Analytes	0.50	1.0	5.0	10.0	25	50	100
Pre-sampling Adsorbent Standard	50	50	50	50	50	50	50
Pre-extraction Filter Recovery Standard	50	50	50	50	50	50	50
Pre-extraction Standard ($^{13}C_{12}$-OCDD, $^{13}C_{12}$-OCDF − 100 pg/µL)	50	50	50	50	50	50	50
Pre-analysis Standard	50	50	50	50	50	50	50
Alternate Recovery Standard	50	50	50	50	50	50	50

[a] Assumes 1 µL injection volume or the injection volume for standards and samples is the same.

TABLE 23–12—CONCENTRATION OF THE INITIAL CALIBRATION STANDARD SOLUTIONS FOR PAH [a]

[pg/µL]

Standard compound	Cal 1 (optional)	Cal 2	Cal 3	Cal 4	Cal 5	Cal 6	Cal 7 (optional)
Target (Unlabeled) Analytes	1	2	4	20	80	400	1,000
Pre-sampling Adsorbent Standard	100	100	100	100	100	100	100
Pre-extraction Filter Recovery Standard	100	100	100	100	100	100	100
Pre-extraction Standard	100	100	100	100	100	100	100
Pre-analysis Standard	100	100	100	100	100	100	100

[a] Assumes 1 µL injection volume.

TABLE 23–13—CONCENTRATION OF THE INITIAL CALIBRATION STANDARD SOLUTIONS FOR PCB [a]

[pg/µL]

Standard compound	Cal 1 (optional)	Cal 2	Cal 3	Cal 4	Cal 5	Cal 6	Cal 7 (optional)
Target (Unlabeled) Analytes	0.50	1	5	10	50	400	2,000
Pre-sampling Adsorbent Standard	100	100	100	100	100	100	100
Pre-extraction Filter Recovery Standard	100	100	100	100	100	100	100
Pre-extraction Standard	100	100	100	100	100	100	100
Pre-analysis Standard	100	100	100	100	100	100	100
Alternate Standard	100	100	100	100	100	100	100

[a] Assumes 1 µL injection volume.

TABLE 23–14—MINIMUM REQUIREMENTS FOR INITIAL AND CONTINUING CALIBRATION RESPONSE FACTORS FOR ISOTOPICALLY LABELED AND NATIVE COMPOUNDS

Analyte group	Initial calibration RRF RSD	Continuing calibration RRF compared to ICAL RRF (PD)
Native (Unlabeled) Analytes	10	25
Pre-sampling Adsorbent Standard	20	25
Pre-extraction Filter Recovery Standard	20	25
Pre-extraction Standard	20	30
Alternative Recovery Standard	20	30

TABLE 23–15—RECOMMENDED ION TYPE AND ACCEPTABLE ION ABUNDANCE RATIOS

Number of chlorine atoms	Ion type	Theoretical ratio	Lower control limit	Upper control limit
1	M/M+2	3.13	2.66	3.60
2	M/M+2	1.56	1.33	1.79
3	M/M+2	1.04	0.88	1.20
4	M/M+2	0.77	0.65	0.89
5	M+2/M+4	1.55	1.32	1.78
6	M+2/M+4	1.24	1.05	1.43
6 [a]	M/M+2	0.51	0.43	0.59
7	M+2/M+4	1.05	0.89	1.21
7 [b]	M/M+2	0.44	0.37	0.51
8	M+2/M+4	0.89	0.76	1.02
9	M+2/M+4	0.77	0.65	0.89
10	M+4/M+6	1.16	0.99	1.33

[a] Used only for ^{13}C-HxCDF.
[b] Used only for ^{13}C-HpCDF.

TABLE 23–16—TYPICAL DB5–MS COLUMN CONDITIONS

Column parameter	PCDD/PCDF	PAH	PCB
Injector temperature	250 °C	320 °C	270 °C.
Initial oven temperature	100 °C	100 °C	100 °C.
Initial hold time (minutes)	2	2	2.
Temperature program	100 to 190 °C at 40 °C/min, then 190 to 300 °C at 3°C/min.	100 to 300 °C at 8°C/min	100 to 150 °C at 15 °C/min, then 150 to 290 °C at 2.5 °C/min.

TABLE 23–17—ASSIGNMENT OF PRE-EXTRACTION STANDARDS FOR QUANTITATION OF TARGET PCB [b]

PCB Congener	BZ No.[a]	Labeled analog	BZ No.
2,4′-DiCB (NOAAT)	8	$^{13}C_{12}$-2,2′-DiCB	4L
2,2′,5-TrCB (NOAAT)	18	$^{13}C_{12}$-2,2′,6-TrCB	19L
2,4,4′-TrCB (NOAAT)	28	$^{13}C_{12}$-2,2′,6-TrCB	19L
2,2′,3,5′-TeCB (NOAAT)	52	$^{13}C_{12}$-2,2′,6,6′-TeCB	54L
2,2′,5,5′-TeCB (NOAAT)	52	$^{13}C_{12}$-2,2′,6,6′-TeCB	54L
2,3′,4,4′-TeCB (NOAAT)	66	$^{13}C_{12}$-2,2′,6,6′-TeCB	54L
3,3′,4,4′-TeCB (NOAAT) (WHOT)	77	$^{13}C_{12}$-3,3′,4,4′-TeCB	77L
3,4,4′,5-TeCB (WHOT)	81	$^{13}C_{12}$-3,4,4″,5-TeCB	81L
2,2′,4,5,5′-PeCB (NOAAT)	101	$^{13}C_{12}$-2,2′,4,5,5′-PeCB	104L
2,3,3′,4,4′-PeCB (NOAAT) (WHOT)	105	$^{13}C_{12}$-2,3,3′,4,4′-PeCB	105L
2,3,4,4′,5-PeCB (WHOT)	114	$^{13}C_{12}$-2,3,4,4′,5-PeCB	114L
2,3′,4,4′,5-PeCB (WHOT)	118	$^{13}C_{12}$-2,3′,4,4′,5-PeCB	118L
2′,3,4,4′,5-PeCB (WHOT)	123	$^{13}C_{12}$-2′,3,4,4′,5-PeCB	123L
3,3′,4,4′,5-PeCB (NOAAT) (WHOT)	126	$^{13}C_{12}$-3,3′,4,4′,5-PeCB	126L
2,2′,3,3′,4,4′-HxCB (NOAAT)	128	$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L
2,2′,3,4,4′,5′-HxCB (NOAAT)	138	$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L
2,2′,4,4′,5,5′-HxCB (NOAAT)	153	$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L
2,3,3′,4,4′,5-HxCB (WHOT)	156	$^{13}C_{12}$-2,3,3′,4,4′,5-HxCB	156L
2,3,3′,4,4′,5′-HxCB (WHOT)	157	$^{13}C_{12}$-2,3,3′,4,4′,5′-HxCB	157L
2,3′,4,4′,5,5′-HxCB (WHOT)	167	$^{13}C_{12}$-2,3′,4,4′,5,5′-HxCB	167L
3,3′,4,4′,5,5′-HxCB (NOAAT) (WHOT)	169	$^{13}C_{12}$-3,3′,4,4′,5,5′-HxCB	169L
2,2′,3,3′,4,4′,5-HpCB (NOAAT)	170	$^{13}C_{12}$-2,2′,3,3′,4,4′,5′-HpCB	170L
2,2′,3,4,4′,5,5′-HpCB (NOAAT)	180	$^{13}C_{12}$-2,2′,3,4,4′,5,5′-HpCB	180L
2,2′,3,4′,5,5′,6-HpCB (NOAAT)	187	$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB	188L
2,3,3′,4,4′,5,5′-HpCB (WHOT)	189	$^{13}C_{12}$-2,3,3′,4,4′,5,5′-HpCB	189L

TABLE 23–17—ASSIGNMENT OF PRE-EXTRACTION STANDARDS FOR QUANTITATION OF TARGET PCB [b]—Continued

PCB Congener	BZ No.[a]	Labeled analog	BZ No.
2,2′,3,3′,4,4′,5,6-OcCB (NOAAT)	195	$^{13}C_{12}$-2,2′ 3,3′,5,5′,6,6′-OcCB	202L
2,2′,3,3′,4,4′,5,5′,6-NoCB (NOAAT)	206	$^{13}C_{12}$-2,2′,3,3′,4,4′,5,5′,6-NoCB	206L
2,2′,3,3′,4,4′,5,5′,6,6′-DeCB (NOAAT)	209	$^{13}C_{12}$-DeCB	209L

[a] BZ No.: Ballschmiter and Zell 1980, or IUPAC number.
[b] Assignments assume the use of the SPB-Octyl column. In the event you choose another column, you may select the labeled standard having the same number of chlorine substituents and the closest retention time to the target analyte in question as the labeled standard to use for quantitation.
NOAAT = PCB considered toxic by the National Oceanic and Atmospheric Administration.
WHOT = PCB considered toxic by the World Health Organization.

TABLE 23–18—INITIAL DEMONSTRATION OF CAPABILITY QC REQUIREMENTS

Section	Requirement	Specification and frequency	Acceptance criteria
9.3.5	Demonstration of low system background	Analyze an LMB after the highest calibration standard. Note: If an automated extraction system is used, an LMB must be extracted on each port.	Confirm that the LMB is free from contamination as defined in Section 13.1.
9.3.7	Determination of MDL	Prepare, extract, and analyze 7 replicate spiked samples (spiked within 2 to 10 times of the expected MDL) and 7 LMBs. See 40 CFR Part 136 Appendix B	See MDL confirmation.
9.3.8	MDL confirmation	Prepare, extract, and analyze a spiked sample (spiked at the MDL).	Confirm that the target compounds meet the qualitative identification criteria in Section 11.4.3.4 of this method.
9.3.9	Demonstration of precision	Prepare, extract, and analyze 7 replicate spiked samples (spiked near mid-range).	Percent relative standard deviation must be ≤20%.
9.3.10	Demonstration of accuracy	Calculate mean recovery for replicate spiked samples in Section 9.3.9.	Mean recovery within 70–130% of true value.
9.3.2	Lowest Calibration Concentration Confirmation.	Establish a target concentration for the lowest calibration based on the intended use of the method.	Upper PIR ≤150%. Lower PIR ≥50%.
9.3.6	Calibration Verification	Analyze a mid-level QCS	Within limits in Section 13.11.

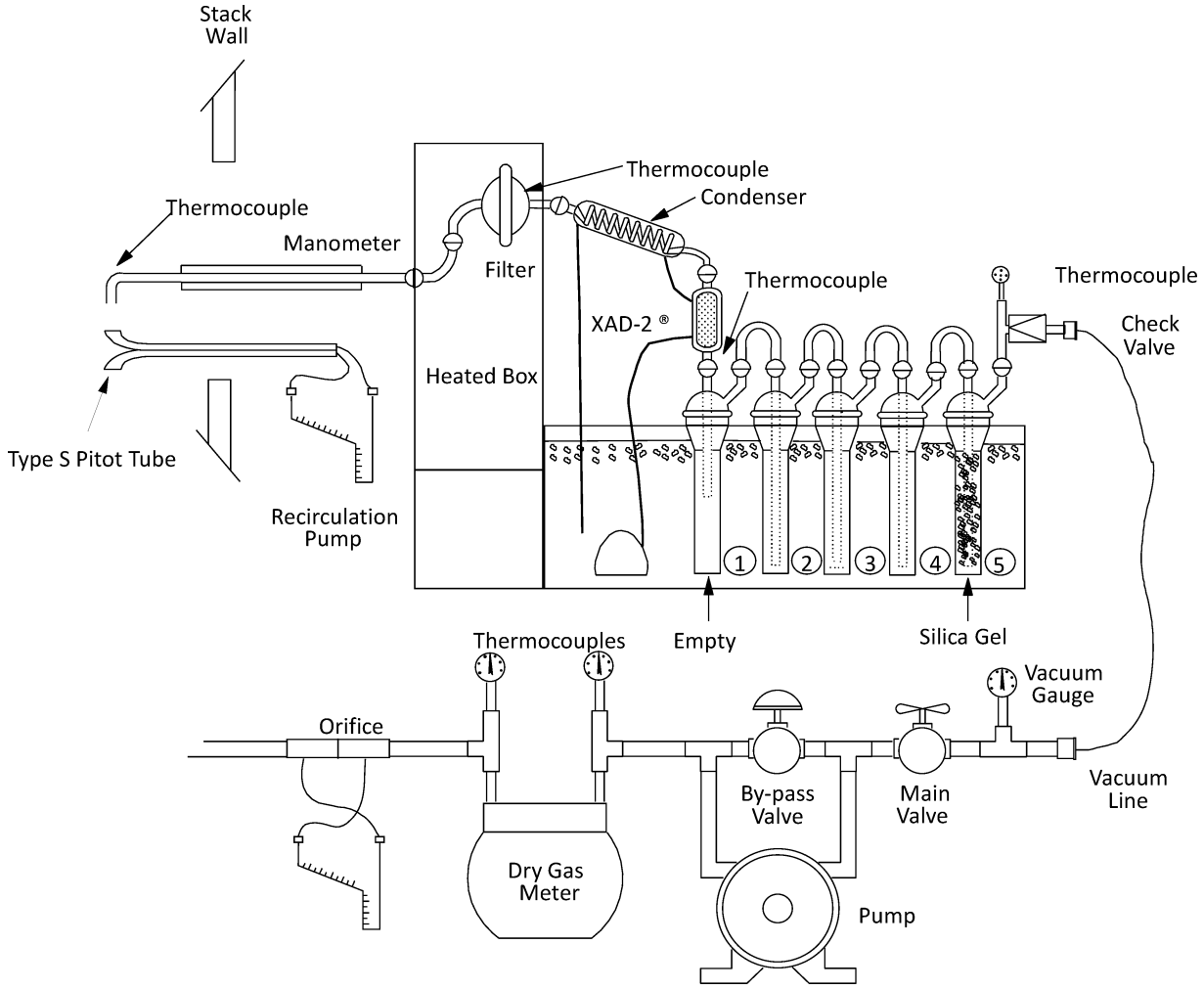

Figure 23–1. Method 23 Sampling Train

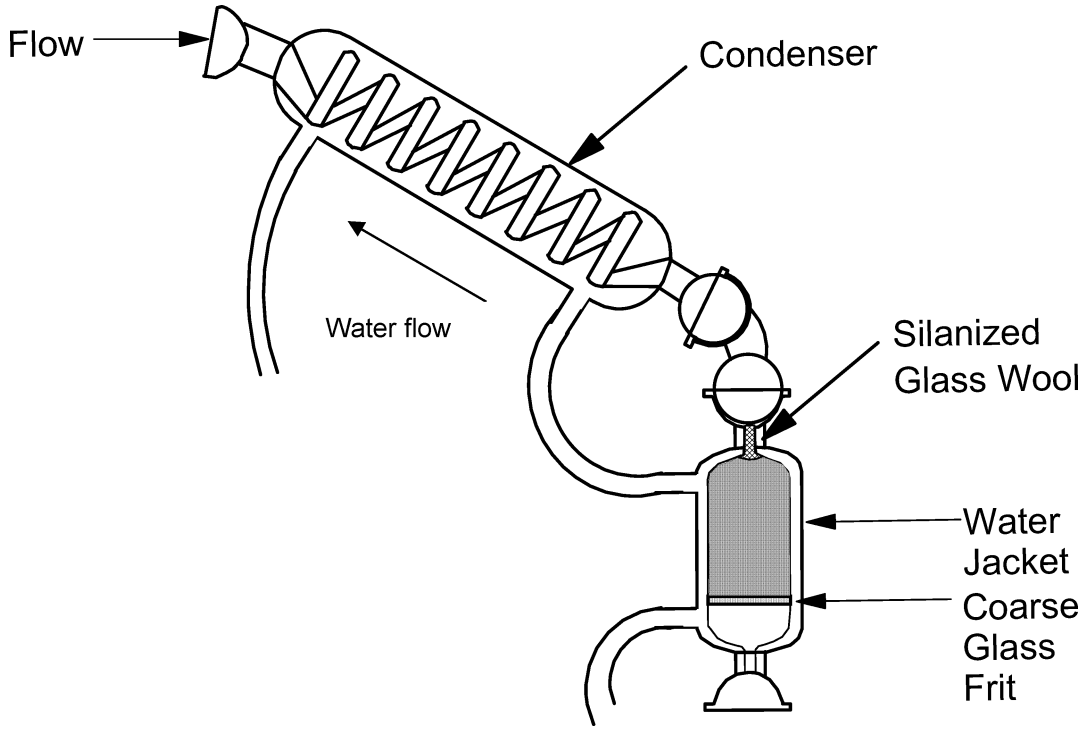

Figure 23–2. Condenser and Adsorbent Module

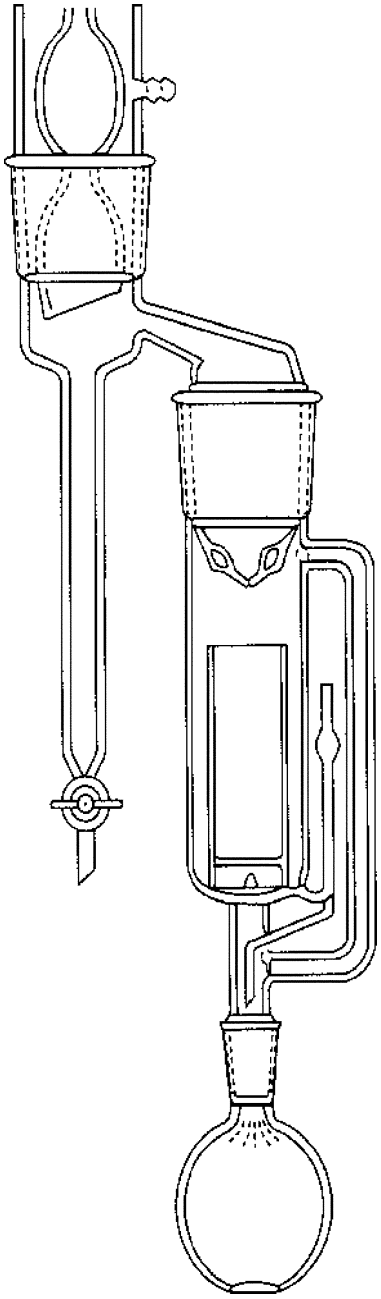

Figure 23–3. Soxhlet/Dean-Stark Extractor

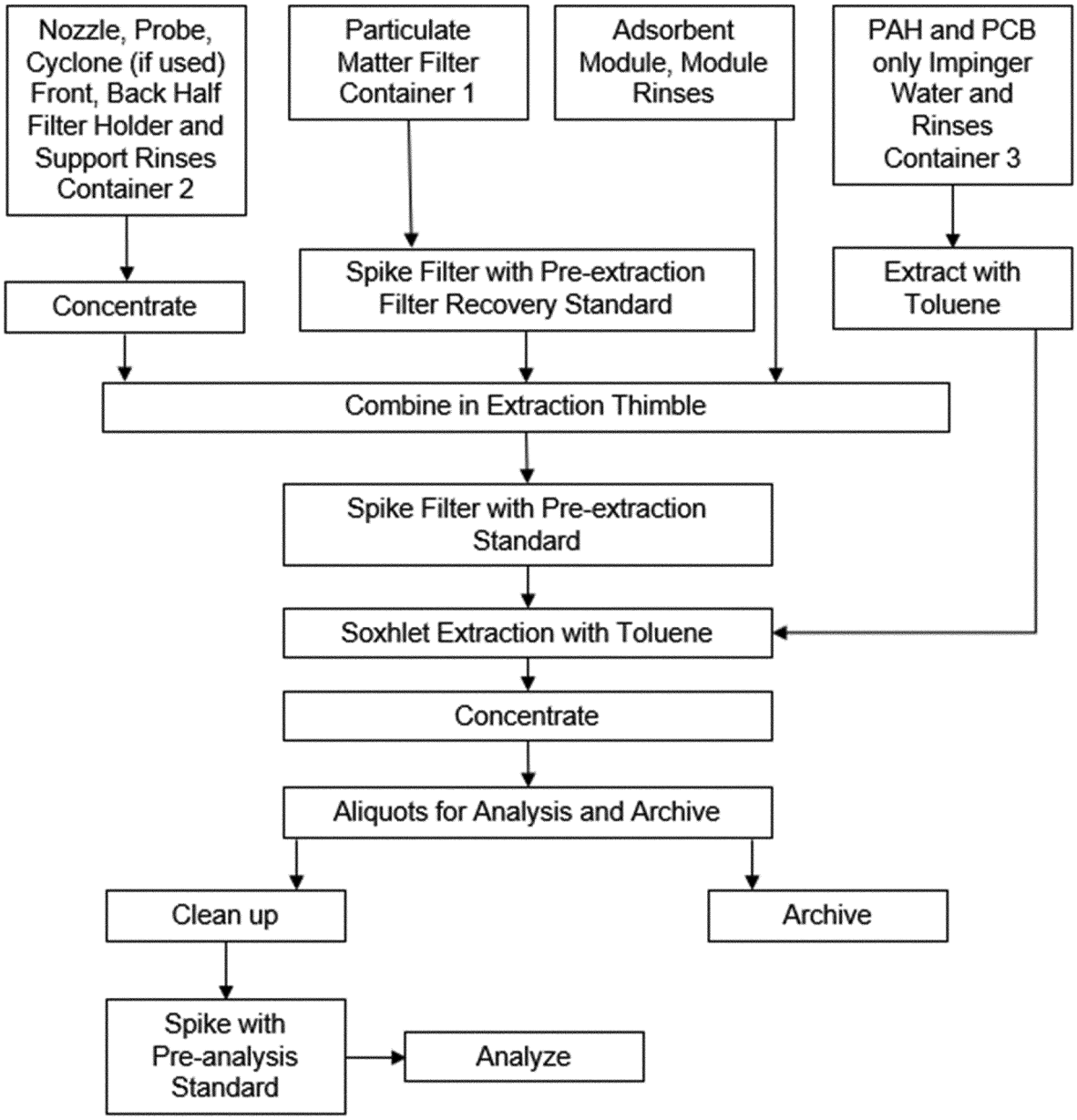

Figure 23–4. Sample Preparation Flow Chart

Appendix A to Method 23

COMPLETE LIST OF 209 PCB CONGENERS AND THEIR ISOMERS WITH CORRESPONDING ISOTOPE DILUTION QUANTITATION STANDARDS [a]

Pre-extraction standard	BZ [b] No.	Unlabeled target analyte	BZ [b] No.	Pre-extraction standard	BZ [b] No.	Unlabeled target analyte	BZ [b] No.
MoCB				**DiCB**			
$^{13}C_{12}$-2-MoCB	1L	2-MoCB	1	$^{13}C_{12}$-2,2′-DiCB	4L	2,2′-DiCB	4
$^{13}C_{12}$-2-MoCB	1L	3-MoCB	2	$^{13}C_{12}$-2,2′-DiCB	4L	2,3-DiCB	5
$^{13}C_{12}$-4-MoCB	3L	4-MoCB	3	$^{13}C_{12}$-2,2′-DiCB	4L	2,3′-DiCB	6
				$^{13}C_{12}$-2,2′-DiCB	4L	2,4-DiCB	7
				$^{13}C_{12}$-2,2′-DiCB	4L	2,4′-DiCB	8
				$^{13}C_{12}$-2,2′-DiCB	4L	2,5-DiCB	9
				$^{13}C_{12}$-2,2′-DiCB	4L	2,6-DiCB	10
				$^{13}C_{12}$-2,2′-DiCB	4L	3,3′-DiCB	11
				$^{13}C_{12}$-2,2′-DiCB	4L	3,4-DiCB	12
				$^{13}C_{12}$-2,2′-DiCB	4L	3,4′-DiCB	13
				$^{13}C_{12}$-2,2′-DiCB	4L	3,5-DiCB	14
				$^{13}C_{12}$-4,4′-DiCB	15L	4,4′-DiCB	15
TrCB							
$^{13}C_{12}$-2,2′,6-TrCB	19L	2,2′,3-TrCB	16	$^{13}C_{12}$-3,4,4′-TrCB	19L	2,4,4′-TrCB	28
$^{13}C_{12}$-2,2′,6-TrCB	19L	2,2′,4-TrCB	17	$^{13}C_{12}$-3,4,4′-TrCB	19L	2,4,5-TrCB	29
$^{13}C_{12}$-2,2′,6-TrCB	19L	2,2′,5-TrCB	18	$^{13}C_{12}$-3,4,4′-TrCB	19L	2,4,6-TrCB	30
$^{13}C_{12}$-2,2′,6-TrCB	19L	2,2′,6-TrCB	19	$^{13}C_{12}$-3,4,4′-TrCB	19L	2,4′,5-TrCB	31
$^{13}C_{12}$-2,2′,6-TrCB	19L	2,3,3′-TrCB	20	$^{13}C_{12}$-3,4,4′-TrCB	19L	2,4′,6-TrCB	32
$^{13}C_{12}$-2,2′,6-TrCB	19L	2,3,4-TrCB	21	$^{13}C_{12}$-3,4,4′-TrCB	19L	2′,3,4-TrCB	33
$^{13}C_{12}$-2,2′,6-TrCB	19L	2,3,4′-TrCB	22	$^{13}C_{12}$-3,4,4′-TrCB	19L	2′,3,5-TrCB	34
$^{13}C_{12}$-2,2′,6-TrCB	19L	2,3,5- TrCB	23	$^{13}C_{12}$-3,4,4′-TrCB	19L	3,3′,4-TrCB	35
$^{13}C_{12}$-2,2′,6-TrCB	19L	2,3,6- TrCB	23	$^{13}C_{12}$-3,4,4′-TrCB	19L	3,3′,5-TrCB	36
$^{13}C_{12}$-2,2′,6-TrCB	19L	2,3′,4-TrCB	25	$^{13}C_{12}$-3,4′,4′-TrCB	37L	3,4,4′-TrCB	37
$^{13}C_{12}$-2,2′,6-TrCB	19L	2,3′,5-TrCB	26	$^{13}C_{12}$-3,4′,4′-TrCB	37L	3,4,5-TrCB	38
$^{13}C_{12}$-2,2′,6-TrCB	19L	2,3′,6-TrCB	27	$^{13}C_{12}$-3,4′,4′-TrCB	37L	3,4′,5-TrCB	39
TeCB							
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,2′,3,3′-TeCB	40	$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,3,4,5-TeCB	61
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,2′,3,4-TeCB	41	$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,3,4,6-TeCB	62
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,2′,3,4′-TeCB	42	$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,3,4′,5-TeCB	63
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,2′,3,5-TeCB	43	$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,3,4′,6-TeCB	64
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,2′,3,5′-TeCB	44	$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,3,5,6-TeCB	65
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,2′,3,6-TeCB	45	$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,3′,4,4′-TeCB	66
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,2′,3,6′-TeCB	46	$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,3′,4,5-TeCB	67
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,2′,4,4′-TeCB	47	$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,3′,4,5′-TeCB	68
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,2′,4,5-TeCB	48	$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,3′,4,6-TeCB	69
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,2′,4,5′-TeCB	49	$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,3′,4′,5-TeCB	70
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,2′,4,6-TeCB	50	$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,3′,4′,6-TeCB	71
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,2′,4,6′-TeCB	51	$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,3′,5,5′-TeCB	72
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,2′,5,5′-TeCB	52	$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,3′,5′,6-TeCB	73
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,2′,5,6′-TeCB	53	$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,4,4′,5-TeCB	74
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,2′,6,6′-TeCB	54	$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,4,4′,6-TeCB	75
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,3,3′,4′-TeCB	55	$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2′,3,4,5-TeCB	76
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,3,3′,4′-TeCB	56	$^{13}C_{12}$-3,3′,4,4′-TeCB	77L	3,3′,4,4′-TeCB	77
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,3,3′,5-TeCB	57	$^{13}C_{12}$-3,3′,4,4′-TeCB	77L	3,3′,4,5-TeCB	78
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,3,3′,5′-TeCB	58	$^{13}C_{12}$-3,3′,4,4′-TeCB	77L	3,3′,4,5′-TeCB	79
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,3,3′,6-TeCB	59	$^{13}C_{12}$-3,3′,4,4′-TeCB	77L	3,3′,5,5′-TeCB	80
$^{13}C_{12}$-2,2′,6,6′-TeCB	54L	2,3,4,4′-TeCB	60	$^{13}C_{12}$-3,4,4′,5-TeCB	81L	3,4,4′,5-TeCB	81
PeCB							
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,3,3′,4-PeCB	82	$^{13}C_{12}$-2,3,3′,4,4′-PeCB	105L	2,3,3′,4,4′-PeCB	105
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,3,3′,5-PeCB	83	$^{13}C_{12}$-2,3,3′,4,4′-PeCB	105L	2,3,3′,4,5-PeCB	106
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,3,3′,6-PeCB	84	$^{13}C_{12}$-2,3,3′,4,4′-PeCB	105L	2,3,3′,4′,5-PeCB	107
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,3,4,4′-PeCB	85	$^{13}C_{12}$-2,3,3′,4,4′-PeCB	105L	2,3,3′,4,5′-PeCB	108
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,3,4,5-PeCB	86	$^{13}C_{12}$-2,3,3′,4,4′-PeCB	105L	2,3,3′,4,6-PeCB	109
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,3,4,5′-PeCB	87	$^{13}C_{12}$-2,3,3′,4,4′-PeCB	105L	2,3,3′,4′,6-PeCB	110
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,3,4,6-PeCB	88	$^{13}C_{12}$-2,3,3′,4,4′-PeCB	105L	2,3,3′,5,5′-PeCB	111
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,3,4,6′-PeCB	89	$^{13}C_{12}$-2,3,3′,4,4′-PeCB	105L	2,3,3′,5,6-PeCB	112
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,3,4′,5-PeCB	90	$^{13}C_{12}$-2,3,3′,4,4′-PeCB	105L	2,3,3′,5′,6-PeCB	113
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,3,4′,6-PeCB	91	$^{13}C_{12}$-2,3,4,4′,5-PeCB	114L	2,3,4,4′,5-PeCB	114
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,3,5,5′-PeCB	92	$^{13}C_{12}$-2,3,4,4′,5-PeCB	114L	2,3,4,4′,6-PeCB	115
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,3,5,6-PeCB	93	$^{13}C_{12}$-2,3,4,4′,5-PeCB	114L	2,3,4,5,6-PeCB	116
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,3,5,6′-PeCB	94	$^{13}C_{12}$-2,3,4,4′,5-PeCB	114L	2,3,4′,5,6-PeCB	117
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,3,5′,6-PeCB	95	$^{13}C_{12}$-2,3′,4,4′,5-PeCB	118L	2,3′,4,4′,5-PeCB	118
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,3,6,6′-PeCB	96	$^{13}C_{12}$-2,3′,4,4′,5-PeCB	118L	2,3′,4,4′,6-PeCB	119
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,3′,4,5-PeCB	97	$^{13}C_{12}$-2,3′,4,4′,5-PeCB	118L	2,3′,4,5,5′-PeCB	120
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,3′,4,6-PeCB	98	$^{13}C_{12}$-2,3′,4,4′,5-PeCB	118L	2,3′,4,5,′6-PeCB	121
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,4,4′,5-PeCB	99	$^{13}C_{12}$-2,3′,4,4′,5-PeCB	118L	2′,3,3′,4,5-PeCB	122
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,4,4′,6-PeCB	100	$^{13}C_{12}$-2′,3,4,4′,5-PeCB	123L	2′,3,4,4′,5-PeCB	123
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,4,5,5′-PeCB	101	$^{13}C_{12}$-2′,3,4,4′,5-PeCB	123L	2′,3,4,5,5′-PeCB	124
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,4,5,6′-PeCB	102	$^{13}C_{12}$-2′,3,4,4′,5-PeCB	123L	2′,3,4,5,6′-PeCB	125
$^{13}C_{12}$-2,2′,4,6,6′-PeCB	104L	2,2′,4,5,′6-PeCB	103	$^{13}C_{12}$-3,3′,4,4′,5-PeCB	126L	3,3′,4,4′,5-PeCB	126

COMPLETE LIST OF 209 PCB CONGENERS AND THEIR ISOMERS WITH CORRESPONDING ISOTOPE DILUTION QUANTITATION STANDARDS [a]—Continued

Pre-extraction standard	BZ [b] No.	Unlabeled target analyte	BZ [b] No.	Pre-extraction standard	BZ [b] No.	Unlabeled target analyte	BZ [b] No.
$^{13}C_{12}$-2,2′,4,6,6′-PeCB ...	104L	2,2′,4,6,6′-PeCB	104	$^{13}C_{12}$-3,3′,4,4′,5-PeCB ..	126L	3,3′,4,5,5′-PeCB	127
HxCB							
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,3′,4,4′-HxCB	128	$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB.	155L	2,2′,3,4′,5′,6-HxCB	149
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,3′,4,5-HxCB	129	$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB.	155L	2,2′,3,4′,6,6′-HxCB	150
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,3′,4,5′-HxCB	130	$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB.	155L	2,2′,3,5,5′,6-HxCB	151
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,3′,4,6-HxCB	131	$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB.	155L	2,2′,3,5,6,6′-HxCB	152
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,3′,4,6′-HxCB	132	$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB.	155L	2,2′,4,4′,5,5′-HxCB	153
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,3′,5,5′-HxCB	133	$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB.	155L	2,2′,4,4′,5′,6-HxCB	154
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,3′,5,6-HxCB	134	$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB.	155L	2,2′,4,4′,6,6′-HxCB	155
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,3′,5,6′-HxCB	135	$^{13}C_{12}$-2,3,3′,4,4′,5-HxCB.	156L	2,3,3′,4,4′,5-HxCB	156
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,3′,6,6′-HxCB	136	$^{13}C_{12}$-2,3,3′,4,4′,5′-HxCB.	157L	2,3,3′,4,4′,5′-HxCB	157
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,4,4′,5-HxCB	137	$^{13}C_{12}$-2,3,3′,4,4′,5′-HxCB.	157L	2,3,3′,4,4′,6-HxCB	158
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,4,4′,5′-HxCB	138	$^{13}C_{12}$-2,3,3′,4,4′,5′-HxCB.	157L	2,3,3′,4,5,5′-HxCB	158
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,4,4′,6-HxCB	139	$^{13}C_{12}$-2,3,3′,4,4′,5′-HxCB.	157L	2,3,3′,4,5,6-HxCB	160
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,4,4′,6′-HxCB	140	$^{13}C_{12}$-2,3,3′,4,4′,5′-HxCB.	157L	2,3,3′,4,5′,6-HxCB	161
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,4,5,5′-HxCB	141	$^{13}C_{12}$-2,3,3′,4,4′,5′-HxCB.	157L	2,3,3′,4′,5,5′-HxCB	162
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,4,5,6-HxCB	142	$^{13}C_{12}$-2,3,3′,4,4′,5′-HxCB.	157L	2,3,3′,4′,5,6-HxCB	163
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,4,5,6′-HxCB	143	$^{13}C_{12}$-2,3,3′,4,4′,5′-HxCB.	157L	2,3,3′,4′,5′,6-HxCB	164
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,4,5′,6-HxCB	144	$^{13}C_{12}$-2,3,3′,4,4′,5′-HxCB.	157L	2,3,3′,5,5′,6-HxCB	165
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,4,6,6′-HxCB	145	$^{13}C_{12}$-2,3,3′,4,4′,5′-HxCB.	157L	2,3,4,4′,5,6-HxCB	166
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,4′,5,5′-HxCB	146	$^{13}C_{12}$-2,3′,4,4′,5,5′-HxCB.	167L	2,3′,4,4′,5,5′-HxCB	167
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,4′,5,6-HxCB	147	$^{13}C_{12}$-2,3′,4,4′,5,5′-HxCB.	167L	2,3′,4,4′,5′,6-HxCB	168
$^{13}C_{12}$-2,2′,4,4′,6,6′-HxCB	155L	2,2′,3,4′,5,6′-HxCB	148	$^{13}C_{12}$-3,3′,4,4′,5,5′-HxCB.	169L	3,3′,4,4′,5,5′-HxCB	169
HpCB							
$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB.	188L	2,2′,3,3′,4,4′,5-HpCB	170	$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB.	188L	2,2′,3,4,4′,5,6′-HpCB	182
$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB.	188L	2,2′,3,3′,4,4′,6-HpCB	171	$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB.	188L	2,2′,3,4,4′,5′,6-HpCB	183
$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB.	188L	2,2′,3,3′,4,5,5′-HpCB	172	$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB.	188L	2,2′,3,4,4′,5′,6-HpCB	184
$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB.	188L	2,2′,3,3′,4,5,6-HpCB	173	$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB.	188L	2,2′,3,4,4′,6,6′-HpCB	185
$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB.	188L	2,2′,3,3′,4,5,6′-HpCB	174	$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB.	188L	2,2′,3,4,5,5′,6-HpCB	186
$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB.	188L	2,2′,3,3′,4,5′,6-HpCB	175	$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB.	188L	2,2′,3,4′,5,5′,6-HpCB	187
$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB.	188L	2,2′,3,3′,4,6,6′-HpCB	176	$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB.	188L	2,2′,3,4′,5,6,6′-HpCB	188
$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB.	188L	2,2′,3,3′,4′,5,6-HpCB	177	$^{13}C_{12}$-2,3,3′,4,4′,5,5′-HpCB.	189L	2,3,3′,4,4′,5,5′-HpCB	189
$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB.	188L	2,2′,3,3′,5,5′,6-HpCB	178	$^{13}C_{12}$-2,3,3′,4,4′,5,5′-HpCB.	189L	2,3,3′,4,4′,5,6-HpCB	190
$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB.	188L	2,2′,3,3′,5,6,6′-HpCB	179	$^{13}C_{12}$-2,3,3′,4,4′,5,5′-HpCB.	189L	2,3,3′,4,4′,5′,6-HpCB	191
$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB.	188L	2,2′,3,4,4′,5,5′-HpCB	180	$^{13}C_{12}$-2,3,3′,4,4′,5,5′-HpCB.	189L	2,3,3′,4,5,5′,6-HpCB	192
$^{13}C_{12}$-2,2′,3,4′,5,6,6′-HpCB.	188L	2,2′,3,4,4′,5,6-HpCB	181	$^{13}C_{12}$-2,3,3′,4,4′,5,5′-HpCB.	189L	2,3,3′,4′,5,5′,6-HpCB	193
OcCB				**NoCB**			
$^{13}C_{12}$-2,2′,3,3′,5,5′,6,6′-OcCB.	202L	2,2′,3,3′,4,4′,5,5′-OcCB	194	$^{13}C_{12}$-2,2′,3,3′,4,4′,5,5′,6-NoCB.	206L	2,2′,3,3′,4,4′,5,5′,6-NoCB.	206

COMPLETE LIST OF 209 PCB CONGENERS AND THEIR ISOMERS WITH CORRESPONDING ISOTOPE DILUTION QUANTITATION STANDARDS [a]—Continued

Pre-extraction standard	BZ [b] No.	Unlabeled target analyte	BZ [b] No.	Pre-extraction standard	BZ [b] No.	Unlabeled target analyte	BZ [b] No.
$^{13}C_{12}$-2,2′,3,3′,5,5′,6,6′-OcCB.	202L	2,2′,3,3′,4,4′,5,6-OcCB ..	195	$^{13}C_{12}$-2,2′,3,3′,4,4′,5,5′,6-NoCB.	206L	2,2′,3,3′,4,4′,5,6,6′-NoCB.	207
$^{13}C_{12}$-2,2′,3,3′,5,5′,6,6′-OcCB.	202L	2,2′,3,3′,4,4′,5,6′-OcCB	196	$^{13}C_{12}$-2,2′,3,3′,4,5,5′,6,6′-NoCB.	208L	2,2′,3,3′,4,5,5′,6,6′-NoCB.	208
$^{13}C_{12}$-2,2′,3,3′,5,5′,6,6′-OcCB.	202L	2,2′,3,3′,4,4′,6,6′-OcCB	197	**DeCB**			
$^{13}C_{12}$-2,2′,3,3′,5,5′,6,6′-OcCB.	202L	2,2′,3,3′,4,5,5′,6-OcCB ..	198	$^{13}C_{12}$-DeCB	209L	2,2′,3,3′,4,4′,5,5′,6,6′-DeCB.	209
$^{13}C_{12}$-2,2′,3,3′,5,5′,6,6′-OcCB.	202L	2,2′,3,3′,4,5,5′,6′-OcCB	199				
$^{13}C_{12}$-2,2′,3,3′,5,5′,6,6′-OcCB.	202L	2,2′,3,3′,4,5,6,6′-OcCB ..	200				
$^{13}C_{12}$-2,2′,3,3′,5,5′,6,6′-OcCB.	202L	2,2′,3,3′,4,5′,6,6′-OcCB	201				
$^{13}C_{12}$-2,2′,3,3′,5,5′,6,6′-OcCB.	202L	2,2′,3,3′,5,5′,6,6′-OcCB	202				
$^{13}C_{12}$-2,3′,3′,4,4′,5,5′,6-OcCB.	205L	2,2′,3,4,4′,5,5′,6-OcCB ..	203				
$^{13}C_{12}$-2,3′,3′,4,4′,5,5′,6-OcCB.	205L	2,2′,3,4,4′,5,6,6′-OcCB ..	204				
$^{13}C_{12}$-2,3′,3′,4,4′,5,5′,6-OcCB.	205L	2,3,3′,4,4′,5,5′,6-OcCB ..	205				

[a] Assignments assume the use of the SPB-Octyl column. In the event you choose another column, you may select the labeled standard having the same number of chlorine substituents and the closest retention time to the target analyte in question as the labeled standard to use for quantitation.
[b] BZ No.: Ballschmiter and Zell 1980, also referred to as IUPAC number.

Appendix B to Method 23

Preparation of XAD–2 Adsorbent Resin

1.0 Scope and Application

XAD–2® resin, as supplied by the original manufacturer, is impregnated with a bicarbonate solution to inhibit microbial growth during storage. Remove both the salt solution and any residual extractable chemicals used in the polymerization process before use. Prepare the resin by a series of water and organic extractions, followed by careful drying.

2.0 Extraction

2.1 You may perform the extraction using a Soxhlet extractor or other apparatus that generates resin meeting the requirements in Section 13.1 of Method 23. Use an all-glass thimble containing an extra-coarse frit for extraction of the resin. The frit is recessed 10–15 mm above a crenellated ring at the bottom of the thimble to facilitate drainage. Because the resin floats on methylene chloride, carefully retain the resin in the extractor cup with a glass wool plug and stainless-steel screen. This process involves sequential extraction with the following recommended solvents in the listed order.

- *Water initial rinse:* Place resin in a suitable container, soak for approximately 5 min with Type II water, remove fine floating resin particles and discard the water. Fill with Type II water a second time, let stand overnight, remove fine floating resin particles, and discard the water.
- *Hot water:* Extract with water for 8 hr.
- *Methyl alcohol:* Extract for 22 hr.
- *Methylene chloride:* Extract for 22 hr.
- *Toluene:* Extract for 22 hr.
- *Methylene chloride:* Extract for 22 hr.

Note: You may store the resin in a sealed glass container filled with toluene prior to the final toluene extraction. It may be necessary to repeat the final methylene chloride extractions to meet the cleanliness requirements in Section 13.1 of Method 23.

2.2 You may use alternative extraction procedures to clean large batches of resin. Any size extractor may be constructed; the choice depends on the needs of the sampling programs. The resin is held in a glass or stainless-steel cylinder between a pair of coarse and fine screens. Spacers placed under the bottom screen allow for even distribution of clean solvent. Clean solvent is circulated through the resin for extraction. A flow rate is maintained upward through the resin to allow maximum solvent contact and prevent channeling.

2.2.1 Experience has shown that 1 mL/g of resin extracted is the minimum necessary to extract and clean the resin. The aqueous rinse is critical to the subsequent organic rinses and may be accomplished by simply flushing the canister with about 1 liter of distilled water for every 25 g of resin. A small pump may be useful for pumping the water through the canister. You should perform the water extraction at the rate of about 20 to 40 mL/min.

2.2.2 All materials of construction are glass, PTFE, or stainless steel. Pumps, if used, should not contain extractable materials.

3.0 Drying

3.1 Dry the adsorbent of extraction solvent before use. This section provides a recommended procedure to dry adsorbent that is wet with solvent. However, you may use other procedures if the cleanliness requirements in Section 13.1 of Method 23 are met.

3.2 Drying Column. A simple column with suitable retainers will hold all the XAD–2 from the extractor or the Soxhlet extractor, as shown in Figure B–1, with sufficient space for drying the bed while generating a minimum backpressure in the column.

3.3 Drying Procedure: Dry the adsorbent using clean inert gas. Liquid nitrogen from a standard commercial liquid nitrogen cylinder has proven to be a reliable source of large volumes of gas free from organic contaminants. You may use high-purity tank nitrogen to dry the resin. However, you should pass the high-purity nitrogen through a bed of activated charcoal approximately 150 mL in volume prior to entering the drying apparatus.

3.3.1 Connect the gas vent of a liquid nitrogen cylinder or the exit of the activated carbon scrubber to the column by a length of precleaned copper tubing (*e.g.,* 0.95 cm ID) coiled to pass through a heat source. A convenient heat source is a water bath heated from a steam line. The final nitrogen temperature should only be warm to the touch and not over 40 °C.

3.3.2 Allow the methylene chloride to drain from the resin prior to placing the resin in the drying apparatus.

3.3.3 Flow nitrogen through the drying apparatus at a rate that does not fluidize or agitate the resin. Continue the nitrogen flow until the residual solvent is removed.

Note: Experience has shown that about 500 g of resin may be dried overnight by consuming a full 160–L cylinder of liquid nitrogen.

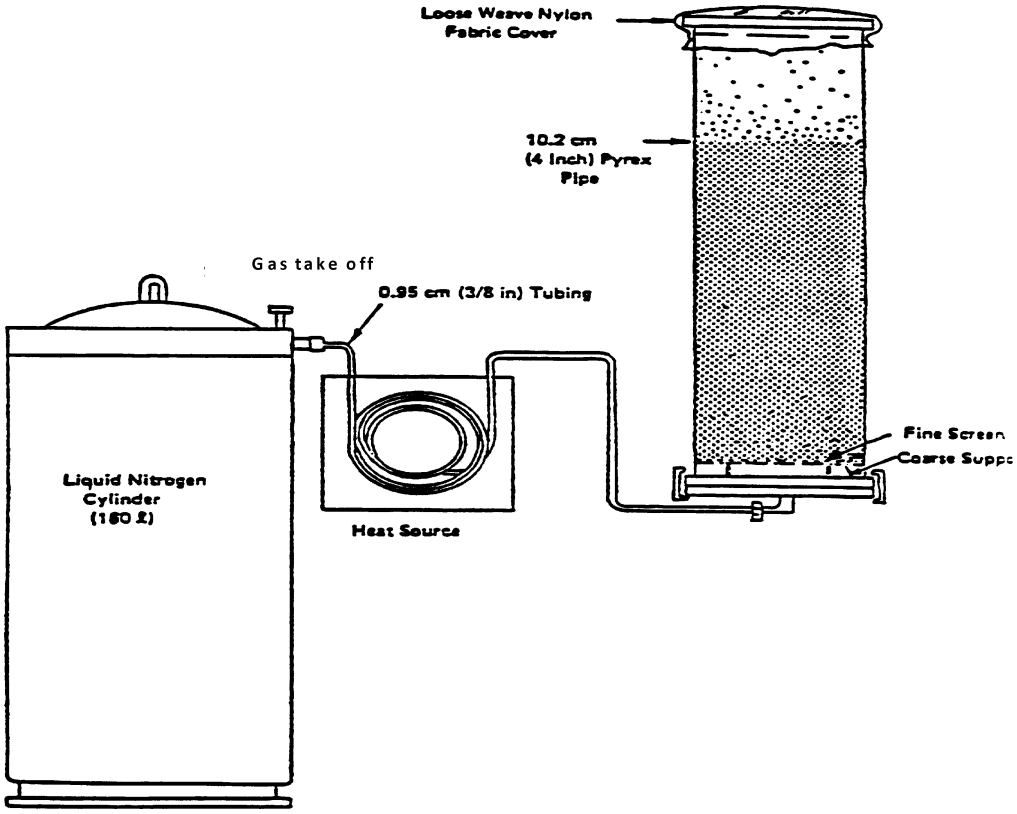

Figure B–1. XAD–2 fluidized-bed drying apparatus

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 6. The authority citation for part 63 continues to read as follows:

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

Subpart LL—National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants

■ 7. In § 63.849, revise paragraphs (a)(13) and (14) to read as follows:

§ 63.849 Test methods and procedures.

* * * * *

(a) * * *

(13) Method 23 of Appendix A–7 of 40 CFR part 60 for the measurement of Polychlorinated Biphenyls (PCBs) where stack or duct emissions are sampled; and

(14) Method 23 of Appendix A–7 of 40 CFR part 60 and Method 14 or Method 14A in Appendix A to Part 60 of this chapter or an approved alternative method for the concentration of PCB where emissions are sampled from roof monitors not employing wet roof scrubbers.

* * * * *

Subpart EEE—National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors

■ 8. In § 63.1208, revise paragraph (b)(1) to read as follows:

§ 63.1208 What are the test methods?

* * * * *

(b) * * *

(1) *Dioxins and furans.* (i) To determine compliance with the emission standard for dioxins and furans, you must use:

(A) Method 0023A, Sampling Method for Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans emissions from Stationary Sources, EPA Publication SW–846 (incorporated by reference—see § 63.14); or

(B) Method 23, provided in Appendix A, Part 60 of this chapter.

(ii) You must sample for a minimum of three hours, and you must collect a minimum sample volume of 2.5 dscm.

(iii) You may assume that nondetects are present at zero concentration.

* * * * *

Subpart XXX—National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese

■ 9. In § 63.1625, revise paragraph (b)(10) to read as follows:

§ 63.1625 What are the performance test and compliance requirements for new, reconstructed, and existing facilities?

* * * * *

(b) * * *

(10) Method 23 of Appendix A–7 of 40 CFR part 60 to determine PAH.

* * * * *

Subpart AAAAAAA—National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing

■ 10. In table 3 to Subpart AAAAAAA of Part 63 revise the entry ''6. Measuring the PAH emissions'' to read as follows:

TABLE 3 TO SUBPART AAAAAAA OF PART 63—TEST METHODS

For * * *	You must use * * *
* * * * *	
6. Measuring the PAH emissions.	EPA test method 23.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 11. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 3017, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

Subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces

■ 12. In § 266.104, revise paragraph (e)(1) to read as follows:

§ 266.104 Standards to control organic emissions.

* * * * *

(e) * * *

(1) During the trial burn (for new facilities or an interim status facility applying for a permit) or compliance test (for interim status facilities), determine emission rates of the tetra-octa congeners of chlorinated dibenzo-p-dioxins and dibenzofurans (CDDs/CDFs) using Method 0023A, Sampling Method for Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans Emissions from Stationary Sources, EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter or Method 23, provided in Appendix A–7, Part 60 of this chapter.

* * * * *

[FR Doc. 2023–04958 Filed 3–17–23; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Species Status With Critical Habitat for Texas Heelsplitter, and Threatened Status With Section 4(d) Rule and Critical Habitat for Louisiana Pigtoe; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2022–0026; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BE46

Endangered and Threatened Wildlife and Plants; Endangered Species Status With Critical Habitat for Texas Heelsplitter, and Threatened Status With Section 4(d) Rule and Critical Habitat for Louisiana Pigtoe

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Texas heelsplitter (*Potamilus amphichaenus*) as an endangered species and the Louisiana pigtoe (*Pleurobema riddellii*) as a threatened species under the Endangered Species Act of 1973, as amended (Act). Both species are freshwater mussels. This document serves as our 12-month finding on a petition to list the Texas heelsplitter and Louisiana pigtoe. For the Louisiana pigtoe, we also propose a rule issued under section 4(d) of the Act (a ''4(d) rule'') to provide for the conservation of the species. In addition, we propose to designate critical habitat for the Texas heelsplitter and Louisiana pigtoe under the Act. In total, approximately 831.8 river miles (1,338.6 river kilometers) in 31 counties in Texas fall within the boundaries of the proposed critical habitat designation for the Texas heelsplitter, and approximately 1,028.2 river miles (1,654.3 river kilometers) in 3 counties in Arkansas, 6 parishes in Louisiana, 2 counties in Mississippi, 1 county in Oklahoma, and 21 counties in Texas fall within the boundaries of the proposed critical habitat designation for the Louisiana pigtoe. We announce the availability of a draft economic analysis of the proposed designation of critical habitat for the Texas heelsplitter and Louisiana pigtoe. Finally, we announce an informational meeting followed by a public hearing on this proposed rule. If we finalize this rule as proposed, it would extend the Act's protections to these species and their critical habitats.

DATES: We will accept comments received or postmarked on or before May 19, 2023. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date.

Public informational meeting and public hearing: We will hold a public informational session from 5 p.m. to 6 p.m., central time, followed by a public hearing from 6:30 p.m. to 8 p.m., central time, on May 2, 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–R2–ES–2022–0026, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check 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 to: Public Comments Processing, Attn: FWS–R2–ES–2022–0026, 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 Information Requested, below, for more information).

Availability of supporting materials: For the proposed critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file and are available at *https://www.fws.gov/southwest/es/arlingtontexas/,* at *https://www.regulations.gov* under Docket No. FWS–R2–ES–2022–0026, and at the Arlington Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Additional supporting information that we developed for this critical habitat designation will be available on the Service's website, at *https://www.regulations.gov,* or both.

Public informational meeting and public hearing: The public informational meeting and the public hearing will be held virtually using the Zoom online video platform and via teleconference. See *Public Hearing,* below, for more information.

FOR FURTHER INFORMATION CONTACT: Debra Bills, Field Supervisor, U.S. Fish and Wildlife Service, Arlington Ecological Services Field Office, 501 West Felix Street, Suite 1105, Fort Worth, Texas 76115; telephone 817–277–1100. 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:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the Texas heelsplitter meets the definition of an endangered species and that the Louisiana pigtoe meets the definition of a threatened species; therefore, we are proposing to list them as such and proposing a designation of critical habitat for both species. Both listing a species as an endangered or threatened species and designating critical habitat can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process.

What this document does. We propose to list the Texas heelsplitter as an endangered species and to list the Louisiana pigtoe as a threatened species with a 4(d) rule. We also propose to designate critical habitat for both species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that habitat loss through changes in water quality, the gradual accumulation of additional layers of fine sediments, and altered hydrology (Factor A) are the primary threats to these species, all of which are exacerbated by the ongoing and expected future effects of climate change (Factor E). Additionally, predation (Factor C) and collection (Factor B), as well as other natural or human-induced events/activities that result in direct mortality, are also

affecting those populations already experiencing low stream flow, and reservoirs and other instream barriers to fish movement (Factor E) that limit dispersal and prevent recolonization after stochastic events.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current ranges, including distribution patterns and the locations of any additional populations of these species;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, their habitats, or both.

(2) Threats and conservation actions affecting these species, including:

(a) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(b) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species.

(c) Existing regulations or conservation actions that may be addressing threats to these species.

(3) Additional information concerning the historical and current status of these species.

(4) Information on regulations that are necessary and advisable to provide for the conservation of the Louisiana pigtoe and that we can consider in developing a 4(d) rule for the species. We particularly seek information concerning the extent to which we should include any of the section 9 prohibitions in the 4(d) rule or whether we should consider any additional exceptions from the prohibitions in the 4(d) rule.

(5) Specific information on:

(a) The amount and distribution of Texas heelsplitter and Louisiana pigtoe habitat;

(b) Any additional areas occurring within the range of the Louisiana pigtoe, *i.e.,* Howard, Little River, and Sevier Counties, Arkansas; Allen, Beauregard, Rapides, St. Tammany, Vernon, and Washington parishes, Louisiana; Marion and Pearl River Counties, Mississippi; McCurtain County, Oklahoma; and Anderson, Angelina, Cherokee, Gregg, Hardin, Harrison, Houston, Jasper, Jefferson, Liberty, Montgomery, Nacogdoches, Orange, Panola, Polk, Rusk, Smith, Trinity, Tyler, Upshur, and Wood Counties, Texas, and Texas heelsplitter, *i.e.,* Anderson, Angelina, Cherokee, Ellis, Freestone, Gregg, Grimes, Hardin, Harrison, Henderson, Houston, Jasper, Jefferson, Kaufman, Leon, Madison, Navarro, Orange, Panola, Polk, Rains, Rusk, Sabine, Shelby, Smith, Trinity, Tyler, Upshur, Van Zandt, Walker, and Wood Counties, Texas, that should be included in the designation because they (i) are occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations, or (ii) are unoccupied at the time of listing and are essential for the conservation of the species; and

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) To evaluate the potential to include areas not occupied at the time of listing, we particularly seek comments regarding whether occupied areas are adequate for the conservation of the species. Additionally, please provide specific information regarding whether or not unoccupied areas would, with reasonable certainty, contribute to the conservation of the species and contain at least one physical or biological feature essential to the conservation of the species. We also seek comments or information regarding whether areas not occupied at the time of listing qualify as ''habitat'' for the species.

(7) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(8) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(9) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts and any additional information regarding probable economic impacts that we should consider.

(10) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. If you think we should exclude any additional areas, please provide information supporting a benefit of exclusion.

(11) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available and section

4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific information available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, 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. We will post all hardcopy submissions on *https://www.regulations.gov.*

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.*

Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that Texas heelsplitter is threatened instead of endangered or that Louisiana pigtoe is endangered instead of threatened, or we may conclude that one or both species do not warrant listing as either an endangered species or a threatened species. For critical habitat, our final designations may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, or may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the 4(d) rule if we conclude it is appropriate in light of comments and new information we receive. For example, we may expand the prohibitions to include prohibiting additional activities if we conclude that those additional activities are not compatible with conservation of the species. Conversely, we may establish additional exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the species.

Public Hearing

We have scheduled a public informational meeting and public hearing on this proposed rule. We will hold the public informational meeting and public hearing on the date and at the times provided above under *Public informational meeting and public hearing* in **DATES**. We are holding the public informational meeting and public hearing via the Zoom online video platform and via teleconference so that participants can attend remotely. For security purposes, registration is required. You must register in order to listen and view the meeting and hearing via Zoom, listen to the meeting and hearing by telephone, or provide oral public comments at the public hearing by Zoom or telephone. For information on how to register, or if you encounter problems joining Zoom the day of the meeting, visit *https://www.fws.gov/office/arlington-ecological-services.* Registrants will receive the Zoom link and the telephone number for the public informational meeting and public hearing. If applicable, interested members of the public not familiar with the Zoom platform should view the Zoom video tutorials (*https://support.zoom.us/hc/en-us/articles/206618765-Zoom-video-tutorials*) prior to the public informational meeting and public hearing.

The public hearing will provide interested parties an opportunity to present verbal testimony (formal, oral comments) regarding this proposed rule. The public informational meeting will be an opportunity for dialogue with the Service. The public hearing is a forum for accepting formal verbal testimony. In the event there is a large attendance, the time allotted for oral statements may be limited. Therefore, anyone wishing to make an oral statement at the public hearing for the record is encouraged to provide a prepared written copy of their statement to us through the Federal eRulemaking Portal, or U.S. mail (see **ADDRESSES**, above). There are no limits on the length of written comments submitted to us. Anyone wishing to make an oral statement at the public hearing must register before the hearing (*https://www.fws.gov/office/arlington-ecological-services*). The use of a virtual public hearing is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

The Texas heelsplitter was identified as a category 2 candidate species on January 6, 1989 (54 FR 554). The category 2 designation was assigned to taxa for which information indicated that proposing to list as endangered or threatened was possibly warranted, but for which conclusive data on biological vulnerability and threats were not currently available to support proposed rules. The species remained so designated in subsequent candidate notices of review (CNORs) (56 FR 58804, November 21, 1991; 59 FR 58982, November 15, 1994). In the February 28, 1996, CNOR (61 FR 7596), we discontinued the designation of category 2 species as candidates; therefore, with the publication of that CNOR, the Texas heelsplitter was no longer a candidate species.

On June 25, 2007, we were petitioned to list both the Texas heelsplitter and Louisiana pigtoe. We published a substantial 90-day finding for Texas heelsplitter on December 15, 2009 (74 FR 66260), and for Louisiana pigtoe on December 16, 2009 (74 FR 66866).

This document constitutes our 12-month warranted petition finding, our proposed listing rule, and our proposed critical habitat rule for the Texas heelsplitter and Louisiana pigtoe.

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the Texas heelsplitter and Louisiana pigtoe. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of 11 appropriate specialists regarding the SSA. We received 6 responses.

I. Proposed Listing Determination

Background

General Mussel Biology

A thorough review of the taxonomy, life history, and ecology of the Texas heelsplitter and Louisiana pigtoe is presented in the SSA report (USFWS 2022, entire), and briefly summarized here.

Freshwater mussels, including the Texas heelsplitter and Louisiana pigtoe, have a complex life history involving parasitic larvae, called glochidia, which are wholly dependent on host fish. As freshwater mussels are generally sessile (immobile), dispersal is accomplished primarily through the behavior of host fish and their tendencies to travel upstream and against the current in rivers and streams. Mussels are broadcast spawners; males release

sperm into the water column, which is taken in by the female through the incurrent aperture (the tubular structure used to draw water into the body of the mussel). The developing larvae remain with the female until they mature and are ready for release as glochidia, to attach on the gills, head, or fins of fishes (Vaughn and Taylor 1999, p. 913; Barnhart *et al.* 2008, pp. 371–373).

Glochidia die if they fail to find a host fish, attach to the wrong species of host fish, attach to a fish that has developed immunity from prior infestations, or attach to the wrong location on a host fish (Neves 1991, p. 254; Bogan 1993, p. 599). Successful glochidia encyst (enclose in a cyst-like structure) on the host's tissue, draw nutrients from the fish, and develop into juvenile mussels (Arey 1932, pp. 214–215). The glochidia will remain encysted for about a month through a transformation to the juvenile stage. Once transformed, the juveniles will excyst from the fish and drop to the substrate.

Freshwater mussel species vary in both onset and duration of spawning, how long developing larvae are held in the marsupial gill chambers (gills used for holding eggs and glochidia), and which fish species serve as hosts. The mechanisms employed by mussel species to increase the likelihood of interaction between host fish and glochidia vary by species.

Mussels are generally immobile; their primary opportunity for dispersal and movement within the stream comes when glochidia attach to a mobile host fish (Smith 1985, p. 105). Upon release from the host, newly transformed juveniles drop to the substrate on the bottom of the stream. Those juveniles that drop in unsuitable substrates die because their immobility prevents them from relocating to more favorable habitat. Juvenile freshwater mussels burrow into interstitial substrates and grow to a larger size that is less susceptible to predation and displacement from high-flow events (Yeager *et al.* 1994, p. 220). Adult mussels typically remain within the same general location where they dropped off (excysted) from their host fish as juveniles.

Host specificity can vary across mussel species, which may have specialized or generalized relationships with one or more taxa of fish. Mussels have evolved a wide variety of adaptations to facilitate transmission of glochidia to host fish, including mantle displays (lures) mimicking fish or invertebrates; packages of glochidia (conglutinates) that mimic worms, insect larvae, larval fish, or fish eggs; and release of glochidia in mucous webs that entangle fish (Strayer *et al.* 2004, p. 431). Polymorphism (existence of multiple forms) of mantle lures and conglutinates frequently exists within mussel populations (Barnhart *et al.* 2008, p. 383), representing important adaptive capacity in terms of genetic diversity and ecological representation.

Texas Heelsplitter

The Texas heelsplitter was first described as the species *Unio amphichaenus* by Frierson (1898, p. 109) from the Sabine River near Logansport, Louisiana. The current recognized scientific name for Texas heelsplitter is *Potamilus amphichaenus* (Williams *et al.* 2017a, pp. 35, 42). The Texas heelsplitter is a medium- to large-sized freshwater mussel (up to 177 millimeters (mm) (7 inches (in)) shell length) that has a tan to brown or black elliptical shell, with lighter coloration on the beaks, and a relatively straight hinge line. Texas heelsplitters exhibit slight sexual dimorphism; females have a broadly rounded posterior margin and males are more pointed (Howells 2010b, p. 2). The base of the anterior margin exhibits a long, narrow gape, while a shorter, much wider gape is located along the posterior margin, presumably to accommodate the incurrent and excurrent apertures (Neck and Howells 1995, p. 4).

Although information specific to Texas heelsplitter reproduction is unavailable, other species from the tribe Lampsilini release glochidia in packets, called conglutinates, and are known to use mantle lures to attract sight feeding fishes that attack and rupture the marsupium, thereby becoming infested by glochidia (Barnhart *et al.* 2008, pp. 377, 380). Related species are long-term brooders (bradytictic), spawning and becoming gravid in the fall and releasing glochidia in the spring (Barnhart *et al.* 2008, p. 384). Freshwater drum (*Aplodinotus grunniens*) have been confirmed as host fish for the Texas heelsplitter (Bosman *et al.* 2015, p. 15).

A related freshwater mussel species, bleufer (*Potamilus purpuratus*), from the southeastern United States was reported to reach a maximum age of 9–26 years, and other related species ranged from 4–50 years with a higher growth rate compared to other species (Haag and Rypel 2011, pp. 229, 234, 239). The Texas heelsplitter has been reported mature at approximately 60 mm (2.4 in) (Ford *et al.* 2016, p. 31).

Texas heelsplitters occur in streams and rivers of the Trinity, Neches, and Sabine drainages in east Texas and in the Sabine River at the western border of Louisiana on substrates consisting of ''firm mud, sand, or finer gravels bottoms, in still to moderate flows'' and sometimes associated with fallen timber (Howells 2014, p. 69; Howells 2010b, p. 3 and table 2.3). Additionally, Texas heelsplitters can tolerate manmade impoundments and have been found in several East Texas reservoirs (Howells 2010b, p. 3).

Louisiana Pigtoe

The Louisiana pigtoe was originally described as the species *Unio riddellii* (Lea 1862, p. 228) from the Trinity River near the City of Dallas, Dallas County, Texas. The current recognized scientific name for Louisiana pigtoe is *Pleurobema riddellii* (Williams *et al.* 2017a, pp. 35, 42). The Louisiana pigtoe is a medium-sized freshwater mussel (shell lengths to greater than 62 mm (2.4 in)) with a brown to black, triangular to subquadrate shell without external sculpturing, sometimes with greenish rays. For a detailed description, see Howells *et al.* 1996 (pp. 91–92) and Howells 2014 (p. 65). Other native mussel species (*e.g.,* pimpleback (*Cyclonaias pustulosa*), Texas pigtoe (*Fusconaia askewi*), Trinity pigtoe (*F. chunii*), and Wabash pigtoe (*F. flava*)) can easily be mistaken for Louisiana pigtoe when identified by shell morphology alone.

Louisiana pigtoe are bradytictic (*i.e.,* long-term brooders; spawning occurs during the summer, and glochidia are held by the female over winter and released the following spring); however, gravid females have been observed in July (Marshall 2014, pp. 46–47). A closely related congener, the rough pigtoe (*Pleurobema plenum*), is known to utilize the tachytictic reproductive cycle (*i.e.,* short-term brooders; fertilization occurs in the spring, and glochidia are expelled during the summer or early fall) (EPA 2007, p. 37).

The primary host fish for Louisiana pigtoe has not been confirmed. Bullhead minnow (*Pimephales vigilax*), blacktail shiner (*Cyprinella venusta*), and red shiner (*Cyprinella lutrensis*) have been suggested as potential fish hosts based on a fish host distribution modeling effort (Marshall 2014, pp. 59–60).

A single juvenile Louisiana pigtoe from the Neches River, Texas, was reported to grow 15 mm (0.6 in) during its first year from an initial shell length of 2 mm (0.08 in) (Ford *et al.* 2016, p. 30). Sexual maturity is achieved at shell lengths around 40 mm (1.6 in) (Ford *et al.* 2016, pp. 28, 30), and Louisiana pigtoe could reach maturity in 3 to 4 years. Based on egg production, sexually mature females were estimated by external annuli to be between 4 and 12 years of age with shell lengths ranging

from 29–59 mm (1.1–2.3 in) (Hinkle 2018, p. 19).

Louisiana pigtoes occur in medium- to large-sized streams throughout portions of east Texas, Louisiana, west Mississippi, southeast Oklahoma, and southwest Arkansas (Vidrine 1993, p. 66; Howells *et al.* 1997, p. 22; Randklev *et al.* 2013, p. 269; Randklev 2018, entire) in flowing waters (0.3–1.4 meters per second (m/s)) over substrates of cobble and rock or sand, gravel, cobble, and woody debris; they are often associated with riffle, run, and sometimes larger backwater tributary habitats (Ford *et al.* 2016, pp. 42, 52; Howells 2010a, pp. 3–4; Williams *et al.* 2017b, p. 21). Specimens are typically found in shallower waters (0.1–1.2 m (0.3–3.9 feet (ft) in depth; Howells 2010a, p. 3)); however, recent surveys found Louisiana pigtoe as deep as 3.33 m (10.9 ft) in the lower Neches River (Corbett 2020, pp. 2, 4).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R2–ES–2022–0026 on *https://www.regulations.gov.*

To assess the viability of the Texas heelsplitter and Louisiana pigtoe, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the

ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated each individual species' life-history needs. The next stage involved an assessment of the historical and current condition of each species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about each species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and their resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability. We analyze these factors both individually and cumulatively to determine the current condition of the species and project the future condition of the species under several plausible future scenarios.

Using various timeframes and the current and projected future resiliency, redundancy, and representation, we describe the species' levels of viability over time. For the Texas heelsplitter and Louisiana pigtoe to maintain viability, their populations or some portion thereof must be sufficiently resilient. A number of factors influence the resiliency of their populations, including occupied stream length, abundance, and recruitment. Elements of the species' habitat that determine whether Texas heelsplitter and Louisiana pigtoe populations can grow to maximize habitat occupancy influence those factors, thereby increasing the resiliency of populations. These resiliency factors and habitat elements are discussed in detail in the SSA report and summarized here.

Species Needs

Occupied Stream Length

Most freshwater mussels, including the Texas heelsplitter and Louisiana pigtoe, are found in aggregations called mussel beds that vary in size from about 50 to over 5,000 square meters (m^2), separated by stream reaches in which mussels are absent or rare (Vaughn 2012, p. 2). Mussel populations in streams are highly patchy, especially at a small scale (less than 100 stream meters) (Strayer 1999, p. 468). We define a mussel population at a larger scale than a single mussel bed; it is the collection or series of mussel beds within a stream reach between that infested host fish may travel, allowing for ebbs and flows in mussel bed density and abundance over time throughout the population's occupied reach. Therefore, adequately resilient mussel populations must occupy stream reaches that are long enough such that stochastic events that adversely affect individual mussel beds do not eliminate the entire population. Repopulation by glochidia-infested fish from other mussel beds within the reach, if present and connected, allow the population to recover from the temporary loss of individuals due to occasional disruptive events.

For our analysis, we consider populations extending greater than 50 river miles (river mi) (80 kilometers (km)) to have a high probability of persistence to stochastic events because a single event is unlikely to affect the entire population. Populations occupying reaches between 20 and 50 river mi (32 and 80 km) have moderate resiliency to stochastic events, while populations occupying reaches less than 20 mi (32.19 km) have low resiliency. Note that we define populations occupying a stream length at or approaching zero miles as being functionally extirpated (populations with abundance that is currently at such low levels that we expect them to become extirpated in the near future) or extirpated.

Abundance

Populations require a minimum number of individuals to ensure stability and persistence. This threshold is often referred to as the minimum viable population and is generally calculated through a population viability analysis that estimates extinction risk given a number of input variables. There are no published minimum viable population estimates for the Texas heelsplitter or Louisiana pigtoe; therefore, it is unknown how many individuals are required to sustain populations of these mussels. However, population health is dependent on species abundance as well as water availability and the ability for mussels to meet life-history needs within their habitats, which were evaluated as part of the SSA.

It is important to recognize that Louisiana pigtoe observations used to determine abundance in the SSA report may include misidentified individuals. Without genetic confirmation, identification of Louisiana pigtoe in the field based on shell morphology is questionable, with seasoned experts accurately identifying the species only 76 percent of the time (Inoue 2018, p. 1). Unfortunately, genetic testing was not available for the majority of reported Louisiana pigtoe historical observations, which relied solely on shell morphological characteristics for species identification (Randklev 2018, entire). Since there is no way to know the margin of error or to otherwise account for potential misidentifications, we determined abundance for Louisiana pigtoe based on reported observations (as is) and did not adjust or modify the survey data to compensate for potential misidentifications. We do not consider misidentification to be an issue for Texas heelsplitter observations, since they are recognizable based on morphological characteristics observed in the field and not easily confused with other species.

Mussel abundance in a given stream reach is a product of the number of mussel beds and the density of mussels within those beds. For populations of Texas heelsplitter and Louisiana pigtoe to be healthy (*i.e.,* adequately resilient), mussel beds of sufficient number and density must be present to allow recovery from natural and local stochastic events, allowing the mussel bed to persist and the overall local population to survive within a stream reach. Mussel abundance is indicated by the number of individuals found during a sample event. Mussel surveys are rarely a complete census of the population, but density can be estimated by the number of individuals found during a survey effort using various statistical techniques (*i.e.,* estimate the total population from a subset of surveyed individuals). Population estimates are not available for all Texas heelsplitter and Louisiana pigtoe populations, and techniques for available surveys are not always directly comparable (*i.e.,* same area size searched, similar search time, etc.). When available, we used the number of

individuals captured relative to the amount of time surveys were conducted to estimate population abundance, hereafter referred to as overall catch per unit effort (CPUE). Although overall CPUE was the preferred metric to estimate population abundance, when overall CPUE was not available, the number of individuals detected during the most recent comprehensive survey effort was used as a surrogate metric. Calculation of abundance in this manner is intended to be an estimate and is considered the best available information when population trend data do not exist and precise population abundance cannot be determined. Using CPUE, we are able to estimate if the species is currently (since year 2000) common or rare within populations. Abundance for each population is rated from ''high'' to ''low'' (or functionally extirpated/extirpated) based on overall CPUE (or number of individuals found when survey effort is not reported) according to live or recent dead found during surveys since the year 2000, as follows: ''high'' is overall CPUE of greater than or equal to 4.0 (or 100 or more individuals); ''moderate'' is overall CPUE greater than or equal to 2.0 and less than 4.0 (or between 25 individuals and 99 individuals); ''low'' is overall CPUE greater than or equal to 0.5 and less than 2.0 (or between 3 and 24 individuals); and ''functionally extirpated/extirpated'' is overall CPUE less than 0.5 (or fewer than 3 individuals).

Reproduction/Recruitment

Sufficiently resilient Texas heelsplitter and Louisiana pigtoe populations must also be reproducing and recruiting young individuals into the population to replace individuals lost to old age, disease, or predation. Population size and abundance are a reflection of habitat conditions, environmental stressors, and other past influences on the population. The ability of populations to successfully reproduce and recruit will determine if a population may be stable, increasing, or decreasing over time. For example, a large, dense mussel population that contains mostly old individuals is not likely to remain large and dense into the future if there are few young individuals to sustain the population over time (*i.e.,* death rates exceed birth rates resulting in negative population growth). Conversely, a population that is less dense but has many young and/or gravid individuals is likely to grow, becoming more densely populated in the future (*i.e.,* birth rates, and subsequent recruitment of reproductive adults, exceed death rates, resulting in positive population growth). Detection rates of very young juvenile mussels during routine abundance and distribution surveys are extremely low due to sampling bias because sampling involves tactile searches and mussels less than 35 mm (1.4 in) can be difficult to detect (Strayer and Smith 2003, pp. 47–48). For this evaluation, we concluded there was evidence of reproduction/recruitment for a population when surveys detected small-sized individuals (near the low end of the detectable range or approximately 35 mm (1.4 in) in size) since the year 2000 or gravid females (eggs and/or glochidia visible) were observed during the reproductively active time of year.

Risk Factors for Texas Heelsplitter and Louisiana Pigtoe

We reviewed the potential risk factors (*i.e.,* threats, stressors) that could be affecting the Texas heelsplitter and Louisiana pigtoe now and in the future. In this proposed rule, we will discuss only those factors in detail that could meaningfully impact the status of the species. Many of the threats and risk factors are the same or similar for both species. Where the effects are expected to be similar, we present one discussion that applies to both species. Where the effects may be unique to one species, we will address that specifically. The primary risk factors (*i.e.,* threats) affecting the status of the Texas heelsplitter and Louisiana pigtoe all fall under Factor A of the Act and are: (1) Water quality changes, (2) altered hydrology, (3) changes to habitat structure and substrate, and (4) habitat fragmentation. These factors are all exacerbated by the ongoing and expected effects of climate change (Factor E). Additionally, predation (Factor C) and collection (Factor B), as well as other natural or human induced events/activities that result in direct mortality, are also affecting those populations already experiencing low stream flow, and reservoirs and instream barriers to fish movement (Factor E) limit dispersal and prevent recolonization after stochastic events.

Changes to Water Quality

Freshwater mussels require water in sufficient quantity and quality on a consistent basis to complete their life cycles and those of their host fishes. Water quality can be degraded through contamination or alteration of water chemistry. Environmental contaminants include a broad array of natural, synthetic, and chemical substances introduced to the environment that can be hazardous to living organisms. Chemical contaminants are ubiquitous throughout the environment and are a major contributor to the current declining status of freshwater mussel species nationwide (Augspurger *et al.* 2007, p. 2025). Contaminants enter the environment through both point (*e.g.,* hazardous spills, industrial wastewater, municipal effluents) and non-point (*e.g.,* urban stormwater and agricultural runoff) sources. These sources contribute organic compounds, trace metals, pesticides, plastics, petroleum hydrocarbons, flame retardants, and a wide variety of emerging contaminants (*e.g.,* pharmaceuticals and personal care products). Ammonia is of particular concern below wastewater treatment plant outfalls because freshwater mussels have been shown to be particularly sensitive to increases in ammonia levels (Augspurger *et al.* 2003, p. 2569). The extent to which environmental contaminants adversely affect aquatic biota can vary depending on many site-specific variables, but species diversity and abundance consistently ranks lower in waters that are known to be polluted or otherwise impaired by contaminants. For example, freshwater mussels are not generally found for many miles downstream of municipal wastewater treatment plants (treatment plants) (Gillis *et al.* 2017, p. 460; Goudreau *et al.* 1993, p. 211; Horne and McIntosh 1979, p. 119).

There are approximately 386 treatment plant discharge permits issued for the Trinity River Basin from its headwaters above the Dallas-Fort Worth metroplex down to the Gulf of Mexico (Texas Commission on Environmental Quality (TCEQ) 2018, entire). The San Jacinto Basin, although geographically smaller than most other basins in Texas, has approximately 1,052 treatment plant outfalls, while the Neches and Sabine rivers have 218 and 191 outfalls, respectively. In addition, some industrial permits can discharge millions of gallons per day and have ammonia limits that exceed levels that inhibited growth in juvenile fatmucket (*Lampsilis siliquoidea*) and rainbow mussel (*Villosa iris*) during 28-day chronic tests (Wang *et al.* 2007, entire). Immature mussels (juveniles and glochidia) are especially sensitive to water quality degradation and contaminants (Cope *et al.* 2008, p. 456; Wang *et al.* 2017, pp. 791–792; Wang *et al.* 2018, p. 3041).

An additional type of water quality impairment is the alteration of water quality parameters such as dissolved oxygen, temperature, total dissolved solids (TDS), and salinity levels. Dissolved oxygen levels may be reduced from increased nutrients in the water

from runoff or wastewater effluent, and juveniles seem to be particularly sensitive to low dissolved oxygen (Sparks and Strayer 1998, pp. 132–133). Increases in water temperature from water diversions, climate change, or low flows during droughts can exacerbate low dissolved oxygen levels as well as have its own effects on juvenile and adult mussels.

Total dissolved solids, a measure of the mineral content of water (*i.e.,* inorganic salts, metals, cations, or anions dissolved in water, including calcium, magnesium, potassium, sodium, bicarbonates, chlorides, and sulfates), is commonly elevated in watersheds impacted by a variety of industrial, commercial, urban, and agricultural activities and has been associated with acute and chronic toxicity to aquatic organisms. Watersheds with increasing trends in conductivity or TDS are experiencing declines in water quality that can be harmful to mussels and other aquatic organisms. Increasing trends in TDS are common in watersheds impacted by anthropogenic activities.

Contaminant spills are also a concern. Texas leads the nation in crude oil and natural gas production, and various chemicals, refined fuels, and wastewater related to oil and natural gas exploration are routinely transported along highways. These facilities and equipment used for extraction, transportation, and refinement of hazardous materials are all potential sources of hazardous spills, and can originate from human error, equipment failure, or catastrophic events like industrial accidents, fires, or floods. Although spills are relatively short-term events and may be localized, water resources nearby can be severely impacted and degraded for years after the incident along with the biological resources that inhabit the area. A reduction in surface flow drought, instream diversions, or groundwater extraction serve to concentrate contaminant and salinity levels, increases water temperatures in streams, and exacerbates effects to Texas heelsplitter and Louisiana pigtoe.

Poor water quality affects most Texas heelsplitter and Louisiana pigtoe populations currently to some degree, and future water quality is expected to decrease due to decreasing stream flow and increasing temperatures. We foresee threats to water quality increasing into the future due to the effects of climate change as demand and competition for limited water resources grows (USFWS 2022, pp. 61–62).

Altered Hydrology

Altered hydrology, through changes to historical flow regimes, leads to inundation, or low- or high-flow conditions that may reduce the quality of affected habitats to the point where they are no longer suitable for freshwater mussels. While Texas heelsplitter and Louisiana pigtoe have adapted to survive natural fluctuations in flows, populations that experience sustained higher than normal flows, prolonged flooding, or unnatural fluctuations in the frequency or intensity of high/low flows or extended (or repeated) drying events will not persist. Virtually every watershed within the range of these two freshwater mussels has experienced some level of alteration, a trend that has continued into the 21st century, particularly in areas with rapid population growth.

Inundation of previously free-flowing rivers and streams by impoundments has arguably had the single largest human-related impact on the distribution of freshwater mussels. The construction of reservoirs and other impoundments permanently alters the hydrology and, hence, the ecology of rivers, often with deleterious effects to water quality, water quantity, host fish movement, and dispersal of mussel glochidia, nutrient cycling, sediment deposition, fate and transport of contaminants, and numerous other changes to the physical, chemical, and biological characteristics of affected areas (upstream and downstream). The close relationship of flow to mussels makes them uniquely vulnerable to hydrology changes.

Both mussel species are adapted to flowing water (lotic habitats) rather than standing water (lentic habitats). Louisiana pigtoe require free-flowing water to survive. The Texas heelsplitter has also been observed in lentic habitats and appears to be tolerant of reservoir conditions; this species may occur in higher densities in areas of reservoirs that are influenced by stream inflows where conditions more closely resemble their preferred riverine habitat (Whisenant 2019, p. 1; Neck and Howells 1995, p. 15).

Inundation of mussel habitat has primarily occurred upstream of dams, including major flood control and water supply reservoirs, such as Toledo Bend Reservoir, and smaller structures like low water vehicle crossings and diversion dams typically found along tributaries on privately owned land. These structures alter the hydrology of rivers by slowing, impeding, or diverting normal flow patterns, and increasing deposition in some areas and eliminating the interstitial spaces that juvenile Texas heelsplitters and Louisiana pigtoes inhabit.

Large reservoirs that release water from the hypolimnion, the deeper water is cold and often devoid of oxygen and necessary nutrients, can adversely affect mussel survival, as cold water can stunt mussel growth and delay or hinder spawning (Vaughn and Taylor 1999, p. 917). Cold water releases from reservoirs like Broken Bow Lake in southeast Oklahoma can affect water temperatures for miles downstream. These cold releases create an extinction gradient, where freshwater mussels are absent or presence is low near the dam, and abundance does not rebound until some distance downstream where ambient conditions raise the water temperature to within the tolerance limits of mussels (Davidson *et al.* 2014, p. 29; Vaugh and Taylor 1999, pp. 915, 916).

The construction of dams for flood control and drinking water supply, and the subsequent management of water releases from those reservoirs (*e.g.,* timing, intensity, and duration), often resulting in higher base flows and peak flows of reduced intensity but longer duration, has significant impacts on the natural function and hydrology of rivers and streams. The additional shear stress caused by these sustained high base flows can incise channels, erode river banks, scour mussel beds, and remove substrate preferred by mussels. Over time, the physical force of these higher base flows can dislodge mussels from the sediment and permanently alter the geomorphology of rivers.

During flood events, along with water, rivers transport sediment, mostly as solids, suspended in the water column. The increase in flooding severity results in greater sediment transport, with important effects to substrate stability and benthic habitats for freshwater mussels, as well as other organisms that are dependent on stable benthic habitats. Further, water released by dams is usually clear due to reduced sediment load and results in incision (downcutting of the bed) and coarsening of the bed material until a new equilibrium is reached (Kondolf 1997, p. 535). The extent to which downcutting and erosion occurs as a result of dam releases varies, but in some cases leads to bank collapse, burial of mussel beds, and mortality. Conversely, depending on how dam releases are conducted, reduced flood peaks can lead to accumulations of fine sediment in the river bed (*i.e.,* loss of flushing flows; Kondolf 1997, pp. 535, 548).

Operation of reservoirs for flood control, water supply, and recreation results in altered hydrologic regimes,

including an attenuation of both high- and low-flow events. The changes to flood flows alters sediment dynamics, as sediments are trapped above and scoured below major impoundments, and negatively affect freshwater mussels and their habitats (Gascho Landis and Stoeckel 2016, p. 234; Ford 2013, p. 3). Evidence that the Texas heelsplitter is able to tolerate reservoir conditions leads us to believe the overall impacts of reservoirs may be more pronounced for the Louisiana pigtoe (Howells 2010b, p. 3).

Very low flows and low water levels are also detrimental to Texas heelsplitter and Louisiana pigtoe populations. Droughts that occurred in the recent past led to extremely low flows in several east Texas rivers. Some rivers, or portions thereof, are resilient to drought because they are spring-fed (Calcasieu, Neches rivers), contain large volumes of water (Trinity River), have large reservoirs in the upper reaches that release water for downstream users (all, excluding Calcasieu River), or have significant return flows (Pearl, Sabine, Trinity rivers); however, drought in combination with increasing trends in groundwater extraction may lead to lower river flows of longer duration than previously recorded. Reservoir releases can be managed to some extent, but in many cases dam operators must stop releases during droughts to conserve water and protect water supplies, or to maximize flood releases during major floods to protect public safety and property, both can negatively affect mussels downstream.

Streamflow and overall discharge for rivers inhabited by the Texas heelsplitter and Louisiana pigtoe are expected to decline due to climate change and projected increases in temperatures and evaporation rates, resulting in more frequent and intense droughts (Lafontaine *et al.* 2019, entire) (Factor E). Return flows, consisting primarily of treated municipal wastewater, are projected to continue to increase in areas with population growth and may serve to ameliorate some of the effects of climate change downstream of metropolitan areas, albeit with notable impacts to water quality; however, these benefits may become less significant as municipalities increase wastewater reuse as a conservation measure. The Trinity River, for example, has been a significantly modified, highly controlled, and highly regulated system since the 1960s, with low flows steadily increasing as the population has grown, resulting in base flows that are significantly higher compared to historical flows (Clark and Mangham 2019, p. 9). The increase in base flows can be attributed to substantial return flows from Dallas/Fort Worth metropolitan area wastewater treatment plants and are projected to continue to increase in the future. Surface and alluvial aquifer groundwater withdrawals will likely increase in the future due to the effects of more intense droughts, with reductions in stream flows putting an additional strain on aquatic resources. However, with the exception of stream segments where municipal effluent return flows supplement base flows, most streams experience lower base flows and reduced high-flow events after major reservoirs are constructed (U.S. Geological Survey (USGS) 2008, pp. 964, 966).

Many streams within the range of these two freshwater mussel species receive significant groundwater inputs from multiple springs associated with aquifers. As spring flows decline due to drought, climate change, or groundwater pumping, habitat for freshwater mussels in affected streams is reduced and could eventually cease to exist. While the Texas heelsplitter and Louisiana pigtoe may survive short periods of low flow, as low flows persist, mussels can be subjected to oxygen deprivation, increased water temperature, stranding, increased predation, and, ultimately, desiccation which leads to reduced survivorship, reproduction, and recruitment to the population. High-flow events can lead to increased risk of mortality through physical removal, transport, or burial of mussels as unstable substrates are transported downstream by flood waters (entrainment) and dislodged mussels are later redeposited in locations that may not be suitable habitat.

The distribution of mussel communities and their habitats is affected by large floods returning at least once during the typical life span of an individual mussel (generally from 3–30 years), as mediated by the presence of flow refuges, where shear stress is relatively low, sediments are relatively stable, and mussels must either tolerate high-frequency disturbances or be eliminated and can colonize only areas that are infrequently disturbed between events (Strayer 1999, pp. 468–469). Shear stress and relative shear stress are limiting to mussel abundance and species richness (Randklev *et al.* 2017, p. 7), and riffle habitats may be more resilient to high-flow events than bank habitats.

The Texas heelsplitter and Louisiana pigtoe undoubtedly evolved in the presence of extreme hydrological conditions, including severe droughts leading to dewatering, and heavy rains leading to damaging scour events and movement of mussels and substrate, although the frequency, duration, and intensity of these events may be different from what is observed today. These same patterns led to the development of flood control and storage reservoirs throughout Texas in the 20th century. The increasing variability, frequency, and severity of extreme weather events is a contributing factor to the contraction of populations for both species.

Another source of alteration to hydrology is from sand and gravel mining directly from rivers or from adjacent alluvial deposits (Kondolf 1997, p. 541). Instream mining directly impacts river habitats by removal of substrates used by mussels, and can indirectly affect river habitats through channel incision, bed coarsening, and lateral channel instability (Kondolf 1997, p. 541). Excavation of pits in or near to the channel can create a knickpoint, which can contribute to erosion (and mobilization of substrate) associated with head cutting (Kondolf 1997, p. 541). Pits associated with off-channel mining of the floodplain can become involved during floods, such that the pits become hydrologically connected, and thus can affect sediment dynamics in the stream or river (Kondolf 1997, p. 545). Sand and gravel mines occurred historically and continue to operate in some basins throughout the ranges of the Texas heelsplitter and Louisiana pigtoe.

Specifically, a change to the number of days with zero flow was limiting for the Louisiana pigtoe, and the number of high pulses was limiting for the Texas heelsplitter. In summary, results to date indicate natural flow regimes have been altered in east Texas rivers, as was expected, which has led to modification of instream habitats and contributed to declines in freshwater mussels (Khan and Randklev 2019, entire). These findings agree with the estimate of many experts, who based on their research believe: (1) Portions of the Trinity River have been significantly modified and may no longer support mussels (particularly in the upper basin where stream hydrology and geomorphology have been permanently altered), and (2) the Neches River is the least altered and has some of the best remaining mussel habitat, along with the most abundant and diverse mussel populations, in east Texas.

Changes to Habitat Structure/Substrate

Texas heelsplitters and Louisiana pigtoes inhabit microhabitat along river stream beds that have abundant

interstitial spaces or small openings in an otherwise closed matrix of stable substrates created by gravel, cobble, boulders, bedrock crevices, tree roots, and other vegetation, with some amount of fine sediment (*i.e.,* clay and silt) necessary to provide appropriate shelter. Excessive amounts of fine sediments can reduce available microhabitat by filling in these interstitial spaces, effectively smothering mussels in place. Interstitial spaces provide essential habitat for juvenile mussels, offering protection from predation and vital nutrients. While adult mussels can be physically buried by excessive sediment, the main impacts of excess sedimentation on freshwater mussels are often sublethal and include interference with feeding mediated by valve closure (Box and Mossa 1999, p. 101).

Under a natural flow regime, sediments are naturally washed away from one microhabitat to another, the amount of sediment in the substrate is relatively stable, and different reaches within a river or stream may be aggrading or degrading sediment at any given time (Poff *et al.* 1997, pp. 770–772). Current (and past) human activities often result in enhanced sedimentation in river systems, including legacy sediment from past land disturbances and reservoir construction. These activities continue in many basins occupied by the Texas heelsplitter and Louisiana pigtoe, and influence river processes and sediment dynamics (Wohl 2015, pp. 31, 39), with legacy effects that can result in degradation of mussel habitat. Sediments deposited by large-scale flooding or other disturbance may persist for several years until adequate cleansing flows can redistribute that sediment downstream. Conversely, when water velocity decreases from reduced streamflow or inundation, water loses its ability to carry sediment in suspension and sediment falls to the substrate, eventually smothering mussels not adapted to soft substrates (Watters 2000, p. 263).

Sediment accumulation can be exacerbated when there is a simultaneous increase in the sources of fine sediments in a watershed, including streambank erosion from development, agricultural activities, livestock and wildlife grazing, in-channel disturbances, roads, and crossings, among others (Poff *et al.* 1997, p. 773). In areas with ongoing development, runoff can transport substantial amounts of sediment from ground disturbance related to construction activities with inadequate or absent sedimentation controls. While these construction impacts can be transient (lasting only during the construction phase), the long-term effects of development on water quantity and quality are long lasting and can result in hydrological alterations as increased impervious cover increases run off and resulting shear stress causes streambank instability and additional sedimentation.

Habitat Fragmentation

Historically, the Texas heelsplitter and Louisiana pigtoe were likely distributed in areas with suitable habitat throughout the river basins described above under Background. Today, the remaining Texas heelsplitter and Louisiana pigtoe populations are isolated from one another by major reservoirs, habitat alterations, and de-watering events, prolonged drought, among other reasons, such that natural recolonization of areas previously extirpated is extremely unlikely, if not impossible, due to barriers to host fish movement. With the exception of the Louisiana pigtoe populations in the Red River Basin in Arkansas and Oklahoma, there is currently no opportunity for substantial interaction among extant Texas heelsplitter and Louisiana pigtoe populations, resulting in genetic isolation.

The impacts of reservoirs are significant, causing permanent changes to fish movement, water quality, and hydrology, with cascading effects to river ecology and aquatic species that utilize areas downstream. Small populations are more affected by limited host fish immigration potential because they are susceptible to genetic drift (random loss of genetic diversity) and inbreeding depression. At the species level, populations that are eliminated due to stochastic events cannot be recolonized naturally, leading to reduced overall redundancy and representation.

The confirmed or assumed primary host fish species for both the Texas heelsplitter and Louisiana pigtoe are known to be common and widespread throughout the range of both mussel species and are therefore not believed to be a limiting factor to dispersal at this time (Nico and Sturtevant 2022, entire; Nico *et al.* 2022, entire; Nico and Fuller 2022, entire; Fuller *et al.* 2022, entire). Each of the identified fish hosts are known to tolerate lake environments and may utilize impoundments as corridors to facilitate migration between hydrologically connected tributaries, thus aiding mussel dispersal. If fish host species are indeed abundant, existing dams, the construction of new major dams and reservoirs, and other barriers to fish movement are the primary mechanism through which remaining populations are isolated. Furthermore, reservoir impacts to river ecosystems can be difficult and costly to manage or minimize.

Most reservoirs function primarily to provide water supply and/or flood control, and meeting those objectives typically involves holding on to as much water as possible (*i.e.,* not releasing); this may limit the ability of reservoir managers to modify releases for the purpose of meeting wildlife conservation or recovery goals. Although dams have been managed to allow fish passage for spawning, to our knowledge, fish passage has not been facilitated specifically to allow movement of host fish for the benefit of freshwater mussels, nor would this be cost-effective considering host fish for the Texas heelsplitter and Louisiana pigtoe are believed to be abundant. Nevertheless, reservoirs represent a permanent barrier to freshwater mussel dispersal. The overall impact of reservoirs is believed to be greater for the Louisiana pigtoe than for the Texas heelsplitter, which is able to persist in reservoir conditions although questions remain about their reproductive success in lake environments.

Direct Mortality

Direct mortality includes any activity or event, whether human-induced or natural, that results in the death of mussels within a localized area due to removal, crushing, burying, consumption, desiccation, or poisoning. Potential activities or events causing direct mortality include, but are not limited to, development projects (such as bridge replacement, stream channelization, and impoundment construction), undeveloped low-water crossings with vehicular traffic that intersect mussel beds, bank collapse, accidental release of hazardous materials, predation, vandalism, and collection (whether for scientific purposes or recreation) (USFWS 2022, pp. 57–58). The frequency, intensity, and magnitude of these impacts likely vary in time and by location and are difficult to quantify with any certainty other than to acknowledge that they exist and negatively affect mussel survival to some degree.

Predation on freshwater mussels is a natural ecological interaction. Raccoons, feral hogs, muskrats, snapping turtles, and fish are known to prey upon mussels (East *et al.* 2013, p. 692; Walters and Ford 2013, p. 480; Kaller *et al.* 2007, p. 174; Neves and Odom 1989, p. 939). Under natural conditions, the level of predation occurring is not likely to pose

a significant risk to any given population; however, during periods of low flow, terrestrial predators have increased access to portions of the river that are otherwise too deep under normal flow conditions, resulting in unnaturally high levels of predation that can decimate mussel populations. Predation during drought has been observed for the Texas heelsplitter on the Sabine River (Walters and Ford 2013, p. 479). Drought, low-flow conditions, and reductions in minimum summer base flows are predicted to occur more often and for longer periods due to the effects of future climate change; therefore, the tributaries and upper portions of focal areas for the Texas heelsplitter and Louisiana pigtoe are expected to experience increased predation pressure into the future (Lafontaine *et al.* 2019, entire).

Additionally, certain mussel beds within some populations, due to ease of access, are vulnerable to over-collection and vandalism. These areas have well known and well documented mussel beds that are often sampled multiple times annually by various researchers for various scientific projects. Populations subjected to repeated sampling or monitoring may experience increased stress or higher rates of mortality. Mortality may also occur in areas where local fishing enthusiasts have been observed using freshwater mussels as bait. The risk of direct mortality from recreation or over-collection for scientific purposes are compounded by the additional stressors discussed in this section, which can influence mussel survival in a cumulative manner. Because collection of Louisiana pigote is localized and could affect populations, we carried this risk factor forward as a population-level threat. Service biologists recently hosted a meeting with State biologists, consultants, and academia who are involved in mussel research to discuss ongoing monitoring and scientific collections and to reduce the likelihood of over-harvesting mussels from any given population (USFWS 2018, p. 1), and we anticipate this collaboration among researchers will continue into the future with ongoing coordination and annual meetings.

Invasive Species

Invasive species, such as Asian clam (*Corbicula fluminea*), zebra mussel (*Dreissena polymorpha*), feral hog (*Sus scrofa*), floating water hyacinth (*Eichhornia crassipes*), giant salvinia (*Salvinia molesta*), and hydrilla (*Hydrilla verticillata*), occur throughout the ranges of the Texas heelsplitter and Louisiana pigtoe and can negatively impact mussel survival. These impacts include predation (feral hog), habitat destruction or modification (feral hog, floating water hyacinth, giant salvinia, hydrilla), changes to water quality (feral hog, zebra mussel), increased resource competition (Asian clam, zebra mussel), or physical impairment (zebra mussel, hydrilla) (Kaller and Kelso 2006, pp. 172–174; Howells 2010a, p. 13; Howells 2010b, pp. 14–15).

Although zebra mussel infestations occur in several Texas reservoirs, including Lewisville Lake and Lake Livingston, populations have not yet become established in nearby river habitats occupied by the Texas heelsplitter and Louisiana pigtoe (Ford *et al.* 2016, p. 47; Texas Parks and Wildlife Department (TPWD) 2019, entire; USGS 2019e, entire).

Feral hogs occur throughout the range of both mussel species and are known to engage in a variety of activities that cause bank and streambed damage, contribute to erosion and increased sedimentation, and their presence appears to cause native mussel diversity and abundance to decrease through organic enrichment of the water and unfavorable changes to microbial community composition (Kaller *et al.* 2007, p. 174; Howells 2010b, p. 10).

Invasive macrophyte infestations of floating water hyacinth, hydrilla, and giant salvinia negatively impact native mussels and their host fish throughout the southern half of the ranges of the Texas heelsplitter and Louisiana pigtoe by creating hypoxic conditions through respiration and during decay (Karatayev and Burlakova 2007, p. 298; USGS 2019b, entire; USGS 2019c, entire; USGS 2019d, entire). Dense mats of hydrilla can also impede native mussel movement during periods of fluctuating surface water levels, leaving them stranded as water levels recede.

Climate Change

Climate change in the form of the change in timing and amount of precipitation and air temperature increase is occurring, and continued greenhouse gas emissions at or above current rates will cause further warming (Intergovernmental Panel on Climate Change (IPCC) 2021, pp. 1–13–1–15). Warming in Texas is expected to be greatest in the summer (Maloney *et al.* 2014, p. 2236, figure 3), with the number of extremely hot days (high temperatures exceeding 35 °C (95 °F)) projected to double by around 2050 (Kinniburgh *et al.* 2015, p. 83). Changes in stream temperatures are expected to reflect changes in air temperature, at a rate of an approximately 0.6–0.8 °C (33 °F) increase in stream water temperature for every 1 °C (33 °F) increase in air temperature (Morrill *et al.* 2005, pp. 1–2, 15), with implications for temperature-dependent water quality parameters such as dissolved oxygen and ammonia toxicity. Given that freshwater mussels in Texas exist at or near the ecophysiological edge of climate and habitat gradients of freshwater mussel biogeography in North America, they may be particularly vulnerable to future climate changes in combination with current and future stressors (Burlakova *et al.* 2011a, pp. 156, 161, 163; Burlakova *et al.* 2011b, pp. 395, 403).

While projected changes to rainfall in Texas may seem relatively small (U.S. Global Change Research Program (USGCRP) 2017, p. 217), higher temperatures caused by anthropogenic activity will lead to increased soil water deficits because of higher rates of evapotranspiration. In turn, higher evapotranspiration rates will likely result in increasing drought severity in future climate scenarios, and the warming atmosphere is projected to continue across the United States (USGCRP 2017, p. 231). Even if precipitation and groundwater recharge remain at current levels, increased groundwater pumping and resulting aquifer shortages due to increased temperatures are nearly certain (Loaiciga *et al.* 2000, p. 193; Mace and Wade 2008, pp. 662, 664–665; Taylor *et al.* 2013, p. 3).

Effects of climate change, such as changes to seasonal rainfall patterns, air temperature increases, and increases in drought frequency and intensity, have been shown to be occurring throughout the ranges of the Texas heelsplitter and Louisiana pigtoe (Andreadis and Lettenmaier 2006, p. 3; USGCRP 2017, p. 188); these effects are expected to exacerbate several of the stressors discussed above, such as water temperature and flow loss (Wuebbles *et al.* 2013, p. 16). A recent review of future climate projections for Texas concludes that both droughts and floods could become more common in east Texas, with droughts like 2011 (the driest on record) becoming commonplace by the year 2100 (Mullens and McPherson 2017, pp. 3, 6). This trend of more frequent droughts is driven by increases in hot temperatures (*e.g.,* daily maximum) and the number of days projected to be at or above 37.8 °C (100 °F), which is set to ''increase in both consecutive events and the total number of days'' (Mullens and McPherson 2017, pp. 14–15). Similarly, floods and extreme runoff are projected to become more common and severe in the 21st century as the frequency,

magnitude, and intensity of heavy precipitation events increase (Mullens and McPherson 2017, p. 20; USGCRP 2017, p. 224).

In the analysis of the future condition for the Texas heelsplitter and Louisiana pigtoe, climate change is considered further under various plausible future scenarios, serving to exacerbate already deteriorating conditions through an increase of fine sediments, changes to water quality, loss of flowing water, and predation, among others.

Summary of Risk Factors for Texas Heelsplitter and Louisiana Pigtoe

Our analysis of the past, current, and future influences on the needs of the Texas heelsplitter and Louisiana pigtoe for long-term viability revealed that there are four that pose the greatest impact on current condition and future viability: degradation of water quality, altered hydrology, substrate changes, and habitat fragmentation, all of which are exacerbated by climate change.

Conservation Efforts and Regulatory Mechanisms

The level of interest among stakeholders, regulatory agencies, and partners to better understand the status, threats, and conservation of freshwater mussels in Texas has increased significantly since 2017, when the Service initiated reviews of several Texas mussel species for possible listing under the Act. This led to improved communication among interested parties and multiple partnerships seeking to conduct research and improve our understanding of the health and distribution of mussel populations across Texas, as well as increased efforts to protect and conserve known populations. Although there are currently no formal conservation agreements in place designed to specifically provide benefits to the Texas heelsplitter or Louisiana pigtoe, we are in discussions with multiple stakeholders who are interested in strengthening partnerships to conserve rare species, including several river authorities that are in the process of developing candidate conservation agreements with assurances (CCAAs). The CCAAs, if finalized, would implement voluntary conservation actions in river basins that would result in a net conservation benefit for the species. Additionally, several stakeholders have voluntarily funded research to ensure that we have the best available information upon which to base a listing decision, and we commend them for their efforts to improve the science of freshwater mussels in Texas. Interested stakeholders and potential future conservation partners include the Trinity River Authority, Lower Neches Valley Authority, North Texas Municipal Water District, Sabine River Authority, the Cities of Dallas and Fort Worth, Tarrant Regional Water District, Texas Department of Transportation, Texas Parks and Wildlife Department, U.S. Army Corps of Engineers, Texas Comptroller of Public Accounts, Texas A&M University, Texas State University, and others.

With regard to silvicultural operations that occur on forested areas across the range of the species, we recognize that private timber companies routinely implement State-approved best management practices (BMPs; as reviewed by Cristan *et al.* 2018, entire). Adherence to these BMPs, such as citing river crossings away from sensitive areas and leaving intact habitat as buffers for areas adjacent to streams, broadly protects water quality by reducing timber harvest-related impacts, particularly erosion and sedimentation (as reviewed by Cristan *et al.* 2018; Warrington *et al.* 2017, entire; and Schilling *et al.* 2021, entire). However, it is important to recognize that while BMPs reduce timber harvest impacts, they do not eliminate impacts; therefore, sensitive species and their habitats may still be impacted even when BMP guidelines are followed.

Some voluntary habitat restoration projects have been completed on private lands within the river basins currently known to be occupied by one or both species. These restoration projects include upland and riparian habitat enhancements coordinated by our State, Federal, and nongovernmental partners, as well as our Partners for Fish and Wildlife Program. There are also regulatory mechanisms in place to protect water quality and quantity, such as protections afforded by the Clean Water Act (33 U.S.C. 1251 *et seq.*), that are implemented by the States with oversight by the EPA. While these regulations are in place and provide some level of protection, population declines continue to be documented in some species of freshwater mussels, indicating that existing regulations may not be sufficient to prevent extinction.

Species Condition

Here we discuss the current and future condition of each known population, taking into account the risks to those populations that are currently occurring, as well as management actions that are currently occurring to address those risks. We consider climate change to be currently occurring, resulting in changes to the timing and amount of rainfall affecting streamflow, which can alter stream characteristics such as an increase in stream temperatures, erosion, and the accumulation of fine sediments. The current condition of each species and population is based upon the cumulative effects of these factors. In the SSA report, for each species and population, we developed and assigned condition categories for three population factors (occupied stream length, abundance, reproduction/recruitment; see *Species Needs,* above) and three habitat factors (habitat structure/substrate, hydrological regime, and water quality; see *Risk Factors for Texas Heelsplitter and Louisiana Pigtoe,* above) that are important for the viability of each species. The summation of all six condition scores assigned to each factor were then used to determine the overall condition of each population: high (healthy), moderate (moderately healthy), low (unhealthy), or functionally extirpated/extirpated. All six factors were weighted equally in importance except abundance, which was viewed as the most relevant and direct measure of current biological condition; therefore, overall condition was capped by the abundance score such that no population's overall condition could exceed the abundance score. These overall conditions translate to our presumed probability of persistence of each population, with healthy populations having the highest probability of persistence over 20 years (greater than 90 percent), moderately healthy populations having a probability of persistence that falls between 60 and 90 percent, unhealthy populations having the lowest probability of persistence (between 10 and 60 percent). Functionally extirpated populations (less than 10 percent) are not expected to persist over 20 years or are already extirpated.

Texas Heelsplitter

There are five remaining Texas heelsplitter populations, occurring in three adjacent river basins (Neches, Sabine, and Trinity River basins) in east Texas and on the Sabine River to the western border of Louisiana. Historically, populations likely occurred throughout the entirety of each basin where connectivity was not an issue and conditions were suitable. Based on our analysis, three populations are considered to have a low current condition, and two populations are considered functionally extirpated/extirpated (see Table 1, below).

Neches River Basin: There are two Texas heelsplitter populations in the

Neches River Basin, one in the Neches River/B.A. Steinhagen Reservoir and the other in the Lower Neches River; these populations are fragmented and isolated from each other by the dam that forms B.A. Steinhagen Reservoir. The Neches River/B.A. Steinhagen Reservoir population occurs in habitat on a fairly long reach (240.9 river mi (387.6 km)) of the Neches River that extends from just below Lake Palestine to B.A. Steinhagen Reservoir and includes the portion of mainstem Angelina River between B.A. Steinhagen and Sam Rayburn reservoirs. This population is characterized by low abundance and a lack of evidence of reproductive success, resulting in low recruitment of new individuals. Further, water quality in tributaries and segments of the occupied habitat is affected by a variety of point and non-point source pollution, and infrequent but substantial drawdowns of the B.A. Steinhagen Reservoir have resulted in direct mortality of Texas heelsplitters. The Lower Neches River population extends 74.2 river mi (119.4 km) downstream from Lake B.A. Steinhagen Reservoir's Town Bluff Dam to approximately 4.5 river mi (7.2 km) downstream of the Village Creek confluence. This population is also characterized by low abundance and lack of evidence of reproductive success, with subsequent low recruitment of new individuals. Further, hydrology and water quality in this reach are affected by water releases from the B.A. Steinhagen Reservoir. The Neches River/B.A. Steinhagen Reservoir population and the Lower Neches River population have a low overall current condition, resulting in low resiliency for both populations.

Sabine River Basin: This Texas heelsplitter population occurs in a fairly long reach (245.8 river mi (395.5 km)) of the Sabine River Basin, that includes the Toledo Bend Reservoir, Sabine River upstream to Lake Tawakoni's Iron Bridge Dam, a portion of Lake Fork Creek upstream from its confluence with the Sabine River, and a portion of Patroon Bayou upstream from its confluence with Toledo Bend Reservoir. While the overall water quality, habitat structure/substrate, and occupied habitat reach length are in high condition, construction of Lake Tawakoni and Toledo Bend Reservoir have altered the natural hydrologic conditions through dam releases causing substrate scouring and elimination of habitat downstream. Due to lack of evidence of reproduction and recruitment, as well as extremely low abundance (CPUE = 0.14) based on 99 surveys since 2000, this population of Texas heelsplitter is considered functionally extirpated/extirpated.

Trinity River Basin: There are two populations of the Texas heelsplitter in the Trinity River Basin, one within Grapevine Lake and another within the Trinity River/Lake Livingston, that are hydrologically isolated from one another by the dam that forms Grapevine Lake. The habitat structure/substrate rating for the Grapevine Lake population is in high condition, with stormwater runoff and the discharge of municipal wastewater and associated pollutants limiting water quality to moderate condition. Reservoir-related changes to natural flow regimes likewise limited the hydrology rating to moderate condition. However, with only two individuals found during population surveys, abundance is extremely low, this combined with the lack of juveniles and gravid females, the Grapevine Lake population is considered to be functionally extirpated. The Trinity River population is characterized by high current condition for the relatively large habitat reach length currently occupied, while habitat structure/substrate is affected by unnaturally elevated base flows and is in moderate current condition. Large daily volumes of municipal wastewater discharge and associated pollutants are impacting water quality and hydrology, which are in low current condition. This population is also characterized by low abundance and lack of evidence of reproductive success, with subsequent low recruitment of new individuals. The Trinity River/Lake Livingston population has a low overall current condition and low resiliency.

TABLE 1—ESTIMATED CURRENT OVERALL CONDITION OF TEXAS HEELSPLITTER POPULATIONS

[USFWS 2022, pp. 40–44]

River basin	Population	Overall current condition
Sabine	Sabine River/Toledo Bend.	FE/E.[1] [2]
Neches	Neches River/B.A. Steinhagen.	Low.[2]
	Lower Neches River	Low.[2]
Trinity	Grapevine Lake	FE/E.[1] [2]
	Trinity River/Lake Livingston.	Low.[2]

[1] FE/E = Functionally extirpated/extirpated.
[2] Indicates representation areas where overall condition was capped by abundance.

Redundancy describes the ability of a species to withstand and recover from catastrophic events. High redundancy is achieved through multiple populations that serve to spread risk, thereby reducing the impact that any one event might have in terms of overall loss to the species. Redundancy is characterized by having multiple healthy, resilient populations distributed across the range of the species. It can be measured by population number, resiliency, spatial extent, and degree of connectivity. Our analysis explored the influence of the number, distribution, and connectivity of populations on the species' ability to withstand catastrophic events.

Within the identified representation areas (Neches, Sabine, and Trinity River basins), only the Neches and Trinity River basins currently have at least one known population (the Sabine River/Toledo Bend population in the Sabine River Basin and Grapevine Lake in the Trinity River Basin are considered functionally extirpated). The Neches River Basin currently has two populations (Neches River and Lower Neches River populations); however, these populations are hydrologically isolated, and therefore provide only minimal redundancy.

Representation describes the ability of a species to adapt to changing environmental conditions over time. It is characterized by the breadth of genetic and environmental diversity within and among populations. Our analysis explores the relationship between the species life history and the influence of genetic and ecological diversity and the species ability to adapt to changing environmental conditions over time.

We consider the Texas heelsplitter to have representation in the form of genetic, geographic, and ecological diversity in the three currently occupied river basins. Because there are no freshwater connections between the three basins, we treated each river basin as separate areas of representation.

Louisiana Pigtoe

Overall, there are 13 remaining populations of Louisiana pigtoe in multiple river drainages throughout portions of east Texas (Big Cypress-Sulphur, Neches-Angelina, Sabine, and San Jacinto river basins), Louisiana (Calcasieu, Sabine, and Pearl river systems), west Mississippi (Pearl River), southeast Oklahoma (Little River), and southwest Arkansas (Cossatot, Saline, Rolling Fork, and Little rivers). Because reported populations from the Ouachita River system in Arkansas were determined to be phylogenetically distinct (a separate species) from Louisiana pigtoe, they were not considered in the SSA. In 2019, an additional population was discovered within the Lower Neches Valley River

Authority canal system in Beaumont, Texas (Bio-West 2021, p. 1). Because this population occupies artificially maintained habitat that may not persist without active operational management by the Lower Neches Valley River Authority, it was not considered for analysis in the SSA.

Historically, the Louisiana pigtoe likely occurred throughout each basin wherever conditions were suitable and connectivity was not an issue, with populations connected by fish migration; however, due primarily to impoundments, the populations are currently isolated from one another, and repopulation of functionally extirpated/extirpated locations is unlikely to occur without human assistance. Two populations are currently considered to be in high condition, four populations are in moderate condition, five populations are in low condition, and two populations are considered functionally extirpated/extirpated (see Table 2, below).

Big Cypress-Sulphur Basin: Although Louisiana pigtoes have not been genetically confirmed and observations may be misidentified as Wabash pigtoe (*Fusconaia flava*), past surveys indicated Louisiana pigtoe presence (Randklev 2018, entire) in this basin. Therefore, we included this population in this assessment. The Louisiana pigtoe population in Big Cypress Bayou includes approximately 32.0 river mi (51.5 km) of Big Cypress Bayou and Little Cypress Bayou upstream of their confluence. This population is characterized by moderate condition for occupied habitat stream length, abundance, habitat structure/substrate, hydrology, and water quality; the habitat factors are influenced by a variety of anthropogenic activities that vary by watershed, including stormwater runoff and discharges from multiple wastewater treatments plants. However, there has been a lack of reported juveniles or gravid females, so this population is in low condition for reproduction and recruitment.

Calcasieu River Basin: Louisiana pigtoe has a single population in the Calcasieu-Mermentau Basin that occurs along an approximately 134-river-mi (216-km) section of hydrologically connected portions of the mainstem Calcasieu River, and the Whisky Chitto and Tenmile creeks located in Allen, Rapides, and Vernon parishes, Louisiana. This population is characterized as being in high condition for occupied habitat reach length and habitat structure/substrate, while hydrology and water quality are in moderate condition due to fluctuations in flow rates and municipal wastewater effluent discharges, among other sources of pollution. However, abundance, reproduction, and recruitment are in low condition, which corresponds to low resiliency.

Neches River Basin: The Neches River Basin in Texas has three populations of Louisiana pigtoe, one each in the Angelina (above Sam Rayburn Reservoir), Neches (above B.A. Steinhagen Reservoir), and Lower Neches rivers (below B.A. Steinhagen Reservoir). These three populations combined extend over 400 river mi (644 km) in a basin that many experts believe contains some of the best remaining habitat and most diverse populations of freshwater mussels in Texas. The Neches River and Lower Neches River populations are hydrologically isolated from each other by the Town Bluff Dam that forms B.A. Steinhagen Reservoir, and the Angelina River population is isolated from the Neches River population by Sam Rayburn Dam and Reservoir. The Neches River population's current condition is characterized as high condition for the occupied habitat reach length (203 river mi (326.7 km)), abundance, habitat structure/substrate, and hydrology, and moderate condition for reproduction/recruitment and water quality. The Lower Neches River population is characterized by high current condition for occupied habitat reach length (160.4 river mi (258.1 km)) and habitat structure/substrate, and a moderate current condition for hydrology, water quality, and reproduction/recruitment due to the impacts of fluctuating stream flows, pollution loading from point and non-point sources, and few reports of gravid females or juvenile mussels. In addition, few individuals have been observed, resulting in a low current condition for population abundance. The Angelina River population is in high condition for occupied habitat reach length (53.2 river mi (85.6 km)), habitat structure/substrate, and hydrology; however, water quality impacts such as elevated bacteria, fecal coliform, and ammonia resulted in a moderate current condition for water quality. Like the Lower Neches River population, due to the few numbers of individuals observed and a lack of juvenile or gravid female presence, abundance and reproduction/recruitment are in low condition for the Angelina River population. The Neches River population has a high overall current condition, and the Lower Neches River and Angelina River populations have a low overall current condition (primarily due to being capped by low abundance).

Pearl River Basin: The Pearl River Basin in Louisiana and Mississippi has a single population of the Louisiana pigtoe within the main stem that extends approximately 280 river mi (450 km) below Ross Barnett Dam near Jackson to Picayune, Mississippi (upstream of Interstate 59). A new impoundment proposed by the Rankin-Hinds Pearl River Flood and Drainage Control District, located 9 mi (14.5 km) downstream of Ross Barnett Reservoir, intended for flood control, is still under review. For the Pearl River population, we determined that occupied habitat reach length is in high condition, and habitat structure/substrate, hydrology, and water quality are in moderate condition due to erratic flows and pollutants from urban areas and industry wastewater discharge. Because few individuals have been reported and there is a lack of juvenile or gravid female presence, abundance and reproduction/recruitment are in low condition. The Pearl River population has an estimated overall low current condition and low resiliency.

Red River Basin: The Red River Basin contains four distinct populations of the Louisiana pigtoe that extend along 88.3 river mi (142.1 km) within the Little River drainage in Arkansas and Oklahoma, including populations in the Cossatot River, Little River/Rolling Fork, Lower Little River, and Saline River. Millwood Lake, located in southwest Arkansas, hydrologically separates the Cossatot River, Saline River, and Little River/Rolling Fork populations from the Lower Little River population. The current condition evaluation for the Cossatot River population determined that abundance, reproduction/recruitment, and habitat structure/substrate are in high condition, and occupied habitat reach length, hydrology, and water quality are in moderate condition due to fluctuations of stream flows from Gillham Lake, as well as pollutant discharges from agriculture and other sources. No habitat or population factors are determined to be in low condition. The Little River/Rolling Fork population's current condition evaluation determined occupied habitat reach length and reproduction/recruitment are in high condition. All other population and habitat factors are in moderate condition due to lower abundance, fluctuations in instream flow (which affect benthic habitat, substrate, and stream hydrology), and increased levels of zinc, lead, and salinity (among other pollutants), leading to moderate water quality. The Saline River population's current condition evaluation found

occupied habitat reach length, abundance, hydrology, and water quality in moderate condition caused by prolonged high water levels and low levels of dissolved oxygen. Due to the lack of evidence of reproductive success and subsequent recruitment of new individuals, and altered flow conditions downstream of Dierks Lake, reproduction/recruitment and habitat structure/substrate are in low condition. The Lower Little River population's current condition evaluation determined that reproduction/recruitment and all habitat factors are in low condition primarily because of its short reach length (8.5 river mi (14.16 km)), altered flow regime, and paucity of survey data. This population is located downstream of Millwood Lake and Dam, a flood control reservoir, and is subject to altered hydrology that further impacts habitat structure and substrates during flood events. Agricultural runoff associated with the lower section of this reach impacts water quality. Due to the extremely low numbers of individuals observed (abundance), this population is considered functionally extirpated/extirpated. In summary, the Cossatot River population has a high overall current condition and high resiliency, the Little River/Rolling Fork and Saline River populations have a moderate overall current condition and moderate resiliency, and the Lower Little River population is considered functionally extirpated/extirpated.

Sabine River: There are two known populations of the Louisiana pigtoe within the Sabine River, one located along 87 river mi (140 km) between Hawkins and Tatum, Texas, and a second population within a 9-river-mi (15-km) segment of Bayou Anacoco in Louisiana. These populations are hydrologically separated by Toledo Bend Dam and Reservoir. The Sabine River population's current condition evaluation determined that occupied habitat reach length and habitat structure/substrate are in high condition. Dam releases from Lake Tawakoni and Toledo Bend Reservoir, wastewater releases, and water quality degradation (including elevated levels of bacteria) are primary causes for moderate current conditions for hydrology and water quality. Due to an extremely low number of individuals detected during surveys, and the lack of juveniles or gravid females observed, abundance and reproduction/recruitment are in low condition, and this population is considered functionally extirpated/extirpated. The Bayou Anacoco population's current condition evaluation found habitat structure/substrate is high condition, and abundance, hydrology, and water quality are in moderate condition. However, the occupied habitat reach length and reproduction/recruitment are in low condition due to the distribution of observed individuals and lack of reported juveniles or gravid females. The Bayou Anacoco population is in moderate current overall condition and has moderate resiliency.

East Fork San Jacinto River: There is one known population of Louisiana pigtoe that occurs within a short (1.3-river-mi (2-km)) segment of the East Fork San Jacinto River near Plum Grove, Texas. The population's current condition evaluation determined that hydrology and water quality are in moderate condition, whereas sand and gravel mining are affecting the habitat structure/substrate, which is in low condition. Due to a low number of individuals detected and lack of juveniles or gravid females observed, population abundance and reproduction/recruitment are in low condition. The East Fork San Jacinto River population is determined to be in overall low condition and has low resiliency.

TABLE 2—ESTIMATED CURRENT OVERALL CONDITION OF KNOWN LOUISIANA PIGTOE POPULATIONS

[USFWS 2022, pp. 34–40]

River basin	Population	Overall current condition
Red	Little River/Rolling Fork	Moderate.
	Cossatot River	High.
	Saline River	Moderate.
	Lower Little River	FE/E. [1] [2]
Big Cypress-Sulphur	Big Cypress Bayou	Moderate.
Calcasieu-Mermentau	Calcasieu River	Low. [2]
Pearl	Pearl River	Low. [2]
Sabine	Sabine River	FE/E. [1] [2]
	Bayou Anacoco	Moderate.
Neches	Angelina River	Low. [2]
	Neches River	High.
	Lower Neches River	Low.[2]
San Jacinto	East Fork San Jacinto River	Low.

[1] FE/E = Functionally extirpated/extirpated.
[2] Indicates representation areas where overall condition was capped by abundance.

Within identified representation areas, the Big Cypress-Sulphur, Calcasieu-Mermentau, Pearl, and San Jacinto River basins each have only one known current population, and therefore lack redundancy should catastrophic events occur that cause extirpation of one or a few populations. The Sabine River Basin has two separate populations (Sabine River and Bayou Anacoco populations) but lacks redundancy due to the Sabine River population being functionally extirpated. The Neches and Red River basins each currently have three known populations (the Lower Little River population in the Red River Basin is considered functionally extirpated), however each population is hydrologically isolated within their respective river basins and are, therefore, considered to provide only limited redundancy.

We consider Louisiana pigtoe to have representation in the form of genetic, ecological, and geographical diversity between each of seven river basins: Big Cypress-Sulphur, Calcasieu-Mermentau, Neches, Pearl, Red, Sabine, and San Jacinto. Because there are no un-impounded, freshwater connections that allow movement between the seven basins, each river was considered a separate area of representation.

Future Conditions

As part of the SSA, we developed multiple future condition scenarios to capture the range of uncertainties

regarding future threats and the projected responses by the Texas heelsplitter and Louisiana pigtoe. Our scenarios included a status quo scenario, which incorporated the current risk factors continuing on the same trajectory that they are on now. We also evaluated two future scenarios that incorporated varying levels of increasing risk factors with elevated negative effects on Texas heelsplitter and Louisiana pigtoe populations. However, because we determined that the current condition of the Texas heelsplitter is consistent with an endangered species (see *Texas Heelsplitter: Determination of Status,* below), we are not presenting the results of the future scenarios in this proposed rule. Please refer to the SSA report (Service 2022) for the full analysis of future scenarios.

We forecasted the Louisiana pigtoe's responses to two plausible future scenarios of environmental conditions projected across the next 10, 25, and 50 years. Ten years represents one to two generations of mussels, assuming an average reproductive life span of five to 10 years. Twenty-five years similarly represents at least two to four mussel generations and 50 years represents at least five or more generations of mussels. The scenarios project the threats into the future and consider the impacts those threats could have on the viability of the Louisiana pigtoe. We apply the concepts of resiliency, redundancy, and representation to the future scenarios to describe possible future conditions of the Louisiana pigtoe. The scenarios described in the SSA report represent only two possible future conditions. Uncertainty is inherent in any projection of future condition, so we must consider plausible scenarios to make our determinations. When assessing the future, viability is not a specific state, but rather a continuous measure of the likelihood that the species will sustain populations over time.

We included climate change in our future scenarios as a factor that would add to the negative impacts of the primary threats on the species' habitat. Climate change is expected to alter the natural flow regime through increased drought and flooding worsening desiccation, scour, and sedimentation. Global climate models project changes in global temperature and other associated climatic changes based on potential future scenarios of greenhouse gas concentrations in the atmosphere (*i.e.,* Representative Concentration Pathways, or RCPs). RCP 4.5 assumes major near-future cuts to carbon dioxide emissions, and RCP 8.5 assumes that current emissions practices continue with no significant change (Terando et al. 2020, p. 10). Thus, these RCPs represent conditions in the upper and lower ends of the range of what can reasonably be expected for the future effects of climate change (Terando et al. 2020, p. 17).

Scenario 1 assesses the species' responses to moderate increases in stressors influencing Louisiana pigtoe populations. Scenario 1 is based on RCP 4.5 emission trajectory and associated model projections, and represents medium-term increases in emissions followed by a decline through the rest of the century. Scenario 2 assesses the species' responses to severe increases in stressors and is based on RCP 8.5 projections. Scenario 2 also includes anthropogenic actions, such as the construction of new reservoirs, wastewater treatment plants, and other currently proposed projects, and manifests as a future where the hydrological conditions of many of the rivers and streams currently occupied by Louisiana pigtoe are altered such that base flows are diminished, floods are more severe if not more frequent, and mussels and their habitats are adversely affected through degradation of water quality and quantity. These altered hydrological conditions are primarily caused by a combination of increasing anthropogenic stressors and climate change. Due to a lack of resolution of the available data, we were unable to distinguish any meaningful difference between a moderate increase in stressors and a moderate decrease in stressors. As a result, we limited the future forecasts to these two scenarios, which we projected over a 50-year period. We restricted our evaluation to 50 years primarily due to limitations projecting non-modeled, extrapolated future conditions for water quality, road density, and habitat fragmentation. Fifty years encompasses about 5 generations of the Louisiana pigtoe; additionally, projected human population growth and the limitations of existing resources are expected to increase and interact with climate effects to exacerbate the effects of drought which is likely to impact water quality and quantity (*i.e.,* the ability to provide the minimum flow needed by the Louisiana pigtoe). A full description of the future scenarios and our methods is available in the SSA report (USFWS 2022, pp. 63–73).

Under Scenario 1, populations of the Louisiana pigtoe decline in resiliency, redundancy, and representation over time as conditions moderately decline from current conditions. One population will remain in moderate condition, seven in low condition, and five functionally extirpated in 50 years. This species will lose two areas of representation, diminishing the overall adaptive capacity to future environmental change in the next 50 years (see Table 3).

TABLE 3—FUTURE CONDITION OF LOUISIANA PIGTOE POPULATIONS WITH A MODERATE INCREASE IN STRESSORS

[Scenario 1]

Species	River basin	Population	Scenario 1 future condition		
			10 years	25 years	50 years
Louisiana Pigtoe	Red Little River/Rolling Fork.	Moderate	Low	Low.	
		High	High	Moderate.	
	Cossatot River	Moderate	Moderate	Low.	
	Saline River	FE/E [1]	FE/E [1]	FE/E.[1]	
	Lower Little River				
	Big Cypress-Sulphur	Big Cypress Bayou	Moderate	Moderate	Low.
	Calcasieu	Calcasieu River	Low	Low	FE/E.[1]
	Pearl	Pearl River	Low	Low	Low.
	Sabine	Sabine River	FE/E [1]	FE/E [1]	FE/E.[1]
		Bayou Anacoco	Low	Moderate	Low.
	Neches	Angelina River	Low	Low	FE/E.[1]
		Neches River	High	Low	Low.
		Lower Neches River	Low	Low	Low.

TABLE 3—FUTURE CONDITION OF LOUISIANA PIGTOE POPULATIONS WITH A MODERATE INCREASE IN STRESSORS—Continued

[Scenario 1]

Species	River basin	Population	Scenario 1 future condition		
			10 years	25 years	50 years
	San Jacinto	East Fork San Jacinto River.	Low	Low	FE/E. [1]

[1] FE/E = Functionally extirpated/extirpated.

Under Scenario 2, populations of the Louisiana pigtoe further decline in resiliency, redundancy, and representation over time as the effects of climate change impact populations through extremely low stream flows, severe increases in sedimentation, reductions in water quality, and an increase in potential for desiccation of habitat. Eight populations of Louisiana pigtoe are expected to become either functionally extirpated or extirpated within 50 years, with the remaining five populations in low condition. The Louisiana pigtoe is projected to lose four of the seven current representation areas in 50 years, with eight populations remaining or becoming extirpated; therefore, the adaptive capacity of this species is projected to be severely reduced in the future (see Table 4).

TABLE 4—FUTURE CONDITION OF LOUISIANA PIGTOE POPULATIONS WITH A SEVERE INCREASE IN STRESSORS

[Scenario 2]

Species	River basin	Population	Scenario 2 future condition		
			10 years	25 years	50 years
Louisiana Pigtoe	Red	Little River/Rolling Fork.	Moderate	Low	Low.
			High	High	Low.
		Cossatot River	Moderate	Low	Low.
		Saline River	FE/E [1]	FE/E [1]	FE/E.[1]
		Lower Little River			
	Big Cypress-Sulphur	Big Cypress Bayou	Moderate	Moderate	Low.
	Calcasieu-Mermentau	Calcasieu River	Low	Low	FE/E.[1]
	Pearl	Pearl River	Low	Low	FE/E.[1]
	Sabine	Sabine River	FE/E [1]	FE/E [1]	FE/E.[1]
		Bayou Anacoco	Low	Moderate	FE/E.[1]
	Neches	Angelina River	Low	Low	FE/E.[1]
		Neches River	High	Low	Low
		Lower Neches River	Low	Low	FE/E.[1]
	San Jacinto	East Fork San Jacinto River.	Low	FE/E [1]	FE/E.[1]

[1] FE/E = Functionally extirpated/extirpated.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Water quality degradation, altered hydrology, changes to habitat structure/substrate, habitat fragmentation, invasive species, climate change, and collecting are all factors that influence or could influence the viability of these two freshwater mussel species. These factors also have the potential to act cumulatively to impact Texas heelsplitter and Louisiana pigtoe viability and their cumulative impacts were considered in our characterization of the species' current and future condition in the SSA. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Determination of Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the Texas heelsplitter and Louisiana pigtoe and

assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we found that both species of freshwater mussels have declined significantly in overall distribution and abundance. At present, most of the known populations exist in very low abundances and show limited evidence of recruitment. Furthermore, existing available habitats are reduced in quality and quantity, relative to historical conditions. Our analysis revealed six primary threats that caused these declines and pose a meaningful risk to the viability of the species. These threats are primarily related to habitat changes (Factor A): impairment of water quality, altered hydrology, the accumulation of fine sediments, and habitat fragmentation, all of which are exacerbated by the effects of climate change (Factor E). Predation (Factor C) and collection (Factor B), as well as other natural or human-induced events/activities that result in direct mortality, are also affecting those populations already experiencing low stream flow, and reservoirs and instream barriers to fish movement (Factor E) limit dispersal and prevent recolonization after stochastic events.

Populations of the Texas heelsplitter and Louisiana pigtoe are faced with a myriad of stressors from natural and anthropogenic sources that pose a risk to their survival in both large and small river segments. Climate change has the noteworthy distinction of being able to directly or indirectly exacerbate the most relevant stressors to freshwater mussels wherever they occur. Climate projections suggest persistent droughts over the continental United States that are longer, cover more area, and are more intense than what has been experienced in the 20th century (APA 2019, p. 4; Terando *et al.* 2018, p. 786; Wehner *et al.* 2017, p. 237). Humans are likely to respond to climate change in predictable ways to meet their needs, such as increased groundwater pumping and surface water diversions, and increased use of reverse osmosis to treat sources of water that are of poor quality (thereby generating increasing volumes of wastewater). These activities will increase overall demand for freshwater resources at a time when those very resources are strained and less abundant (reviewed in Banner *et al.* 2010, entire). We expect climate change impacts to occur throughout the range of both the Texas heelsplitter and the Louisiana pigtoe.

The threats to the species, acting alone or in combination with each other and climate change, could result in the extirpation of additional mussel populations, further reducing the overall redundancy and representation of the Texas heelsplitter and Louisiana pigtoe. Historically, each species, bolstered by large, interconnected populations (*i.e.,* with meta-population dynamics), would have been more resilient to stochastic events such as drought, excessive sedimentation, and scouring floods. As locations became extirpated by catastrophic events, they could be recolonized over time by dispersal from nearby surviving populations, facilitated by movements of host fish. This connectivity across potential habitats made for highly resilient species overall, as evidenced by the long and successful evolutionary history of freshwater mussels as a taxonomic group, and in North America in particular. However, under current conditions, restoration of that connectivity on a regional scale is not feasible. Because of these current conditions, the viability of the Texas heelsplitter and Louisiana pigtoe now primarily depends on maintaining the remaining isolated populations and potentially restoring new populations where feasible.

Texas Heelsplitter: Status Throughout All of Its Range

The Texas heelsplitter has declined significantly in overall distribution and abundance over the past 100 or more years. Most known populations of the Texas heelsplitter are isolated and currently exist in very low numbers (low abundance), have limited evidence of recruitment, and are believed to occupy much less habitat than in the past (range contraction). Of the five remaining populations of Texas heelsplitter, three are small in abundance and have low resiliency, and two are considered functionally extirpated/extirpated. While the three low resiliency populations (Neches River/B.A. Steinhagen Reservoir, Lower Neches River, and Trinity River/Lake Livingston) have habitat in high or moderate current condition, all three have very little evidence of reproduction and are therefore likely to decline due to a lack of young individuals joining the population as the population ages. Low abundance, combined with the lack of evidence of reproduction and recruitment, results in populations with very little population resiliency. Overall, these low levels of resiliency, redundancy, and representation currently result in the Texas heelsplitter having a high risk of extinction.

Our analysis of the species' current condition, as well as the conservation efforts discussed above, show that the Texas heelsplitter is in danger of extinction throughout all of its range due to the severity and immediacy of threats currently impacting their populations. The risk of extinction is high because the remaining fragmented populations have a high risk of extirpation, are isolated, and have limited potential for recolonization. We find that a threatened species status is not appropriate for the Texas heelsplitter because its current range is already contracted, all populations are fragmented and isolated from one another, the threats are occurring across the entire range of this species, and the species currently exhibits low resiliency, redundancy, and representation. Because these conditions place the species already in danger of extinction throughout its range, a threatened status is not appropriate.

Texas Heelsplitter: Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the Texas heelsplitter is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the Texas heelsplitter warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020), because that decision related to significant portion of the range analyses for species that warrant listing as threatened, not endangered, throughout all of their range.

Texas Heelsplitter: Determination of Status

Our review of the best available scientific and commercial information indicates that the Texas heelsplitter meets the Act's definition of an endangered species. Therefore, we propose to list the Texas heelsplitter as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Louisiana Pigtoe: Status Throughout All of Its Range

Many Louisiana pigtoe populations are relatively abundant, but populations are isolated from one another; therefore, the species is unable to recolonize following stochastic events that may reduce or eliminate populations. Additionally, many populations occur in degraded habitats. Although some

conservation efforts are underway, they are not sufficient to prevent the decline of the species. Thirteen populations of Louisiana pigtoe remain. Two populations are in high condition, four in moderate condition, five are in low condition, and two are functionally extirpated/extirpated. The Red River Basin has four populations, and only one is in high condition (Cossatot River), two are in moderate overall condition, and one (Lower Little River) is functionally extirpated/extirpated. The Neches River is the only other population with a high overall current condition. Only two populations, Little River/Rolling Fork and Cossatot River (both within the Red River Basin), have strong evidence of reproduction and recruitment as indicated by presence of fish hosts, juveniles, and gravid females; two (Neches and Lower Neches rivers) have moderate evidence of reproduction and recruitment; the remaining nine populations have low evidence of reproduction and recruitment. Two populations have high abundance (Cossatot and Neches rivers) four populations have moderate abundance (Little River/Rolling Rock, Saline River, Big Cypress Bayou, and Bayou Anacoco), and five populations have extremely low abundance (Calcasieu, Pearl, Angelina, Lower Neches, and East Fork San Jacinto rivers), and population abundance is too low to support resiliency of two populations (Lower Little River (tributary to the Red River) and Sabine River), which are functionally extirpated/extirpated

We considered whether the Louisiana pigtoe is presently in danger of extinction throughout all of its range and determined that endangered status is not appropriate. The current conditions as assessed in the SSA report show two of the populations in two of the representative units are in high current condition, and four are in moderate current condition; they are not currently subject to declining flows or extreme flow events. While threats are currently acting on the species and many of those threats are expected to continue into the future, we did not find that the species is currently in danger of extinction throughout all of its range.

In the future, as extreme flow events become more frequent as rainfall patterns change, and increased urbanization results in reduced groundwater levels, we expect even these populations to be at an increased risk of extirpation. Given the likelihood of climate change and other anthropogenic effects in the foreseeable future, within 50 years we estimate at least five populations will become (or remain) functionally extirpated/extirpated, seven will be in low condition, and one population will be in moderate condition. In the future, we anticipate that the Louisiana pigtoe will have reduced viability, with no highly resilient populations and limited representation and redundancy.

According to our assessment of plausible future scenarios in the SSA report, the species is likely to become an endangered species in the foreseeable future of 50 years throughout all of its range. Fifty years encompasses about 5 generations of the Louisiana pigtoe; additionally, projected human population growth and the limitations of existing resources are expected to increase and interact with climate effects to exacerbate the effects of drought on surface water resources throughout all of its range. These effects are likely to impact the ability to provide the minimum flow needed by the Louisiana pigtoe. As a result, we expect increased incidences of low flows followed by scour events, as well as persistent decreased water quality, to be occurring in 50 years.

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we find that the Louisiana pigtoe populations will continue to decline over the next 50 years so that this species is likely to become in danger of extinction throughout all of its range within the foreseeable future due to increased frequency of drought and extremely high-flow events, decreased water quality, and decreased substrate suitability.

Thus, after assessing the best available information, we determine that the Louisiana pigtoe is not currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Louisiana Pigtoe: Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020) (Everson), vacated the aspect of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (Final Policy) (79 FR 37578; July 1, 2014) that provided that the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in Everson, we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for the Louisiana pigtoe, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species may be endangered.

For the Louisiana pigtoe, we consider abundance to be the most direct measure of the health and status of the species (see *Species Condition,* above). Measures like water quality and hydrology may rank moderate or high, indicating higher quality habitat—but that does not necessarily indicate the presence of Louisiana pigtoe, only presence of suitable habitat. All six factors were weighted equally in importance except abundance, which was viewed as the most relevant and direct measure of current biological condition; therefore, overall condition was capped by the abundance score such that no population's overall condition could exceed the abundance score. By capping abundance, we ensured that the overall current condition score is based on species-specific information. There are five populations that are considered to be in low overall current condition (with between 3–25 individuals found per population survey) and two that are considered functionally extirpated/extirpated (with less than 3 individuals found per population survey). In addition to low abundance, there was a lack of evidence of reproduction in 9 of the 13 populations; these two population factors are similar in scope, scale, and distribution across the range of the species (See Reproduction/

Recruitment in *Species Needs* above). We then considered whether these populations that are at higher risk of extirpation are geographically concentrated in any portion of the species' range at a biologically meaningful scale.

We examined the range of Louisiana pigtoe for biologically meaningful portions that may be at higher risk of extirpation, as reflected by current population resiliency. The range of Louisiana pigtoe is relatively large, and populations are distributed in varying conditions across the range. Therefore, we examined the range based on accepted mussel faunal provinces (*i.e.,* Haag 2010, p. 18), which reflect phylogenetic relationships as well as physiogeographical differences in stream habitat. The faunal provinces germane to the range of the Louisiana pigtoe are Interior Highlands (includes the Little River and tributaries), Mississippi Embayment (includes Big Cypress Bayou), Sabine-Trinity (includes Upper Calcasieu, Sabine, Angelina, Neches, and East Fork San Jacinto Rivers, and Bayou Anacoco), and Pontchartrain-Pearl-Pascagoula (includes Pearl River). Of these faunal provinces, the Interior Highlands, Sabine-Trinity, and Pontchartrain-Pearl-Pascagoula faunal provinces contain populations in low condition or that are functionally extirpated and therefore are at higher risk of extirpation.

The Interior Highlands faunal province is characterized by upland streams in the Ozark and Ouachita mountains. This province has numerous endemic aquatic species of both fish and freshwater mussels, due to the isolation of the river systems within the province from each other and from other upland river systems (Haag 2012, pp. 82–83). In this faunal province, the Lower Little River is functionally extirpated, with the remaining populations in moderate (Little River and Saline River) or high (Cossatot River) condition. While the populations in this faunal province are subject to threats such as erratic flows capable of causing bed movement or dislocation of mussels, increased sedimentation, altered water chemistry (*e.g.,* low temperatures), and decreased water quality due to higher pollutant loads from urban areas and industrial wastewater discharges, the threats are primarily occurring in the future. Under a moderate increase in stressors based on the lower greenhouse gas emissions trajectory (RCP 4.5), model projections expect an increase in global mean surface temperatures that will alter precipitation events resulting in drought and flooding in the next 25–50 years, this combined with future human demand for water resources indicate an overall decline in populations in the future. Louisiana pigtoe within the Interior Highlands faunal province are not currently in danger of extinction; therefore, they do not have a different status from the remainder of the species' range.

The Sabine-Trinity faunal province is located in the central Gulf Coast of Texas, and characterized by lowland streams and rivers, with lentic and wetland habitats bordering the main channels (Haag 2012, pp. 86–87). In this faunal province, the Upper Calcasieu River, Angelina River, Lower Neches River, and the East Fork San Jacinto River are in low condition, the Sabine River is functionally extirpated, with the remaining populations in moderate (Big Cypress Bayou) or high condition (Neches River). While the populations in this faunal province are being affected by impoundments resulting in threats such as excessive sedimentation and water quality degradation, as well as ongoing agricultural activities, groundwater withdrawals, and surface water diversions, these threats are primarily occurring in the future. Under a moderate increase in stressors based on the lower greenhouse gas emissions trajectory (RCP 4.5), model projections expect an increase in global mean surface temperatures that will alter precipitation events resulting in more extreme drought and flooding conditions that reduces water quality, mobilizes substrates, eroded habitat or deposits sentiments on Louisiana pigtoe populations in the next 25–50 years. The Sabine-Trinity faunal province are not currently in danger of extinction; therefore, they do not have a different status from the remainder of the species' range.

The Pontchartrain-Pearl-Pascagoula faunal province lies entirely within the Coastal Plain and is characterized by lowland streams filled with sandy and fine sediments, with lentic and wetland habitats alongside the main stream channels (Haag 2012, p. 87.). This province has numerous endemic aquatic species of both fish and freshwater mussels, the majority of which are shared with the Mobile Basin province (Haag 2012, pp. 87–89), and includes the Pearl River population in an overall low condition. The Pearl River population in this faunal province is subject to threats such as erratic flows from water releases from the Ross Barrett Dam that are capable of causing bed movement or dislocation of mussels, increased sedimentation, and altered water chemistry (*e.g.,* low temperatures), the threats are primarily occurring in the future. Under a moderate greenhouse gas emission trajectory (RCP 4.5), model projections no changes from current condition are expected within 10-years. Within 25-years, hydrologic conditions would be negatively affected by the construction of a flood control reservoir proposed for the upper portion of the focal area, resulting in a moderate decline in substrate condition as sediments accumulate on mussel beds from a lack or cleansing flows, and water quality degradation. Although these threats are not unique to this area, they may be acting at a greater intensity here, either individually or in combination, than elsewhere in the range, given the low abundance of Louisiana pigtoe in this reach. The small size of this population, coupled with the current condition information in the SSA report suggesting the population in this area has low resiliency, indicates the populations in the Pontchartrain-Pearl-Pascagoula faunal province *may* be in danger of extinction now.

We evaluated the available information about this portion of the range of Louisiana pigtoe that occupies the upper Pearl River in this context, assessing its biological significance in terms of the three habitat criteria (habitat/structure, hydrology, and water quality; see *Species Condition*) used to assign the current condition of Louisiana Pigtoe populations, and determined the information did not indicate it may be significant. Louisiana pigtoe in this population exhibit similar habitat and host fish use to Louisiana pigtoe in the remainder of its range; thus, there is no unique observable environmental usage or behavioral characteristics attributable to just this area's population. The Pearl River is not essential to any specific life-history function of the Louisiana pigtoe that is not found elsewhere in the range. Further, the habitat in the Pearl River does not contain higher quality or higher value than the remainder of the species' range of the Louisiana pigtoe (see Table 3). Additionally, this population does not interact with other populations of the species. Overall, we found no substantial information that would indicate the population in the Pearl River may be significant. While this reach provides some contribution to the species' overall ability to withstand catastrophic or stochastic events (redundancy and resiliency, respectively), the species has larger populations in adjacent faunal provinces. The best scientific and commercial information available indicate that this populations' contribution is very limited in scope

due to small population size and isolation from other populations. Therefore, because we could not answer both the status and significance questions in the affirmative, we conclude that the Pearl River does not warrant further consideration as a significant portion of the range of the Louisiana pigtoe.

Therefore, no portion of the species' range provides a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not need to consider whether any portions are significant and, therefore, did not apply the aspects of the Final Policy's definition of ''significant'' that those court decisions held were invalid.

Louisiana Pigtoe: Determination of Status

Our review of the best available scientific and commercial information indicates that the Louisiana pigtoe meets the Act's definition of a threatened species. Therefore, we propose to list the Louisiana pigtoe as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies, including the Service, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (*https://www.fws.gov/program/endangered-species*).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their ranges may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Arkansas, Oklahoma, Louisiana, Mississippi, and Texas would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Texas heelsplitter and Louisiana pigtoe. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Although the Texas heelsplitter and Louisiana pigtoe are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for these species. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the Federal Emergency Management Agency (related to disaster recovery projects), National Park Service, Natural Resources Conservation Service, National Wildlife Refuge System, U.S. Army, U.S. Army Corps of Engineers, and the U.S. Forest Service.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any species listed as an endangered species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. The Act allows the Secretary to promulgate protective regulations for threatened species pursuant to section 4(d) of the Act. The discussion in the following section, Proposed Rule Issued Under Section 4(d) of the Act, regarding protective regulations under section 4(d) of the Act for the Louisiana pigtoe complies with our policy.

For the Texas heelsplitter, based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive:

(1) Normal agricultural and silvicultural practices, including herbicide and pesticide use, that are carried out in accordance with any existing regulations, permit and label requirements, and best management practices; and

(2) Normal residential landscaping activities.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act, if they are not authorized in accordance with applicable law; this list is not comprehensive:

(1) Unauthorized handling or collecting of the species;

(2) Unauthorized destruction or alteration of Texas heelsplitter habitat by dredging, channelization, impoundment, diversion, recreational vehicle operation within the stream channel, sand or gravel removal, or other activities that result in the destruction or significant degradation of channel or bank stability, streamflow/water quantity, substrate composition, and water quality used by the species for foraging, cover, and reproduction;

(3) Modification of the channel or water flow of any stream, including the withdrawal (decrease) or supplementation (increase) of surface or ground waters where the Texas heelsplitter is known to occur;

(4) Livestock grazing that results in direct or indirect destruction of riparian or instream habitat; and

(5) Unauthorized discharge of chemicals (including pesticides and fertilizers in violation of label restrictions), household waste, silt, sediments, fill material, or other pollutants (*e.g.,* sewage, oil and gasoline, heavy metals), into any waters or their adjoining riparian areas where the Texas heelsplitter is known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Arlington Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

II. Proposed Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened. The U.S. Supreme Court has noted that statutory language similar to the language in section 4(d) of the Act authorizing the Secretary to take action that she ''deems necessary and advisable'' affords a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld, as a valid exercise of agency authority, rules developed under section 4(d) that included limited prohibitions against takings (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 WL 511479 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The provisions of this proposed 4(d) rule would promote conservation of the Louisiana pigtoe by encouraging riparian landscape conservation while also meeting the conservation needs of the Louisiana pigtoe. By streamlining those projects that follow best management practices and improve instream habitat (such as streambank

stabilization, instream channel restoration, and upland restoration that improves instream habitat), conservation is more likely to occur for Louisiana pigtoe, improving the condition of populations in those reaches. The provisions of this proposed rule are several of many tools that we would use to promote the conservation of the Louisiana pigtoe. This proposed 4(d) rule would apply only if and when we make final the listing of the Louisiana pigtoe as a threatened species.

As mentioned previously in Available Conservation Measures, section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of Federal actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

These requirements are the same for a threatened species with a species-specific 4(d) rule. For example, a Federal agency's determination that an action is ''not likely to adversely affect'' a threatened species will require the Service's written concurrence. Similarly, a Federal agency's determination that an action is ''likely to adversely affect'' a threatened species will require formal consultation and the formulation of a biological opinion.

Provisions of the Proposed 4(d) Rule

Exercising the Secretary's authority under section 4(d) of the Act, we have developed a proposed rule that is designed to address the Louisiana pigtoe's specific conservation needs. As discussed previously in Summary of Biological Status and Threats, we have concluded that the Louisiana pigtoe is likely to become in danger of extinction within the foreseeable future primarily due to habitat changes such as the accumulation of fine sediments, altered hydrology, and impairment of water quality; predation and collection; and barriers to fish movement. Section 4(d) requires the Secretary to issue such regulations as she deems necessary and advisable to provide for the conservation of each threatened species and authorizes the Secretary to include among those protective regulations any of the prohibitions that section 9(a)(2) of the Act prescribes for endangered species. We find that, if finalized, the protections, prohibitions, and exceptions in this proposed rule as a whole satisfy the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the Louisiana pigtoe.

The protective regulations we are proposing for the Louisiana pigtoe incorporate prohibitions from section 9(a)(1) to address the threats to the species. Section 9(a)(1) prohibits the following activities for endangered wildlife: importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce. This protective regulation includes most of these prohibitions for the Louisiana pigtoe because the Louisiana pigtoe is at risk of extinction in the foreseeable future and putting these prohibitions in place will help to preserve the species' remaining populations, slow its rate of decline, and decrease synergistic, negative effects from other stressors.

In particular, this proposed 4(d) rule would provide for the conservation of the Louisiana pigtoe by prohibiting the following activities, unless they fall within specific exceptions or are otherwise authorized or permitted: Importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce.

Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulations at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating incidental and intentional take would help preserve the species' remaining populations, slow their rate of decline, and decrease synergistic, negative effects from other stressors. Therefore, we propose to prohibit take of the Louisiana pigtoe, except for take resulting from those actions and activities specifically excepted by the 4(d) rule.

Exceptions to the prohibition on take would include most of the general exceptions to the prohibition against take of endangered wildlife, as set forth in 50 CFR 17.21 and certain other specific activities that we propose for exception, as described below.

The proposed 4(d) rule would also provide for the conservation of the species by allowing exceptions that incentivize conservation actions or that, while they may have some minimal level of take of the Louisiana pigtoe, are not expected to rise to the level that would have a negative impact (*i.e.,* would have only de minimis impacts) on the species' conservation. The proposed exceptions to these prohibitions include the following activities that are expected to have negligible impacts to the Louisiana pigtoe and its habitat:

(1) Channel restoration projects that create natural, physically stable (streambanks and substrate remaining relatively unchanging over time), ecologically functioning streams or stream and wetland systems (containing an assemblage of fish, mussels, other invertebrates, and plants) that are reconnected with their groundwater aquifers. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools composed of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands and woodland buffers. This exception to the

proposed 4(d) rule for incidental take would promote conservation of Louisiana pigtoe by creating stable stream channels that are less likely to scour during high-flow events, thereby increasing population resiliency.

(2) Bioengineering methods such as streambank stabilization using live native stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), live native fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or native brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). These methods must not include the sole use of quarried rock (rip-rap) or the use of rock baskets or gabion structures. In addition, to reduce streambank erosion and sedimentation into the stream, work using these bioengineering methods must be performed at base flow or low water conditions and when significant rainfall is not predicted. Further, streambank stabilization projects must keep all equipment out of the stream channels and water. Similar to channel restoration projects, this exception to the proposed 4(d) rule for incidental take would promote conservation of Louisiana pigtoe by creating stable stream channels that are less likely to scour during high-flow events, thereby increasing population resiliency.

(3) Soil and water conservation practices and riparian and adjacent upland habitat management activities that restore instream habitats for the species, restore adjacent riparian habitats that enhance stream habitats for the species, stabilize degraded and eroding stream banks to limit sedimentation and scour of the species' habitats, and restore or enhance nearby upland habitats to limit sedimentation of the species' habitats. We recommend that these practices and activities comply with specifications and technical guidelines developed by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS), as soil and water conservation practices and aquatic species habitat restoration projects associated with NRCS conservation plans are designed to improve water quality and enhance fish and aquatic species habitats. This exception to the proposed 4(d) rule for incidental take would promote conservation of Louisiana pigtoe by creating stable stream channels and reducing sediment inputs to the stream, thereby increasing population resiliency.

We include other standard exceptions to the prohibitions in the proposed 4(d) rule for the Louisiana pigtoe.

Despite these prohibitions regarding threatened species, we may under certain circumstances issue permits to carry out one or more otherwise-prohibited activities, including those described above. The regulations that govern permits for threatened wildlife state that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species. These include permits issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act (50 CFR 17.32). The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist us in implementing all aspects of the Act. In this regard, section 6 of the Act provides that we must cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with us in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve Louisiana pigtoe that may result in otherwise prohibited take without additional authorization.

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or our ability to enter into partnerships for the management and protection of the Louisiana pigtoe. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between us and other Federal agencies, where appropriate. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that we could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested, above).

III. Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land

ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would likely result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

As discussed earlier in this document, there are well documented beds of Louisiana pigtoe that are sampled for scientific projects, and to a lesser degree collected by fishing enthusiasts for use as bait. Because these areas are already well known, and they are not being collected for private collections, there is currently no additional imminent threat of collection or vandalism identified under Factor B for these species, and identification and mapping of critical habitat is not expected to initiate any such threat. In our SSA and proposed listing determination for the Texas heelsplitter and Louisiana pigtoe, we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to these species and that those threats in some way can be addressed by section 7(a)(2) consultation measures. These species occur wholly in the jurisdiction of the United States, and we are able to identify areas that meet the definition of critical habitat. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met and because

the Secretary has not identified other circumstances for which this designation of critical habitat would be not prudent, we have determined that the designation of critical habitat is prudent for the Texas heelsplitter and Louisiana pigtoe.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the Texas heelsplitter and Louisiana pigtoe is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.'' When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where these species are located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the Texas heelsplitter and Louisiana pigtoe.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

We derive the specific physical or biological features (PBFs) essential for the conservation of the Texas heelsplitter and Louisiana pigtoe from studies of these species' habitat, ecology, and life history. The life histories of these two freshwater mussel species are very similar—mussels need suitable water quality, flowing water, suitable substrate, flow refuges, and appropriate host fish—and so we will discuss their common habitat needs and then describe their species-specific needs.

Physiological Requirements: Water Quality Requirements

Freshwater mussels, as a group, are sensitive to changes in water quality, including parameters such as dissolved oxygen, salinity, ammonia, and environmental pollutants (*e.g.,* pesticides and trace metals). Habitats with appropriate levels of these parameters that are pollutant-free or have low levels of pollutants are considered suitable, while those habitats with levels outside of the appropriate ranges or that contain elevated pollutants are considered less suitable. We have used information for the Texas heelsplitter and Louisiana pigtoe, where available, and data from other species when species-specific information is not available. Juvenile freshwater mussels are particularly susceptible to low dissolved oxygen levels. Juveniles will reduce feeding behavior when dissolved oxygen is between 2–4 milligrams per liter (mg/L), and mortality has been shown to occur at dissolved oxygen levels below 1.3 mg/L. Increased salinity levels may also be stressful to freshwater mussels, with some species showing signs of stress at salinity levels of 2 ppt or higher (Bonner *et al.* 2018; pp. 155–156).

The release of pollutants into streams from point and nonpoint sources have immediate impacts on water quality conditions and may make environments unsuitable for habitation by mussels. Early life stages of freshwater mussels are some of the most sensitive organisms of all species to ammonia and copper (Augspurger *et al.* 2007, p. 2025). Additionally, sublethal effects of contaminants over time can result in reduced feeding efficiency, reduced growth, decreased reproduction, changes in enzyme activity, and behavioral changes to all mussel life stages. Even wastewater discharges with low ammonia levels have been shown to negatively affect mussel populations.

Finally, water temperature plays a critical role in the life history of freshwater mussels. High water temperatures can cause valve closure, reduced reproductive output, and death. Laboratory studies investigating the effects of thermal stress on glochidia and adults have indicated thermal stress may occur at 27 °C (80.6 °F) (Bonner *et al.* 2018; Khan *et al.* 2019, entire)).

Based on the above information, we determine that stream reaches with the following water quality parameters are suitable for the Texas heelsplitter and Louisiana pigtoe:

- Water temperature below 27 °C (80.6 °F);
- Dissolved oxygen levels greater than 3 mg/L;
- Low salinity (less than 2 ppt) and total dissolved solids;
- Low total ammonia and nitrogen (below 0.3–0.7 mg/L total ammonia nitrogen);
- Low levels of copper, nickel, and other trace metals;
- Low levels of pesticides, sulfate, chloride, potassium, and other harmful constituents; and
- Low pollutants and environmental contaminants common to wastewater.

Space for Individual and Population Growth and for Normal Behavior

Most freshwater mussels, including the Texas heelsplitter and Louisiana pigtoe, are found in aggregations, called mussel beds, that vary in size from about 50 to greater than 5,000 square meters (m^2), separated by stream reaches in which mussels are absent or rare (Vaughn 2012, p. 983). Freshwater mussel larvae (called glochidia) are parasites that must attach to a host fish. A population incorporates more than one mussel bed; it is the collection of mussel beds within a stream reach between which infested host fish may travel, allowing for ebbs and flows in mussel bed density and abundance over time throughout the population's occupied reach. Accordingly, sufficiently resilient mussel populations must occupy stream reaches long enough so that stochastic events that affect individual mussel beds do not eliminate the entire population. Repopulation by infested host fish from other mussel beds within the reach can allow the population to recover from these events. Longer stream reaches are more likely to support populations of the Texas heelsplitter and Louisiana pigtoe into the future than shorter stream reaches. Therefore, we determine that long stream reaches, over 50 river miles (80.5 km), are an important component of a riverine system with habitat to support all life stages of the Texas heelsplitter and Louisiana pigtoe. Populations occupying reaches shorter than 50 miles can still provide population redundancy and, if habitat factors are of sufficiently high quality, can be an important component of the recovery of Texas heelsplitter and Louisiana pigtoe.

The Texas heelsplitter needs low to moderately flowing streams, and tolerates impoundments (lakes, reservoirs, or pools without flow). All life stages of the Texas heelsplitter require substrates consisting of firm mud, sand, finer gravels, and mixtures of those with high organic matter content. The Louisiana pigtoe needs flowing water for survival and occurs in medium- to large-sized streams and rivers associated with riffle, run, and sometimes larger backwater tributary habitats. All life stages of the Louisiana pigtoe require substrates consisting of cobble/rock, sand/gravel/woody debris, and runs with subdominant gravel mixtures. River reaches with continuous flow support all life stages of these two species of freshwater mussels, while those with little or no flow do not. Flow rates needed by each species will vary depending on the species and the river size, location, and substrate type. Habitat locations must be relatively free of fine sediments for both species such that the mussels are not smothered.

Sites for Development of Offspring

As discussed above, freshwater mussel larvae are parasites that must attach to a host fish to develop into juvenile mussels. The Texas heelsplitter and Louisiana pigtoe use a variety of host fish, many of which are widely distributed throughout their ranges. The presence of these fish species, either singly or in combination, supports the life-history needs of these two species of freshwater mussels:

- Texas heelsplitter: freshwater drum (*Aplodinotus grunniens*).
- Louisiana pigtoe: red shiner (*Cyprinella* (=*Notropis*) *lutrensis*), blacktail shiner (*Cyprinella venusta*), and bullhead minnow (*Pimephales vigilax*).

Summary of Essential Physical or Biological Features

In summary, we derive the specific PBFs essential to the conservation of Texas heelsplitter and Louisiana pigtoe from studies of these species' habitat, ecology, and life history as described above. Additional information can be found in the SSA report available on *https://www.regulations.gov* under Docket No. FWS–R2–ES–2022–0026.

Texas Heelsplitter

We have determined that the following PBFs are essential to the conservation of the Texas heelsplitter:

1. Water quality parameters within the following ranges:
   a. Water temperature below 27 °C (80.6 °F);
   b. Dissolved oxygen levels greater than 3 mg/L;
   c. Low salinity (less than 2 ppt) and total dissolved solids;
   d. Low total ammonia and nitrogen (below 0.3–0.7 mg/L total ammonia nitrogen);
   e. Low levels of copper, nickel, and other trace metals;
   f. Low levels of pesticides, sulfate, chloride, potassium, and other harmful constituents; and
   g. Low pollutants and environmental contaminants common to wastewater.
2. Moderately flowing water rates suitable to prevent excess sedimentation but not so high as to dislodge individuals or sediment; or no water flow, if in an impoundment (lake, reservoir, or pool without flow).
3. Substrate including bedrock and boulder crevices, point bars, and vegetated run habitat comprising sand, gravel, and larger cobbles.
4. Freshwater drum (*Aplodinotus grunniens*) present.

Louisiana Pigtoe

We have determined that the following PBFs are essential to the conservation of the Louisiana pigtoe:

1. Water quality parameters within the following ranges:
   a. Water temperature below 27 °C (80.6 °F);
   b. Dissolved oxygen levels greater than 3 mg/L;
   c. Low salinity (less than 2 ppt) and total dissolved solids;
   d. Low total ammonia and nitrogen (below 0.3–0.7 mg/L total ammonia nitrogen);
   e. Low levels of copper, nickel, and other trace metals;
   f. Low levels of pesticides, sulfate, chloride, potassium, and other harmful constituents; and
   g. Low pollutants and environmental contaminants common to wastewater.
2. Moderately flowing water rates suitable to prevent excess sedimentation but not so high as to dislodge individuals or sediment.
3. Stable bank and riffle habitats with bedrock and boulder crevices, point bars, and vegetated run habitat comprising sand, gravel, and larger cobbles.
4. Red shiner (*Cyprinella* (=*Notropis*) *lutrensis*), blacktail shiner (*Cyprinella venusta*), and bullhead minnow (*Pimephales vigilax*) present.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of the Texas heelsplitter and Louisiana pigtoe may require special management considerations or protections to reduce the following threats: increased fine sediment, changes in water quality impairment, altered hydrology from both inundation and flow loss/scour, predation and collection, and barriers to fish movement.

Management activities that could ameliorate these threats include, but are not limited to: Use of best management practices (BMPs) designed to reduce sedimentation, erosion, and bank side destruction; protection of riparian corridors and retention of sufficient canopy cover along banks; exclusion of livestock and nuisance wildlife (feral hogs, exotic ungulates); moderation of

surface and ground water withdrawals to maintain natural flow regimes; increased use of stormwater management and reduction of stormwater flows into the systems; use of highest water quality standards for wastewater and other return flows; and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

In summary, we find that the occupied areas we are proposing to designate as critical habitat contain the PBFs that are essential to the conservation of the species and that may require special management considerations or protection. Special management considerations or protection may be required of the Federal action agency to eliminate, or to reduce to negligible levels, the threats affecting the PBFs of each unit.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not currently proposing to designate any areas outside the geographical area occupied by the Texas heelsplitter and Louisiana pigtoe because we have determined that the occupied areas are sufficient to conserve the species.

We anticipate that recovery will require conserving the genetic diversity of extant populations across the species' current ranges and maintaining and, where necessary, improving habitat and habitat connectivity to ensure the long-term viability of the Texas heelsplitter and Louisiana pigtoe. This proposed critical habitat designation delineates the habitat that is physically occupied and used by the species rather than delineating all land or aquatic areas that influence the species. We recognize that there may be additional occupied areas outside of the proposed areas designated as critical habitat that we are not aware of at the time of this designation that may be necessary for the conservation of the species. We have determined that the areas currently occupied by the Texas heelsplitter and Louisiana pigtoe would maintain each species' resiliency, redundancy, and representation and are sufficient to conserve these two species. Therefore, we are not currently proposing to designate any areas outside the geographical area occupied by the species.

Sources of data for this proposed critical habitat include multiple databases maintained by universities and State agencies, scientific and agency reports, and numerous survey reports on streams throughout the species' range (Service 2022, pp. 16–24).

Areas Occupied at the Time of Listing

The proposed critical habitat designations do not include all rivers and streams known to have been occupied by the species historically; instead, they focus on rivers and streams occupied at the time of listing that have retained the necessary PBFs that will allow for the maintenance and expansion of existing populations. A stream reach may not have all of the PBFs to be included as proposed critical habitat; in such reaches, our goal is to recover the species by restoring the missing PBFs. We defined ''occupied'' units as stream channels with observations of one or more live individuals. Specific habitat areas were delineated based on reports of live individuals and recently dead shells. We include ''recent dead shell material'' to delineate the boundaries of a unit because recently dead shell material at a site indicates the species is present in that area. Recently dead shells have tissue remaining on the shells or have retained a shiny nacre, indicating the animal died within days or weeks of finding the shell. It is highly unlikely that a dead individual represents the last remaining individual of the population, and recently dead shells are an accepted indicator of a species' presence (*e.g.,* Howells 1996, pp. ii, 4; Randklev *et al.* 2011, p. 17).

We are relying on evidence of occupancy from data collected in 2000 to the present. This is because freshwater mussels may be difficult to detect, and some sites are not visited multiple times. Additionally, these species live at least 15 to 20 years. Because adults are less sensitive to habitat changes than juveniles, changes in population sizes usually occur over decades rather than years. As a result, areas where individuals were collected within the last 20 years are expected to remain occupied now. Additionally, any areas that were surveyed around 20 years ago and do not have subsequent surveys were reviewed for any large-scale habitat changes (*i.e.,* major flood or scour event, drought) to confirm that general habitat characteristics remained constant over this time. None of the relatively few areas without more recent survey information had experienced changes to general habitat characteristics. Therefore, data from around 2000 would be considered a strong indicator a species remains extant at a site if general habitat characteristics have remained constant over that time.

For areas proposed as critical habitat, we delineated critical habitat unit boundaries using the following criterion: Evaluate habitat suitability of stream segments within the geographic area occupied at the time of listing, and retain those segments that contain some or all of the PBFs to support life-history functions essential for conservation of the species. Humanmade reservoirs are not considered natural habitat for either species and may not contain all of the PBFs; therefore, they were not delineated as critical habitat for Texas heelsplitter, which occurs in some reservoirs. The recovery vision for Texas heelsplitter will not be focused on enhancing the species in these areas.

As a final step, we evaluated those occupied stream segments retained through the above analysis and refined the starting and ending points by evaluating the presence or absence of appropriate PBFs. We selected upstream and downstream cutoff points to reference existing easily recognizable geopolitical features including confluences, highway crossings, and county lines. Using these features as end points allows the public to clearly understand the boundaries of critical habitat. Unless otherwise specified, any stream beds located directly beneath bridge crossings or other landmark features used to describe critical habitat spatially, such as stream confluences, are considered to be wholly included within the critical habitat unit. Critical habitat stream segments were then mapped using ArcMap version 10.6.1 (ESRI, Inc.), a Geographic Information Systems program.

We consider the following streams and rivers to be occupied by the Texas heelsplitter at the time of proposed listing: Neches River, Sabine River, and Trinity River.

We consider the following streams and rivers to be occupied by the Louisiana pigtoe at the time of proposed listing: Angelina River, Big Cypress Bayou, Calcasieu River, Cossatot River, Little River, Neches River, Pearl River, Rolling Fork, Sabine River, Saline River, San Jacinto River, and Sulphur River.

General Information on the Maps of the Proposed Critical Habitat Designations

When determining proposed critical habitat boundaries, we made every

effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the Texas heelsplitter and Louisiana pigtoe. Critical habitat for these mussels includes only stream channels up to bankfull height, where the stream base flow is contained within the channel. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are proposing to designate as critical habitat three units for the Texas heelsplitter and six units for the Louisiana pigtoe based on one or more of the PBFs being present to support the Texas heelsplitter's or Louisiana pigtoe's life-history processes. Some units contain all of the identified physical or biological features and support multiple life-history processes. Some units contain only some of the PBFs necessary to support the Texas heelsplitter's or Louisiana pigtoe's particular use of that habitat.

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *https://www.regulations.gov* at Docket No. FWS–R2–ES–2022–0026, on our internet site *https://www.fws.gov/office/arlington-ecological-services.*

Proposed Critical Habitat Designation

We are proposing to designate approximately 832 river mi (1,339 km) in three units as critical habitat for Texas heelsplitter and approximately 1,028 river mi (1,654 km) in six units for the Louisiana pigtoe. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Texas heelsplitter and Louisiana pigtoe. All units are occupied by their respective species. The three areas we propose as critical habitat for Texas heelsplitter are all in Texas and are: (1) Trinity River, (2) Sabine River, and (3) Neches River. The six areas we propose as critical habitat for Louisiana pigtoe are: (1) Little River (Arkansas/Oklahoma), (2) Sabine River (Louisiana/Texas), (3) Neches River (Texas), (4) San Jacinto River (Texas), (5) Calcasieu River (Louisiana), and (6) Pearl River (Louisiana/Mississippi). One proposed Louisiana pigtoe critical habitat subunit, LAPT–1a (Upper Little River, Oklahoma; 25.7 river miles (41.4 km)), is located within the Choctaw Reservation, but not on any lands held in trust for the Tribe, or owned or managed by the Tribe. Tables 5 and 6 show the proposed critical habitat units, the adjacent riparian area ownership, and the approximate area of each unit.

TABLE 5—PROPOSED CRITICAL HABITAT UNITS FOR THE TEXAS HEELSPLITTER

Unit	Subunit	Riparian ownership	Occupied?	River miles (kilometers)
TXHS–1: Trinity River	TXHS–1a: Trinity River	Private, State	Yes	212.8 (342.4)
	TXHS–1b: Bedias Creek	Private	Yes	28.9 (46.5)
Unit Total				241.7 (388.9)
TXHS–2: Sabine River	TXHS–2a: Upper Sabine River	Private, State, Local, Federal	Yes	237.4 (382.0)
	TXHS–2b: Lake Fork Creek	Private	Yes	13.8 (22.2)
	TXHS–2c: Patroon Bayou	Private, Federal	Yes	19.9 (32.0)
Unit Total				271.1 (436.2)
TXHS–3: Neches River	TXHS–3a: Upper Neches River	Private, Federal	Yes	227.9 (366.7)
	TXHS–3b: Lower Angelina River	Private, Federal	Yes	14.7 (23.7)
	TXHS–3c: Lower Neches River	Private, State, Federal	Yes	76.3 (122.8)
Unit Total				318.9 (513.1)
Total				831.8 (1,338.6)

Note: Lengths may not accurately sum due to rounding.

TABLE 6—PROPOSED CRITICAL HABITAT UNITS FOR THE LOUISIANA PIGTOE

Unit	Subunit	Riparian ownership	Occupied?	River miles (kilometers)
LAPT–1: Little River	LAPT–1a: Upper Little River	Private, State, Federal, Tribal	Yes	88.0 (141.6)
	LAPT–1b: Rolling Fork	Private	Yes	29.9 (47.9)
	LAPT–1c: Cossatot River	Private, Federal	Yes	47.2 (75.9)
	LAPT–1d: Saline River	Private	Yes	42.6 (68.5)
Unit Total				207.7 (334.2)
LAPT–2: Sabine River	LAPT–2a: Upper Sabine River	Private, State, Federal	Yes	110.1 (177.2)

TABLE 6—PROPOSED CRITICAL HABITAT UNITS FOR THE LOUISIANA PIGTOE—Continued

Unit	Subunit	Riparian ownership	Occupied?	River miles (kilometers)
	LAPT–2b: Anacoco Bayou	Private	Yes	12.2 (19.6)
Unit Total				122.3 (196.8)
LAPT–3: Neches River	LAPT–3a: Upper Neches River	Private, Federal	Yes	200.4 (322.4)
	LAPT–3b: Upper Angelina River	Private, Federal	Yes	67.4 (108.4)
	LAPT–3c: Lower Neches River	Private, State, Federal	Yes	76.2 (122.6)
	LAPT–3d: Village Creek	Private, State, Federal	Yes	54.9 (88.3)
	LAPT–3e: Big Sandy Creek	Private, Federal	Yes	43.7 (70.3)
Unit Total				442.6 (712.1)
LAPT–4: East Fork San Jacinto River.		Private	Yes	23.3 (37.5)
Unit Total				23.3 (37.5)
LAPT–5: Calcasieu River	LAPT–5a: Upper Calcasieu River	Private, Federal	Yes	92.0 (148.0)
	LAPT–5b: Whisky Chitto Creek	Private, State	Yes	21.7 (34.9)
	LAPT–5c: Tenmile Creek	Private, State	Yes	32.0 (51.5)
Unit Total				145.7 (234.4)
LAPT–6: Pearl River		Private, State, Federal	Yes	86.6 (139.3)
Unit Total				86.6 (139.3)
Total				1,028.2 (1,654.3)

Note: Lengths may not accurately sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Texas heelsplitter (TXHS) or Louisiana pigtoe (LAPT) below.

Texas Heelsplitter

Unit TXHS–1: Trinity River

Subunit TXHS–1a: Trinity River. The Trinity River Subunit includes 212.8 river mi (342.4 km) in Anderson, Ellis, Freestone, Henderson, Houston, Kaufman, Leon, Madison, and Navarro Counties, Texas. The subunit begins at Lake Livingston (estimated from the State Highway 24 bridge located 4.7 mi (7.6 km) northeast of Midway, Texas) and continues upstream to the State Highway 34 bridge, located 2.5 miles (4 km) southwest of Rosser, Texas. Ownership of adjacent riparian areas is 95 percent private and 5 percent State. Although this reach is approximately 20 mi (32.2 km) southeast and downstream of the Dallas-Fort Worth Metroplex, activities occurring across the Metroplex continue to affect both water quality and quantity downstream, including in this subunit, even though it is located in a largely rural area and predominately within riparian woodlands and agricultural lands. The Trinity River Subunit is occupied by the Texas heelsplitter and contains all the PBFs essential to the conservation of the species most of the year. However, hydrologic conditions have been significantly altered by wastewater return flows, and flooding in the Trinity River can be extreme, causing the species to experience a variety of environmental stressors that degrade habitat quality, such as shear stress, scouring, erosion, sediment deposition and siltation, and bank collapse.

The Trinity River Subunit is being affected by impoundments, wastewater return flows, ongoing agricultural activities, and development resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. There is no overlap with any designated critical habitat for other listed species.

Subunit TXHS–1b: Bedias Creek. The Bedias Creek Subunit is comprised of 28.9 river mi (46.5 km) in Grimes, Madison, and Walker Counties, Texas. The subunit continues upstream from Livingston Lake, as estimated from the Farm to Market Road 247 bridge located 9.2 mi (14.8 km) south-southeast of Midway, Texas, to the State Highway 90 bridge located approximately 6.3 mi (10.1 km) south-southwest of Madisonville, Texas. Adjacent riparian areas are privately owned. This reach is largely rural and predominately within riparian woodlands and agricultural lands. The Bedias Creek Subunit is occupied by the Texas heelsplitter and contains all the PBFs essential to the conservation of the species most of the year. However, fluctuating drought conditions and flooding in Bedias Creek can cause the species to experience either extreme low-flow conditions with related reduced water quality or extreme high flows that mobilize substrates, erode habitat, or deposit sediment on Texas heelsplitter populations.

The Bedias Creek Subunit is influenced by drought, low flows, and flooding (leading to scour), and the subunit is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. There is no overlap with any designated critical habitat for other listed species.

Unit TXHS–2: Sabine River

Subunit TXHS–2a: Upper Sabine River. The Upper Sabine River Subunit includes 237.4 river mi (382 km) in Gregg, Harrison, Panola, Rains, Rusk,

Smith, Upshur, Van Zandt, and Wood Counties, Texas. The subunit extends upstream from the Louisiana/Texas State line, located approximately 2.4 mi (3.9 km) north-northeast of Joaquin, Texas, to a utility easement approximately 0.9 river mile (1.4 km) below Tawakoni Lake dam. Ownership of adjacent riparian areas is approximately 93 percent private, 4 percent State, 1 percent local, and 2 percent Federal. This reach is mostly rural and predominately within riparian woodlands bordered by agricultural lands. The Upper Sabine River Subunit is occupied by the Texas heelsplitter and contains all the PBFs essential to the conservation of the species most of the year. However, drought conditions and flooding in the Sabine River can be significant, resulting in either extreme low-flow conditions with related reduced water quality or high flows that mobilize substrates, erode habitat, or deposit sediment on Texas heelsplitter populations. The City of Longview, Texas, is located north of the subunit approximately mid-reach. Industrial and municipal wastewater associated with this urban area are discharged into the Sabine River Basin, negatively affecting water quality in some areas downstream.

The Upper Sabine River Subunit is influenced by drought, low flows, and flooding (leading to scour), and the subunit is being affected by impoundments, ongoing agricultural activities, and development resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. There is an overlap of 110.05 river mi (177.11 km) of this unit with proposed critical habitat for the Louisiana pigtoe.

Subunit TXHS–2b: Lake Fork Creek. The Lake Fork Creek Subunit consists of 13.8 river mi (22.2 km) in Wood County, Texas. The subunit extends upstream from its confluence with the Sabine River to the FM 49 bridge, located approximately 5 mi (8 km) northeast of Mineola, Texas. Adjacent riparian areas are privately owned. This reach is mostly rural and predominately within riparian woodlands bordered by agricultural lands. The Lake Fork Creek Subunit is occupied by the Texas heelsplitter and contains all the PBFs essential to the conservation of the species most of the year. However, drought conditions and flooding in the Lake Fork Creek can cause the species to experience either extreme low-flow conditions with related reduced water quality or high flows that mobilize substrates, erode habitat, or deposit sediment on Texas heelsplitter populations.

The Lake Fork Creek Subunit is influenced by drought, low flows, and flooding (leading to scour), and the subunit is being affected by impoundments, ongoing agricultural activities, and development resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. There is no overlap with any designated critical habitat for other listed species.

Subunit TXHS–2c: Patroon Bayou. The Patroon Bayou Subunit includes 19.9 river mi (32 km) in Sabine and Shelby Counties, Texas. This subunit begins at the mouth of Patroon Bayou (location estimated at the Reeves Road bridge, approximately 7 mi (11.3 km) north of Milam, Texas) and continues upstream to the State Highway 87 bridge located 11.3 mi (18.2 km) southeast of Shelbyville, Texas. Ownership of adjacent riparian areas are 93 percent private and 7 percent Federal. The Patroon Bayou Subunit is occupied by the Texas heelsplitter and contains all the PBFs essential to the conservation of the species most of the year. However, drought conditions and flooding in the Patroon Bayou can cause low-flow conditions with related reduced water quality or high flows that mobilize substrates, erode habitat, or deposit sediment on Texas heelsplitter populations.

The Patroon Bayou Subunit is influenced by drought, low flows, and flooding (leading to scour), and the subunit is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. There is no overlap with any designated critical habitat for other listed species.

Unit TXHS–3: Neches River

Subunit TXHS–3a: Upper Neches River. The Upper Neches River Subunit includes 227.9 river mi (366.7 km) of stream in Anderson, Angelina, Cherokee, Houston, Jasper, Polk, Trinity, and Tyler Counties, Texas. The subunit originates at B.A. Steinhagen Lake (estimated at a point located approximately 13 mi (20.9 km) east of Colmesneil, Texas) and continues upstream to a transmission line right-of-way (ROW) located approximately 1.1 river mi (1.8 km) below Palestine Lake Dam. Ownership of adjacent riparian areas is approximately 88 percent private and 12 percent Federal. This reach is rural and predominately within riparian woodlands bordered by agricultural lands. The Upper Neches River Subunit is occupied by the Texas heelsplitter and contains all the PBFs essential to the conservation of the species most of the year. However, drought conditions and flooding in the Neches River can cause either extreme low-flow conditions with related reduced water quality or high flows that mobilize substrates, erode habitat, or deposit sediment on Texas heelsplitter populations.

The Upper Neches River Subunit is influenced by drought, low flows, and flooding (leading to scour), and the subunit is being affected by impoundments, ongoing agricultural activities, and development resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. There is an overlap of 200.38 river mi (322.48 km) of this unit with proposed critical habitat for the Louisiana pigtoe.

Subunit TXHS–3b: Lower Angelina River. The Lower Angelina River Subunit consists of 14.7 river mi (23.7 km) in Jasper County, Texas. The subunit extends upstream from B.A. Steinhagen Lake, estimated at a point located approximately 5.7 mi (9.2 km) west of Curtis, Texas, to a transmission line ROW located approximately 0.3 mile (0.5 km) below Sam Rayburn Reservoir. Ownership of adjacent riparian areas is approximately 89 percent private and 11 percent Federal. This reach is rural and predominately within riparian woodlands bordered by agricultural lands. The Lower Angelina River Subunit is occupied by the Texas heelsplitter and contains all the necessary PBFs essential to the conservation of the species most of the year. However, drought conditions and flooding in the Angelina River can be compounded by hydroelectric dam operations at Sam Rayburn Reservoir, causing the species to experience either extreme low-flow conditions with related reduced water quality or extreme high flows that mobilize substrates,

erode habitat, or deposit sediment on Texas heelsplitter populations.

The Lower Angelina River Subunit is influenced by drought, low flows, and flooding (leading to scour), and the subunit is being affected by impoundments, ongoing agricultural activities, and development resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. There is no overlap with any designated critical habitat for other listed species.

Subunit TXHS–3c: Lower Neches River. The Lower Neches River Subunit occupies 76.3 river mi (122.8 km) in Hardin, Jasper, Jefferson, Orange, and Tyler Counties, Texas. The subunit extends upstream from the Lower Neches Valley Authority weir, located north of Beaumont, Texas, to the Walnut Run confluence, which is approximately 2.6 mi (4.2 km) southeast of the B.A. Steinhagen Dam. The Lower Neches River Subunit is hydrologically isolated from the Upper Neches River Subunit by B.A. Steinhagen Lake. Ownership of adjacent riparian areas is approximately 88 percent private, 7 percent State, and 5 percent Federal. This reach is mostly rural and predominately within riparian woodlands bordered by agricultural lands. The Lower Neches River Subunit is occupied by the Texas heelsplitter and contains all the PBFs essential to the conservation of the species most of the year. However, drought conditions and flooding in the Neches River can cause low-flow conditions with related reduced water quality or high flows that mobilize substrates, erode habitat, or deposit sediment on Texas heelsplitter populations.

The Lower Neches River Subunit is influenced by drought, low flows, and flooding (leading to scour); and the subunit is being affected by impoundments, ongoing agricultural activities, and development resulting in excessive sedimentation, water quality degradation, groundwater withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. There is an overlap of 76.35 river mi (122.87 km) of this unit with proposed critical habitat for the Louisiana pigtoe.

Louisiana Pigtoe

Unit LAPT–1: Little River

Subunit LAPT–1a: Upper Little River. The Upper Little River Subunit consists of approximately 88.0 river mi (141.6 km) of the mainstem Little River upstream of Millwood Lake, Arkansas, occupying portions of Little River and Sevier Counties, Arkansas, and McCurtain County, Oklahoma. This subunit extends upstream from the U.S. Highway 69/71 bridge near Millwood Lake, Arkansas, to the Glover River confluence, located 2.6 mi (4.2 km) west-southwest of Golden, Oklahoma. This subunit is hydrologically connected to the Rolling Fork Subunit (Subunit LAPT–1b). Ownership of adjacent riparian areas is approximately 42 percent private, 1 percent State, 26 percent Federal, and 23 percent private land within the Choctaw Reservation, but not any lands held in trust for the Tribe, or owned or managed by the Tribe. This reach is entirely rural, with long sections of intact riparian woodlands bordered by agricultural lands. The Upper Little River Subunit is occupied by the Louisiana pigtoe and contains all the PBFs essential to the conservation of the species most of the year.

Drought conditions and flooding in the Little River are seldom extreme; however, this subunit is affected by hydroelectric dam-related cold water releases in the Mountain Fork from Broken Bow Reservoir and ongoing agricultural activities, resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. The Upper Little River Subunit is occupied by four federally listed freshwater mussels, the endangered pink mucket (*Lampsilis abrupta*), the threatened rabbitsfoot (*Theliderma cylindrica,* listed as *Quadrula cylindrica cylindrica*), the endangered winged mapleleaf (*Quadrula fragosa*), and the endangered Ouachita rock pocketbook (*Arcidens wheeleri,* listed as *Arkansia wheeleri*). There is overlap of 88.3 river mi (142.1 km) of this unit with designated critical habitat for rabbitsfoot (see 50 CFR 17.95(f) and 80 FR 24692, April 30, 2015).

Subunit LAPT–1b: Rolling Fork. The Rolling Fork Subunit consists of approximately 29.9 river mi (47.9 km) in Sevier County, Arkansas. The subunit extends upstream from the Little River confluence to the falls/bedrock ledge located approximately 0.5 river mile (0.8 km) downstream of DeQueen Lake Dam. Ownership of adjacent riparian areas is privately held. This reach is entirely rural, and predominately agricultural lands and riparian woodlands. The Rolling Fork Subunit is occupied by the Louisiana pigtoe and contains all the PBFs essential to the conservation of the species most of the year.

Drought conditions and flooding in Rolling Fork are seldom extreme; however, this subunit is affected by impoundments and ongoing agricultural activities, resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. There is no overlap with any designated critical habitat for other listed species.

Subunit LAPT–1c: Cossatot River. The Cossatot River Subunit consists of approximately 47.2 river mi (75.9 km) of stream located within Sevier County, Arkansas. This subunit extends upstream from the U.S. Highway 69/71 bridge near Millwood Lake, Arkansas, to the Howard/Sevier County line in southeast Arkansas. Ownership of adjacent riparian areas is approximately 85 percent private and 15 percent Federal. This reach is entirely rural, and predominately riparian woodlands bordered by agricultural lands. The Cossatot River Subunit is occupied by the Louisiana pigtoe and contains all the PBFs essential to the conservation of the species most of the year.

Drought conditions and flooding in the Cossatot River are seldom extreme; however, this subunit is affected by impoundments and ongoing agricultural activities, resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. There is no overlap with any designated critical habitat for other listed species.

Subunit LAPT–1d: Saline River. The Saline River Subunit consists of approximately 42.6 river mi (68.5 km) of stream located along the Howard/Sevier County line in southeast Arkansas. This subunit extends upstream from the Bright Star Road bridge, which is located immediately north of Millwood Lake, to the Thirty Thousand Road (County Road 80) bridge located

approximately 3.8 mi (6.1 km) west-northwest of Dierks, Arkansas. Adjacent riparian areas are privately owned. This reach is entirely rural, and predominately riparian woodlands bordered by agricultural lands. The Saline River Subunit is occupied by the Louisiana pigtoe and contains all the PBFs essential to the conservation of the species most of the year.

Drought conditions and flooding in the Saline River are seldom extreme; however, this subunit is affected by impoundments and ongoing agricultural activities, resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. There is no overlap with any designated critical habitat for other listed species.

Unit LAPT–2: Sabine River

Subunit LAPT–2a: Upper Sabine River. The Upper Sabine River Subunit consists of 110.1 river mi (177.2 km) occupying portions of Gregg, Harrison, Panola, Rusk, Smith, Upshur, and Wood Counties, Texas. This subunit continues upstream from the State Highway 43 bridge, which is 5 mi (8 km) northeast of Tatum, Texas, and terminates at the Farm-to-Market Road 1804 bridge located 3.3 mi (5.3 km) southeast of Mineola, Texas. Ownership of adjacent riparian areas is approximately 96 percent private, 2 percent State, and 2 percent Federal. This reach is mostly rural and predominately within riparian woodlands bordered by agricultural lands.

The Upper Sabine River Subunit is occupied by the Louisiana pigtoe and contains all the PBFs essential to the conservation of the species most of the year. However, drought conditions and flooding in the Sabine River can be extreme, causing the species to experience either extreme low-flow conditions with associated reduced water quality or extreme high flows that mobilize substrates, erode habitat, or deposit sediment on Louisiana pigtoe populations. The City of Longview, Texas, is located north of the subunit at approximately one-third of the reach length upstream from the downstream terminus. Industrial and municipal wastewater associated with this urban area are discharged into the Sabine River Basin. The Upper Sabine River Subunit is influenced by drought, low flows, and flooding (leading to scour), and the subunit is being affected by impoundments, ongoing agricultural activities, and development resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. There is an overlap of 110.05 river mi (177.11 km) of this unit with proposed critical habitat for the Texas heelsplitter.

Subunit LAPT–2b: Anacoco Bayou. The Anacoco Bayou Subunit consists of 12.2 river mi (19.6 km) in Vernon Parish, Louisiana. The subunit extends upstream from the Beauregard/Vernon parish line, situated approximately 8 mi (12.9 km) northwest of DeRidder, Louisiana, and terminates at the Hawks Road bridge, located approximately 4.8 mi (7.7 km) northwest of Rosepine, Louisiana. Adjacent riparian areas are privately owned. This reach is mostly rural and predominately within riparian woodlands. The Anacoco Bayou Subunit is occupied by the Louisiana pigtoe and contains all the PBFs essential to the conservation of the species most of the year. However, drought conditions and flooding in Anacoco Bayou can be extreme, causing the species to experience either extreme low-flow conditions with associated reduced water quality or extreme high flows that mobilize substrates, erode habitat, or deposit sediments on Louisiana pigtoe populations.

Three sand and gravel mining operations and one paper mill that exist adjacent to this subunit likely negatively affect water quality from activities that generate point and non-point source pollution. Wastewater and storm water runoff associated with these activities are discharged into Anacoco Bayou drainage. The Anacoco Bayou Subunit is influenced by drought, low flows, and flooding (leading to scour), and the subunit is being affected by impoundments, as well as ongoing mining and industrial activities resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. There is no overlap with any designated critical habitat for other listed species.

Unit LAPT–3: Neches River

Subunit LAPT–3a: Upper Neches River. The Upper Neches River Subunit extends for 200.4 river mi (322.4 km) through parts of Anderson, Angelina, Cherokee, Houston, Polk, Trinity, and Tyler Counties, Texas. The downstream boundary corresponds to U.S. Highway 59 bridge, approximately 4 mi (6.4 km) south of Diboll, Texas, and the upstream boundary is located at a transmission line ROW approximately 1.1 river mi (1.8 km) below Palestine Lake Dam. Ownership of adjacent riparian areas is approximately 89 percent private and 11 percent Federal. This reach is mostly rural and predominately within riparian woodlands bordered by agricultural lands. The Upper Neches River Subunit is occupied by the Louisiana pigtoe and contains all the PBFs essential to the conservation of the species most of the year. However, drought conditions and flooding in the Neches River can be significant, causing the species to experience either extreme low-flow conditions with associated reduced water quality or extreme high flows that mobilize substrates, erode habitat, or deposit sediment on Louisiana pigtoe populations.

The Upper Neches River Subunit is influenced by drought, low flows, and flooding (leading to scour), and the subunit is being affected by impoundments, ongoing agricultural activities, and development resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. The entire subunit overlaps with proposed critical habitat for the Texas heelsplitter.

Subunit LAPT–3b: Upper Angelina River. The Upper Angelina River Subunit includes 67.4 river mi (108.4 km) in Angelina, Cherokee, and Nacogdoches Counties, Texas. The subunit extends upstream from the Union Pacific Railroad crossing, located approximately 3.7 mi (6 km) north-northwest of Redland, Texas, to the State Highway 204 bridge located 1.6 mi (2.6 km) west of Sacul, Texas. This subunit is hydrologically isolated from the Upper Neches River Subunit by Sam Rayburn Reservoir. Ownership of adjacent riparian areas is approximately 50 percent private and 50 percent Federal. This reach is mostly rural and predominately within riparian woodlands bordered by agricultural lands. The Upper Angelina River Subunit is occupied by the Louisiana pigtoe and contains all the PBFs essential to the conservation of the species most of the year. However, drought conditions and flooding in the Angelina River can result in either extreme low-flow conditions with

associated reduced water quality or extreme high flows that mobilize substrates, erode habitat, or deposit sediments on Louisiana pigtoe populations.

The Upper Angelina River Subunit is influenced by drought, low flows, and flooding (leading to scour); the subunit is being affected by impoundments, ongoing agricultural activities, and development resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. There is no overlap with any designated critical habitat for other listed species.

Subunit LAPT–3c: Lower Neches River. The Lower Neches River Subunit occupies 76.2 river mi (122.6 km) in Hardin, Jasper, Jefferson, Orange, and Tyler Counties, Texas. The subunit extends upstream from the Lower Neches Valley Authority weir, located north of Beaumont, Texas, to the Walnut Run confluence, which is approximately 2.6 mi (4.2 km) southeast of the B.A. Steinhagen Dam. The Lower Neches River Subunit is hydrologically isolated from the Upper Neches River Subunit by B.A. Steinhagen Lake. Ownership of adjacent riparian areas is approximately 88 percent private, 7 percent State, and 5 percent Federal. This reach is mostly rural and predominately within riparian woodlands bordered by agricultural lands. The Lower Neches River Subunit is occupied by the Louisiana pigtoe and contains all the PBFs essential to the conservation of the species most of the year. However, drought conditions and flooding in the Neches River can cause the species to experience either extreme low-flow conditions with associated reduced water quality or extreme high flows that mobilize substrates, erode habitat, or deposit sediments on Louisiana pigtoe populations.

The Lower Neches River Subunit is influenced by drought, low flows, and flooding (leading to scour); the subunit is being affected by impoundments, ongoing agricultural activities, and development resulting in excessive sedimentation, water quality degradation, groundwater withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. The entire subunit overlaps with proposed critical habitat for the Texas heelsplitter.

Subunit LAPT–3d: Village Creek. The Village Creek Subunit includes 54.9 river mi (88.3 km) of stream in Hardin County, Texas. The subunit originates at the Village Creek confluence with the Neches River, located approximately 1.6 mi (2.6 km) north-northwest of Lakeview, Texas, and continues up Village Creek to its terminus at the confluence of Big Sandy and Kimball creeks, located approximately 1.6 mi (2.6 km) south-southeast of Wildwood, Texas. Ownership of adjacent riparian areas is approximately 20 percent private, 2 percent State, and 78 percent Federal. Although some urban encroachment occurs in the lower half of the reach, it is mostly rural and predominately within riparian woodlands bordered by agricultural lands. The Village Creek Subunit is occupied by the Louisiana pigtoe and contains all the PBFs essential to the conservation of the species most of the year. However, drought conditions and flooding in Village Creek can be extreme, causing the species to experience either extreme low-flow conditions with associated reduced water quality or extreme high flows that mobilize substrates, erode habitat, or deposit sediments on Louisiana pigtoe populations.

The Village Creek Subunit is influenced by drought, low flows, and flooding (leading to scour); the subunit is being affected by impoundments, ongoing agricultural activities, and development resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. There is no overlap with any designated critical habitat for other listed species.

Subunit LAPT–3e: Big Sandy Creek. The Big Sandy Creek Subunit consists of 43.7 river mi (70.3 km) of stream in Hardin, Polk, and Tyler Counties, Texas. The subunit continues upstream from its confluence with Kimball Creek, located approximately 1.6 mi (2.6 km) south-southeast of Wildwood, Texas, to the Alabama-Coushatta Reservation boundary. This boundary is 1.4 river mi (2.25 km) southeast of the U.S. Highway 190 bridge, which is located approximately 12.8 mi (20.6 km) east of Livingston, Texas. Ownership of adjacent riparian areas is approximately 5 percent private and 95 percent Federal. This reach is mostly rural and predominately within riparian woodlands bordered by agricultural lands. The Big Sandy Creek Subunit is occupied by the Louisiana pigtoe and contains all the PBFs essential to the conservation of the species most of the year. However, drought conditions and flooding in Big Sandy Creek can be significant, resulting in low-flow conditions with associated reduced water quality or high flows that mobilize substrates, erode habitat, or deposit sediments on Louisiana pigtoe populations.

The Big Sandy Creek Subunit is influenced by drought, low flows, and flooding (leading to scour), and the subunit is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. There is no overlap with any designated critical habitat for other listed species.

Unit LAPT–4: East Fork San Jacinto River

The East Fork San Jacinto River Unit includes 23.3 river mi (37.5 km) of the East Fork San Jacinto River in Liberty and Montgomery Counties, Texas. The downstream boundary of this unit is located at the FM 1485 bridge approximately 1 mile (1.6 km) east of Lake Houston Wilderness Park. The upstream boundary coincides with the Low Water Bridge Road (FM 388) bridge approximately 1.6 mi (2.6 km) northwest of Cleveland, Texas. Adjacent riparian areas are privately owned. Although located 10 mi northwest of the Houston metropolitan area, this reach is mostly rural and predominately within riparian woodlands, but it is bordered by developed areas. Four sand and gravel mining operations are located adjacent to this unit. The East Fork San Jacinto River Unit is occupied by the Louisiana pigtoe and contains all the PBFs essential to the conservation of the species most of the year. However, drought conditions and flooding in the East Fork San Jacinto River can be extreme, causing the species to experience either extreme low-flow conditions with associated reduced water quality or extreme high flows that mobilize substrates, erode habitat, or deposit sediments on Louisiana pigtoe populations.

The East Fork San Jacinto River Unit is influenced by drought, low flows, and flooding (leading to scour), and the unit is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality

degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. There is no overlap with any designated critical habitat for other listed species.

Unit LAPT–5: Calcasieu River

Subunit LAPT–5a: Upper Calcasieu River. The Upper Calcasieu River Subunit includes 92.0 river mi (148.0 km) located in Allen and Rapides parishes, Louisiana. The subunit originates at the Union Pacific Railroad crossing located south of U.S. Highway 190 approximately 4 mi (6.4 km) west of Kinder, Louisiana, and continues upstream to the Price Road bridge, located 3.1 mi (5 km) northwest of Hineston, Louisiana. Ownership of adjacent riparian areas is 78 percent private and 22 percent Federal. This reach is rural and predominately within riparian woodlands. The Upper Calcasieu River Subunit is occupied by the Louisiana pigtoe and contains all the PBFs essential to the conservation of the species most of the year. However, drought conditions and flooding in the Calcasieu River can be extreme, causing the species to experience either extreme low-flow conditions with related reduced water quality or extreme high flows that mobilize substrates, erode habitat, or deposit sediment on Louisiana pigtoe populations.

The Upper Calcasieu River Subunit is influenced by drought, low flows, and flooding (leading to scour), and the subunit is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. There is no overlap with any designated critical habitat for other listed species.

Subunit LAPT–5b: Whisky Chitto Creek. The Whisky Chitto Creek Subunit includes 21.7 river mi (34.9 km) located in Allen Parish, Louisiana. The subunit extends from its confluence with Calcasieu River to the Tenmile Creek confluence, which is located approximately 0.7 mi (1.1 km) northeast of Mittie, Louisiana. Ownership of adjacent riparian areas is 1 percent private and 99 percent State. This reach is rural and predominately within riparian woodlands. The Whisky Chitto Creek Subunit is occupied by the Louisiana pigtoe and contains all the PBFs essential to the conservation of the species most of the year. However, drought conditions and flooding in the Whisky Chitto Creek can be extreme, causing the species to experience either extreme low-flow conditions with related reduced water quality or extreme high flows that mobilize substrates, erode habitat, or deposit sediment on Louisiana pigtoe populations.

The Whisky Chitto Creek Subunit is influenced by drought, low flows, and flooding (leading to scour), and the subunit is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. There is no overlap with any designated critical habitat for other listed species.

Subunit LAPT–5c: Tenmile Creek. The Tenmile Creek Subunit consists of 32.0 river mi (51.5 km) in Allen, Rapides, and Vernon parishes, Louisiana. The Tenmile Creek Subunit continues upstream from the Whisky Chitto Creek confluence located 0.7 mi (1.1 km) northeast of Mittie, Louisiana, to the 10 Mile Road bridge located approximately 5 mi (8 km) north of Elizabeth, Louisiana. Ownership of adjacent riparian areas is 98 percent private and 2 percent State. This reach is rural and predominately within riparian woodlands. The Tenmile Creek Subunit is occupied by the Louisiana pigtoe and contains all the PBFs essential to the conservation of the species most of the year. However, drought conditions and flooding in the Tenmile Creek can be extreme, causing the species to experience either extreme low-flow conditions with related reduced water quality or extreme high flows that mobilize substrates, erode habitat, or deposit sediment on Louisiana pigtoe populations.

The Tenmile Creek Subunit is influenced by drought, low flows, and flooding (leading to scour), and the subunit is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. There is no overlap with any designated critical habitat for other listed species.

Unit LAPT–6: Pearl River

The Pearl River Unit consists of 86.6 river mi (139.3 km) in St. Tammany and Washington parishes, Louisiana, and Marion and Pearl River Counties, Mississippi. The Pearl River splits into two significant channels within Bogue Chitto National Wildlife Refuge, and a navigation channel is associated with the west channel. Proposed critical habitat river mileage is calculated from the east channel only, but the Pearl River Unit does include the west channel by definition. The navigation channel is excluded from the unit. Following the east channel, the Pearl River Unit extends upstream along the Louisiana/Mississippi State line from the I–59 bridge located 1 mile (1.6 km) south of Nicholson, Mississippi, to where the Pearl River enters Louisiana from Mississippi, which is located 3.9 mi (6.3 km) southeast of Sandy Hook, Mississippi. The west channel extends from the I–59 bridge located 0.9 mi (1.4 km) northeast of Pearl River, Louisiana, and continues upstream to its confluence with the east channel, which is located approximately 2.7 mi (4.3 km) west of Industrial, Mississippi. Ownership of adjacent riparian areas is 44 percent private, 14 percent State, and 42 percent Federal. This reach is largely rural and predominately within riparian woodlands. The Pearl River Unit is occupied by the Louisiana pigtoe and contains all the PBFs essential to the conservation of the species most of the year. However, drought conditions and flooding in the Pearl River can be extreme, causing the species to experience either extreme low-flow conditions with related reduced water quality or extreme high flows that mobilize substrates, erode habitat, or deposit sediment on Louisiana pigtoe populations.

The Pearl River Unit is influenced by drought, low flows, and flooding (leading to scour), and the subunit is being affected by impoundments, ongoing agricultural activities, and development resulting in excessive sedimentation, water quality degradation, ground water withdrawals, and surface water diversions. Therefore, special management considerations may be required to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. The entire subunit overlaps with critical habitat for the federally listed Gulf sturgeon (*Acipenser oxyrinchus* (=*oxyrhynchus*) *desotoi*) (see 50 CFR 17.95(e)).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation: (a) if the amount or extent of taking specified in the incidental take statement is exceeded; (b) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or (d) if a new species is listed or critical habitat designated that may be affected by the identified action.

In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but Congress also enacted some exceptions in 2018 to the requirement to reinitiate consultation on certain land management plans on the basis of a new species listing or new designation of critical habitat that may be affected by the subject Federal action. See 2018 Consolidated Appropriations Act, Public Law 115–141, Div, O, 132 Stat. 1059 (2018).

Application of the ''Destruction or Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that we may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify critical habitat include, but are not limited to, actions that would: (1) Alter the minimum flow or the existing flow regime (for example, impoundment, channelization, water diversion, water withdrawal, or hydropower generation); (2) significantly alter water chemistry or temperature (for example, release of chemicals, biological pollutants, or heated effluents into surface water or connected groundwater at a point source or by dispersed release (nonpoint source)); (3) significantly increase sediment deposition within the stream channel (for example, excessive sedimentation from livestock grazing; road construction; channel alteration; timber harvest; off-road vehicle use; agricultural, industrial, or urban development; or other watershed and floodplain disturbances); and (4) significantly alter channel morphology or geometry (for example, channelization, impoundment, road and bridge construction, mining, dredging, or destruction of riparian vegetation). These activities may lead to changes in water flows and levels that would degrade or eliminate the mussel or its fish host and/or their habitats. These actions can also lead to increased sedimentation and degradation in water quality to levels that are beyond the tolerances of the mussels or their fish hosts.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act Improvement Act of 1997 (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. No DoD lands with a completed INRMP are within the proposed critical habitat designations.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (hereafter, the ''2016 Policy''; 81 FR 7226, February 11, 2016), both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled ''The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under section 4(b)(2) of the Endangered Species Act'' (M–37016).

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. In our final rules, we explain any decision to exclude areas, as well as decisions not to exclude, to demonstrate that the decision is reasonable. We describe below the process that we use for taking into consideration each category of impacts and any initial analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for the particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designations of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Texas heelsplitter and the Louisiana pigtoe (IEc 2021, entire). We began by conducting a screening analysis of the proposed designations of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes any probable economic impacts where land and water use may already be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. If the proposed critical habitat designation contains any unoccupied units, the screening analysis assesses whether those units require additional management or conservation efforts that may incur incremental economic impacts (although here the proposed critical habitat designations does not contain any unoccupied units). This screening analysis, combined with the information contained in our IEM, are what we consider our draft economic analysis (DEA) of the proposed critical habitat designations for the Texas heelsplitter and Louisiana pigtoe; our DEA is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly

affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designations. In our evaluation of the probable incremental economic impacts that may result from the proposed designations of critical habitat for the Texas heelsplitter and Louisiana pigtoe, first we identified, in the IEM dated September 1, 2021, probable incremental economic impacts associated with the following categories of activities: (1) Federal lands management (National Park Service, National Wildlife Refuge System, U.S. Forest Service, U.S. Army Corp of Engineers, Natural Resources Conservation Service, Department of the Army); (2) industrial, municipal, and agricultural water users and dischargers (including wastewater treatment plants); (3) water supply delivery and treatment; (4) reservoir and dam operations; (5) transportation; (6) petroleum pipelines that may cross proposed designated stream reaches; (7) residential, commercial, industrial, and agricultural development; and (8) disaster recovery from hurricanes and flooding. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we list these species, in areas where the Texas heelsplitter and Louisiana pigtoe are present, Federal agencies would be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If, when we list the species, we also finalize this proposed critical habitat designation, Federal agencies would be required to consider the effects of their actions on the designated habitat, and if the Federal action may affect critical habitat, our consultations would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the Texas heelsplitter's and Louisiana pigtoe's critical habitat. Because the designations of critical habitat for Texas heelsplitter and Louisiana pigtoe are being proposed concurrently with their listings, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the Texas heelsplitter and Louisiana pigtoe would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for these species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of these proposed designations of critical habitat.

The proposed critical habitat designations for the Texas heelsplitter and Louisiana pigtoe include a total of nine units, all of which are occupied by their respective species. Ownership of riparian lands adjacent to the nine proposed units includes 1,214 river mi (1,954 km; 82.2 percent) in private ownership, and 262 river mi (422 km; 17.8 percent) in public (Federal, State, or Local) ownership. In these areas, any actions that may affect the two species or their habitats would also affect designated critical habitat.

Total incremental costs of critical habitat designation for the Texas heelsplitter and Louisiana pigtoe are not expected to exceed $51,800 (2021 dollars) per year. The costs are reflective of: (1) All proposed units are considered occupied, (2) project modifications requested to avoid adverse modification are likely to be the same as those recommended to avoid jeopardy in occupied habitat for these species, and (3) a portion of the proposed designations receive baseline protection from the presence of critical habitat for co-occurring listed mussel species with similar habitat needs. Because consultation would be required as a result of the listing of the Texas heelsplitter and Louisiana pigtoe and is already required in some of these areas as a result of the presence of other listed species and critical habitats, the economic costs of the critical habitat designation would likely be primarily limited to additional administrative efforts to consider adverse modification for these two species in section 7 consultations.

Based on the consultation history regarding historical projects and activities overlapping the proposed critical habitat areas for the Texas heelsplitter and Louisiana pigtoe, the number of future consultations, including technical assistance efforts, is likely to be no more than nine per year across all nine units. Overall, transportation and utilities activities are expected to result in the largest portion of consultations for both the Texas heelsplitter and Louisiana pigtoe and, therefore, to incur the highest costs. The geographic distribution of future section 7 consultations and associated costs are likely to be most heavily concentrated in all three proposed units for the Texas heelsplitter, and in proposed Units 2 and 3 for the Louisiana pigtoe. However, even assuming consultation activity increases substantially, incremental administrative costs are still likely to remain well under $100 million per year. Therefore, based on the definition of significance in E.O. 12866, they would not be significant.

The entities most likely to incur incremental costs are parties to section 7 consultations, including Federal action agencies and, in some cases, third parties, most frequently State agencies or municipalities. Activities we expect would be subject to consultations that may involve private entities as third parties are farms and ranches acquiring funding through Federal agricultural programs, oil and gas production regulated by the Federal Energy Regulatory Commission, and infrastructure projects that involve Federal funding or authorization. However, based on coordination efforts with State and local agencies, the cost to private entities in these sectors is expected to be relatively minor (administrative costs of less than $10,000 per consultation effort) and would not be significant (*i.e.,* would not exceed $100 million in a single year).

We are soliciting data and comments from the public on the DEA discussed above. During the development of a final designation, we will consider the information presented in the DEA and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19. We may exclude an area from critical habitat if we determine that the benefits of

excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Consideration of National Security Impacts or Homeland Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' However, the Service must consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i) because section 4(b)(2) requires the Service to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal requester provides information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

In preparing this proposal, we have determined that the lands within the proposed designations of critical habitat for Texas heelsplitter and Louisiana pigtoe are not owned or managed by the DoD or DHS, and, therefore, we anticipate no impact on national security or homeland security.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as HCPs, safe harbor agreements (SHAs), or candidate conservation agreements with assurances (CCAAs)—or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other impacts that might occur because of the designation.

When analyzing other relevant impacts of including a particular area in a designation of critical habitat, we weigh those impacts relative to the conservation value of the particular area. To determine the conservation value of designating a particular area, we consider a number of factors, including, but not limited to, the additional regulatory benefits that the area would receive due to the protection from destruction or adverse modification as a result of actions with a Federal nexus, the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

In the case of the Texas heelsplitter and Louisiana pigtoe, the benefits of critical habitat include public awareness of the presence of these species and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the Texas heelsplitter and Louisiana pigtoe due to protection from destruction or adverse modification of critical habitat. Continued implementation of an ongoing management plan that provides conservation equal to or more than the protections that result from a critical habitat designation would reduce those benefits of including that specific area in the critical habitat designation.

We evaluate the existence of a conservation plan when considering the benefits of inclusion. We consider a variety of factors, including, but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Private or Other Non-Federal Conservation Plans Related to Permits Under Section 10 of the Act

HCPs for incidental take permits under section 10(a)(1)(B) of the Act provide for partnerships with non-Federal entities to minimize and mitigate impacts to listed species and their habitat. In some cases, HCP permittees agree to do more for the conservation of the species and their habitats on private lands than designation of critical habitat would provide alone. We place great value on the partnerships that are developed

during the preparation and implementation of HCPs.

CCAAs and SHAs are voluntary agreements designed to conserve candidate and listed species, respectively, on non-Federal lands. In exchange for actions that contribute to the conservation of species on non-Federal lands, participating property owners are covered by an ''enhancement of survival'' permit under section 10(a)(1)(A) of the Act, which authorizes incidental take of the covered species that may result from implementation of conservation actions, specific land uses, and, in the case of SHAs, the option to return to a baseline condition under the agreements. We also provide enrollees assurances that we will not impose further land-, water-, or resource-use restrictions, or require additional commitments of land, water, or finances, beyond those agreed to in the agreements.

When we undertake a discretionary section 4(b)(2) exclusion analysis based on permitted conservation plans such as CCAAs, SHAs, and HCPs, we consider the following three factors:

(i) Whether the permittee is properly implementing the conservation plan or agreement;

(ii) Whether the species for which critical habitat is being designated is a covered species in the conservation plan or agreement; and

(iii) Whether the conservation plan or agreement specifically addresses the habitat of the species for which critical habitat is being designated and meets the conservation needs of the species in the planning area.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for the Texas heelsplitter or Louisiana pigtoe. The proposed designation of critical habitat for the Louisiana pigtoe includes the Choctaw Reservation in Oklahoma, but not any lands held in trust for the tribe, or owned or managed by the tribe. No Tribal lands fall within the range of the Texas heelsplitter or the boundaries of the proposed critical habitat designations. Therefore the proposed designations do not include any Tribal lands or trust resources. We anticipate no impact on Tribal lands, partnerships, or HCPs from the proposed critical habitat designations.

We are currently working with the Sabine River Authority of Louisiana, State of Louisiana, and Sabine River Authority of Texas to develop CCAAs that address activities conducted by the River Authorities and States with conservation measures specifically designed to provide a net conservation benefit to the covered species, including the Texas heelsplitter and Louisiana pigtoe, in the covered area for the term for each of the CCAAs. We are also working with the Trinity River Authority of Texas to develop a CCAA that would address activities conducted by the Trinity River Authority and State with conservation measures specifically designed to provide a net conservation benefit to the covered species, including the Texas heelsplitter, in the covered area for the term of the CCAA. While these agreements are not yet completed, if and when they are, we may consider excluding areas covered by the completed agreements from our critical habitat designations.

Summary of Exclusions Considered Under Section 4(b)(2) of the Act

At this time, we are not considering any exclusions from the proposed designations based on economic impacts, national security impacts, or other relevant impacts—such as partnerships, management, or protection afforded by cooperative management efforts—under section 4(b)(2) of the Act. In preparing this proposal, we have determined that the proposed designation of critical habitat for the Louisiana pigtoe includes Choctaw Reservation in Oklahoma, but not any lands held in trust for the Tribe, or owned or managed by the Tribe. No tribal lands fall within the range of the Texas heelsplitter or the boundaries of the proposed critical habitat designations. Therefore we have determined that no HCPs or other management plans for the Texas heelsplitter or Louisiana pigtoe currently exist, and the proposed designations do not include any Tribal lands or trust resources. Therefore, we anticipate no impact on Tribal lands, partnerships, or HCPs from the proposed critical habitat designations, and, thus, as described above, we are not considering excluding any particular areas on the basis of the presence of conservation agreements or impacts to trust resources. Some areas within the proposed designations are included in proposed CCAAs. If finalized, we will consider the lands covered in the CCAAs for exclusion in the development of the final designations. However, we have contacted the Choctaw Nation of Oklahoma to request information on any possible impacts and will include such information in our final review.

If through the public comment period we receive information that we determine indicates that there are economic, national security or other relevant impacts from designating particular areas as critical habitat, then as part of developing the final designation of critical habitat, we will evaluate that information and may conduct a discretionary exclusion analysis to determine whether to exclude those areas under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19. If we receive a request for exclusion of a particular area and after evaluation of supporting information we do not exclude, we will fully explain our decision in the final rule for this action. (Please see **ADDRESSES**, above, for instructions on how to submit comments).

Required Determinations

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.

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 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 proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an 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 effects 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 the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designations. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designations will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designations would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed critical habitat designations would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Facilities that provide energy supply, distribution, or use occur within some units of the proposed critical habitat designations (for example, dams, pipelines) and may potentially be affected. We determined that consultations, technical assistance, and requests for species lists may be necessary in some instances. In our economic analysis, we did not find that the proposed critical habitat designations would significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is 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.*), we make the following finding:

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or

authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this proposed rule would significantly or uniquely affect small governments because the vast majority of the lands being proposed for critical habitat designation are owned by the Federal Government; States of Arkansas, Louisiana, Mississippi, Oklahoma, and Texas; and private individuals. These entities do not fit the definition of ''small governmental jurisdiction.'' One proposed unit (TXHS–2a) includes a very small portion of land owned by the local government, but that is only 1 percent of that one unit. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Texas heelsplitter and Louisiana pigtoe in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designation of critical habitat for the Texas heelsplitter and the Louisiana pigtoe, and it concludes that, if adopted, these designations of critical habitat do not pose significant takings implications for lands within or affected by the designations.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of the proposed critical habitat designations with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designations may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. 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.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of the Louisiana pigtoe, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation. We invite the public to comment on the extent to which these proposed critical habitat designations 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 making a final determination on this proposed rule.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands fall within the boundaries of the proposed critical habitat for the Texas heelsplitter or Louisiana pigtoe, so no Tribal lands would be affected by the proposed designations.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Arlington Ecological Services Field Office.

List of Subjects in 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 part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. 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.

■ 2. Amend § 17.11(h) by adding entries for ''Heelsplitter, Texas'' and ''Pigtoe, Louisiana'' to the List of Endangered and Threatened Wildlife in alphabetical order under CLAMS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
CLAMS				
*	*	*	*	*
Heelsplitter, Texas	*Potamilus amphichaenus*	Wherever found	E	[**Federal Register** citation when published as a final rule]; 50 CFR 17.95(f).[CH]
*	*	*	*	*
Pigtoe, Louisiana	*Pleurobema riddellii*	Wherever found	T	[**Federal Register** citation when published as a final rule]; 50 CFR 17.45(g);[4d] 50 CFR 17.95(f).[CH]
*	*	*	*	*

■ 3. Further amend § 17.45, as proposed to be amended on September 29, 2020, at 85 FR 61384, on August 26, 2021, at 86 FR 47916, and on September 7, 2021, at 86 FR 50010, and by adding paragraphs (f) and (g) to read as follows:

§ 17.45 Special rules—snails and clams.

* * * * *

(f) [Reserved]

(g) Louisiana pigtoe (*Pleurobema riddellii*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the Louisiana pigtoe. Except as provided under paragraph (g)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to Louisiana pigtoe:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (4) for endangered wildlife.

(iii) Take as set forth at § 17.31(b).

(iv) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

(v) Take incidental to an otherwise lawful activity caused by:

(A) Channel restoration projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are reconnected with their groundwater aquifers.

(B) Bioengineering methods such as streambank stabilization using live native stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), live native fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or native brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). These methods must not include the sole use of quarried rock (rip-rap) or the use of rock baskets or gabion structures. In addition, to reduce streambank erosion and sedimentation

into the stream, work using these bioengineering methods must be performed at base-flow or low-water conditions and when significant rainfall is not predicted. Further, streambank stabilization projects must keep all equipment out of the stream channels and water.

(C) Soil and water conservation practices and riparian and adjacent upland habitat management activities that restore instream habitats for the species, restore adjacent riparian habitats that enhance stream habitats for the species, stabilize degraded and eroding stream banks to limit sedimentation and scour of the species' habitats, and restore or enhance nearby upland habitats to limit sedimentation of the species' habitats. We recommend that these practices and activities comply with specifications and technical guidelines developed by the U.S. Department of Agriculture's Natural Resources Conservation Service.

■ 4. Amend § 17.95(f) by adding an entry for ''Texas Heelsplitter (*Potamilus amphichaenus*)'' after the entry for ''Carolina Heelsplitter (*Lasmigona decorata*)'', and by adding an entry for ''Louisiana Pigtoe (*Pleurobema riddellii*)'' after the entry for ''Georgia Pigtoe (*Pleurobema hanleyianum*)'', to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and Snails.*

* * * * *

Texas Heelsplitter (Potamilus amphichaenus)

(1) Critical habitat units are depicted for Anderson, Angelina, Cherokee, Ellis, Freestone, Gregg, Grimes, Hardin, Harrison, Henderson, Houston, Jasper, Jefferson, Kaufman, Leon, Madison, Navarro, Orange, Panola, Polk, Rains, Rusk, Sabine, Shelby, Smith, Trinity, Tyler, Upshur, Van Zandt, Walker, and Wood Counties, Texas, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of Texas heelsplitter consist of the following components within impoundments and streambeds:

(i) Water quality parameters within the following ranges:

(A) Water temperature below 27 °C (80.6 °F);

(B) Dissolved oxygen levels greater than 3 milligrams per liter (mg/L);

(C) Low salinity (less than 2 parts per thousand) and total dissolved solids;

(D) Low total ammonia and nitrogen (below 0.3–0.7 mg/L total ammonia nitrogen);

(E) Low levels of copper, nickel, and other trace metals;

(F) Low levels of pesticides, sulfate, chloride, potassium, and other harmful constituents; and

(G) Low pollutants and environmental contaminants common to wastewater.

(ii) Moderately flowing water rates suitable to prevent excess sedimentation but not so high as to dislodge individuals or sediment; or no water flow, if in an impoundment (lake, reservoir, or pool without flow).

(iii) Substrate including bedrock and boulder crevices, point bars, and vegetated run habitat comprising sand, gravel, and larger cobbles.

(iv) Freshwater drum (*Aplodinotus grunniens*) present.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of the final rule.

(4) Data layers defining map units were created on a base of U.S. Geological Survey digital ortho-photo quarter-quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) Zone 14N coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/office/arlington-ecological-services,* at *https://www.regulations.gov* at Docket No. FWS–R2–ES–2022–0026, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map of critical habitat units for the Texas heelsplitter follows:

Figure 1 to Texas Heelsplitter (*Potamilus amphichaenus*) paragraph (5)

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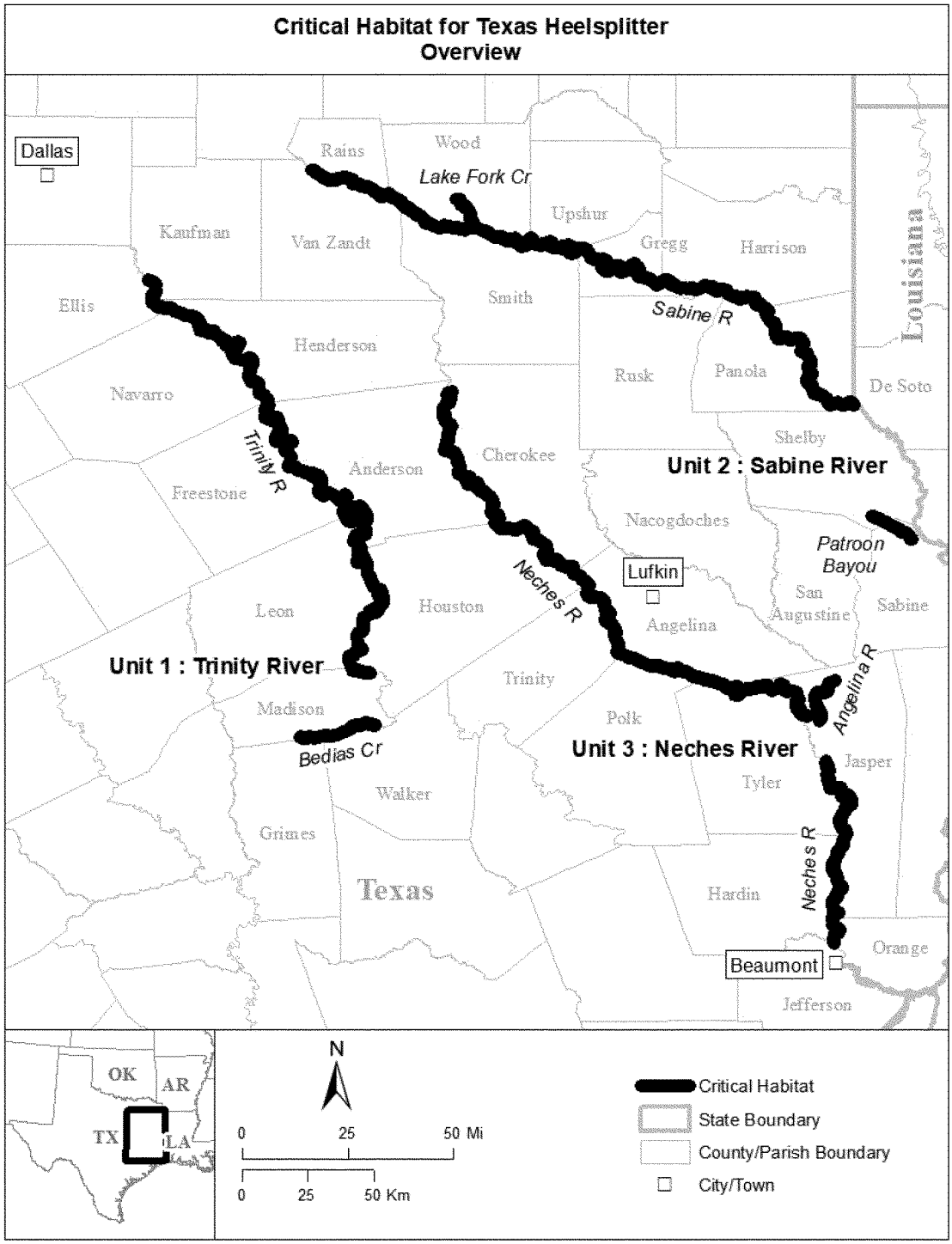


(6) Unit TXHS–1: Trinity River Unit; Anderson, Ellis, Freestone, Grimes, Henderson, Houston, Kaufman, Leon, Madison, Navarro, and Walker Counties, Texas.

(i) Unit TXHS–1 consists of two subunits:

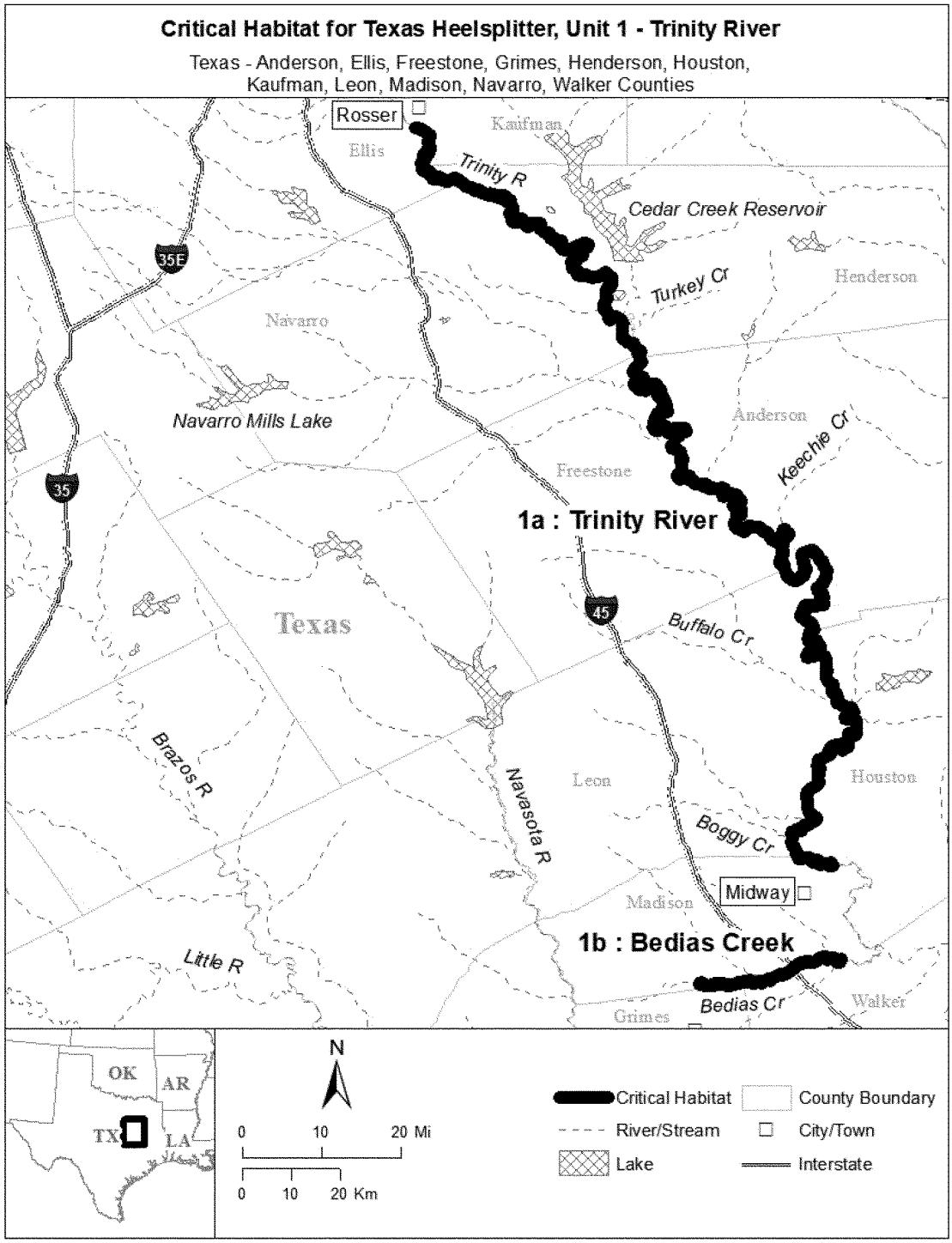
(A) Subunit TXHS–1a (Trinity River) is comprised of 212.8 river miles (mi) (342.4 kilometers (km)) in Anderson, Ellis, Freestone, Henderson, Houston, Kaufman, Leon, Madison, and Navarro Counties, Texas. This subunit is composed of lands in State (5 percent) and private (95 percent) ownership.

(B) Subunit TXHS–1b (Bedias Creek) is comprised of 28.9 river mi (46.5 km) in Grimes, Madison, and Walker Counties, Texas. All of the riparian lands that border this subunit are in private ownership.

(ii) Unit TXHS–1 includes stream channel up to bankfull height.

(iii) Map of Unit TXHS–1 follows:

Figure 2 to Texas Heelsplitter (*Potamilus amphichaenus*) paragraph (6)(iii)



(7) Unit TXHS–2: Sabine River Unit; Gregg, Harrison, Panola, Rains, Rusk, Sabine, Shelby, Smith, Upshur, Van Zandt, and Wood Counties, Texas.

(i) Unit TXHS–2 consists of three subunits:

(A) Subunit TXHS–2a (Upper Sabine River) is comprised of 237.4 river mi (382 km) in Gregg, Harrison, Panola, Rains, Rusk, Smith, Upshur, Van Zandt, and Wood Counties, Texas. The riparian lands that border this subunit include Federal (2 percent), State (4 percent), local (1 percent), and private (93 percent) ownership.

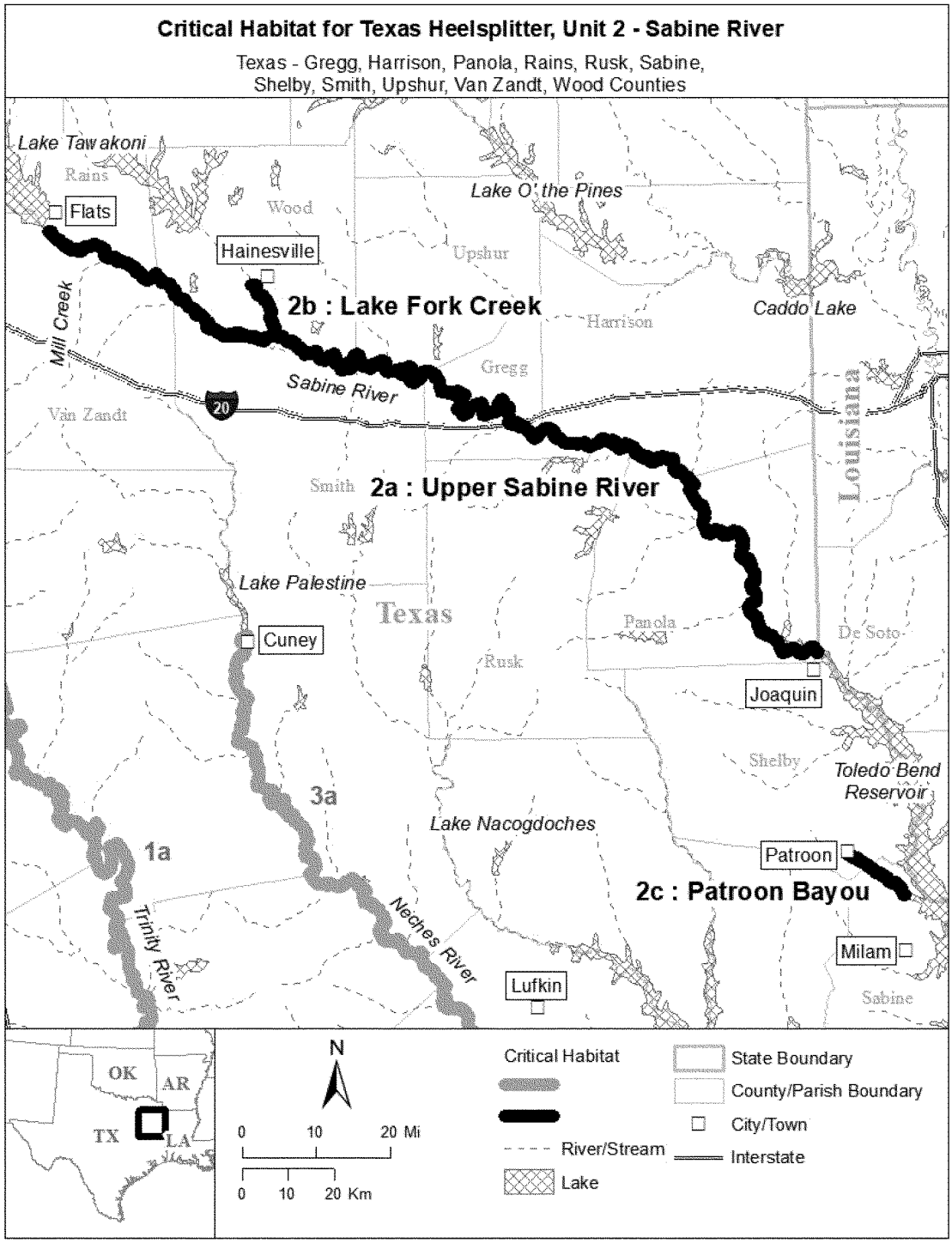
(B) Subunit TXHS–2b (Lake Fork Creek) consists of 13.8 river mi (22.2 km) in Wood County, Texas. All of the riparian lands that border this subunit are in private ownership.

(C) Subunit TXHS–2c (Patroon Bayou) includes 19.9 river mi (32 km) in Sabine and Shelby Counties, Texas. The riparian lands that border this subunit are in Federal (7 percent) and private (93 percent) ownership.

(ii) Unit TXHS–2 includes stream channel up to bankfull height.

(iii) Map of Unit TXHS–2 follows:

Figure 3 to Texas Heelsplitter (*Potamilus amphichaenus*) paragraph (7)(iii)



(8) Unit TXHS–3: Neches River Unit; Anderson, Angelina, Cherokee, Hardin, Houston, Jasper, Jefferson, Orange, Polk, Trinity, and Tyler Counties, Texas.

(i) Unit TXHS–3 consists of three subunits:

(A) Subunit TXHS–3a (Upper Neches River) is comprised of 227.9 river mi (366.7 km) of stream in Anderson, Angelina, Cherokee, Houston, Jasper, Polk, Trinity, and Tyler Counties, Texas. The riparian lands that border this subunit are in Federal (12 percent) and private (88 percent) ownership.

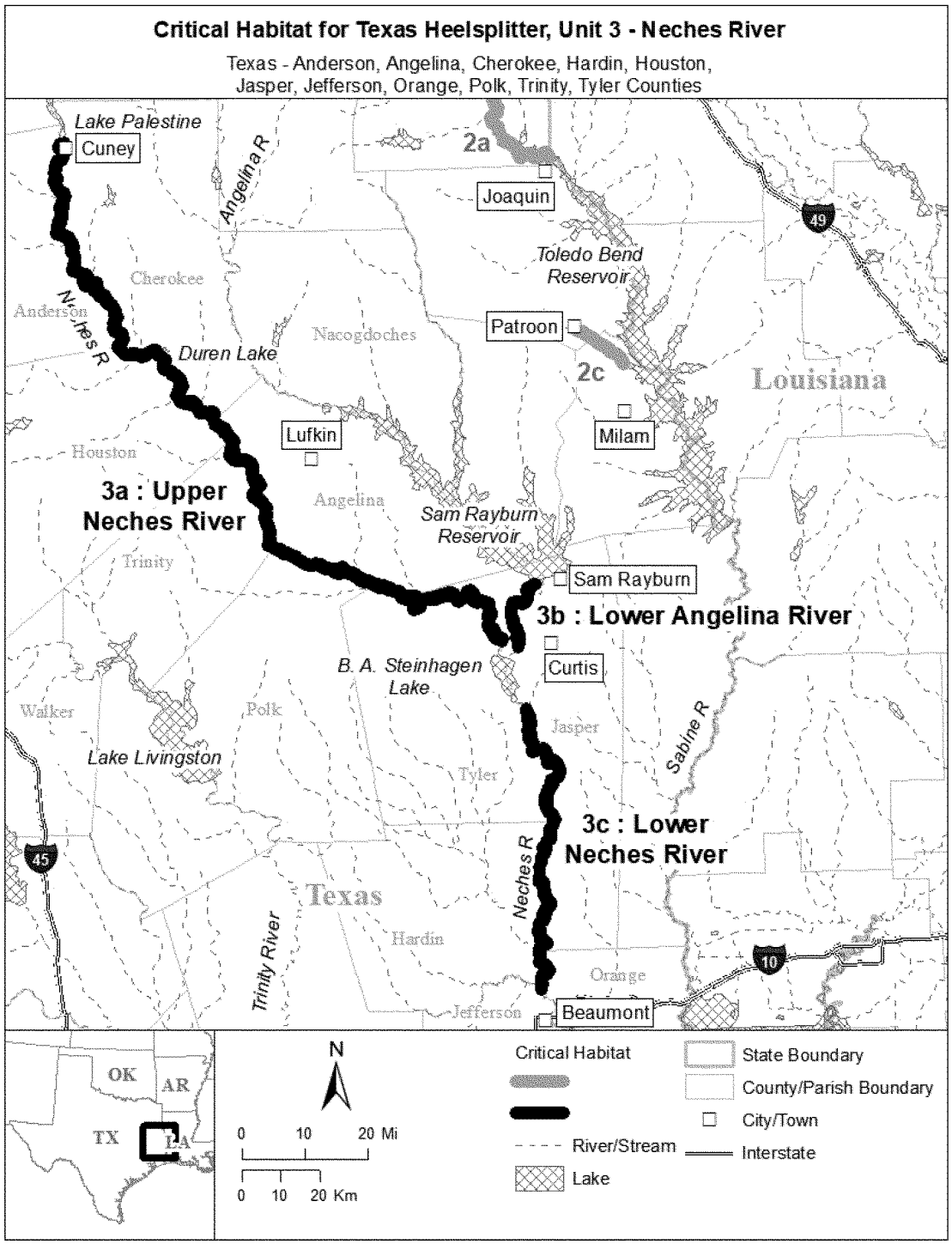
(B) Subunit TXHS–3b (Lower Angelina River) consists of 14.7 river mi (23.7 km) in Jasper County, Texas. The riparian lands that border this subunit are in Federal (11 percent) and private (89 percent) ownership.

(C) Subunit TXHS–3c (Lower Neches River) includes 76.3 river mi (122.8 km) in Hardin, Jasper, Jefferson, Orange, and Tyler Counties, Texas. The riparian lands that border this subunit are in Federal (5 percent), State (7 percent), and private (88 percent) ownership.

(ii) Unit TXHS–3 includes stream channel up to bankfull height.

(iii) Map of Unit TXHS–3 follows:

Figure 4 to Texas Heelsplitter (*Potamilus amphichaenus*) paragraph (8)(iii)



* * * * *

Louisiana Pigtoe (Pleurobema riddellii)

(1) Critical habitat units are depicted for Howard, Little River, and Sevier Counties, Arkansas; Allen, Beauregard, Rapides, St. Tammany, Vernon, and Washington parishes, Louisiana; Marion and Pearl River Counties, Mississippi; McCurtain County, Oklahoma; and Anderson, Angelina, Cherokee, Gregg, Hardin, Harrison, Houston, Jasper, Jefferson, Liberty, Montgomery, Nacogdoches, Orange, Panola, Polk, Rusk, Smith, Trinity, Tyler, Upshur, and Wood Counties, Texas, on the maps in this entry.

(2) Within this area, the physical or biological features essential to the conservation of Louisiana pigtoe consist of the following components within streambeds:

(i) Water quality parameters within the following ranges:

(A) Water temperature below 27 °C (80.6 °F);

(B) Dissolved oxygen levels greater than 3 milligrams per liter (mg/L);

(C) Low salinity (less than 2 parts per thousand) and total dissolved solids;

(D) Low total ammonia and nitrogen (below 0.3–0.7 mg/L total ammonia nitrogen);

(E) Low levels of copper, nickel, and other trace metals;

(F) Low levels of pesticides, sulfate, chloride, potassium, and other harmful constituents; and

(G) Low pollutants and environmental contaminants common to wastewater.

(ii) Moderately flowing water rates suitable to prevent excess sedimentation but not so high as to dislodge individuals or sediment.

(iii) Stable bank and riffle habitats with bedrock and boulder crevices, point bars, and vegetated run habitat comprising sand, gravel, and larger cobbles.

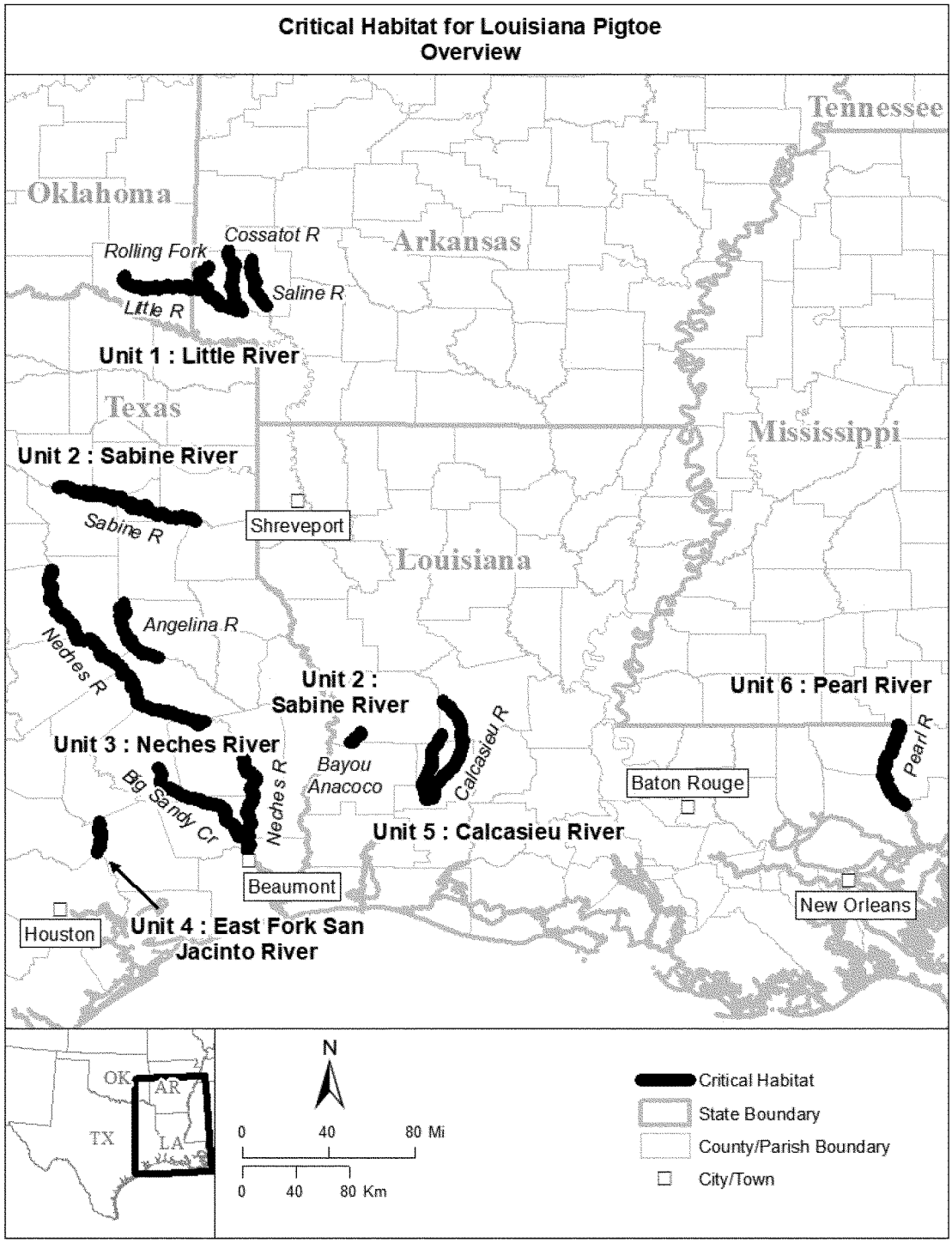
(iv) Red shiner (*Cyprinella* (=*Notropis*) *lutrensis*), blacktail shiner (*Cyprinella venusta*), and bullhead minnow (*Pimephales vigilax*) present.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of the final rule.

(4) Data layers defining map units were created on a base of U.S. Geological Survey digital ortho-photo quarter-quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) Zone 14N coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/office/arlington-ecological-services,* at *https://www.regulations.gov* at Docket No. FWS–R2–ES–2022–0026, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map of critical habitat units for the Louisiana pigtoe follows:

Figure 1 to Louisiana Pigtoe (*Pleurobema riddellii*) paragraph (5)



(6) Unit LAPT–1: Little River Unit; Howard, Little River, and Sevier Counties, Arkansas, and McCurtain County, Oklahoma.

(i) Unit LAPT–1 consists of four subunits:

(A) Subunit LAPT–1a (Upper Little River) is comprised of consists of approximately 88 river miles (mi) (141.6 kilometers (km)) in Little River and Sevier Counties, Arkansas, and McCurtain County, Oklahoma. The riparian lands that border this subunit are in Federal (26 percent), State (1 percent), and private (42 percent) ownership, and private land with the Choctaw Reservation (23 percent), but not any lands held in trust for the Tribe, or owned or managed by the Tribe.

(B) Subunit LAPT–1b (Rolling Fork) is comprised of 29.9 river mi (47.9 km) in Sevier County, Arkansas. All of the riparian lands that border this subunit are in private ownership.

(C) Subunit LAPT–1c (Cossatot River) includes 47.2 river mi (75.9 km) in Sevier County, Arkansas. The riparian lands that border this subunit are in Federal (15 percent) and private (85 percent) ownership.

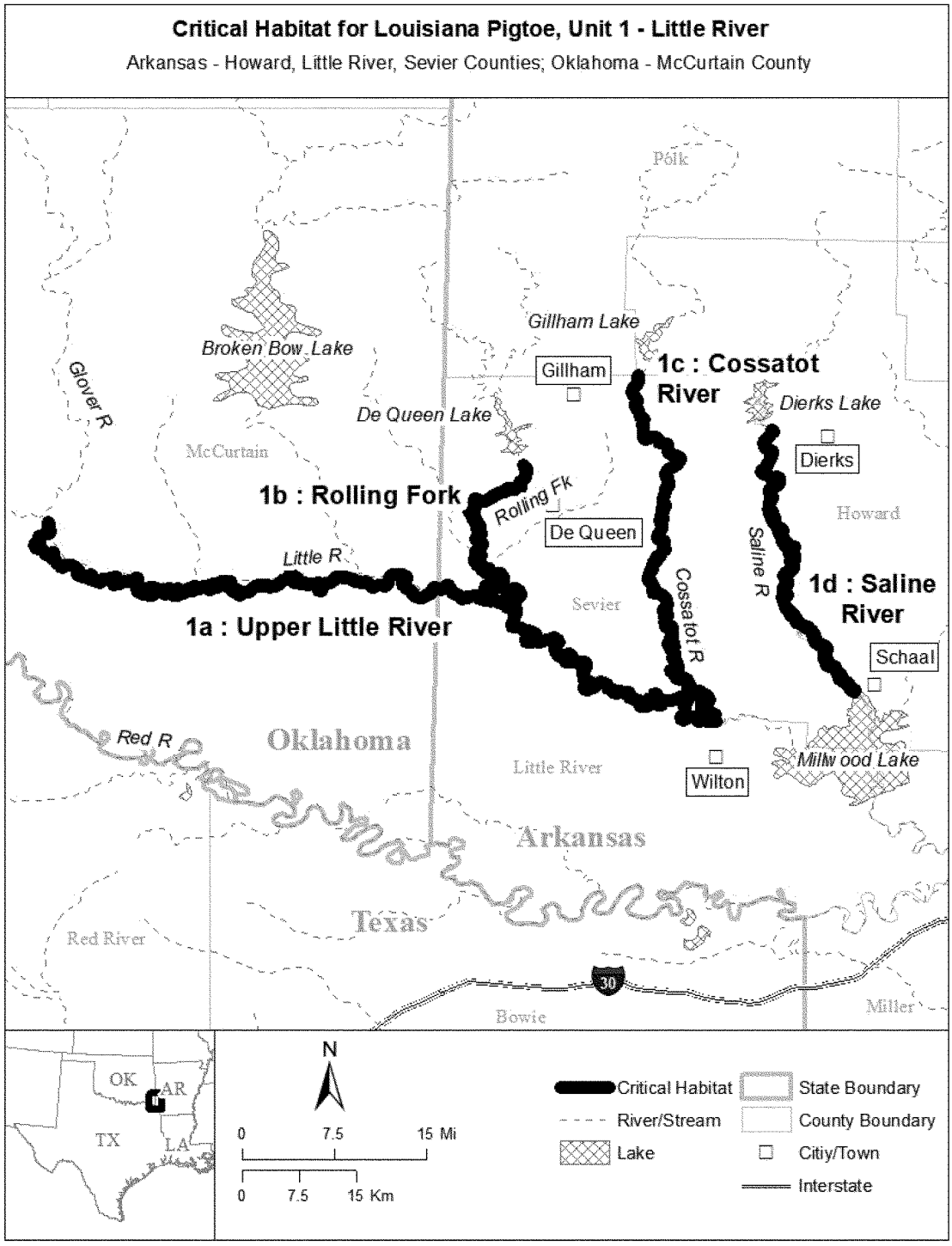
(D) Subunit LAPT–1d (Saline River) consists of 42.6 river mi (68.5 km) along the Howard/Sevier County line in southeast Arkansas. All of the riparian

lands in this subunit are in private ownership.

(ii) Unit LAPT–1 includes stream channel up to bankfull height.

(iii) Map of Unit LAPT–1 follows:

Figure 2 to Louisiana Pigtoe (*Pleurobema riddellii*) paragraph (6)(iii)



(7) Unit LAPT–2: Sabine River Unit; Beauregard and Vernon parishes, Louisiana, and Gregg, Harrison, Panola, Rusk, Smith, Upshur, and Wood Counties, Texas.

(i) Unit LAPT–2 consists of two subunits:

(A) Subunit LAPT–2a (Upper Sabine River) consists of 110.1 river mi (177.2 km) in Gregg, Harrison, Panola, Rusk, Smith, Upshur, and Wood Counties, Texas. The riparian lands that border this subunit are in Federal (2 percent), State (2 percent), and private (96 percent) ownership.

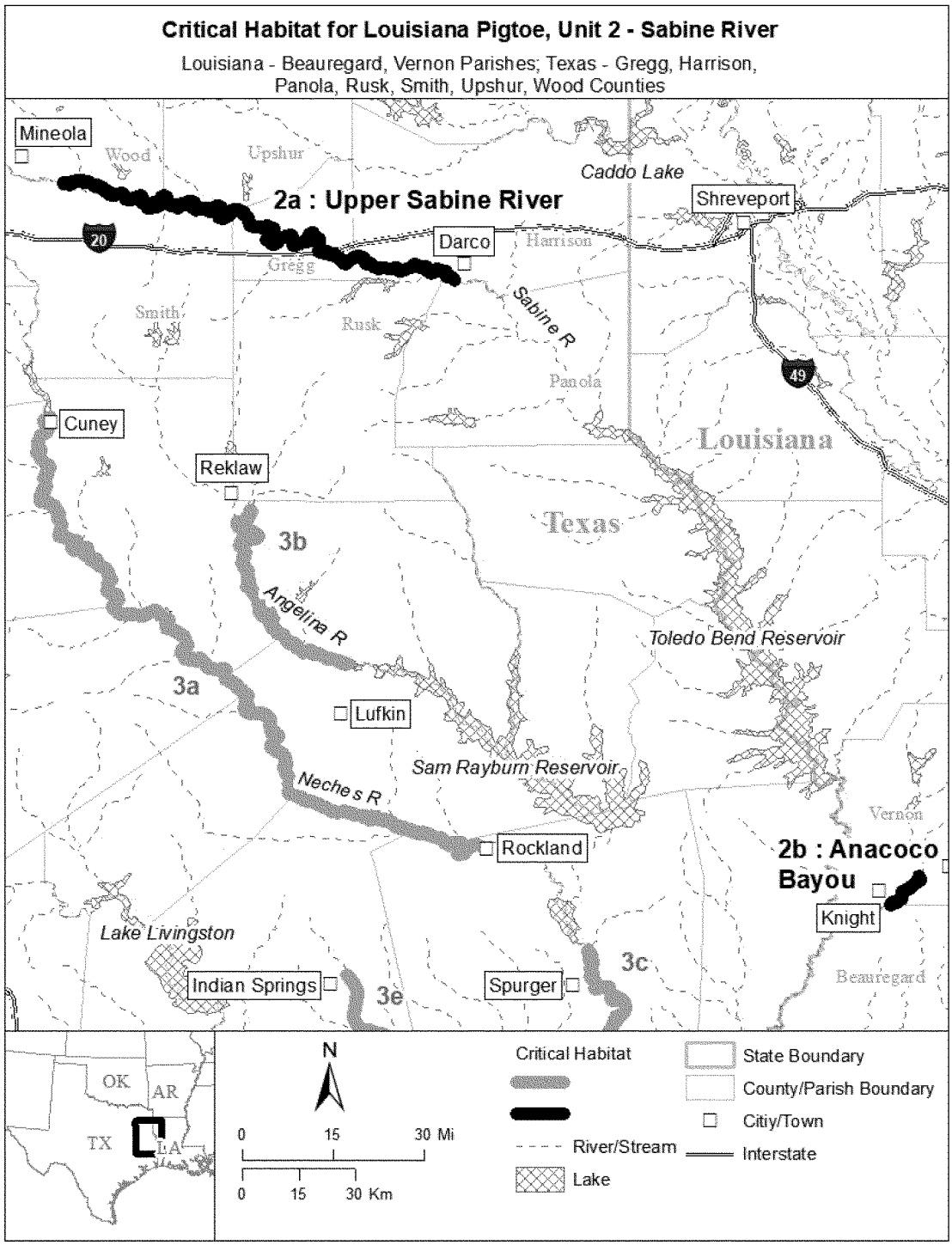
(B) Subunit LAPT–2b (Anacoco Bayou) includes 12.2 river mi (19.6 km)

in Vernon and Beauregard parishes, Louisiana. All of the riparian lands that border this subunit are in private ownership.

(ii) Unit LAPT–2 includes stream channel up to bankfull height.

(iii) Map of Unit LAPT–2 follows:

Figure 3 to Louisiana Pigtoe (*Pleurobema riddellii*) paragraph (7)(iii)



(8) Unit LAPT–3: Neches River Unit; Anderson, Angelina, Cherokee, Hardin, Houston, Jasper, Jefferson, Nacogdoches, Orange, Polk, Trinity, and Tyler Counties, Texas.

(i) Unit LAPT–3 consists of five subunits:

(A) Subunit LAPT–3a (Upper Neches River) consists of 200.4 river mi (322.4 km) through parts of Anderson, Angelina, Cherokee, Houston, Polk, Trinity, and Tyler Counties, Texas. The riparian lands that border this subunit are in Federal (11 percent) and private (89 percent) ownership.

(B) Subunit LAPT–3b (Upper Angelina River) consists of 67.4 river mi (108.4 km) in Angelina, Cherokee, and Nacogdoches Counties, Texas. The riparian lands that border this subunit are in Federal (50 percent) and private (50 percent) ownership.

(C) Subunit LAPT–3c (Lower Neches River) includes 76.2 river mi (122.6 km) in Hardin, Jasper, Jefferson, Orange, and Tyler Counties, Texas. The riparian lands that border this subunit are in Federal (5 percent), State (7 percent), and private (88 percent) ownership.

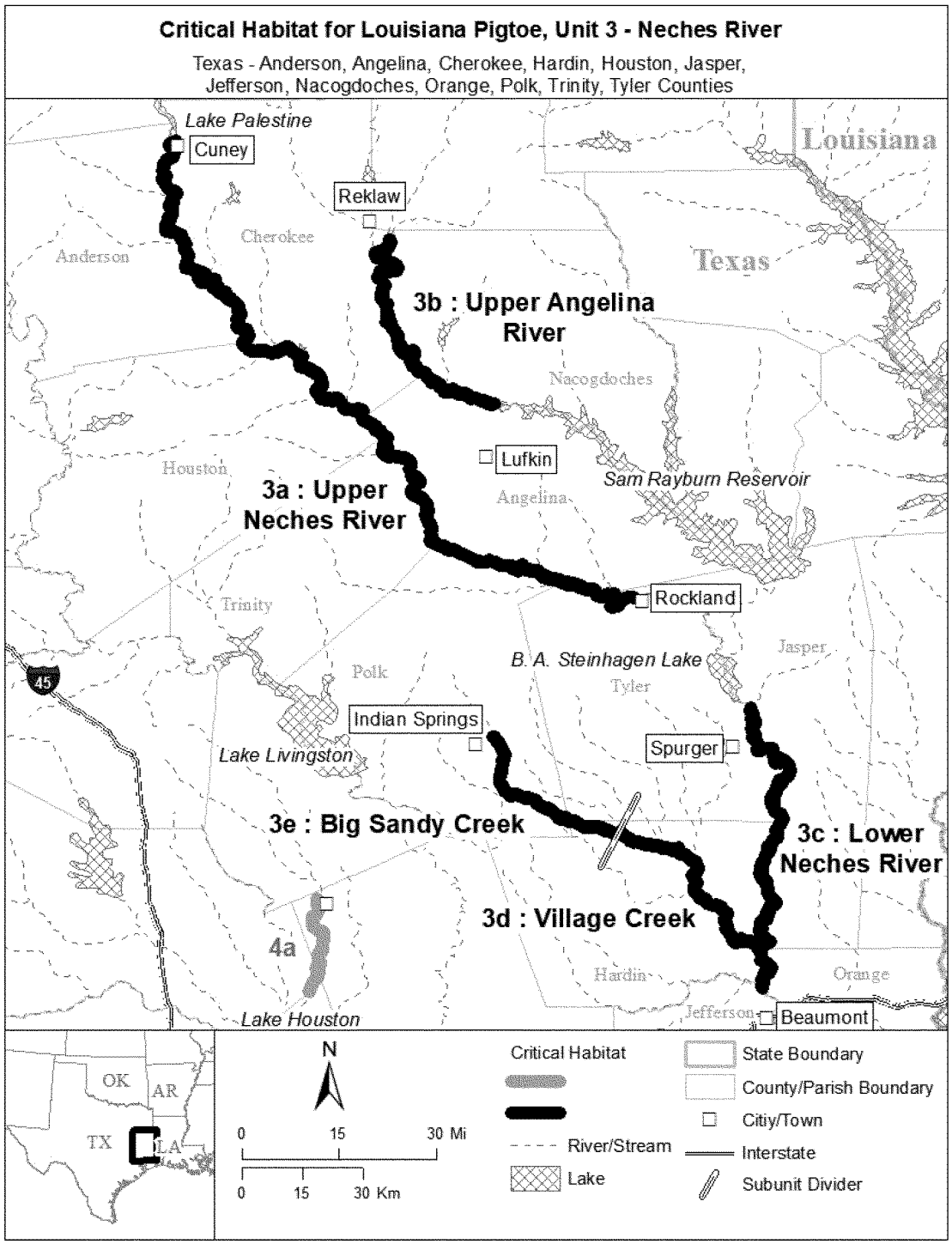
(D) Subunit LAPT–3d (Village Creek) consists of 54.9 river mi (88.3 km) of stream in Hardin County, Texas. The riparian lands that border this subunit are in Federal (78 percent), State (2 percent), and private (20 percent) ownership.

(E) Subunit LAPT–3e (Big Sandy Creek) consists of 43.7 river mi (70.3 km) of stream in Hardin, Polk, and Tyler Counties, Texas. The riparian lands that border this subunit are in Federal (95 percent) and private (5 percent) ownership.

(ii) Unit LAPT–3 includes stream channel up to bankfull height.

(iii) Map of Unit LAPT–3 follows:

Figure 4 to Louisiana Pigtoe (*Pleurobema riddellii*) paragraph (8)(iii)



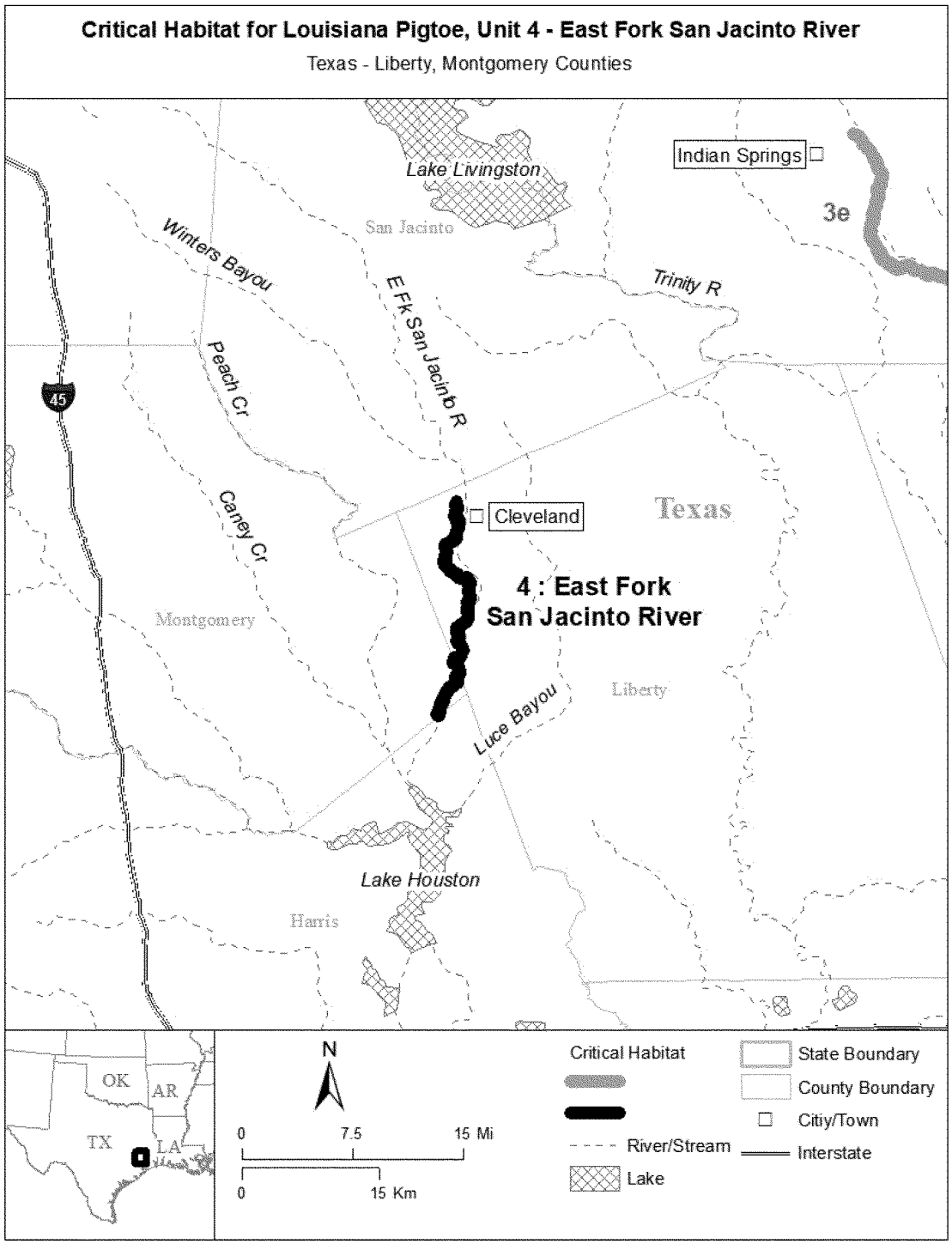
(9) Unit LAPT–4: East Fork San Jacinto River Unit; Liberty and Montgomery Counties, Texas.

(i) Unit LAPT–4 consists of 23.3 river mi (37.5 km) in Liberty and Montgomery Counties, Texas. All of the riparian lands that border this unit are in private ownership.

(ii) Unit LAPT–4 includes stream channel up to bankfull height.

(iii) Map of Unit LAPT–4 follows:

Figure 5 to Louisiana Pigtoe (*Pleurobema riddellii*) paragraph (9)(iii)



(10) Unit LAPT–5: Calcasieu River Unit; Allen, Rapides, and Vernon parishes, Louisiana.

(i) Unit LAPT–5 consists of three subunits:

(A) Subunit LAPT–5a (Upper Calcasieu River) includes 92 river mi (148 km) in Allen and Rapides parishes, Louisiana. The riparian lands that border this subunit are in Federal (22 percent) and private (78 percent) ownership.

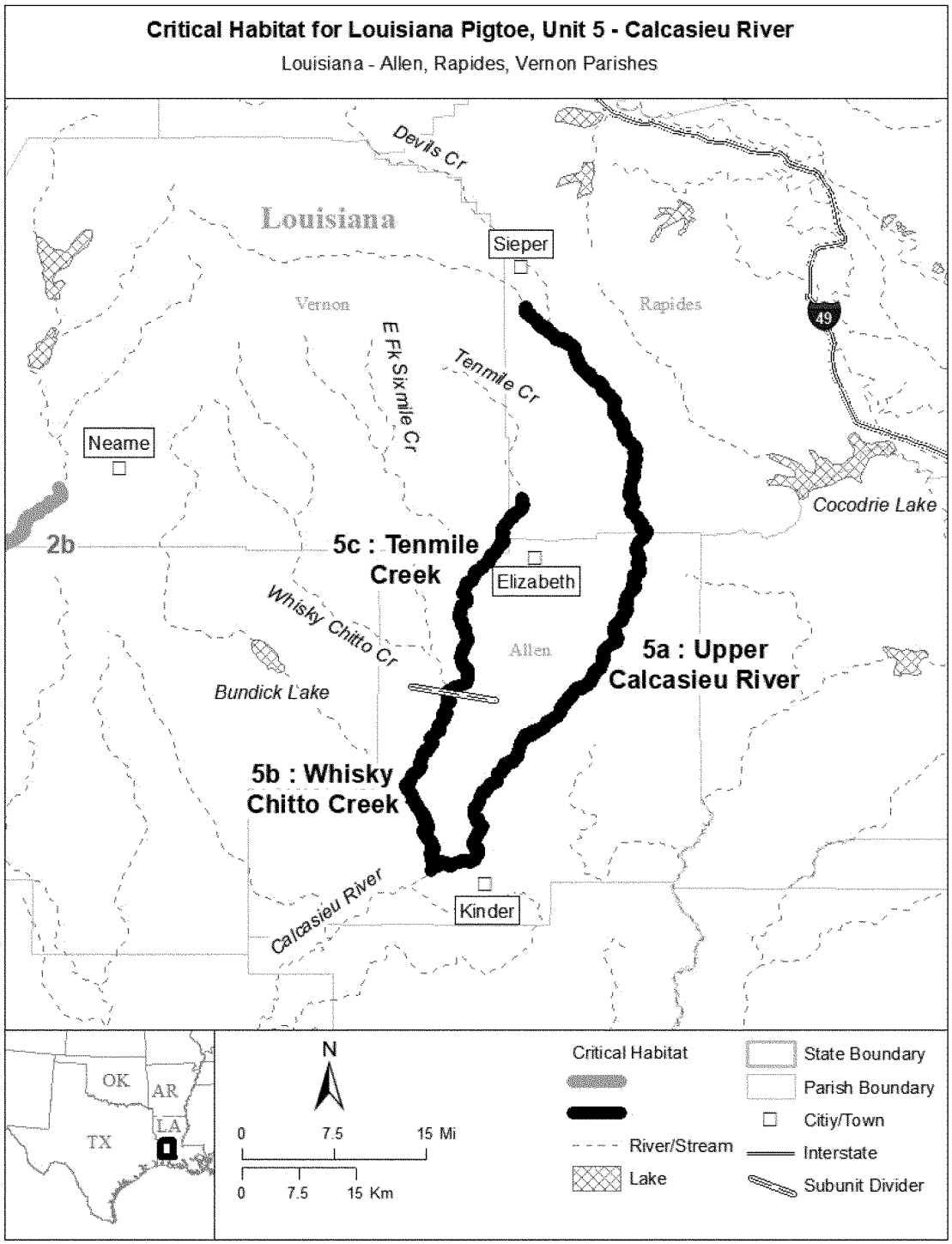
(B) Subunit LAPT–5b (Whisky Chitto Creek) includes 21.7 river mi (34.9 km) in Allen Parish, Louisiana. The riparian lands that border this subunit are in State (99 percent) and private (1 percent) ownership.

(C) Subunit LAPT–5c (Tenmile Creek) consists of 32 river mi (51.5 km) in Allen, Rapides, and Vernon parishes, Louisiana. The riparian lands that border the subunit are in State (2 percent) and private (98 percent) ownership.

(ii) Unit LAPT–5 includes stream channel up to bankfull height.

(iii) Map of Unit LAPT–5 follows:

Figure 6 to Louisiana Pigtoe (*Pleurobema riddellii*) paragraph (10)(iii)



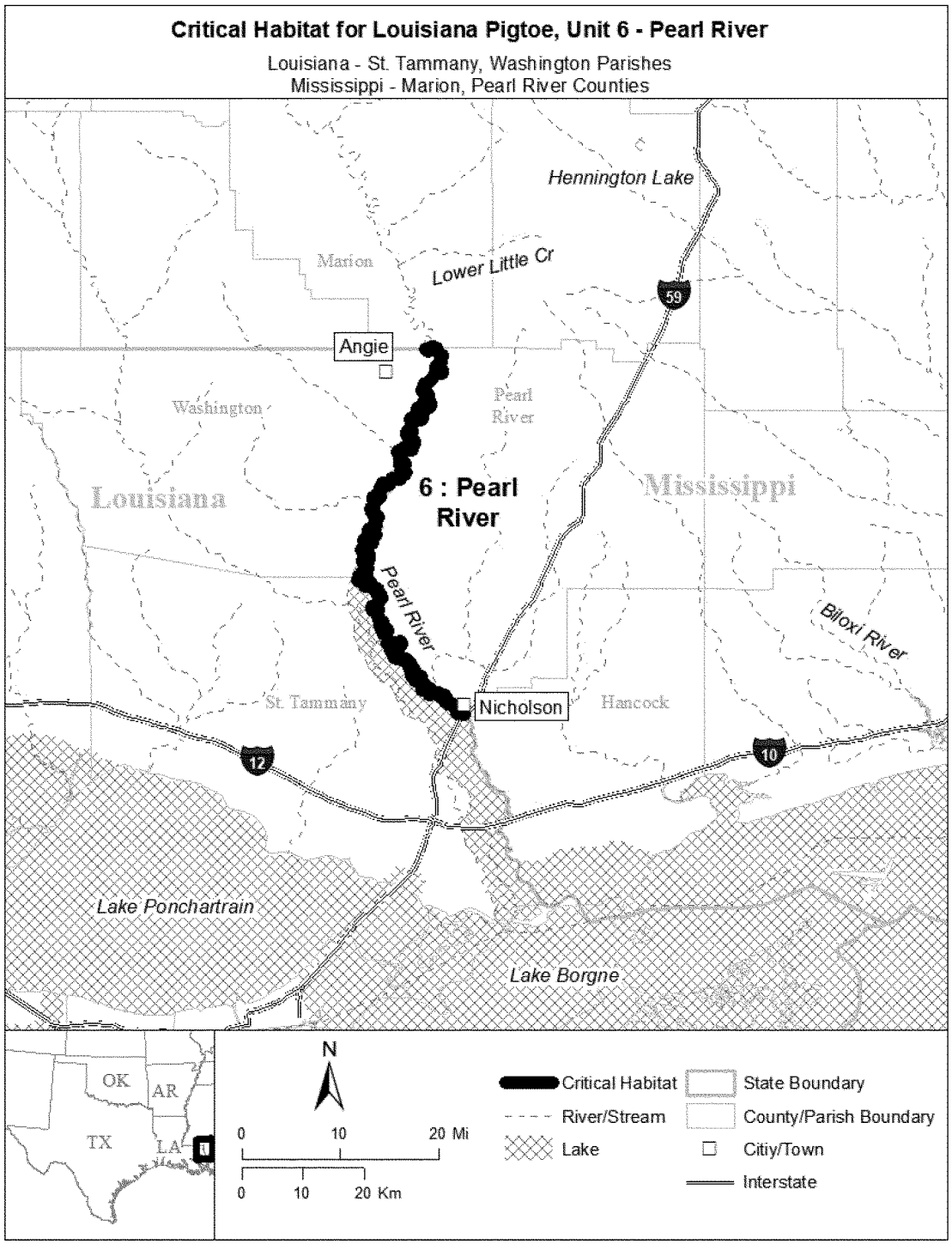
(11) Unit LAPT–6: Pearl River Unit; St. Tammany and Washington parishes, Louisiana, and Marion and Pearl River Counties, Mississippi.

(i) Unit LAPT–6 consists of 86.6 river mi (139.3 km) in St. Tammany and Washington parishes, Louisiana, and Marion and Pearl River Counties, Mississippi. The riparian lands that border this unit are in Federal (42 percent), State (14 percent), and private (44 percent) ownership.

(ii) Unit LAPT–6 includes stream channel up to bankfull height.

(iii) Map of Unit LAPT–6 follows:

Figure 7 to Louisiana Pigtoe (*Pleurobema riddellii*) paragraph (11)(iii)



* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–05107 Filed 3–17–23; 8:45 am]

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FEDERAL REGISTER

Vol. 88 Monday,

No. 53 March 20, 2023

Part IV

Department of Housing and Urban Development

24 CFR Part 581

General Services Administration

41 CFR Part 102–75

Department of Health and Human Services

45 CFR Part 12a

Use of Federal Real Property To Assist the Homeless: Revisions to Regulations; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 581

[Docket No. FR 6119–P–01]

RIN 2506–AC49

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–75

[3090–AK46]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 12a

RIN 0991–AC14

Use of Federal Real Property To Assist the Homeless: Revisions to Regulations

AGENCY: Department of Housing and Urban Development, General Services Administration, and Department of Health and Human Services.

ACTION: Proposed rule.

SUMMARY: The Department of Housing and Urban Development (HUD), the General Services Administration (GSA), and the Department of Health and Human Services (HHS) (the Agencies) each have distinct responsibilities in the administration of the Title V program, authorized by the McKinney-Vento Homeless Assistance Act. The program makes suitable Federal real properties categorized as underutilized, unutilized, excess, or surplus available to States, local government agencies, and 501(c)(3) tax-exempt non-profit organizations for use to assist the homeless. In 2016, the Federal Assets Sales and Transfer Act amended Title V of the McKinney-Vento Homeless Assistance Act. This proposed rule would incorporate required statutory changes and current practices; update references and terminology that are now outdated; and revise procedures for more efficient program administration in the Agencies' regulations.

DATES: *Comment Due Date:* May 19, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule. All submissions must refer to the above docket number and title. There are two methods for submitting public comments.

1. Submission of Comments by Mail. Comments regarding a particular agency or its portion of the proposed rule 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; Theresa M. Ritta, Program Manager, Real Property Management Services, Real Estate Logistics and Operations, Program Support Center, ATTN: [RIN: 0991–AC14], 5600 Fishers Lane, Suite 6W66, Rockville, Maryland 20852, respectively. Comments for GSA must be submitted electronically.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* The Agencies strongly encourage commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Agencies to make comments 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 (FAX) Comments. FAX comments will not be considered.

Public Inspection of Public Comments. HUD will make available all properly submitted comments and communications for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above HUD address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments 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 also available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For information regarding each agency's implementation of these regulations, the contact information for that agency follows.

The Agencies welcome and are 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.*

Department of Housing and Urban Development: Juanita Perry, Senior Program Specialist, Office of Special Needs Assistance Programs, Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7262, Washington, DC 20140; *title5@hud.gov;* telephone number (202)–402–3970 (this is not a toll-free number).

General Services Administration: Chris Coneeney, Director, Real Property Policy Division, Office of Government-wide Policy, at 202–208–2956 or *chris.coneeney@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSA at *RegSec@gsa.gov.*

Department of Health and Human Services: Theresa M. Ritta, Program Manager, Real Property Management Services; Telephone: (301) 443–2265; Email: *rpb@psc.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1991, the Agencies jointly published a regulation (56 FR 23789 (May 24, 1991)), codified at 24 CFR part 581, 41 CFR part 102–75, and 45 CFR part 12a, implementing the provisions of Title V of the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act or Title V) (42 U.S.C. 11411). The 1991 regulation established procedures for collecting information from landholding agencies about excess, surplus, unutilized, and underutilized properties under their control and the criteria for determining the properties' suitability for use as homeless assistance. It also provided procedures and timelines for the application process and agency review of submitted applications to use such properties for homeless assistance. The regulation has not been updated since its publication in 1991. Since that time, however, the McKinney-Vento Act has been amended several times by new legislation, including the Homeless Emergency Assistance and Rapid Transition to Housing Act (Sec. 1003, Pub. L. 111–22, 1632, 1664–65), the Federal Property Management Reform Act of 2016 (114 Pub. L. 318, 130 Stat. 1608), and most significantly, section 22 of the Federal Assets Sales and Transfer Act of 2016 (FASTA) (Pub. L. 114–287, 130 Stat. 1463 (codified at 40 U.S.C. 1303 note)).

Under Section 501 of Title V, HUD handles the suitability determination and HHS processes applications from eligible organizations and monitors transferred property for compliance with programmatic requirements. GSA supports both agencies at various stages throughout the entire process. Specifically, GSA screens real properties reported by a particular agency as excess with other Federal agencies to determine if they are required for use by any other Federal agency pursuant to 42 U.S.C. 11411(f)(3). Properties reported to GSA for disposal are submitted by GSA to HUD for a determination of suitability for use to assist the homeless. Pursuant to 42 U.S.C. 11411(b)(1)(B), after HUD makes its suitability determination, HUD reports the determination to GSA, and GSA notifies HUD whether there is a continuing need for the property within the Federal government. In practice, if GSA has information that there is a continuing Federal need for the property, GSA notifies HUD of the continuing need when GSA submits property information to HUD for the suitability determination. If there is no continuing Federal need for the property, the property is determined surplus to the needs of the Federal government, and if HUD determines the property to be suitable, then the property is available for application to HHS for homeless assistance use. Pursuant to 42 U.S.C. 11411(f)(3)(A), if HHS receives and approves an application for surplus property and recommends to GSA that the property be conveyed to the applicant for homeless assistance use, GSA assigns the property to HHS. HHS then deeds or leases the property to the applicant for the purpose(s) stated in the approved application, unless a competing request for the property under 40 U.S.C. 550 is determined by GSA or HHS to be so meritorious and compelling as to outweigh the needs of the homeless.

Pursuant to 42 U.S.C. 11411(a), HUD is the agency authorized to determine whether a property is suitable for homeless assistance use. HUD must request information from Federal landholding agencies regarding unutilized, underutilized, excess, and surplus Federal real properties (including land, buildings, and fixtures) based on the requirements of 42 U.S.C. 11411(a). As required by 42 U.S.C. 11411(a), HUD must determine which of those properties are suitable for homeless assistance no later than thirty days after receiving the information. Once HUD has determined a property is suitable for use to assist the homeless based on HUD's suitability criteria, HUD must then promptly notify each Federal agency of the suitability determination made pursuant to HUD's suitability criteria. The landholding agency must respond to HUD within 45 days regarding whether the property is available for use to assist the homeless. No later than 15 days after the end of the 45-day period, HUD must publish a list of all reviewed properties on the HUD website, whether HUD determined a reviewed property to be suitable for use to assist the homeless, and whether the property is available for application for use to assist the homeless. HUD must also publish annually all properties that were identified as suitable for use to assist the homeless, but were reported to be unavailable, and why the properties were unavailable, as required by 42 U.S.C. 11411(c)(1)(D). GSA also hosts a website listing property available for homeless assistance.[1]

Pursuant to 42 U.S.C. 11411(c)(1)(C), if HUD determines a property is not suitable for homeless assistance use, it must identify the reasons for its determination. If HUD determines a property is unsuitable for homeless assistance use, there is a 20-day holding period to allow any representative of the homeless to request that HUD review the unsuitability determination. HUD must review any such requests and make a final determination pursuant to 42 U.S.C. 11411(d)(3), implemented in the regulations at 24 CFR 581.4.

After HUD publishes its list of suitable properties that are available for application, an eligible organization may apply to HHS for use of any such property. HHS reviews applications to use suitable properties to assist the homeless under 42 U.S.C. 11411(e). After HHS receives an initial application, HHS has 10 days, unless extended by HHS, to review it and make a determination as to whether the initial application is approvable. HHS must maintain a public record of all actions taken regarding an application under 42 U.S.C. 11411(e)(3). If HHS approves an initial application, the applicant then has 45 days to provide a final application detailing a reasonable plan to finance the approved homeless assistance program under 42 U.S.C. 11411(e)(4). HHS must make a final determination and complete all actions on the final application within 15 days of receipt of a final application pursuant to 42 U.S.C. 11411(e)(5). HHS is then responsible for pursuing the transfer of a suitable property to an approved applicant. In the case of excess or surplus properties, HHS will request assignment of the property from GSA, and if GSA assigns the property to HHS, HHS will enter into a lease or deed with the successful applicant. In the case of unutilized or underutilized property, HHS will process applications for the use of the property, but the individual landholding agency will enter into the lease or permit agreement with the successful applicant. HHS is also the responsible agency for ensuring post-transfer compliance and monitoring activities for those properties transferred by HHS.

As previously noted, FASTA made several changes to the McKinney-Vento Act. Section 22 of FASTA amended the McKinney-Vento Act to allow for HUD's suitability determinations to be posted electronically; to eliminate subsequent posting of previously reported properties determined unsuitable with no changes; to change the timeframes related to how long suitable and available properties are held for homeless assistance use; to change the number of days by which eligible organizations must submit an expression of interest to HHS from 60 days to 30 days from the date of HUD's publication; to create a two-phased application process; to shorten the initial application processing period from 90 days to 75 days; and, if approved, provide the applicant 45 days to submit a final application. If HHS does not approve a final application after approving an initial application, disposal of the property may proceed in accordance with applicable law.

In addition to 42 U.S.C. 11411 and the current regulations, the Title V Program is guided by Federal court decisions, including the March 13, 2017, revised Order in *National Law Center on Homelessness and Poverty* v. *Veterans Administration,* et al. 1988 WL 136970 (D.D.C. 1988). Subsequent nationwide litigation, including *Colorado Coalition for the Homeless* v. *GSA and HHS,* 2019 WL 2723857 (D.CO. 2019), *United States* v. *Overcoming Love Ministries,* 2018 WL 4054867 (E.D.N.Y. 2018) and *New Life Evangelistic Center, Inc.* v. *Sebelius,* 753 F.Supp.2d 103 (D.D.C. 2010) have interpreted and applied key provisions of Title V and HHS's regulations. These rulings, taken together with the Agencies' experience operating the Title V program over the past thirty years, have convinced the Agencies that it is now appropriate to amend this joint regulation to achieve the following three goals: harmonize the joint regulation with Title V, as

[1] General Services Administration, Notices of Determination of Homeless Suitability and Availability, Real Property Utilization and Disposal, *https://disposal.gsa.gov/s/noticetypedetail?type=Homeless+Screening.*

amended by FASTA; incorporate existing policy and practice requirements for the benefit of future applicants; and, for ease of reference, expand portions of the joint regulation that cross-reference other sections of other regulations by incorporating the referenced portions.

II. This Proposed Rule

A. Collaborative Changes Across HUD, GSA, and HHS's Individual Regulations

This proposed rule would establish procedures conforming to FASTA, incorporate other legislative changes, and codify established policies and processes that the Agencies use to govern the program. For greater readability, in instances where requirements found in other sections of the proposed rule are referenced by citation, this proposed rule would instead incorporate those provisions in each agency's individual regulations, rather than just the citation, to provide a broader and clearer understanding of the Title V program requirements. This proposed rule would also provide revised suitability criteria for clarity and to address GAO's recommendation in its 2014 report entitled *Federal Real Property: More Useful Information to Providers Could Improve the Homeless Assistance Programs.*[2]

The changes in the proposed rule would amend the Agencies' individual regulations found in Title 24 (HUD), Title 41 (GSA), and Title 45 (HHS) of the Code of Federal Regulations. Provisions of this proposed rule that apply to the Agencies collectively would be found in each agency's regulations. HUD's and GSA's regulations have included all sections applicable to all three Agencies within its regulations found in Title 24 and Title 41, respectively. HHS's regulation will only include provisions directly applicable to HHS.

Throughout this proposed rule, the Agencies have renumbered various existing sections of their respective regulations. This proposed rule references the current section numbers in discussing changes to the applicable sections unless otherwise stated. Also of note, within this proposed regulation, variations of the terms United States and Federal government are intended to be used interchangeably.

1. Definitions

This proposed rule would remove definitions that are no longer relevant, revise other definitions to conform to existing legislation, and incorporate new definitions, some of which are currently used but are not defined in the existing Title V regulation. The updated definitions would modify 24 CFR 581.1, 41 CFR 102–75.1160, and 45 CFR 12a.1 to provide clarity and consistency regarding the Agencies' roles and requirements for potential Title V applicants. The definitions of *Checklist, Classification, Day, GSA, HHS, HUD, Non-profit organization, Representative of the homeless, Suitable property, Underutilized, Unsuitable property,* and *Unutilized property* would remain unchanged.

The definitions of *Applicant, Eligible organization, Excess property, Homeless, Landholding agency, Lease, Permit, Property, Screen* and *Surplus property* would be amended to provide consistent regulatory language across the Agencies. The proposed changes to the definitions of *Applicant, Eligible organization,* and *Surplus property* would be non-substantive but provide more clarity. The definition of *Landholding agency* would be updated to provide more detail regarding the type of agency that typically qualifies as a landholding agency. The definition of *Lease* would be updated to clarify that in the case of underutilized and unutilized real properties, landholding agencies would be the only party from the Federal government to the lease agreement and that landholding agency lease agreements pertain only to underutilized and unutilized real properties. The definition of *Permit* would be amended to specify that permits are typically granted for a maximum of one year and to clarify that a permit does not grant to the recipient any interest in the property.

The definition of *Excess property* would be updated to conform with 40 U.S.C. 102, consistent with the Federal Property Management Reform Act of 2016 and remove the word ''discharge'' from an agency's needs or responsibilities. The definition of *Homeless* would be revised to cross-reference the definition at 42 U.S.C. 11302. The definition of this term was amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (division B, Pub. L. 111–22). The proposed revision is for ease of program administration in the event of a future statutory amendment. The revision is not intended to revise the current interpretation of ''homeless'' for this program or the terms of ''homeless,'' ''homeless individual,'' or ''homeless person'' for other programs not covered by this part. The definition of *Property* would be updated to reference 40 U.S.C. 524, pursuant to the Federal Property Management Reform Act of 2016, which describes executive agencies' property management duties.

The definition of *Screen* would be amended to add the term ''surplus.'' The Agencies are proposing this change to clarify the types of properties subject to the screening processes.

Lastly, the proposed rule would add the following definitions: *HUD website* for clarity, based on FASTA's requirement that HUD publish on the HUD website all reviewed properties determined by HUD to be suitable for use to assist the homeless and that are available for application for use to assist the homeless; *Transferee* to clarify that it means an eligible entity that acquires Federal real property by lease, deed, or permit; *Transfer document* to identify such documents as being lease, deed or permit; *Substantial noncompliance* to clarify that it means the failure to take corrective action as directed by HHS, based on transferees' and potential funders' concerns that HHS will revert a property for a minor issue that was, or could easily be, addressed by corrective action; and *Related personal property* and *State* to conform with 45 CFR 12.1(n) and (p), respectively, as it pertains to this part.

The definitions of *Regional Homeless Coordinator* and *State Homeless Coordinator* would be removed as they are no longer applicable. The definition of *ICH* would also be removed from the definition section, and instead the term ''United States Interagency Council on Homelessness'' would be included within the text of the proposed rule on its first reference.

2. Applicability

The proposed rule would expand the sections of the Agencies' regulations that identify which properties are not subject to the joint regulation by adding properties that are not subject to Federal Real Property Council reporting requirements to this list, in accordance with 40 U.S.C. 623(i). Additionally, 24 CFR 581.2, 41 CFR 102–75.1161, and 45 CFR 12a.2, would be updated to reflect that properties not subject to the joint regulation include buildings and property at military installations that were approved for closure under the Defense Base Closure and Realignment Act of 1990 after October 25, 1994. The proposed rule would also amend 24 CFR 581.2(b)(2), 41 CFR 102–75.1161(b)(2), and 45 CFR 12.a.2(b)(2), to make clear that machinery and equipment that is not related personal property is not subject to the joint regulation, and that machinery and equipment that is related personal property is not subject to the regulation if GSA or the landholding agency

[2] *https://www.gao.gov/assets/gao-14-739.pdf.*

choose to dispose of the machinery and equipment separate from the real property. At 24 CFR 581.2(b)(8) and 45 CFR 12a.2(b)(8), the joint regulation already includes Indian Reservation land as property not subject to the joint regulation but does not include the citation to 40 U.S.C. 523. This proposed rule would add the citation to these sections at newly designated paragraph (a)(9) where it currently does not exist. Additionally, the current regulation already provides that properties ''subject to a court order'' are not subject to the regulation, and this proposed rule would specify that this refers only to court orders that, for any reason, preclude transfer for use to assist the homeless under Title V at proposed 24 CFR 581.2(b)(5), 41 CFR 102–75.1161(b)(5), and 45 CFR 12a.2(b)(5). Similarly, the proposed rule would provide clarity regarding the current exclusion of mineral and air space rights from Title V processing by specifying that these exclusions refer to mineral and air space rights that are independent of surface rights. This change would be found in newly designated paragraphs (a)(7) and (8). Lastly, this proposed rule would exclude from Title V processing excess or surplus buildings or fixtures that sit on land owned by a landholding agency where the underlying land is not also excess or surplus. These changes would be found at proposed paragraph (b)(12) of 24 CFR 581.2, 41 CFR 102–75.1161, and 45 CFR 12a.2.

3. Collecting Information From Federal Agencies

The McKinney-Vento Act requires HUD to canvass landholding agencies quarterly and requires the landholding agencies to respond with property information within 25 days. HUD is then required to make a suitability determination on the property within 30 days of receipt of the property information. Because of the high number of properties being reported to HUD, HUD began accepting property information from landholding agencies on an ongoing basis. This proposed rule would codify this existing process at 24 CFR 581.3(a) and 41 CFR 102–75.1162(a). It also would provide that HUD's canvass of landholding agencies will include information about previously reported properties only if the property's status or classification changed, or if improvements were made to the property since the property was last reported to HUD. It would clarify that landholding agencies will respond to HUD's information collecting canvass in accordance with 40 U.S.C. 524. This proposed rule would clarify in 24 CFR 581.3(a) and 41 CFR 102–75.1162(a) that a completed property checklist is the vehicle for submitting property information to HUD. Consistent with FASTA, paragraphs (d) of 24 CFR 581.3 and 41 CFR 102–75.1162 would provide that HUD will review properties with a change in status for suitability and repost the property information on the HUD website.

4. Suitability Determination

HUD has 30 days from the time it receives property information from landholding agencies or GSA to make a suitability determination. Currently, property that is determined unsuitable may not be made available for any other purpose for 20 days after publication under 24 CFR 581.4(e) and 41 CFR 102–75.1175(e). To request a review of a property determined unsuitable for homeless assistance use, a representative of the homeless must contact HUD within 20 days of the publication of notice that a property is unsuitable pursuant to 24 CFR 581.4(f)(1) and 41 CFR 102–75.1175(f)(1). Under 24 CFR 581.4(f)(4) and 41 CFR 102–75.1175(f)(1) of the current regulation, HUD is required to notify the landholding agency of the request to review the unsuitability determination and advise the landholding agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability. Regulations found at 24 CFR 581.4(f)(4)(i) and 41 CFR 102–75.1175(f)(4)(i) currently provide that HUD will act on all review requests within 30 days after receiving the landholding agency's response and will notify the representative of the homeless and the landholding agency in writing of its decision. There is currently no deadline, however, for the landholding agency to respond to HUD's request for additional information. The current regulation also does not outline the determination process after HUD receives or does not receive the landholding agency's response. As a result, the Agencies are proposing in 24 CFR 581.4(f)(4) and 41 CFR 102–75.1163(f)(4) of this proposed rule that unless HUD and the landholding agency agree to an extended period, the deadline for the landholding agency to respond to HUD's request for additional information would be 20 days from the date that the landholding agency is notified of the request to review the unsuitability determination. If the landholding agency fails to meet the deadline or request an extension, HUD would proceed with the appeal review with the property information provided in the survey it already has and information submitted in the appeal request provided by the representative of the homeless. This proposed rule would add at proposed paragraph (f)(4)(i) of 24 CFR 581.4 and 41 CFR 102–75.1163 that HUD will act on requests for review where the landholding agency or GSA has failed to meet the deadline within 30 days of such deadline.

This rule would also propose to incorporate required statutory changes under FASTA in proposed sections 24 CFR 581.4(e), (f)(1), and (f)(4)(ii) and 41 CFR 102–75.1163(e), (f)(1), and (f)(4)(ii) that allow HUD to post suitability determinations on a HUD website or a successor technology that is equally accessible and available to the public. This proposed rule would update processes by removing the identified toll-free number from 24 CFR 581.8(b) and revising it to state that HUD will establish and maintain ''a toll-free number'' for the public to obtain specific information about Title V property reviewed for suitability. Persons with inquiries regarding property suitability and other Title V related questions will be instructed to submit questions through the HUD Title V website, or such other method as HUD may require in proposed 24 CFR 581.4(f)(1) and 41 CFR 102–75.1163(f)(1). Persons with disabilities may also request an alternative method for submitting inquiries when it may be necessary as a reasonable accommodation under Federal fair housing laws.

5. Real Property Reported Excess to GSA

Currently under 24 CFR 581.5 and 41 CFR 102–75.1180, landholding agencies are required to submit a report to GSA of properties determined as excess along with a copy of any HUD suitability determination. These sections in HUD's and GSA's regulations would remain substantially the same but would be updated for clarity. Within Title 41, this proposed rule would contain this section at the redesignated 41 CFR 102–75.1164.

6. Suitability Criteria

This proposed rule would revise the criteria in 24 CFR 581.6 and 41 CFR 102–75.1185 that HUD uses to determine suitability to make the criteria clearer and more user-friendly for both the Agencies and applicants. The Agencies propose to reframe this section by dividing the suitability criteria into two categories: (1) properties deemed suitable unless the properties have any of the characteristics listed in paragraph (a),

and (2) properties having characteristics that would make the property presumptively unsuitable, unless the landholding agencies provide further information for HUD to determine the property suitable, in proposed paragraph (b).

In proposed paragraph (a)(1), the proposed rule would revise the criteria relating to property located near a container or facility storing, handling, or processing flammable or explosive materials to provide for suitability if HUD can determine, based on information provided by the landholding agency or GSA, that the property complies with the acceptable separation distance standards at 24 CFR part 51, subpart C and the HUD Guidebook, ''Siting of HUD-Assisted Projects Near Hazardous Facilities'' or a successor guidebook, or that appropriate mitigating measures, as defined in 24 CFR 51.205, are already in place. The proposed rule would remove the reference to 2000 feet and the references to gasoline stations, tank trucks, above ground containers ''with a capacity of 100 gallons or less,'' and larger containers providing heating or power. Instead, the proposed rule would utilize the more useful acceptable separation distance standards and would exclude containers and facilities that are not hazards, as defined in 24 CFR 51.201. Additionally, in proposed paragraph (a)(2), the proposed rule would add coastal barriers as a suitability criterion; properties located in a Coastal Barrier System Unit would be determined unsuitable because most new federal expenditures and financial assistance, including federal flood insurance, are prohibited within Coastal Barrier System Units.[3] A Coastal Barrier System Unit is any undeveloped coastal barrier, or combination of closely related undeveloped coastal barriers, included within the Coastal Barrier Resources System established by the Coastal Barriers Resources Act, as amended (codified at 16 U.S.C. 3501).

This proposed rule would also rename the documented deficiencies criterion currently at 24 CFR 581.6(a)(5) and 41 CFR 102–75.1185(a)(5) as ''Site Safety Conditions'' in newly redesignated paragraph (a)(3) and focus that criterion solely on a property's physical characteristics, including, as examples, properties that exhibit significant contamination from hazardous substances, as defined by 42 U.S.C. 9601, periodic flooding, sinkholes, or landslides.

The proposed rule would move the criteria regarding floodways, national security concerns, runway clear zones, and inaccessible property into paragraph (b), as property presumed unsuitable unless information to enable HUD to determine it suitable is provided. The proposed rule would also remove the reference in the current rule to floodways that have been ''contained or corrected'', since the meaning of ''corrected'' is unclear and a floodplain that is ''contained'' might still adversely affect the use of portions of the site that are located within the ''contained'' floodway to assist the homeless.

The proposed rule also includes specific questions for public comment in section III regarding suitability criteria. The Agencies considered several changes to this section and do not expect these proposed changes to affect the number of properties deemed suitable.

7. General Policies of HHS

The proposed rule would add a section General Policies of HHS to mirror 45 CFR part 12.3 instead of incorporating that regulation. The section highlights the minimum criteria for eligibility for and transfers of surplus property.

8. Expressions of Interest Process

HHS is responsible for accepting expressions of interest for properties published by HUD as suitable and available for homeless assistance purposes. Pursuant to FASTA, the period in which eligible organizations must submit an expression of interest has changed from 60 days to 30 days from the date of HUD's publication. Therefore, eligible organizations must now submit an expression of interest to HHS within 30 days of HUD's publication date. This proposed change would be found at 24 CFR 581.10, 41 CFR 102–75.1169, and 45 CFR 12a.4. In an effort to increase efficiency and be environmentally conscious, HHS will accept such expressions of interest by email at *rpb@psc.hhs.gov.* This change is located at paragraph (c) of those sections. HHS's physical address would also be updated to its current physical address in the revised regulation. Additionally, at paragraph (b), this section would be amended to clarify that HUD's determination of suitability does not mean a property is necessarily useable for the purpose stated in the application, nor does it guarantee subsequent conveyance or transfer of a property.

9. Application Process and Requirements

HHS is responsible for receiving and evaluating applications submitted by eligible organizations for properties deemed suitable and available. Prior to FASTA, eligible organizations were required to submit a single application within 90 days after HHS's receipt of an acceptable expression of interest. Under FASTA, the process now requires that an eligible organization submit an initial application within 75 days following HHS's receipt of an expression of interest, unless extended by HHS. If HHS approves the initial application, then a final application, setting forth a reasonable financial plan, must be submitted within 45 days of HHS's approval of the initial application. This proposed rule would incorporate the two-stage application process outlined in FASTA and which HHS currently follows.

The proposed rule would revise the regulation to make the application requirements more clear, concise, and consistent with the instructions accompanying the application packet. This proposed rule would expand the existing regulations found at 24 CFR 581.9, 41 CFR 102–75.1200 and 45 CFR 12a.9 to describe the specific document an applicant must submit with its application to demonstrate its ability to hold title to property for the requested purpose(s). This proposed rule would also modify the current regulations found at 24 CFR 581.9(b)(2), 41 CFR 102–75.1200(b)(2) and 45 CFR 12a.5(b)(2) to require that applicants certify, rather than merely indicate, that their use of the property and any modification(s) made to the property, conform to all applicable building codes and local use restrictions, or similar limitations, including local zoning regulations. The modification is meant to ensure an applicant's proposed program is capable of being developed and operated following transfer without hindrances posed by local codes, regulations and/or similar limitations. These updates would also incorporate existing practice that applicants requesting lesser portions of the listed real property will be denied. These updated provisions would be found at the newly redesignated paragraphs (a)(1) and (a)(2) of 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5.

This proposed rule would also expand current 24 CFR 581.9(b)(3), 41 CFR 102–75.1200(b)(3) and 45 CFR 12a.9(b)(3) to advise applicants that the description of the proposed program must also include how the applicant intends to implement the proposed

[3] *See* U.S. Fish and Wildlife Service, Glossary, Coastal Barrier Resources System, *https://www.fws.gov/ecological-services/about/glossary.html#CBRA.*

program. Such information is crucial to HHS in rendering a determination on the adequacy and timeliness of a proposed program and likelihood of operational success, and often applications only contain a list of proposed services without any description about the programs or implementation. The proposed rule would capture these changes at the newly redesignated paragraphs (a)(3) of 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5.

This proposed rule would also modify 24 CFR 581.9(b)(4) and 581.9(b)(5), 41 CFR 102–75.1200(b)(4) and 102–75.1200(b)(5) and 45 CFR 12a.9(b)(4) and 12a.9(b)(5) for greater clarity regarding the application process. These updated paragraphs would be found at newly redesignated paragraphs (a)(4) and (a)(5) of 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5. Regarding paragraph (a)(4), an applicant would be required to demonstrate both that there is an immediate need to acquire the property for the proposed program and the applicant's ability to utilize all of the Federal real property for which it is applying. Additionally, this paragraph would be expanded to clarify that an applicant is required, per the application instructions, to provide details concerning modifications to the property that need to be completed before the program can become operational.

This proposed rule would also clarify 24 CFR 581.9(b)(4), 41 CFR 102–75.1200(b)(4) and 45 CFR 12a.9(b)(4), the requirements needed to demonstrate an applicant's ability to finance and operate the proposed program. Finances typically prove to be the most difficult for transferees to navigate to ensure that monies are available to successfully operate the program and adequately maintain the property during the duration of the transfer term. Formulating a reasonable financial plan during the application process ensures that an applicant has the methods and means to carry out the application proposal. The requisite information provides HHS more confidence in making a determination on an application and is designed to both spare applicants the time and expense associated with a transfer that is likely to fail and protect the United States' residual interest in the transferred property. Therefore, rather than requiring that an applicant merely ''indicate'' it has financial ability, this proposed rule would revise this section to incorporate HHS's current practice of requiring that an applicant ''demonstrate'' its financial ability. A reasonable financial plan must, at a minimum, be specific and be accompanied by supporting documentation which demonstrates that the proposed plan is likely to succeed; and neither diminish the value of the government's interest in the property nor impair the government's ability to revert and immediately dispose of the property with clear title, free of any lien or encumbrance. Further, this section would memorialize current practice, which permits HHS to grant, to an otherwise approved applicant, a short-term lease when a zoning change is required or an applicant's financial plan proposes to utilize Low-Income Housing Tax Credits or other funding sources that typically take longer to process than other forms of financing. This enables the approved applicant to gain site control of the property that may be required for funding and additional time to provide HHS the requisite information to ensure the Federal government's interest in the property is adequately protected. These proposed changes would be found at newly redesignated paragraph (a)(6) of 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5.

This proposed rule would modify 24 CFR 581.9(b)(6), 41 CFR 102–75.1200(b)(6) and 45 CFR 12a.9(b)(6) to clearly state property insurance requirements and the purpose thereof, thereby allowing for the omission of the reference to other provisions of the Agencies' regulations. This proposed rule would amend 24 CFR 581.9(b)(9), 41 CFR 102–75.1200(b)(9) and 45 CFR 12a.4(b)(9) pertaining to local government notification of the applicant's application for acquisition of surplus property for the proposed purpose. The section would be amended to incorporate HHS's current practice of requiring that an applicant notify the local government in writing and provide evidence of such rather than simply indicate in its application that it has done so. These changes would be codified at newly redesignated paragraphs (a)(9) and (a)(12), respectively, of 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5.

The proposed rule would revise and expand 24 CFR 581.9, 41 CFR 102–75.1200, and 45 CFR 12a.9 to clarify the requirements regarding the transfer of surplus property and to comply with FASTA. Pursuant to FASTA, an applicant has the discretion to apply for Federal real property for a permit, lease, or deed. An applicant applying for a deed must comply with local zoning and certify such in its application by providing the required documentation. This proposed rule would incorporate HHS's current policy that transfers by deed will only be made subsequent to the appropriate certification that the proposed program is not in conflict with State or local zoning restrictions, building codes, or similar limitations, omitting the need to reference other provisions of the Agencies' regulations.

This proposed rule would also revise 24 CFR 581.9(c), 581.9(d), and 581.9(e), 41 CFR 102–75.1200(c), 102–75.1200(d), and 102–75.1200(e), and 45 CFR 12a.9(c), 12a.9(d), and 12a.9(e) to conform to legislative changes required by FASTA. Under FASTA, an initial application is now due 75 days following HHS's receipt of an expression of interest. This differs from the current regulation requiring the application, in its entirety, be submitted within 90 days of an applicant's expression of interest. This proposed rule would revise paragraph (c) of the previously referenced sections to set forth the new deadline for submitting an initial application. Additionally, FASTA reduced the time for HHS to review an initial application from 25 days to 10 days of its receipt. This proposed rule would reflect this change and revise paragraph (d) of the above referenced sections within the Agencies' individual regulations. It would also revise the ranking system and criteria contained in this section. An initial application would be evaluated based on the three statutory criteria: services offered; need; and experience. Criteria would no longer be evaluated with ranking weights; rather, all criteria would be of equal weight, and failure to meet any one criterion would result in the application being disapproved. Additionally, each paragraph within this section would be revised to conform to legislative changes pursuant to FASTA and to eliminate any confusion caused by the March 13, 2017, revised Order *in National Law Center on Homelessness and Poverty* v. *Department of Veterans Affairs,* (D.D.C. 1988).[4] If HHS approves an initial application, an applicant is provided 45 days to submit a final application,

[4] The revised court order provides, in pertinent part: ''No later than 15 days after the receipt of the final application, HHS shall review, make a final determination, and complete all actions on the final application. This period may be extended by agreement of HHS and the applicant.'' The language ostensibly provides HHS with the discretion to extend the statutory deadline for the final application. Consistent with HHS practice since FASTA was implemented and judicial decisions such as *Colorado Coalition for the Homeless* v. *GSA and HHS,* 2019 WL 2723857 (D.CO. 2019) and *New Life Evangelistic Center, Inc.* v. *Sebelius,* 753 F.Supp.2d 103 (D.D.C. 2010), HHS will require all final applications to be completely submitted within the statutory deadline and will not exercise the discretion the Court's order in National Law Center purports to give to HHS.

setting forth a reasonable financial plan. HHS will not extend the deadline to submit a final application, or any part thereof, as the statute does not contain an extension provision or otherwise allow the deadline to be extended. HHS will provide a determination within 15 days of receiving the final application.

10. Surplus Property Transfer Documents

This proposed rule would add an entirely new section regarding transfer documents to conform to legislative changes made pursuant to FASTA. Applicants are permitted to apply for surplus property for acquisition by lease, deed, or permit. For clarifying purposes, the proposed rule would add this section to include relevant provisions of 41 CFR part 102–75 and 45 CFR part 12 pertaining to general terms and conditions of transfers. This proposed change improves the readability of the regulation and removes the need for additional cross-references. Additionally, the proposed rule omits the provision that requires the reversion or abrogation of transferred property, at the discretion of HHS, should the property not be placed into use within 8 years. This change allows more flexibility to resolve such issues on a case-by-case basis and, based on conversations with transferees, provides more assurances to funders that property may not be automatically reverted should the property not be placed into use within 8 years. These proposed changes would be captured at newly redesignated 24 CFR 581.14, 41 CFR 102–75.1172, and 45 CFR 12a.7.

11. Compliance With the National Environmental Policy Act of 1969 (NEPA) and Other Related Acts (Environmental Impact)

At 24 CFR 581.9(b)(8), 41 CFR 102–75.1200(b)(8), and 45 CFR 12a.9(b)(8), the current regulation already provides general application requirements as they pertain to environmental information. The proposed rule would expand these sections to clarify and to mirror requirements and policies currently required by NEPA and other related Acts. This proposed rule would contain this expanded clarification at 24 CFR 581.16, 41 CFR 102–75.1174, and 45 CFR 12a.8.

12. No Applications Approved

This proposed rule would modify 24 CFR 581.12, 41 CFR 102–75.1215, and 45 CFR 12a.12 to comply with FASTA. Under FASTA, Federal real properties shall only be held for 30 days to permit homeless providers an opportunity to submit a notice of interest instead of the previous 60-day holding period. Additionally, FASTA requires GSA or the landholding agency to proceed with disposal of surplus property 75 days following receipt of an initial expression of interest if no initial application or requests for extensions have been received by HHS, or within 45 days after an approved initial application if no final application has been received. This means that no disposal action can be taken by GSA or the landholding agency, as appropriate, until all Title V actions are completed. The proposed rule would codify these changes in the newly redesignated 24 CFR 581.17, 41 CFR 102–75.1175, and 45 CFR 12a.9.

13. Utilization and Enforcement

This proposed rule would add 24 CFR 581.18, 41 CFR 102–75.1176, and 45 CFR 12a.10 to clearly articulate a transferee's utilization requirements and potential enforcement actions that may be taken, at the discretion of HHS, should noncompliance occur. HHS's policies have not changed but are included in the regulation to clarify program requirements to applicants and transferees. This section also includes the Federal government's requirements of transferees in the event of a reversion action. Such reversionary language is currently included in transfer documents.

14. Other Uses

The proposed rule would add 24 CFR 581.19, 41 CFR 102–75.1177, and 45 CFR 12a.11 to incorporate HHS's current policy as it relates to ''other uses'' of surplus property by transferees. The proposed rule would make clear the requirements of transferees should a transferee request approval to utilize the property, or a portion thereof, for uses other than those stated in the approved original application. In adding this section, the Agencies address questions and requests made by transferees since inception of the program.

15. Abrogation

The abrogation process is discussed in various sections of the current regulation, and this proposed rule would establish 24 CFR 581.20, 41 CFR 102–75.1178, and revise 45 CFR 12a.12 to more clearly articulate the instances in which HHS may abrogate the conditions and restrictions in the transfer document. This proposed rule would address the abrogation process in its own section for clarity and simplicity.

16. Compliance Inspections and Reports

For clarifying purposes, the proposed rule would add this section to include provisions of 45 CFR part 12.14 pertaining to compliance inspections and reports. HHS's policies have not changed but are included in the regulation to be clearer for the public and removes the need for additional cross-references. These policies would be captured at 24 CFR 581.21, 41 CFR 102–75.1179, and 45 CFR 12a.13.

17. No Right of Administrative Review for Agency Decisions

Title V, as amended by FASTA, does not provide for internal administrative review of HHS application decisions. Accordingly, the proposed rule would establish 24 CFR 581.22 and 41 CFR 102–75.1180, and modify 45 CFR 12a.14 to codify HHS's existing policy that no agency reconsideration or appeal shall be granted. HHS's application decision constitutes final agency action in accordance with the Administrative Procedure Act (5 U.S.C. 704).

18. Public Notice and Holding Period Under FASTA & Technical Changes

This proposed rule would make changes throughout HUD's and GSA's existing regulations and implement FASTA amendments to the McKinney-Vento Act, including that suitability determinations for properties are published electronically on the HUD website and that HUD will post a list of all properties reviewed, including a description of the property, its address, and classification on the HUD website, rather than in the **Federal Register**. The language ''on the HUD website'' would be added to 24 CFR 581.8(a) and 41 CFR 102–75.1167(a) and in place of ''Federal Register'' as necessary, throughout HUD's and GSA's regulations. In addition, the proposed rule would revise 24 CFR 581.8(b) and 41 CFR 102–75.1167(b) to remove identification of a specific toll-free number to accommodate any necessary changes to the toll-free number in the future and more closely align with 42 U.S.C. 11411(c)(2)(C). The proposed rule also clarifies that the list of all properties published on the HUD website is sent to the United States Interagency Council on Homelessness within the same timeframe as HUD's publishing of the list of all reviewed properties to the HUD website. Requirements for the agency annual suitable property report would be added to 24 CFR 581.3(b) and 41 CFR 102–75.1162(b), and the proposed rule would clarify that the list of all properties published in the **Federal Register** no later than February 15 of each year would be a list of all properties from the agency annual suitable property reports, reported to HUD pursuant to 24 CFR 581.3(b) and

41 CFR 102–75.1162(b). To reflect the transition to publishing electronically, the proposed rule also removes the requirement for physical copies of the list of all properties published in the **Federal Register** be available for review in HUD buildings.

Additional technical changes would be made throughout the regulations for clarity, including at proposed sections 24 CFR 581.8 and 581.12, 45 CFR 12a.6, and 41 CFR 102–75.1167 and 102–75.1171.

B. Changes to HUD's Regulations

The proposed changes to regulations found at 24 CFR part 581 relate to each agency's responsibilities under the McKinney-Vento Act in an effort to provide the public with a comprehensive understanding of the Title V process. Part 581 would continue to contain HUD's responsibilities under Title V while also publishing all changes discussed above, including new sections explained above in II.A.10, II.A.11, and II.A.13 through II.A.16.

C. Changes to GSA's Regulations

The regulations found at 41 CFR 102–75 (subpart H) would relate to GSA's role in the use of Federal real property to assist the homeless along with the other Agencies' responsibilities. Since this regulation will be published jointly with HUD and HHS, subpart H would be updated to include all changes discussed above, including new sections explained above in II.A.10, II.A.11, and II.A.13 through II.A.16. This proposed rule would also update subpart H to include a section on waivers previously contained in HUD's regulations at 24 CFR 581.13 but never published in GSA's regulations. Lastly, sections in subpart H would be renumbered throughout the regulation as noted above.

D. Changes to HHS's Regulations

The regulations found at 45 CFR 12a would solely relate to HHS's portion of the proposed rule. Part 12a would be updated to include all changes discussed above, except sections that are not applicable to HHS, which include II.A.3 through II.A.6. The changes to Part 12a would also include new sections explained in II.A.10, II.A.11, and II.A.13 through II.A.16.

III. Questions for Public Comment

HUD and GSA seek public comment on the suitability criteria in 24 CFR 581.6 and 41 CFR 102–75.1165 and on the proposal to exclude property from the screening process if it is only available for removal for off-site use. For each of the questions asked below, and regarding any other issue, the Agencies are interested in public comment on whether and how the Agencies should refine the suitability criteria such that HUD can determine properties suitable under the statute notwithstanding certain conditions that will not be remedied by landholding agencies before property is transferred by long-term lease or deed. Specifically, the Agencies seek comment on how suitability criteria can protect the public from conditions that represent a clear threat to personal physical safety and health if left unremedied, while not inappropriately identifying properties as unsuitable due to low-risk conditions that HUD determines can easily be remedied by a transferee. Additionally, HHS seeks public comment regarding potential barriers to the development of a plan to finance under the modified application process in this proposed rule. While the following questions are not exhaustive, the Agencies are particularly interested in comments on the following questions:

Question 1. Are there cases or scenarios in which the Agencies should consider revising the proposed suitability criteria at 24 CFR 581.6(a)(1) and 41 CFR 102–75.1165 to allow HUD to determine that a property is suitable in its current condition if acceptable separation distance standards, including mitigating measures defined in 24 CFR 51.205, are not in place, but the risks associated with the presence of flammable or explosive materials are extremely low or would be mitigated through the transferee's routine compliance with applicable Federal, state, or local law? If so, what changes should HUD consider to the proposed rule? In its review of comments, the Agencies will not consider changes that would require an agency to impose, monitor, or enforce mitigating actions by transferees.

Question 2. If an incidental portion of a property is in a floodway or runway clear zone should the entire property be determined unsuitable?

Question 3: Should there be other changes to the suitability criteria?

Question 4: The Agencies are also considering amending the regulations' applicability to exclude property only available for removal for off-site use from the screening process. How would interested members of the public view this change?

Question 5: Given the requirements and limitations in the revised statute, what if any, barriers would you foresee to the development of a plan to finance under the modified application process as outlined in this proposed rule and how, specifically, could HHS act within its authority to address those barriers?

IV. Findings and Certifications

HUD

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made by the Office of Management and Budget (OMB) regarding whether a regulatory action is significant and therefore subject to review in accordance with the requirements of the executive order. This proposed rule was determined to be a ''significant regulatory action'' as defined in Section 3(f) of the order (although not an economically significant regulatory action under the order). Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule streamlines the process for Federal surplus transfers pursuant to the Federal Assets and Sales Act of 2016.

This proposed rule was determined to be a significant regulatory action under section 3(f) of Executive Order 12866 (although not an economically significant regulatory action under the order). The Agencies prepared an initial Regulatory Impact Analysis (RIA) that addresses the costs and benefits of the proposed rule and is part of the docket file for this rule.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the

FONSI 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.*

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. This proposed rule does not impose any Federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (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.

This proposed rule imposes no additional requirements on small entities. The rule conforms the Agencies' existing regulation with required statutory changes under the Federal Assets Sale and Transfer Act of 2016 and other legislative changes. This proposed rule also provides for HUD's suitability determinations to be published electronically rather than in the **Federal Register**. Accordingly, the undersigned certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from publishing any rule that has federalism implications if the rule 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.

Paperwork Reduction Act

The information collection requirements for part 581 contained in this proposed rule pertain to HHS's Title V application. HHS's information collection requirements have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 0937–0191. 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.

GSA

Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is not anticipated to be a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2). Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register.** OIRA has determined that this rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Regulatory Flexibility Act

GSA certifies this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This proposed rule applies only to Federal agencies and employees.

Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

HHS

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made by the Office of Management and Budget (OMB) regarding whether a regulatory action is significant and therefore subject to review in accordance with the requirements of the order. This rule was determined to be a ''significant regulatory action'' as defined in Section 3(f) of the order (although not an economically significant regulatory action under the order). Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule streamlines the process for Federal surplus property transfers pursuant to the Federal Assets and Sales Act of 2016.

Environmental Review

National Environmental Policy Act of 1969 (NEPA). Actions resulting from this proposed rule amendment may constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not specifically required for purposes of the proposed rule amendment, however, actions involving specific property transactions may require further NEPA analysis as an action may not be covered by the categorical exclusion published at 47 FR 2414–02 on January 11, 1982. HHS will, prior to making a final decision to convey or lease, or to amend, reform, or grant an approval or release with respect to a previous conveyance or lease of surplus property for homeless assistance purposes, ensure an environmental review and/or assessment is conducted, if applicable, and appropriately document the

proposed transaction, in keeping with applicable provisions of NEPA.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. This proposed rule does not impose any Federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (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. This proposed rule imposes no significant economic impacts or additional requirements on a substantial number of small entities as defined by RFA. The rule conforms the Agencies' existing regulations with required statutory changes under the Federal Assets Sale and Transfer Act of 2016 and other legislative changes, and to address certain issues that have arisen since the inception of the program. Accordingly, the undersigned certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits to the extent practicable and permitted by law, an agency from publishing any rule that has federalism implications if the rule 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.

Paperwork Reduction Act

Under the Paperwork Reduction Act, all Departments are required to submit to the Office of Management and Budget for review and approval or any reporting or recordkeeping requirements in a proposed or final rule. This proposed rule amendment does contain information collection requirements which have been approved by the Office of Management and Budget under control number 0937–0191.

List of Subjects

24 CFR Part 581

Administrative practice and procedure, Homeless, Reporting and recordkeeping requirements, Surplus Government property.

41 CFR Part 102–75

Federal buildings and facilities, Government property management, Rates and fares, Surplus Government property.

45 CFR Part 12a

Government Property, Surplus Government Property, Grant programs—health, Grant programs—housing and community development, Homeless, Housing, Public Assistance Programs.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:

Accordingly, for the reasons stated above, HUD proposes to amend 24 CFR part 581 as follows:

PART 581—USE OF FEDERAL REAL PROPERTY TO ASSIST THE HOMELESS

■ 1. The authority citation for part 581 continues to read as follows:

Authority: 42 U.S.C. 11411 note; 42 U.S.C. 3535(d).

■ 2. Amend § 581.1 by:
■ a. Revising the definitions of *Applicant, Eligible organization, Excess property,* and *Homeless;*
■ b. Adding the definition of *HUD website;*
■ c. Removing the definition of *ICH;*
■ d. Revising the definitions of *Landholding agency, Lease, Non-profit organization, Permit, Property;*
■ e. Removing the definition of *Regional homeless coordinator;*
■ f. Adding the definition of *Related personal property;*
■ g. Revising the definition of *Screen;*
■ h. Adding the definition of *State;*
■ i. Removing the definition of *State homeless coordinator;*
■ j. Adding the definition of *Substantial noncompliance;*
■ k. Revising the definitions of *Suitable property* and *Surplus property;*
■ l. Adding the definitions of *Transfer document* and *Transferee.*

The revisions and additions read as follows:

§ 581.1 Definitions.

Applicant means any eligible organization which has submitted an application to the Department of Health and Human Services to obtain use of a certain suitable property to assist the homeless.

* * * * *

Eligible organization means a State or local government agency, or a private, non-profit organization that provides assistance to the homeless, and that is authorized by its charter or by State law to enter into an agreement with the Federal government for use of property for the purposes of this part. Eligible organizations that are private, non-profit organizations interested in applying for suitable property must be tax exempt under section 501(c)(3) of the Internal Revenue Code at the time of application and remain tax exempt throughout the time the Federal government retains a reversionary interest in the property.

Excess property means any property under the control of a Federal Executive agency that the head of the agency determines is not required to meet the agency's needs or responsibilities, pursuant to 40 U.S.C. 524.

* * * * *

Homeless is defined in 42 U.S.C. 11302. This term is synonymous with ''Homeless Individual'' and ''Homeless Person.''

* * * * *

HUD website means a website maintained by HUD providing information about HUD, including any successor websites or technologies that are equally accessible and available to the public.

Landholding agency means the Federal department or agency with statutory authority to control property. For purposes of this part, the landholding agency is typically the Federal department or agency that had custody and accountability on behalf of the Federal government, of a certain piece of property at the time that such property was reported to HUD for a suitability determination pursuant to 42 U.S.C. 11411.

Lease means an agreement in writing between either HHS for surplus property or landholding agencies for underutilized and unutilized properties and the applicant giving rise to the relationship of lessor and lessee for the use of Federal property for a term of at least one year under the conditions set forth in the lease document.

Non-profit organization means an organization recognized as a non-profit by the State in which the organization operates, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain

a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

Permit means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time, usually one year or less, under terms and conditions determined by the landholding agency. A permit does not grant to the recipient an estate in land or any interest in the property.

Property means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to 40 U.S.C. 524.

Related personal property means any personal property that is located on real property and is either an integral part of or useful in the operation of that property or is determined by GSA to be otherwise related to the property.

* * * * *

Screen means the process by which GSA surveys Federal Executive agencies to determine if they have an interest in using excess Federal property to carry out a particular agency mission, and then surveys State, local and non-profit entities, to determine if any such entity has an interest in using surplus Federal property to carry out a specific public use.

State means a State of the United States, and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

Substantial noncompliance means failure to take corrective action as directed by HHS.

Suitable property means that HUD has determined that a certain property satisfies the criteria listed in § 581.6.

Surplus property means any excess property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by GSA.

Transfer document means a lease, deed, or permit transferring surplus, unutilized or underutilized property.

Transferee means an eligible entity that acquires Federal property by lease, deed, or permit.

* * * * *

■ 3. Revise § 581.2 to read as follows:

§ 581.2 Applicability.

(a) This part applies to Federal property that has been designated by Federal landholding agencies as unutilized, underutilized, excess or surplus and is therefore subject to the provisions of Title V of the McKinney Act, as amended (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this part (regardless of whether they may be unutilized or underutilized):

(1) Buildings and property at military installations that were approved for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101–510; 10 U.S.C. 2687 note) after October 25, 1994.

(2) Machinery and equipment not determined to be related personal property by the landholding agency or GSA or determined to be related personal property that the landholding agency or GSA chooses to dispose of separate from real property.

(3) Government-owned, contractor-operated machinery, equipment, land, and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.

(4) Properties subject to special legislation directing a particular action.

(5) Properties subject to a court order that, for any reason, precludes transfer for use to assist the homeless under the authority of 42 U.S.C. 11411.

(6) Property not subject to Federal Real Property Council reporting requirements in accordance with 40 U.S.C. 623(i).

(7) Mineral rights interests independent of surface rights.

(8) Air space interests independent of surface rights.

(9) Indian Reservation land subject to 40 U.S.C. 523.

(10) Property interests subject to reversion.

(11) Easements.

(12) Any building or fixture that is excess, or surplus, that is on land owned by a landholding agency, where the underlying land is not excess or surplus.

(13) Property purchased in whole or in part with Federal funds if title to the property is not held by a Federal landholding agency as defined in this part.

■ 4. In § 581.3 revise paragraphs (a), (b), and (d) to read as follows:

§ 581.3 Collecting the Information.

(a) *Canvass of landholding agencies.* On a quarterly basis, HUD will canvass each landholding agency to collect information about property described as unutilized, underutilized, excess or surplus in accordance with 40 U.S.C. 524; however, HUD will accept property information between canvasses. Each canvass will collect information on properties not previously reported, and about property reported previously where the status or classification of the property has changed, or improvements have been made to the property. HUD will request descriptive information on properties sufficient to make a reasonable determination, under the criteria described below, of the suitability of a property for use to assist the homeless. Landholding agencies must report property information to HUD using the property checklist developed by HUD for that purpose. Property checklists submitted in response to a canvass must be submitted to HUD within 25 days of receipt of the canvass.

(b) *Agency annual suitable property report.* By December 31 of each year, each landholding agency must notify HUD of the current availability status and classification of each property controlled by the agency that:

(1) was included in a list of suitable properties published that year by HUD, and

(2) remains available for application for use to assist the homeless or has become available for application during that year.

* * * * *

(d) *Change in status.* If the information provided on the property checklist changes subsequent to HUD's determination of suitability, including any improvements or other alterations to the physical condition of the land or the buildings on the property, and the property remains unutilized, underutilized, excess or surplus, the landholding agency must submit a revised property checklist in response to the next quarterly canvass. HUD will review for suitability and, if it differs from the previous determination, repost the property information on the HUD website. For example, property determined unsuitable due to extensive deterioration may have had improvements, or property determined suitable may subsequently be found to be extensively deteriorated.

■ 5. In § 581.4 revise paragraphs (a), (b), (d), (e), and (f) to read as follows:

§ 581.4 Suitability Determination.

(a) *Suitability determination.* Within 30 days after the receipt of a completed property checklist from landholding agencies either in response to a quarterly canvass, or between canvasses, HUD will determine, using the criteria set forth in § 581.6 whether a property is suitable for use to assist the homeless and report its determination to the landholding agency. Properties that are under lease, contract, license, or agreement by which a Federal agency retains a real property interest or which

are scheduled to become unutilized or underutilized will be reviewed for suitability no earlier than six months prior to the expected date when the property will become unutilized or underutilized.

(b) *Scope of suitability.* HUD will determine the suitability of a property for use to assist the homeless without regard to any particular use.

* * * * *

(d) *Record of suitability determination.* HUD will assign an identification number to each property reviewed for suitability. HUD will maintain a public record of the following:

(1) The suitability determination for a particular piece of property, and the reasons for that determination; and

(2) The landholding agency's response to the determination pursuant to the requirements of § 581.7(a).

(e) *Property determined unsuitable.* Property that is reviewed by HUD under this section and that is determined unsuitable for use to assist the homeless may not be made available for any other purpose for 20 days after publication of a notice of unsuitability on the HUD website.

(f) *Procedures for appealing unsuitability determinations.*

(1) To request review of a determination of unsuitability, a representative of the homeless must contact HUD, in writing, through the U.S. Mail, email, or the HUD website, or such other method as HUD may require, within 20 days of publication of notice of unsuitability.

(2) Requests for review of a determination of unsuitability may be made only by representatives of the homeless.

(3) The request for review must specify the grounds on which it is based, *i.e.,* HUD has improperly applied the criteria or HUD has relied on incorrect or incomplete information in making the determination (*e.g.,* that property is in a floodplain but not in a floodway).

(4) Upon receipt of a request to review a determination of unsuitability, HUD will notify the landholding agency or GSA that such a request has been made. The landholding agency or GSA shall have 20 days from receipt of the notice from HUD, or an extended period agreed to between HUD and the landholding agency or GSA, to provide any information pertinent to the review. The landholding agency or GSA must refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability. If the landholding agency or GSA fails to meet the deadline, HUD will move forward with the appeal review with the property information it already has and information submitted in the appeal request provided by the representative of the homeless.

(i) HUD will act on all requests for review within 30 days of receipt of the landholding agency's or GSA's response, or, if the landholding agency or GSA failed to meet the deadline, within 30 days of such deadline, and will notify the representative of the homeless and the landholding agency or GSA in writing of its decision.

(ii) If a property is determined suitable as a result of the review, HUD will request the landholding agency's or GSA's determination of availability pursuant to § 581.7, upon receipt of which HUD will promptly publish the determination on the HUD website.

■ 6. Amend § 581.5 by:

■ a. Revising paragraphs (b), (c), (e), (f), (g), and (h); and

■ b. Adding paragraph (i).

The revisions and additions read as follows:

§ 581.5 Real property reported excess to GSA.

(a) * * *

(b) If a landholding agency reports an excess property to GSA that HUD has already determined to be suitable for use to assist the homeless, GSA will screen the property pursuant to paragraph (h) of this section and will advise HUD of the availability of the property for use by the homeless as provided in paragraph (e) of this section. In lieu of the above, GSA may submit a new checklist to HUD and follow the procedures in paragraphs (c) through (h) of this section.

(c) If a landholding agency reports an excess property to GSA that has not been reviewed by HUD for homeless assistance suitability, GSA will complete a property checklist, based on information provided by the landholding agency, and will forward this checklist to HUD for a suitability determination. This checklist will reflect any change in classification, such as from unutilized or underutilized to excess or surplus.

* * * * *

(e) When GSA receives notification from HUD listing suitable excess properties, GSA will transmit a response to HUD within 45 days regarding the availability of the property. GSA's response will include the following for each identified property:

(1) A statement that there is no other compelling Federal need for the property and, therefore, the property will be determined surplus; or

(2) A statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(f) When GSA submits a checklist to HUD in accordance with paragraphs (b) and (c) of this section, the information regarding the availability of the property, as specified in paragraph (e)(1) and (2) of this section, may be included with the checklist if it is known at the time of submittal.

(g) When a surplus property is determined as suitable, confirmed as available by GSA, and notice is published on the HUD website, GSA will concurrently notify HHS, State and local government units, and known homeless assistance providers that have expressed interest in the particular property, and other organizations, as appropriate, concerning suitable properties.

(h) Upon submission of a Report of Excess to GSA, GSA may screen the property for Federal use. In addition, GSA may screen State and local governmental units and eligible non-profit organizations to determine interest in the property in accordance with current regulations. (See 41 CFR 102–75.1220, 102–75.255 and 102–75.350).

(i) The landholding agency will retain custody and accountability and will protect and maintain any property that is reported excess to GSA as provided in 41 CFR 102–75.965.

■ 7. Revise § 581.6 to read as follows:

§ 581.6 Suitability criteria.

(a) In general, properties will be determined suitable unless a property's characteristics include one or more of the following conditions:

(1) *Flammable or explosive hazards.* Property located less than an acceptable separation distance (under the standards in 24 CFR part 51, subpart C and the HUD Guidebook, ''Siting of HUD-Assisted Projects Near Hazardous Facilities'' or successor guidebook) from any stationary above-ground container or facility which stores, handles, or processes hazardous substances of an explosive or fire prone nature (excluding containers and facilities that are not hazards as defined in 24 CFR 51.201), unless HUD can determine during the review period based on information provided by the landholding agency that appropriate mitigating measures, as defined in 24 CFR 51.205, are already in place.

(2) *Coastal Barriers.* Property located in a System Unit, as defined at 16 U.S.C. 3502(7), under the Coastal Barrier

Resources Act, as amended (16 U.S.C. 3501 *et seq.*).

(3) *Site Safety Conditions.* Property with a documented and extensive condition(s) that represents a clear threat to personal physical safety or health. Such conditions may include, but are not limited to, significant contamination from hazardous substances, as defined by 42 U.S.C. 9601, periodic flooding, sinkholes, or landslides.

(b) In the cases below, properties will be determined unsuitable, unless the landholding agencies provide information to enable HUD to determine the property is suitable:

(1) *Inaccessible.* Property that is inaccessible, meaning that the property is not accessible by road (including property on small offshore islands) or is landlocked (*e.g.,* can be reached only by crossing private property and there is no established right or means of entry).

(2) *National Security.* Property located in an area to which the general public is denied access in the interest of national security (*e.g.,* where a special pass or security clearance is a condition of entry to the property), unless there is an alternative method to gain access without compromising national security.

(3) *Runway clear zones.* Property located within a runway clear zone or a military airfield clear zone.

(4) *Floodway.* Property located in a floodway, unless only an incidental portion of the property is in the floodway and that incidental portion does not affect the use of the remainder of the property to assist the homeless.

■ 8. Revise § 581.7 to read as follows:

§ 581.7 Determination of availability for suitable properties.

(a) Within 45 days after receipt of notification from HUD pursuant to § 581.4(a) that a property has been determined to be suitable, each landholding agency or GSA must transmit to HUD a statement of one of the following:

(1) In the case of unutilized or underutilized property—

(i) An intention to declare the property excess;

(ii) An intention to make the property available for use to assist the homeless; or

(iii) The reasons why the property cannot be declared excess or made available for use to assist the homeless. The reasons given must be different from those listed as suitability criteria in § 581.6.

(2) In the case of excess property which has been reported to GSA—

(i) A statement that there is no compelling Federal need for the property, and, therefore, the property will be determined surplus; or

(ii) A statement that there is a further and compelling Federal need for the property (including a full explanation of such need) and therefore, the property is not presently available for use to assist the homeless.

(b) [Reserved]

■ 9. Revise § 581.8 to read as follows:

§ 581.8 Public notice of determination.

(a) No later than 15 days after the most recent 45-day period has elapsed for receiving responses from the landholding agencies or GSA regarding availability, HUD will post on the HUD website a list of all properties reviewed, including a description of the property, its address, and classification. The following designations will be made:

(1) Properties that are suitable and available.

(2) Properties that are suitable and unavailable.

(3) Properties that are suitable and to be declared excess.

(4) Properties that are unsuitable.

(b) HUD will establish and maintain a toll-free number for the public to obtain specific information about properties in paragraph (a) of this section.

(c) No later than 15 days after the most recent 45-day period has elapsed for receiving responses from the landholding agencies or GSA regarding availability, HUD will transmit to the United States Interagency Council on Homelessness (USICH) a copy of the list of all properties in paragraph (a) of this section. The USICH will immediately distribute to all state and regional homeless coordinators area-relevant portions of the list. The USICH will encourage the state and regional homeless coordinators to disseminate this information widely.

(d) No later than February 15 of each year, HUD will publish in the **Federal Register** a list of all properties in the agency annual suitable property reports, reported to HUD pursuant to § 581.3(b).

(e) HUD will publish an annual list of properties determined suitable, but which agencies reported unavailable including the reasons such properties are not available.

■ 10. Revise § 581.9 to read as follows:

§ 581.9 General Policies of HHS.

(a) It is the policy of HHS to foster and assure maximum utilization of surplus property for homeless assistance purposes.

(b) Transfers may be made only to eligible organizations.

(c) Eligible organizations must be authorized, in the State in which the requested property is located, to carry out the activity for which it requests the property.

(d) Property will be requested for assignment only when HUD has made a final determination that the property is suitable for use to assist the homeless, GSA has determined it is available, and HHS has determined it is needed for homeless assistance purposes. The amount of real and related personal property to be transferred shall not exceed normal operating requirements of the applicant. Such property will not be requested for assignment unless it is needed at the time of application for homeless assistance purposes or will be so needed within the immediate or foreseeable future.

(e) Transfers by deed will be made only after the applicant's financial plan is approved and the applicant provides certification that the proposed program is permissible under all applicable State and local zoning restrictions, building codes, and similar limitations.

■ 11. Revise § 581.10 to read as follows:

§ 581.10 Expression of interest process.

(a) Properties published by HUD as suitable and available pursuant to § 581.8, for application for use to assist the homeless shall not be available for any other purpose for a period of 30 days beginning on the date of publication. Any eligible organization interested in any underutilized, unutilized, excess, or surplus property for use to assist the homeless must send to HHS a written expression of interest in that property within 30 days after the property has been published on the HUD website.

(b) Although a property may be determined suitable by HUD, HUD's determination does not mean a property is necessarily useable for the purpose(s) stated in the application, nor does it guarantee subsequent conveyance or transfer of a property.

(c) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 30-day holding period, such property may not be made available for any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

(d) The expression of interest should identify the specific property, briefly describe the proposed use, include the name of the organization, and indicate whether it is a public body or a private, non-profit organization. The expression of interest must be sent to HHS by email, *rpb@psc.hhs.gov,* or by mail at the following address: Department of

Health and Human Services, Program Manager, Federal Real Property Assistance Program, Real Estate Logistics and Operations, 5600 Fishers Lane, Rockville, Maryland 20852.

(1) HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a certain property.

(e) An expression of interest may be sent to and accepted by HHS any time after the 30-day holding period has expired only if the property remains available as determined by GSA or the landholding agency for application to assist the homeless. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if:

(1) There are no pending applications or written expressions of interest made under any law for use of the property for any purpose; and

(2) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

■ 12. Revise § 581.11 to read as follows:

§ 581.11 Application Process and Requirements.

(a) Upon receipt of an expression of interest, HHS will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following—

(1) *Acquisition type.* The applicant must state whether it is requesting acquisition of the property by lease, deed, or permit. A lease of one year, extendable at HHS's discretion, with the concurrence of GSA or the landholding agency, may be granted when the applicant's initial application is approved and the applicant's final application outlining the applicant's financial plan is found to be otherwise reasonable based on the criteria in paragraph (a)(7) of this section, but either a change in zoning is required or the financial plan proposes to utilize Low-Income Housing Tax Credits or other funding sources that typically take longer to process than other forms of financing.

(2) *Description of the applicant organization.* The applicant must document that it satisfies the definition of an ''eligible organization'' as specified in § 581.1. The applicant must document its authority to hold property for the proposed program and plan of use by providing a copy of its Articles of Organization, Charter, Certification from State of Non-Profit Organization status, or other appropriate document or citation. Private, non-profit organizations applying for the acquisition of a certain property must document that they are tax exempt under section 501(c)(3) of the Internal Revenue Code.

(3) *Description of the property desired.* The applicant must describe the listed property desired, including existing zoning. Applicants must certify that any modification(s) made to and use of the property will conform to all applicable building codes, and local use restrictions, or similar limitations. In accordance with GSA policy, determinations regarding parcelization are made prior to screening. Therefore, expressions of interest and applications for portions of listed properties will not be accepted.

(4) *Description of the proposed program.* The applicant must fully describe the proposed program and plan of use, including implementation plans.

(5) *Demonstration of need.* The applicant must demonstrate that the property is needed for homeless assistance purposes at the time of application and how the program will address the needs of the homeless population to be assisted. The applicant must demonstrate that it has an immediate need and ability to utilize all of the property for which it is applying.

(6) *Demonstrate that the property is suitable and adaptable for the proposed program and plan of use.* The applicant must fully explain why the property is suitable and describe what, if any, modification(s) will be made to the property before the program becomes operational.

(7) *Ability to finance and operate the proposed program.* If the applicant's initial application is approved, the applicant must set forth a reasonable plan to finance the approved program within 45 days of the initial approval. To be considered reasonable, the plan must, at a minimum:

(i) specifically describe all anticipated costs and sources of funding for the proposed program, including any property modifications;

(ii) be accompanied by supporting documentation which demonstrates that the proposed plan is likely to succeed;

(iii) demonstrate that the applicant is ready, willing, able, and authorized to assume care, custody, and maintenance of the property;

(iv) demonstrate that it has secured the necessary dedicated funds, or the ability to obtain such funds, to carry out the approved proposed program and plan of use for the property, including administrative expenses incident to the transfer by deed, lease, or permit;

(v) not diminish the value of the government's interest in the property nor impair the government's ability to revert and immediately dispose of the property free of any and all liens, encumbrances, or anything else which renders the property unmarketable. Deed transfers will only be made after an applicant demonstrates its financial plan adequately protects the United States' interest in the property; and

(vi) neither subject the Federal government's interest in the property to foreclosure nor impose obligations (*e.g.,* extended use agreements) on the Federal government.

(8) *Compliance with non-discrimination requirements.* Each applicant under this part must certify in writing that it will comply with all requirements of federal law and HHS policy, as amended, relating to non-discrimination, including the following: the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations; and, as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d–4) (Non-discrimination in Federally Assisted Programs) and implementing regulations; Section 1557 of the Affordable Care Act and implementing regulations; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations; the prohibitions against discrimination against otherwise qualified individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations; and Titles II or III of the Americans with Disabilities Act and implementing regulations, as applicable. The applicant must maintain the required records to demonstrate compliance with all applicable Federal laws and HHS policies related to non-discrimination.

(9) *Insurance and Indemnification.* The applicant must certify that it will insure the property against loss, damage, or destruction to protect the residual financial interest of the United States. The United States shall be named as an additional insured. Applicants must provide proof of insurance annually or upon request. Failure to maintain sufficient insurance may result in adverse action, including reversion of the property, at the discretion of HHS. Applicants, and all affiliated parties utilizing the property, as approved by HHS, must indemnify the United States and hold the United States harmless for all actions involving use of the property.

(10) *Historic preservation.* Where applicable, the applicant must provide information that will enable HHS to comply with Federal historic preservation requirements.

(11) *Environmental information.* The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant's proposal on the environment, in accordance with the instructions provided with the application packet. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency. However, the burden is on the applicant to submit sufficient documentation for analysis by HHS.

(12) *Local government notification.* The applicant must certify that it has notified the applicable unit of general local government responsible for sewer, water, police, and fire services, in writing, of its proposed program for the specific property and submit a copy of that written notification.

(13) *Zoning and Local Use Restrictions.* An applicant requesting a deed must certify that it has consulted all State and local governmental entities that will have jurisdiction over the property and that the proposed use will comply with all applicable zoning and local use restrictions, including local building code requirements. An applicant that applies for a lease or permit is not required to comply with local zoning requirements, as long as the Federal government retains ownership of the property. Deed transfers will only be made after the applicant has provided acceptable written proof that the proposed program is not in conflict with State or local zoning laws and restrictions, building codes, or similar limitations.

(b) *Scope of evaluations.* Due to the short time frame imposed by statute for evaluating applications, HHS's evaluation will, generally, be limited to the information contained in the application. It is therefore incumbent on applicants to provide thorough and complete applications.

(c) *Deadline for Initial Application.* An initial application must be received by HHS, at the above email address or other address indicated by HHS, within 75 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may, in its discretion, grant extensions authorized by 42 U.S.C. 11411(e)(2)(A), provided that the appropriate landholding agency or GSA concurs with the extension.

(d) *Evaluation of initial application.*

(1) Upon receipt of an initial application, HHS will review it for completeness, and, if incomplete, may, in its discretion, return it or ask the applicant to furnish any missing or additional required information prior to final evaluation of the initial application.

(2) HHS will evaluate each initial application within 10 days of receipt and will promptly advise the applicant of its decision. All initial applications will be reviewed on the basis of the following elements:

(i) *Services offered.* The extent and range of proposed services, such as meals, shelter, job training, and counseling.

(ii) *Need.* The demand for the program, the program's ability to satisfy unmet needs of the community, and the degree to which the available property will be fully utilized.

(iii) *Experience.* Demonstrated ability to provide the services, such as prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.

(e) *Deadline and Evaluation of Final Application.*

(1) If HHS approves an initial application, HHS will notify the applicant and provide the applicant 45 days in which to provide a final application. The final application shall set forth a reasonable plan to finance, as specified in § 581.11(a)(7), the approved program as set forth in the initial application. Applicants may not modify the approved initial application within its final application proposal.

(2) Upon receipt of the final application, HHS will make a determination within 15 days and notify the applicant.

(3) Unlike with initial applications, requests for extensions are not authorized by 42 U.S.C. 11411 and thus will not be considered for final applications.

(4) Applications are evaluated on a first-come, first-served basis. HHS will notify all organizations that have submitted expressions of interest for a particular property whether an earlier application received for that property has been approved.

(f) *Competing Applications.* If HHS receives more than one final application simultaneously, HHS will evaluate all applications and make a determination based on each application's merit. HHS will rank approved applications based on the elements listed in paragraph (a) of this section, and notify the landholding agency, or GSA, as appropriate, of the approved applicant.

■ 13. Revise § 581.12 to read as follows:

§ 581.12 Action on approved applications.

(a) Unutilized and underutilized properties.

(1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available. (Leases and permits will be for a period of at least one year unless the applicant requests a shorter term.)

(ii) The terms and conditions of the lease or permit document (except that a landholding agency may not charge any fees or impose any costs).

(b) Excess and surplus properties.

(1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for transfer. Requests to GSA for the assignment of surplus property to HHS for homeless assistance purposes will be based on the following conditions:

(i) HHS has a fully approved application for the property;

(ii) The applicant is able, willing, and authorized to assume immediate care, custody, and maintenance of the property;

(iii) The applicant is able, willing and authorized to pay the administrative expenses incident to the transfer; and

(iv) The applicant has secured the necessary funds, or had demonstrated the ability to obtain such funds, to carry out the approved program of use of the property.

(2) Upon receipt of an acceptable assignment, HHS will execute the transfer document in accordance with the procedures and requirements set out in this part and any other terms and conditions HHS and GSA determine are appropriate or necessary. Custody and accountability of the property will remain throughout the lease term with the landholding agency (*i.e.,* the agency which initially reported the property as excess) and throughout the deed term with the transferee.

(3) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs in deciding the disposition of surplus property. Priority of consideration will normally be given to uses to assist the homeless. However, both GSA and HHS may consider any competing request for the property made under 40 U.S.C. 550 that is so meritorious and compelling

that it outweighs the needs of the homeless.

(4) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance, the agency making the decision will transmit to the appropriate committees of Congress an explanatory statement which details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

■ 14. Add § 581.14 to read as follows:

§ 581.14 Surplus Property Transfer Documents.

(a) Surplus property may be conveyed to eligible organizations pursuant to 40 U.S.C. 550(d) and 42 U.S.C. 11411, as amended, by lease or deed, at the applicant's discretion.

(b) Transfers of surplus property for homeless assistance purposes are in exchange for the transferee's agreement to fully utilize the property for homeless assistance purposes in accordance with the terms specified in the transfer document.

(c) A transfer of surplus property for homeless purposes is subject to the disapproval of GSA within 30 days after notice is given to GSA of the proposed transfer.

(d) Surplus property transferred pursuant to this part will be disposed on an ''as is, where is,'' basis without warranty of any kind except as may be stated in the transfer document.

(e) Unless excepted by GSA in its assignment, the disposal of property includes mineral rights associated with the surface estate.

(f) Transfers of surplus property under this part will be made with the following general terms and conditions:

(1) For the period provided in the transfer document, the transferee shall utilize all the surplus property it receives solely and continuously for an approved program and plan of use, in accordance with 42 U.S.C. 11411 and these regulations, except that:

(i) The transferee has 12 months from the date of transfer to place the surplus property into use, if HHS did not approve in writing, construction of new facilities or major renovation of the property when it approved the final application;

(ii) The transferee has 36 months from the date of transfer to place the surplus property into use, if the transferee proposes construction of new facilities or major renovation of the property and HHS approves it in writing at the time it approves the final application;

(iii) If the applicable time limitation is not met, the transferee shall either commence payments in cash to the Federal government for each month thereafter during which the proposed use has not been implemented or take such other action as set forth at § 581.18 as is deemed appropriate by HHS. Such monthly payments shall be computed on the basis of the current fair market value of the property, as conveyed, at the time of the first payment and dividing it by 360 months. At HHS's discretion, the payment may be waived if the transferee makes a sufficient showing of continued progress to place the property into use or if an unforeseeable event occurs which prevents the property from being put into use within the applicable timeframe; and

(iv) HHS may permit use of surplus property at any time during the period of restriction by an entity other than the transferee in accordance with § 581.19.

(2) The transferee will not be permitted to encumber, sell, lease or sublease, rent, mortgage, or otherwise dispose of the property, or any part thereof, without the prior written authorization of HHS. In the event the property is sold, leased or subleased, encumbered, disposed of, or is used for purposes other than those set forth in an approved plan without the consent of HHS, all revenues or the reasonable value of other benefits received by the transferee directly or indirectly from such use, as determined by HHS, will be considered to have been received and held in trust by the transferee for the account of the United States and will be subject to the direction and control of HHS. The provisions of this paragraph shall not impair or affect the rights reserved to the United States in paragraph (f)(8) of this section, or the right of HHS to impose conditions to its consent.

(3) The transferee will file with HHS such reports on its maintenance and use of the transferred property and any other reports or information deemed necessary by HHS.

(4) The transferee shall pay all administrative costs incidental to the transfer, including but not limited to—transfer taxes; surveys; appraisals; title searches; the transferee's legal fees; and recordation expenses. Transferee is solely responsible for such costs and may not seek reimbursement from the Federal government for any reason.

(5) The transferee shall protect, preserve, maintain, and repair the property to ensure that the property remains in as good a condition as when received.

(6) The transferee shall protect the residual financial interest of the United States in the surplus property by insurance or such other means as HHS directs. Where loss or damage to the transferred property occurs, all proceeds from insurance shall be promptly used by the transferee for the purpose of repairing and restoring the property to its former condition or replacing it with equivalent or more suitable facilities. If not so used, there shall be paid to the United States that part of the insurance proceeds that is attributable to the Government's residual interest in the property lost, damaged, or destroyed. Further, transferee shall neither take any action nor allow any action which diminishes the residual financial interest of the United States.

(7) The transferee shall abide by all applicable Federal Civil Rights laws including those specified in the covenants and conditions contained in the transfer document, prohibiting the transferee from discriminating on the basis of, including but not limited to, race, color, national origin, religion, sex, familial status or disability in the use of the property.

(8) In the event of substantial noncompliance with any conditions of the deed as determined by HHS, whether caused by the legal or other inability of the transferee, its successors and assigns, to perform any of the obligations of the transfer document, the Federal government has an immediate right of reentry thereon, and to cause all right, title, and interest in and to the property to revert to the United States, and the transferee shall forfeit all right, title, and interest in and to the property. In such event, transferee shall execute a quitclaim deed and take all other actions necessary to return the property to the United States within ninety (90) days of a written request from the Federal government, extended only at the discretion of the Federal government. Transferee shall cooperate with the United States in the event of a reversion and agrees that the United States need not seek judicial intervention before exercising its right to revert, reenter and reconvey the property.

(9) In the event title is reverted to the United States for noncompliance or voluntarily reconveyed to the United States, the transferee shall, at the option of HHS, be required to: reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the transferee to adapt the property to the homeless use for which the property was transferred; and reimburse the United States for any costs incurred in reverting title to or

possession of the property, including reasonable attorneys' fees.

(10) With respect to leased property, in the event of substantial noncompliance with any of the conditions of the lease, as determined by HHS or the landholding agency, the right of occupancy and possession shall, at the option of HHS or the landholding agency, be terminated. In the event a leasehold is terminated by the United States for substantial noncompliance or is voluntarily surrendered, the lessee shall be required, at the option of HHS, to reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the lessee to adapt the property to the homeless use for which the property was leased. With respect to any termination of leasehold resulting from noncompliance, the United States, shall, in addition thereto, be reimbursed for such costs as may be incurred in recovering possession of the property, including reasonable attorneys' fees.

(11) Any other term or condition that HHS and GSA determine appropriate or necessary.

(12) With respect to surplus property transferred by deed, the terms and conditions including those in paragraph (f) of this section, apply for a period of thirty (30) years of use in accordance with a program of use approved in writing by HHS. The thirty-year (30) period may, in HHS's sole discretion, be extended or restarted in the event the property is not fully utilized or is retransferred to a successor entity. Expiration of the foregoing terms and conditions does not release the transferee from continuing compliance, as appropriate, with any conditions that may run with the land, *e.g.,* environmental conditions and/or historic preservation covenants. Such conditions will continue to be the responsibility of the transferee and successors.

(13) With respect to surplus property transferred by lease, the terms and conditions including those in paragraph (f) of this section, extend for the entire initial lease and for any subsequent renewal periods, unless specifically excluded in writing by HHS.

(g) Related personal property may be transferred or leased as a part of the realty and in accordance with real property procedures.

(h) Completion of Transfer Term and Reversion of Title. Transferees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the United States, the transferee will be responsible for removing improvements made to the property if directed to by the United States and, in such event, will be responsible for restoration of the property or the costs associated with restoring the property. If improvements made by the transferee are not voluntarily removed by the transferee and the United States consents, they will become the property of the United States. If the United States does not consent, the transferee shall reimburse the United States for reasonable costs of removal. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

(i) Transferees, by obtaining the consent of HHS, may abrogate the restrictions set forth in paragraph (f) of this section for all or any portion of the property in accordance with the provisions of § 581.20.

■ 15. Add § 581.15 to read as follows:

§ 581.15 Unsuitable properties.

The landholding agency or GSA will defer action to dispose of properties determined unsuitable for homeless assistance for 20 days after the date that notice of a property is posted on the HUD website. HUD will inform landholding agencies or GSA if appeal of an unsuitability determination is filed by a representative of the homeless pursuant to § 581.4(f). HUD will advise the agency to refrain from initiating disposal procedures until HUD has completed its reconsideration process regarding unsuitability. Thereafter, or if no appeal has been filed after 20 days, GSA or the appropriate landholding agency may proceed with disposal action in accordance with applicable law.

■ 16. Add § 581.16 to read as follows:

§ 581.16 Compliance with the National Environmental Policy Act of 1969 and other related Acts (environmental impact).

(a) HHS, prior to making a final decision to convey or lease, or to amend, reform, or grant an approval or release with respect to a previous conveyance or lease of, surplus property for homeless purposes, will act in accordance with applicable provisions of the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the National Archeological Data Preservation Act, and other related acts. No lease to use surplus property shall allow the lessee to make, or cause to be made, any irreversible change in the conditions of said property, and no lease shall be employed for the purpose of delaying or avoiding compliance with the requirements of these Acts, unless approved by the United States.

(b) Applicants shall be required to provide such information as HHS deems necessary to make an assessment of the impact of the proposed Federal action on the human environment. Materials contained in the applicant's official request, responses to a standard questionnaire prescribed by HHS, as well as other relevant information, will be used by HHS in making said assessment.

(c) If the assessment reveals:

(1) that the proposed Federal action involved properties of historical significance which are listed, or eligible for listing, in the National Register of Historic Places; or

(2) that a more than insignificant impact on the human environment is reasonably foreseeable as a result of the proposed action; or

(3) that the proposed Federal action could result in irreparable loss or destruction of archeologically significant items or data, HHS will, except as provided for in paragraph (d) of this section, prepare and distribute, or cause to be prepared or distributed, such notices and statements and obtain such approvals as are required by the above cited Acts.

(d) If a proposed action involves other Federal agencies in a sequence of actions, or a group of actions, directly related to each other because of their functional interdependence, HHS may enter into and support a lead agency agreement to designate a single lead agency which will assume primary responsibility for coordinating the assessment of environmental effects of proposed Federal actions, preparing and distributing such notices and statements, or obtaining such approvals, as are required by the above cited Acts. The procedures of the designated lead agency will be utilized in conducting the environmental assessment. In the event of disagreement between HHS and another Federal agency, HHS will reserve the right to abrogate the lead agency agreement with the other Federal agency.

■ 17. Add § 581.17 to read as follows:

§ 581.17 No applications approved.

(a) At the end of the 30-day holding period described in § 581.10(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a certain property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will

proceed with disposal in accordance with applicable law.

(b) Upon notice from HHS that all applications have been disapproved, or if no initial applications have been received within 75 days after an expression of interest, or no final application has been received within 45 days after an approved initial application, disposal may proceed in accordance with applicable law.

■ 18. Add § 581.18 to read as follows:

§ 581.18 Utilization and Enforcement.

(a) *Sanctions.* For instances of substantial noncompliance relating to surplus property transfers, HHS may impose, in its sole discretion, any or all of the following sanctions, as applicable:

(1) Where property or any portion thereof was not used or is not being used for the purposes for which transferred, or is sold, leased or subleased, encumbered, disposed of, or used for purposes other than those in the approved program and plan of use, without the prior written consent of HHS, HHS may require the transferee to—

(i) Place the property into immediate use for an approved purpose and extend the period of restriction in the transfer document for an additional term as determined by HHS;

(ii) Hold in trust all revenues and the reasonable value of other benefits received by the transferee directly or indirectly from that use for the United States subject to the direction and control of HHS;

(iii) Return title to such property to the United States or to relinquish any leasehold interest therein;

(iv) Abrogate the conditions and restrictions of the transfer, as set forth in § 581.20;

(v) Make cash payments to the United States, as directed by HHS, equivalent to the current fair market rental value of the surplus property, as transferred, for each month during which the program and plan of use has not been implemented and continues to not be implemented; or

(vi) Any other remedy that HHS determines appropriate or necessary.

(2) Where the transferee desires to place the property into temporary use to assist the homeless other than that for which the property was transferred, written approval from HHS must be obtained, and will be conditioned upon HHS's authority to permit the use and such terms as HHS may impose.

(3) If HHS or the landholding agency determines that a lessee or sublessee of a transferee is in substantial noncompliance with a term or condition of the lease, or if the lessee voluntarily surrenders the premises, HHS may require termination of the lease and impose sanctions described in paragraph (a)(1) of this section, as appropriate.

(b) *Reversion.* When HHS recommends reversion of the property for noncompliance, HHS will seek GSA's concurrence. GSA will respond to HHS's concurrence request within 30 days of its receipt. If GSA concurs, HHS will work with GSA to complete the reversion of the property. If GSA does not concur to the reversion recommendation, GSA will issue, to HHS, a written determination: stating the reason(s) for the disapproval; and acknowledging that HHS has recommended reversion and, therefore, the property is no longer within HHS's Title V program. The Federal government will implement a response to the noncompliance that is in its best interests.

■ 19. Add § 581.19 to read as follows:

§ 581.19 Other Uses.

(a) A transferee may permit the use of all or a portion of the surplus property by another eligible entity as described in § 581.1 for homeless assistance purposes, only upon those terms and conditions HHS determines appropriate, if:

(1) The transferee submits a written request to HHS explaining the purpose of and need for another eligible entity's use of the property, program plan, and other relevant information requested by HHS;

(2) HHS determines that the proposed use would not substantially limit the program and plan of use by the transferee and that the use will not unduly burden the Federal government;

(3) HHS's written consent is obtained by the transferee in advance;

(4) HHS approves the use instrument in advance and in writing; and

(5) HHS advises GSA and there is no disapproval by GSA within thirty (30) days.

(b) [Reserved].

■ 20. Add § 581.20 to read as follows:

§ 581.20 Abrogation.

(a) HHS may abrogate the conditions and restrictions in the transfer document if:

(1) The transferee submits to HHS a written request that HHS abrogate the conditions and restrictions in the transfer document as to all or any portion of the surplus property;

(2) HHS determines the terms and conditions of the proposed abrogation and determines that the proposed abrogation is in the best interest of the United States; and

(3) HHS transmits the abrogation request to GSA and there is no disapproval by GSA within 30 days after notice is given. If GSA disapproves, GSA will state, in writing, to HHS the reason(s) for the disapproval.

(b) HHS abrogates the conditions and restrictions in the transfer document only upon receipt of the appropriate consideration, including cash payment, to the United States, as directed by HHS, which is based on the formula contained in the transfer document, and any other terms and conditions HHS deems appropriate to protect the interest of the United States.

■ 21. Add § 581.21 to read as follows:

§ 581.21 Compliance Inspections and Reports.

Transferees are required to allow HHS to conduct compliance inspections and to submit such compliance reports and actions as are deemed necessary by HHS. At a minimum, the transferee will be required to submit an annual utilization report regarding the operation and maintenance of the property, including current images of the entire property and such information as HHS shall require.

■ 22. Add § 581.22 to read as follows:

§ 581.22 No Right of Administrative Review for Agency Decisions.

There is no right to administrative review within HHS, including requests for reconsideration or appeal, of agency decisions on applications and other discretionary decisions.

General Services Administration

Accordingly, for the reasons stated above, GSA proposes to amend 41 CFR part 102–75 subpart H as follows:

PART 102–75—REAL PROPERTY DISPOSAL

■ 23. The authority citation for 41 CFR part 102–75 subpart H continues to read as follows:

Authority: 40 U.S.C. 121(c), 521–523, 541–559; E.O. 12512, 50 FR 18453, 3 CFR, 1985 Comp., p. 340.

■ 24. Revise part 102–75 subpart H to read as follows:

Subpart H—Use of Federal Real Property to Assist the Homeless

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Definitions

§ 102–75.1160 What definitions apply to this subpart?

The following definitions are also pursuant to 24 CFR part 581.1 and 45 CFR part 12a.1.

Applicant means any eligible organization which has submitted an application to the Department of Health and Human Services to obtain use of a certain suitable property to assist the homeless.

Checklist or property checklist means the form developed by HUD for use by landholding agencies to report the information to be used by HUD in making determinations of suitability.

Classification means a property's designation as unutilized, underutilized, excess, or surplus.

Day means one calendar day, including weekends and holidays.

Eligible organization means a State or local government agency, or a private, non-profit organization that provides assistance to the homeless, and that is authorized by its charter or by State law to enter into an agreement with the Federal government for use of property for the purposes of this subpart. Eligible organizations that are private, non-profit organizations interested in applying for suitable property must be tax exempt under section 501(c)(3) of the Internal Revenue Code at the time of application and remain tax exempt throughout the time the Federal government retains a reversionary interest in the property.

Excess property means any property under the control of a Federal Executive agency that the head of the agency determines is not required to meet the agency's needs or responsibilities, pursuant to 40 U.S.C. 524.

GSA means the General Services Administration.

HHS means the Department of Health and Human Services.

Homeless is defined in 42 U.S.C. 11302. This term is synonymous with ''Homeless Individual'' and ''Homeless Person.''

HUD means the Department of Housing and Urban Development.

HUD website means a website maintained by HUD providing information about HUD, including any successor websites or technologies that are equally accessible and available to the public.

Landholding agency means the Federal department or agency with statutory authority to control property. For purposes of this subpart, the landholding agency is typically the Federal department or agency that had custody and accountability on behalf of the Federal government, of a certain piece of property at the time that such property was reported to HUD for a suitability determination pursuant to 42 U.S.C. 11411.

Lease means an agreement in writing between either HHS for surplus property or landholding agencies for underutilized and unutilized properties and the applicant giving rise to the relationship of lessor and lessee for the use of Federal property for a term of at least one year under the conditions set forth in the lease document.

Non-profit organization means an organization recognized as a non-profit by the State in which the organization operates, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

Permit means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time, usually one year or less, under terms and conditions determined by the landholding agency. A permit does not grant to the recipient an estate in land or any interest in the property.

Property means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to 40 U.S.C. 524.

Related personal property means any personal property that is located on real property and is either an integral part of or useful in the operation of that property or is determined by GSA to be otherwise related to the property.

Representative of the homeless means a State or local government agency, or private nonprofit organization that provides, or proposes to provide, services to the homeless.

Screen means the process by which GSA surveys Federal Executive agencies to determine if they have an interest in using excess Federal property to carry out a particular agency mission, and then surveys State, local and non-profit entities, to determine if any such entity has an interest in using surplus Federal property to carry out a specific public use.

State means a State of the United States, and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

Substantial noncompliance means failure to take corrective action as directed by HHS.

Suitable property means that HUD has determined that a certain property satisfies the criteria listed in § 102–75.1165.

Surplus property means any excess property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by GSA.

Transfer document means a lease, deed, or permit transferring surplus, unutilized or underutilized property.

Transferee means an eligible entity that acquires Federal property by lease, deed, or permit.

Underutilized means an entire property or portion thereof, with or without improvements which is used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property.

Unsuitable property means that HUD has determined that a particular property does not satisfy the criteria in § 102–75.1165.

Unutilized property means an entire property or portion thereof, with or without improvements, not occupied for current program purposes for the accountable executive agency or occupied in caretaker status only.

Applicability

§ 102–75.1161 What is the applicability of this subpart?

(a) This subpart applies to Federal property that has been designated by Federal landholding agencies as unutilized, underutilized, excess or surplus and is therefore subject to the provisions of Title V of the McKinney Act, as amended (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this subpart (regardless of whether they may be unutilized or underutilized):

(1) Buildings and property at military installations that were approved for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101–510; 10 U.S.C. 2687 note) after October 25, 1994.

(2) Machinery and equipment not determined to be related personal property by the landholding agency or GSA or determined to be related personal property that the landholding agency or GSA chooses to dispose of separate from real property.

(3) Government-owned, contractor-operated machinery, equipment, land, and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.

(4) Properties subject to special legislation directing a particular action.

(5) Properties subject to a court order that, for any reason, precludes transfer for use to assist the homeless under the authority of 42 U.S.C. 11411.

(6) Property not subject to Federal Real Property Council reporting requirements in accordance with 40 U.S.C. 623(i).

(7) Mineral rights interests independent of surface rights.

(8) Air space interests independent of surface rights.

(9) Indian Reservation land subject to 40 U.S.C. 523.

(10) Property interests subject to reversion.

(11) Easements.

(12) Any building or fixture that is excess, or surplus, that is on land owned by a landholding agency, where the underlying land is not excess or surplus.

(13) Property purchased in whole or in part with Federal funds if title to the property is not held by a Federal landholding agency as defined in this subpart.

Collecting the Information

§ 102–75.1162 How will information be collected?

(a) *Canvass of landholding agencies.* On a quarterly basis, HUD will canvass each landholding agency to collect information about property described as unutilized, underutilized, excess or surplus in accordance with 40 U.S.C. 524; however, HUD will accept property information between canvasses. Each canvass will collect information on properties not previously reported, and about property reported previously where the status or classification of the property has changed, or improvements have been made to the property. HUD will request descriptive information on properties sufficient to make a reasonable determination, under the criteria described below, of the suitability of a property for use to assist the homeless. Landholding agencies must report property information to HUD using the property checklist developed by HUD for that purpose. Property checklists submitted in response to a canvass must be submitted to HUD within 25 days of receipt of the canvass.

(b) *Agency annual suitable property report.* By December 31 of each year, each landholding agency must notify HUD of the current availability status and classification of each property controlled by the agency that:

(1) was included in a list of suitable properties published that year by HUD, and

(2) remains available for application for use to assist the homeless or has become available for application during that year.

(c) *GSA inventory.* HUD will collect information, in the same manner as described in paragraph (a) of this section, from GSA regarding property that is in GSA's current inventory of excess or surplus property.

(d) *Change in status.* If the information provided on the property checklist changes subsequent to HUD's determination of suitability, including any improvements or other alterations to the physical condition of the land or the buildings on the property, and the property remains unutilized, underutilized, excess or surplus, the landholding agency must submit a revised property checklist in response to the next quarterly canvass. HUD will review for suitability and, if it differs from the previous determination, repost the property information on the HUD website. For example, property determined unsuitable due to extensive deterioration may have had improvements, or property determined suitable may subsequently be found to be extensively deteriorated.

Suitability Determination

§ 102–75.1163 Who issues the suitability determination?

(a) *Suitability determination.* Within 30 days after the receipt of a completed property checklist from landholding agencies either in response to a quarterly canvass, or between canvasses, HUD will determine, using the criteria set forth in § 581.6 whether a property is suitable for use to assist the homeless and report its determination to the landholding agency. Properties that are under lease, contract, license, or agreement by which a Federal agency retains a real property interest or which are scheduled to become unutilized or underutilized will be reviewed for suitability no earlier than six months prior to the expected date when the property will become unutilized or underutilized.

(b) *Scope of suitability.* HUD will determine the suitability of a property for use to assist the homeless without regard to any particular use.

(c) *Environmental information.* HUD will evaluate the environmental

information contained in property checklists forwarded to HUD by the landholding agencies solely for the purpose of determining suitability of properties under the criteria in § 102–75.1166

(d) *Record of suitability determination.* HUD will assign an identification number to each property reviewed for suitability. HUD will maintain a public record of the following:

(1) The suitability determination for a particular piece of property, and the reasons for that determination; and

(2) The landholding agency's response to the determination pursuant to the requirements of § 102–75.1166(a).

(e) *Property determined unsuitable.* Property that is reviewed by HUD under this section and that is determined unsuitable for use to assist the homeless may not be made available for any other purpose for 20 days after publication of a notice of unsuitability on the HUD website.

(f) *Procedures for appealing unsuitability determinations.*

(1) To request review of a determination of unsuitability, a representative of the homeless must contact HUD, in writing, through the U.S. Mail, email, or the HUD website, or such other method as HUD may require, within 20 days of publication of notice of unsuitability.

(2) Requests for review of a determination of unsuitability may be made only by representatives of the homeless.

(3) The request for review must specify the grounds on which it is based, *i.e.,* HUD has improperly applied the criteria or HUD has relied on incorrect or incomplete information in making the determination (*e.g.,* that property is in a floodplain but not in a floodway).

(4) Upon receipt of a request to review a determination of unsuitability, HUD will notify the landholding agency or GSA that such a request has been made. The landholding agency or GSA shall have 20 days from receipt of the notice from HUD, or an extended period agreed to between HUD and the landholding agency or GSA, to provide any information pertinent to the review. The landholding agency or GSA must refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability. If the landholding agency or GSA fails to meet the deadline, HUD will move forward with the appeal review with the property information it already has and information submitted in the appeal request provided by the representative of the homeless.

(i) HUD will act on all requests for review within 30 days of receipt of the landholding agency's or GSA's response, or, if the landholding agency or GSA failed to meet the deadline, within 30 days of such deadline, and will notify the representative of the homeless and the landholding agency or GSA in writing of its decision.

(ii) If a property is determined suitable as a result of the review, HUD will request the landholding agency's or GSA's determination of availability pursuant to § 102–75.1166, upon receipt of which HUD will promptly publish the determination on the HUD website.

Real Property Reported Excess to GSA

§ 102–75.1164 For the purposes of this subpart, what is the policy concerning real property reported excess to GSA?

(a) Each landholding agency must submit a report to GSA of properties it determines excess. Each landholding agency must also provide a copy of HUD's suitability determination, if any, including HUD's identification number for the property.

(b) If a landholding agency reports an excess property to GSA that HUD has already determined to be suitable for use to assist the homeless, GSA will screen the property pursuant to paragraph (h) of this section and will advise HUD of the availability of the property for use by the homeless as provided in paragraph (e) of this section. In lieu of the above, GSA may submit a new checklist to HUD and follow the procedures in paragraphs (c) through (h) of this section.

(c) If a landholding agency reports an excess property to GSA that has not been reviewed by HUD for homeless assistance suitability, GSA will complete a property checklist, based on information provided by the landholding agency, and will forward this checklist to HUD for a suitability determination. This checklist will reflect any change in classification, such as from unutilized or underutilized to excess or surplus.

(d) Within 30 days after GSA's submission, HUD will advise GSA of the suitability determination.

(e) When GSA receives notification from HUD listing suitable excess properties, GSA will transmit a response to HUD within 45 days. GSA's response will include the following for each identified property:

(1) A statement that there is no other compelling Federal need for the property and, therefore, the property will be determined surplus; or

(2) A statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(f) When GSA submits a checklist to HUD in accordance with paragraphs (b) and (c) of this section, the information regarding the availability of the property, as specified in paragraph (e)(1) and (2) of this section, may be included with the checklist if it is known at the time of submittal.

(g) When a surplus property is determined as suitable, confirmed as available by GSA, and notice is published on the HUD website, GSA will concurrently notify HHS, State and local government units, and known homeless assistance providers that have expressed interest in the particular property, and other organizations, as appropriate, concerning suitable properties.

(h) Upon submission of a Report of Excess to GSA, GSA may screen the property for Federal use. In addition, GSA may screen State and local governmental units and eligible non-profit organizations to determine interest in the property in accordance with current regulations. (See 41 CFR 102–75.1220, 102–75.255 and 102–75.350).

(i) The landholding agency will retain custody and accountability and will protect and maintain any property that is reported excess to GSA as provided in 41 CFR 102–75.965.

Suitability Criteria

§ 102–75.1165 What are suitability criteria?

(a) In general, properties will be determined suitable unless a property's characteristics include one or more of the following conditions:

(1) *Flammable or explosive hazards.* Property located less than an acceptable separation distance (under the standards in 24 CFR part 51, subpart C and the HUD Guidebook, ''Siting of HUD-Assisted Projects Near Hazardous Facilities'' or successor guidebook) from any stationary aboveground container or facility which stores, handles, or processes hazardous substances of an explosive or fire prone nature (excluding containers and facilities that are not hazards as defined in 24 CFR 51.201), unless HUD can determine during the review period based on information provided by the landholding agency that appropriate mitigating measures, as defined in 24 CFR 51.205, are already in place.

(2) *Coastal Barriers.* Property located in a System Unit, as defined at 16 U.S.C. 3502(7), under the Coastal Barrier Resources Act, as amended (16 U.S.C. 3501 *et seq.*).

(3) *Site Safety Conditions.* Property with a documented and extensive condition(s) that represents a clear threat to personal physical safety or health. Such conditions may include, but are not limited to, significant contamination from hazardous substances, as defined by 42 U.S.C. 9601, periodic flooding, sinkholes, or landslides.

(b) In the cases below, properties will be determined unsuitable, unless the landholding agencies provide information to enable HUD to determine the property is suitable:

(1) *Inaccessible.* Property that is inaccessible, meaning that the property is not accessible by road (including property on small offshore islands) or is landlocked (*e.g.,* can be reached only by crossing private property and there is no established right or means of entry).

(2) *National Security.* Property located in an area to which the general public is denied access in the interest of national security (*e.g.,* where a special pass or security clearance is a condition of entry to the property), unless there is an alternative method to gain access without compromising national security.

(3) *Runway clear zones.* Property located within a runway clear zone or a military airfield clear zone.

(4) *Floodway.* Property located in a floodway, unless only an incidental portion of the property is in the floodway and that incidental portion does not affect the use of the remainder of the property to assist the homeless.

Determination of Availability

§ 102–75. 1166 What is the policy concerning determination of availability statements for suitable properties?

(a) Within 45 days after receipt of notification from HUD pursuant to § 102–75.1162(a) that a property has been determined to be suitable, each landholding agency or GSA must transmit to HUD a statement of one of the following:

(1) In the case of unutilized or underutilized property—

(i) An intention to declare the property excess;

(ii) An intention to make the property available for use to assist the homeless; or

(iii) The reasons why the property cannot be declared excess or made available for use to assist the homeless. The reasons given must be different from those listed as suitability criteria in § 102–75.1165.

(2) In the case of excess property which has been reported to GSA—

(i) A statement that there is no compelling Federal need for the property, and, therefore, the property will be determined surplus; or

(ii) A statement that there is a further and compelling Federal need for the property (including a full explanation of such need) and therefore, the property is not presently available for use to assist the homeless.

(b) [Reserved]

Public Notice of Determination

§ 102–75.1167 What is the policy concerning making public the notice of determination?

(a) No later than 15 days after the most recent 45-day period has elapsed for receiving responses from the landholding agencies or GSA regarding availability, HUD will post on the HUD website a list of all properties reviewed, including a description of the property, its address, and classification. The following designations will be made:

(1) Properties that are suitable and available.

(2) Properties that are suitable and unavailable.

(3) Properties that are suitable and to be declared excess.

(4) Properties that are unsuitable.

(b) HUD will establish and maintain a toll-free number for the public to obtain specific information about properties in paragraph (a) of this section.

(c) No later than 15 days after the most recent 45-day period has elapsed for receiving responses from the landholding agencies or GSA regarding availability, HUD will transmit to the United States Interagency Council on Homelessness (USICH) a copy of the list of all properties in paragraph (a) of this section. The USICH will immediately distribute to all state and regional homeless coordinators area-relevant portions of the list. The USICH will encourage the state and regional homeless coordinators to disseminate this information widely.

(d) No later than February 15 of each year, HUD will publish in the **Federal Register** a list of all properties in the agency annual suitable property reports, reported to HUD pursuant to § 102–75.1162(b).

(e) HUD will publish an annual list of properties determined suitable, but which agencies reported unavailable including the reasons such properties are not available.

General Policies of HHS

§ 102–75.1168 What are the general policies of HHS regarding the transfer of properties to assist the homeless?

(a) It is the policy of HHS to foster and assure maximum utilization of surplus property for homeless assistance purposes.

(b) Transfers may be made only to eligible organizations.

(c) Eligible organizations must be authorized, in the State in which the requested property is located, to carry out the activity for which it requests the property.

(d) Property will be requested for assignment only when HUD has made a final determination that the property is suitable for use to assist the homeless, GSA has determined it is available, and HHS has determined it is needed for homeless assistance purposes. The amount of real and related personal property to be transferred shall not exceed normal operating requirements of the applicant. Such property will not be requested for assignment unless it is needed at the time of application for homeless assistance purposes or will be so needed within the immediate or foreseeable future.

(e) Transfers by deed will be made only after the applicant's financial plan is approved and the applicant provides certification that the proposed program is permissible under all applicable State and local zoning restrictions, building codes, and similar limitations.

Expression of Interest Process

§ 102–75.1169 How may eligible organizations express interest in properties to assist the homeless?

(a) Properties published by HUD as suitable and available pursuant to § 102–75.1167, for application for use to assist the homeless shall not be available for any other purpose for a period of 30 days beginning on the date of publication. Any eligible organization interested in any underutilized, unutilized, excess, or surplus property for use to assist the homeless must send to HHS a written expression of interest in that property within 30 days after the property has been published on the HUD website.

(b) Although a property may be determined suitable by HUD, HUD's determination does not mean a property is necessarily useable for the purpose(s) stated in the application, nor does it guarantee subsequent conveyance or transfer of a property.

(c) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 30-day holding period, such property may not be made available for any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

(d) The expression of interest should identify the specific property, briefly describe the proposed use, include the name of the organization, and indicate whether it is a public body or a private, non-profit organization. The expression of interest must be sent to HHS by email, *rpb@psc.hhs.gov,* or by mail at the following address: Department of Health and Human Services, Program Manager, Federal Real Property Assistance Program, Real Estate Logistics and Operations, 5600 Fishers Lane, Rockville, Maryland 20852.

(1) HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a certain property.

(e) An expression of interest may be sent to and accepted by HHS any time after the 30-day holding period has expired only if the property remains available as determined by GSA or the landholding agency for application to assist the homeless. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if:

(1) There are no pending applications or written expressions of interest made under any law for use of the property for any purpose; and

(2) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

Application Process and Requirements

§ 102–75.1170 How may eligible organizations apply for the use of properties to assist the homeless?

(a) Upon receipt of an expression of interest, HHS will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following—

(1) *Acquisition type.* The applicant must state whether it is requesting acquisition of the property by lease, deed, or permit. A lease of one year, extendable at HHS's discretion, with the concurrence of GSA or the landholding agency, may be granted when the applicant's initial application is approved and the applicant's final application outlining the applicant's financial plan is found to be otherwise reasonable based on the criteria in paragraph (a)(7) of this section, but either a change in zoning is required or the financial plan proposes to utilize Low-Income Housing Tax Credits or other funding sources that typically take longer to process than other forms of financing.

(2) *Description of the applicant organization.* The applicant must document that it satisfies the definition of an ''eligible organization'' as specified in § 102–75.1160. The applicant must document its authority to hold property for the proposed program and plan of use by providing a copy of its Articles of Organization, Charter, Certification from State of Non-Profit Organization status, or other appropriate document or citation. Private, non-profit organizations applying for the acquisition of a certain property must document that they are tax exempt under section 501(c)(3) of the Internal Revenue Code.

(3) *Description of the property desired.* The applicant must describe the listed property desired, including existing zoning. Applicants must certify that any modification(s) made to and use of the property will conform to all applicable building codes, and local use restrictions, or similar limitations. In accordance with GSA policy, determinations regarding parcelization are made prior to screening. Therefore, expressions of interest and applications for portions of listed properties will not be accepted.

(4) *Description of the proposed program.* The applicant must fully describe the proposed program and plan of use, including implementation plans.

(5) *Demonstration of need.* The applicant must demonstrate that the property is needed for homeless assistance purposes at the time of application and how the program will address the needs of the homeless population to be assisted. The applicant must demonstrate that it has an immediate need and ability to utilize all of the property for which it is applying.

(6) *Demonstrate that the property is suitable and adaptable for the proposed program and plan of use.* The applicant must fully explain why the property is suitable and describe what, if any, modification(s) will be made to the property before the program becomes operational.

(7) *Ability to finance and operate the proposed program.* If the applicant's initial application is approved, the applicant must set forth a reasonable plan to finance the approved program within 45 days of the initial approval. To be considered reasonable, the plan must, at a minimum:

(i) specifically describe all anticipated costs and sources of funding for the proposed program, including any property modifications;

(ii) be accompanied by supporting documentation which demonstrates that the proposed plan is likely to succeed;

(iii) demonstrate that the applicant is ready, willing, able, and authorized to assume care, custody, and maintenance of the property;

(iv) demonstrate that it has secured the necessary dedicated funds, or the ability to obtain such funds, to carry out the approved proposed program and plan of use for the property, including administrative expenses incident to the transfer by deed, lease, or permit;

(v) not diminish the value of the government's interest in the property nor impair the government's ability to revert and immediately dispose of the property free of any and all liens, encumbrances, or anything else which renders the property unmarketable. Deed transfers will only be made after an applicant demonstrates its financial plan adequately protects the United States' interest in the property; and

(vi) neither subject the Federal government's interest in the property to foreclosure nor impose obligations (*e.g.,* extended use agreements) on the Federal government.

(8) *Compliance with non-discrimination requirements.* Each applicant under this part must certify in writing that it will comply with all requirements of federal law and HHS policy, as amended, relating to non-discrimination, including the following: the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations; and, as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d–4) (Non-discrimination in Federally Assisted Programs) and implementing regulations; Section 1557 of the Affordable Care Act and implementing regulations; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations; and the prohibitions against otherwise qualified individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations. The applicant must maintain the required records to demonstrate compliance with all applicable Federal laws and HHS policies related to non-discrimination.

(9) *Insurance and Indemnification.* The applicant must certify that it will insure the property against loss, damage, or destruction to protect the residual financial interest of the United States. The United States shall be named as an additional insured. Applicants must provide proof of insurance annually or upon request. Failure to maintain sufficient insurance may result in adverse action, including

reversion of the property, at the discretion of HHS. Applicants, and all affiliated parties utilizing the property, as approved by HHS, must indemnify the United States and hold the United States harmless for all actions involving use of the property.

(10) *Historic preservation.* Where applicable, the applicant must provide information that will enable HHS to comply with Federal historic preservation requirements.

(11) *Environmental information.* The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant's proposal on the environment, in accordance with the instructions provided with the application packet. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency. However, the burden is on the applicant to submit sufficient documentation for analysis by HHS.

(12) *Local government notification.* The applicant must certify that it has notified the applicable unit of general local government responsible for sewer, water, police, and fire services, in writing, of its proposed program for the specific property and submit a copy of that written notification.

(13) *Zoning and Local Use Restrictions.* An applicant requesting a deed must certify that it has consulted all State and local governmental entities that will have jurisdiction over the property and that the proposed use will comply with all applicable zoning and local use restrictions, including local building code requirements. An applicant that applies for a lease or permit is not required to comply with local zoning requirements, as long as the Federal government retains ownership of the property. Deed transfers will only be made after the applicant has provided acceptable written proof that the proposed program is not in conflict with State or local zoning laws and restrictions, building codes, or similar limitations.

(b) *Scope of evaluations.* Due to the short time frame imposed by statute for evaluating applications, HHS's evaluation will, generally, be limited to the information contained in the application. It is therefore incumbent on applicants to provide thorough and complete applications.

(c) *Deadline for Initial Application.* An initial application must be received by HHS, at the above email address or other address indicated by HHS, within 75 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may, in its discretion, grant extensions authorized by 42 U.S.C. 11411(e)(2)(A), provided that the appropriate landholding agency or GSA concurs with the extension.

(d) *Evaluation of initial application.*

(1) Upon receipt of an initial application, HHS will review it for completeness, and, if incomplete, may, in its discretion, return it or ask the applicant to furnish any missing or additional required information prior to final evaluation of the initial application.

(2) HHS will evaluate each initial application within 10 days of receipt and will promptly advise the applicant of its decision. All initial applications will be reviewed on the basis of the following elements:

(i) *Services offered.* The extent and range of proposed services, such as meals, shelter, job training, and counseling.

(ii) *Need.* The demand for the program, the program's ability to satisfy unmet needs of the community, and the degree to which the available property will be fully utilized.

(iii) *Experience.* Demonstrated ability to provide the services, such as prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.

(e) *Deadline and Evaluation of Final Application.*

(1) If HHS approves an initial application, HHS will notify the applicant and provide the applicant 45 days in which to provide a final application. The final application shall set forth a reasonable plan to finance, as specified in § 102–75.1170(a)(6), the approved program as set forth in the initial application. Applicants may not modify the approved initial application within its final application proposal.

(2) Upon receipt of the final application, HHS will make a determination within 15 days and notify the applicant.

(3) Unlike with initial applications, requests for extensions are not authorized by 42 U.S.C. 11411 and thus will not be considered for final applications.

(4) Applications are evaluated on a first-come, first-served basis. HHS will notify all organizations that have submitted expressions of interest for a particular property whether an earlier application received for that property has been approved.

(f) *Competing Applications.* If HHS receives more than one final application simultaneously, HHS will evaluate all applications and make a determination based on each application's merit. HHS will rank approved applications based on the elements listed in paragraph (a) of this section, and notify the landholding agency, or GSA, as appropriate, of the approved applicant.

Action on Approved Applications

§ 102–75.1171 What action must be taken on approved applications?

(a) Unutilized and underutilized properties.

(1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available. (Leases and permits will be for a period of at least one year unless the applicant requests a shorter term.)

(ii) The terms and conditions of the lease or permit document (except that a landholding agency may not charge any fees or impose any costs).

(b) Excess and surplus properties.

(1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for transfer. Requests to GSA for the assignment of surplus property to HHS for homeless assistance purposes will be based on the following conditions:

(i) HHS has a fully approved application for the property;

(ii) The applicant is able, willing, and authorized to assume immediate care, custody, and maintenance of the property;

(iii) The applicant is able, willing and authorized to pay the administrative expenses incident to the transfer; and

(iv) The applicant has secured the necessary funds, or had demonstrated the ability to obtain such funds, to carry out the approved program of use of the property.

(2) Upon receipt of an acceptable assignment, HHS will execute the transfer document in accordance with the procedures and requirements set out in this subpart and any other terms and conditions HHS and GSA determines are appropriate or necessary. Custody and accountability of the property will remain throughout the lease term with the landholding agency (*i.e.,* the agency which initially reported the property as excess) and throughout the deed term with the transferee.

(3) Prior to assignment to HHS, GSA may consider other Federal uses and

other important national needs in deciding the disposition of surplus property. Priority of consideration will normally be given to uses to assist the homeless. However, both GSA and HHS may consider any competing request for the property made under 40 U.S.C. 550 that is so meritorious and compelling that it outweighs the needs of the homeless.

(4) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance, the agency making the decision will transmit to the appropriate committees of Congress an explanatory statement which details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

Surplus Property Transfer Documents

§ 102–75.1172 What documents are used for the transfer of surplus Federal real property for use to assist the homeless?

(a) Surplus property may be conveyed to eligible organizations pursuant to 40 U.S.C. 550(d) and 42 U.S.C. 11411, as amended, by lease or deed, at the applicant's discretion.

(b) Transfers of surplus property for homeless assistance purposes are in exchange for the transferee's agreement to fully utilize the property for homeless assistance purposes in accordance with the terms specified in the transfer document.

(c) A transfer of surplus property for homeless purposes is subject to the disapproval of GSA within 30 days after notice is given to GSA of the proposed transfer.

(d) Surplus property transferred pursuant to this subpart will be disposed on an ''as is, where is,'' basis without warranty of any kind except as may be stated in the transfer document.

(e) Unless excepted by GSA in its assignment, the disposal of property includes mineral rights associated with the surface estate.

(f) Transfers of surplus property under this subpart will be made with the following general terms and conditions:

(1) For the period provided in the transfer document, the transferee shall utilize all the surplus property it receives solely and continuously for an approved program and plan of use, in accordance with 42 U.S.C. 11411 and these regulations, except that:

(i) The transferee has 12 months from the date of transfer to place the surplus property into use, if HHS did not approve in writing, construction of new facilities or major renovation of the property when it approved the final application;

(ii) The transferee has 36 months from the date of transfer to place the surplus property into use, if the transferee proposes construction of new facilities or major renovation of the property and HHS approves it in writing at the time it approves the final application;

(iii) If the applicable time limitation is not met, the transferee shall either commence payments in cash to the Federal government for each month thereafter during which the proposed use has not been implemented or take such other action as set forth at § 102–75.1176 as is deemed appropriate by HHS. Such monthly payments shall be computed on the basis of the current fair market value of the property, as conveyed, at the time of the first payment and dividing it by 360 months. At HHS's discretion, the payment may be waived if the transferee makes a sufficient showing of continued progress to place the property into use or if an unforeseeable event occurs which prevents the property from being put into use within the applicable timeframe; and

(iv) HHS may permit use of surplus property at any time during the period of restriction by an entity other than the transferee in accordance with § 102–75.1177.

(2) The transferee will not be permitted to encumber, sell, lease or sublease, rent, mortgage, or otherwise dispose of the property, or any part thereof, without the prior written authorization of HHS. In the event the property is sold, leased or subleased, encumbered, disposed of, or is used for purposes other than those set forth in an approved plan without the consent of HHS, all revenues or the reasonable value of other benefits received by the transferee directly or indirectly from such use, as determined by HHS, will be considered to have been received and held in trust by the transferee for the account of the United States and will be subject to the direction and control of HHS. The provisions of this paragraph shall not impair or affect the rights reserved to the United States in paragraph (f)(8) of this section, or the right of HHS to impose conditions to its consent.

(3) The transferee will file with HHS such reports on its maintenance and use of the surplus property and any other reports or information deemed necessary by HHS.

(4) The transferee shall pay all administrative costs incidental to the transfer, including but not limited to—transfer taxes; surveys; appraisals; title search; the transferee's legal fees; recordation expenses, etc. Transferee is solely responsible for such costs and may not seek reimbursement from the Federal government for any reason.

(5) The transferee shall protect, preserve, maintain, and repair the property to ensure that the property remains in as good a condition as when received.

(6) The transferee shall protect the residual financial interest of the United States in the surplus property by insurance or such other means as HHS directs. Where loss or damage to the transferred property occurs, all proceeds from insurance shall be promptly used by the transferee for the purpose of repairing and restoring the property to its former condition or replacing it with equivalent or more suitable facilities. If not so used, there shall be paid to the United States that part of the insurance proceeds that is attributable to the Government's residual interest in the property lost, damaged, or destroyed. Further, transferee shall neither take any action nor allow any action which diminishes the residual financial interest of the United States.

(7) The transferee shall abide by all applicable Federal Civil Rights laws including those specified in the covenants and conditions contained in the transfer document, prohibiting the transferee from discriminating on the basis of, including but not limited to, race, color, national origin, religion, sex, familial status or disability in the use of the property.

(8) In the event of substantial noncompliance with any conditions of the deed as determined by HHS, whether caused by the legal or other inability of the transferee, its successors and assigns, to perform any of the obligations of the transfer document, the Federal government has an immediate right of reentry thereon, and to cause all right, title, and interest in and to the property to revert to the United States, and the transferee shall forfeit all right, title, and interest in and to the property. In such event, transferee shall execute a quitclaim deed and take all other actions necessary to return the property to the United States within ninety (90) days of a written request from the Federal government, extended only at the discretion of the Federal government. Transferee shall cooperate with the United States in the event of a reversion and agrees that the United States need not seek judicial intervention before exercising its right to revert, reenter and reconvey the property.

(9) In the event title is reverted to the United States for noncompliance or voluntarily reconveyed to the United

States, the transferee shall, at the option of HHS, be required to: reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the transferee to adapt the property to the homeless use for which the property was transferred; and reimburse the United States for any costs incurred in reverting title to or possession of the property, including reasonable attorneys' fees.

(10) With respect to leased property, in the event of substantial noncompliance with any of the conditions of the lease, as determined by HHS or the landholding agency, the right of occupancy and possession shall, at the option of HHS or the landholding agency, be terminated. In the event a leasehold is terminated by the United States for substantial noncompliance or is voluntarily surrendered, the lessee shall be required, at the option of HHS, to reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the lessee to adapt the property to the homeless use for which the property was leased. With respect to any termination of leasehold resulting from noncompliance, the United States, shall, in addition thereto, be reimbursed for such costs as may be incurred in recovering possession of the property, including reasonable attorneys' fees.

(11) Any other term or condition that HHS and GSA determine appropriate or necessary.

(12) With respect to surplus property transferred by deed, the terms and conditions including those in paragraph (f) of this section, apply for a period of thirty (30) years of use in accordance with a program of use approved in writing by HHS. The thirty-year (30) period may, in HHS's sole discretion, be extended or restarted in the event the property is not fully utilized or is retransferred to a successor entity. Expiration of the foregoing terms and conditions does not release the transferee from continuing compliance, as appropriate, with any conditions that may run with the land, *e.g.,* environmental conditions and/or historic preservation covenants. Such conditions will continue to be the responsibility of the transferee and successors.

(13) With respect to surplus property transferred by lease, the terms and conditions including those in paragraph (f) of this section, extend for the entire initial lease and for any subsequent renewal periods, unless specifically excluded in writing by HHS.

(g) Related personal property may be transferred or leased as a part of the realty and in accordance with real property procedures.

(h) Completion of Transfer Term and Reversion of Title. Transferees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the United States, the transferee will be responsible for removing improvements made to the property if directed to by the United States and, in such event, will be responsible for restoration of the property or the costs associated with restoring the property. If improvements made by the transferee are not voluntarily removed by the transferee and the United States consents, they will become the property of the United States. If the United States does not consent, the transferee shall reimburse the United States for reasonable costs of removal. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

(i) Transferees, by obtaining the consent of HHS, may abrogate the restrictions set forth in paragraph (f) of this section for all or any portion of the property in accordance with the provisions of § 102–75.1178.

Unsuitable Properties

§ 102–75.1173 What action must be taken on properties determined unsuitable for homeless assistance?

The landholding agency or GSA will defer action to dispose of properties determined unsuitable for homeless assistance for 20 days after the date that notice of a property is posted on the HUD website. HUD will inform landholding agencies or GSA if appeal of an unsuitability determination is filed by a representative of the homeless pursuant to § 102–75.1163(f). HUD will advise the agency to refrain from initiating disposal procedures until HUD has completed its reconsideration process regarding unsuitability. Thereafter, or if no appeal has been filed after 20 days, GSA or the appropriate landholding agency may proceed with disposal action in accordance with applicable law.

Compliance With the National Environmental Policy Act of 1969 and Other Related Acts (Environmental Impact)

§ 102–75.1174 What are the requirements for compliance with the National Environmental Policy Act of 1969 and other related Acts (environmental impact) for the transfer of Federal real property for use to assist the homeless?

(a) HHS, prior to making a final decision to convey or lease, or to amend, reform, or grant an approval or release with respect to a previous conveyance or lease of, surplus property for homeless purposes, will act in accordance with applicable provisions of the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the National Archeological Data Preservation Act, and other related acts. No lease to use surplus property shall allow the lessee to make, or cause to be made, any irreversible change in the conditions of said property, and no lease shall be employed for the purpose of delaying or avoiding compliance with the requirements of these Acts, unless approved by the United States.

(b) Applicants shall be required to provide such information as HHS deems necessary to make an assessment of the impact of the proposed Federal action on the human environment. Materials contained in the applicant's official request, responses to a standard questionnaire prescribed by HHS, as well as other relevant information, will be used by HHS in making said assessment.

(c) If the assessment reveals:

(1) that the proposed Federal action involved properties of historical significance which are listed, or eligible for listing, in the National Register of Historic Places; or

(2) that a more than insignificant impact on the human environment is reasonably foreseeable as a result of the proposed action; or

(3) that the proposed Federal action could result in irreparable loss or destruction of archeologically significant items or data, HHS will, except as provided for in paragraph (d) of this section, prepare and distribute, or cause to be prepared or distributed, such notices and statements and obtain such approvals as are required by the above cited Acts.

(d) If a proposed action involves other Federal agencies in a sequence of actions, or a group of actions, directly related to each other because of their functional interdependence, HHS may enter into and support a lead agency agreement to designate a single lead

agency which will assume primary responsibility for coordinating the assessment of environmental effects of proposed Federal actions, preparing and distributing such notices and statements, or obtaining such approvals, as are required by the above cited Acts. The procedures of the designated lead agency will be utilized in conducting the environmental assessment. In the event of disagreement between HHS and another Federal agency, HHS will reserve the right to abrogate the lead agency agreement with the other Federal agency.

No Applications Approved

§ 102–75.1175 What action must be taken if there is no expression of interest or approved application?

(a) At the end of the 30-day holding period described in § 102–75.1169(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a certain property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will proceed with disposal in accordance with applicable law.

(b) Upon notice from HHS that all applications have been disapproved, or if no initial applications have been received within 75 days after an expression of interest, or no final application has been received within 45 days after an approved initial application, disposal may proceed in accordance with applicable law.

Utilization and Enforcement

§ 102–75.1176 What are the utilization and enforcement requirements for property transferred for use to assist the homeless?

(a) *Sanctions.* For instances of substantial noncompliance relating to surplus property transfers, HHS may impose, in its sole discretion, any or all of the following sanctions, as applicable:

(1) Where property or any portion thereof was not used or is not being used for the purposes for which transferred, or is sold, leased or subleased, encumbered, disposed of, or used for purposes other than those in the approved program and plan of use, without the prior written consent of HHS, HHS may require the transferee to—

(i) Place the property into immediate use for an approved purpose and extend the period of restriction in the transfer document for an additional term as determined by HHS;

(ii) Hold in trust all revenues and the reasonable value of other benefits received by the transferee directly or indirectly from that use for the United States subject to the direction and control of HHS;

(iii) Return title to such property to the United States or to relinquish any leasehold interest therein;

(iv) Abrogate the conditions and restrictions of the transfer, as set forth in § 102–75.1178;

(v) Make cash payments to the United States, as directed by HHS, equivalent to the current fair market rental value of the surplus property, as transferred, for each month during which the program and plan of use has not been implemented and continues to not be implemented; or

(vi) Any other remedy that HHS determines appropriate or necessary.

(2) Where the transferee desires to place the property into temporary use to assist the homeless other than that for which the property was transferred, written approval from HHS must be obtained, and will be conditioned upon HHS's authority to permit the use and such terms as HHS may impose.

(3) If HHS or the landholding agency determines that a lessee or sublessee of a transferee is in substantial noncompliance with a term or condition of the lease, or if the lessee voluntarily surrenders the premises, HHS may require termination of the lease and impose sanctions described in paragraph (a)(1) of this section, as appropriate.

(b) *Reversion.* When HHS recommends reversion of the property for noncompliance, HHS will seek GSA's concurrence. GSA will respond to HHS's concurrence request within 30 days of its receipt. If GSA concurs, HHS will work with GSA to complete the reversion of the property. If GSA does not concur to the reversion recommendation, GSA will issue, to HHS, a written determination: stating the reason(s) for the disapproval; and acknowledging that HHS has recommended reversion and, therefore, the property is no longer within HHS's Title V program. The Federal government will implement a response to the noncompliance that is in its best interests.

Other Uses

§ 102–75.1177 What are the requirements for other uses of a transferred property?

(a) A transferee may permit the use of all or a portion of the surplus property by another eligible entity as described in § 102–75.1160 for homeless assistance purposes, only upon those terms and conditions HHS determines appropriate, if:

(1) The transferee submits a written request to HHS explaining the purpose of and need for another eligible entity's use of the property, program plan, and other relevant information requested by HHS;

(2) HHS determines that the proposed use would not substantially limit the program and plan of use by the transferee and that the use will not unduly burden the Federal government;

(3) HHS's written consent is obtained by the transferee in advance;

(4) HHS approves the use instrument in advance and in writing; and

(b) [Reserved].

Abrogation

§ 102–75.1178 What are the conditions of abrogation for property transferred to assist the homeless?

(a) HHS may abrogate the conditions and restrictions in the transfer document if:

(1) The transferee submits to HHS a written request that HHS abrogate the conditions and restrictions in the transfer document as to all or any portion of the surplus property;

(2) HHS determines the terms and conditions of the proposed abrogation and determines that the proposed abrogation is in the best interest of the United States; and

(3) HHS transmits the abrogation request to GSA and there is no disapproval by GSA within 30 days after notice is given. If GSA disapproves, GSA will state, in writing, to HHS the reason(s) for the disapproval.

(b) HHS abrogates the conditions and restrictions in the transfer document only upon receipt of the appropriate consideration, including cash payment, to the United States, as directed by HHS, which is based on the formula contained in the transfer document, and any other terms and conditions HHS deems appropriate to protect the interest of the United States.

Compliance Inspections and Reports

§ 102–75.1179 What Compliance Inspections and Reports are Required?

Transferees are required to allow HHS to conduct compliance inspections and to submit such compliance reports and actions as are deemed necessary by HHS. At a minimum, the transferee will be required to submit an annual utilization report regarding the operation and maintenance of the property, including current images of the entire property and such information as HHS shall require.

No Right of Administrative Review for Agency Decisions

§ 102–75.1180 Is there a right of administrative review for agency decisions within HHS?

There is no right to administrative review within HHS, including requests for reconsideration or appeal, of agency decisions on applications and other discretionary decisions.

Waivers

§ 102–75.1181 May any requirement of this subpart be waived?

The Secretary of HUD may waive any requirement of this subpart (over which the Secretary of HUD has jurisdiction) that is not required by law, whenever it is determined that undue hardship would result from applying the requirement, or where application of the requirement would adversely affect the purposes of the program. Each waiver will be in writing and will be supported by documentation of the pertinent facts and grounds. The Secretary periodically will publish notice of granted waivers on the HUD website.

§§ 102–75.1182 through 102–75.1219 [Reserved]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Accordingly, for the reasons stated above, HHS proposes to amend 45 CFR part 12a as follows:

■ 25. The authority citation for part 12a is revised to read as follows:

Authority: 42 U.S.C. 11411; 40 U.S.C. 550.

■ 26. Revise part 12a to read as follows:

PART 12a—USE OF FEDERAL REAL PROPERTY TO ASSIST THE HOMELESS

Sec.
12a.1 Definitions.
12a.2 Applicability
12a.3 General Policies
12a.4 Expression of Interest Process.
12a.5 Application Process and Requirements.
12a.6 Action on Approved Applications.
12a.7 Transfer Documents.
12a.8 Compliance with the National Environmental Policy Act of 1969 and Other Related Acts (environmental impact).
12a.9 No Applications Approved.
12a.10 Utilization and Enforcement.
12a.11 Other Uses.
12a.12 Abrogation.
12a.13 Compliance Inspections and Reports
12a.14 No Right of Administrative Review for Agency Decisions.

§ 12a.1 Definitions.

(a) *Applicant* means any eligible organization which has submitted an application to the Department of Health and Human Services to obtain use of a certain suitable property to assist the homeless.

(b) *Classification* means a property's designation as unutilized, underutilized, excess, or surplus.

(c) *Day* means one calendar day, including weekends and holidays.

(d) *Eligible organization* means a State or local government agency, or a private, non-profit organization that provides assistance to the homeless, and that is authorized by its charter or by State law to enter into an agreement with the Federal government for use of property for the purposes of this part. Eligible organizations that are private, non-profit organizations interested in applying for suitable property must be tax exempt under section 501(c)(3) of the Internal Revenue Code at the time of application and remain tax exempt throughout the time the Federal government retains a reversionary interest in the property.

(e) *Excess property* means any property under the control of a Federal Executive agency that the head of the agency determines is not required to meet the agency's needs or responsibilities, pursuant to 40 U.S.C. 524.

(f) *GSA* means the General Services Administration.

(g) *HHS* means the Department of Health and Human Services.

(h) *Homeless* is defined in 42 U.S.C. 11302. This term is synonymous with ''Homeless Individual'' and ''Homeless Person.''

(i) *HUD* means the Department of Housing and Urban Development.

(j) *HUD website* means a website maintained by HUD providing information about HUD, including any successor websites or technologies that are equally accessible and available to the public.

(k) *Landholding agency* means the Federal department or agency with statutory authority to control property. For purposes of this part, the landholding agency is typically the Federal department or agency that had custody and accountability on behalf of the Federal government, of a certain piece of property at the time that such property was reported to HUD for a suitability determination pursuant to 42 U.S.C. 11411.

(l) *Lease* means an agreement in writing between either HHS for surplus property or landholding agencies for underutilized and unutilized properties and the applicant giving rise to the relationship of lessor and lessee for the use of Federal property for a term of at least one year under the conditions set forth in the lease document.

(m) *Non-profit organization* means an organization recognized as a non-profit by the State in which the organization operates, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

(n) *Permit* means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time, usually one year or less, under terms and conditions determined by the landholding agency. A permit does not grant to the recipient an estate in land or any interest in the property.

(o) *Property* means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to 40 U.S.C. 524.

(p) *Related personal property* means any personal property that is located on real property and is either an integral part of or useful in the operation of that property or is determined by GSA to be otherwise related to the property.

(q) *Representative of the homeless* means a State or local government agency, or private nonprofit organization that provides, or proposes to provide, services to the homeless.

(r) *Screen* means the process by which GSA surveys Federal Executive agencies to determine if they have an interest in using excess Federal property to carry out a particular agency mission, and then surveys State, local and non-profit entities, to determine if any such entity has an interest in using surplus Federal property to carry out a specific public use.

(s) *State* means a State of the United States, and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

(t) *Substantial noncompliance* means failure to take corrective action as directed by HHS.

(u) *Suitable property* means that HUD has determined that a certain property satisfies the criteria listed in 24 CFR 581.6.

(v) *Surplus property* means any excess property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by GSA.

(w) *Transfer document* means a lease, deed, or permit transferring surplus, unutilized or underutilized property.

(x) *Transferee* means an eligible entity that acquires Federal property by lease, deed, or permit.

(y) *Underutilized* means an entire property or portion thereof, with or without improvements which is used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property.

(z) *Unutilized property* means an entire property or portion thereof, with or without improvements, not occupied for current program purposes for the accountable executive agency or occupied in caretaker status only.

§ 12a.2 Applicability.

(a) This part applies to Federal property that has been designated by Federal landholding agencies as unutilized, underutilized, excess or surplus and is therefore subject to the provisions of Title V of the McKinney Act, as amended (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this part (regardless of whether they may be unutilized or underutilized):

(1) Buildings and property at military installations that were approved for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) after October 25, 1994.

(2) Machinery and equipment not determined to be related personal property by the landholding agency or GSA or determined to be related personal property that the landholding agency or GSA chooses to dispose of separate from real property.

(3) Government-owned, contractor-operated machinery, equipment, land, and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.

(4) Properties subject to special legislation directing a particular action.

(5) Properties subject to a court order that, for any reason, precludes transfer for use to assist the homeless under the authority of 42 U.S.C. 11411.

(6) Property not subject to Federal Real Property Council reporting requirements in accordance with 40 U.S.C. 623(i).

(7) Mineral rights interests independent of surface rights.

(8) Air space interests independent of surface rights.

(9) Indian Reservation land subject to 40 U.S.C. 523.

(10) Property interests subject to reversion.

(11) Easements.

(12) Any building or fixture that is excess, or surplus, that is on land owned by a landholding agency, where the underlying land is not excess or surplus.

(13) Property purchased in whole or in part with Federal funds if title to the property is not held by a Federal landholding agency as defined in this part.

§ 12a.3 General Policies.

(a) It is the policy of HHS to foster and assure maximum utilization of surplus property for homeless assistance purposes.

(b) Transfers may be made only to eligible organizations.

(c) Eligible organizations must be authorized, in the State in which the requested property is located, to carry out the activity for which it requests the property.

(d) Property will be requested for assignment only when HUD has made a final determination that the property is suitable for use to assist the homeless, GSA has determined it is available, and HHS has determined it is needed for homeless assistance purposes. The amount of real and related personal property to be transferred shall not exceed normal operating requirements of the applicant. Such property will not be requested for assignment unless it is needed at the time of application for homeless assistance purposes or will be so needed within the immediate or foreseeable future.

(e) Transfers by deed will be made only after the applicant's financial plan is approved and the applicant provides certification that the proposed program is permissible under all applicable State and local zoning restrictions, building codes, and similar limitations.

§ 12a.4 Expression of Interest Process.

(a) Properties published by HUD as suitable and available pursuant to 24 CFR 581.8, for application for use to assist the homeless shall not be available for any other purpose for a period of 30 days beginning on the date of publication. Any eligible organization interested in any underutilized, unutilized, excess, or surplus property for use to assist the homeless must send to HHS a written expression of interest in that property within 30 days after the property has been published on the HUD website.

(b) Although a property may be determined suitable by HUD, HUD's determination does not mean a property is necessarily useable for the purpose(s) stated in the application, nor does it guarantee subsequent conveyance or transfer of a property.

(c) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 30-day holding period, such property may not be made available for any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

(d) The expression of interest should identify the specific property, briefly describe the proposed use, include the name of the organization, and indicate whether it is a public body or a private, non-profit organization. The expression of interest must be sent to HHS by email, *rpb@psc.hhs.gov,* or by mail at the following address: Department of Health and Human Services, Program Manager, Federal Real Property Assistance Program, Real Estate Logistics and Operations, 5600 Fishers Lane, Rockville, Maryland 20852.

(1) HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a certain property.

(e) An expression of interest may be sent to and accepted by HHS any time after the 30-day holding period has expired only if the property remains available as determined by GSA or the landholding agency for application to assist the homeless. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if:

(1) There are no pending applications or written expressions of interest made under any law for use of the property for any purpose; and

(2) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

§ 12a.5 Application Process and Requirements.

(a) Upon receipt of an expression of interest, HHS will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following—

(1) *Acquisition type.* The applicant must state whether it is requesting acquisition of the property by lease, deed, or permit. A lease of one year, extendable at HHS's discretion, with the concurrence of GSA or the landholding agency, may be granted when the applicant's initial application is

approved and the applicant's final application outlining the applicant's financial plan is found to be otherwise reasonable based on the criteria in paragraph (a)(7) of this section, but either a change in zoning is required or the financial plan proposes to utilize Low-Income Housing Tax Credits or other funding sources that typically take longer to process than other forms of financing.

(2) *Description of the applicant organization.* The applicant must document that it satisfies the definition of an ''eligible organization'' as specified in § 12a.1. The applicant must document its authority to hold property for the proposed program and plan of use by providing a copy of its Articles of Organization, Charter, Certification from State of Non-Profit Organization status, or other appropriate document or citation. Private, non-profit organizations applying for the acquisition of a certain property must document that they are tax exempt under section 501(c)(3) of the Internal Revenue Code.

(3) *Description of the property desired.* The applicant must describe the listed property desired, including existing zoning. Applicants must certify that any modification(s) made to and use of the property will conform to all applicable building codes, and local use restrictions, or similar limitations. In accordance with GSA policy, determinations regarding parcelization are made prior to screening. Therefore, expressions of interest and applications for portions of listed properties will not be accepted.

(4) *Description of the proposed program.* The applicant must fully describe the proposed program and plan of use, including implementation plans.

(5) *Demonstration of need.* The applicant must demonstrate that the property is needed for homeless assistance purposes at the time of application and how the program will address the needs of the homeless population to be assisted. The applicant must demonstrate that it has an immediate need and ability to utilize all of the property for which it is applying.

(6) *Demonstrate that the property is suitable and adaptable for the proposed program and plan of use.* The applicant must fully explain why the property is suitable and describe what, if any, modification(s) will be made to the property before the program becomes operational.

(7) *Ability to finance and operate the proposed program.* If the applicant's initial application is approved, the applicant must set forth a reasonable plan to finance the approved program within 45 days of the initial approval. To be considered reasonable, the plan must, at a minimum:

(i) specifically describe all anticipated costs and sources of funding for the proposed program, including any property modifications;

(ii) be accompanied by supporting documentation which demonstrates that the proposed plan is likely to succeed;

(iii) demonstrate that the applicant is ready, willing, able, and authorized to assume care, custody, and maintenance of the property;

(iv) demonstrate that it has secured the necessary dedicated funds, or the ability to obtain such funds, to carry out the approved proposed program and plan of use for the property, including administrative expenses incident to the transfer by deed, lease, or permit;

(v) not diminish the value of the government's interest in the property nor impair the government's ability to revert and immediately dispose of the property free of any and all liens, encumbrances, or anything else which renders the property unmarketable. Deed transfers will only be made after an applicant demonstrates its financial plan adequately protects the United States' interest in the property; and

(vi) neither subject the Federal government's interest in the property to foreclosure nor impose obligations (*e.g.,* extended use agreements) on the Federal government.

(8) *Compliance with non-discrimination requirements.* Each applicant under this part must certify in writing that it will comply with all requirements of federal law and HHS policy, as amended, relating to non-discrimination, including the following: the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations; and, as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d–4) (Non-discrimination in Federally Assisted Programs) and implementing regulations; Section 1557 of the Affordable Care Act and implementing regulations; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations; and the prohibitions against otherwise qualified individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations. The applicant must maintain the required records to demonstrate compliance with all applicable Federal laws and HHS policies related to non-discrimination.

(9) *Insurance and Indemnification.* The applicant must certify that it will insure the property against loss, damage, or destruction to protect the residual financial interest of the United States. The United States shall be named as an additional insured. Applicants must provide proof of insurance annually or upon request. Failure to maintain sufficient insurance may result in adverse action, including reversion of the property, at the discretion of HHS. Applicants, and all affiliated parties utilizing the property, as approved by HHS, must indemnify the United States and hold the United States harmless for all actions involving use of the property.

(10) *Historic preservation.* Where applicable, the applicant must provide information that will enable HHS to comply with Federal historic preservation requirements.

(11) *Environmental information.* The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant's proposal on the environment, in accordance with the instructions provided with the application packet. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency. However, the burden is on the applicant to submit sufficient documentation for analysis by HHS.

(12) *Local government notification.* The applicant must certify that it has notified the applicable unit of general local government responsible for sewer, water, police, and fire services, in writing, of its proposed program for the specific property and submit a copy of that written notification.

(13) *Zoning and Local Use Restrictions.* An applicant requesting a deed must certify that it has consulted all State and local governmental entities that will have jurisdiction over the property and that the proposed use will comply with all applicable zoning and local use restrictions, including local building code requirements. An applicant that applies for a lease or permit is not required to comply with local zoning requirements, as long as the Federal government retains ownership of the property. Deed transfers will only be made after the applicant has provided acceptable written proof that the proposed program is not in conflict with State or local zoning laws and restrictions, building codes, or similar limitations.

(b) *Scope of evaluations.* Due to the short time frame imposed by statute for evaluating applications, HHS's evaluation will, generally, be limited to

the information contained in the application. It is therefore incumbent on applicants to provide thorough and complete applications.

(c) *Deadline for Initial Application.* An initial application must be received by HHS, at the above email address or other address indicated by HHS, within 75 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may, in its discretion, grant extensions authorized by 42 U.S.C. 11411(e)(2)(A), provided that the appropriate landholding agency or GSA concurs with the extension.

(d) *Evaluation of initial application.*

(1) Upon receipt of an initial application, HHS will review it for completeness, and, if incomplete, may, in its discretion, return it or ask the applicant to furnish any missing or additional required information prior to final evaluation of the initial application.

(2) HHS will evaluate each initial application within 10 days of receipt and will promptly advise the applicant of its decision. All initial applications will be reviewed on the basis of the following elements:

(i) *Services offered.* The extent and range of proposed services, such as meals, shelter, job training, and counseling.

(ii) *Need.* The demand for the program, the program's ability to satisfy unmet needs of the community, and the degree to which the available property will be fully utilized.

(iii) *Experience.* Demonstrated ability to provide the services, such as prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.

(e) *Deadline and Evaluation of Final Application.*

(1) If HHS approves an initial application, HHS will notify the applicant and provide the applicant 45 days in which to provide a final application. The final application shall set forth a reasonable plan to finance, as specified in § 12a.5(a)(7), the approved program as set forth in the initial application. Applicants may not modify the approved initial application within its final application proposal.

(2) Upon receipt of the final application, HHS will make a determination within 15 days and notify the applicant.

(3) Unlike with initial applications, requests for extensions are not authorized by 42 U.S.C. 11411 and thus will not be considered for final applications.

(4) Applications are evaluated on a first-come, first-served basis. HHS will notify all organizations that have submitted expressions of interest for a particular property whether an earlier application received for that property has been approved.

(f) *Competing Applications.* If HHS receives more than one final application simultaneously, HHS will evaluate all applications and make a determination based on each application's merit. HHS will rank approved applications based on the elements listed in paragraph (a) of this section, and notify the landholding agency, or GSA, as appropriate, of the approved applicant.

§ 12a.6 Action on Approved Applications.

(a) Unutilized and underutilized properties.

(1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available. (Leases and permits will be for a period of at least one year unless the applicant requests a shorter term.)

(ii) The terms and conditions of the lease or permit document (except that a landholding agency may not charge any fees or impose any costs).

(b) Excess and surplus properties.

(1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for transfer. Requests to GSA for the assignment of surplus property to HHS for homeless assistance purposes will be based on the following conditions:

(i) HHS has a fully approved application for the property;

(ii) The applicant is able, willing, and authorized to assume immediate care, custody, and maintenance of the property;

(iii) The applicant is able, willing and authorized to pay the administrative expenses incident to the transfer; and

(iv) The applicant has secured the necessary funds, or had demonstrated the ability to obtain such funds, to carry out the approved program of use of the property.

(2) Upon receipt of an acceptable assignment, HHS will execute the transfer document in accordance with the procedures and requirements set out in this part and any other terms and conditions HHS and GSA determine are appropriate or necessary. Custody and accountability of the property will remain throughout the lease term with the landholding agency (*i.e.,* the agency which initially reported the property as excess) and throughout the deed term with the transferee.

(3) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs in deciding the disposition of surplus property. Priority of consideration will normally be given to uses to assist the homeless. However, both GSA and HHS may consider any competing request for the property made under 40 U.S.C. 550 that is so meritorious and compelling that it outweighs the needs of the homeless.

(4) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance, the agency making the decision will transmit to the appropriate committees of Congress an explanatory statement which details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

§ 12a.7 Transfer Documents.

(a) Surplus property may be conveyed to eligible organizations pursuant to 40 U.S.C. 550(d) and 42 U.S.C. 11411, as amended, by lease or deed, at the applicant's discretion.

(b) Transfers of surplus property for homeless assistance purposes are in exchange for the transferee's agreement to fully utilize the property for homeless assistance purposes in accordance with the terms specified in the transfer document.

(c) A transfer of surplus property for homeless purposes is subject to the disapproval of GSA within 30 days after notice is given to GSA of the proposed transfer.

(d) Surplus property transferred pursuant to this part will be disposed on an ''as is, where is,'' basis without warranty of any kind except as may be stated in the transfer document.

(e) Unless excepted by GSA in its assignment, the disposal of property includes mineral rights associated with the surface estate.

(f) Transfers of surplus property under this part will be made with the following general terms and conditions:

(1) For the period provided in the transfer document, the transferee shall utilize all the surplus property it receives solely and continuously for an approved program and plan of use, in accordance with 42 U.S.C. 11411 and these regulations, except that:

(i) The transferee has 12 months from the date of transfer to place the surplus property into use, if HHS did not approve in writing, construction of new facilities or major renovation of the property when it approved the final application;

(ii) The transferee has 36 months from the date of transfer to place the surplus property into use, if the transferee proposes construction of new facilities or major renovation of the property and HHS approves it in writing at the time it approves the final application;

(iii) If the applicable time limitation is not met, the transferee shall either commence payments in cash to the Federal government for each month thereafter during which the proposed use has not been implemented or take such other action as set forth at § 12a.10 as is deemed appropriate by HHS. Such monthly payments shall be computed on the basis of the current fair market value of the property, as conveyed, at the time of the first payment and dividing it by 360 months. At HHS's discretion, the payment may be waived if the transferee makes a sufficient showing of continued progress to place the property into use or if an unforeseeable event occurs which prevents the property from being put into use within the applicable timeframe; and

(iv) HHS may permit use of surplus property at any time during the period of restriction by an entity other than the transferee in accordance with § 12a.11.

(2) The transferee will not be permitted to encumber, sell, lease or sublease, rent, mortgage, or otherwise dispose of the property, or any part thereof, without the prior written authorization of HHS. In the event the property is sold, leased or subleased, encumbered, disposed of, or is used for purposes other than those set forth in an approved plan without the consent of HHS, all revenues or the reasonable value of other benefits received by the transferee directly or indirectly from such use, as determined by HHS, will be considered to have been received and held in trust by the transferee for the account of the United States and will be subject to the direction and control of HHS. The provisions of this paragraph shall not impair or affect the rights reserved to the United States in paragraph (f)(8) of this section, or the right of HHS to impose conditions to its consent.

(3) The transferee will file with HHS such reports on its maintenance and use of the transferred property and any other reports or information deemed necessary by HHS.

(4) The transferee shall pay all administrative costs incidental to the transfer, including but not limited to—transfer taxes; surveys; appraisals; title searches; the transferee's legal fees; and recordation expenses. Transferee is solely responsible for such costs and may not seek reimbursement from the Federal government for any reason.

(5) The transferee shall protect, preserve, maintain, and repair the property to ensure that the property remains in as good a condition as when received.

(6) The transferee shall protect the residual financial interest of the United States in the surplus property by insurance or such other means as HHS directs. Where loss or damage to the transferred property occurs, all proceeds from insurance shall be promptly used by the transferee for the purpose of repairing and restoring the property to its former condition or replacing it with equivalent or more suitable facilities. If not so used, there shall be paid to the United States that part of the insurance proceeds that is attributable to the Government's residual interest in the property lost, damaged, or destroyed. Further, transferee shall neither take any action nor allow any action which diminishes the residual financial interest of the United States.

(7) The transferee shall abide by all applicable Federal Civil Rights laws including those specified in the covenants and conditions contained in the transfer document, prohibiting the transferee from discriminating on the basis of, including but not limited to, race, color, national origin, religion, sex, familial status or disability in the use of the property.

(8) In the event of substantial noncompliance with any conditions of the deed as determined by HHS, whether caused by the legal or other inability of the transferee, its successors and assigns, to perform any of the obligations of the transfer document, the Federal government has an immediate right of reentry thereon, and to cause all right, title, and interest in and to the property to revert to the United States, and the transferee shall forfeit all right, title, and interest in and to the property. In such event, transferee shall execute a quitclaim deed and take all other actions necessary to return the property to the United States within ninety (90) days of a written request from the Federal government, extended only at the discretion of the Federal government. Transferee shall cooperate with the United States in the event of a reversion and agrees that the United States need not seek judicial intervention before exercising its right to revert, reenter and reconvey the property.

(9) In the event title is reverted to the United States for noncompliance or voluntarily reconveyed to the United States, the transferee shall, at the option of HHS, be required to: reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the transferee to adapt the property to the homeless use for which the property was transferred; and reimburse the United States for any costs incurred in reverting title to or possession of the property, including reasonable attorneys' fees.

(10) With respect to leased property, in the event of substantial noncompliance with any of the conditions of the lease, as determined by HHS or the landholding agency, the right of occupancy and possession shall, at the option of HHS or the landholding agency, be terminated. In the event a leasehold is terminated by the United States for substantial noncompliance or is voluntarily surrendered, the lessee shall be required, at the option of HHS, to reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the lessee to adapt the property to the homeless use for which the property was leased. With respect to any termination of leasehold resulting from noncompliance, the United States, shall, in addition thereto, be reimbursed for such costs as may be incurred in recovering possession of the property, including reasonable attorneys' fees.

(11) Any other term or condition that HHS and GSA determine appropriate or necessary.

(12) With respect to surplus property transferred by deed, the terms and conditions including those in paragraph (f) of this section, apply for a period of thirty (30) years of use in accordance with a program of use approved in writing by HHS. The thirty-year (30) period may, in HHS's sole discretion, be extended or restarted in the event the property is not fully utilized or is retransferred to a successor entity. Expiration of the foregoing terms and conditions does not release the transferee from continuing compliance, as appropriate, with any conditions that may run with the land, *e.g.,* environmental conditions and/or historic preservation covenants. Such conditions will continue to be the responsibility of the transferee and successors.

(13) With respect to surplus property transferred by lease, the terms and conditions including those in paragraph (f) of this section, extend for the entire initial lease and for any subsequent renewal periods, unless specifically excluded in writing by HHS.

(g) Related personal property may be transferred or leased as a part of the realty and in accordance with real property procedures.

(h) Completion of Transfer Term and Reversion of Title. Transferees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the United States, the transferee will be responsible for removing improvements made to the property if directed to by the United States and, in such event, will be responsible for restoration of the property or the costs associated with restoring the property. If improvements made by the transferee are not voluntarily removed by the transferee and the United States consents, they will become the property of the United States. If the United States does not consent, the transferee shall reimburse the United States for reasonable costs of removal. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

(i) Transferees, by obtaining the consent of HHS, may abrogate the restrictions set forth in paragraph (f) of this section for all or any portion of the property in accordance with the provisions of § 12a.12.

§ 12a.8 Compliance With the National Environmental Policy Act of 1969 and Other Related Acts (environmental impact).

(a) HHS, prior to making a final decision to convey or lease, or to amend, reform, or grant an approval or release with respect to a previous conveyance or lease of, surplus property for homeless purposes, will act in accordance with applicable provisions of the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the National Archeological Data Preservation Act, and other related acts. No lease to use surplus property shall allow the lessee to make, or cause to be made, any irreversible change in the conditions of said property, and no lease shall be employed for the purpose of delaying or avoiding compliance with the requirements of these Acts, unless approved by the United States.

(b) Applicants shall be required to provide such information as HHS deems necessary to make an assessment of the impact of the proposed Federal action on the human environment. Materials contained in the applicant's official request, responses to a standard questionnaire prescribed by HHS, as well as other relevant information, will be used by HHS in making said assessment.

(c) If the assessment reveals:

(1) that the proposed Federal action involved properties of historical significance which are listed, or eligible for listing, in the National Register of Historic Places; or

(2) that a more than insignificant impact on the human environment is reasonably foreseeable as a result of the proposed action; or

(3) that the proposed Federal action could result in irreparable loss or destruction of archeologically significant items or data, HHS will, except as provided for in paragraph (d) of this section, prepare and distribute, or cause to be prepared or distributed, such notices and statements and obtain such approvals as are required by the above cited Acts.

(d) If a proposed action involves other Federal agencies in a sequence of actions, or a group of actions, directly related to each other because of their functional interdependence, HHS may enter into and support a lead agency agreement to designate a single lead agency which will assume primary responsibility for coordinating the assessment of environmental effects of proposed Federal actions, preparing and distributing such notices and statements, or obtaining such approvals, as are required by the above cited Acts. The procedures of the designated lead agency will be utilized in conducting the environmental assessment. In the event of disagreement between HHS and another Federal agency, HHS will reserve the right to abrogate the lead agency agreement with the other Federal agency.

§ 12a.9 No Applications Approved.

(a) At the end of the 30-day holding period described in § 12a.4(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a certain property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will proceed with disposal in accordance with applicable law.

(b) Upon notice from HHS that all applications have been disapproved, or if no initial applications have been received within 75 days after an expression of interest, or no final application has been received within 45 days after an approved initial application, disposal may proceed in accordance with applicable law.

§ 12a.10 Utilization and Enforcement.

(a) *Sanctions.* For instances of substantial noncompliance relating to surplus property transfers, HHS may impose, in its sole discretion, any or all of the following sanctions, as applicable:

(1) Where property or any portion thereof was not used or is not being used for the purposes for which transferred, or is sold, leased or subleased, encumbered, disposed of, or used for purposes other than those in the approved program and plan of use, without the prior written consent of HHS, HHS may require the transferee to—

(i) Place the property into immediate use for an approved purpose and extend the period of restriction in the transfer document for an additional term as determined by HHS;

(ii) Hold in trust all revenues and the reasonable value of other benefits received by the transferee directly or indirectly from that use for the United States subject to the direction and control of HHS;

(iii) Return title to such property to the United States or to relinquish any leasehold interest therein;

(iv) Abrogate the conditions and restrictions of the transfer, as set forth in § 12a.12;

(v) Make cash payments to the United States, as directed by HHS, equivalent to the current fair market rental value of the surplus property, as transferred, for each month during which the program and plan of use has not been implemented and continues to not be implemented; or

(vi) Any other remedy that HHS determines appropriate or necessary.

(2) Where the transferee desires to place the property into temporary use to assist the homeless other than that for which the property was transferred, written approval from HHS must be obtained, and will be conditioned upon HHS's authority to permit the use and such terms as HHS may impose.

(3) If HHS or the landholding agency determines that a lessee or sublessee of a transferee is in substantial noncompliance with a term or condition of the lease, or if the lessee voluntarily surrenders the premises, HHS may require termination of the lease and impose sanctions described in paragraph (a)(1) of this section, as appropriate.

(b) *Reversion.* When HHS recommends reversion of the property for noncompliance, HHS will seek

GSA's concurrence. GSA will respond to HHS's concurrence request within 30 days of its receipt. If GSA concurs, HHS will work with GSA to complete the reversion of the property. If GSA does not concur to the reversion recommendation, GSA will issue, to HHS, a written determination: stating the reason(s) for the disapproval; and acknowledging that HHS has recommended reversion and, therefore, the property is no longer within HHS's Title V program. The Federal government will implement a response to the noncompliance that is in its best interests.

§ 12a.11 Other Uses.

A transferee may permit the use of all or a portion of the surplus property by another eligible entity as described in § 12a.1(d) for homeless assistance purposes, only upon those terms and conditions HHS determines appropriate, if:

(a) The transferee submits a written request to HHS explaining the purpose of and need for another eligible entity's use of the property, program plan, and other relevant information requested by HHS;

(b) HHS determines that the proposed use would not substantially limit the program and plan of use by the transferee and that the use will not unduly burden the Federal government;

(c) HHS's written consent is obtained by the transferee in advance;

(d) HHS approves the use instrument in advance and in writing; and

(e) HHS advises GSA and there is no disapproval by GSA within thirty (30) days.

§ 12a.12 Abrogation.

(a) HHS may abrogate the conditions and restrictions in the transfer document if:

(1) The transferee submits to HHS a written request that HHS abrogate the conditions and restrictions in the transfer document as to all or any portion of the surplus property;

(2) HHS determines the terms and conditions of the proposed abrogation and determines that the proposed abrogation is in the best interest of the United States; and

(3) HHS transmits the abrogation request to GSA and there is no disapproval by GSA within 30 days after notice is given. If GSA disapproves, GSA will state, in writing, to HHS the reason(s) for the disapproval.

(b) HHS abrogates the conditions and restrictions in the transfer document only upon receipt of the appropriate consideration, including cash payment, to the United States, as directed by HHS, which is based on the formula contained in the transfer document, and any other terms and conditions HHS deems appropriate to protect the interest of the United States.

§ 12a.13 Compliance Inspections and Reports.

Transferees are required to allow HHS to conduct compliance inspections and to submit such compliance reports and actions as are deemed necessary by HHS. At a minimum, the transferee will be required to submit an annual utilization report regarding the operation and maintenance of the property, including current images of the entire property and such information as HHS shall require.

§ 12a.14 No Right of Administrative Review for Agency Decisions.

There is no right to administrative review within HHS, including requests for reconsideration or appeal, of agency decisions on applications and other discretionary decisions.

Marcia L. Fudge,

Secretary, HUD.

Robin Carnahan,

Administrator, GSA.

Xavier Becerra,

Secretary, HHS.

[FR Doc. 2023–04353 Filed 3–17–23; 8:45 am]

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