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The President

Executive Order 14096 of April 21, 2023

Revitalizing Our Nation's Commitment to Environmental Justice for All

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to advance environmental justice, it is hereby ordered as follows:

Section 1. *Policy*. To fulfill our Nation's promises of justice, liberty, and equality, every person must have clean air to breathe; clean water to drink; safe and healthy foods to eat; and an environment that is healthy, sustainable, climate-resilient, and free from harmful pollution and chemical exposure. Restoring and protecting a healthy environment—wherever people live, play, work, learn, grow, and worship—is a matter of justice and a fundamental duty that the Federal Government must uphold on behalf of all people.

We must advance environmental justice for all by implementing and enforcing the Nation's environmental and civil rights laws, preventing pollution, addressing climate change and its effects, and working to clean up legacy pollution that is harming human health and the environment. Advancing environmental justice will require investing in and supporting culturally vibrant, sustainable, and resilient communities in which every person has safe, clean, and affordable options for housing, energy, and transportation. It is also necessary to prioritize building an equitable, inclusive, and sustainable economy that offers economic opportunities, workforce training, and high-quality and well-paying jobs, including union jobs, and facilitating an equitable transition of the workforce as part of a clean energy future. Achieving this vision will also require improving equitable access to parks, tree cover, playgrounds, sports fields, rivers, ponds, beaches, lakes, and all of the benefits provided by nature, including America's public lands and waters. Pursuing these and other objectives integral to advancing environmental justice can successfully occur only through meaningful engagement and collaboration with underserved and overburdened communities to address the adverse conditions they experience and ensure they do not face additional disproportionate burdens or underinvestment.

We have more work to do to make environmental justice a reality for our Nation, both for today and for the generations that will follow us. Even as many communities in the United States have prospered and thrived in recent decades, many other communities have been left behind. Communities with environmental justice concerns face entrenched disparities that are often the legacy of racial discrimination and segregation, redlining, exclusionary zoning, and other discriminatory land use decisions or patterns. These decisions and patterns may include the placement of polluting industries, hazardous waste sites, and landfills in locations that cause cumulative impacts to the public health of communities and the routing of highways and other transportation corridors in ways that divide neighborhoods. These remnants of discrimination persist today.Communities with environmental justice concerns exist in all areas of the country, including urban and rural areas and areas within the boundaries of Tribal Nations and United States Territories. Such communities are found in geographic locations that have a significant proportion of people who have low incomes or are otherwise adversely affected by persistent poverty or inequality. Such communities are also found in places with a significant proportion of people of color,

including individuals who are Black, Latino, Indigenous and Native American, Asian American, Native Hawaiian, and Pacific Islander. Communities with environmental justice concerns also include geographically dispersed and mobile populations, such as migrant farmworkers.

Communities with environmental justice concerns experience disproportionate and adverse human health or environmental burdens. These burdens arise from a number of causes, including inequitable access to clean water, clean air, natural places, and resources for other basic human health and environmental needs; the concentration of pollution, hazardous waste, and toxic exposures; and underinvestment in affordable housing that is safe and healthy and in basic infrastructure and services to support such housing, including safe drinking water and effective sewage management. The cumulative impacts of exposure to those types of burdens and other stressors, including those related to climate change and the environment, further disadvantage communities with environmental justice concerns. People in these communities suffer from poorer health outcomes and have lower life expectancies than those in other communities in our Nation. Moreover, gaps in environmental and human health data can conceal these harms from public view, and, in doing so, are themselves a persistent and pernicious driver of environmental injustice.

Nearly three decades after the issuance of Executive Order 12898 of February 11, 1994 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations), the Federal Government must build upon and strengthen its commitment to deliver environmental justice to all communities across America. Our Nation needs an ambitious approach to environmental justice that is informed by scientific research, high-quality data, and meaningful Federal engagement with communities with environmental justice concerns and that uses the tools available to the Federal Government, including enforcement of civil rights and environmental laws. Our Nation must also take further steps to dismantle racial discrimination and institutional bias that disproportionately affect the health, environment, safety, and resiliency of communities with environmental justice concerns.

To ensure that the Nation's policies and investments respond to the needs of every community, all people should be afforded the opportunity to meaningfully participate in agency decision-making processes that may affect the health of their community or environment. The Federal Government must continue to remove barriers to the meaningful involvement of the public in such decision-making, particularly those barriers that affect members of communities with environmental justice concerns, including those related to disability, language access, and lack of resources. The Federal Government must also continue to respect Tribal sovereignty and support self-governance by ensuring that Tribal Nations are consulted on Federal policies that have Tribal implications. In doing so, we must recognize, honor, and respect the different cultural practices—including subsistence practices, ways of living, Indigenous Knowledge, and traditions—in communities across America. As our Nation reaffirms our commitment to environmental justice, the Federal Government must continue to be transparent about, and accountable for, its actions.

It is the policy of my Administration to pursue a whole-of-government approach to environmental justice. This order builds upon my Administration's ongoing efforts to advance environmental justice and equity consistent with Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), Executive Order 13990 of January 20, 2021 (Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis), Executive Order 14008 of January 27, 2021 (Tackling the Climate Crisis at Home and Abroad), Executive Order 14052 of November 15, 2021 (Implementation of the Infrastructure Investment and Jobs Act), Executive Order 14057 of December 8, 2021 (Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability), Executive Order 14082 of September 12,

2022 (Implementation of the Energy and Infrastructure Provisions of the Inflation Reduction Act of 2022), and Executive Order 14091 of February 16, 2023 (Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government). This order also supplements the foundational efforts of Executive Order 12898 to address environmental justice. In partnership with State, Tribal, territorial, and local governments, as well as community organizations, businesses, and members of the public, the Federal Government will advance environmental justice and help create a more just and sustainable future for all.

Sec. 2. *Definitions*. As used in this order:

(a) ''Agency'' means an executive agency as defined by 5 U.S.C. 105, excluding the Government Accountability Office and independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(b) ''Environmental justice'' means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people:

(i) are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and

(ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.

(c) ''Federal activity'' means any agency rulemaking, guidance, policy, program, practice, or action that affects or has the potential to affect human health and the environment, including an agency action related to climate change. Federal activities may include agency actions related to: assuring compliance with applicable laws; licensing, permitting, and the reissuance of licenses and permits; awarding, conditioning, or oversight of Federal funds; and managing Federal resources and facilities. This may also include such activities in the District of Columbia and the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and other Territories and possessions of the United States.

(d) ''Tribal Nation'' means an American Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges as a federally recognized Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 5130, 5131.

Sec. 3. *Government-Wide Approach to Environmental Justice*. (a) Consistent with section 1–101 of Executive Order 12898 and each agency's statutory authority, each agency should make achieving environmental justice part of its mission. Each agency shall, as appropriate and consistent with applicable law:

(i) identify, analyze, and address disproportionate and adverse human health and environmental effects (including risks) and hazards of Federal activities, including those related to climate change and cumulative impacts of environmental and other burdens on communities with environmental justice concerns;

(ii) evaluate relevant legal authorities and, as available and appropriate, take steps to address disproportionate and adverse human health and environmental effects (including risks) and hazards unrelated to Federal activities, including those related to climate change and cumulative impacts of environmental and other burdens on communities with environmental justice concerns;

(iii) identify, analyze, and address historical inequities, systemic barriers, or actions related to any Federal regulation, policy, or practice that impair

the ability of communities with environmental justice concerns to achieve or maintain a healthy and sustainable environment;

(iv) identify, analyze, and address barriers related to Federal activities that impair the ability of communities with environmental justice concerns to receive equitable access to human health or environmental benefits, including benefits related to natural disaster recovery and climate mitigation, adaptation, and resilience;

(v) evaluate relevant legal authorities and, as available and appropriate, take steps to provide, in consultation with unions and employers, opportunities for workforce training and to support the creation of high-quality and well-paying jobs, including union jobs, for people who are part of communities with environmental justice concerns;

(vi) evaluate relevant legal authorities and, where available and appropriate, consider adopting or requiring measures to avoid, minimize, or mitigate disproportionate and adverse human health and environmental effects (including risks) and hazards of Federal activities on communities with environmental justice concerns, to the maximum extent practicable, and to address any contribution of such Federal activities to adverse effects—including cumulative impacts of environmental and other burdens—already experienced by such communities;

(vii) provide opportunities for the meaningful engagement of persons and communities with environmental justice concerns who are potentially affected by Federal activities, including by:

(A) providing timely opportunities for members of the public to share information or concerns and participate in decision-making processes;

(B) fully considering public input provided as part of decision-making processes;

(C) seeking out and encouraging the involvement of persons and communities potentially affected by Federal activities by:

(1) ensuring that agencies offer or provide information on a Federal activity in a manner that provides meaningful access to individuals with limited English proficiency and is accessible to individuals with disabilities;

(2) providing notice of and engaging in outreach to communities or groups of people who are potentially affected and who are not regular participants in Federal decision-making; and

(3) addressing, to the extent practicable and appropriate, other barriers to participation that individuals may face; and

(D) providing technical assistance, tools, and resources to assist in facilitating meaningful and informed public participation, whenever practicable and appropriate;

(viii) continue to engage in consultation on Federal activities that have Tribal implications and potentially affect human health or the environment, pursuant to Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), the Presidential Memorandum of January 26, 2021 (Tribal Consultation and Strengthening Nation-to-Nation Relationships), and the Presidential Memorandum of November 30, 2022 (Uniform Standards for Tribal Consultation), and fulfill obligations established pursuant to Executive Order 13007 of May 24, 1996 (Indian Sacred Sites);

(ix) carry out environmental reviews under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, consistent with the statute and its implementing regulations and through the exercise of the agency's expertise and technical judgment, in a manner that:

(A) analyzes direct, indirect, and cumulative effects of Federal actions on communities with environmental justice concerns;

(B) considers best available science and information on any disparate health effects (including risks) arising from exposure to pollution and

other environmental hazards, such as information related to the race, national origin, socioeconomic status, age, disability, and sex of the individuals exposed; and

(C) provides opportunities for early and meaningful involvement in the environmental review process by communities with environmental justice concerns potentially affected by a proposed action, including when establishing or revising agency procedures under NEPA;

(x) in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and agency regulations, ensure that all programs or activities receiving Federal financial assistance that potentially affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, policies, practices, or methods of administration that discriminate on the basis of race, color, or national origin;

(xi) ensure that the public, including members of communities with environmental justice concerns, has adequate access to information on Federal activities, including planning, regulatory actions, implementation, permitting, compliance, and enforcement related to human health or the environment, when required under the Freedom of Information Act, 5 U.S.C. 552; the Government in the Sunshine Act, 5 U.S.C. 552b; the Clean Air Act, 42 U.S.C. 7401 *et seq.*; the Clean Water Act, 33 U.S.C. 1251 *et seq.*; the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11001 *et seq.*; or other environmental statutes with public information provisions;

(xii) improve collaboration and communication with State, Tribal, territorial, and local governments on programs and activities to advance environmental justice;

(xiii) encourage and, to the extent permitted by law, ensure that Government-owned, contractor-operated facilities take appropriate steps to implement the directives of this order;

(xiv) consider ways to encourage and, as appropriate, ensure that recipients of Federal funds—including recipients of block grant funding—and entities subject to contractual, licensing, or other arrangements with Federal agencies advance environmental justice;

(xv) develop internal mechanisms to achieve the goals of this order, including by:

(A) creating performance metrics and other means of accountability;

(B) identifying and dedicating staff, funding, and other resources; and

(C) providing appropriate professional development and training of agency staff; and

(xvi) consistent with section 2–2 of Executive Order 12898, ensure that Federal activities do not have the effect of:

(A) excluding persons, including populations, from participation in Federal activities on the basis of their race, color, or national origin;

(B) denying persons, including populations, the benefits of Federal activities on the basis of their race, color, or national origin; or

(C) subjecting persons, including populations, to discrimination on the basis of their race, color, or national origin.

(b) The Administrator of the Environmental Protection Agency (EPA) shall:

(i) in carrying out responsibilities under section 309 of the Clean Air Act, 42 U.S.C. 7609, assess whether each agency analyzes and avoids or mitigates disproportionate human health and environmental effects on communities with environmental justice concerns; and

(ii) report annually to the Chair of the Council on Environmental Quality (CEQ) and the White House Environmental Justice Interagency Council (Interagency Council) described in section 7 of this order on EPA's Clean

Air Act section 309 reviews regarding communities with environmental justice concerns and provide recommendations on legislative, regulatory, or policy options to advance environmental justice in Federal decision-making.

(c) In carrying out assigned responsibilities under Executive Order 12250 of November 2, 1980 (Leadership and Coordination of Nondiscrimination Laws), the Attorney General shall assess agency efforts to ensure compliance with civil rights laws in programs and activities receiving Federal financial assistance that potentially affect human health or the environment and shall report annually based on publicly available information to the Chair of CEQ regarding any relevant pending or closed litigation.

Sec. 4. *Environmental Justice Strategic Plans*. (a) No later than 18 months after the date of this order and every 4 years thereafter, each agency shall submit to the Chair of CEQ and make available to the public online an Environmental Justice Strategic Plan.

(b) Each Environmental Justice Strategic Plan shall, based on guidance provided by the Chair of CEQ under section 9 of this order, set forth the agency's vision, goals, priority actions, and metrics to address and advance environmental justice and to fulfill the directives of this order, including through the identification of new staffing, policies, regulations, or guidance documents.

(c) Each Environmental Justice Strategic Plan shall also identify and address opportunities through regulations, policies, permits, or other means to improve accountability and compliance with any statute the agency administers that affects the health and environment of communities with environmental justice concerns. Such measures may include:

(i) increasing public reporting by regulated entities;

(ii) expanding use of pollution measurement and other environmental impact or compliance assessment tools such as fenceline monitoring;

(iii) improving the effectiveness of remedies to provide relief to individuals and communities with environmental justice concerns, such as remedies that penalize and deter violations and promote future compliance, including harm mitigation and corrective action; and

(iv) considering whether to remove exemptions or waivers that may undermine the achievement of human health or environmental standards.

(d) No later than 2 years after the submission of an Environmental Justice Strategic Plan, each agency shall submit to the Chair of CEQ, and make available to the public, an Environmental Justice Assessment that evaluates, based on guidance provided by the Chair of CEQ under section 9 of this order, the effectiveness of the agency's Environmental Justice Strategic Plan. The Environmental Justice Assessment shall include an evaluation of:

(i) the agency's progress in implementing its Environmental Justice Strategic Plan;

(ii) any barriers to implementing the agency's Environmental Justice Strategic Plan; and

(iii) steps taken to address any barriers identified.

(e) An agency's completion of an Environmental Justice Strategic Plan and Environmental Justice Assessment shall satisfy the requirements of section 1–103 of Executive Order 12898.

(f) The Environmental Justice Scorecard established under section 223(d) of Executive Order 14008 shall address agency progress toward achieving the goals outlined in this order and shall include, among other items, a section on agencies' Environmental Justice Strategic Plans and Environmental Justice Assessments.

(g) The Chair of CEQ may request additional periodic reports, information, or evaluations on environmental justice issues from agencies.

(h) Independent regulatory agencies are strongly encouraged to comply with the provisions of this order and to provide a notice to the Chair

of CEQ of their intention to do so. The Chair of CEQ shall make such notices publicly available and maintain a list online of such agencies.

Sec. 5. *Research, Data Collection, and Analysis to Advance Environmental Justice*. (a) To address the need for a coordinated Federal strategy to identify and address gaps in science, data, and research related to environmental justice, the Director of the Office of Science and Technology Policy (OSTP) shall establish an Environmental Justice Subcommittee of the National Science and Technology Council (Environmental Justice Subcommittee).

(i) The Director of OSTP, in consultation with the Chair of CEQ, shall designate at least two co-chairs of the Environmental Justice Subcommittee and may designate additional co-chairs as appropriate. The membership of the Subcommittee shall consist of representatives of agencies invited by the Director, in consultation with the Chair of CEQ.

(ii) The Environmental Justice Subcommittee and the Interagency Council described in section 7 of this order shall hold an annual summit on the connection of science, data, and research with policy and action on environmental justice.

(iii) The Environmental Justice Subcommittee shall prepare, and update biennially, an Environmental Justice Science, Data, and Research Plan (Research Plan) to:

(A) analyze any gaps and inadequacies in data collection and scientific research related to environmental justice, with a focus on gaps and inadequacies that may affect agencies' ability to advance environmental justice, including through the Environmental Justice Strategic Plans required under section 4 of this order;

(B) identify opportunities for agencies to coordinate with the research efforts of State, Tribal, territorial, and local governments; academic institutions; communities; the private sector; the non-profit sector; and other relevant actors to accelerate the development of data, research, and techniques—including consideration of Indigenous Knowledge—to address gaps and inadequacies in data collection and scientific research that may affect agencies' ability to advance environmental justice;

(C) provide recommendations to agencies on the development and use of science, data, and research to support environmental justice policy and the agency responsibilities outlined in section 3 of this order;

(D) provide recommendations to the Chair of CEQ on data sources to include in the Climate and Economic Justice Screening Tool established pursuant to section 222(a) of Executive Order 14008;

(E) provide recommendations to agencies on ethical standards, privacy protections, and other requirements for the development and use of science, data, and research addressed in the Research Plan, including recommendations with respect to engaging in consultation with and obtaining consent of Tribal Nations; and

(F) provide recommendations to agencies on:

(1) encouraging participatory science, such as research or data collection undertaken by communities or the public, and, as appropriate, integrating such science into agency decision-making processes;

(2) taking steps to ensure or encourage, as appropriate, that collections of data related to environmental justice include data from the Territories and possessions of the United States;

(3) improving the public accessibility of research and information produced or distributed by the Federal Government, including through the use of machine-readable formats, where appropriate;

(4) disaggregating environmental risk, exposure, and health data by race, national origin, income, socioeconomic status, age, sex, disability, and other readily accessible and appropriate categories;

(5) identifying and addressing data collection challenges related to patterns of historical or ongoing racial discrimination and bias;

(6) analyzing cumulative impacts (including risks) from multiple sources, pollutants or chemicals, and exposure pathways, and accounting for non-chemical stressors and current and anticipated climate change;

(7) in collaboration with Tribal Nations, as appropriate, collecting, maintaining, and analyzing information on consumption patterns of fish, wildlife, and plants related to subsistence and cultural practices of Tribal and Indigenous populations;

(8) providing opportunities for meaningful engagement for communities with environmental justice concerns on the development and design of data collection and research strategies relevant to those communities; and

(9) implementing sections 3–3 and 4–4 of Executive Order 12898 in an efficient and effective manner.

(b) Consistent with sections 3–3 and 4–4 of Executive Order 12898, each agency shall take appropriate steps, considering the recommendations of the Environmental Justice Subcommittee, to promote the development of research and data related to environmental justice, including enhancing the collection of data, supporting the creation of tools to improve the consideration of environmental justice in decision-making, providing analyses of cumulative impacts and risks, and promoting science needed to inform decisions that advance environmental justice.

(c) When conducting research and data collection in furtherance of the directives in this order and Executive Order 12898, agencies shall comply with applicable regulations and directives, including those related to standards of ethics for the protection of human subjects, such as those set forth in Executive Order 12975 of October 3, 1995 (Protection of Human Research Subjects and Creation of National Bioethics Advisory Commission), and the Presidential Memorandum of January 27, 2021 (Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking).

Sec. 6. *Community Notification on Toxic Chemical Releases*. To ensure that the public, including members of communities with environmental justice concerns, receives timely information about releases of toxic chemicals that may affect them and health and safety measures available to address such releases:

(a) Each agency shall report in accordance with sections 301 through 313 of EPCRA after considering applicable EPA guidance and without regard to the Standard Industrial Classification or North American Industry Classification System delineations.

(b) No later than 6 weeks following a release requiring notification by an agency under section 304(a) of EPCRA, the notifying agency shall hold a public meeting providing the information required under section 304(b)(2) of EPCRA, including information on the nature of the release, known or anticipated health risks, and the proper precautions to take as a result. The agency shall provide notice of a public meeting no later than 72 hours after a release.

(c) The Administrator of EPA shall evaluate available legal authorities and consider any additional steps it may require or encourage non-Federal facilities that report releases under EPCRA to undertake in connection with the report.

(d) The Administrator of EPA shall provide the Environmental Justice Subcommittee established by section 5 of this order with an annual report on trends in data in the Toxic Release Inventory established by section 313 of EPCRA to inform the development of the Research Plan required under section 5(a)(iii) of this order.

Sec. 7. *White House Environmental Justice Interagency Council*. (a) Section 1–102(b) of Executive Order 12898, as amended by section 220(a) of Executive Order 14008, and further amended by section 4(b) of Executive Order 14082, creating the White House Environmental Justice Interagency Council, is amended to read as follows:

''(b) Membership. The Interagency Council shall consist of the following additional members:

(i) the Secretary of State;

(ii) the Secretary of Defense;

(iii) the Attorney General;

(iv) the Secretary of the Interior;

(v) the Secretary of Agriculture;

(vi) the Secretary of Commerce;

(vii) the Secretary of Labor;

(viii) the Secretary of Health and Human Services;

(ix) the Secretary of Housing and Urban Development;

(x) the Secretary of Transportation;

(xi) the Secretary of Energy;

(xii) the Secretary of Veterans Affairs;

(xiii) the Secretary of Homeland Security;

(xiv) the Administrator of the Environmental Protection Agency;

(xv) the Director of the Office of Management and Budget;

(xvi) the Chair of the Council of Economic Advisers;

(xvii) the Administrator of General Services;

(xviii) the Executive Director of the Federal Permitting Improvement Steering Council;

(xix) the Director of the Office of Science and Technology Policy;

(xx) the Assistant to the President and National Climate Advisor;

(xxi) the Assistant to the President for Domestic Policy;

(xxii) the Assistant to the President for Economic Policy;

(xxiii) the Executive Director of the White House Gender Policy Council;

(xxiv) the Senior Advisor to the President for Clean Energy Innovation and Implementation; and

(xxv) other relevant agency heads as determined by the Chair of CEQ.''

(b) Section 1–102(d) of Executive Order 12898, as amended by section 220(a) of Executive Order 14008, is further amended by adding the following sentence at the end: ''The Interagency Council shall support and facilitate interagency collaboration on programs and activities related to environmental justice, including the development of materials for environmental justice training to build the capacity of Federal employees to advance environmental justice and to increase the meaningful participation of individuals from communities with environmental justice concerns in Federal activities.''

(c) Section 1–102(g) of Executive Order 12898, as amended by section 220(a) of Executive Order 14008, is amended to read as follows: ''Officers. The head of each agency on the Interagency Council shall designate an Environmental Justice Officer within the agency with the authority to represent the agency on the Interagency Council and with the responsibility for leading agency planning and implementation of the agency's Environmental Justice Strategic Plan, coordinating with CEQ and other agencies, and performing such other duties related to advancing environmental justice as the head of the agency deems appropriate.''

(d) Section 1–102 of Executive Order 12898, as amended by section 220(a) of Executive Order 14008, is further amended by adding the following at the end:

''(h) Memorandum of Understanding. The Interagency Council shall adopt a Memorandum of Understanding among its members that sets forth the objectives, structure, and planned operations of the Interagency Council.

(i) Public meetings. In coordination with the White House Environmental Justice Advisory Council, the Interagency Council shall hold at least one public meeting per year. The Interagency Council shall prepare, for public review, a summary of the comments and recommendations discussed at public meetings of the Interagency Council.

(j) Clearinghouse. The Administrator of EPA, in coordination with the Interagency Council, shall, no later than March 31, 2024, establish a public, internet-based, whole-of-government clearinghouse composed of culturally and linguistically appropriate and accessible materials related to environmental justice, including:

(i) information describing the activities of the members of the Interagency Council to address issues relating to environmental justice;

(ii) information on technical assistance, tools, and resources to assist communities with environmental justice concerns in building capacity for public participation;

(iii) copies of training materials developed by the Interagency Council or its members to help individuals and employees understand and carry out environmental justice activities; and

(iv) any other information deemed appropriate by the Administrator, in coordination with the Interagency Council.''

(e) Section 5–5(a) of Executive Order 12898 is amended to read as follows: ''The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Interagency Council.''

Sec. 8. *White House Office of Environmental Justice*. (a) The White House Office of Environmental Justice is hereby established within CEQ.

(b) The Office shall be headed by a Federal Chief Environmental Justice Officer, who shall be appointed by the President. The Federal Chief Environmental Justice Officer shall advance environmental justice initiatives, including by coordinating the development of policies, programs, and partnerships to achieve the policies set forth in this order; identifying opportunities for collaboration and coordination with State, Tribal, territorial, and local governments; supporting the Interagency Council; and advising the Chair of CEQ and the Interagency Council on environmental justice matters.

(c) The heads of all agencies shall cooperate with the Federal Chief Environmental Justice Officer and provide such information, support, and assistance as the Federal Chief Environmental Justice Officer may request, as appropriate.

Sec. 9. *Guidance*. Within 6 months of the date of this order, the Chair of CEQ shall issue interim guidance, in consultation with the Interagency Council, to inform agency implementation of this order, and shall request recommendations on the guidance from the White House Environmental Justice Advisory Council established by Executive Order 14008 (Advisory Council). To reduce redundancy and streamline reporting obligations, the interim guidance shall identify ways for agencies to align other related efforts, such as obligations that agencies may have under Executive Order 13985 and Executive Order 14008. Within 18 months of the date of this order, the Chair of CEQ shall issue final guidance after considering any recommendations of the Advisory Council. The Chair of CEQ may revise any guidance, or issue additional guidance under this order, as appropriate, and shall consider any additional recommendations made by the Advisory Council in issuing or revising guidance under this section.

Sec. 10. *Reports to the President*. Within 1 year of the date for the submission of agency Environmental Justice Strategic Plans to the Chair of CEQ under

section 4(a) of this order, the Chair shall, after consultation with the Interagency Council and after considering recommendations from the Advisory Council, submit to the President a report that describes the implementation of this order, includes each agency's Environmental Justice Strategic Plan, provides recommendations for additional steps to advance environmental justice, and, beginning with the second report, also provides any insights gathered from each agency's Environmental Justice Assessment required under section 4(d) of this order.

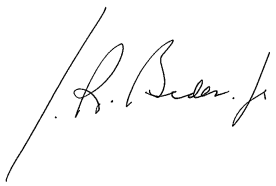
Sec. 11. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
April 21, 2023.

[FR Doc. 2023–08955
Filed 4–25–23; 8:45 am]
Billing code 3395–F3–P

Presidential Documents

Proclamation 10554 of April 21, 2023

National Park Week, 2023

By the President of the United States of America

A Proclamation

Edward Abbey, park ranger and author, wrote that ''Every man, every woman, carries in heart and mind the image of the ideal place, the right place, the one true home, known or unknown, actual or visionary.'' For so many Americans, this place can be found in our magnificent National Park System. From the pristine lakes of Glacier National Park to the breathtaking cliffs of Acadia and from Independence Hall in Philadelphia to the César E. Chávez National Monument in California, these 424 cultural treasures and natural wonders provide endless opportunities for recreation, reflection, and inspiration. This week, we celebrate our cherished National Park System and recommit ourselves to protecting it for years to come.

Preserving our remarkable lands, which have been home to Tribal Nations since time immemorial, not only bridges our past to our present but also invests in our planet's future. By tending to our forests, we support our trees' ability to cycle carbon dioxide out of the atmosphere. By safeguarding our wetlands, we shore up our defenses against hurricanes and superstorms and improve our chances of beating back forest fires. Ensuring the health of our ecosystems is vital to our fight against the climate crisis and our resilience when disasters strike.

That is why I launched the ''America the Beautiful'' initiative during my first year in office. This set a national goal of voluntarily conserving 30 percent of our country's lands and waters by 2030. Our National Park System is a cornerstone of this conservation effort, and expanding and protecting it is key to meeting our goal.

My Administration is also investing over a billion dollars through our Bipartisan Infrastructure Law to help Federal agencies, including the National Park Service, restore our extensive system of national parks and public lands. This funding supports critical ecosystems by combating invasive species, replanting vegetation, and improving soil health. It expands recruitment, training, and pay for thousands of brave wildland firefighters. And it supports new trails, roads, bridges, and other transportation within national parks, making it easier and safer to travel and see the sights. These efforts go hand-in-hand with our Inflation Reduction Act, the largest investment in combating climate change in American history. With this law, the National Park Service will hire new employees, and we will build out clean energy charging stations across our national parks and public lands, bringing us closer to a net-zero emissions future.

I have been proud to use executive authorities—including my authority under the Antiquities Act—to protect and expand some of America's most cherished natural wonders in and outside the National Park System. I designated the Camp Hale-Continental Divide Monument in Colorado and protected Alaska's Tongass National Forest. I restored protections for Alaska's Bristol Bay, Minnesota's Boundary Waters Area Watershed, Utah's Bears Ears and Grand Staircase-Escalante National Monuments, and the Northeast Canyons and Seamounts National Monuments. And last month, I established our two newest national monuments—Avi Kwa Ame National Monument

in Nevada and Castner Range National Monument in Texas—protecting nearly 514,000 total acres of public land.

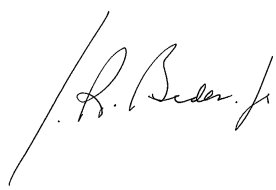
Throughout this work, my Administration is ensuring that all Americans have equal access to our national parks. My new Budget requests $3.8 billion from the Congress for the National Park Service so we can improve transportation options to and from these sites—making it easier for all Americans to visit, especially people in underserved communities and people with disabilities. We are taking steps to recognize traditional indigenous knowledge and to expand Tribal co-stewardship of national parks because drawing upon Tribal Nations' deep expertise of these lands is key to sustaining them. And through the Outdoor Recreation Legacy Partnership, the National Park Service is helping renovate and build public parks and other outdoor spaces in communities with little access to outdoor recreation.

Our national parks are the envy of the world. Jill and I have taken our children and grandchildren to these extraordinary places around the country to remind them of the magnificence and majesty of America. They unite us all and are the birthright that we pass down from generation to generation. This week and always, let us appreciate these national treasures that our ancestors conserved for us and rededicate ourselves to preserving them for all Americans to enjoy.

On April 22, the National Park Service will be offering free entry to all national parks. I encourage everyone to take advantage of this opportunity and to visit these treasured places.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 22 through April 30, 2023, as National Park Week. I encourage all Americans to find their park, recreate responsibly, and enjoy the benefits that come from spending time in the natural world.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of April, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-seventh.



[FR Doc. 2023–08936
Filed 4–25–23; 8:45 am]
Billing code 3395–F3–P

Presidential Documents

Proclamation 10555 of April 21, 2023

National Crime Victims' Rights Week, 2023

By the President of the United States of America

A Proclamation

Every person deserves to feel safe in their home, school, workplace, and community. Yet each year, millions of Americans fall victim to acts of violence, theft, fraud, and other crimes. Often, the pain and trauma can have long-term impacts. During National Crime Victims' Rights Week, we recommit to the work of preventing crime, supporting victims as they heal, and holding offenders accountable.

Beyond the physical, psychological, and emotional scars, victims and their families too often bear the economic burden of the crimes they suffered—such as lost income, medical bills, or expenses for temporary housing. As a United States Senator, I was proud to support the Victims of Crime Act in 1984, which created a Crime Victims Fund using fines from Federal prosecutions to directly compensate victims and finance victim assistance services. In recent years, the fund's balance declined significantly, so I signed a bill in 2021 to rebuild it and ensure that victims can access these critical resources.

Last year, I also reauthorized and strengthened the Violence Against Women Act (VAWA), which I first wrote as a United States Senator more than 30 years ago to change the laws and culture around the scourge of domestic and sexual violence in America. For decades, this law has supported shelters and rape crisis centers; funded housing and legal assistance for survivors of abusive relationships, sexual assault, and stalking; and helped train law enforcement agencies and courts to make the justice system more responsive to survivors' needs.

As President, I increased funding for VAWA to its highest level so that we can hold more offenders accountable and allow more victims to access trauma-informed care—especially victims from underserved communities, including those from the LGBTQI+ community and rural areas. Tribal courts will now be able to exercise jurisdiction over non-Native perpetrators of sexual assault, child abuse, and sex trafficking. The law also enables victims to take people who disseminate their intimate images without consent to court, and it provides training for law enforcement, prosecutors, and victim service providers in addressing online abuse and cyberstalking.

I signed into law the COVID–19 Hate Crimes and Khalid Jabara-Heather Heyer NO HATE Acts, which help State, local, and Tribal law enforcement agencies better track and prosecute hate-fueled acts of violence against people from marginalized groups, including by establishing state-run reporting hotlines for victims of hate crimes. We also made lynching a Federal hate crime for the first time in American history with the Emmett Till Antilynching Act, giving prosecutors more power to pursue perpetrators of these vile acts. I also hosted the United We Stand Summit, convening civic, faith, philanthropic, and business leaders to prevent and respond to hate crimes, and to help survivors of hate crimes and their communities heal from these tragic events.

While my Administration continues to take historic action to reduce gun crime, we are also taking action to help survivors of gun violence and families that have lost loved ones to this public health epidemic. Last

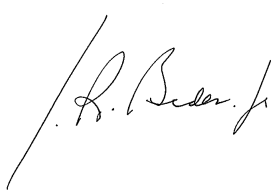
June, I was proud to sign the Bipartisan Safer Communities Act, the most sweeping gun safety law in nearly three decades. Among other steps, this law helps keep guns out of the hands of dating partners convicted of violent crimes and provides over a billion dollars to address the youth mental health crisis in America, especially trauma experienced by survivors of gun violence. In March 2023, I signed an Executive Order directing key members of my Cabinet to submit a proposal for improving Federal support for communities and individuals impacted by gun violence.

Supporting crime victims also requires building trust between the public and law enforcement. When someone falls victim to a crime, first responders should have the resources they need to ensure victims feel heard, valued, and supported. We have provided States with over $10 billion to improve law enforcement training, fund community violence interventions, purchase necessary equipment like body-worn cameras, clear court backlogs, and support crime victims. My Safer America Plan calls for an additional $37 billion to prevent crime, reduce gun violence, and create a fairer justice system—including by hiring 100,000 more officers for safe, effective, and accountable community policing, consistent with the standards of my policing Executive Order, which will also help strengthen public trust in law enforcement.

This week and every week, let us all commit to doing our part to help prevent crimes and to provide survivors with the resources they need to heal, pursue justice, and emerge stronger. If you or a loved one are a victim of crime, I encourage you to visit www.Crimevictims.gov.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 23 through April 29, 2023, as National Crime Victims' Rights Week. I call upon all Americans to observe this week by participating in events that raise awareness of victims' rights and services and by volunteering to serve and support victims in their time of need.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of April, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-seventh.



[FR Doc. 2023–08937

Filed 4–25–23; 8:45 am]

Billing code 3395–F3–P

Presidential Documents

Proclamation 10556 of April 21, 2023

Earth Day, 2023

By the President of the United States of America

A Proclamation

America's natural wonders help define who we are as a Nation. They unite and renew us, a constant reminder of something bigger than ourselves. But nature is not only a catalyst for reflection—it demands action. On Earth Day, we celebrate the modern environmental movement that kicked off 53 years ago, when millions of Americans of every age and background first rallied together to change our laws and become better stewards of our planet. Because of their courage and commitment, the Environmental Protection Agency was created to safeguard our environment and the health of all Americans, and the National Oceanic and Atmospheric Administration was established to help protect our ocean. The Congress passed the Clean Water Act to restore our rivers and streams; the 1970 Clean Air Act to slash deadly emissions; and the Endangered Species Act, which has helped prevent 99 percent of potential extinctions of species under its care. Advocates have since built a global coalition that today will see a billion people worldwide take action to protect the Earth. Their work has called us all to conscience and has inspired us to reject the false choice between a sustainable planet and a strong economy. Today we are continuing to prove that we can and must demand both.

This work has never been more urgent. Climate change is a clear and present danger—in the words of UN Secretary General Antonio Guterres, it is a ''code red for humanity.'' We see it across the world and in every corner of our country: more destructive hurricanes and tornadoes; more severe and longer-lasting droughts; and wildfires that have destroyed millions of acres—more land than many whole States. Extreme weather is disrupting our supply chains and overwhelming our energy grids, costing America $165 billion in damages last year alone and often hitting low-income communities hardest. Deforestation, biodiversity loss, toxic spills, and plastic pollution only make things worse. Our economy, our national security, and our children's futures are at stake.

When I was sworn in as President, we set groundbreaking goals to cut America's greenhouse gas emissions in half by 2030 and achieve net-zero emissions by 2050 in order to keep global warming below the critical 1.5-degrees-Celsius threshold. We immediately rejoined the Paris Agreement and have worked to strengthen global resilience—rallying 130 nations to commit to slashing methane emissions, working to halt deforestation, and putting healthy ecosystems at the heart of healthy economies. At home, we are in the midst of a generational upgrade in our infrastructure; and we passed the most aggressive climate investment law in history, making record investments in green manufacturing, clean public transit, and climate-smart agriculture while giving families tax credits to make their homes more energy efficient. In the first 2 years of my Administration, more solar, wind, and battery storage technology were deployed in the United States than any prior 2-year period. In 2022 alone, wind and solar provided nearly three-quarters of new power generation capacity in the United States. We are making the United States the world's electric vehicle leader, building a nationwide network of 500,000 charging stations and providing tax credits

to help families afford electric cars and save on the cost of gasoline. Throughout, we are making sure that the technology powering our clean energy future is made in America by American workers, creating good-paying union jobs. Since we know environmental factors can impact businesses and markets, I have made sure that pension fund managers can continue to take those factors into account.

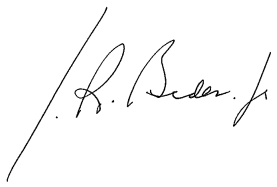
As we unleash this new era of economic growth powered by clean energy, we are also making historic investments in environmental justice—cleaning up toxic waste, improving air quality, capping old oil and gas wells, and expanding safe outdoor spaces across the country so communities smothered by the legacy of pollution can rebuild. We are working to replace every lead pipe left in America so children everywhere can turn on the faucet and drink clean water, and we are partnering with communities to get dangerous ''PFAS'' chemicals out of their water supplies. To complement and enable these efforts, today I signed an Executive Order committing the Federal Government to incorporating environmental justice perspectives, values, and considerations into our work. I have also committed to working with the Congress to quadruple American support for global climate finance, unlocking the additional pools of private investment needed to bring the world along. There is no denying that we are in this together.

At home, we have also deepened our conservation work, preserving our natural wonders as bridges to our past and future. Our ''America the Beautiful'' Initiative aims to conserve at least 30 percent of our Nation's lands and waters by 2030; in its first year, we protected more territory than any administration since President John F. Kennedy's. Last Earth Day, I signed an Executive Order strengthening America's forests to harness their power in the fight against climate change and reduce wildfire risk. I have designated magnificent lands from Avi Kwa Ame—or Spirit Mountain—in Nevada to Camp Hale in Colorado as national monuments, restored protections to treasures like Bears Ears and Grand Staircase-Escalante in Utah, and acted to protect the Tongass National Forest and Bristol Bay in Alaska.

The environmentalist and author Rachel Carson once wrote: ''Those who contemplate the beauty of the Earth find reserves of strength that will endure as long as life lasts.'' Today, we renew that strength to keep building on our progress. The challenges we face are great, but our capacity is greater. The inspiring passion of young people and climate activists, civil society and Indigenous communities, and thoughtful consumers and forward-thinking businesses is galvanizing the world to finally deliver a more equitable, prosperous, and just planet, preserved for generations to come.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 22, 2023, as Earth Day. Today, I encourage all Americans to reflect on the need to protect our precious Earth; to heed the call to combat our climate and biodiversity crises while growing the economy; and to keep working for a healthier, safer, more equitable future for all.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of April, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-seventh.



[FR Doc. 2023–08938
Filed 4–25–23; 8:45 am]
Billing code 3395–F3–P

Rules and Regulations

Federal Register
Vol. 88, No. 80
Wednesday, April 26, 2023

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

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2022–0109]

RIN 3150–AK86

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Renewal of Initial Certificate and Amendment Nos. 1 Through 15; Delay of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; delay of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is delaying the effective date of a direct final rule published in the **Federal Register** on February 13, 2023. The direct final rule renews the initial certificate (Amendment 0) and Amendment Nos. 1 through 15 of the Holtec International HI–STORM 100 Certificate of Compliance No. 1014 for 40 years and revises the certificate of compliance's conditions and technical specifications to address aging management activities related to the structures, systems, and components important to safety of the dry storage system to ensure that these will maintain their intended functions during the period of extended storage operations. The delay is necessary for the NRC to evaluate the public comments submitted on the direct final rule.

DATES: The effective date of May 1, 2023, for the direct final rule published February 13, 2023 (88 FR 9106), is delayed indefinitely. The NRC will publish a subsequent document in the **Federal Register** either announcing a new effective date or withdrawing the direct final rule.

ADDRESSES: Please refer to Docket ID NRC–2022–0109 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0109. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individual listed in the **FOR 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, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *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, 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: James Firth, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission; Washington, DC 20555–0001; telephone: 301–415–6628; email: *James.Firth@nrc.gov.*

SUPPLEMENTARY INFORMATION: On February 13, 2023, the NRC published a direct final rule (88 FR 9106) and a companion proposed rule (88 FR 9195) amending its regulations in part 72 of title 10 of the *Code of Federal Regulations* to revise the Holtec International HI–STORM 100 Cask System listing within the ''List of approved spent fuel storage casks'' to renew the initial certificate (Amendment No. 0) and Amendment Nos. 1 through 15 to Certificate of Compliance No. 1014. The renewal of the initial certificate and Amendment Nos. 1 through 15 for 40 years revises the certificate of compliance's conditions and technical specifications to address aging management activities related to the structures, systems, and components important to safety of the dry storage system to ensure that these will maintain their intended functions during the period of extended storage operations.

In the direct final rule published on February 13, 2023 (88 FR 9106), the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on May 1, 2023. In response to requests for extension of the public comment period, on March 22, 2023, the NRC reopened the public comment period (88 FR 17164) until April 14, 2023. In total, the NRC received and docketed eight comment submissions on the companion proposed rule (88 FR 9195; February 13, 2023), that included requests for the NRC to extend the public comment period. An electronic copy of the comment submissions can be obtained from the Federal Rulemaking website *https://www.regulations.gov* under Docket ID NRC–2022–0109 and they are also available in ADAMS using the Accession numbers shown in the table in the Availability of Documents section.

In the direct final rule (88 FR 9106; February 13, 2023), the NRC originally provided a 45-day period between the close of the public comment period and the effective date of the direct final rule to allow the NRC sufficient time to evaluate whether any of the comments received are significant adverse comments and, if so, to prepare and publish a withdrawal of the direct final rule. After reopening the public comment period and receiving additional comments, the effective date of May 1, 2023, will not allow the NRC sufficient time to evaluate the comments.

Therefore, in order to provide the NRC with sufficient time to consider whether any of the comments received are significant adverse comments, the direct final rule will not become effective as scheduled.

The NRC will complete its evaluation of the public comments on the direct final rule and will publish a subsequent notice indicating either that the NRC is

moving forward with the direct final rule, and if so, providing a new effective date, or that the NRC is withdrawing the direct final rule and moving forward under the companion proposed rule (88 FR 9195; February 13, 2023).

Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No./ **Federal Register** citation
"List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Renewal of Initial Certificate and Amendment Nos. 1 Through 15"; Proposed rule (February 13, 2023).	88 FR 9195.
"List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Renewal of Initial Certificate and Amendment Nos. 1 Through 15"; Direct Final Rule: Environmental Assessment and Final Finding of No Significant Impact. (February 13, 2023).	88 FR 9106.
"List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Renewal of Initial Certificate and Amendment Nos. 1 Through 15"; Proposed rule; Reopening of Comment Period. (March 22, 2023).	88 FR 17164.
Comment (001) from Brian Gutherman on PR–72—List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Renewal of Initial Certificate and Amendment Nos. 1 through 15.	ML23046A406.
Comment (002) from Renante Baniaga on PR–72—List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Renewal of Initial Certificate and Amendment Nos. 1 through 15.	ML23046A407.
Comment (003) from Michael Ford on PR–72—List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Renewal of Initial Certificate and Amendment Nos. 1 through 15.	ML23073A116.
Comment (004) from Kalene Walker on PR–72—List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Renewal of Initial Certificate and Amendment Nos. 1 through 15.	ML23075A156.
Comment Period Extension Request from NIRS, et al. on PR–72—List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Renewal of Initial Certificate and Amendment Nos. 1 through 15.	ML23073A095.
Comment (005) from NIRS, et al. on PR–72—List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Renewal of Initial Certificate and Amendment Nos. 1 through 15.	ML23107A144.
Comment (006) from Michael Ford on PR–72—List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Renewal of Initial Certificate and Amendment Nos. 1 through 15.	ML23108A278.
Comment (007) from Kalene Walker on PR–72—List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Renewal of Initial Certificate and Amendment Nos. 1 through 15.	ML23108A279.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2022–0109.

Dated: April 21, 2023.

For the Nuclear Regulatory Commission.

Cindy K. Bladey,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–08789 Filed 4–25–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 590

Policy Statement on Export Commencement Deadlines in Authorizations To Export Natural Gas to Non-Free Trade Agreement Countries

	Docket Nos.
Lake Charles Exports, LLC	11–59–LNG.
Gulf LNG Liquefaction Company, LLC.	12–101–LNG.
Golden Pass LNG Terminal LLC	12–156–LNG.
Lake Charles LNG Export Co., LLC.	13–04–LNG.
Magnolia LNG, LLC	13–132–LNG.
Delfin LNG LLC	13–147–LNG.
Alaska LNG Project LLC	14–96–LNG.
Pieridae Energy (USA) Ltd	14–179–LNG.
Texas LNG Brownsville LLC	15–62–LNG.
Cameron LNG, LLC	15–90–LNG.
Port Arthur LNG, LLC	15–96–LNG.
Rio Grande LNG, LLC	15–190–LNG.
Venture Global Plaquemines LNG, LLC.	16–28–LNG.
Lake Charles LNG Export Co., LLC.	16–109–LNG.
Lake Charles Exports, LLC	16–110–LNG.
Driftwood LNG LLC	16–144–LNG.
Freeport LNG Expansion, L.P. & FLNG Liquefaction 4, LLC.	18–26–LNG.
Mexico Pacific Limited LLC	18–70–LNG.
Corpus Christi Liquefaction, LLC	18–78–LNG.
ECA Liquefaction, S. de R.L. de C.V.	18–144–LNG.
Energía Costa Azul, S. de R.L. de C.V.	18–145–LNG.
Epcilon LNG LLC	20–31–LNG.
Vista Pacifico LNG, S.A.P.I. de C.V.	20–153–LNG.

AGENCY: Office of Fossil Energy and Carbon Management, Department of Energy.

ACTION: Policy statement.

SUMMARY: The Department of Energy (DOE) is reaffirming the seven-year deadline for authorization holders to commence exports of domestically produced natural gas, including liquefied natural gas (LNG), to non-free trade agreement (non-FTA) countries set forth in long-term authorizations issued under the Natural Gas Act. For existing and future non-FTA authorizations for the export of LNG, DOE will allow

authorizations to expire on the export commencement deadline originally set forth in the order and will not consider an application for an extension, unless the authorization holder demonstrates both that: it has physically commenced construction on the associated export facility, and its inability to comply with the existing export commencement deadline is the result of extenuating circumstances outside of its control. Authorization holders unable to make this demonstration may submit a new non-FTA application, which will be considered without prejudice. This policy will increase transparency for non-FTA authorization holders and pending applicants who have not yet commenced exports, while providing greater certainty about DOE's approvals for the LNG export market. Concurrently with the issuance of this Policy Statement, DOE is issuing final orders on three pending applications for a commencement extension.

DATES: This Policy Statement is applicable on April 21, 2023.

FOR FURTHER INFORMATION CONTACT: Amy Sweeney or Jennifer Wade, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585; (202) 586–2627 or (202) 586–4749; *amy.sweeney@hq.doe.gov* or *jennifer.wade@hq.doe.gov;* Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Energy Delivery and Resilience, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW, Washington, DC 20585; (202) 586–9793; *cassandra.bernstein@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations. Acronyms and abbreviations used in this document are set forth below for reference.

Bcf/d Billion Cubic Feet per Day
DOE United States Department of Energy
FERC Federal Energy Regulatory Commission
FTA Free Trade Agreement
LNG Liquefied Natural Gas
MARAD Maritime Administration
NEPA National Environmental Policy Act of 1969
NGA Natural Gas Act of 1938
Tcf Trillion Cubic Feet

Table of Contents

I. Statutory Background

DOE is responsible for authorizing exports of domestically produced natural gas, including LNG,[1] to foreign countries under section 3 of the Natural Gas Act (NGA).[2] The policy announced in this Policy Statement is specific to authorizations [3] for the export of natural gas to countries with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas and with which trade is not prohibited by U.S. law or policy (non-FTA countries).[4] NGA section 3(a) authorizes the exportation of natural gas from the United States unless DOE determines that doing so ''will not be consistent with the public interest.'' [5] DOE, as affirmed by the U.S. Court of Appeals for the District of Columbia Circuit, has consistently interpreted this provision as creating a rebuttable presumption that a proposed export of natural gas to non-FTA countries is in the public interest.[6] Accordingly, DOE will conduct an informal adjudication and grant an application requesting a non-FTA authorization unless DOE finds that the proposed exportation will not be consistent with the public interest.[7] NGA section 3(a) also authorizes DOE, ''after opportunity for hearing, and for good cause shown,'' to issue any supplemental order ''as it may find necessary or appropriate.'' [8]

DOE's authorization is solely with respect to the export (or import) of natural gas and does not extend to authorization over the siting, construction, and operation of the liquefaction and export facilities. For LNG terminals located onshore or in state waters, the agency responsible for permitting the export facilities is the Federal Energy Regulatory Commission (FERC) pursuant to NGA section 3(e).[9] For LNG terminals located offshore beyond state waters, the responsible agency is the Maritime Administration (MARAD) within the Department of Transportation pursuant to the Deepwater Ports Act of 1974.[10]

Although most approved non-FTA exports originate (or will originate) from existing or proposed projects to be built in the United States, DOE has also approved non-FTA exports in extraterritorial proceedings involving

[1] In referring to natural gas in this Policy Statement, DOE refers primarily, but not exclusively, to LNG. Some DOE proceedings have involved (and, in the future, may involve) other types of natural gas, including compressed natural gas and compressed gas liquid. *See* 15 U.S.C. 717a(5) (definition of natural gas); 10 CFR 590.102(i).

[2] 15 U.S.C. 717b. The Secretary's authority was established by the Department of Energy Organization Act, 42 U.S.C. 7151(b), which transferred jurisdiction over import and export authorizations from the Federal Power Commission to the Secretary of Energy; *see also* 42 U.S.C. 7172(f). The authority to regulate the imports and exports of natural gas, including LNG, under NGA section 3 has been delegated to the Assistant Secretary for Fossil Energy and Carbon Management (FECM) in Redelegation Order No. S4–DEL–FE1–2023, issued on April 10, 2023.

[3] For purposes of this Policy Statement, DOE uses the terms ''authorization'' and ''order'' interchangeably.

[4] 15 U.S.C. 717b(a). This Policy Statement does not apply to exports to FTA countries under NGA section 3(c), 15 U.S.C. 717b(c). Section 3(c) of the NGA, as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102–486), requires that applications to export natural gas to FTA countries ''shall be deemed to be consistent with the public interest'' and granted ''without modification or delay.'' 15 U.S.C. 717b(c). Additionally, as of August 24, 2018, qualifying ''small-scale natural gas exports'' to non-FTA countries are deemed to be consistent with the public interest under NGA section 3(a). *See* 10 CFR 590.102(p); 10 CFR 590.208(a); *see also* U.S. Dep't of Energy, Small-Scale Natural Gas Exports; Final Rule, 83 FR 35106 (July 25, 2018). Because small-scale orders contain different terms than non-FTA orders involving larger volumes of exports (specifically, requiring authorization holders to commence small-scale exports within two years), this Policy Statement also does not apply to small-scale exports of natural gas.

[5] 15 U.S.C. 717b(a).

[6] *See Sierra Club* v. *U.S. Dep't of Energy,* 867 F.3d 189, 203 (D.C. Cir. 2017) (''We have construed [NGA section 3(a)] as containing a 'general presumption favoring [export] authorization.' '') (quoting *W. Va. Pub. Serv. Comm'n* v. *U.S. Dep't of Energy,* 681 F.2d 847, 856 (D.C. Cir. 1982)).

[7] *Id.* (''there must be 'an affirmative showing of inconsistency with the public interest' to deny the application'' under NGA section 3(a)) (quoting *Panhandle Producers & Royalty Owners Ass'n* v. *Econ. Regulatory Admin.,* 822 F.2d 1105, 1111 (D.C. Cir. 1987)).

[8] 15 U.S.C. 717b(a).

[9] 15 U.S.C. 717b(e); *see also* 15 U.S.C. 717a(11) (definition of LNG terminal); 18 CFR 153.2(d); *Sierra Club* v. *Fed. Energy Regulatory Comm'n,* 827 F.3d 36, 40 (D.C. Cir. 2016) (observing that, while DOE ''maintains exclusive authority over the export of natural gas as a commodity,'' DOE has delegated to FERC the authority to approve or deny an application for the siting, construction, operation, or expansion of an LNG terminal under NGA section 3(e)).

[10] *See* 33 U.S.C. 1502(9), 1503(a). The Deepwater Port Act originally applied only to oil import terminals, but was amended to include natural gas terminals. *See* Maritime Transportation Security Act of 2002, sec. 106, Public Law 107–295, 116 Stat. 2064.

Mexico or Canada. In such proceedings, DOE approves the export of U.S.-sourced natural gas by pipeline to Mexico or Canada under NGA section 3(c), and authorizes the re-export [11] of the U.S.-sourced natural gas in the form of LNG from a liquefaction and export facility to be built in Mexico or Canada, respectively, to non-FTA countries under NGA section 3(a).[12]

Before reaching a final decision on any non-FTA application, DOE must also comply with the National Environmental Policy Act of 1969 (NEPA).[13]

II. Regulatory Background

A. Long-Term Non-FTA Authorizations Issued to Date

Although NGA section 3(a) establishes a broad public interest standard and a presumption favoring export authorizations, the statute does not define ''public interest'' or identify criteria that must be considered. In prior decisions, DOE has identified a range of factors that it evaluates when reviewing an application to export LNG to non-FTA countries. These factors include economic impacts, international impacts, security of natural gas supply, and environmental impacts, among others. To conduct this review, DOE looks to record evidence developed in the application proceeding.[14]

Currently, there are 41 long-term orders [15] authorizing the export of LNG sourced from the United States (both the lower-48 states and Alaska) to non-FTA countries under NGA section 3(a).[16] These orders authorize a cumulative volume of non-FTA exports equivalent to 47.28 billion cubic feet (Bcf) per day (Bcf/d) of natural gas sourced from the lower-48 United States and 2.55 Bcf/d sourced from Alaska, or approximately 17.3 trillion cubic feet (Tcf) and 0.9 Tcf per year, respectively.[17] This cumulative volume includes 43.52 Bcf/d of U.S.-sourced natural gas authorized for export from facilities built (or proposed to be built) in the United States (including Alaska), and 6.31 Bcf/d of U.S-sourced natural gas authorized for re-export in the form of LNG from facilities to be built in Mexico or Canada.[18] It does not include volumes from long-term non-FTA orders that DOE has vacated [19] or orders authorizing small-scale exports of natural gas.[20]

Of the 49.83 Bcf/d in approved non-FTA export volumes as of today (sourced from both the lower-48 states and Alaska), the cumulative total of U.S. and Mexico LNG export capacity that is operating or under construction across 11 mid- or large-scale export projects is 24.19 Bcf/d of natural gas.[21] The remaining 25.64 Bcf/d in approved non-FTA export volumes represent possible future export capacity from numerous other proposed LNG export projects, but these proposed projects have not yet progressed to the construction phase. Some of these projects received approval for non-FTA exports as far back as 2016.[22]

B. Seven-Year Commencement Deadline for Exports to Non-FTA Countries

Both the NGA and DOE's regulations provide DOE with broad authority to attach conditions to non-FTA export authorizations. NGA section 3(a) states that DOE may grant an application for a non-FTA export authorization ''upon such terms and conditions as the [Secretary] may find necessary or appropriate.'' [23] Similarly, under 10 CFR 590.404, DOE may ''issue a final opinion and order and attach such conditions thereto as may be required by the public interest after completion and review of the final record.'' [24] Neither NGA section 3(a) nor DOE's regulations prescribe a specific time period for a non-FTA authorization. For this reason, DOE has determined that it has discretion under 10 CFR 590.404 to impose suitable terms.

For long-term orders authorizing the export of U.S.-sourced LNG to non-FTA countries, DOE provides each authorization holder with a period of seven years to commence export operations, set from the date the order is issued.[25] The end of this seven-year period is often referred to as the ''commencement deadline,'' after which point the non-FTA authorization expires. If the authorization holder commences exports of LNG from its facility within this seven-year period, its export term (whether for 20 years or for a term extending through December 31,

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[11] For purposes of these proceedings, ''re-export'' means to ship or transmit U.S.-sourced natural gas in its various forms (gas, compressed, or liquefied) subject to DOE's jurisdiction under the NGA, 15 U.S.C. 717b, from one foreign country (*i.e.,* a country other than the United States) to another foreign country.

[12] *See, e.g., Vista Pacifico LNG, S.A.P.I. de C.V.,* DOE/FECM Order No. 4929, Docket No. 20–153–LNG, Order Granting Long-Term Authorization to Re-Export U.S.-Sourced Natural Gas in the Form of Liquefied Natural Gas from Mexico to Non-Free Trade Agreement Nations, 1–7 (Dec. 20, 2022).

[13] 42 U.S.C. 4321 *et seq.*

[14] *See, e.g., Sabine Pass Liquefaction, LLC,* DOE/FECM Order No. 4800, Docket No. 19–125–LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, 10–28 (Mar. 16, 2022).

[15] Under DOE practice, ''long-term'' refers to orders greater than two years in duration. *See* U.S. Dep't of Energy, Including Short-Term Export Authority in Long-Term Authorizations for the Export of Natural Gas on a Non-Additive Basis; Policy Statement, 86 FR 2243 (Jan. 12, 2021).

[16] *See Freeport LNG Expansion, L.P., et al.,* DOE/FECM Order No. 4961, Docket No. 21–98–LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 72–76 (Mar. 3, 2023) (identifying final non-FTA authorizations sourced from the lower-48 states); *see also Alaska LNG Project LLC,* DOE/FE Order No. 3643–A, Docket No. 14–96–LNG, Final Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Aug. 20, 2020), *reh'g granted in part,* DOE/FE Order No. 3643–B (Apr. 15, 2021), *order aff'd,* DOE/FECM Order No. 3643–C (Apr. 13, 2023).

[17] *See Freeport LNG Expansion, L.P., et al.,* DOE/FECM Order No. 4961, at 72; *see also Alaska LNG Project LLC,* DOE/FE Order No. 3643–A, at 5, 40. Following issuance of *Freeport LNG Expansion, L.P., et al.,* DOE/FECM Order No. 4961, DOE vacated one long-term non-FTA authorization at the request of the authorization holder, Eagle LNG Partners Jacksonville II LLC (0.01 Bcf/d). *See infra* note 19.

[18] *See Freeport LNG Expansion, L.P., et al.,* DOE/FECM Order No. 4961, at 72–76; *see also Vista Pacifico LNG,* DOE/FECM Order No. 4929, at 7.

[19] To date, DOE has vacated nine long-term authorizations to export LNG to non-FTA countries (none over the objection of the authorization holder) in the following proceedings: *Eagle LNG Partners Jacksonville II LLC,* Docket No. 17–79–LNG (Mar. 12, 2023); *Bear Head Energy Inc. and Bear Head LNG (USA), LLC,* Docket No. 15–33–LNG (Jan. 20, 2023); *Jordan Cove Energy Project L.P.,* Docket No. 12–32–LNG (Apr. 22, 2022); *Air Flow N. Am. Corp.,* Docket No. 14–206–LNG (Dec. 30, 2021); *Emera CNG, LLC,* Docket No. 13–157–CNG (Oct. 20, 2021); *Annova LNG Common Infrastructure, LLC,* Docket No. 19–34–LNG (Apr. 23, 2021); *Floridian Natural Gas Storage Co., LLC,* Docket No. 15–38–LNG (Oct. 22, 2020); *Carib Energy (USA) LLC,* Docket No. 11–141–LNG (Nov. 17, 2020); *Flint Hills Res., LP,* Docket No. 15–168–LNG (Feb. 5, 2019).

[20] *See* 10 CFR 590.102(p); 10 CFR 590.208(a); *see supra* note 4.

[21] This 24.19 Bcf/d volume representing export capacity approved to non-FTA countries currently operating or under construction is comprised of:

(i) 23.75 Bcf/d of non-FTA volumes under construction or operating in the United States at the end of March 2023 (*see* U.S. Energy Info. Admin., U.S. Liquefaction Capacity (Apr. 17, 2023), *https://www.eia.gov/naturalgas/U.S.liquefaction capacity.xlsx,* calculated by adding Column N in ''Existing & Under Construction'' worksheet); and

(ii) 0.44 Bcf/d in U.S.-sourced natural gas to be re-exported in the form of LNG by ECA Liquefaction, S. de R.L. de C.V. from the ECA Mid-Scale Project Phase 1, under construction in Mexico, to non-FTA countries (*see* Docket No. 18–144–LNG).

[22] *See, e.g., Pieridae Energy (USA) Ltd.,* DOE/FE Order No. 3768, Docket No. 14–179–LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export U.S.-Sourced Natural Gas Natural Gas by Pipeline to Canada for Liquefaction and Re-Export in the Form of Liquefied Natural Gas to Non-Free Trade Agreement Countries (Feb. 5, 2016), discussed *infra.*

[23] 15 U.S.C. 717b(a).

[24] 10 CFR 590.404.

[25] The non-FTA exceptions are: (i) the Alaska LNG non-FTA authorization, which has a 12-year commencement deadline due to the unique aspects of that proposed project, *see Alaska LNG Project LLC,* DOE/FE Order No. 3643–A, at 41 (Ordering Para. D), and (ii) orders authorizing small-scale exports of natural gas, which have a two-year commencement deadline (*see supra* note 4).

2050) [26] begins upon the date of first commercial export.[27]

This practice began in 2011, when DOE issued its first conditional long-term export authorization involving domestically produced LNG to Sabine Pass Liquefaction, LLC (Sabine Pass).[28] In its application, Sabine Pass had requested ''that its authorization commence on the earlier of the date of first export or five years from the date of the issuance of the authorization.'' [29] After reviewing the record evidence, DOE determined that a period of seven years for Sabine Pass to commence its non-FTA exports was consistent with the public interest.[30]

In reaching this conclusion, DOE first explained that the purpose of the commencement deadline ''is to ensure that other entities that may seek similar authorizations are not frustrated in their efforts to obtain those authorizations by authorization holders that are not engaged in actual export operations.'' [31] Next, DOE stated that ''a seven-year operations commencement date has been selected as a reasonable accommodation given [Sabine Pass's] representation that it plans to be ready to commence operations by 2015–2016.'' [32] DOE reasoned that a seven-year commencement period ''provides approximately two years beyond [Sabine Pass's] current planned commencement date before the condition must be met,'' and thus ''will allow for time lost due to unplanned delays in licensing and construction of the planned liquefaction facilities.'' [33]

Since 2011, DOE has continued to provide a seven-year period for authorization holders to commence exports to non-FTA countries. This seven-year commencement deadline is set forth in both the Terms and Conditions and the Ordering Paragraphs of each long-term non-FTA order.[34] Specifically, in the Terms and Conditions, DOE continues to cite the need for the seven-year commencement deadline ''to ensure that other entities that may seek similar authorizations are not frustrated in their efforts to obtain those authorizations by authorization holders that are not engaged in actual export [or re-export] operations.'' [35] In the relevant Ordering Paragraph of each non-FTA order, DOE states that the authorization holder ''must commence export [or re-export] operations using the planned liquefaction facilities no later than seven years from the date of issuance of [the Order].'' [36]

To date, all seven large-scale export facilities using U.S.-sourced natural gas that have commenced exports of LNG have done so before the seven-year commencement deadline established in the authorization holders' corresponding non-FTA authorization(s).[37]

C. Applications To Extend the Export Commencement Deadline

Several authorization holders have filed applications (or requests) asking DOE to extend their original seven-year commencement deadline to a later date, based on the circumstances associated with their proposed LNG facility.

1. Orders Extending the Export Commencement Deadline Granted in 2020

In 2020, DOE granted extensions of the commencement deadline in six non-FTA orders (held by four different authorization holders), as follows:

- *Golden Pass LNG Terminal LLC,* DOE/FE Order No. 3978–C, Docket No. 12–156–LNG, Order Granting Request for Extension of Export Commencement Deadlines (Mar. 24, 2020) (extending commencement deadline from April 25, 2024, to September 30, 2025);
- *Lake Charles LNG Export Company, LLC,* DOE/FE Order Nos. 3868–A and 4010–A, Docket Nos. 13–04–LNG and 16–109–LNG, Order Granting Application for Extension of Commencement Deadlines (Oct. 6, 2020) (extending commencement deadlines in two non-FTA orders from July 29, 2023 or June 29, 2024, respectively, to December 16, 2025);
- *Lake Charles Exports, LLC,* DOE/FE Order Nos. 3324–B and 4011–A, Docket Nos. 11–59–LNG and 16–110–LNG, Order Granting Application to Amend Long-Term Authorizations (Oct. 6, 2020) (extending commencement deadlines in two non-FTA orders from July 29, 2023 or June 29, 2024, respectively, to December 16, 2025); and
- *Cameron LNG, LLC,* DOE/FE Order No. 3846–A, Docket No. 15–90–LNG, Order Granting Application for Extension of Commencement Deadlines (Nov. 2, 2020) (extending commencement deadline from July 15, 2023, to May 5, 2026).

Although DOE evaluated these authorization holders' extension applications on a case-by-case basis, DOE considered the same general factors in each proceeding.

First, DOE considered whether FERC—the agency approving the siting, construction, and operation of the LNG export facility in each proceeding—had approved an extension of its own ''construction and in-service deadline'' for the proposed facility.[38] In each of these proceedings, DOE found that FERC had already approved an extension for the facility's original construction and in-service deadline.

Second, DOE considered the project-specific facts presented in the extension application, including the authorization holder's progress in constructing the proposed export facility,[39] the

[26] *See* U.S. Dep't of Energy, Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050; Notice of Final Policy Statement and Response to Comments, 85 FR 52237 (Aug. 25, 2020).

[27] *See, e.g., Magnolia LNG LLC,* DOE/FECM Order No. 3909–C, Docket No. 13–132–LNG, Order Amending Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 67–68 (Apr. 27, 2022) (Ordering Paras. A, D).

[28] *See Sabine Pass Liquefaction, LLC,* DOE/FE Order No. 2961, Docket No. 10–111–LNG, Opinion and Order Conditionally Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations (May 20, 2011). DOE incorporated this seven-year commencement period in Sabine Pass's final order (DOE/FE Order No. 2961–A), issued on August 7, 2012.

[29] *Sabine Pass Liquefaction, LLC,* DOE/FE Order No. 2961, at 2.

[30] *Id.* at 33, 43 (Ordering Para. C).

[31] *Id.* at 33.

[32] *Id.*

[33] *Id.*

[34] If an authorization holder has already commenced export operations from its facility and is requesting to export additional volumes, this term is unnecessary and is therefore omitted from successive orders. *See, e.g., Sabine Pass,* DOE/FECM Order No. 4800, at 68–75.

[35] *E.g.,* Corpus Christi Liquefaction Stage III, LLC, DOE/FE Order No. 4490, Docket No. 18–78–LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 49 (Term and Condition B) (Feb. 10, 2020); *see also Vista Pacifico LNG, S.A.P.I. de C.V.*, DOE/FECM Order No. 4929, at 73–74 (Term and Condition B) (Dec. 20, 2022).

[36] *Magnolia LNG LLC,* DOE/FECM Order No. 3909–C, at 68 (Ordering Para. C). The exact phrasing of this Ordering Paragraph may vary among orders, but the seven-year commencement deadline is consistent.

[37] The authorization holders that have commenced exports before their commencement deadline are: (i) Sabine Pass; (ii) Cove Point LNG, LP; (iii) Southern LNG Company, L.L.C.; (iv) Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC (joint authorization holders); (v) Cameron LNG, LLC; (vi) Freeport LNG Expansion, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, and FLNG Liquefaction 3, LLC (joint authorization holders); and (vii) Venture Global Calcasieu Pass, LLC. *See supra* note 21.

[38] FERC's authorizations for proposed LNG export facilities under NGA section 3(e), 15 U.S.C. 717b(e), include a deadline for the authorization holder to complete construction of the facility and to make it available for service—typically five years from the date of the order, which may be extended for good cause. *See, e.g., Rio Grande LNG, LLC,* Order Granting Extension of Time Request, 181 FERC ¶ 61032, P 10 (Oct. 14, 2022).

[39] Among the proceedings identified, progress on the proposed facility noted by DOE has included, for example, obtaining all required federal, state, and local authorizations; conducting or completing front-end engineering and design; awarding engineering, procurement, and construction contracts for the facility; and receiving

Continued

additional time necessary for the authorization holder to commence exports, and any unique delays and challenges faced by the authorization holder.[40]

Finally, DOE published each application for a commencement extension in the **Federal Register** and provided the public with 15 days to submit protests, motions to intervene, and comments in response to the application.[41] As part of DOE's final order on each application, DOE considered any responses received during this comment period.[42]

In each of these proceedings, DOE found good cause to grant the application for the commencement extension and concluded that extending the export commencement deadline would not alter DOE's public interest determination in granting the original non-FTA authorization.[43]

2. Applications for Commencement Extensions Submitted Since 2022

DOE has continued to receive new applications for commencement extensions. In 2022, Lake Charles LNG Export Company, LLC and Lake Charles Exports, LLC filed an application requesting their second commencement extension across a total of four non-FTA orders,[44] and Port Arthur LNG, LLC filed an application requesting its first commencement extension.[45] Most recently, in 2023, Pieridae Energy (USA) Ltd.[46] and Magnolia LNG, LLC[47] have each filed an application requesting their first commencement extension.[48]

III. Policy Statement

A. Basis for Change in DOE's Treatment of Applications for Commencement Extensions

When DOE originally adopted a seven-year export commencement deadline for Sabine Pass's non-FTA authorization in 2011, it did so based upon an explicit recognition that an authorization holder would need time to construct its proposed facility before commencing exports of LNG—and that this time period must be sufficiently long to allow for ''unplanned delays in the licensing and construction'' of the facility.[49] In the following 12 years, DOE's conclusion that seven years was an adequate and reasonable amount of time for authorization holders to commence exports after initial authorization, and the reasoning underlying that conclusion, have been validated. All authorization holders currently exporting from the seven large-scale export facilities in the United States commenced exports within their original seven-year commencement period—some while facing the particularly challenging delays and uncertainties associated with the COVID–19 pandemic.[50] Most recently, Venture Global Calcasieu Pass, LLC (Calcasieu Pass) constructed and began operating its LNG export facility in Cameron Parish, Louisiana, within three years from the date it received its non-FTA authorization from DOE,[51] demonstrating that it is possible for major LNG projects to be placed in-service well within the seven-year commencement period, even during the COVID–19 pandemic.

Nonetheless, not all authorization holders have successfully moved forward with their projects and commenced exports within the seven-year deadline. Some have asked DOE to vacate their authorization prior to the commencement deadline,[52] whereas others (as discussed herein) have filed applications requesting more time.[53] Indeed, as part of its analysis in non-FTA orders, DOE has long noted the ''continuing uncertainty that all or even most of the proposed LNG export projects will ever be realized because of the time, difficulty, and expense of commercializing, financing, and constructing LNG export terminals, as well as the uncertainties and competition inherent in the global market for LNG.'' [54] Yet, DOE anticipates that authorization holders will continue to file applications requesting a commencement extension in an effort to keep their non-FTA authorization active, even if the likelihood of completing construction and commencing exports from their facility is uncertain. DOE notes, for example, that by the end of 2026, the export commencement deadline in 14 long-term non-FTA authorizations will expire.[55]

Further, in monitoring market developments as the impact of successive authorizations of LNG exports unfolds, DOE has recognized new challenges involving the growing volume of approved non-FTA exports associated with facilities that are *not* currently operating or under construction. Over time, as more authorization holders are authorized to export or re-export U.S.-sourced LNG to non-FTA countries—but are not engaged in actual export or re-export operations—this approval gap, or ''authorization overhang,'' has widened, with detrimental effects.[56]

For example, in October 2019, DOE had issued final orders authorizing exports of LNG to non-FTA countries totaling 38.06 Bcf/d of natural gas, with 15.54 Bcf/d of export capacity then operating or under construction—a difference of 22.52 Bcf/d in approved exports. As of today, however, that difference has grown to 25.64 Bcf/d—with approved non-FTA exports from

authorization from FERC to proceed with site clearance.

[40] For example, the Lake Charles entities stated that they experienced an unforeseen construction delay resulting from a commercial merger in their corporate ownership. *See, e.g., Lake Charles LNG Export Co., LLC,* DOE/FE Order Nos. 3868–A and 4010–A, at 5.

[41] *See, e.g.,* U.S. Dep't of Energy, Cameron LNG, LLC; Request for Extension of Commencement Deadline for Non-Free Trade Agreement Authorization, 85 FR 20993 (Apr. 15, 2020).

[42] *See, e.g., Golden Pass LNG Terminal LLC,* DOE/FE Order No. 3978–C, at 4, 8–10.

[43] *Id.* at 8–10.

[44] *See* Docket Nos. 11–59–LNG, 16–110–LNG, 13–04–LNG, and 16–109–LNG.

[45] *See* Docket No. 15–96–LNG.

[46] *See* Pieridae Energy (USA) Ltd., Request for Extension for Long-Term, Multi-Contract Authorization to Export U.S. Sourced Natural Gas by Pipeline to Canada for Liquefaction and Re-Export in the Form of Liquefied Natural Gas, Docket No. 14–179–LNG (Feb. 2, 2023). Pieridae filed this extension application three days before the export commencement deadline set forth in its non-FTA order (DOE/FE Order No. 3768), which was February 5, 2023. Therefore, although Pieridae's non-FTA order has technically expired, its extension application remains under review.

[47] *See* Magnolia LNG, LLC, Request for Limited Extension to Start Date of Term of Authorization, Docket No. 13–132–LNG (Mar. 20, 2023).

[48] *See infra* § III.D.

[49] *Sabine Pass,* DOE/FECM Order No. 4800, at 33; *see supra* § II.B.

[50] *See supra* note 37.

[51] Calcasieu Pass received its non-FTA export authorization, DOE/FE Order No. 4346, on March 5, 2019. On March 1, 2022, Calcasieu Pass loaded its first cargo of LNG at the newly constructed Venture Global Calcasieu Pass Project, and it has exported dozens of cargoes to date. *See* Venture Global Calcasieu Pass, LLC, Semi-Annual Status Report, Dockets No. 13–69–LNG, *et al.,* at 2 (Mar. 31, 2023), *https://www.energy.gov/sites/default/files/2023-04/VG%20Calcasieu%20Pass_April%202023%20DOE%20Progress%20Report%20%28final%29.pdf.*

[52] *See supra* note 19.

[53] DOE notes that, of the authorization holders that have applied for and received an extension to their export commencement deadline (*see supra* § II.C.1), none have yet commenced export operations.

[54] *Freeport LNG Expansion, L.P., et al.,* DOE/FECM Order No. 4961, at 71.

[55] These 14 authorizations are: *Magnolia LNG, LLC* (DOE/FECM Order No. 3909–C); *Delfin LNG, LLC* (DOE/FE Order No. 4028–C); *Golden Pass LNG Terminal LLC* (DOE/FECM Order No. 3978–E); *Lake Charles Exports, LLC* (DOE/FE Order Nos. 3324–B, 4011–A); *Lake Charles LNG Export Co., LLC* (DOE/FE Order Nos. 3868–A, 4010–A); *Mexico Pacific Ltd. LLC* (DOE/FECM Order No. 4312–A); *ECA Liquefaction, S. de R.L. de C.V.* (DOE/FE Order No. 4364–B); *Energía Costa Azul, S. de R.L. de C.V.* (DOE/FECM Order No. 4365–B); *Cameron LNG, LLC* (DOE/FE Order No. 3846–B); *Port Arthur LNG, LLC* (DOE/FE Order No. 4372–A); *Driftwood LNG LLC* (DOE/FE Order No. 4373–A); *Freeport LNG Expansion, L.P., et al.* (DOE/FE Order No. 4374–A); *Gulf LNG Liquefaction Co., LLC* (DOE/FE Order No. 4410–A); and *Venture Global Plaquemines LNG, LLC* (DOE/FE Order No. 4446–A).

[56] *See supra* II.A.

the United States totaling 49.83 Bcf/d,[57] and 24.19 Bcf/d of export capacity operating or under construction.[58] This overhang of authorized exports—25.64 Bcf/d of natural gas—is even larger than today's ''proven'' U.S. LNG export market at 24.19 Bcf/d. This overhang obscures an accurate picture of investment-backed commitments involving U.S. LNG.

When DOE's cumulative volume of approved non-FTA exports is greater than the physical capacity to export these volumes, there is no assurance of when the full export capacity will be available, or whether it will become available at all. This uncertainty has become increasingly disruptive to DOE's planning, economic forecasting, and market analysis of the U.S. LNG export market as reviews of non-FTA export applications continue. Since 2019, DOE has received eight new applications requesting long-term authority to export LNG to non-FTA countries in a combined volume equivalent to 9.8 Bcf/yr of natural gas.[59] With the non-FTA volumes already approved and these applications for new non-FTA exports under review, it is important for DOE to have a clear picture of the U.S. LNG export market, including what amount of export capacity may be commercialized within seven years. Further, DOE has become aware of the challenges this continuing uncertainty presents to participants in the U.S. and global LNG export markets, including U.S. allies and trading partners. The authorization overhang also may serve to discourage or delay potential new entrants to the U.S. export market—including those that seek to utilize newer technology and to adopt better environmental practices.

Finally, DOE notes that its public interest analysis supporting each non-FTA authorization under NGA section 3(a) may become stale after seven years, as the natural gas market and supporting analyses continue to evolve.[60] In the normal course, the NGA does not require DOE to affirmatively reevaluate whether exports remain in the public interest during the term of an existing export authorization. However, new DOE decisions regarding non-FTA exports, such as actions in response to the pending expiration of an authorization holder's export commencement deadline, should be made on the basis of the latest market information and analytical approaches available at the time of DOE's decision.

B. Policy and Implementation

For the reasons set forth herein, DOE reaffirms the seven-year export commencement deadline set forth in long-term authorizations to export domestically produced LNG to non-FTA countries.[61] The timely commencement of exports from all seven large-scale export facilities currently operating in the United States demonstrates that seven years is a reasonable, achievable period of time for an authorization holder both to construct its facility and to commence exports of LNG.[62]

Accordingly, DOE is giving notice that, in general, it intends to allow non-FTA authorizations to expire at the end of the seven-year commencement period set forth in each authorization. As such, DOE will no longer consider applications for extensions to export commencement deadlines, unless an authorization holder submits an application prior to its commencement deadline demonstrating that:

(i) The authorization holder (or its affiliate) has physically commenced construction on the associated export facility before the request for additional time to commence exports is made; and

(ii) The authorization holder's inability to comply with its export commencement deadline is the result of extenuating circumstances outside of the authorization holder's control, including but not limited to acts of God.[63]

An authorization holder seeking to apply for an extension under this Policy Statement should submit its application to DOE at least 90 days prior to the commencement deadline in its non-FTA order.[64] This will ensure that DOE has sufficient time to provide notice of the extension application in the **Federal Register** for a 30-day public comment period, and to evaluate the application and any public filings received in response to the notice of application prior to the expiration of the non-FTA order.[65] In the extension application, the authorization holder should provide evidence, including any supporting documentation, to meet both parts of the required demonstration.[66]

Evidence that an authorization holder (or its affiliate) has physically commenced construction on its export facility may include, for example: (i) a copy of its most recent status report or other update submitted to FERC or MARAD, if available (or, for extraterritorial projects, the comparable federal regulatory agency), describing the current construction status of the export facility; [67] (ii) a verified statement of the construction costs incurred to date, as compared to the total projected costs for construction; and/or (iii) documentation showing that the contractor has met one or more completion targets under the relevant engineering, procurement, and construction agreement.

Although the two-part demonstration described above is required for DOE to consider an application for a commencement extension, it does not guarantee that DOE will approve the request. Following the 30-day comment period, DOE will issue an order evaluating the application, and any responses received in response to the notice of application, under the good cause standard provided by NGA section 3(a), with appropriate

[57] This total represents 47.28 Bcf/d in approved exports of LNG sourced from the lower-48 states and 2.55 Bcf/d sourced from Alaska. *See supra* II.A.

[58] *See supra* note 21.

[59] These eight applications under review are: *Commonwealth LNG, LLC* (1.21 Bcf/d) (Docket No. 19–134–LNG); *Port Arthur LNG Phase II, LLC* (1.91 Bcf/d) (Docket No. 20–23–LNG); *Venture Global CP2 LNG, LLC* (3.96 Bcf/d) (Docket No. 21–131–LNG); *New Fortress Energy Louisiana FLNG LLC* (0.40 Bcf/d) (Docket No. 22–39–LNG); *NFE Altamira FLNG, S. de R.L. de C.V.* (0.40 Bcf/d) (Docket No. 22–110–LNG); *Mexico Pacific Limited LLC* (0.80 Bcf/d) (Docket No. 22–167–LNG); *Gulfstream LNG Development, LLC* (0.65 Bcf/d) (Docket No. 23–34–LNG); *Corpus Christi Liquefaction, LLC, CCL Midscale 8–9, LLC, and Cheniere Marketing, LLC* (0.47 Bcf/d) (Docket No. 23–46–LNG); *see also* U.S. Dep't of Energy, Office of Fossil Energy and Carbon Management, Long Term Applications Received by DOE to Export Domestically Produced LNG, CNG, CGL from the Lower-48 States (as of Mar. 14, 2023), *https://www.energy.gov/sites/default/files/2023-03/Summary%20of%20LNG%20Export%20Applications%203-14-23_0.pdf.* Not included are two applications for an amended non-FTA volume which, if granted, would not receive a new seven-year export commencement deadline.

[60] *See supra* II.A.

[61] As noted, this Policy Statement does not apply to orders authorizing small-scale exports of natural gas (*see supra* note 4); *see also supra* note 1.

[62] *See supra* note 37.

[63] For purposes of this Policy Statement, an ''act of God'' means a severe natural event outside of human control, such as a hurricane, flash flood, or other natural disaster.

[64] 10 CFR 590.201(b) (''Applications shall be filed at least ninety (90) days in advance of the proposed import or export or other requested action, unless a later date is permitted for good cause shown.'').

[65] *See supra* § II.C.1; 10 CFR 590.205 (Notice of applications).

[66] An application for an export commencement extension must also meet other requirements set forth in DOE's regulations governing the export of natural gas, 10 CFR part 590.

[67] DOE notes that FERC's authorizations of LNG terminals under NGA section 3(e) require the authorization holder to provide status reports to FERC on a monthly basis until all construction activities are complete. These status reports must include the ''current construction status of the project and work planned for the following reporting period.'' *See, e.g., Commonwealth LNG, LLC,* Order Granting Authorization Under Section 3 of the Natural Gas Act, 181 FERC ¶ 61,143, Appendix A (Enviro. Condition #8) (Nov. 17, 2022), *www.ferc.gov/media/c-2-cp19–502–000.*

consideration of the public interest.[68] Further, DOE will consider extending an export commencement deadline only for such time as DOE deems necessary for the authorization holder to commence exports, based on the extenuating circumstances identified in the application.

If an authorization holder reaches the end of the seven-year export commencement period set forth in its non-FTA authorization, and cannot make such a demonstration, the non-FTA authorization will expire on the deadline set forth in the order.[69] DOE will consider any new export application under NGA section 3(a) without prejudice, which would be evaluated pursuant to the policies and analytical tools in use at the time of the new application.

C. Policy Objectives

Over time, this policy should reduce the authorization overhang, as authorizations expire on their commencement deadline (unless an authorization holder makes the demonstration set forth above and DOE determines there is good cause to grant the commencement extension). As a result, the total volume of exports approved under DOE's non-FTA orders should become more aligned with the export capacity under construction or operating using U.S.-sourced LNG. This, in turn, will allow DOE to better assess whether any new non-FTA applications are in the public interest; provide more certainty to the U.S. and global LNG export markets; and ensure that DOE is making decisions utilizing the latest market information and analytical tools available. It should also encourage authorization holders to develop their export facilities in a timely manner, without excessive delays. Based on its analysis of the U.S. natural gas export market, and as discussed herein, DOE believes these changes are in the public interest.

D. Applicability of Policy Statement

In order to provide industry and the public with fair notice of the change in DOE policy described herein, this Policy Statement will apply to all existing and future long-term non-FTA authorizations, except for those authorizations for which an application requesting an export commencement extension was filed prior to issuance of this Policy Statement on April 21, 2023. DOE will review and act on those applications filed before April 21, 2023, at the appropriate time, using the case-by-case factual review undertaken by DOE prior to issuance of this Policy Statement.

Specifically, concurrently with this Policy Statement, DOE is issuing final orders on commencement extension applications filed by Lake Charles LNG Export Company, LLC; Lake Charles Exports, LLC; and Port Arthur LNG, LLC in their respective dockets. Because these applications were filed in 2022, DOE is not taking action on these applications under this Policy Statement, but rather under DOE's prior practice based on the record in each commencement extension proceeding.[70]

Likewise, because the commencement extension applications filed recently by Pieridae Energy (USA) Ltd. and Magnolia LNG, LLC (on February 2, 2023, and March 20, 2023, respectively) were filed before issuance of this Policy Statement, they will not be reviewed under this Policy Statement. At the appropriate time after the public comment period for each of these applications is complete, DOE will issue an order taking action on each application under DOE's prior practice based on the record in each commencement extension proceeding.[71]

IV. Administrative Benefits

In this Policy Statement, DOE is not proposing any new requirements for applicants or authorization holders under 10 CFR part 590. Rather, DOE's intent is to provide greater transparency to authorization holders and participants in the U.S. natural gas export market, and to minimize administrative burdens.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this policy statement.

Signing Authority

This document of the Department of Energy was signed on April 21, 2023, by Brad Crabtree, Assistant Secretary, Office of Fossil Energy and Carbon Management, 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 April 21, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–08805 Filed 4–25–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 542

Publication of Syrian Sanctions Regulations Web General License 22

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general license.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing one general license (GL) issued pursuant to the Syrian Sanctions Regulations: GL 22, which was previously made available on OFAC's website.

DATES: GL 22 was issued on May 12, 2022. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

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[68] *See, e.g., Cameron LNG, LLC,* DOE/FE Order No. 3846–A, at 6 (evaluating extension application under NGA section 3(a) to determine whether there is good cause shown for extending the commencement deadline, and whether such extension would alter DOE's public interest determination in granting the original non-FTA export authorization).

[69] Because this Policy Statement does not apply to FTA export authorizations issued under NGA section 3(c) (*see supra* note 4), any related FTA authorization would not be affected by the expiration of a non-FTA authorization.

[70] *See supra* at II.C.2.

[71] *See supra* notes 46–47; *see also* Pieridae Energy (USA) Ltd., Request for Extension for Long-Term Authorization to Export Liquefied Natural Gas, 88 FR 18530 (Mar. 29, 2023) (establishing 30-day public comment period for Pieridae's application requesting an extension to its commencement deadline); Magnolia LNG, LLC, Request for Limited Extension to Start Date of Term of Authorization, 88 FR 23020 (Apr. 14, 2023) (establishing 30-day public comment period for Magnolia's application requesting an extension to its commencement deadline).

Background

On May 12, 2022, OFAC issued GL 22 to authorize certain transactions otherwise prohibited by the Syrian Sanctions Regulations, 31 CFR part 542. The GL was made available on OFAC's website (*www.treas.gov/ofac*) when it was issued. The text of the GL is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Syrian Sanctions Regulations

31 CFR Part 542

GENERAL LICENSE NO. 22

Authorizing Activities in Certain Economic Sectors in Non-Regime Held Areas of Northeast and Northwest Syria

(a) Except as provided in paragraph (c) of this general license, transactions prohibited by § 542.206 or 542.207 of the Syrian Sanctions Regulations, 31 CFR part 542 (SySR), that are ordinarily incident and necessary to activities in the following economic sectors in the areas of northeast and northwest Syria described in the Annex to this general license are authorized:

(1) agriculture;
(2) information and telecommunications;
(3) power grid infrastructure;
(4) construction;
(5) finance;
(6) clean energy;
(7) transportation and warehousing;
(8) water and waste management;
(9) health services;
(10) education;
(11) manufacturing; and
(12) trade.

(b) Except as provided in paragraph (c) of this general license, the purchase of refined petroleum products of Syrian origin for use in Syria prohibited by § 542.209 of the SySR that is ordinarily incident and necessary to the activities described in paragraph (a) of this general license are authorized.

Note to paragraphs (a) and (b). The authorizations in paragraphs (a) and (b) of this general license include the processing or transfer of funds on behalf of third-country entities to or from Syria in support of the transactions authorized by paragraphs (a) and (b) of this general license. U.S. financial institutions and U.S. registered money transmitters may rely on the originator of a funds transfer with regard to compliance with paragraphs (a) or (b) of this general license, provided that the financial institution does not know or have reason to know that the funds transfer is not in compliance with paragraphs (a) or (b) of this general license.

(c) This general license does not authorize:

(1) Any transactions involving any person, including the Government of Syria, whose property or interests in property are blocked pursuant to the SySR or the Caesar Syria Civilian Protection Act of 2019; or

(2) The importation into the United States of petroleum or petroleum products of Syrian origin prohibited by § 542.208 of the SySR.

Note to General License 22. See § 542.510 of the SySR for a general license authorizing the exportation or reexportation of certain items and services to Syria.

Andrea M. Gacki,
Director, Office of Foreign Assets Control,
Dated: May 12, 2022.

Annex

The areas of northeast and northwest Syria in which activities are authorized by Syria General License 22, subject to conditions in paragraph (c) of this general license, including the exclusion of transactions involving the Government of Syria, are:

(a) Halab (Aleppo) Governorate
(1) Manbij District, excluding the following subdistricts:
(i) Khafsah subdistrict
(ii) Maskanah subdistrict
(2) Al Bab District, excluding the following subdistricts:
(i) Tadif subdistrict
(ii) Dayr Hafir subdistrict
(iii) Rasm Harmal al Imam subdistrict
(iv) Kuwayris Sharqi subdistrict
(3) Ayn Al Arab District
(4) I'zaz District, excluding the following subdistricts:
(i) Tall Rif'at subdistrict
(ii) Nubl subdistrict
(5) Jarabulus District
(b) Ar Raqqah Governorate
(1) Markaz ar Raqqah District, excluding the following subdistricts:
(i) Ma'dan subdistrict
(2) Tall Abyad District
(3) Ath Thawrah District, excluding the following subdistricts:
(i) Al Mansurah subdistrict
(c) Dayr az Zawr Governorate
(1) Markaz Dayr az Zawr District, excluding areas west of the Euphrates in the following subdistricts:
(i) Markaz Dayr as Zawr subdistrict
(ii) At Tibni subdistrict
(iii) Muhasan subdistrict
(iv) Khusham subdistrict
(2) Al Mayadin District, excluding areas west of the Euphrates in the following subdistricts:
(i) Markaz al Mayadin subdistrict
(ii) Asharah subdistrict
(3) Albu Kamal District, excluding areas west of the Euphrates in the following subdistricts:
(i) Markaz Albu Kamal subdistrict
(ii) Al Jala subdistrict
(d) Al Hasakah Governorate
(1) Markaz al Hasakah District
(2) Al Malikiyah District
(3) Al Qamishli District
(4) Ra's al Ayn District

Andrea M. Gacki,
Director, Office of Foreign Assets Control.

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 62, 63, 64, and 65

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing four general licenses (GLs) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GLs 62, 63, 64, and 65, each of which was previously made available on OFAC's website.

DATES: GL 62, GL 63, GL 64, and GL 65 were issued on April 12, 2023. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

Background

On April 12, 2023, OFAC issued GLs 62, 63, 64, and 65 to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587. GLs 62 and 63 have an expiration date of July 11, 2023. Each GL was made available on OFAC's website (*www.treas.gov/ofac*) at the time of publication. The text of these GLs is provided below.

Also on April 12, 2023, OFAC revoked GL 15, which was issued on March 3, 2022 (87 FR 55279).

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 62

Authorizing the Wind Down of Transactions Involving Holdingovaya Kompaniya Metalloinvest AO, Megafon PAO, Limited Liability Company USM Telecom, or Akkermann Cement Ca Limited Liability Company

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the wind down of any transaction involving Holdingovaya Kompaniya Metalloinvest AO (Metalloinvest), Megafon PAO (Megafon), Limited Liability Company USM Telecom (USM Telecom), Akkermann Cement Ca Limited Liability Company (Akkermann), or any entity in which Metalloinvest, Megafon, USM Telecom, or Akkermann owns, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest, are authorized through 12:01 a.m. eastern daylight time, July 11, 2023, provided that any payment to a blocked person must be made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR).

(b) This general license does not authorize:

(1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any transactions prohibited by Directive 4 under E.O. 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation;* or

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: April 12, 2023.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 63

Authorizing Transactions Related to Debt or Equity of, or Derivative Contracts Involving, Holdingovaya Kompaniya Metalloinvest AO

(a) Except as provided in paragraphs (d) and (e) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the divestment or transfer, or the facilitation of the divestment or transfer, of debt or equity of Holdingovaya Kompaniya Metalloinvest AO (Metalloinvest), or any entity in which Metalloinvest owns, directly or indirectly, a 50 percent or greater interest purchased prior to April 12, 2023 (''covered debt or equity''), to a non-U.S. person are authorized through 12:01 a.m. eastern daylight time, July 11, 2023.

(b) Except as provided in paragraph (e) of this general license, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to facilitating, clearing, and settling trades of covered debt or equity that were placed prior to 4:00 p.m. eastern daylight time, April 12, 2023 are authorized through 12:01 a.m. eastern daylight time, July 11, 2023.

(c) Except as provided in paragraph (e) of this general license, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to the wind down of derivative contracts entered into prior to 4:00 p.m. eastern daylight time, April 12, 2023 that (i) include a blocked person described in paragraph (a) of this general license as a counterparty or (ii) are linked to covered debt or equity are authorized through 12:01 a.m. eastern daylight time, July 11, 2023, provided that any payments to a blocked person are made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR).

(d) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, covered debt or equity to, directly or indirectly, any person whose property and interests in property are blocked; or

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment in, directly or indirectly, covered debt or equity, other than purchases of or investments in covered debt or equity ordinarily incident and necessary to the divestment or transfer of covered debt or equity as described in paragraph (a) of this general license.

(e) This general license does not authorize:

(1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any transactions prohibited by Directive 4 under E.O. 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation;* or

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: April 12, 2023.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 64

Authorizing Certain Transactions Involving Kommersant

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 involving Joint-Stock Company Kommersant, or any entity in which Joint-Stock Company Kommersant owns, directly or indirectly, a 50 percent or greater interest, that are ordinarily incident and necessary to the operations of the newspaper *Kommersant* are authorized.

(b) This general license does not authorize:

(1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any transactions prohibited by Directive 4 under E.O. 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation;* or

(3) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: April 12, 2023.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 65

Authorizing Transactions Related to Telecommunications and Certain Internet-Based Communications Involving Megafon PAO or Digital Invest Limited Liability Company

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR) that are ordinarily incident and necessary to the receipt or transmission of telecommunications involving Megafon PAO (Megafon) or Digital Invest Limited Liability Company (Digital Invest), or any entity in which Megafon or Digital Invest owns, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest (collectively, ''Covered Entities''), and involving Tajikistan or Uzbekistan, are authorized.

(b) Except as provided in paragraph (c) of this general license, the exportation or reexportation, sale, or supply, directly or indirectly, from the United States or by U.S. persons, wherever located, to the Covered Entities of services, software, hardware, or technology incident to the exchange of communications over the internet, such as instant messaging, videoconferencing, chat and email, social networking, sharing of photos, movies, and documents, web browsing, blogging, web hosting, and domain name registration services, that is prohibited by the RuHSR, is authorized.

(c) This general license does not authorize:

(1) The opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2 under Executive Order (E.O.) 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation;

(3) Any transactions prohibited by E.O. 14066 or E.O. 14068; or

(4) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Note to General License No. 65. Nothing in this general license relieves any person from compliance with any other Federal laws or requirements of other Federal agencies, including export, reexport, and transfer (in-country) licensing requirements maintained by the Department of Commerce's Bureau of Industry and Security under the Export Administration Regulations, 15 CFR parts 730–774.

Dated: April 12, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2023–08860 Filed 4–25–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0156]

RIN 1625–AA00

Safety Zone; Gulf of Mexico, Marathon, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters in the Gulf of Mexico offshore Marathon, Florida. This action is necessary to provide for the safety of life on these navigable waters of Marathon, FL, during the 2023 Race World Offshore 7 Mile Grand Prix. This rule prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Key West or a designated representative.

DATES: This rule is effective each day from 10 a.m. through 4:30 p.m. on April 29, 2023 and April 30, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0156 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 LTjg Hailye Wilson, Sector Key West Waterways Management Division, U.S. Coast Guard; telephone 305–292–8768, email *Hailye.M.Wilson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event organizer for the RWO Grand Prix did not provide the Coast Guard with all of the necessary information until March 16, 2023. The Coast Guard lacks sufficient time to provide for a comment period and then consider those comments before issuing the rule since this rule is needed by April 28, 2028. It would be contrary to the public interest since immediate action is necessary to protect the safety of the public, and vessels transiting the waters of the Gulf of Mexico.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the high-speed boat race.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Key West (COTP) has determined that potential

hazards associated with the RWO 7 Mile Grand Prix on April 29, 2023, and April 30, 2023, will be a safety concern for anyone within the regulated area. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being repaired.

IV. Discussion of the Rule

This rule establishes a safety zone from 10 a.m. until 4:30 p.m. on April 29, 2023, and April 30, 2023. The safety zone will cover all navigable waters of the Gulf of Mexico within the following coordinates: Latitude 24°42.348′ N, longitude 081°08.377′ W, thence north offshore to latitude 24°42.979′ N, longitude 081°08.427′ W, thence east to latitude 24°43.433′ N, longitude 081°06.012′ W, thence south to latitude 24°43.028′ N, longitude 081°05.714′ W, thence southwest to latitude 24°42.840′ N, longitude 081°05.956′ W, thence west to latitude 24°42.796′ N, longitude 081°06.362′ W, located within the county of Monroe, FL. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the race. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP 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 time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small, designated area of the Gulf of Mexico offshore Marathon for 6.5 hours each day. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

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 a safety zone lasting only 6.5 hours for two days that will prohibit entry within a specified area of the Gulf of Mexico offshore of Marathon, FL. 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.T07–0156 to read as follows:

§ 165.T07–0156 Safety Zone; Gulf of Mexico, Marathon, FL.

(a) *Location.* The following area is a safety zone: All navigable waters within the following coordinates: Latitude 24°42.348′ N, longitude 081°08.377′ W, thence north offshore to latitude 24°42.979′ N, longitude 081°08.427′ W, thence east to latitude 24°43.433′ N, longitude 081°06.012′ W, thence south to latitude 24°43.028′ N, longitude 081°05.714′ W, thence southwest to latitude 24°42.840′ N, longitude 081°05.956′ W, thence west to latitude 24°42.796′ N, longitude 081°06.362′ W, located within the county of Monroe, FL. These coordinates are based on North American Datum.

(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 and a Federal, State, and local officer designated by or assisting the Captain of the Port Key West (COTP) in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 305–292–8727. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced each day from 10 a.m. until 4:30 p.m. on April 29, 2023, and April 30, 2023.

Dated: April 18, 2023.

Jason D. Ingram,

Captain, U.S. Coast Guard, Captain of the Port Sector Key West.

[FR Doc. 2023–08816 Filed 4–25–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2016–0674; FRL–10596–02–R6]

Oklahoma; Excess Emission and Malfunction Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA, the Act), the Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Oklahoma through the Secretary of Energy & Environment on November 7, 2016. The revision was submitted in response to a finding of substantial inadequacy and SIP call as published by EPA on June 12, 2015, concerning excess emissions during periods of startup, shutdown, and malfunction (SSM) events. EPA is approving the SIP revision and finds that it corrects the inadequacies identified in Oklahoma's SIP in the June 12, 2015 SIP call.

DATES: This rule is effective on May 26, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2016–0674. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Regional Haze and SO_2 Section, EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270, (214) 665–6691, *Shar.alan@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our February 3, 2023 (88 FR 7378) proposal. In that document we proposed to approve a revision to the Oklahoma SIP submitted on November 7, 2016, in response to EPA's national SIP call of June 12, 2015, concerning excess emissions during periods of SSM. Specifically, we proposed to approve the removal of EPA-approved Subchapter 9 Excess Emission and Malfunction Reporting Requirements, sections OAC 252:100–9–1, OAC 252:100–9–2, 252:100–9–3(a) and (b), OAC 252:100–9–4, OAC 252:100–9–5, and OAC 252:100–9–6 from the Oklahoma SIP. We also proposed to determine that the November 7, 2016, SIP revision corrects the substantial inadequacies with the Oklahoma SIP identified in the June 12, 2015 SIP call.

II. Response to Comments

The public comment period for our proposed approval and determination ended on March 6, 2022, and no adverse comments were received. We received one comment supporting removal of sections OAC 252:100–9–1, OAC 252:100–9–2, 252:100–9–3(a) and (b), OAC 252:100–9–4, OAC 252:100–9–5, and OAC 252:100–9–6 from the Oklahoma SIP. Therefore, we are finalizing our approval action as proposed.

III. Impacts on Areas of Indian Country

Section III of our February 3, 2023 (88 FR 7378) proposal discusses in detail the background for EPA's October 1, 2020 approval of Oklahoma's request under the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 (SAFETEA) to administer in certain areas of Indian country (as defined at 18 U.S.C. 1151) the State's environmental regulatory programs that were previously approved by EPA for areas outside of Indian country.[1]

[1] On December 22, 2021, the EPA proposed to withdraw and reconsider the October 1, 2020, SAFETEA approval. See *https://www.epa.gov/ok/proposed-withdrawal-and-reconsideration-and-supporting-information.* The EPA expects to have further discussions with tribal governments and the State of Oklahoma as part of this reconsideration. The EPA also notes that the October 1, 2020,

Continued

As explained below, the EPA is finalizing a revision to the Oklahoma SIP submitted by the State of Oklahoma on November 7, 2016. More specifically, we are approving the removal of OAC 252:100–9–1, OAC 252:100–9–2, OAC 252:100–9–3(a) and (b), OAC 252:100–9–4, OAC 252:100–9–5, and OAC 252:100–9–6 of Subchapter 9 Excess Emission and Malfunction Reporting Requirements of the Oklahoma SIP. Consistent with the D.C. Circuit's decision in *ODEQ* v. *EPA* and with EPA's October 1, 2020 SAFETEA approval, these SIP revisions will apply to all Indian country within the State of Oklahoma, other than the excluded Indian country lands.[2] Because—per the State's request under SAFETEA—EPA's October 1, 2020 approval does not displace any SIP authority previously exercised by the State under the CAA as interpreted in *ODEQ* v. *EPA,* the SIP will also apply to any Indian allotments or dependent Indian communities located outside of an Indian reservation over which there has been no demonstration of tribal authority.

IV. Final Action

The EPA is approving a revision to the Oklahoma SIP submitted on November 7, 2016, in response to EPA's national SIP call of June 12, 2015, concerning excess emissions during periods of SSM. Specifically, we are approving the removal of sections OAC 252:100–9–1, OAC 252:100–9–2, 252:100–9–3(a) and (b), OAC 252:100–9–4, OAC 252:100–9–5, and OAC 252:100–9–6 of Subchapter 9 Excess Emission and Malfunction Reporting Requirements from the Oklahoma SIP. We are approving these revisions in accordance with section 110 of the Act. EPA is also determining that this SIP revision corrects the deficiencies in Oklahoma's SIP identified in the June 12, 2015 SIP call.

V. Environmental Justice Considerations

As stated in the proposal and for informational purposes only, EPA provided additional information regarding this action and potentially impacted populations. EPA reviewed individual demographic data, education level, and percent of people living below the poverty level in Oklahoma and then compared the data to the national average.[3] As discussed in the proposal, this action is intended to ensure that all communities and populations across Oklahoma, and downwind areas, including people of color and low-income and indigenous populations overburdened by pollution, receive the full human health and environmental protection provided by the CAA through the removal of director discretion provisions that have interfered with the enforcement structure of the CAA by raising inappropriate impediments to enforcement by states, the EPA, or citizens.

VI. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is removing the incorporation by reference of Subchapter 9 Excess Emission and Malfunction Reporting in 40 CFR 52.1960, as described in the Final Action above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for removal from the Oklahoma SIP, have been removed from incorporation by reference by EPA into that plan, are no longer federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and incorporation by reference will be removed in the next update to the SIP compilation.

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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.
- This approval of a revision to the Oklahoma SIP removing provisions providing discretionary exemptions from excess emission violations as discussed more fully in our proposal will apply to certain areas of Indian country as discussed in the preamble, and therefore has tribal implications as specified in E.O. 13175 (65 FR 67249, November 9, 2000). However, this action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the EPA held a virtual

approval is the subject of a pending challenge in federal court. *Pawnee Nation of Oklahoma* v. *Regan*, No. 20–9635 (10th Cir.). The EPA may make further changes to any approval of Oklahoma's program to reflect the outcome of the proposed withdrawal and reconsideration of the October 1, 2020, SAFETEA approval.

[2] As requested by Oklahoma, the EPA's approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) Qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively ''excluded Indian country lands'').

[3] Section V, February 3, 2023 (88 FR 7380).

consultation meeting with the Muscogee (Creek) Nation of Oklahoma on February 14, 2023, and provided additional information concerning this action.

• Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is described above in the section titled, ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area by removal of director discretion provisions of the Oklahoma SIP. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, 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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 26, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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: April 17, 2023.

Earthea Nance,

Regional Administrator, Region 6.

■ For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

PART 52–APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart LL—Oklahoma

§ 52.1920 [Amended]

■ 2. In § 52.1920, the table in paragraph (c) entitled ''EPA Approved Oklahoma Regulations'' is amended by removing the heading ''Subchapter 9 Excess Emission and Malfunction Reporting Requirements'' and the entries for 252:100–9–1 through 252:100–9–6.

[FR Doc. 2023–08615 Filed 4–25–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 113

[Docket No. USCG–2020–0075]

RIN 1625–AC66

Update to Electrical Engineering Regulations; Correction

AGENCY: Coast Guard, DHS.

ACTION: Final rule; correcting amendment.

SUMMARY: In a final rule the Coast Guard published in the **Federal Register** on March 16, 2023, an inadvertent error in an amendatory instruction prevented the processing of a change in our regulations. This document corrects that error.

DATES: Effective April 26, 2023.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Raymond Martin, Systems Engineering Division, Coast Guard; telephone 202–372–1384, email *Raymond.W.Martin@uscg.mil.*

SUPPLEMENTARY INFORMATION: On March 16, 2023, the Coast Guard published a final rule titled ''Update to Electrical Engineering Regulations'' at 88 FR 16369. The final rule contained an error in amendatory instruction 121 that prevented the correct updating of 46 CFR 113.50–5. Amendatory instruction 121 in the final rule said the changes were for § 113.50–25, which does not exist. This document corrects that error and adopts the intended changes for § 113.50–5.

We find good cause under provisions in 5 U.S.C. 553(d)(3) to make this correction effective upon publication because delaying the effective date is unnecessary and contrary to the public interest. Waiting 30 days after publication to correct the error within the final rule is unnecessary and contrary to the public's interest in having access to accurate and current regulations. The March 16, 2023 final rule preamble discussion indicated the changes were for the right section, § 113.50–5, but the amendatory instruction was inaccurate.

List of Subjects in 46 CFR Part 113

Communications equipment, Fire prevention, Incorporation by reference, Vessels.

For the reasons stated in the preamble, the Coast Guard is correcting 46 CFR part 113 with the following correcting amendment:

PART 113—COMMUNICATION AND ALARM SYSTEMS AND EQUIPMENT

■ 1. The authority citation for part 113 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; DHS Delegation No. 00170.1, Revision No. 01.2.

§ 113.50–5 [Amended]

■ 2. Amend § 113.50–5 as follows:

■ a. In paragraphs (b) and (d), after the word ''maker'', add the words ''or initiating device''; and

■ b. In paragraph (g), remove the text ''IEC 60529 (both incorporated by reference; see 46 CFR 110.10–1)'' and add, in its place, the text ''IEC 60529:2013 (both incorporated by

reference; see § 110.10–1 of this subchapter)''.

Dated: April 20, 2023.

M.T. Cunningham,

Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.

[FR Doc. 2023–08745 Filed 4–25–23; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 20–3; DA 23–327; FR ID 133942]

Wireless Telecommunications Bureau Extends Transition Period for Hearing Aid Compatibility Technical Standard

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: In this document, the Wireless Telecommunications Bureau (Bureau) of the Federal Communications Commission (Commission) extends the enforcement of the technical standard transition period for hearing aid compatibility by six months from June 5, 2023 to December 5, 2023. We take this step to ensure that handset manufacturers can continue to release the newest handset models capable of achieving hearing aid compatibility while we consider a pending waiver request filed by ATIS addressing the volume control requirements of the newest hearing aid compatibility technical standard.

DATES: The enforcement date for 47 CFR 20.19(b) is December 5, 2023.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eli Johnson, *Eli.Johnson@fcc.gov,* of the Wireless Telecommunications Bureau, Competition & Infrastructure Policy Division, (202) 418–1395.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission document, WT Docket No. 20–3, DA 23–327, released on April 14, 2023. The full text of this document is available for public inspection on the FCC's website at: DA–23–327A1.docx, DA–23–327A1.pdf, DA–23–327A1.txt. The document is available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format, etc.), and reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) may be requested by sending an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Synopsis

1. Today, we take action to ensure that handset manufacturers can continue to release the newest handset models capable of achieving hearing aid compatibility by extending the enforcement of the technical standard transition period referenced in § 20.19(b) of our hearing aid compatibility rules by six months. This provision requires that starting June 5, 2023, handset manufacturers must exclusively use the 2019 ANSI Standard for certifying new handset models as hearing aid-compatible and may no longer use the 2011 ANSI Standard for certification purposes. We take this step to ensure that handset manufacturers can continue to certify new handset models with improved hearing aid compatibility features under the 2011 ANSI Standard while we consider a petition for waiver filed by ATIS to modify the 2019 ANSI Standard to allow handset models satisfying a reduced volume control testing methodology to be certified as hearing aid-compatible. With this brief extension of time, we allow handset manufacturers to continue to use either the 2011 or the 2019 ANSI Standard to certify new handset models as hearing aid-compatible until December 5, 2023. We expect that during this six month period handset manufacturers will abide by their commitment to include innovative new technologies in the handset models that they release which will benefit consumers, especially those with hearing loss. Continuing to allow new handset models to be certified as hearing aid-compatible is essential to moving towards the Commission's commitment to attaining 100% hearing aid-compatibility of covered wireless handsets, as soon as achievable.

I. Background

2. The Commission's rules require handset manufacturers to ensure that at least 85% of the total number of handset models that they offer to consumers are hearing aid-compatible. Handset models are considered hearing aid-compatible if they meet ANSI technical standards that the Commission has incorporated by reference into the hearing aid compatibility rules. In September 2019, the ANSI Committee petitioned the Commission to replace the existing 2011 ANSI Standard that had been incorporated by reference into the Commission's rules with the 2019 ANSI Standard. Both standards address acoustic and inductive coupling between wireless handsets and hearing aids, but the 2019 ANSI Standard for the first time includes a volume control requirement. This new standard specifically incorporates by reference the ANSI/TIA–5050:2018 volume control standard and requires handset models to meet this standard in order to be certified as hearing aid-compatible.

3. On February 22, 2021, the Commission adopted the 2019 ANSI Standard and the related ANSI/TIA volume control standard. The Commission noted that ''[t]he 2019 ANSI Standard is broadly supported by both industry and consumer groups.'' The Commission determined to make the 2019 ANSI Standard and the associated volume control requirement the exclusive testing standard for determining hearing aid compatibility after a two year transition period. During the transition period, handset manufacturers may use either the 2011 or the 2019 ANSI Standard when certifying new handset models. The Commission found that a two-year transition period was an appropriate length of time because it was consistent with past practice and took into consideration the typical handset industry product development cycle. The Commission noted that CTIA and Samsung, among others, supported a two-year transition period before requiring the exclusive use of the new testing standard. The two-year transition period that the Commission adopted ends on June 5, 2023. Without today's action, beginning on this date, handset models would only be certified as hearing aid-compatible using the new standard and the related volume control standard.

4. On December 16, 2022, ATIS filed a petition for waiver asking the Commission to allow wireless handsets to satisfy a reduced volume control testing methodology—instead of the full ANSI/TIA Volume Control Standard incorporated into the 2019 ANSI Standard—in order to be certified as hearing aid-compatible. According to ATIS, handset manufacturers have discovered ''significant and material problems with the methodology used for testing volume control'' that renders compliance with the 2019 ANSI Standard functionally impossible for handsets. On March 23, 2023, the Wireless Telecommunications Bureau (Bureau) released a Public Notice seeking comment on ATIS's petition that establishes a 45-day comment period that closes on May 18, 2023. The Public Notice seeks comment on the petition within the context of the

Commission's commitment to attaining 100% hearing aid compatibility for all covered wireless handsets, as soon as achievable, as well as the Commission's previous finding that a volume control requirement is necessary ''to ensure the provision of effective telecommunications for people with hearing loss.''

5. Subsequently, on March 29, 2023, CTIA filed a letter with the Commission urging ''the Commission to provide near-term relief in light of the flawed volume control testing methodology and upcoming exclusive use compliance date of June 5, 2023.'' CTIA states that without action, the timing of the current comment cycle will likely alter the HAC-rated phone market. Likewise, on April 5, 2023, the ATIS Hearing Aid Compatibility Task Force (Task Force) filed a letter urging ''the Commission to act to grant interim, near-term relief that enables new wireless handsets with improved or novel features for people with hearing loss to receive HAC ratings while the Commission considers the [ATIS] waiver request.'' In its letter, the Task Force explains that ''[h]andset testing takes several weeks, and therefore the FCC will not be able to resolve the Petition before covered entities must test phones in advance of the June 5, 2023 compliance date given the current comment cycle.''

II. Discussion

6. Section 1.3 of the Commission's rules provides that the Commission may ''on its own motion or on petition'' suspend a rule ''for good cause shown, in whole or in part, at any time.'' The Commission may find that the ''good cause shown'' standard is met when: (1) ''special circumstances warrant a deviation from the general rule'' and (2) ''such deviation will serve the public interest.'' In this case, we find good cause to suspend the enforcement of the June 5, 2023 exclusive use transition date contained in § 20.19(b) of our rules for six months.

7. ATIS's petition and the subsequent letters filed by CTIA and the Task Force express significant concerns about the pending June 5 exclusive use date for the 2019 ANSI Standard. These filings demonstrate both that special circumstances warrant an extension of the transition period and that an extension of the exclusive use date will serve the public interest. First, ATIS's petition states that handset manufacturers have discovered ''significant and material problems with the methodology used for testing volume control.'' ATIS's petition states that there is a flaw in the existing volume control testing methodology that renders compliance with the standard functionally impossible and, as a result, compliance with the requirements of the 2019 ANSI Standard impossible. ATIS asserts that we must act in order to ensure that new handset models can be certified as hearing aid-compatible after the exclusive use transition date passes. Without Commission action, ATIS states that handset manufacturers will only be able to release a limited number of new handset models, if any at all. ATIS recognizes that the Commission's rules require handset manufacturers to ensure that 85% of the total number of handset models that they offer to the public are hearing aid-compatible. ATIS argues that the 85% deployment benchmark will limit the ability of handset manufacturers to release new handset models if they cannot certify new handset models as hearing aid-compatible. As such, the Bureau placed the petition on public notice to develop a record in order to fully consider the technical aspects and functional implications of ATIS's petition.

8. Further, CTIA and the Task Force urge the Commission to take immediate action and grant near-term relief while the record develops for ATIS's petition. CTIA asserts that the 2019 ANSI Standard's volume control testing methodology contains ''insurmountable flaws'' and without immediate Commission action the handset marketplace will be altered. The Task Force states that ''the volume control testing measures in the 2019 ANSI standard are unworkable.'' According to these parties, after the exclusive use transition date passes, handset manufacturers will not be able to certify new handset models as hearing aid-compatible and this will harm consumers with hearing loss because they may not consider purchasing new handset models that lack hearing aid compatibility certification—even though these new models might offer improved hearing aid compatibility features that better meet their needs. This lack of certification, CTIA and the Task Force argue, will deprive consumers with hearing loss of the information that they need to make informed purchasing decisions. Additionally, as explained in the Task Force's letter, handset testing takes several weeks, which would require the covered entities to begin testing new phones before the conclusion of the comment cycle for ATIS's Petition.

9. Moreover, the Task Force, CTIA, and ATIS indicate that during the extended transition period, consumers with hearing loss will receive additional benefits in terms of advancements in hearing aid-compatible handsets. The Task Force states that ''industry stakeholders will continue to roll out new, advanced wireless phones that have the latest features, including volume control while the Commission provides interim relief.'' In addition, the Task Force states that during the period of interim relief, handset manufacturers ''will continue to offer innovative coupling and volume control capabilities,'' and that handset manufacturers are committed to ''continue to explore advanced solutions and offer innovative coupling and volume control capabilities, and improved audio quality while interim relief is in effect.'' CTIA asserts that handset manufacturers already may be in the process of designing new handset models to meet certain aspects of the 2019 ANSI Standard. CTIA indicates that these new handset models may provide for improved acoustic and T-Coil coupling between handsets and hearing aids, operate over a wider range of frequencies, and have volume control capabilities. In its petition, ATIS stresses that new handset models are being designed to produce increased amplification, consistent with the Commission's goal for adopting volume control requirements.

10. Based on the special circumstances outlined above, as well as the commitments made by the Task Force, CTIA, and ATIS that handset manufacturers will continue to improve coupling and volume control capabilities of new handset models during any interim relief, we find that granting this extension of six months of the date of enforcement to December 5, 2023 is in the public interest. During this six-month extension, handset manufacturers may continue to use either the 2011 or the 2019 ANSI Standards for certification. If a manufacturer chooses to use the 2019 ANSI Standard for certification, the submitted handset model must meet all aspects of the standard, including the volume control requirements, in order for the handset to be certified as hearing aid-compatible. Otherwise, new handset models must meet all aspects of the 2011 ANSI Standard in order to be certified as hearing aid-compatible. The 2011 ANSI Standard is a well-established and utilized standard for determining hearing aid compatibility and granting this extension permitting use of the standard for six months will ensure that new handset models will continue to be released to the public.

11. Our extension is consistent with the policy objective underlying our hearing aid compatibility rules. These rules are based on the principle that consumers with hearing loss should

have the same access to the newest and most advanced handset models as consumers without hearing loss. By extending the enforcement of the transition period, we ensure that in the coming months handset manufacturers will be able to release new handset models when they otherwise might not be able to because of the 85% hearing aid-compatible handset deployment benchmark. The extended transition period permits new handset models to be certified as hearing aid-compatible, which in turn ensures that consumers with hearing loss will have the opportunity to consider these handsets for their needs just like consumers without hearing loss. By granting this extension, we act to ensure that the handset marketplace will not be disrupted by certification issues and will continue to operate as it has during the existing two-year transition period.

12. Additionally, a six-month extension is the appropriate length of time to preserve the status quo pending resolution of the testing problems identified by ATIS. This extension gives the public time to fully review and comment on ATIS's petition, which will ensure that we have a complete record on which to assess the request. Further, given the complexity of the technical issues involved with ATIS's petition, we wish to ensure that members of the public have time to meet with us if they wish to express their views in *ex parte* presentations. Thus, we agree with CTIA and the Task Force that granting interim relief serves the public interest because it will allow the record to develop in response to ATIS's petition.

13. We are encouraged by the technological advancements that the Task Force, CTIA, and ATIS refer to in their filings and the commitment by handset manufacturers to continue to innovate and to include these innovations in new handset models released during the extended transition period. Consumers with hearing loss will benefit from these improvements, and we expect that handset manufacturers will incorporate these changes into new handset models released in the coming months. In addition, these commitments will bring us closer to the time when all handset models will be certified as hearing aid-compatible and consumers with hearing loss will be able to consider all handset models for their needs, including the newest and most technologically advanced models. We continue to strive toward our goal of 100% hearing aid compatibility in the near future and our decision to adopt a six month extension does not require us to adjust our time frame for making this decision. Our extension permits handset manufacturers to continue the process of certifying all of their handset models as hearing aid-compatible, as many of them do now. These advancements support our decision to grant this brief extension and ensure that our action today is in the public interest.

14. For all of the above reasons, we find good cause to extend by six months the enforcement of the June 5, 2023 exclusive use transition date contained in § 20.19(b) of our hearing aid compatibility rules to December 5, 2023.

15. *Paperwork Reduction Act.* This document does not contain new or substantively modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

16. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

III. Ordering Clauses

17. Accordingly, *it is ordered,* pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and §§ 0.331 and 1.3 of the Commission's rules, 47 CFR 0.331 and 1.3, that the enforcement of the June 5, 2023 date included within § 20.19(b) is extended to December 5, 2023.

18. *It is further ordered* that the Office of the Managing Director, Performance Evaluation and Records Management, *shall send* a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Amy Brett,

Acting Chief of Staff, Wireless Telecommunications Bureau.

[FR Doc. 2023–08417 Filed 4–25–23; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 88, No. 80
Wednesday, April 26, 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

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–22–0055]

Origin of Livestock; New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notification and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget for a new information collection related to livestock production practices under the USDA organic regulations.

DATES: Comments must be received by June 26, 2023 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments concerning this notification by using the electronic process available at *https://www.regulations.gov.* Written comments may also be submitted to Valeria Frances, Agricultural Marketing Specialist, National Organic Program, AMS/USDA, 1400 Independence Ave. SW, Room 2642–South, Ag Stop 0268, Washington, DC 20250–0268. All comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments received will be posted without change, including any personal information provided, at *https://www.regulations.gov* and will be included in the record and made available to the public.

FOR FURTHER INFORMATION CONTACT: Erin Healy, Director, Standards Division, National Organic Program. Phone: (202) 720–3252, Email: *Erin.Healy@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: National Organic Program.

OMB Number: 0581–new.

Type of Request: New—Variances at 7 CFR 205.236(d)(1).

Abstract: On April 5, 2022, AMS published the ''Origin of Livestock'' (OOL) final rule (87 FR 19740) related to livestock production practices under the USDA organic regulations (7 CFR part 205). The final rule clarified that organic dairy operations may transition nonorganic animals to organic production once—after that, any animals added to an operation must have been organically managed from the last third of gestation. To provide flexibility, the final rule allows small, certified operations to request a variance from the rule's one-time transition requirement under limited conditions specified at 7 CFR 205.236(d). This is a new variance with an information collection burden for which there has not been public comment. In this request, AMS is seeking public comment on the burdens, costs, and other effects of the information collection required by the new variance.

AMS invites comment on the following topics: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Authority and Need for Information Collection

The Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501–6524), authorizes the Secretary of Agriculture to establish the National Organic Program (NOP) and accredit certifying agents to certify that farms and businesses meet national organic standards. The purpose of OFPA is to: (1) establish national standards governing the marketing of certain agricultural products as organically produced products; (2) assure consumers that organically produced products meet a consistent standard; and (3) facilitate interstate commerce in fresh and processed food that is organically produced. 7 U.S.C. 6501.

Reporting and recordkeeping are essential to the integrity of the organic certification system. A paper trail is a critical element in carrying out the mandate of OFPA and the NOP. Reporting and recordkeeping serve the AMS mission, program objectives, and management needs by providing information on the efficiency and effectiveness of the program. The collected information is the basis for evaluating compliance with OFPA and the USDA organic regulations, administering the program, making management and program planning decisions, and establishing the cost of the program. It also supports administrative and regulatory actions in response to noncompliance with OFPA and the USDA organic regulations.

In general, the information collected is used by USDA, State programs, and certifying agents. Information is created and submitted by State and foreign program officials, peer review auditors, certifying agents, organic inspectors, certified organic producers and handlers, entities seeking accreditation or certification, and parties interested in changing the National List of Allowed and Prohibited Substances in §§ 205.600–205.607. Information collections require most of these entities to establish and maintain record-keeping procedures and to maintain space for records.

Origin of Livestock Final Rule and Variance Requests

AMS amended the OOL requirements for dairy animals under the USDA organic regulations with a final rule published on April 5, 2022 (87 FR 19740). The final rule followed a proposed rule published on April 28, 2015 (80 FR 23455) and two subsequent comment periods (October 1, 2019, 84 FR 52041; May 12, 2021, 86 FR 25961). All comments can be accessed at *https://www.regulations.gov* (search for the Docket ID ''AMS–NOP–11–0009'').

The final rule clarifies requirements related to organic dairy production under the USDA organic regulations and specifies how and when nonorganic dairy animals may be transitioned or converted to organic production. The final rule grants a one-time allowance for transitioning nonorganic animals to

organic production to operations that (1) are not already certified for organic livestock production and that (2) have never transitioned animals. The final rule also allows variances for the movement of transitioned animals under limited scenarios. Specifically, the AMS Administrator [1] may issue case-by-case variances for some operations to sell or transfer transitioned animals (see discussion at 87 FR 19750). The final rule allows businesses that the Small Business Administration (SBA) classifies as *small* in its regulations (see 13 CFR part 121) [2] to request a variance. For example, the SBA regulations currently establish that a dairy cattle operation is a small business if it takes in less than $3.25 million in annual receipts; and a goat farming operation is small if it has less than $2.25 million in annual receipts. AMS limits variances to small businesses to minimize the adverse economic impact on small entities, as directed by the Regulatory Flexibility Act.

Pursuant to 7 CFR 205.236(d)(1), a small, organic dairy operation [3] may request a variance from the OOL transitioned animal sourcing prohibitions only if:

- The certified operation selling the transitioned animals is part of a bankruptcy proceeding or a forced sale (§ 205.236(d)(1)(i)); or
- The certified operation has become insolvent, must liquidate its animals, and as a result has initiated a formal process to cease its operations (§ 205.236(d)(1)(ii)); or
- The certified operation wishes to conduct an intergenerational transfer of transitioned animals to an immediate family member § 205.236(d)(1)(iii)).

The OOL variance request process is very similar to the request process for temporary variances at § 205.290. Under the process described in the NOP Program Handbook,[4] the operation must submit its request for a temporary variance in writing to its certifying agent and include supporting documentation justifying the need for the variance. Likewise, a certified operation requesting a variance to the OOL transitioned animal sourcing prohibition must submit a request in writing to its certifying agent. The operation must provide documentation to support the request (*e.g.,* contracts, evidence of forced/sale closure, family records, wills or trusts, bankruptcy filings, tax documentation, records to support size standard).

The certifying agent must review the request to determine whether it agrees with the reasons listed at § 205.236(d) and whether the documentation provided by the operation justifies the need for the variance. Within ten days of receipt, the certifying agent must submit the request to AMS, including the original request and supporting documentation, and recommend either granting or denying the variance. The certifying agent must provide the reasons for their recommendation and include any documentation that supports their recommendation. AMS then determines whether to grant the variance request.

Overview of Information Collection Burden

In general, compliance with USDA organic regulations requires information to be collected and maintained by USDA. In the final rule, AMS provided for a variance request process at § 205.236(d)(1). Certified operations may request a variance from the prohibition on the movement of transitioned animals for specific circumstances. This is a new variance process with information collection burden for which there has not been public comment. In this information collection request, AMS is seeking public comment on the information collection impacts due to the new variance procedures described at § 205.236(d)(1).

AMS has identified six respondent types in its currently approved information collection (0581–0191): certified operations (producers and handlers), certifying agents, inspectors, foreign governments, state organic programs, and petitioners. All these entities must have procedures, personnel, time, and space for recordkeeping. Any of these entities may wish to comment on the recordkeeping requirements of the OOL variance request process. Only two respondent types—certified operations (producers, specifically) seeking a variance and their certifying agents (accredited for livestock)—are expected to have information collection impacts in this new collection:

Certifying agents. Certifying agents are State, private, or foreign entities who are accredited by USDA to certify domestic and foreign producers and handlers as organic in accordance with OFPA and the USDA organic regulations. Each entity wanting to be an agent seeks accreditation from USDA, submitting information documenting its business operations and program expertise. Certifying agents determine if a producer or handler meets organic requirements, using detailed information from the operation documenting its specific practices and on-site inspection reports from organic inspectors. Administrative costs for reporting, disclosure of information, and recordkeeping vary among certifying agents. Factors affecting costs include the number and size of clients, the categories of certification provided, and the type of systems maintained.

When an entity applies for accreditation as a certifying agent, it must provide a copy of its procedures for complying with recordkeeping requirements (§ 205.504(b)(3)). Once accredited, agents must make their records available for inspection and copying by authorized representatives of the Secretary (§ 205.501(a)(9)). USDA charges certifying agents for the time required to do these document reviews.

Recordkeeping requirements for certifying agents are divided into three categories of records with varying retention periods: (1) records obtained from applicants for certification and certified operations, maintained five years, the same as OFPA's requirement for the retention of records by certified operations; (2) records created by certifying agents regarding applicants for certification and certified operations, maintained ten years, consistent with OFPA's requirement for maintaining all records concerning activities of certifying agents; and (3) records created or received by certifying agents regarding accreditation, maintained five years, consistent with OFPA's requirement for renewal of agent's accreditation (§ 205.510(b)).

[1] The Administrator includes a ''representative to whom authority has been delegated to act in the stead of the Administrator'' which could be the NOP Program Manager, *i.e.,* the NOP Deputy Administrator.

[2] *https://www.ecfr.gov/current/title-13/chapter-I/part-121/subpart-A.*

[3] AMS estimates that 2,832 certified organic dairy operations could be classified as small under the SBA standard. Within the 2016 ARMS data, 90 percent of organic dairy farms (300 of the 332) had fewer than 200 milking animals. Lacking more detailed information, AMS assumes that 90 percent of all organic dairy farms, or 2,832 operations of the 3,134 operations, qualify as small businesses under the SBA standard.

[4] NOP Program Handbook, NOP 2606 Instruction: Temporary Variances. Available at: *https://www.ams.usda.gov/sites/default/files/media/Program%20Handbk_TOC.pdf.*

Certified Operations (Producers and handlers). Producers and handlers, domestic and foreign, apply to certifying agents for organic certification, submit detailed information documenting their specific practices, provide annual updates to continue their certification, and report changes in their practices. Producers include farmers, livestock and poultry producers, and wild crop harvesters. Handlers include those who process or transform food, including millers, bulk distributors, food manufacturers, processors, or packers. Some handlers are part of a retail operation that processes organic products in a location other than the premises of the retail outlet. Administrative costs for reporting and recordkeeping vary among certified operators. Factors affecting costs include the type and size of operation, and the type of systems maintained.

Estimates of the time burden of information collection have been summarized on the AMS 71 Grid (supplementary document). Estimates of the reporting hour burden and the recordkeeping hour burden and costs are summarized here and in the Supporting Statement (supplementary document).

AMS calculates the costs to domestic and foreign respondents (certifying agents and certified operations) to more precisely understand the reporting and recordkeeping costs of the OOL final rule. At this time, 60% of organic producers and 59% of certifying agents are domestic and 40% of organic producers and 41% of certifying agents are based in foreign countries.[5] For all respondents, AMS estimates: (1) the number of respondents; (2) the hours they spend, annually, creating and storing records to meet the paperwork requirements of the organic labeling program; and (3) the costs of those activities based on prevailing domestic[6] and foreign[7] wages and benefits.[8][9]

For the 57 certifying agents that are accredited to certify livestock operations and for the estimated 28 organic dairy operations[10] that may request a variance per § 205.236, the total cumulative information collection burden for both reporting and recordkeeping is 106.25 hours for a total annual burden cost of $4,555. For each type of respondent, we describe the reporting burden and the recordkeeping burden below in narrative and in Table 1. Reporting Burden—Organic Operations & Certifying Agents and Table 2. Recordkeeping Burden—Organic Operations & Certifying Agents.

Total Reporting Burden Cost: $3,644.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour or 60 minutes per response.

Respondents: Certified operations and certifying agents.

Estimated Number of Reporting Respondents: 85.

Estimated Number of Reporting Responses: 85.

Estimated Total Reporting Burden on Respondents: 85 hours.

Estimated Total Reporting Responses per Reporting Respondents: 1 reporting response per reporting respondent.

AMS estimates the public reporting burden for this new information collection at 85 hours per year for a total cost of $3,644 (rounded) with a total number of 85 respondents. Respondents are comprised of organic dairy operations seeking variances and certifying agents reviewing and submitting the requests for a variance to the AMS Administrator. See Table 1 below for details.

TABLE 1—REPORTING BURDEN (ROUNDED)—ORGANIC OPERATIONS & CERTIFYING AGENTS

	Number of respondents	Wage + benefits	Total reporting hours	Total reporting costs
USDA Certified Operations (Dairy)				
USDA Certified Producers—Domestic (60%)	17	$49.40	17	$840
USDA Certified Producers—Foreign (40%)	11	35.52	11	391
USDA Organic Operations—All	28		28	1,231
USDA Certifying Agents Reporting Burden				
USDA U.S.-Based Certifying Agents (59%)	34	47.75	34	1,624
USDA Foreign-Based Certifying Agents (41%)	23	34.34	23	790
Total USDA Certifying Agents—All	57		57	2,413
All Respondents—Reporting Burden	85		85	3,644

[5] Organic Integrity Database (OID): August 18, 2022.

[6] The source of the specific hourly wage rates identified below is the National Compensation Survey: Occupational Employment and Wages for 2021, published March 2022 by the Bureau of Labor Statistics, Occupational Employment and Wages, *https://www.bls.gov/oes/current/oes_nat.htm.*

[7] Wages in foreign countries are benchmarked as 69.97% of U.S wages derived from World Bank estimates of Organization for Economic Co-Operation and Development (OECD) member countries in 2021 *https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD?locations=OE.*

[8] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Benefits account for 31% of total average employer compensation costs, March 2022: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[9] Benefit compensation rates at 34.63% of wage rates is based on an average of Organization for Economic Co-Operation and Development (OECD) benefits compensation rates for countries with USDA-accredited certifying agents. *https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

[10] AMS estimates that 1%, or 28 operations, of small organic dairy operations may seek a variance, annually, per § 205.236(d)). For comparison, AMS received a total of 10 temporary variance requests submitted under § 205.290 of the USDA organic regulations, and those procedures are available to all 46,277 organic operations.

The total reporting burden for all 28 organic dairy operations that may seek variances is 28 hours (1 hour per response), with a total estimated reporting cost of $1,231. Of these 28 operations, 17 or 60% of operations are U.S. domestic operations and will have a reporting burden of 17 hours at a wage estimate of $49.40 per hour ($37.71 per labor hour [11] plus 31.0% in benefits,[12]) with a total cost of $840 annually. The remaining 40% or 11 operations are in foreign countries with a reporting burden of 11 hours at an estimated wage rate of $35.52 per hour ($26.39 per labor hour [13] plus 34.63% in benefits [14]) with a total cost of $391 annually.

The total reporting burden for all 57 certifying agents accredited to certify livestock operations, including dairies that may request a variance, is 57 hours (1 hour per response), for a total calculated cost of $2,413. Of these 57 certifying agents, 34 or 59% of certifying agents are based in the U.S. with a reporting burden of 34 hours at an estimated wage rate of $47.75 per hour ($36.45 [15] plus 31% in benefits [16]) with a total cost of $1,624 annually. The remaining 23 certifying agents, or 41%, are in foreign countries with a reporting burden of 23 hours at an estimated wage rate of $34.34 per hour ($25.50 [17] plus 34.63% [18] in benefits), with a total cost of $790 annually.

Total Recordkeeping Burden Cost: $911.

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hours or 15 minutes per response.

Respondents: Certified operations and certifying agents.

Estimated Number of Recordkeeping Respondents: 85.

Estimated Number of Recordkeeping Responses: 85.

Estimated Total Recordkeeping Burden on Respondents: 21.25 hours.

Estimated Total Recordkeeping Responses per Recordkeeping Respondents: 1 recordkeeping response per recordkeeping respondent.

AMS estimates the public recordkeeping burden for this new information collection at 21.25 hours per year for a cost of $911 (rounded), with a total number of 85 respondents. Respondents are comprised of organic dairy operations that may need to seek a variance per § 205.236(d) and the certifying agents reviewing and submitting these requests for a variance on behalf of the organic operations. See *Table 2* for the details.

TABLE 2—RECORDKEEPING BURDEN (ROUNDED)—ORGANIC OPERATIONS & CERTIFYING AGENTS

	Number of respondents	Wage + benefits	Total recordkeeping hours	Total recordkeeping costs
USDA Certified Operations (Dairy)				
USDA Certified Producers—Domestic (60%)	17	$49.40	4.25	$210
USDA Certified Producers—Foreign (40%)	11	35.52	2.75	98
USDA Organic Operations—All	28		7.00	308
USDA Certifying Agents Reporting Burden				
USDA U.S.-Based Certifying Agents (59%)	34	47.75	8.50	406
USDA Foreign-Based Certifying Agents (41%)	23	34.34	5.75	197
Total USDA Certifying Agents—All	57		14.25	603
All Respondents—Recordkeeping Burden	85		21.25	911

The total recordkeeping burden for all 28 organic dairy operations that may seek variances is 7 hours (.25 hours or 15 minutes per response), calculated at $308. Of these 28 operations, 60% or 17 operations are domestic with a recordkeeping burden of 4.25 hours at an estimated wage rate of $49.40 per hour ($37.71 per labor hour,[19] plus 31.0% in benefits,[20]) with a total cost of $210 annually. The remaining 40% or 11 operations are in foreign countries with a recordkeeping burden of 2.75 hours at an estimated wage rate of $35.52 ($26.39 per labor hour,[21] plus

[11] National Compensation Survey: Occupational Employment and Wage Estimates for 2021, published March 2022 by the Bureau of Labor Statistics. 11–9013 Farmers, Ranchers, and Other Agricultural Managers. *https://www.bls.gov/oes/current/oes_nat.htm.*

[12] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Benefits account for 31% of total average employer compensation costs, March 2022: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[13] Wages in foreign countries are benchmarked as 69.97% of U.S wages derived from World Bank estimates of Organization for Economic Co-Operation and Development (OECD) member countries in 2021 *https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD?locations=OE.*

[14] Benefit compensation rates at 34.63% of wage rates is based on an average of Organization for Economic Co-Operation and Development (OECD) benefits compensation rates for countries with USDA-accredited certifying agents. *https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

[15] National Compensation Survey: Occupational Employment and Wages for 2021, published March 2022 by the Bureau of Labor Statistics, Occupational Employment and Wages, 13–041 Compliance Officers *https://www.bls.gov/oes/current/oes_nat.htm.*

[16] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Benefits account for 31% of total average employer compensation costs, March 2022: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[17] Wages in foreign countries are benchmarked as 69.97% of U.S. wages derived from World Bank estimates of Organization for Economic Co-Operation and Development (OECD) member countries in 2021 *https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD?locations=OE.*

[18] Benefit compensation rates at 34.63% of wage rates is based on an average of Organization for Economic Co-Operation and Development (OECD) benefits compensation rates for countries with USDA-accredited certifying agents. *https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

[19] National Compensation Survey: May 2021 Occupational Employment and Wage Estimates, March 2022, published by the Bureau of Labor Statistics. 11–9013 Farmers, Ranchers, and Other Agricultural Managers. *https://www.bls.gov/oes/current/oes_nat.htm.*

[20] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Benefits account for 31% of total average employer compensation costs, March 2022: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[21] Wages in foreign countries are benchmarked as 69.97% of U.S. wages derived from World Bank estimates of Organization for Economic Co-Operation and Development (OECD) member countries in 2021 *https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD?locations=OE.*

34.63% in benefits,[22]) with a total cost of $98 annually.

The total recordkeeping burden of the 57 certifying agents accredited to certify organic livestock operations, including dairies, 14.25 hours (.25 hours or 15 minutes per response), calculated at $603. Of these 57 certifying agents, 59% or 34 are based in the U.S. with a recordkeeping burden of 8.5 hours at an estimated wage rate of $47.75 per hour ($36.45,[23] plus 31% in benefits,[24]) with a total cost of $406 annually. The remaining 41% or 23 certifying agents are in foreign countries with a recordkeeping burden of 5.75 hours at an estimated wage rate of $34.34 ($25.73,[25] plus 34.63% [26] in benefits), with a total cost of $197 annually.

Conclusion

AMS invites public comment on the following topics: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

AMS will summarize all responses to this notification and include its summary in the request for OMB approval. All comments will become a matter of public record.

Authority: 7 U.S.C. 6501–6524.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–06885 Filed 4–25–23; 8:45 am]

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[22] Benefit compensation rates at 34.63% of wage rates is based on an average of Organization for Economic Co-Operation and Development (OECD) benefits compensation rates for countries with USDA-accredited certifying agents. *https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

[23] National Compensation Survey: Occupational Employment and Wages, March 2022, published by the Bureau of Labor Statistics. Bureau of Labor Statistics, Occupational Employment and Wages, 13–041 Compliance Officers *https://www.bls.gov/oes/current/oes_nat.htm.*

[24] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Benefits account for 31% of total average employer compensation costs, March 2022: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[25] Wages in foreign countries are benchmarked as 69.97% of U.S wages derived from World Bank estimates of Organization for Economic Co-Operation and Development (OECD) member countries in 2021 *https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD?locations=OE.*

[26] Benefit compensation rates at 34.63% of wage rates is based on an average of Organization for Economic Co-Operation and Development (OECD) benefits compensation rates for countries with USDA-accredited certifying agents. *https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1293

RIN 2590–AB29

Fair Lending, Fair Housing, and Equitable Housing Finance Plans

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Agency (FHFA or the Agency) is seeking comments on a proposed rule that would address barriers to sustainable housing opportunities for underserved communities by codifying existing FHFA practices in regulation and adding new requirements related to fair lending, fair housing, and Equitable Housing Finance Plans. The proposed rule would improve FHFA's fulfillment of its statutory purposes and its oversight of the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Banks (Banks) (Fannie Mae and Freddie Mac collectively, the Enterprises; the Enterprises and the Banks collectively, regulated entities), and their fulfillment of their statutory purposes.

DATES: Comments must be received on or before June 26, 2023.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590–AB29, by any one of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590–AB29.
- *Hand Delivered/Courier:* The hand delivery address is: Clinton Jones, General Counsel, Attention: Comments/RIN 2590–AB29, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. Deliver the package at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Clinton Jones, General Counsel, Attention: Comments/RIN 2590–AB29, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

FOR FURTHER INFORMATION CONTACT: James Wylie, Associate Director, Office of Fair Lending Oversight, (202) 649–3209, *James.Wylie@fhfa.gov;* Leda Bloomfield, Branch Chief for Policy and Equity, Office of Fair Lending Oversight, (202) 649–3415, *Leda.Bloomfield@fhfa.gov;* Annalyce Shufelt, Branch Chief for Fair Lending Law, Supervision, and Enforcement, (202) 717–1164, *Annalyce.Shufelt@FHFA.gov*; or Sarah Friedman, Examination Specialist (Fair Lending), Office of Fair Lending Oversight, (202) 807–9324, *Sarah.Friedman@FHFA.gov.* These are not toll-free numbers. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

Comments

FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing a final rule. Copies of all comments will be posted without change, and will include any personal information you provide such as your name, address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule also located on the FHFA website.

Table of Contents

I. Introduction

Federal agency oversight of fair housing and fair lending laws, as well as strategic planning to address barriers faced by renters and borrowers, are important in promoting sustainable housing opportunities [1] for underserved communities.[2] The proposed rule would address barriers to sustainable housing opportunities for underserved communities by codifying existing FHFA practices in regulation and adding new requirements. Collectively, the actions in the proposed rule would improve FHFA's fulfillment of its statutory purposes and its oversight of the regulated entities and their fulfillment of their statutory purposes.

The proposed rule would codify in regulation much of FHFA's existing practices and programs regarding fair housing and fair lending oversight of its regulated entities, the Equitable Housing Finance Plan program for the Enterprises, and requirements for the Enterprises to collect and report language preference, homeownership education, and housing counseling information. The proposed rule would make changes to the Equitable Housing Finance Plan program to promote greater accountability for the Enterprises and public transparency, add oversight of unfair or deceptive acts or practices to FHFA's fair housing and fair lending oversight programs, require additional certification of compliance by the Enterprises, and establish more precise standards related to fair housing, fair lending, and principles of equitable housing for regulated entity boards of directors (boards).

II. Background

A. FHFA, the Regulated Entities, and Their Public Purposes

Fannie Mae and Freddie Mac are federally chartered housing finance enterprises whose purposes include providing stability to the secondary market for residential mortgages; providing ongoing assistance to the secondary market for residential mortgages (including activities related to mortgages on housing for low- and moderate-income families) by increasing the liquidity of mortgage investments and improving distribution of investment capital available for residential mortgage financing; and, promoting access to mortgage credit throughout the United States, including central cities, rural areas, and underserved areas, by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.[3]

The Federal Home Loan Bank System (the System) provides a stable and reliable source of liquidity for its members and provides support for affordable housing and community development for the communities they serve. It was established in 1932 by the Federal Home Loan Bank Act,[4] and today consists of 11 regional Federal Home Loan Banks (the Banks) and the System's fiscal agent, the Office of Finance. Each Bank is a separate, government-chartered, member-owned corporation.

Congress established FHFA to oversee the regulated entities to ensure that the purposes of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), as amended, the authorizing statutes, and any other applicable laws are carried out.[5] In doing so, Congress recognized that the regulated entities have important public purposes reflected in their authorizing statutes, and that they need to be managed safely and soundly so that they continue to accomplish their public missions.[6]

With respect to the public purposes of the Enterprises, a number of statutory and regulatory authorities that apply to FHFA and the Enterprises speak to the need to advance equity for homebuyers, homeowners, and tenants in the housing market.[7] FHFA's principal duties include ensuring that the Enterprises operate consistent with safety and soundness and with the public interest.[8] FHFA and the Enterprises also have statutory and other commitments to advance equitable solutions for borrowers and tenants in the housing market. The Enterprises' authorizing statutes, for example, provide that one of their purposes is to promote access to mortgage credit throughout the nation (including central cities, rural areas, and underserved areas).[9] The authorizing

[1] Sustainable housing opportunity is defined more completely later in the proposed rule, but generally encompasses rental or homeownership opportunities that include one or more characteristics important to the needs of a tenant or homeowner.

[2] Underserved community is defined more completely later in the proposed rule, but generally encompasses a group of people with shared characteristics or an area that is subject to current discrimination or has been subjected to past discrimination that has or has had continuing adverse effects on the group or area's participation in the housing market, historically has received or currently receives a lower share of the benefits of Enterprise programs and activities providing sustainable housing opportunities, or that otherwise has had difficulty accessing these benefits compared with groups of people without the shared characteristic or other areas.

[3] 12 U.S.C. 1451 (note) and 1716.

[4] 12 U.S.C. 1421 *et seq.*

[5] 12 U.S.C. 4511(b).

[6] 12 U.S.C. 4501(1) (Enterprises and Federal Home Loan Banks have important public missions), (2) (their continued ability to accomplish their public missions is important, and effective regulation is needed to reduce risk of failure), and (7) (Enterprises have affirmative obligation to facilitate financing of affordable housing for low- and moderate-income families consistent with their public purposes, while maintaining a strong financial condition and a reasonable economic return).

[7] These include providing ongoing assistance to the secondary market for residential mortgages, including mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities. 12 U.S.C. 1716(3) and (4) (Fannie Mae charter purposes); 12 U.S.C. 1451 note (b)(3) and (4) (Freddie Mac charter purposes). They also include Enterprise affordable housing Goals, *see* 12 U.S.C. 4561(a), 4562, and 4563; 12 CFR part 1282, subpart B, and Enterprise Duty to Serve affordable housing needs of certain underserved markets, *see* 12 U.S.C. 4565; 12 CFR part 1282, subpart C. In addition, the Enterprises are required to report annually to Congress on, among other things, assessments of their underwriting standards and business practices that affect their purchases of mortgages for low- and moderate-income families, and revisions to their standards and practices that promote affordable housing or fair lending. 12 U.S.C. 1723a(n)(2)(G) (Fannie Mae charter), 1456(f)(2)(G) (Freddie Mac charter).

[8] 12 U.S.C. 4513(a)(1)(B)(i), (v).

[9] 12 U.S.C. 1716(4) (Fannie Mae charter); 1451 note (b)(4) (Freddie Mac charter).

statutes require the Enterprises, as part of their annual housing reports, to assess their underwriting standards, policies, and business practices that affect low- and moderate-income families or cause racial disparities, along with any revisions to these standards, policies, or practices that promote affordable housing or fair lending.[10]

The Housing Goals and Duty to Serve requirements are critical elements for ensuring that the Enterprises fulfill their mission and charters and serve low- and moderate-income families and underserved populations.[11] The Safety and Soundness Act provides that, in meeting these requirements, the Enterprises are required to take affirmative steps to assist primary lenders to make housing credit available in areas with concentrations of low-income and minority families.[12] The Safety and Soundness Act also requires the Enterprises to transfer an amount equal to 4.2 basis points for each dollar of unpaid principal balance of new purchases to the U.S. Department of Housing and Urban Development's (HUD) administration of the Housing Trust Fund and the U.S. Department of the Treasury's administration of the Capital Magnet Fund.[13] Both funds are designed to support affordable housing initiatives by providing capital for the production or preservation of affordable housing and related economic development activities. For the 2022 year, the Enterprises transferred $545 million into the funds.[14]

Several provisions of the Federal Home Loan Bank Act denote the public purposes of the Banks, including their role in making secured long-term advances to members to support residential housing finance, specific community support requirements, establishment of a community investment program and an affordable housing program, compliance with housing goals, and the requirement that certain directors have experience in public interest areas.[15] FHFA launched a comprehensive review of the System in August 2022.[16] Among the areas FHFA has explored as part of the review are the Banks' role in promoting affordable, sustainable, equitable, and resilient housing and community investment, including rental housing, and in addressing the unique needs of tribal communities, communities of color, rural communities, and other financially vulnerable and underserved communities. Numerous commenters during the public input phases of the initiative suggested establishing or expanding requirements for housing and community development lending plans for the Banks, and these and other suggestions are currently under consideration separately and apart from this proposed rulemaking.

Under the Fair Housing Act, all Federal agencies having regulatory or supervisory authority over financial institutions, including FHFA, are required to administer their programs and activities relating to housing and urban development in a manner that affirmatively furthers the purposes of the Fair Housing Act, which includes providing for fair housing throughout the United States.[17] FHFA has included considerations of fair housing and fair lending in rulemaking since its establishment.[18] FHFA has also issued a policy statement on fair lending which describes its regulatory and oversight authorities to supervise and enforce fair lending laws with respect to its regulated entities.[19] FHFA has issued orders to Fannie Mae and Freddie Mac for regular and special reports related to fair housing and fair lending.[20] FHFA has issued guidance for the Enterprises on fair housing and fair lending supervisory expectations.[21] FHFA coordinates with HUD on fair lending and fair housing oversight,[22] and has established a fair lending oversight data system in part to facilitate cooperation in interagency fair housing and fair lending oversight.[23] FHFA has also implemented the referral program for potential mortgage pricing disparities across mortgage lenders based on the Enterprises' data, as required by Congress in section 1128 of the Housing and Economic Recovery Act of 2008 (HERA).[24] FHFA also established the Equitable Housing Finance Plan program for the Enterprises to develop a framework for addressing barriers to sustainable housing opportunity for underserved communities through strategic planning and public participation.[25] FHFA joined other agencies in issuing the Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B in 2022.[26]

B. Barriers to Sustainable Housing Opportunities

Ongoing disparities and challenges in the housing market persist, limiting sustainable housing opportunities for underserved communities. The following section discusses some of these disparities and challenges by way of example. Both Enterprises' 2022–2024 Equitable Housing Finance Plans also include extensive discussions of barriers to sustainable housing opportunities.[27] The inclusion or discussion of a particular disparity, challenge, or underserved community is not an indication of FHFA's views on

[10] 12 U.S.C. 1723a(n)(2)(G), 1456(f)(2)(G).

[11] 12 U.S.C. 4561(a) (FHFA to establish annual housing goals by regulation), 4562 (establishment of required categories of single-family housing goals), and 4563 (establishment of required multifamily affordable housing goals); 12 U.S.C. 4565 (Enterprise duty to facilitate secondary mortgage market for very low-, low-, and moderate-income families in certain underserved markets).

[12] 12 U.S.C. 4565(b)(3)(A).

[13] 12 U.S.C. 4567.

[14] *See https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-545-Million-for-Affordable-Housing-Programs.aspx.*

[15] *See, e.g.,* 12 U.S.C. 1427(a)(3)(B)(ii), 12 U.S.C. 1430(g), (i), (j); 12 U.S.C. 1430c.

[16] *See https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Comprehensive-Review-of-the-FHLBank-System.aspx.*

[17] 42 U.S.C. 3608(d); 42 U.S.C. 3601 *et seq.*

[18] *See, e.g.,* 12 CFR 1253.4(b)(3)(viii); 74 FR 31602, 31603, 31606 (Jul. 2, 2009), 12 CFR 1254.6(a)(2) and 1254.8(b)(2); 84 FR 41886, 41905, 41906, 41907 (Aug. 16, 2019), and 12 CFR 1291.23(e); 83 FR 61186, 61208, 61238 (Nov. 28, 2018).

[19] 86 FR 36199 (Jul. 9, 2021).

[20] *See* FHFA Orders In Re: Enterprise Compliance and Information Submission with Respect to Fair Lending, Nos. 2021–OR–FNMA–2 and 2021–OR–FHLMC–2 (FHFA's Fair Lending Orders), *available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/Fair-Lending-Oversight-Program.aspx#:~:text=Fair%20Lending%20Reporting%20Orders&text=The%20orders%20require%20the%20Enterprises,lending%20supervision%20and%20monitoring%20capabilities.*

[21] Advisory Bulletin AB–2021–04, *Enterprise Fair Lending and Fair Housing Compliance* (Dec. 20, 2021), *available at https://www.fhfa.gov/SupervisionRegulation/AdvisoryBulletins/AdvisoryBulletinDocuments/AB%202021-04%20Enterprise%20Fair%20Lending%20and%20Fair%20Housing%20Compliance.pdf.*

[22] Memorandum of Understanding by and between the U.S. Department of Housing and Urban Development and the Federal Housing Finance Agency regarding Fair Housing and Fair Lending Coordination (Aug. 12, 2021), *available at https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/FHFA-HUD-MOU_8122021.pdf.*

[23] Fair Lending Oversight Data System of Records Notice, 87 FR 30947 (May 20, 2022), *available at https://www.govinfo.gov/content/pkg/FR-2022-05-20/pdf/2022-10798.pdf.*

[24] Public Law 110–289, 122 Stat. 2696, 2697 (2008) (*codified at* 12 U.S.C. 4561(d)).

[25] *See https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Equitable-Housing-Finance-Plans--for-Fannie-Mae-and-Freddie-Mac.aspx.*

[26] *See Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B* (Feb. 22, 2022), *available at https://www.federalreserve.gov/supervisionreg/caletters/CA%2022-2%20Attachment%20SPCP_Interagency_Statement_for_release.pdf.*

[27] *See* Freddie Mac 2022–2024 *Equitable Housing Finance Plan* (Apr. 2023), *available at https://www.freddiemac.com/about/pdf/Freddie-Mac-Equitable-Housing-Finance-Plan.pdf;* Fannie Mae 2022–2024 Equitable Housing Finance Plan (June 2022), *available at https://www.fanniemae.com/media/43636/display.*

the needs of a community or what actions FHFA's regulated entities should take.

1. Disparities in Homeownership Rates and Wealth

The national homeownership rate has ranged from around 45 percent in some eras to around 65 percent in recent years.[28] However, there have been persistent gaps in the homeownership rate by race and ethnicity. In the fourth quarter of 2022, the White homeownership rate was 74.5 percent, the Black homeownership rate was 44.9 percent, the Latino homeownership rate was 48.5 percent, and the Asian, Native Hawaiian and Pacific Islander homeownership rate was 61.9 percent.[29] The Black and White homeownership gap, at 29.6 percentage points as of the fourth quarter of 2022, has persisted over time, though there have been some modest reductions in the gap since 2019. Even when the racial homeownership rate is stratified by household income, there continue to be significant disparities in homeownership amongst racial groups, even in the highest income brackets. For example, for households with an income over $150,000, there exists a 10 percentage point gap between Black and White families.[30]

A household's home is often its largest financial asset and key to wealth building and intergenerational wealth transfers. The homeownership gap therefore contributes significantly to wealth gaps for underserved communities. The Federal Reserve, in a 2019 survey, found that White families have the highest level of both median and mean family wealth: $188,200 and $983,400, respectively.[31] In contrast, Black families' median and mean wealth is less than 15 percent that of White families, at $24,100 and $142,500, respectively. These wealth disparities have grown between 2003 and 2018.[32] One study estimated that the total racial wealth gap is $10.14 trillion.[33] This lack of intergenerational wealth transfers reduces the likelihood that older generations can assist with down payments, educational costs, and unexpected financial events, including natural disasters and medical emergencies. Black families are also less likely to receive or expect to receive an inheritance, and, if they do, it is, on average, less than that of White households.[34] Moreover, many Black, Latino, and Asian households provide financial assistance to older generations, which slows their ability to save for a down payment.[35]

2. Disparities Based on Disaggregated Data

For many underserved communities, it is critical to examine disaggregated data and data at the community level.[36] Failing to disaggregate may result in failure to identify significant disparities facing unique race/ethnicity subgroups for the purpose of identifying barriers and improving housing policy. For example, although Asians and Pacific Islanders as a whole have homeownership rates above 60 percent, Korean Americans' homeownership rate is 54 percent and Nepalese Americans' homeownership rate is 33 percent.[37] Geographically, while the overall homeownership gap between Black and White homeowners is 29.6 percentage points, in Minneapolis the gap rises to 50 percentage points.[38]

There are also disparities in mortgage underwriting that may be obscured by looking at aggregated data.[39] For Latino communities, Mexican applicants have slightly higher approval rates than Latino applicants as a whole, but Puerto Rican and ''Other Hispanic'' applicants have lower approval rates. Among Asian applicants, the Vietnamese, Filipino, and ''Other Asian'' communities experience lower approval rates than White applicants, despite Asian applicants, as a whole, having similar approval rates to White applicants. Similarly, when the Pacific Islander group is disaggregated, it becomes clear that Samoan and ''Other Pacific Islander'' applicants have significantly lower approval rates than Native Hawaiian and Chamorro applicants.

3. Challenges Accessing Sustainable Housing Opportunities

In addition to racial and ethnic gaps across homeownership and wealth, there are other underserved communities experiencing significant challenges in accessing sustainable housing opportunities. This includes families living on tribal land, in rural areas, and in rental homes. Almost half of renters are cost-burdened, paying more than 30 percent of their income on housing, compared to only 22 percent of homeowners.[40] As an increasing proportion of households wish to age in place, there is often a lack of housing opportunities that provide for mobility and other physical impairments. By 2035, the population 80 and over is expected to double from its level in 2016. More than 10 million households headed by someone over 65 are cost-burdened, with the median older renter having net wealth under $6,000 in 2019.[41] Two percent of total housing inventory is accessible for people with mobility disabilities, while 14 percent of Americans have mobility disabilities.[42] Other populations, including persons identifying as lesbian, gay, bisexual, transgender, or queer (LGBTQ+), continue to report facing challenges in

[28] *See* Don Layton, ''The Homeownership Rate and Housing Finance Policy, Part 1: Learning from the Rate's History,'' August 2021, *available at https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_homeownership_rate_layton_2021.pdf.*

[29] Federal Reserve Economic Data, Federal Reserve Bank of St. Louis; Housing and Homeownership: Homeownership Rate (retrieved February 11, 2023) *available at https://fred.stlouisfed.org/release/tables?rid=296&eid=784188#snid=784199.*

[30] *See* Fannie Mae 2022–2024 *Equitable Housing Finance Plan* (June 2022), p. 7, *available at https://www.fanniemae.com/media/43636/display.*

[31] *See* Neil Bhutta et al., Board of Governors of the Federal Reserve System, ''Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances,'' (Sept. 28, 2020), *available at https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.html.*

[32] *See* Earl Fitzhugh et al., McKinsey Institute for Black Economic Mobility, ''It's time for a new approach to racial equity,'' (Dec. 2, 2020), *available at https://www.mckinsey.com/bem/our-insights/its-time-for-a-new-approach-to-racial-equity.*

[33] *See* Fred Dews, ''Charts of the Week: The racial wealth gap; the middle-class income slump,'' Brookings Institution (Jan. 8, 2021), *available at https://www.brookings.edu/blog/brookings-now/2021/01/08/charts-of-the-week-the-racial-wealth-gap-the-middle-class-income-slump/.*

[34] *See* Freddie Mac 2022–2024 *Equitable Housing Finance Plan* (Apr. 2023), *available at https://www.freddiemac.com/about/pdf/Freddie-Mac-Equitable-Housing-Finance-Plan.pdf.*

[35] *See* Mike Dang, ''Their Children Are Their Retirement Plans,'' New York Times (Feb. 24, 2023), *available at https://www.nytimes.com/2023/01/21/business/retirement-immigrant-families.html.*

[36] *See* Leda Bloomfield et al., FHFA Insights Blog, ''Latino Diversity and Complexity: The Importance of Data Disaggregation,'' (Sept. 23, 2021), *available at https://www.fhfa.gov/Media/Blog/Pages/Latino-Diversity-and-Complexity-The-Importance-of-Data-Disaggregation.aspx.*

[37] *See* Asian Real Estate Association, 2023–2024 State of Asia America Report, *available at https://areaa.org/resource-asia-america-report.*

[38] *See* Alanna McCargo et al., ''Mapping the black homeownership gap,'' (Feb. 26, 2018), *available at https://www.urban.org/urban-wire/mapping-black-homeownership-gap.*

[39] *See* Leda Bloomfield et al., FHFA Insights Blog, ''Latino Diversity and Complexity: The Importance of Data Disaggregation,'' (Sept. 23, 2021), *available at https://www.fhfa.gov/Media/Blog/Pages/Latino-Diversity-and-Complexity-The-Importance-of-Data-Disaggregation.aspx.*

[40] *See* National Equity Atlas, ''Housing Burden: All residents should have access to quality, affordable homes), (retrieved Mar. 5, 2023) *available at https://nationalequityatlas.org/indicators/Housing_burden#/?rentown01=2.*

[41] *See* Jennifer Molinsky, ''Housing for America's Older Adults: Four Problems We Must Address,'' Joint Center for Housing Studies of Harvard University (Aug. 18, 2022), *available at https://www.jchs.harvard.edu/blog/housing-americas-older-adults-four-problems-we-must-address.*

[42] *See* Freddie Mac 2022–2024 *Equitable Housing Finance Plan* (Apr. 2023), *available at https://www.freddiemac.com/about/pdf/Freddie-Mac-Equitable-Housing-Finance-Plan.pdf.*

accessing the housing finance system. A study found that same-sex applicants are 73.12 percent more likely to be denied for a mortgage.[43] Households with limited English proficiency (LEP), or who are more comfortable transacting in a language other than English, may also experience barriers to housing opportunities and housing sustainability. Often, LEP borrowers will rely on their English-proficient child, who may not be familiar with mortgage lending terms, as a translator.[44] As a result, this can leave the borrower without a full understanding of mortgage terms and conditions.

4. Mortgage Market Disparities

Disparities are present in the mortgage market for several underserved communities. For example, in 2022 Black families comprised about 14 percent of the total U.S. population, but only about 7 percent of the loans that Fannie Mae and Freddie Mac purchased. American Indian and Alaska Native families comprised about 3 percent of the total U.S. population, but only about 1 percent of the loans that Fannie Mae and Freddie Mac purchased. In contrast, White families comprised about 62 percent of the U.S. population, but they comprised about 68 percent of Fannie Mae and Freddie Mac acquisitions.[45]

FHFA has released data on Fannie Mae and Freddie Mac's automated underwriting systems, presenting gaps in approval rates for applicants from certain groups over time compared to other groups. These underwriting tools complete credit risk assessments on loan applicants to determine whether a loan is eligible for sale to the Enterprises. Although the move to a more automated, less subjective system to assess creditworthiness in mortgage market underwriting was an important step in eliminating bias in subjective underwriting decisions, further improvements in automated underwriting to reduce gaps would promote better access to sustainable housing opportunities. In 2022, White applicants' automated underwriting system applications had approval rates of about 84 and 85 percent for the automated underwriting systems of Fannie Mae and Freddie Mac, respectively; Black applicants had approval rates of about 70 and 69 percent; Latino applicants had approval rates of about 78 percent and 73 percent; Asian applicants had approval rates of about 84 and 85 percent; American Indian and Alaska Native applicants had approval rates of about 78 and 75 percent; and Native Hawaiian and Pacific Islander applicants had approval rates of about 78 and 74 percent.[46]

Home Mortgage Disclosure Act (HMDA) data also shows higher denial rates by lenders for many underserved communities. For example, an analysis of the 2020 HMDA data found a denial rate of 27.1 percent for Black applicants compared to 13.6 percent for White applicants.[47] The trend in higher denial rates has persisted in HMDA data for many years.[48] A 2019 study of mortgage pricing found that Black and Latino borrowers pay 7.9 and 3.6 basis points more in interest for mortgages, even when controlling for several factors.[49] FHFA conducts an annual screening, preliminary findings, and referral process for lenders pursuant to the Safety and Soundness Act and describes the results in its Annual Report to Congress. Based on the results of FHFA's 2019 and 2020 analysis, more than 36 percent of FHFA's preliminary findings were based on an annual percentage rate disparity of 10 basis points or more, with the most common preliminary findings and referrals for Latino and Black borrowers.[50]

The Federal Home Loan Bank of San Francisco entered into a research and product development initiative with a research institution to address issues related to the racial homeownership gap.[51] A study resulting from this partnership noted that the heavy reliance on certain credit attributes in the current mortgage underwriting process to the exclusion of other attributes limits opportunities for people of color.[52]

Additional mortgage market disparities and challenges remain with respect to rural areas, manufactured housing, and other market segments. FHFA's Duty to Serve program works to address many of these disparities.[53]

5. Appraisal and Valuation Disparities

FHFA's Uniform Appraisal Dataset (UAD) Aggregate Statistics highlight that properties located in minority tracts have a higher proportion of appraised values less than the contract price. According to the 2021 appraisal statistics, 23.3 percent of homes in high minority tracts (80.1–100 percent) experienced an appraised value less than the contract price.[54] This is compared to 13.4 percent of homes in White tracts (0–50 percent) and 19.2 percent in minority tracts (50.1–80 percent).[55] Additionally, FHFA identified examples with direct references to the racial and ethnic composition of the neighborhood in appraisal reports.[56] Freddie Mac's

[43] *See* Hua Sun et al., ''Lending practices to same-sex borrowers,'' (Apr. 16, 2019), *available at https://www.pnas.org/doi/10.1073/pnas.1903592116.*

[44] *See* Freddie Mac and Fannie Mae, ''Language Access for Limited English Proficiency Borrowers: Final Report,'' (Apr. 2017), *available at https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-Access-Final-Report-June-2017.pdf.*

[45] Loan purchase data sourced from Enterprise data released by FHFA at *https://www.fhfa.gov/DataTools/Downloads/Pages/Fair-Lending-Data.aspx.* Total population statistics are drawn from 2020 Census data summarized at *https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html.* Total population statistics for White are provided as White alone. Total population statistics for Black and American Indian and Alaska Native are provided as alone or in combination with another race or ethnicity category.

[46] *See https://www.fhfa.gov/DataTools/Downloads/Pages/Fair-Lending-Data.aspx.*

[47] *See* Jung H. Choi et al., ''What Different Denial Rates Can Tell Us About Racial Disparities in the Mortgage Market,'' (Jan. 13, 2022), *available at https://www.urban.org/urban-wire/what-different-denial-rates-can-tell-us-about-racial-disparities-mortgage-market.*

[48] *See* Laurie Goodman et al., ''Traditional Mortgage Denial Metrics May Misrepresent Racial and Ethnic Discrimination,'' (Aug. 23, 2018), p. 5, *available at https://www.urban.org/urban-wire/traditional-mortgage-denial-metrics-may-misrepresent-racial-and-ethnic-discrimination.*

[49] *See* Robert Bartlett et al., Haas School of Business UC Berkely, ''Consumer-Lending Discrimination in the FinTech Era,'' (Nov. 2019), *available at https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf.*

[50] *See* Federal Housing Finance Agency, 2021 Report to Congress, p. 67, *available at https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FHFA-2021-Annual-Report-to-Congress.pdf.*

[51] *See https://fhlbsf.com/about/newsroom/urban-institute-and-fhlbank-san-francisco-announce-new-efforts-close-racial?f%5B0%5D=authored_on%3A2021.*

[52] *See* Jung H. Choi et al., Urban Institute and Federal Home Loan Bank of San Francisco, ''Reducing the Black-White Homeownership Gap through Underwriting Innovations: The Potential Impact of Alternative Data in Mortgage Underwriting,'' *available at https://www.urban.org/sites/default/files/2022-10/Reducing%20the%20Black-White%20Homeownership%20Gap%20through%20Underwriting%20Innovations.pdf.*

[53] *See https://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/Duty-to-Serve.aspx.*

[54] *See* Jonathan Liles, ''Exploring Appraisal Bias Using UAD Aggregate Statistics,'' FHFA Insights Blog (Nov. 11, 2022), *available at https://www.fhfa.gov/Media/Blog/Pages/Exploring-Appraisal-Bias-Using-UAD-Aggregate-Statistics.aspx.*

[55] For 2022, 17.15 percent of home purchase appraisals were below contract price in high minority tracts, compared to 14.3 percent in minority tracts and 11.2% in White tracts. Uniform Appraisal Dataset Aggregate Statistics, a*vailable at https://www.fhfa.gov/DataTools/Pages/UAD-Dashboards.aspx.*

[56] *See* Chandra Broadnax, ''Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary,'' FHFA Insights Blog (Dec. 14, 2021), *available at https://www.fhfa.gov/Media/Blog/Pages/Reducing-Valuation-Bias-by-Addressing-Appraiser-and-Property-Valuation-Commentary.aspx.*

research showed that properties in minority tracts are more likely than properties in White tracts to receive an appraisal lower than the contract price.[57] A Fannie Mae publication concluded that White borrowers' homes were overvalued at higher rates across all neighborhoods, but stronger effects were present for White borrowers in Black neighborhoods.[58] Additional research has also highlighted and analyzed disparities in property valuation.[59] Consumer groups have begun to conduct fair housing paired testing of appraisers, resulting in the filing of complaints.[60] Rural markets also experience challenges related to appraiser availability and appraisal cost.[61]

III. The Proposed Rule

A. FHFA Fair Lending Oversight of the Regulated Entities

The proposed rule would codify in regulation FHFA's existing fair lending oversight functions with respect to the regulated entities, including conducting supervisory examinations, issuing examination findings, requiring regular and special reporting and data, and enforcement. The proposed oversight would be substantially the same as FHFA's current fair lending oversight functions, but would establish FHFA's oversight of potential unfair or deceptive acts or practices by the regulated entities and would require the regulated entities to file certifications of compliance with fair lending and fair housing laws with regular and special reports. It would additionally establish more precise standards related to fair housing and fair lending and principles of equitable housing for regulated entity boards of directors.

B. Enterprise Equitable Housing Finance Plans

The proposed rule would codify FHFA's current requirements for the Enterprises' Equitable Housing Finance Plans. The proposed plan requirements would be substantially the same as FHFA's current requirements for the Enterprises' plans, but would establish additional public disclosure and reporting requirements and expanded program requirements. Codifying the Enterprises' plan requirements with additions in a regulation would make the Enterprises' obligations more explicit and transparent to the public and would also establish greater accountability mechanisms through FHFA's statutory enforcement and compliance authorities.

The proposed rule has some similar elements to the HUD's affirmatively furthering fair housing rules and requirements.[62] HUD's framework provides helpful guidance and information on an equity planning process that affirmatively furthers fair housing. HUD's framework has informed FHFA in its development of the proposed rule, but FHFA has also taken into account the unique features of the Enterprises, its experience in overseeing the program to date, and the views of stakeholders as part of FHFA's requests for input and listening sessions to develop the proposed rule.

C. Enterprise Data Collection and Reporting to FHFA

The proposed rule would require the Enterprises to collect, maintain, and report data on language preference, homeownership education, and housing counseling for applicants and borrowers. The Enterprises collect this data through their automated underwriting systems and loan delivery. The Enterprises also provide a standard form for collection of the data—the Supplemental Consumer Information Form. The proposed rule would codify the FHFA policy announced in May 2022 for mandatory use of the Supplemental Consumer Information Form.[63] Consistent with current policy, the proposed rule would not require applicants and borrowers to respond to a language preference question, and applicants and borrowers may be provided with the option to not respond to a question about language preference as part of the information collection to satisfy the proposed rule.

D. Application of FHFA's Prudential Standard Framework

Section 4513b of the Safety and Soundness Act (12 U.S.C. 4513b(b)) requires FHFA to establish prudential management and operations standards for its regulated entities, authorizes FHFA to establish such standards by regulation or guideline, and establishes a corrective action framework if a regulated entity fails to meet a prudential standard.[64] To implement section 4513b, FHFA has adopted a Prudential Management and Operations Standards (PMOS) regulation, at 12 CFR part 1236, and an Appendix to that regulation. The PMOS regulation is primarily procedural; for example, it addresses FHFA determinations that a regulated entity has failed to meet a standard; provides that FHFA may base that determination on an examination, inspection, or any other information; and addresses the contents and filing deadlines for corrective plans.[65] The PMOS regulation also codifies FHFA's authority to require a regulated entity to submit a PMOS corrective plan in conjunction with other required submissions.[66] If a regulated entity fails to submit a corrective plan or fails to implement an approved corrective plan, the PMOS regulation addresses FHFA's statutory authority to order the regulated entity to correct the deficiency or to undertake additional corrective or remedial measures as FHFA may require.

The Appendix sets forth substantive prudential management and operational standards (Standards) that FHFA has established as guidelines, including a statement on General Responsibilities of the Board and Management and ten numbered Standards. These Standards contain many elements that are relevant to components of the proposed rule, such as responsibilities for boards and senior management with respect to appropriate business strategies and policies; standards for internal controls and information systems; maintenance of records; alignment of the overall risk

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[57] *See* Melissa Narragon et al., ''Racial & Ethnic Valuation Gaps in Home Purchase Appraisals—A Modeling Approach,'' (May 2022), *available at https://www.freddiemac.com/research/insight/20220510-racial-ethnic-valuation-gaps-home-purchase-appraisals-modeling-approach;* Freddie Mac, ''Racial and Ethnic Valuation Gaps in Home Purchase Appraisals,'' (Sept. 20, 2021), *available at https://www.freddiemac.com/research/insight/20210920-home-appraisals.*

[58] *See* Jake Williamson et al., ''Appraising the Appraisal,'' (Feb. 2022) *available at https://www.fanniemae.com/media/42541/display.*

[59] *See, e.g.,* Andre Perry et al., The Brookings Institution, ''The Devaluation of Assets in Black Neighborhoods: The Case of Residential Property (Nov. 27, 2018), *available at https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/;* Junia Howell et al., ''Appraised: The Persistent Evaluation of White Neighborhoods as More Valuable Than Communities of Color,'' (Nov. 2022), *available at https://www.eruka.org/appraised;* Edward Pinto et al., American Enterprise Institute, ''How Common is Appraiser Racial Bias—An Update,'' (May 2022), *available at https://www.aei.org/wp-content/uploads/2022/06/How-Common-is-Appraiser-Racial-Bias-An-Update-May-2022-FINAL-corrected-1.pdf?x91208.*

[60] Jake Lilien, National Community Reinvestment Coalition, ''Faulty Foundations: Mystery-Shopper Testing in Home Appraisals Exposes Racial Bias Undermining Black Wealth,'' (Oct. 2022), *available at https://ncrc.org/faulty-foundations-mystery-shopper-testing-in-home-appraisals-exposes-racial-bias-undermining-black-wealth/.*

[61] *See* FHFA, Request for Information on Appraisal-Related Policies, Practices, and Processes (Dec. 28, 2020), p. 4, *available at https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/RFI-Appraisal-Related-Policies.pdf.*

[62] *See, e.g.,* 24 CFR 5.150 *et seq.*

[63] *See https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Mandatory-Use-of-the-Supplemental-Consumer-Information-Form.aspx.*

[64] 12 U.S.C. 4513b(b)(2)(B).

[65] 12 CFR 1236.4(a).

[66] 12 CFR 1236.4(c)(2)(ii).

profile with mission objectives; internal audit; compliance with laws, regulations, and supervisory guidance; and others. Therefore, compliance with the proposed rule, if finalized, would be subject to applicable Standards and could be addressed through the PMOS corrective framework.

Separately, the proposed rule would establish Subpart C, Enterprise Equitable Housing Finance Planning, except for § 1293.26, as a prudential standard within the meaning of section 4513b. FHFA has determined that it is legally appropriate and would be sound policy to identify that subpart as a prudential standard. The Enterprise equitable housing finance planning framework, as discussed above, is consistent with the Enterprises' authorizing statute obligations and FHFA's statutory charges related to ensuring regulated entities operate consistent with the public interest and that FHFA furthers fair housing in its oversight of the regulated entities. In addition to the more general application of the PMOS framework through the Standards discussed above, this designation of the equitable housing finance planning framework as a Standard by regulation would provide FHFA access to section 4513b corrective measures, if necessary, to address deficiencies in equitable housing finance planning or implementation by an Enterprise. Section 1293.26 is proposed to be excluded from the designation because that section articulates a broader concept related to ensuring Enterprise boards appropriately consider the equitable housing finance plan alongside other longstanding mission responsibilities in their oversight of an Enterprise and not the required elements and process for an Equitable Housing Finance Plan.

Section 4513b makes clear that corrective actions pursuant to the PMOS framework are in addition to any enforcement action FHFA would be authorized to take, if FHFA determined that an Enterprise has violated any regulation.[67] Thus the PMOS framework does not limit FHFA's authorities and FHFA will determine the appropriate supervisory response based on the facts and circumstances of any failure or violation.

E. Policy Purposes for and Benefits of the Proposed Rule

All communities in the United States deserve access to sustainable housing opportunities and well-functioning housing markets. As acknowledged through the Duty to Serve requirements, housing goals framework, and the Agency and the regulated entities' public purposes, enumerated protected classes under fair housing and fair lending laws are not the only underserved communities in the United States. The proposed rule's incorporation of broad protections for consumers under prohibitions against unfair or deceptive acts or practices, and defining underserved communities broadly for the purposes of Equitable Housing Finance Plans, will help ensure the Agency and the regulated entities focus on underserved communities throughout the United States, consistent with the Enterprises' Charter Acts, the Agency's public interest duty, and the purposes of the Fair Housing Act. The proposed rule will add to the Agency's existing set of programs and tools to accomplish these goals.

By codifying many of FHFA's existing requirements and policies regarding fair lending oversight, Enterprise Equitable Housing Finance Plans, and language preference and homeownership education and housing counseling data collection, as well as expanding certain requirements, the proposed rule serves a number of policy purposes and would provide a number of policy benefits.

Consistent oversight of fair housing and fair lending, along with public participation and accountability, have been key issues that impact the fair housing and fair lending compliance by financial institutions and housing market actors. Codifying the requirements and policies through rulemaking will provide greater public transparency and input regarding the existing programs, as well as greater assurance of the Agency's commitment. Codifying existing fair housing and fair lending requirements and enhancing them will provide greater oversight and accountability regarding the regulated entities' fair housing and fair lending compliance and therefore benefit the public who are ultimately protected by fair housing and fair lending laws.

Strategic planning for improvements in fair housing has been a key component of fulfilling commitments to affirmatively further fair housing and is an important way in which progress toward providing for fair housing throughout the United States can be made. Codifying Equitable Housing Finance Plans in regulation and providing additional standards through rulemaking will ensure that fair housing issues can be addressed proactively in addition to reactively through supervision and examinations.

Establishing enhanced standards and transparency for fair housing and fair lending generally, and for the Equitable Housing Finance Plans, may also have the benefit of providing greater market assurance with respect to the regulated entities' compliance with applicable laws, thereby supporting liquidity in the secondary mortgage market and support for underserved communities.

IV. Section-by-Section Analysis

A. Section 1293.1 General

Subpart A of the proposed rule would provide general information, rules, definitions, and compliance and enforcement provisions that apply to all of proposed part 1293. Proposed § 1293.1(a) would provide general information and rules, including fair lending oversight of the regulated entities, equitable housing finance planning by the Enterprises, and data collection and reporting by the regulated entities (currently only including requirements for the Enterprises). Proposed § 1293.1(b) would provide that nothing in proposed part 1293 permits or requires a regulated entity to engage in any activity that would otherwise be inconsistent with the Safety and Soundness Act, the authorizing statutes, or other applicable law. FHFA believes it is important to reiterate in the proposed rule that activities must be in keeping with safety and soundness. Without safety and soundness underlying the regulated entities' activities, they cannot truly promote fair housing, fair lending, and principles of housing equity. As discussed later, FHFA is also adding the prohibition on unfair or deceptive acts or practices to the laws it oversees with respect to the regulated entities. FHFA believes that underscoring the importance of safety and soundness and avoiding unfair or deceptive acts or practices complements and enhances the pursuit of solutions that further fair housing, fair lending, and principles of housing equity and makes clear that predatory products or activities would not be in furtherance of the proposed rule. Proposed § 1293.1(c) would provide that nothing in proposed part 1293 creates a private right of action.

B. Section 1293.2 Definitions

Proposed § 1293.2 would provide definitions that apply to proposed part 1293.

The proposed definition of ''Equitable Housing Finance Plan'' (plan) is a key component of subpart C of the proposed rule. It is a three-year public plan developed with public engagement and adopted by each Enterprise describing how each Enterprise will overcome barriers to sustainable housing opportunities faced by one or more

[67] 12 U.S.C. 4513b(c).

underserved communities through objectives, meaningful actions, and measurable goals. The plan is a key element of the proposed rule, and its requirements are more fully described in proposed §§ 1293.22 and 1293.25. The proposed definition of ''annual plan update'' (update) is a public update to a plan for the second or third year of a planning cycle. The proposed definition of ''performance report'' (report) is an annual public report by an Enterprise on its performance under a plan and other information on equitable housing and fair lending that meets the requirements of proposed § 1293.23 and any other FHFA requirements.

The proposed definition of ''barrier'' is an important element of a plan. As part of a plan, an Enterprise would be required to identify barriers faced by an underserved community. The proposed definition includes Enterprise actions, products, or policies as well as aspects of the housing market that can reasonably be influenced by an Enterprise's actions, products, or policies that contribute to an underserved community's limited share of sustainable housing opportunities, difficulties in accessing those sustainable housing opportunities, or the continuing adverse effects of discrimination affecting their participation in the housing market. The proposed definition focuses on an Enterprise's own actions, products, or policies because these are what an Enterprise can most easily change. Including aspects of the housing market that can reasonably be influenced by an Enterprise's actions, in addition to an Enterprise's own actions, products, or policies, encourages actions that serve the public interest, promote access to mortgage credit throughout the nation, and further fair housing.

The proposed definition of ''fair housing and fair lending laws'' provides an enumeration of Federal fair housing and fair lending laws to which the regulated entities are subject and FHFA oversees pursuant to the fair lending oversight described in the proposed rule. The ''fair housing and fair lending laws'' are the Fair Housing Act, the Equal Credit Opportunity Act, and implementing regulations. Additionally, with respect to an Enterprise, the ''fair housing and fair lending laws'' include 12 U.S.C. 4545 and implementing regulations.

The proposed definition of ''sustainable housing opportunity'' relates to the scope and type of the benefits that the plans should seek to achieve for underserved communities through meaningful actions. The proposed definition includes both rental and homeownership opportunities that include one or more characteristics important to the needs of a tenant or homeowner within its scope and includes several illustrative characteristics of the concept, including affordability, habitability, resilience to climate impacts, quality, locational benefits, accessibility, long-term sustainability, and accommodations for short-term hardships. These are important features of housing opportunities that should help focus the Enterprises' plans. Further standards related to the proposed definition are provided in proposed § 1293.25.

The proposed definition of ''underserved community'' is an important element of a plan. An Enterprise chooses one or more underserved communities on which to focus for a planning cycle. ''Underserved community'' would be defined as a group of people with shared characteristics or an area that is subject to current discrimination or has been subjected to past discrimination that has or has had continuing adverse effects on the group or area's participation in the housing market, historically has received or currently receives a lower share of the benefits of Enterprise programs and activities providing sustainable housing opportunities, or that otherwise has had difficulty accessing these benefits compared with groups of people without the shared characteristic or other areas. The proposed definition includes characteristics protected by fair lending laws applicable to the Enterprises, but the definition is not limited to such characteristics. The definition provides illustrative examples, if supported by adequate information under the requirements of proposed § 1293.25. The proposed definition makes clear that a variety of groups or areas could be chosen by an Enterprise. The inclusion or exclusion of any particular group from the illustrative examples is not an indication of FHFA's views about whether or not that group constitutes an underserved community or whether it should be the focus of a plan.

C. Section 1293.3 Compliance and Enforcement

Proposed § 1293.3 reiterates general FHFA authority related to compliance and enforcement for proposed part 1293, inclusive of all aspects of the proposed rule. FHFA has broad authority for compliance and enforcement. This section notes FHFA's ability to conduct examinations related to proposed part 1293, including fair lending compliance, equitable housing finance, and other matters. It also notes FHFA's ability to issue adverse examination findings and take various forms of enforcement actions and issue civil money penalties under 12 U.S.C. 4511(b), 4513b, 4631, and 4636. This section is similar to other sections of FHFA regulations related to oversight of specific programmatic areas [68] and the FHFA fair lending policy statement.[69]

Some examples of how FHFA's compliance and enforcement authority could be used with respect to fair lending oversight, equitable housing finance, or data collection or reporting include, but are not limited to:

- If FHFA found that a regulated entity had insufficient compliance management around fair lending laws or the proposed rule, FHFA could issue adverse examination findings and factor the insufficient compliance management into supervisory ratings;
- If FHFA found that a regulated entity had violated the Fair Housing Act, FHFA could issue adverse examination findings, factor the non-compliance into supervisory ratings, and enter into a consent order with the regulated entity requiring corrective action, additional remedies, and civil money penalties;
- If an Equitable Housing Finance Plan, annual update, performance report, or an Enterprise's actions taken under the program did not meet the requirements of this proposed rule, FHFA could issue an adverse examination finding, factor non-compliance into supervisory ratings, and issue a prudential management operating standard notice requiring the entity to submit a corrective plan; and
- If FHFA found that a regulated entity had not complied with required data collection or reporting, FHFA could issue an adverse examination finding, factor non-compliance into supervisory ratings, and enter into a written agreement with the regulated entity.

Neither this section of the proposed rule or the examples given above are intended to limit FHFA's authority in any way. This section merely restates some of the most applicable FHFA authority.

D. Section 1293.4 Preservation of Authority

Proposed § 1293.4 would provide that nothing in the proposed rule would in any way limit the authority of the agency under other provisions of applicable law and regulations.

[68] *See, e.g.,* 12 CFR 1223.24.

[69] *See* FHFA, ''Policy Statement on Fair Lending,'' (Jul. 9, 2021), *available at https://www.govinfo.gov/content/pkg/FR-2021-07-09/pdf/2021-14438.pdf.*

E. Section 1293.11 Regulated Entity Compliance

Subpart B of the proposed rule applies to all regulated entities and provides standards related to compliance, responsibilities of boards of directors, reports, data, and certification. Proposed § 1293.11 addresses regulated entity compliance with fair housing and fair lending laws. Proposed § 1293.11(a) states that regulated entities must comply with the Fair Housing Act, the Equal Credit Opportunity Act, and 12 U.S.C. 4545 for the Enterprises. Proposed § 1293.11(b) would provide that the regulated entities must comply with 15 U.S.C. 45 (Section 5 of the Federal Trade Commission Act), which prohibits unfair or deceptive acts or practices. The prohibition against unfair or deceptive acts or practices is an important protection under Federal law for consumers and other market actors against predatory and deceptive actions,[70] and FHFA has determined it would be appropriate to oversee the regulated entities for compliance with this statute. Violations of these laws by the regulated entities would, in addition, violate § 1293.11(a) and (b) as proposed.[71] The Safety and Soundness Act empowers FHFA to oversee its regulated entities' compliance with ''other applicable law,'' 12 U.S.C. 4511(b)(2), and to engage in enforcement for noncompliance with law.[72] Other Federal financial regulators examine and oversee their regulated entities on these or similar bases as part of consumer protection under similar authority.[73] While FHFA is including unfair or deceptive acts or practices in the proposed rule because they are similar to fair lending laws in the intent to ensure fair treatment, FHFA understands unfair or deceptive acts or practices to encompass a broad scope of activities harmful to individuals that go beyond illegal discrimination.

Proposed § 1293.11(c) would establish more precise standards related to fair housing and fair lending and the prohibition on unfair or deceptive acts or practices for regulated entity boards of directors in carrying out their existing responsibility under FHFA's Corporate Governance regulation (12 CFR part 1239) to direct the operations of the regulated entities in conformity with FHFA regulations. FHFA's Corporate Governance regulation provides that the ultimate responsibility for a regulated entity's oversight rests with the board of directors, and that directors have a duty to direct the operations of a regulated entity in conformance with the authorizing statutes, the Safety and Soundness Act, and FHFA regulations.[74] Board and management oversight of fair housing and fair lending compliance has long been recognized as a critical component of a well-functioning compliance management system. Federal financial regulators regularly examine their regulated entities for sufficient fair lending compliance management, and rate regulated entities based in part on Board and Management Oversight.[75] Consent orders for fair housing and fair lending violations frequently include specific requirements for enhanced Board and Management Oversight.[76] The standard articulated in the proposed rule is intended to provide more clarity and guidance to directors in how to incorporate the proposed rule into the pre-existing duty under the Corporate Governance regulation to direct operations in conformity with FHFA regulations. The proposed rule's language on ''appropriately considering'' compliance with fair housing and fair lending laws and the prohibition on unfair or deceptive acts or practices are intended to be flexible and tailored to the particular consideration at hand, while reinforcing the broad application of fair housing and fair lending laws and the prohibition on unfair or deceptive acts or practices on a regulated entity's operations and the board's ultimate responsibility for the regulated entity's oversight.

F. Section 1293.12 Reports and Data

Proposed § 1293.12 would provide that FHFA may require the regulated entities to provide to FHFA regular and special reports, including the provision of data, concerning fair lending and fair housing. FHFA has issued fair lending reporting orders to Fannie Mae and Freddie Mac requiring regular reports.[77] FHFA has not issued fair lending reporting orders to the Banks, and FHFA is not proposing to require specific reports of the Banks through this proposed rule. FHFA would plan to issue such reporting orders at an appropriate time, if deemed necessary.

Proposed § 1293.12 also provides that each regular report related to fair housing and fair lending shall include a certification of the regulated entity's compliance with fair housing and fair lending laws and the prohibition on unfair or deceptive acts or practices in addition to any other required certification or declaration (such as a declaration under 12 U.S.C. 4514(a)(4)). Under FHFA's regular and special report authority under 12 U.S.C. 4514(a)(4), each report must contain a declaration from an officer that the report is true and correct to the best of such officer's knowledge and belief. This section would add an additional requirement for a certification that the regulated entity complies with fair housing and fair lending laws and the prohibition on unfair or deceptive acts or practices for reports related to fair housing and fair lending. This certification requirement would provide additional incentive to the boards and management of the regulated entities to ensure compliance with fair housing and fair lending laws in their operations. Both Enterprises require their seller/servicers to attest to compliance with fair housing and fair lending laws.[78] Certifications related to

[70] Kathleen C. Engel et al., A Tale of Three Markets: The Law and Economics of Predatory Lending, 80 Tex. L. Rev. 1255, 1260 (2002) (noting that lending fraud or deceptive practices ''come[ ] in endless varieties''). Ngai Pindell, The Fair Housing Act at Forty: Predatory Lending and the City As Plaintiff, J. Affordable Housing & Community Dev. L., Winter 2009, at 173–75 (describing contemporary unfair and predatory lending practices).

[71] *See, e.g.,* 12 U.S.C. 4636.

[72] 12 U.S.C. 4631. FHFA's cease-and-desist authority is similar to Section 8 of the Federal Deposit Insurance Act under which the FDIC (for example) enforces unfair and deceptive acts or practices.

[73] *See, e.g.,* Federal Deposit Insurance Corporation (FDIC) Guidance on Unfair or Deceptive Acts or Practices, FIL–57–2002 (May 30, 2002), *available at https://www.fdic.gov/news/inactive-financial-institution-letters/2002/fil0257.html. See also* HUD's Mortgagee Letter 2014–10 (ML 2014–10), *available at https://www.hud.gov/sites/documents/14-10ML.PDF* (HUD letter ''remind[ing] mortgagees of the Federal Housing Administration's (FHA) requirements prohibiting misleading or deceptive advertising'').

[74] 12 CFR 1239.4.

[75] *See, e.g.,* Federal Financial Institutions Examination Council, Uniform Interagency Consumer Compliance Rating System, 81 FR 79473 (Nov. 14, 2016) (outlining expectations for Board and Management Oversight in consumer compliance management, including fair lending); Federal Financial Institutions Examination Council, Interagency Fair Lending Examination Procedures, *available at https://www.fdic.gov/regulations/examinations/fairlend.pdf* (detailing examiners' engagement with management and review of management oversight).

[76] *See, e.g., United States* v. *Cadence Bank* Consent Order, *available at https://www.justice.gov/crt/case-document/file/1429051/download#:~:text=%C2%A7%C2%A7%201691%2D1691f.&text=1.,%2C%20color%2C%20and%20national%20origin.*

[77] *See* FHFA's Fair Lending Orders, *available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/Fair-Lending-Oversight-Program.aspx#:~:text=Fair%20Lending%20Reporting%20Orders&text=The%20orders%20require%20the%20Enterprises,lending%20supervision%20and%20monitoring%20capabilities.*

[78] *See* Fannie Mae Selling Guide, Compliance with Laws *available at https://selling-guide.fanniemae.com/Selling-Guide/Doing-*

Continued

compliance are commonly used by other Federal agencies, including with respect to Federal housing grants, such as Community Development Block Grants, and consent decrees and settlement agreements by the Department of Justice and HUD in housing and lending discrimination cases.

FHFA is not proposing to include the specific certification language in the rule, instead merely the general requirement. FHFA believes this would allow flexibility for FHFA to make changes to the specific certification language when necessary. However, FHFA seeks comment on the following certification language: ''[Regulated entity] complies and has complied in all material respects with, and maintains policies, procedures, and internal controls to assure compliance with fair housing and fair lending laws and the prohibition on unfair or deceptive acts or practices.'' If a regulated entity did not believe it could certify to that or similar language for a particular period, such as because FHFA had identified fair lending non-compliance in a supervisory examination that the regulated entity was still remediating, and the regulated entity would not be able to complete remediation by the time of certification, it could notify FHFA in advance to discuss additional stipulations to the language.

G. Section 1293.21 General

Proposed § 1293.21 provides general information that Subpart C of the proposed rule, entitled Enterprise Equitable Housing Finance Planning, sets forth the Enterprises' duty to engage in equitable housing finance planning and establishes standards and procedures related to public engagement and FHFA's oversight of the Enterprises' planning and actions. It provides for general timing requirements when a date falls on a non-business day. It also provides that submission requirements and publication dates provided in the proposed rule may be altered or waived by the Director by publication of a public order. As discussed above, it also designates Subpart C, except for § 1293.26, as a prudential standard.

H. Section 1293.22 Plans and Updates

Proposed § 1293.22 provides rules related to plans and updates.

Proposed § 1293.22(a) would establish the general requirement for each Enterprise to adopt a plan covering a three-year period, with optional updates in the second and third year of the plan period.

Proposed § 1293.22(b) establishes general content requirements for the plan, including an identification of barriers to sustainable housing opportunities faced by one or more underserved communities, objectives that define the outcomes the plan seeks to accomplish that address the identified barriers, meaningful actions that describe the high-impact activities that the Enterprise will undertake to accomplish or further the identified objectives, which may span one or more years (including extending beyond the period covered by the plan); specific, measurable, and time-bound goals for those actions; and summaries of the Enterprise's public engagement in developing the plan.

Proposed § 1293.22(c) would establish a requirement for an Enterprise to submit a plan to FHFA for review on or before September 30 of the year prior to the first year covered by the plan.

Proposed § 1293.22(d) would establish general content requirements for an update, including all changes the Enterprise is making to its plan and a summary of any additional public engagement.

Proposed § 1293.22(e) would establish a requirement for an Enterprise to submit an update to FHFA for review on or before February 15 of the year covered by the update.

Proposed § 1293.22(f) would establish standards for FHFA's review of plans and updates. It would provide that FHFA may review each plan and update prior to publication and may require removal of any confidential or proprietary information; require removal of any content that is not consistent with part 1293, the Safety and Soundness Act, the authorizing statutes, or other applicable law; provide any feedback for consideration; and exercise any other authority of FHFA. Inclusion of confidential or proprietary information in plans and updates would be inappropriate and reveal sensitive information that is not required under the proposed rule. Further, FHFA's review may identify proposals and plan content that are contrary to the Enterprise's authorizing statutes, the Safety and Soundness Act, or other applicable law. FHFA also retains all other existing authority that may be needed in particular circumstances to address issues that arise during the review of a plan or update. Given that a plan may only contain limited information about a proposed action, FHFA may identify issues with the activity through other processes, such as prior approval of new products, or its supervision and oversight of the Enterprises. FHFA's review of the plan would not preclude using these processes and FHFA's full authorities if it were to later identify issues with the action, and the public engagement opportunities throughout the plan cycle would give FHFA additional information from the public for this purpose.

Proposed § 1293.22(g) would provide that FHFA's review does not constitute a prior approval of a plan or update or any action described therein and that all actions included in a plan are subject to all applicable FHFA and other requirements and authorities. For example, a meaningful action that met the criteria for a new activity or new product would be subject to the process described in FHFA's prior approval for Enterprise products regulation.[79] FHFA believes that the process established by the proposed rule would help support the prior approval for Enterprise products regulation by providing both FHFA and the public information about activities being considered by the Enterprises that may later trigger the requirements of the regulation.

Proposed § 1293.22(h) would provide that plans and updates must include disclaimer language indicating the implementation of actions may be subject to change based on certain factors. The disclaimer language in the current plans is: ''DISCLAIMER: Implementation of the activities and objectives in [Enterprise]'s Equitable Housing Finance Plan may be subject to change based on factors including, without limitation, FHFA review for compliance with [Enterprise]'s statutory charter, specific FHFA approval requirements and safety and soundness standards, FHFA guidance and directives, regulatory requirements, Senior Preferred Stock Purchase Agreement obligations, and adverse market or economic conditions, as applicable.'' FHFA seeks comment on this disclaimer language and any changes that should be made.

Proposed § 1293.22(i) would provide that each Enterprise shall publish its plan on January 15 of the first year covered by the plan, and each annual update on April 15 of the second and third year covered by the plan. It would also provide that the Enterprise maintain the plan on its website thereafter and that it ensures that the

Business-with-Fannie-Mae/Subpart-A3-Getting-Started-with-Fannie-Mae/Chapter-A3-2-Compliance-with-Requirements-and-Laws/1645975681/A3-2-01-Compliance-With-Laws-07-06-2022.htm and Freddie Mac Seller/Service Guide, Compliance with Applicable Law *available at https://guide.freddiemac.com/app/guide/section/1301.2/03-01-2023.*

[79] 12 CFR part 1253.

plans or updates are accessible to persons with disabilities.

Proposed § 1293.22(j) would provide that from time to time, FHFA may issue public guidance on plans and updates.

I. Section 1293.23 Performance Reports

Proposed § 1293.23 would provide rules related to annual performance reports (reports). Proposed § 1293.23(a) would establish the general requirement for each Enterprise to publicly report on its plan progress and provide other information related to equitable housing and fair lending annually for the prior year in a report.

Proposed § 1293.23(b) would establish requirements for the contents of the report, including: a narrative assessment about the program; performance details for each objective, measurable goal, and meaningful action; general outcomes categorized by group; summary of resources dedicated to the plan; and an assessment of the Enterprise's underwriting that includes several elements. The report section on underwriting is similar in nature to the authorizing statutes' requirements for assessing underwriting standards that may yield disparate results based on the race of the borrower, including revisions thereto that may promote fair lending, and reporting on this assessment under the Annual Housing Activities Report.[80] FHFA believes that the proposed rule provides an opportunity to incorporate this concept into a fair lending-focused report and provide details based on it into reporting under the Equitable Housing Finance Plans.

Proposed § 1293.23(c) would establish a requirement for an Enterprise to submit a report to FHFA for review on or before February 15 annually.

Proposed § 1293.23(d) would establish standards for FHFA's review of reports. The standards would align with the review standards for plans and updates.

Proposed § 1293.23(e) would establish a requirement for an Enterprise to publish its report on April 15 annually. It would also require that the report be maintained on the Enterprise's website and that the Enterprise ensures that reports are accessible to persons with disabilities.

Proposed § 1293.23(f) would establish that FHFA may issue public guidance on reports and also notes that FHFA may require additional information in reports through other authorities, such as its authority to require regular reports under 12 U.S.C. 4514. FHFA believes that this authority may be helpful in establishing reporting requirements in an expedited fashion for specific plans given the differing nature of underserved communities and activities that may be included in plans and the ongoing public engagement that is a part of the process established by the proposed rule.

J. Section 1293.24 Public Engagement

Proposed § 1293.24 establishes requirements related to public engagement. Proposed § 1293.24(a) provides that on or before June 15 annually, FHFA will conduct public engagement to gather public input for the Enterprises and for FHFA to consider. FHFA's 2021 request for input and listening session on the initial Equitable Housing Finance Plan program provided valuable input and the proposed rule would therefore codify these or similar types of public engagement as a requirement for future plans.[81]

Proposed § 1293.24(b) of the proposed rule would provide that the Enterprises are required to consult with stakeholders, including members of underserved communities and housing market participants, in development of a plan and update and describe such consultation in the plan.

K. Section 1293.25 Program Standards

Proposed § 1293.25 would establish program standards for various elements of the Equitable Housing Finance Plan process. These requirements are intended to provide a foundational logic model and theory of change for a particular plan.[82]

Proposed § 1293.25(a) would establish requirements for selecting one or more underserved communities to be the focus of a plan. It would establish a requirement that an Enterprise's choice of an underserved community be supported by information and documented in the plan. It would also provide several factors that an Enterprise must consider in selecting an underserved community, but would also allow for the consideration of other factors.

Proposed § 1293.25(b) would establish requirements for objectives. It would require objectives to be logically tied to one or more identified barriers and facilitate establishing meaningful actions and measurable goals. Objectives establish the overall direction and focus for the plan by defining the outcomes the plan seeks to accomplish. Given that the definition of an underserved community can include both a group of people with a shared characteristic or an area, in some cases objectives could seek to provide place-based solutions to address the needs of a specific area or may seek to provide people the opportunity to obtain sustainable housing opportunities more broadly. The U.S. Supreme Court has made clear that both strategies may be appropriate and comply with the Fair Housing Act depending on the circumstances.[83] FHFA expects that an Enterprise would choose appropriate strategies in developing its objectives after considering the needs of an underserved community and feedback from public engagement.

Examples of objectives, if developed to meet the requirements of the proposed rule, could include:

- Developing and providing secondary market support for special purpose credit programs that promote sustainable housing opportunities for an underserved community;
- Increasing sustainable housing opportunities for individuals in the mortgage market, such as by expanding the number of qualified borrowers of an underserved community, or making changes to underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures to promote fair lending or provide greater access to sustainable housing opportunities;
- Increasing sustainable housing opportunities for renters of an underserved community living in or seeking to live in multifamily properties financed by the Enterprise's loan purchases, such as by prohibiting source of income discrimination (including rental subsidies and vouchers), providing other tenant protections, or requiring reporting of on-time payments;

[80] *See, e.g.,* 12 U.S.C. 1723a(n)(2)(G) (''assess underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures, that affect the purchase of mortgages for low- and moderate-income families, or that may yield disparate results based on the race of the borrower, including revisions thereto to promote affordable housing or fair lending;'').

[81] *See* FHFA, Enterprise Equitable Housing Finance Plans Request for Input, (Sept. 2021), *available at https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Equitable-Housing-Finance-Plans-RFI.pdf;* FHFA Public Listening Session: Enterprise Equitable Housing Finance Plans RFI, (Sept. 28, 2021), *available at https://www.fhfa.gov/Videos/Pages/Enterprise-Equitable-Housing-Finance-Plans-RFI.aspx.*

[82] *See, e.g.,* Leiha Edmonds, Urban Institute, ''Center Racial Equity in Measurement and Evaluation: Emerging Lessons and Guidance from Human Service Nonprofits,'' (July 2021), *available at https://www.urban.org/sites/default/files/publication/104487/centering-racial-equity-in-measurement-and-evaluation_0.pdf.*

[83] *See Tex. Dep't of Hous. & Cmty. Affairs* v. *Inclusive Cmtys. Project, Inc.,* 135 S. Ct. 2507, 2512 (2015).

- Reducing the homeownership gap for an underserved community with a significant homeownership rate disparity;
- Reducing disparities in acceptance rates for an underserved community with a significant disparity in the Enterprise's automated underwriting system;
- Reducing disparities in the share of loans acquired by the Enterprise that serve an underserved community with a significant disparity in the share of loans acquired by the Enterprise compared to the share of loans originated to members of that underserved community in the overall mortgage market;
- Reducing disparities in negative outcomes for an underserved community in servicing, loan modifications, and loss mitigation;
- Reducing disparities in negative outcomes for an underserved community in tenant screening, repayment options, and evictions;
- Increasing the supply of, and equitable access to, high-quality affordable rental housing for an underserved community;
- Reducing underinvestment and undervaluation in formerly redlined areas or areas that are otherwise underserved or undervalued;
- Increasing the supply of, and equitable access to, high-quality affordable and accessible housing for persons with disabilities and that is available in the most integrated setting appropriate to the needs of an individual with a disability;
- Increasing the supply of, and equitable access to, high-quality affordable housing for families with children in areas with access to high-quality educational, transportation, economic, and other important opportunities;
- Increasing sustainable housing opportunities for veterans;
- Promoting or requiring improvements in: fair lending standards and compliance, marketing and outreach to members of an underserved community who are less likely to apply for certain housing opportunities, the estimation of race and ethnicity for mortgage applicants or housing market participants where race and ethnicity data has not been self-reported, and fair lending self-testing by primary lenders or other market participants that do business with the Enterprises;
- Conducting, and making available publicly, research on advancing equity and sustainable housing opportunities for an underserved community;
- Conducting ethnographic or consumer research on how to effectively serve an underserved community and disseminating it to market participants to improve quality of communications and increase community trust;
- Releasing data publicly on how an Enterprise or the market is performing in serving an underserved community, the effects of an Enterprise's policies on an underserved community, and how an Enterprise's actions may improve performance or address such effects; and
- Providing support to HUD program participants in affirmatively furthering fair housing.

The inclusion or exclusion of any particular objective from the illustrative list is not an indication of FHFA's views about whether or not that objective should or should not be undertaken as part of a plan. The list is intended to illustrate the flexibility of the proposed rule.

Proposed § 1293.25(c) would establish requirements for meaningful actions. It would require that meaningful actions be logically tied to one or more measurable goals and one or more objectives for an identified underserved community and that they support sustainable housing opportunities. It would also require that meaningful actions reflect significant additional action above and beyond actions that also serve other Enterprise objectives and goals and reflect more than *de minimis* action. It would also require that meaningful actions reflect a commitment commensurate with an Enterprise's prominence in the housing market, its available resources, its dedication of resources to other important efforts, the needs of underserved communities, market conditions, and safety and soundness. It would also require that meaningful actions comply with the Safety and Soundness Act, the authorizing statutes, and other applicable law. Finally, it would require that meaningful actions not be actions that are required to remediate supervisory findings or required as a result of enforcement actions.

Proposed § 1293.25(d) would establish requirements for measurable goals. It would require measurable goals to be logically tied to one or more meaningful actions in a plan, be specific, be time-bound, be focused on outcomes, and facilitate measuring Enterprise progress, comparing Enterprise performance, and ensuring public accountability.

L. Section 1293.26 Enterprise Board Equitable Housing and Mission Responsibilities

Proposed § 1293.26 would provide equitable housing and other mission-related responsibilities for Enterprise boards. As discussed above, board oversight is an important element of successful corporate governance, and FHFA's Corporate Governance regulation establishes a requirement for directors to direct the operations of regulated entities in conformity with FHFA regulations. The proposal would provide that Enterprise boards appropriately consider the objectives, actions, and goals of the Enterprise's Equitable Housing Finance Plan, while also appropriately considering its affordable housing goals and Duty to Serve plans and targets, and its other mission-related obligations, in the board's oversight of the Enterprise and the Enterprise's business activities. The proposed rule's language on ''appropriately considering'' the equitable housing and other mission responsibilities is intended to be flexible and tailored to the particular consideration at hand, while reinforcing that the plan should work in concert with the Enterprise's other mission activities and operations as a whole. This proposed section helps clearly articulate the ultimate responsibility of the board for oversight of the Equitable Housing Finance Plan, the Enterprise's affordable housing goals and Duty to Serve plans and targets, and its other mission-related obligations, and that they should work in concert with the Enterprise's operations as a whole.[84]

M. Section 1293.31 Required Enterprise Data Collection and Reporting

Proposed § 1293.31 provides for certain required Enterprise data collection and reporting related to fair housing and fair lending. It would require the Enterprises to collect, maintain, and report data on language preference, homeownership education, and housing counseling for applicants and borrowers. The proposed rule would be substantially the same as the policy announced by FHFA in May 2022.[85] The Enterprises currently collect this data through the automated underwriting systems and loan delivery

[84] *See, e.g.,* Leiha Edmonds et al., Urban Institute, ''Centering Racial Equity in Measurement and evaluation,'' (July 2021), *available at https://www.urban.org/sites/default/files/publication/104487/centering-racial-equity-in-measurement-and-evaluation_0.pdf.*

[85] *See https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Mandatory-Use-of-the-Supplemental-Consumer-Information-Form.aspx.*

and have established data standards for collection of the information. The Enterprises have also issued a standard form for collection of the data—the Supplemental Consumer Information Form.

FHFA issued a request for input in 2017 that addressed improving language access in mortgage lending and mortgage servicing.[86] As part of that request for input as well as through ongoing engagement, stakeholders have noted the value of collecting the information and certain issues related to its collection. Certain applicants or borrowers may not wish to disclose the information; consistent with current practice by the Enterprises, the proposed rule would not require a response from applicants and borrowers and they could be provided with the option to not respond to a question about language preference as part of the information collection to satisfy the proposed rule. Providing the applicant or borrower the option to not respond is consistent with the collection of data on race and ethnicity in the mortgage market.[87] Certain stakeholders have also raised concerns about collecting the information in compliance with the Equal Credit Opportunity Act and Regulation B. The Consumer Financial Protection Bureau has specified that collection of language preference information does not violate Regulation B.[88]

Information about homeownership education and housing counseling provides valuable insight into these programs. In July 2022, the Mortgage Industry Standards Maintenance Organization formed a new working group related to housing counseling data.[89] FHFA's National Survey of Mortgage Originations (NSMO) includes questions related to homeownership education and housing counseling.[90] Researchers have used the NSMO data to explore homeownership education and housing counseling's effects on borrowers.[91] Prior research has also explored the effects of homeownership education and housing counseling on borrowers.[92] Consistent collection of homeownership education and housing counseling data can facilitate research and market changes to further make use of homeownership education and housing counseling to assist borrowers.

FHFA believes that the information collected on language preference, homeownership education, and housing counseling for applicants and borrowers can support efforts to promote sustainable housing opportunities for underserved communities and could underlie elements of future Equitable Housing Finance Plans.

N. Proposed Rule Timing Elements

Considering the timing aspects of the proposed rule together, in the year prior to new plans, FHFA would conduct public engagement on or before June 15 (*e.g.,* FHFA would conduct public engagement on or before June 15, 2024, to inform planning and oversight related to the 2025–2027 plans). An Enterprise would submit the plan to FHFA for review by September 30 in the year prior to the three-year period covered by the plan; the Enterprise would then publish the plan on its website on January 15 of the first year covered by the plan (*e.g.,* a Freddie Mac plan covering 2025–2027 would be submitted to FHFA on September 30, 2024, and published by Freddie Mac on January 15, 2025). FHFA would conduct public engagement on or before June 15 in the first year of the plan cycle (*e.g.,* FHFA would conduct public engagement on or before June 16, 2025, because it is the first business day after June 15). Updates and reports would be submitted to FHFA by February 15 of the second year of the plan cycle and published by an Enterprise on April 15 (*e.g.,* a 2026 Freddie Mac update to a 2025–2027 plan would be submitted to FHFA on February 16, 2026, because it is the first business day after February 15, and published by Freddie Mac on April 15, 2026). FHFA would conduct public engagement on or before June 15 of the second year of the plan cycle (*e.g.,* FHFA would conduct public engagement on or before June 15, 2026). Updates and reports would be submitted to FHFA by February 15 of the third year of the plan cycle and published by an Enterprise on April 15 (*e.g.,* a 2027 Freddie Mac update to a 2025–2027 plan would be submitted to FHFA on February 16, 2027, because it is the first business day after February 15, and published by Freddie Mac on April 15, 2027). FHFA would conduct public engagement on or before June 15 in the third year of the plan (*e.g.,* FHFA would conduct public engagement on or before June 15, 2027).

Establishing expected dates by rule for submission, public engagement, and publication provides certainty and transparency to the public and the Enterprises, while permitting the Director to change the dates by public order if necessary in exigent circumstances.

V. Considerations of Differences Between the Banks and the Enterprises

Under the proposed rule, both the Enterprises and the Banks would be subject to proposed subpart A (§§ 1293.1 through 1293.3) and subpart B (§§ 1293.11 through 1293.12), including general provisions related to fair housing and fair lending laws, compliance, examinations, oversight, and enforcement. Additionally, both the Banks and Enterprises would be covered by FHFA's ability to require regular and special reports and the requirement to certify compliance in regular reports. However, FHFA has not currently issued any reporting orders requiring regular or special fair housing and fair lending reports from the Banks. The Equitable Housing Finance Plan and broader equitable housing finance planning requirements described specifically in subpart C (§§ 1293.21 through 1293.26) would apply only to the Enterprises and would codify in regulation and expand on the existing equitable housing framework for the Enterprises that FHFA established. As

[86] *See* FHFA, ''Improving Language Access in Mortgage Lending and Servicing Request for Input,'' (May 25, 2017), *available at https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Language_Access_RFI.pdf.*

[87] 12 CFR part 1003, appendix B.

[88] ''On May 3, 2022, the Federal Housing Finance Agency announced that lenders will be required to use the Supplemental Consumer Information Form, which asks about consumers' language preference, as part of the application process for loans that will be sold to the Enterprises. Consistent with the Consumer Financial Protection Bureau's Nov. 2017 approval, creditors do not violate the ECOA or Regulation B when they collect the language preference of an applicant or borrower.'' Consumer Financial Protection Bureau, ''Resources to help industry understand, implement, and comply with the fair lending requirements of the Equal Credit Opportunity Act (ECOA) and Regulation B,'' *available at https://www.consumerfinance.gov/compliance/compliance-resources/other-applicable-requirements/equal-credit-opportunity-act/.*

[89] *See https://www.mismo.org/about-MISMO/news/2022/07/25/mismo-issues-call-for-participants-for-new-housing-counseling-workgroup.*

[90] *See* FHFA, National Survey of Mortgage Originations Technical Documentation (Dec. 13, 2022), *available at https://www.fhfa.gov/DataTools/Downloads/Documents/NSMO-Public-Use-Files/NSMO-Technical-Documentation-20221213.pdf.*

[91] *See* Robert Argento et al., ''First-Time Homebuyer Counseling and the Mortgage Selection Experience in the United States: Evidence from the National Survey of Mortgage Originations,'' CityScape, Vol. 21, Number 2, (Nov. 2019), *available at https://www.huduser.gov/portal/periodicals/cityscpe/vol21num2/ch3.pdf.*

[92] *See* Wei Li et al., ''NeighborWorks America's Homeownership Education and Counseling: Who Receives It and Is it Effective?'' Urban Institute (Sept. 29, 2016), *available at https://www.urban.org/research/publication/neighborworks-americas-homeownership-education-and-counseling-who-receives-it-and-it-effective;* Jennifer Turnham ''Pre-Purchase Counseling Outcome Study,'' (May 2012), *available at https://www.huduser.gov/publications/pdf/pre_purchase_counseling.pdf;* J. Michael Collins et al., ''Homeownership Education and Counseling: Do We Know What Works?'' *available at http://massinc.org/wp-content/uploads/2011/06/76378_10554_Research_RIHA_Collins_Report.pdf.*

discussed above, as part of FHFA's comprehensive review of the Banks, commenters have suggested incorporating equitable housing considerations for the Banks and this idea is currently under consideration. FHFA requests public comment on whether FHFA should codify a similar framework to subpart C for the Banks in regulation and what elements of the framework should be included, modified, or excluded if FHFA were to apply such a framework to the Banks through regulation. FHFA also requests comment on other ways to incorporate principles of equitable housing for the Banks that would meet the same objective. Proposed subpart D (§ 1293.31) could include data collection and reporting requirements that would apply to both the Enterprises and the Banks, but currently as proposed the requirements would apply only to the Enterprises.

When promulgating regulations or taking other actions that relate to the Banks, section 1313(f) of the Safety and Soundness Act, as amended by section 1201 of HERA, requires the Director to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability.[93] In preparing the proposed rule, the Director has considered the differences between the Banks and the Enterprises as they relate to the above factors and has determined that none of the statutory factors would be adversely affected by the proposed rule. The Director is requesting comments from the public about whether differences related to these factors should result in a revision of the proposed rule as it relates to the Banks.

VI. Comments Specifically Requested

As stated above, FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing a final rule. In addition to comments specifically requested within the description of the proposed rule above, FHFA also requests comment on the questions set forth below. The most helpful comments reference the specific questions listed, explain the reason for any changes, and include supporting data.

General

1. The rule currently does not define equity. FHFA seeks comments on whether the rule should define equity. If the rule should define equity, what would be an appropriate definition?

Compliance and Enforcement

2. How can FHFA improve fair lending compliance oversight of the regulated entities?

3. Are there other applicable consumer compliance and/or consumer protection statutes and regulations that FHFA should include in this section?

4. Are there any benefits or other issues FHFA should be aware of in considering adding unfair or deceptive acts or practices to its compliance and enforcement for regulated entities?

5. How should FHFA approach assessing compliance with non-fair lending consumer protection authorities such as unfair or deceptive acts or practices? Would additional guidance be helpful to regulated entities as they assess their overall compliance management?

6. Are there alternatives FHFA should consider to the language and approach for fair lending compliance certifications?

Equitable Housing Finance Plans and Updates

7. Is the three-year timeline for the plans adopted by the Enterprises appropriate?

8. Should FHFA issue an evaluation of the Enterprises? Should the rule include required evaluation metrics for the progress reports?

9. Should the rule include required or optional priority goals? If so, who should determine which priority goals are applicable?

10. From year to year, what should be the scope of updates to the Equitable Housing Finance Plans?

11. Should the focus of an Equitable Housing Finance Plan be limited to one underserved community at a time?

12. Does the rule provide for sufficient public engagement?

13. Developing or supporting special purpose credit programs is one type of meaningful action that an Enterprise could take under an Equitable Housing Finance Plan, but the rule would not establish any special purpose credit programs under 12 CFR 1002.8(a)(1) in the regulation itself. Should FHFA adopt any special purpose credit programs under 12 CFR 1002.8(a)(1) and, if so, what type of program(s) should be adopted?

14. Are the minimum requirements for performance reports sufficient or should performance reports contain any additional information not included in the rule?

Federal Home Loan Banks

15. Should the Banks be required to comply with a framework similar to that of the Equitable Housing Finance Plans by regulation?

16. What elements of the framework should be included, modified, or excluded if FHFA were to apply such a framework to the Banks by regulation?

17. Are there other ways to incorporate principles of equitable housing for the Banks that would meet the same objective?

VII. Paperwork Reduction Act

The proposed rule would not contain any information collection requirement that would require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to OMB for review.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the Agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. FHFA has considered the impact of this proposed rule under the Regulatory Flexibility Act. FHFA certifies that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities because the regulation would apply only to the regulated entities, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects for 12 CFR Part 1293

Government-sponsored enterprises, Fair housing, Federal home loan banks, Mortgages, Reporting and recordkeeping requirements.

Authority and Issuance

■ Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4511, 4513, 4526, FHFA proposes to add part 1293 to chapter XII in title 12 of the Code of Federal Regulations, to read as follows:

[93] 12 U.S.C. 4513(f).

PART 1293—FAIR LENDING OVERSIGHT AND EQUITABLE HOUSING FINANCE

Authority: 12 U.S.C. 1456(c)(1); 12 U.S.C. 1723a(m)(1); 12 U.S.C. 4511; 12 U.S.C. 4513; 12 U.S.C. 4513b; 12 U.S.C. 4514; 12 U.S.C. 4517; 12 U.S.C. 4526; 42 U.S.C. 3608(d).

Subpart A—General

§ 1293.1 General.

(a) This part sets forth requirements related to fair lending oversight of regulated entities, equitable housing finance planning by the Enterprises, and certain data collection and reporting by the regulated entities.

(b) Nothing in this part permits or requires a regulated entity to engage in any activity that would otherwise be inconsistent with the Safety and Soundness Act, the authorizing statutes, or other applicable law.

(c) Nothing in this part creates a private right of action.

§ 1293.2 Definitions.

For purposes of this part:

Annual plan update (update) means a public update to an Equitable Housing Finance Plan for the second or third year of a planning cycle.

Barrier means an element of an Enterprise's actions, products, or policies, or an aspect of the housing market that can reasonably be influenced by the Enterprise's actions, products, or policies, that contributes to an underserved community's limited share of sustainable housing opportunities, difficulties in accessing those sustainable housing opportunities, or the continuing adverse effects of discrimination affecting their participation in the housing market.

Equitable Housing Finance Plan (plan) means a three-year public plan developed with public engagement and adopted by each Enterprise describing how each Enterprise will overcome barriers to sustainable housing opportunities faced by one or more underserved communities through objectives, meaningful actions, and measurable goals.

Fair housing and fair lending laws means the Fair Housing Act, the Equal Credit Opportunity Act, and implementing regulations. Additionally, with respect to an Enterprise, it means 12 U.S.C. 4545 and implementing regulations.

Performance report (report) means an annual public report by an Enterprise on its performance under its Equitable Housing Finance Plan and other information on equitable housing and fair lending that meets the requirements of § 1293.23 and any other FHFA requirements.

Sustainable housing opportunity means a rental or homeownership opportunity that includes one or more characteristics important to the needs of a tenant or homeowner. These include but are not limited to: being affordable to obtain and sustain; relating to a dwelling that meets basic habitability requirements and is reasonably able to withstand natural disasters or other climate-related impact events; relating to a dwelling that is improving the quality of housing stock in an area; being located in an area with access to educational, transportation, economic, and other important opportunities, including community assets; being accessible for persons with disabilities and available in the most integrated setting appropriate to the needs of an individual with a disability; not placing the tenant or homeowner in a position where they are unlikely to succeed in sustaining the housing opportunity over the long term; and providing reasonable opportunities to accommodate hardships by the renter or homeowner to allow continuation of the housing opportunity.

Underserved community is a group of people with shared characteristics or an area that is subject to current discrimination or has been subjected to past discrimination that has or has had continuing adverse effects on the group or area's participation in the housing market, historically has received or currently receives a lower share of the benefits of Enterprise programs and activities providing sustainable housing opportunities, or that otherwise has had difficulty accessing these benefits compared with groups of people without the shared characteristic or other areas. Shared characteristics include but are not limited to characteristics protected by fair lending laws applicable to the Enterprises including race, color, religion, sex (including actual or perceived sexual orientation or gender identity), familial status, national origin, disability, marital status, age, receipt of public assistance income, exercise of rights protected by the Consumer Credit Protection Act, exercise of rights protected by the Fair Housing Act, dwelling age, dwelling location, and neighborhood age. Examples of underserved communities, if supported by adequate information in a plan pursuant to § 1239.25 of this chapter, include: the Commonwealth of Puerto Rico, single parents, persons with disabilities, women of color, seniors with fixed income, self-employed individuals, individuals with limited mainstream credit and banking history, counties which have historically received a lower share of the benefits of Enterprise programs and activities, individuals with income variance such as skilled tradespeople or those that receive income through commission, persons with limited English proficiency, and multigenerational households.

§ 1293.3 Compliance and enforcement.

FHFA may enforce compliance with this part in any manner and through any means within its authority, including but not limited to adverse examination findings or through supervision or enforcement under 12 U.S.C. 4511(b), 4513b, 4631, or 4636. The agency may conduct examinations of a regulated entity's activities related to this part pursuant to 12 U.S.C. 4517.

§ 1293.4 Preservation of authority.

Nothing in this part in any way limits the authority of the Federal Housing Finance Agency under other provisions of applicable law and regulations.

§§ 1293.5–1293.10 [Reserved]

Subpart B—Fair Housing and Fair Lending Compliance

§ 1293.11 Regulated entity compliance.

(a) *Compliance with fair housing and fair lending laws.* Regulated entities must comply with fair housing and fair lending laws.

(b) *Compliance with prohibition on unfair or deceptive acts or practices.* Regulated entities must comply with the

prohibition on unfair or deceptive acts or practices under 15 U.S.C. 45.

(c) *Responsibilities of boards of directors.* In accordance with § 1239.4(b)(4) of this chapter, directors of a regulated entity shall direct the operations of the regulated entity in conformity with fair housing and fair lending laws and the prohibition on unfair or deceptive acts or practices under 15 U.S.C. 45, including by appropriately considering compliance with fair housing and fair lending laws and the prohibition on unfair or deceptive acts or practices under 15 U.S.C. 45 in the oversight of the regulated entity and its business activities.

§ 1293.12 Reports, data, and certifications.

(a) *Reports.* FHFA may require the regulated entities to submit to FHFA regular and special reports concerning fair housing and fair lending, including the provision of data pursuant to FHFA instructions.

(b) *Certifications.* Each regular report concerning fair housing and fair lending shall include a certification of the regulated entity's compliance with fair housing and fair lending laws and with § 1293.11(b) in addition to any other required certification or declaration (such as a declaration under 12 U.S.C. 4514(a)(4)).

§§ 1293.13–1293.20 [Reserved]

Subpart C—Enterprise Equitable Housing Finance Planning

§ 1293.21 General; Identification of subpart as a prudential standard.

(a) This subpart sets forth the Enterprise duty to engage in equitable housing finance planning and to take meaningful actions to support underserved communities, and establishes standards and procedures related to public engagement and FHFA's oversight of the Enterprises' planning and actions.

(b) If a date provided in this subpart falls on a day that is not a business day, the date required shall be the next business day.

(c) Submission and publication dates provided in this subpart may be changed by the Director, as determined appropriate, by public order for a particular required submission or publication.

(d) This subpart, except for § 1293.26, is a prudential standard pursuant to section 1313B of the Safety and Soundness Act, 12 U.S.C. 4513b, and is subject to 12 CFR part 1236.

§ 1293.22 Equitable housing finance plans and updates.

(a) *General.* Every three years each Enterprise shall adopt an Equitable Housing Finance Plan covering a three-year period. Each Enterprise may adopt a public annual plan update to that plan for the second and third years of the plan.

(b) *Contents of plan.* The plan shall include:

(1) Identification of barriers to sustainable housing opportunities faced by one or more underserved communities;

(2) Objectives that establish the overall direction and focus for the plan by defining the outcomes the plan seeks to accomplish, and that are logically tied to one or more identified barriers;

(3) Meaningful actions (actions) describing the high-impact activities the Enterprise intends to undertake to further the identified objectives that span one or more years (including extending beyond the period covered by the plan);

(4) Specific, measurable, and time-bound goals (goals) for each action; and

(5) Summaries of the Enterprise's public engagement in developing the plan.

(c) *Plan submission.* Each Enterprise shall submit its Plan to FHFA for review on or before September 30 of the year prior to the first year covered by the Plan.

(d) *Contents of annual plan update.* If an Enterprise chooses to submit an update, it shall include all changes the Enterprise is making to its plan, including any changes in identified barriers, objectives, meaningful actions, specific, measurable, and time-bound goals, and a summary of any additional public engagement. The update shall clearly describe the specific reason(s) for each significant change to the plan.

(e) *Annual update submission.* If an Enterprise chooses to submit an update, it shall submit its update for FHFA review on or before February 15 of the year covered by the update.

(f) *FHFA review.* FHFA shall review each plan and update and, prior to publication, may:

(1) Require removal of any confidential or proprietary information;

(2) Require removal of any content that is not consistent with this part, the Safety and Soundness Act, the authorizing statutes, or other applicable law; and

(3) Provide any feedback for consideration.

(g) *No prior approval of activities.* FHFA's review does not constitute a prior approval of a plan or update or any action described therein. All actions included in a plan are subject to all applicable FHFA and other requirements and authorities.

(h) *Disclaimer included in plan and annual update.* The plan and the annual update must include disclaimer language indicating the implementation of actions may be subject to change based on certain factors.

(i) *Plan and update publication.* Each Enterprise shall publish its plan on its website on January 15 of the first year covered by the plan and maintain it thereafter. Each Enterprise shall publish any update on its website on April 15 of the second and third year covered by the plan and maintain it thereafter. Each Enterprise shall ensure that plans and updates are accessible to persons with disabilities.

(j) *Additional guidance.* From time to time, FHFA may issue public guidance on plans and updates.

§ 1293.23 Performance reports.

(a) *General.* Annually, each Enterprise shall publicly report on its plan progress and provide other information related to equitable housing and fair housing and fair lending for the prior year in a performance report.

(b) *Contents of the report.* The report shall contain, at a minimum:

(1) A narrative assessment consisting of a review of major successes and key accomplishments as well as lessons learned and challenges experienced;

(2) Plan performance details for each objective, measurable goal, and meaningful action, including outcome-based metrics;

(3) A summary of outcomes for the year categorized by type of activity and by race and ethnicity group and underserved community group (if available);

(4) A summary of the value of resources dedicated by the Enterprise in supporting the outcomes categorized by type of activity and a summary of additional value of resources contributed from third parties as a result of the Enterprise's support of the outcomes.

(5) An assessment of the Enterprise's underwriting that includes:

(i) For the applicable year and the preceding three years, the accept rates for the Enterprise's automated underwriting system categorized by home purchase, rate-term refinancing, and cash-out refinancing and by race and ethnicity group and underserved community group (if available);

(ii) For the applicable year and the preceding three years, the Enterprise's loan acquisitions categorized by home purchase, rate-term refinancing, and cash-out refinancing and by race and

ethnicity group and underserved community group (if available); and

(iii) A narrative assessment of any innovations in automated underwriting or other policy taken during the applicable year and any future planned work intended to address identified disparities.

(c) *Report submission.* Each Enterprise shall submit its report to FHFA for review on or before February 15 annually.

(d) *FHFA review.* FHFA shall review each report and, prior to publication, may:

(1) Require removal of any confidential or proprietary information;

(2) Require removal of any content that is not consistent with this part, the Safety and Soundness Act, the authorizing statutes, or other applicable law; and

(3) Provide any feedback for consideration.

(e) *Report publication.* Each Enterprise shall publish its report on its website on April 15 annually and maintain it thereafter. Each Enterprise shall ensure that reports are accessible to persons with disabilities.

(f) *Additional requirements and guidance.* FHFA may require additional information to be included in reports through other FHFA authorities, such as 12 U.S.C. 4514. From time to time, FHFA may issue public guidance on reports.

§ 1293.24 Public engagement.

(a) *FHFA public engagement.* On or before June 15 annually, FHFA will conduct public engagement to allow the public to provide input for the Enterprises to consider in developing and implementing their plans and for FHFA to consider in its oversight.

(b) *Enterprise consultation.* The Enterprises shall consult with stakeholders, including members of underserved communities and housing market participants, in the development and implementation of their plans and updates.

§ 1293.25 Program requirements.

(a) *Requirements for underserved communities.* An Enterprise shall ensure that a plan relies on adequate information in identifying the underserved community or communities addressed by that plan and shall document that information as part of the plan. In selecting one or more underserved communities to be the focus of a plan, an Enterprise shall consider, among other factors:

(1) Input from public engagement;

(2) Whether the underserved community has previously been the focus of a plan;

(3) The extent of the needs identified for the underserved community, including such needs that may remain despite prior efforts under a plan; and

(4) Whether the underserved community is covered by a different initiative or program of the Enterprise.

(b) *Requirements for objectives.* Objectives identified in a plan shall be logically tied to one or more identified barriers and facilitate establishing meaningful actions and measurable goals.

(c) *Requirements for meaningful actions*—(1) *Relation to objectives and goals.* Meaningful actions shall be logically tied to one or more measurable goals and one or more objectives and support sustainable housing opportunities for an identified underserved community.

(2) *Other Enterprise goals and incremental action.* Meaningful actions may also serve other Enterprise objectives and goals; however, a plan shall reflect significant additional action above and beyond actions that are also serving other Enterprise objectives and goals and shall reflect more than *de minimis* action.

(3) *Significant dedication of resources.* Meaningful actions shall reflect a commitment commensurate with an Enterprise's prominence in the housing market, its available resources, its dedication of resources to other important efforts, the needs of underserved communities, market conditions, and safety and soundness.

(4) *Compliance with law.* Actions that are not compliant with the Safety and Soundness Act, the authorizing statutes, or other applicable law do not qualify as meaningful actions.

(5) *Required remedial actions.* Actions that are required to remediate supervisory findings or required as a result of enforcement actions do not qualify as meaningful actions.

(d) *Requirements for measurable goals.* Measurable goals shall be:

(1) Logically tied to one or more meaningful actions identified in a plan;

(2) Specific;

(3) Time-bound;

(4) Focused on outcomes; and

(5) Facilitative of measuring Enterprise progress, comparing Enterprise performance, and ensuring public accountability.

§ 1293.26 Enterprise board equitable housing and mission responsibilities.

An Enterprise's board of directors shall appropriately consider the objectives, actions, and goals of the Enterprise's Equitable Housing Finance Plan, while also appropriately considering its affordable housing goals, Duty to Serve plans and targets, and other mission-related obligations, in the board's oversight of the Enterprise and the Enterprise's business activities.

§§ 1293.27–1293.30 [Reserved]

Subpart D—Data Collection

§ 1293.31 Required Enterprise data collection and reporting.

Each Enterprise shall collect, maintain, and provide to FHFA the following data relating to single-family mortgages:

(a) The language preference of applicants and borrowers; and

(b) Whether applicants and borrowers have completed homeownership education or housing counseling and information about the homeownership education or housing counseling.

Sandra L. Thompson,

Director, Federal Housing Finance Agency.

[FR Doc. 2023–08602 Filed 4–25–23; 8:45 am]

BILLING CODE 8070–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2023–0201; FRL–10839–01–R7]

Air Plan Partial Approval and Partial Disapproval; Missouri; Revision to Sulfur Dioxide Control Requirements for Lake Road Generating Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing partial approval and partial disapproval of revisions to the Missouri State Implementation Plan (SIP) submitted by the State of Missouri on February 17, 2022. In its submission, the Missouri Department of Natural Resources (MoDNR) requested that revisions to a 2016 Administrative Order on Consent (AOC) for controlling sulfur dioxide (SO_2) emissions at the Lake Road power plant (hereinafter referred to as ''2016 AOC'') be approved in the SIP. The revised AOC establishes more stringent fuel oil sulfur content limits, removes SO_2 emission limits that are no longer needed due to the strengthened fuel oil sulfur requirements, and streamlines reporting requirements. The changes proposed for approval meet the requirements of the Clean Air Act (CAA). The EPA is proposing disapproval of a new provision in the AOC that would potentially allow Lake

Road to exceed the fuel oil sulfur content limits on a temporary basis.

DATES: Comments must be received on or before May 26, 2023.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2023–0201 to *www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Allie Donohue, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7986; email address: *donohue.allie@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to the EPA.

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2023–0201, at *www.regulations.gov.* Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

II. What is being addressed in this document?

The EPA is proposing to partially approve and partially disapprove a SIP revision submitted by the State of Missouri on February 17, 2022. In its submission, MoDNR requested that AOC No. APCP–2015–118 between MoDNR and Evergy (formerly Kansas City Power & Light) submitted in 2016, and amended in 2018 (Amendment #1), be replaced with Amendment #2 to the AOC in the SIP. The EPA is proposing to approve these SIP revisions, with the exception of Amendment #2 paragraph 12.A. The revisions proposed for approval meet the requirements of the Clean Air Act. The EPA is proposing disapproval of Amendment #2 paragraph 12.A. because this provision potentially allows Lake Road to burn fuel oil with a sulfur content greater than the sulfur content limit of 15 parts per million (ppm) on a temporary basis. Paragraph 12.A. is severable from Amendment #2 because it is a new paragraph that was not previously included in the 2016 AOC and Amendment #1 and is not approved in the SIP. The technical support document (TSD) included in this docket discusses our review and analysis of Amendment #2 and provides support for our proposed action.

A. 1997 Violation of the 1971 SO2 National Ambient Air Quality Standards (NAAQS)

In 1997, a monitor in St. Joseph (Buchanan County), Missouri measured a violation of the 1971 24-hour SO_2 NAAQS. At the time of the 1997 violation, Buchanan County was designated as ''Better than National Standards'' (equivalent to ''attainment'') for the 1971 24-hour SO_2 NAAQS. To address the violation, the State of Missouri and the St. Joseph Light and Power (SJLP) Company entered into a Consent Decree that required SO_2 control measures at the SJLP Lake Road power generating facility, hereinafter referred to as the ''2000 Consent Decree.'' [1] The 2000 Consent Decree was submitted by the State of Missouri in order to maintain attainment of the 1971 24-hour SO_2 NAAQS and was not submitted because of a SIP call. On November 15, 2001, the EPA approved the 2000 Consent Decree as a revision to Missouri's SIP (66 FR 57389, November 15, 2001).

B. Designation of Buchanan County for the 2010 SO_2 NAAQS

On June 22, 2010, the EPA established a new 1-hour SO_2 standard (''the 2010 SO_2 NAAQS'') and revoked the existing 24-hour and annual primary SO_2 standards (75 FR 35520, June 22, 2010, at 75 FR 35592). The EPA directed States to continue implementing any attainment and maintenance requirements of the 1971 24-hour SO_2 NAAQS until the requirements were subsumed by any new planning and control requirements associated with the 2010 SO_2 NAAQS (75 FR 35520, June 22, 2010, at 75 FR 35580). Accordingly, areas designated as nonattainment for the 2010 SO_2 NAAQS or areas that do not meet the requirements of a SIP call for the 1971 SO_2 NAAQS remain subject to the 1971 SO_2 NAAQS until the area submits, and EPA approves, an attainment plan for the 2010 SO_2 NAAQS. *See* 40 CFR 50.4(e). However, the EPA also stated that any existing SIP provisions under Clean Air Act (CAA) sections 110, 191 and 192 for the 1971 24-hour SO_2 NAAQS remain in effect (75 FR 35520, June 22, 2010, at 75 FR 35581).

On January 9, 2018, Buchanan County was designated as Attainment/Unclassifiable for the 2010 SO_2 NAAQS (83 FR 1098, January 9, 2018) and therefore the State of Missouri was not required to submit a SIP providing for attainment of the SO_2 NAAQS under sections 191 and 192 of the CAA. However, because the 2000 Consent Decree was approved pursuant to section 110 of the CAA, the provisions of the Consent Decree remain in effect notwithstanding EPA's revocation of the 1971 24-hour SO_2 NAAQS and designation of Buchanan County as Attainment/Unclassifiable for the 2010 SO_2 NAAQS.

C. 2016 AOC and Amendment #1

Kansas City Power & Light (KCPL) acquired SJLP's Lake Road facility in 2008. On March 30, 2015, KCPL notified the MoDNR of its intent to cease the combustion of coal in Boiler No. 6 at the facility by April 16, 2016, to comply with the Mercury Air Toxics Standards rule, 40 CFR part 63, subpart UUUUU.

[1] The EPA is referring to the Consent Decree as the ''2000 Consent Decree'' to be consistent with the State's November 2, 2018, SIP revision submittal. The 2000 Consent Decree was entered by the Circuit Court of Buchanan County, Missouri, on May 25, 2001.

KCPL also requested to use natural gas instead of coal as the primary fuel and to designate No. 2 fuel oil the secondary fuel of Boiler No. 6.

Because the 2000 Consent Decree stipulated the type of fuel to be used in each combustion unit, including Boiler No. 6, MoDNR and KCPL entered into an AOC on March 30, 2016, that included the substantive requirements from the 2000 Consent Decree and revised the fuel requirements for Boiler No. 6.

On June 13, 2018, the MoDNR and KCPL issued Amendment #1 to the 2016 AOC to require low sulfur coal as the primary fuel in Boiler No. 5, rather than a blend of high and medium sulfur coal as required by the 2000 Consent Decree and the 2016 AOC. The EPA approved the 2016 AOC and Amendment #1 into Missouri's SIP at 40 CFR 52.1320(d)(32) and (33) in August 2019.[2]

D. Amendment #2

Evergy became the current owner and operator of Lake Road after KCPL and Westar Energy merged to become Evergy in 2018. In 2021 MoDNR and Evergy revised the AOC for Lake Road by issuing Amendment #2 that consolidates all requirements into a single document, lowers the fuel oil sulfur content limit from 500 ppm to 15 ppm, eliminates SO_2 emission rate limits that are no longer necessary due to the more stringent fuel oil sulfur content limits, makes the retirement of Boiler No. 3 permanent and enforceable, and streamlines reporting and record keeping requirements. Amendment #2 does not revise the SO_2 emission rate limit of 1.349 pounds per million British thermal units (lb/MMBtu) for Boiler No. 5. Amendment #2 also adds language in paragraph 12.A. that allows MoDNR to grant temporary exemptions to the fuel oil requirements due to unforeseen circumstances.

In its submission, MoDNR included an analysis of SO_2 emissions from the Lake Road facility between 2002 through 2020. MoDNR's analysis demonstrated that Lake Road SO_2 emissions have decreased by 94.84 percent from 2002 through 2020, attributable to the 2000 Consent Decree and the fuel requirements provided in the 2016 AOC, Amendment #1, and Amendment #2. MoDNR states that Amendment #2 will ensure the SO_2 emissions decreases at Lake Road over the past 20 years remain permanent and further assist with maintenance and attainment of both the 1971 and 2010 SO_2 NAAQS.

[2] See 84 FR 44233; August 23, 2019.

Section 110(l) of the CAA prohibits the EPA from approving a SIP revision that interferes with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. Based on our analysis of Amendment #2, the EPA proposes to conclude that the SIP revision, with the exception of paragraph 12.A., is in accordance with the requirements of section 110(l) of the CAA. The EPA proposes to disapprove Amendment #2 paragraph 12.A. because it potentially allows the facility to burn fuel oil with sulfur content that exceeds the 15 ppm sulfur content limit on a temporary basis. The EPA's analysis of Amendment #2 can be found in the TSD included in this docket.

III. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from November 1, 2021, to December 9, 2021, and received no comments. In addition, as explained above and in more detail in the TSD which is part of this docket, the revisions proposed for approval meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

As explained in section II and further in the TSD, EPA is proposing to disapprove Amendment #2 paragraph 12.A. regarding temporary exemptions from fuel requirements.

IV. What action is the EPA taking?

We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments. We are publishing the proposed rule in the **Federal Register** to partially approve and partially disapprove the SIP submission. Any parties interested in commenting must do so by the date listed in the **DATES** section of the document. For further information about commenting on this proposed rule, see the **ADDRESSES** section of the document. If the EPA receives adverse comment, we will address all public comments in the subsequent final rule based on the proposed rule.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to add the incorporation by reference of the Missouri Amendment #2 to Administrative Order on Consent state effective October 18, 2021, between MoDNR and Evergy related to controlling sulfur dioxide (SO_2) emissions at the Lake Road power plant, as discussed in Section II of this preamble and as set forth below in the proposed amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Also, in this document, as described in the proposed amendments to 40 CFR part 52 set forth below, EPA is proposing to remove provisions of the EPA-Approved Missouri Administrative Order on Consent and Amendment #1 (state effective September 27, 2018) from the Missouri State Implementation Plan, which was incorporated by reference in accordance with the requirements of 1 CFR part 51. As described in the proposed amendments to 40 CFR part 52 set forth below, EPA is also proposing to remove an outdated reference to the St. Joseph Light and Power So_2 consent agreement (state effective May 21, 2001).

VI. Environmental Justice Considerations

The EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within a 2-mile radius of the Lake Road facility Census 2010 Summary Report available on Environmental Justice Screen (EJSCREEN). The EPA then compared the data to the state average for each of the demographic groups using 2010 state census data from the United States Census Bureau. The results of this analysis are being provided for informational and transparency purposes. The results of the demographic analysis indicate that, for populations within the 2-mile radius of the Lake Road facility, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is less than the national average (16 percent versus 21 percent). Within people of color, the percent of the population that is Black or African American alone is lower than the state average (3 percent versus 12 percent) and the percent of the population that is American Indian/Alaska Native is similar to the state average (1 percent versus 1 percent).

The percent of the population that is two or more races is similar to the state average (3 percent versus 3 percent). The percent of people with low income within the 2-mile radius of the Lake Road facility is higher than the state average (41 percent versus 31 percent).

VII. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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); and
- Is not subject to requirements of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this rulemaking does not involve technical standards;

In addition, 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 and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an environmental justice analysis, as is described above in the section titled, ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 18, 2023.

Meghan A. McCollister,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320, in the table in paragraph (d):

■ a. Remove and reserve entries ''(17)'', ''(32)'', and ''(33)''; and

■ b. Add entry ''(38)'' in numerical order.

The addition reads as follows:

§ 52.1320 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED MISSOURI SOURCE-SPECIFIC PERMITS AND ORDERS

Name of source	Order/permit number	State effective date	EPA approval date	Explanation
*	*	*	*	*
(38) Kansas City Power and Light—Lake Road Facility.	Amendment #2 to Administrative Order on Consent No. APCP–2015–118.	10/18/2021	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	EPA is approving Amendment #2 to AOC No. APCP–2015–118, except for paragraph 12.A.

* * * * *

[FR Doc. 2023–08596 Filed 4–25–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 435, 457, and 600

Office of the Secretary

45 CFR Parts 152 and 155

[CMS–9894–P]

RIN 0938–AV23

Clarifying Eligibility for a Qualified Health Plan Through an Exchange, Advance Payments of the Premium Tax Credit, Cost-Sharing Reductions, a Basic Health Program, and for Some Medicaid and Children's Health Insurance Programs

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: This proposed rule would make several clarifications and update the definitions currently used to determine whether a consumer is eligible to enroll in a Qualified Health Plan (QHP) through an Exchange; a Basic Health Program (BHP), in States that elect to operate a BHP; and for some State Medicaid and Children's Health Insurance Programs (CHIPs).

DATES: To be assured consideration, comments must be received at one of the addresses provided below, by June 23, 2023.

ADDRESSES: In commenting, please refer to file code CMS–9894–P.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *https://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9894–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9894–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Morgan Gruenewald, (301) 492–5141, or Anna Lorsbach, (301) 492–4424, for matters related to Exchanges.

Sarah Lichtman Spector, (410) 786–3031, or Annie Hollis, (410) 786–7095, for matters related to Medicaid, CHIP, and BHP.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov.* Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

I. Background

The Patient Protection and Affordable Care Act (ACA) [1] generally [2] requires that in order to enroll in a Qualified Health Plan (QHP) through an Exchange, an individual must be either a citizen or national of the United States or be ''lawfully present'' in the United States.[3] The ACA also generally requires that individuals be ''lawfully present'' in order to be eligible for insurance affordability programs such as premium tax credits (PTC),[4] advance payments of the premium tax credit (APTC),[5] and cost-sharing reductions (CSRs);[6] additionally, enrollees in a Basic Health Program (BHP) are required to meet the same citizenship and immigration requirements as QHP enrollees.[7] Further, the ACA required that individuals be ''lawfully present'' in order to qualify for the Pre-Existing Condition Insurance Plan Program (PCIP), which expired in 2014.[8] The ACA does not define ''lawfully present'' beyond specifying that an individual is only considered lawfully present if they are reasonably expected to be lawfully present for the period of their enrollment.[9] The ACA also requires the Centers for Medicare & Medicaid Services (CMS) to verify that Exchange applicants are lawfully present in the United States.[10]

As such, consistent with its statutory authority under the ACA and in order to facilitate the operation of its programs, CMS issued regulations in 2010 to define ''lawfully present'' for the purposes of determining eligibility for PCIP (75 FR 45013); in 2012 for purposes of determining eligibility to enroll in a QHP through an Exchange by cross-referencing the existing PCIP definition (77 FR 18309); and in 2014 to cross-reference the existing definition for purposes of determining eligibility to enroll in a BHP (79 FR 14111). In this proposed rule, we propose to amend these three regulations in order to update the definition of ''lawfully present'' at 45 CFR 152.2, which is used to determine whether a consumer is eligible to enroll in a QHP through an Exchange and for a BHP. Exchange regulations apply this definition to the eligibility standards for APTC and CSRs by requiring an applicant to be eligible to enroll in a QHP to be eligible for

[1] The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Healthcare and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this rulemaking, the two statutes are referred to collectively as the ''Patient Protection and Affordable Care Act'', ''Affordable Care Act'', or ''ACA.''.

[2] States may pursue a waiver under section 1332 of the Affordable Care Act (ACA) that could waive the ''lawfully present'' framework in section 1312(f)(3) of the ACA. See 42 U.S.C. 18052(a)(2)(B). There is currently one State (Washington) with an approved section 1332 waiver that includes a waiver of the ''lawfully present'' framework to the extent necessary to permit all State residents, regardless of immigration status, to enroll in a QHP and Qualified Dental Plan (QDP) through the State's Exchange, as well as to apply for State subsidies to defray the costs of enrolling in such coverage. Consumers who are eligible for Exchange coverage under the waiver remain ineligible for PTC. For more information on this State's section 1332 waiver, see *https://www.cms.gov/cciio/programs-and-initiatives/state-innovation-waivers/section_1332_state_innovation_waivers-.*

[3] 42 U.S.C. 18032(f)(3).

[4] 26 U.S.C. 36B(e)(2).

[5] 42 U.S.C. 18082(d).

[6] 42 U.S.C. 18071(e).

[7] 42 U.S.C. 18051(e).

[8] 42 U.S.C. 18001(d)(1).

[9] 42 U.S.C. 18032(f)(3), 42 U.S.C. 18071(e)(2).

[10] 42 U.S.C. 18081(c)(2)(B).

APTC and CSRs.[11] Accordingly, in this proposed rule, when we refer to the regulatory definition of ''lawfully present'' used to determine whether a consumer is eligible to enroll in a QHP through an Exchange, we also are referring to the regulatory definition used to determine whether a consumer is eligible for APTC and CSRs.

We propose a similar definition of ''lawfully present'' applicable to eligibility for Medicaid and Children's Health Insurance Program (CHIP) in States that elect to cover ''lawfully residing'' pregnant individuals and children under section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (hereinafter ''CHIPRA 214 option''), now codified at section 1903(v)(4) of the Social Security Act (the Act) for Medicaid and section 2107(e)(1)(O) of the Act for CHIP. In July 2010, CMS interpreted ''lawfully residing'' to mean individuals who are ''lawfully present'' in the United States and who are residents of the State in which they are applying under the State's Medicaid or CHIP residency rules.[12] The definitions of ''lawfully present'' and ''lawfully residing'' used for Medicaid and CHIP are currently set forth in a 2010 State Health Official (SHO) letter (SHO #10–006) and further clarified in a 2012 SHO letter (SHO #12–002).[13]

We propose several modifications to the definition of ''lawfully present'' currently articulated at 45 CFR 152.2 and described in the SHO letters for Medicaid and CHIP. First, we propose to remove an exception that excludes Deferred Action for Childhood Arrivals (DACA) recipients from the definitions of ''lawfully present'' used to determine eligibility to enroll in a QHP through an Exchange, a BHP, or Medicaid and CHIP under the CHIPRA 214 option. If this proposal is finalized, DACA recipients would be considered lawfully present for purposes of eligibility for these insurance affordability programs [14] based on a grant of deferred action, just like other similarly situated noncitizens who are granted deferred action. We also propose to incorporate additional technical changes into the proposed ''lawfully present'' definition at 45 CFR 152.2, as well as to the proposed ''lawfully present'' definition at 42 CFR 435.4.

These proposed definitions are solely for the purposes of determining eligibility for specific Department of Health and Human Services (HHS) health programs and are not intended to define lawful presence for purposes of any other law or program. We also note that this proposed rule would not provide any noncitizen relief or protection from removal, or convey any immigration status or other authority for a noncitizen to remain in the United States under existing immigration laws or to become eligible for any immigration benefit available under the U.S. Department of Homeland Security (DHS)'s or Department of Justice's purview.

II. Provisions of the Proposed Regulations

A. Proposed Effective Date

CMS's target effective date for this rule is November 1, 2023, to ensure the provisions are effective during the Open Enrollment Period for individual market Exchanges, the next of which will begin on November 1, 2023. We are considering this target date because Open Enrollment is an important opportunity for consumers to shop for and enroll in insurance coverage, and implementation of these changes would be most effective during a period when there are many outreach and enrollment activities occurring from CMS, State Exchanges, Navigator and assister groups, and other interested parties. We note that, if this rule is finalized as proposed, DACA recipients would qualify for the Special Enrollment Period at 45 CFR 155.420(d)(3) for individuals who become newly eligible for enrollment in a QHP through an Exchange due to newly meeting the requirement at 45 CFR 155.305(a)(1) that an enrollee be lawfully present. However, we still believe that proposing to align this rule's effective date with the individual market Exchange Open Enrollment Period would reduce barriers to enrollment for consumers due to the previously mentioned outreach and enrollment activities occurring during this time and the longer period of time individuals have to enroll in a QHP through an Exchange during the individual market Exchange Open Enrollment Period compared with a Special Enrollment Period. Further, even though the individual market Exchange Open Enrollment Period is, among the programs addressed in this proposed rule, currently only applicable to Exchanges, we believe that it is important to align effective dates across Exchanges, BHP, Medicaid and CHIP in order to promote consistency, and because eligibility for these programs is typically evaluated through a single application.[15]

We seek comment on the feasibility of this target effective date and whether to consider a different target effective date when we finalize this proposed rule. CMS is committed to working with State agencies and providing technical assistance regarding implementation of these proposed changes, if finalized. At the same time, CMS understands that State Medicaid and CHIP agencies are experiencing a significant increase in workload following the end of the Medicaid continuous enrollment condition established under section 6008(b)(3) of the Families First Coronavirus Response Act, as amended by section 5131 of the Consolidated Appropriations Act, 2023, and we seek comment about the impact of this workload or any other operational barriers to implementation for State Exchanges, and State Medicaid, CHIP, and BHP agencies. While CMS believes that there are advantages to implementing these provisions, if finalized, on the proposed November 1, 2023 target effective date, CMS will consider the comments received on this issue as we evaluate the feasibility of a November 1, 2023 effective date or different effective dates, if this proposal is finalized.

B. Pre-Existing Condition Insurance Plan Program (45 CFR 152.2)

We propose to remove the definition of ''lawfully present'' currently at 45 CFR 152.2 and insert the proposed definition of ''lawfully present'' at 45 CFR 155.20. The regulations at 45 CFR 152.2 apply to the PCIP program, which ended in 2014. Further, we are proposing to update BHP regulations at 42 CFR 600.5 that currently cross-reference 45 CFR 152.2 to instead cross-reference the definition proposed in this rule at 45 CFR 155.20. While we do not expect the definition at 45 CFR 152.2 to be used for any current CMS programs, we are proposing to modify the regulation at 45 CFR 152.2 to cross-reference Exchange regulations at 45 CFR 155.20 to help ensure alignment of definitions for other programs. We seek comment on whether, alternatively, we

[11] 45 CFR 155.305(f)(1)(ii)(A) and (g)(1)(i)(A).

[12] Centers for Medicare & Medicaid Services. (2010). *SHO #10–006: Medicaid and CHIP Coverage of ''Lawfully Residing'' Children and Pregnant Women. https://downloads.cms.gov/cmsgov/archived-downloads/smdl/downloads/sho10006.pdf.*

[13] Centers for Medicare & Medicaid Services. State Health Official letter (*SHO) #12–002: Individuals with Deferred Action for Childhood Arrivals* (issued August 28, 2012). Available at *https://www.medicaid.gov/federal-policy-guidance/downloads/sho-12-002.pdf.*

[14] *See* 45 CFR 155.300(a) and 42 CFR 435.4.

[15] Pursuant to 42 CFR 600.320(d), a State operating a BHP must either offer open enrollment periods pursuant Exchange regulations at 45 CFR 155.410 or follow Medicaid's continuous enrollment process. The two States that currently operate a BHP, New York and Minnesota, follow Medicaid's continuous enrollment process.

should strike the definition of ''lawfully present'' currently at 45 CFR 152.2 instead of replacing it with a cross-reference to 45 CFR 155.20.

C. Exchange Establishment Standards and Other Related Standards Under the ACA (45 CFR 155.20)

1. DACA Recipients

The ACA generally requires that in order to enroll in a QHP through an Exchange, an individual must be a ''citizen or national of the United States or an alien lawfully present in the United States.'' [16] While individuals who are not eligible to enroll in a QHP are also not eligible for APTC, PTC, or CSRs to lower the cost of a QHP, the ACA specifies that individuals who are not lawfully present are also not eligible for such insurance affordability programs.[17] The ACA does not offer a definition of ''lawfully present.'' [18]

In a recent rulemaking, DHS referred to its definition of ''lawful presence'' in 8 CFR 1.3, reiterating that it is a ''specialized term of art'' that does not confer lawful status or authorization to remain in the United States, but instead describes noncitizens who are eligible for certain benefits as set forth in 8 U.S.C. 1611(b)(2) (*Deferred Action for Childhood Arrivals,* final rule, 87 FR 53152 (August 30, 2022) (''DHS DACA Final Rule'')). DHS also stated that HHS and ''other agencies whose statutes independently link eligibility for benefits to lawful presence may have the authority to construe such language for purposes of those statutory provisions'' (87 FR 53152). We discuss this authority in further detail later in this section.

CMS first established a regulatory definition of ''lawfully present'' for purposes of the PCIP program in 2010 (75 FR 45013). In that 2010 rulemaking, CMS adopted the definition of ''lawfully present'' already established for Medicaid and CHIP eligibility for children and pregnant individuals under the CHIPRA 214 option articulated in SHO #10–006 (hereinafter ''2010 SHO'') to have the maximum alignment possible across CMS programs establishing eligibility for lawfully present individuals. The definition of ''lawfully present'' articulated in the 2010 SHO was also informed by DHS regulations codified at 8 CFR 1.3(a) defining ''lawfully present'' for the purpose of eligibility for certain Social Security benefits, with some revisions necessary for updating or clarifying purposes, or as otherwise deemed appropriate for the Medicaid and CHIP programs consistent with the Act.

In March 2012, CMS issued regulations regarding eligibility to enroll in a QHP through an Exchange that cross-referenced the definition of ''lawfully present'' set forth in the 2010 PCIP regulations (77 FR 18309). As the DACA policy had not yet been established, the definitions of ''lawfully present'' set forth in the 2010 SHO, the 2010 PCIP regulations, and the 2012 QHP regulations did not explicitly reference DACA recipients. However, these definitions specify that individuals granted deferred action are considered lawfully present for purposes of eligibility to enroll in a QHP through an Exchange, a BHP, or Medicaid and CHIP under the CHIPRA 214 option. In June 2012, DHS issued the memorandum ''Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,'' establishing the DACA policy.[19] DHS explained in this memorandum that DACA is a form of deferred action, and the removal forbearance afforded to a DACA recipient is identical for immigration purposes to the forbearance afforded to any individual who is granted deferred action in other exercises of enforcement discretion. DHS provided that the DACA policy was ''necessary to ensure that [its] enforcement resources are not expended on these low priority cases.'' [20] DHS did not address DACA recipients' ability to access insurance affordability programs through an Exchange, a BHP, and Medicaid or CHIP under the CHIPRA 214 option.

In August 2012, CMS amended its regulatory definition of ''lawfully present'' at 45 CFR 152.2, used for both PCIP and Exchange purposes, to add an exception stating that an individual granted deferred action under DHS' DACA policy was not considered lawfully present (77 FR 52614), thereby treating DACA recipients differently from other deferred action recipients for purposes of these benefits programs. CMS also issued the 2012 SHO excluding DACA recipients from the definition of ''lawfully residing'' for purposes of Medicaid or CHIP eligibility under the CHIPRA 214 option. In 2014, CMS issued regulations establishing the framework governing a BHP, which also adopted the definition of ''lawfully present'' at 45 CFR 152.2, thereby aligning the definition of ''lawfully present'' for a BHP with Exchanges, Medicaid and CHIP. As a result, DACA recipients, unlike all other deferred action recipients, are not currently eligible to enroll in a QHP through an Exchange, or for APTC or CSRs in connection with enrollment in a QHP through an Exchange, nor are they eligible to enroll in a BHP or for Medicaid or CHIP under the CHIPRA 214 option because they are not considered lawfully present for purposes of these programs. In both the August 2012 rulemaking and the 2012 SHO that excluded DACA recipients from CMS definitions of ''lawfully present,'' CMS reasoned that, because the rationale that DHS offered for adopting the DACA policy did not pertain to eligibility for insurance affordability programs, these benefits should not be extended as a result of DHS deferring action under DACA.

HHS has now reconsidered its position, and is proposing to change its interpretation of the statutory phrase ''lawfully present'' to treat DACA recipients the same as other deferred action recipients as described in current regulations in paragraph (4)(iv) of the definition at 45 CFR 152.2. Under the proposed rule, DACA recipients would be considered lawfully present to the same extent as other deferred action recipients for purposes of the ACA at 42 U.S.C. 18032(f)(3) for the Exchange, and 42 U.S.C. 18051(e) for a BHP. To align the eligibility standards across insurance affordability programs for noncitizens considered ''lawfully present,'' we are also proposing to establish rules in the Medicaid and CHIP programs to recognize that DACA recipients are ''lawfully residing'' in the United States, just like other deferred action recipients, for purposes of the CHIPRA 214 option, as discussed in section II.D.1. of this proposed rule.

Since HHS first interpreted ''lawfully present'' to exclude DACA recipients in 2012, new information regarding DACA recipients' access to health insurance coverage has emerged. While a 2021 survey of DACA recipients found that DACA may facilitate access to health insurance through employer-based plans, 34 percent of DACA recipient respondents reported that they were not

[16] 42 U.S.C. 18032(f)(3).

[17] 26 U.S.C. 36B(e)(2), 42 U.S.C. 18082(d), 42 U.S.C. 18071(e).

[18] 42 U.S.C. 18001(d)(1).

[19] United States Department of Homeland Security. (2012) *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children. https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf.*

[20] United States Department of Homeland Security. (2012) *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children. https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf.*

covered by health insurance.[21] Individuals without health insurance are less likely to receive preventative or routine health screenings, and may delay necessary medical care, incurring high costs and debts.[22] The 2021 survey of DACA recipients also found that 47 percent of respondents attested to having experienced a delay in medical care due to their immigration status and 67 percent of respondents said that they or a family member were unable to pay medical bills or expenses.[23] The COVID–19 public health emergency has also highlighted the need for this population to have access to high quality, affordable health coverage. According to a demographic estimate by the Center for Migration Studies, over 200,000 DACA recipients served as essential workers during the COVID–19 public health emergency.[24] This figure encompasses 43,500 DACA recipients who worked in health care and social assistance occupations, including 10,300 in hospitals and 2,000 in nursing care facilities.[25] During the height of the pandemic, essential workers were disproportionately likely to contract COVID–19.[26] [27] These factors emphasize how increasing access to health insurance would improve the health and well-being of many DACA recipients currently without coverage. In addition to improving health outcomes, these individuals could be even more productive and better economic contributors to their communities and society at large with improved access to health care. A 2016 study found that a worker with health insurance is estimated to miss 77 percent fewer workdays than an uninsured worker.[28]

By including DACA recipients in the definition of ''lawfully present,'' this proposed rule is aligned with the goals of the ACA—specifically, to lower the number of people who are uninsured in the United States and make affordable health insurance available to more people. Further, DACA recipients represent a pool of relatively young, healthy adults; at an average age of 29 per U.S. Citizenship and Immigration Services (USCIS) data, they are younger than the general Exchange population.[29] As such, there may be a slight effect on the Exchange or BHP risk pools as a result of this proposed change, discussed further in the Regulatory Impact Analysis in section VI.C. of this proposed rule.

In previously excluding DACA recipients from the definition of ''lawfully present,'' CMS had posited that the broadly accepted conventions of lawful presence should be set aside if the program or status in question was not established with the explicit objective of expanding access to health insurance affordability programs. However, given the broad aims of the ACA to increase access to health coverage, we now assess that this rationale for excluding certain noncitizen groups from such coverage was not only not statutorily mandated, it failed to best effectuate congressional intent in the ACA. Additionally, HHS previously reasoned that considering DACA recipients eligible for insurance affordability programs was inconsistent with the limited relief that the DACA policy was intended to afford. However, on further review and consideration, it is clear that the DACA policy was intended to provide recipients with the stability and assurance that would allow them to obtain education and lawful employment, and integrate as productive members of society. Extending health benefits to these individuals is consistent with those fundamental goals of DACA. It is also evident that there was no statutory mandate to distinguish between recipients of deferred action under the DACA policy and other deferred action recipients.

The proposed change to no longer exclude DACA recipients from CMS definitions of ''lawfully present'' aligns with both the longstanding DHS definition of lawful presence under 8 CFR 1.3 and DHS's explanation of this definition in the DHS DACA Final Rule. In a January 20, 2021 memorandum, ''Preserving and Fortifying Deferred Action for Childhood Arrivals,'' the President directed the Secretary of Homeland Security and the Attorney General to take appropriate steps consistent with applicable law to act to preserve and fortify DACA.[30]

Following the issuance of this memorandum, DHS issued a proposed rule, ''Deferred Action for Childhood Arrivals,'' on September 28, 2021 (86 FR 53736), and the DHS DACA Final Rule on August 30, 2022, with an effective date of October 31, 2022.[31] Among other things, the DHS DACA Final Rule reiterated USCIS' longstanding policy that a noncitizen who has been granted deferred action is deemed ''lawfully present''—a specialized term of art that Congress has used in multiple statutes—for example, for purposes of 8 U.S.C. 1611(b)(2). The DHS DACA Final Rule also reiterated that DACA recipients do not accrue ''unlawful presence'' for purposes of 8 U.S.C. 1182(a)(9).

We are aware that DHS received public comments about ''HHS' exclusion of DACA recipients from participation in Medicaid, the Children's Health Insurance Program (CHIP), and the ACA health insurance marketplace.'' (87 FR 53152). In response, DHS noted that it did not have the authority to make changes to the definitions of ''lawfully present'' used to determine eligibility for insurance affordability programs and affirmed that such authority rests with HHS (87 FR 53152). While review of the DHS DACA Final Rule in part prompted HHS to revisit its own interpretation of ''lawfully present,'' the changes proposed in this rule reflect a desire to align with longstanding DHS policy

[21] National Immigration Law Center. *Tracking DACA Recipients' Access to Health Care. https://www.nilc.org/wp-content/uploads/2022/06/NILC_DACA-Report_060122.pdf.*

[22] Kaiser Family Foundation. *Key Facts About the Uninsured Population. https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/.*

[23] National Immigration Law Center. *Tracking DACA Recipients' Access to Health Care. https://www.nilc.org/wp-content/uploads/2022/06/NILC_DACA-Report_060122.pdf.*

[24] Center for Migration Studies. *DACA Recipients are Essential Workers and Part of the Front-line Response to the COVID–19 Pandemic, as Supreme Court Decision Looms, https://cmsny.org/daca-essential-workers-covid/.*

[25] Center for Migration Studies. *DACA Recipients are Essential Workers and Part of the Front-line Response to the COVID–19 Pandemic, as Supreme Court Decision Looms, https://cmsny.org/daca-essential-workers-covid/.*

[26] Nguyen, L.H., Drew, D.A., Graham, M.S., Joshi, A.D., Guo, C.-G., Ma, W., Mehta, R.S., Warner, E.T., Sikavi, D.R., Lo, C.-H., Kwon, S., Song, M., Mucci, L.A., Stampfer, M.J., Willett, W.C., Eliassen, A.H., Hart, J.E., Chavarro, J.E., Rich-Edwards, J.W., . . . Zhang, F. (2020). Risk of COVID–19 among front-line health-care workers and the general community: A prospective cohort study. *The Lancet Public Health, 5*(9). *https://doi.org/10.1016/S2468-2667(20)30164-X.*

[27] Barrett, E.S., Horton, D.B., Roy, J., Gennaro, M.L., Brooks, A., Tischfield, J., Greenberg, P., Andrews, T., Jagpal, S., Reilly, N., Carson, J.L., Blaser, M.J., & Panettieri, R.A. (2020). Prevalence of SARS–COV–2 infection in previously undiagnosed health care workers in New Jersey, at the onset of the U.S. covid–19 pandemic. *BMC Infectious Diseases, 20*(1). *https://doi.org/10.1186/s12879-020-05587-2.*

[28] Dizioli, Allan and Pinheiro, Roberto. (2016). *Health Insurance as a Productive Factor.* Labour Economics. *https://doi.org/10.1016/j.labeco.2016.03.002.*

[29] Key Facts on Individuals Eligible for the Deferred Action for Childhood Arrivals (DACA) Program. Kaiser Family Foundation. February 1, 2018. *https://www.kff.org/racial-equity-and-health-policy/fact-sheet/key-facts-on-individuals-eligible-for-the-deferred-action-for-childhood-arrivals-daca-program/.*

[30] The White House. (2021). *Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA). https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01769.pdf.*

[31] Current court orders prohibit DHS from administering the DACA policy. But a partial stay permits DHS to continue processing DACA renewals and related applications for employment authorization documents. *See* USCIS, DACA Litigation Information and Frequently Asked Questions (Nov. 3, 2022).

predating the DHS DACA Final Rule, under which deferred action recipients have been considered ''lawfully present'' for purposes of certain Social Security benefits under 8 CFR 1.3.

In light of DHS's clarifications, HHS sees no persuasive reasons to treat DACA recipients differently from other noncitizens who have been granted deferred action. Accordingly, HHS proposes to amend our regulations at 42 CFR 600.5 and 45 CFR 152.2 and 155.20, and establish regulations at 42 CFR 435.4 and 457.320, so that DACA recipients would be considered lawfully present for purposes of eligibility for health insurance coverage through an Exchange, a BHP, and for eligibility under the CHIPRA 214 option in Medicaid and CHIP, just like other individuals granted deferred action. Specifically, we are proposing to amend QHP regulations at 45 CFR 155.20 to remove the current cross-reference to 45 CFR 152.2 and to instead add a definition of ''lawfully present'' for purposes of determining eligibility to enroll in a QHP through an Exchange. In section II.B. of this rule, we propose to remove the definition of ''lawfully present'' currently in the PCIP regulations at 45 CFR 152.2 and add a cross reference to 45 CFR 155.20 to ensure alignment across programs. In the definition proposed at 45 CFR 155.20, we propose to remove the existing exception in 45 CFR 152.2 that excludes DACA recipients from the definition of ''lawfully present,'' and clarify that references to noncitizens who are granted deferred action who are lawfully present for purposes of this provision include DACA recipients. Under this proposed change, we estimate that approximately 129,000 DACA recipients would enroll in a QHP through an Exchange, a BHP, or Medicaid or CHIP under the CHIPRA 214 option. Proposed changes to Medicaid and CHIP under the CHIPRA 214 option and BHP are included under sections II.D. and II.E. of this proposed rule.

2. Other Proposed Changes to the ''Lawfully Present'' Definition

In addition to including DACA recipients in the definition of ''lawfully present'' for the purposes of eligibility for health insurance coverage through an Exchange, a BHP, and for eligibility under the CHIPRA 214 option in Medicaid and CHIP, CMS is proposing several other clarifications and technical adjustments to the definition proposed at 45 CFR 155.20, as compared to the definition currently at 45 CFR 152.2.

First, in paragraph (1) of the proposed definition of ''lawfully present'' at 45 CFR 155.20, we propose some revisions as compared to paragraph (1) of the definition currently at 45 CFR 152.2. In the current regulations at 45 CFR 152.2, paragraph (1) provides that qualified aliens, as defined in the Personal Responsibility and Work Opportunity Act (PRWORA) at 8 U.S.C. 1641, are lawfully present. Throughout the proposed definition at 45 CFR 155.20, we propose a nomenclature change to use the term ''noncitizen'' instead of ''alien'' when appropriate to align with more modern terminology. Additionally, in paragraph (1) of the proposed definition at 45 CFR 155.20, we propose to cite the definition of ''qualified noncitizen'' at 42 CFR 435.4, rather than the definition of ''qualified alien'' in PRWORA. The definition of ''qualified noncitizen'' currently at 42 CFR 435.4 includes the term ''qualified alien'' as defined at 8 U.S.C. 1641(b) and (c). We note that for purposes of Exchange coverage and APTC eligibility, citizens of the Freely Associated States (FAS) living in the United States under the Compacts of Free Association (COFA), commonly referred to as COFA migrants, are not considered qualified noncitizens because the statutory provision at 8 U.S.C.1641(b)(8) making such individuals qualified noncitizens only applies to Medicaid. Similarly, for purposes of BHP eligibility, COFA migrants are not considered qualified noncitizens by cross-referencing the BHP definition of ''lawfully present'' at 42 CFR 600.5 to 45 CFR 155.20. Please see section II.D.3. of this proposed rule, where we discuss this further and we seek comment on whether to provide a more detailed definition of ''qualified noncitizen'' at 42 CFR 435.4. Pending such comments, and to ensure alignment across CMS programs, we propose that the Exchange regulations at 45 CFR 155.20 define ''qualified noncitizen'' by including a citation to the Medicaid regulations at 42 CFR 435.4, rather than to PRWORA.

Further, in the current definition of ''lawfully present'' at 45 CFR 152.2, CMS included in paragraph (2), a noncitizen in a nonimmigrant status who has not violated the terms of the status under which they were admitted or the status to which they have changed since their admission. In this rule, we propose in paragraph (2) of 45 CFR 155.20, modifying this language such that a noncitizen in a valid nonimmigrant status would be deemed lawfully present. Determining whether an individual has violated the terms of their status is a responsibility of DHS, not CMS. Accordingly, this proposed change would ensure coverage of noncitizens in a nonimmigrant status that has not expired, so long as DHS has not determined those noncitizens have violated their status.

Exchanges would continue to submit requests to verify an applicant's nonimmigrant status through a data match with DHS via the Federal data services hub using DHS' Systematic Alien Verification for Entitlements (SAVE) system. If SAVE indicates that the applicant has no eligible immigration status, the applicant would not be eligible for coverage. As such, this modification will simplify the eligibility verification process, so that a nonimmigrant's immigration status can be verified solely using the existing SAVE process, and reduce the number of individuals for whom an Exchange or State agency may need to request additional information. We also believe this change will promote simplicity, consistency in program administration, and program integrity given the reliance on a Federal trusted data source, while eliminating the agency's responsibility to understand and evaluate the minute complexities of the various immigration statuses and regulations.

We also propose a minor technical change in paragraph (4) of the proposed definition of ''lawfully present'' at 45 CFR 155.20, as compared to the definition of ''lawfully present'' currently in paragraph (4)(i) at 45 CFR 152.2, to refer to individuals who are ''granted,'' rather than ''currently in'' temporary resident status, as this language more accurately refers to how this status is conferred. We similarly propose a minor technical change in paragraph (5) of the proposed definition of ''lawfully present'' at 45 CFR 155.20, as compared to the definition of ''lawfully present'' currently in paragraph (4)(ii) at 45 CFR 152.2, to refer to individuals who are ''granted,'' rather than ''currently under'' Temporary Protected Status (TPS), as this language more accurately refers to how DHS confers this temporary status upon individuals.

Paragraph (4)(iii) of the current definition at 45 CFR 152.2 provides that noncitizens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24) are considered lawfully present. In paragraph (6) of the proposed definition of ''lawfully present'' at 45 CFR 155.20, we propose to cross reference 8 CFR 274a.12(c) in its entirety in order to simplify the regulatory definition and verification process. We are proposing this modification to the regulatory text to include all noncitizens who have been granted an Employment Authorization

Document (EAD) under 8 CFR 274a.12(c), as USCIS has authorized these noncitizens to accept employment in the United States. USCIS may grant noncitizens employment authorization under this regulatory provision based on the noncitizen's underlying immigration status or relief granted, an application for such status or other immigration relief, or other basis. Almost all noncitizens granted an EAD under 8 CFR 274a.12(c) are already considered lawfully present under existing regulations, either at in paragraph (4)(iii) of the defintion at 45 CFR 152.2 or within 45 CFR 152.2 more broadly. This modification would add only two minor categories to the proposed definition: noncitizens granted employment authorization under 8 CFR 274a.12(c)(35) and (36). Individuals covered under 8 CFR 274a.12(c)(35) and (36) are noncitizens with certain approved employment-based immigrant visa petitions who are transitioning from an employment-based nonimmigrant status to lawful permanent resident (LPR) status, and their spouses and children, for whom immigrant visa numbers are not yet available. These EAD categories act as a ''bridge'' to allow these noncitizens to maintain work authorization after their nonimmigrant status expires while they await an immigrant visa to become available. Because these individuals were previously eligible for insurance programs by virtue of their nonimmigrant status, the proposed rule would simply allow their eligibility to continue until they are eligible to apply to adjust to LPR status.

This change to consider ''lawfully present'' all individuals with an EAD granted under 8 CFR 274a.12(c) is beneficial because Exchanges can usually verify that an individual has been granted an EAD under 8 CFR 274a.12(c) in real time through SAVE, at the initial step of the verification process. Thus, the proposed revision to the definition would help to streamline and expedite verification of status for individuals who have been granted an EAD under this regulatory provision.

Further, to reduce duplication and confusion, we propose to remove the clause currently in paragraph (4)(ii) of the defintion in 45 CFR 152.2, referring to ''pending applicants for TPS who have been granted employment authorization,'' as these individuals would be covered under proposed paragraph (6) of the definition of ''lawfully present'' at 45 CFR 155.20.

We propose a minor technical modification to the citation in paragraph (7) of the definition of ''lawfully present'' to more accurately describe Family Unity beneficiaries. Family Unity beneficiaries are individuals who entered the United States and have been continuously residing in the United States since May 1988, and who have a family relationship (spouse or child) to a noncitizen with ''legalized status.'' [32] The current definition of ''lawfully present'' at 45 CFR 152.2 includes Family Unity beneficiaries eligible under section 301 of the Immigration Act of 1990 (Pub. L. 101–649, enacted November 29, 1990), as amended. However, DHS also considers as Family Unity beneficiaries individuals who are granted benefits under section 1504 of the Legal Immigration and Family Equity (LIFE) Act Amendments of 2000 (enacted by reference in Pub. L. 106–554, enacted December 21, 2000), referred to hereinafter as the LIFE Act Amendments. In this rule, we propose to amend the definition to include individuals who are granted benefits under section 1504 of the LIFE Act Amendments for consistency with DHS's policy to consider such individuals Family Unity beneficiaries.

As discussed previously, in paragraph (9) of the proposed definition of ''lawfully present'' at 45 CFR 155.20, we propose an additional clause clarifying that all recipients of deferred action, including DACA recipients, are lawfully present for purposes of 45 CFR part 155, which concerns eligibility to enroll in a QHP through an Exchange, and by cross-reference at 42 CFR 600.5, eligibility for a BHP.

In paragraph (10) of the proposed definition of ''lawfully present'' at 45 CFR 155.20, we propose to clarify that individuals with a pending application for adjustment of status are not required to have an approved immigrant visa petition in order to be considered lawfully present. We propose this change because in some circumstances, DHS does not require a noncitizen to have an approved immigrant visa petition to apply for adjustment of status. For example, USCIS allows noncitizens in some employment-based categories, as well as immediate relatives of U.S. citizens, to concurrently file a visa petition with an application for adjustment of status. Further, there are some scenarios where individuals need not have an approved visa petition at all, such as individuals applying for adjustment of status under the Cuban Adjustment Act. In addition, the DHS SAVE verification system generally does not currently return information to requestors on the status of underlying immigrant visa petitions associated with the adjustment of status response. This proposed modification would simplify verification for these noncitizens, reduce the burden on States and individual applicants, and align with current DHS procedures.

Paragraph (5) of the current definition of ''lawfully present'' pertains to applicants for asylum, withholding of removal, or relief under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (hereinafter ''Convention Against Torture''). In this rule, we are proposing to move this text to paragraph (12) of the definition of ''lawfully present'' at 45 CFR 155.20, and remove the portion of the text pertaining to noncitizens age 14 and older who have been granted employment authorization, as these individuals are noncitizens granted employment authorization under 8 CFR 274a.12(c)(8), and as such, are included in paragraph (6) of our proposed definition of ''lawfully present'' at 45 CFR 155.20. This proposed change is intended to reduce duplication and will not have a substantive impact on the definition of ''lawfully present.''

We further propose to remove the requirement in the current definition that individuals under age 14 who have filed an application for asylum, withholding of removal, or relief under the Convention Against Torture have had their application pending for 180 days to be deemed lawfully present. We originally included this 180-day waiting period for children under 14 in our definition of ''lawfully present'' to align with the statutory waiting period before applicants for asylum and other related forms of protection can be granted an EAD. We now propose to change this so that children under 14 are considered lawfully present without linking their eligibility to the 180-day waiting period for an EAD. We note that children under age 14 are generally are not permitted to work in the United States under the Fair Labor Standards Act,[33] and as such, the EAD waiting period has no direct nexus to their eligibility for coverage. Under the proposed rule, Exchanges and States would continue to verify that a child has the relevant pending application or is listed as a dependent on a parent's [34] pending application for asylum or related protection using DHS's SAVE system. This proposed modification captures the same population of children that were previously covered as lawfully present, without respect to

[32] See USCIS Form I–817 (Application for Family Unity Benefits) and Instructions available at *https://www.uscis.gov/sites/default/files/document/forms/i-817.pdf. https://www.uscis.gov/sites/default/files/document/forms/i-817instr.pdf.*

[33] See 29 CFR 570.2.

[34] See 8 U.S.C. 1101(b)(2) (definition of ''parent'').

how long their applications have been pending.

In paragraph (13) of the proposed definition of ''lawfully present'' at 45 CFR 155.20, we propose to include individuals with an approved petition for Special Immigrant Juvenile (SIJ) classification. The definition currently at paragraph (7) of 45 CFR 152.2 refers imprecisely to noncitizens with a ''pending application for [SIJ] status'' and therefore unintentionally excludes from the definition of ''lawfully present,'' children whose petitions for SIJ classification have been approved but who cannot yet apply for adjustment of status due to lack of an available visa number.[35] Due to high demand for visas in this category, for many applicants it can take several years for a visa number to become available. SIJs are an extremely vulnerable population and as such, we propose to close this unintentional gap so that all children with an approved petition for SIJ classification are deemed lawfully present.

In May 2022, USCIS began considering granting deferred action to noncitizens with approved petitions for SIJ classification but who are unable to apply for adjustment of status solely due to unavailable immigrant visa numbers. Accordingly, based on the proposed changes at 45 CFR 155.20, SIJs could be considered ''lawfully present'' under three possible categories, as applicable: paragraph (9) deferred action; paragraph (10) a pending adjustment of status application; or paragraph (13) a pending or approved SIJ petition. While paragraph (9) would cover individuals with approved SIJ petitions who cannot apply for adjustment of status, there may be a small number of SIJs with approved petitions whose request for deferred action has not yet been decided, for whom DHS has declined to defer action, or who were not considered for deferred action. The proposed modification to paragraph (13) of the definition of ''lawfully present'' at 45 CFR 155.20 would capture individuals who have established eligibility for SIJ classification but do not qualify under paragraph (9) or (10) of the proposed definition of ''lawfully present'' at 45 CFR 155.20, and eliminate an unintentional gap in the definition.

We also propose a nomenclature change to the definitions currently at 45 CFR 152.2 to use the term ''noncitizen,'' rather than ''alien'' in the definition proposed at 45 CFR 155.20 to align with more modern terminology.

3. Severability

We propose to add a new section at 45 CFR 155.30 addressing the severability of the provisions proposed in this rule. In the event that any portion of a final rule is declared invalid, CMS intends that the various provisions of the definition of ''lawfully present'' be severable, and that the changes we are proposing with respect to the definitions of ''lawfully present'' in 45 CFR 155.20 would continue even if some of the proposed changes to any individual category are found invalid. The severability of these provisions is discussed in detail in section III. of this proposed rule.

D. Eligibility in States, the District of Columbia, the Northern Mariana Islands, and American Samoa and Children's Health Insurance Programs (CHIPs) (42 CFR 435.4 and 457.320(c))

1. Lawfully Residing and Lawfully Present Definitions

Section 214 of CHIPRA is currently codified at sections 1903(v)(4)(A) and 2107(e)(1)(O) of the Act to allow States and territories an option to provide Medicaid and CHIP benefits to children under age 21 (under age 19 for CHIP) and pregnant individuals who are ''lawfully residing'' in the United States, without a 5-year waiting period, provided that they meet all other eligibility requirements in the State (for example, income). When States elect to cover pregnant individuals and children under the CHIPRA 214 option, this coverage includes the 60-day postpartum period or, at State option, the 12-month postpartum period (including for adolescents who become pregnant),[36] when they are lawfully residing and meet all other eligibility requirements in the State. While the Medicaid and CHIP statutes do not define ''lawfully residing'', we have previously recognized that this term is broader than the definition of ''qualified noncitizen'', discussed in section II.D.3. of this proposed rule.

As discussed previously in this rule, on July 1, 2010, CMS issued the 2010 SHO letter providing guidance for State Medicaid and CHIP agencies to implement section 214 of CHIPRA. In the 2010 SHO letter, CMS interpreted ''lawfully residing'' to mean individuals who are ''lawfully present'' in the United States and who are residents of the State in which they are applying under the State's Medicaid or CHIP residency rules.[37] The term ''lawfully present'' is defined in the 2010 SHO and was based on the definition of ''lawfully present'' that is now codified at 8 CFR 1.3 with some revisions necessary for updating or clarifying purposes, or as otherwise determined appropriate for the Medicaid and CHIP programs consistent with the Act.

On August 28, 2012, CMS issued the 2012 SHO, excluding DACA recipients from being considered lawfully residing for Medicaid and CHIP under the CHIPRA 214 option.[38] The 2012 SHO established CMS' current interpretation of ''lawfully present'' indicating that DACA recipients, unlike other recipients of deferred action, are not considered lawfully present for purposes of eligibility for Medicaid and CHIP under section 214 of CHIPRA. In the 2012 SHO, CMS reasoned that because the rationale that DHS offered for adopting the DACA policy did not pertain to eligibility for Medicaid and CHIP, eligibility for these benefits should not be extended as a result of DHS deferring action under DACA. In so reasoning, CMS relied on the description of the DACA policy offered by DHS in its ''Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children'' memorandum, which explained that the DACA policy was ''necessary to ensure that [its]

[35] Moreover, SIJ classification is not itself a status and should not be described as such in the regulation. The current regulatory reference to a ''pending application for SIJ status'' has been construed to encompass noncitizens with a pending SIJ petition. It is not limited to noncitizens with a pending application for adjustment of status based on an approved SIJ petition. Therefore, the proposed regulatory change does not modify the current practice of determining lawful presence for noncitizens in the SIJ process based on a pending petition, rather than (as with other categories of noncitizens seeking (LPR) status) based on a pending application. Rather, the modification we propose in this rule clarifies the language so that both pending and approved SIJ petitions convey lawful presence for the purposes of eligibility for health insurance coverage through an Exchange, a BHP, and for eligibility under the CHIPRA 214 option in Medicaid and CHIP, whether or not an individual with an approved SIJ petition has an adjustment application pending.

[36] 42 U.S.C. 1396a(e)(16); 42 U.S.C. 1397gg(e)(1)(J). *See* SHO #21–0007, ''Improving Maternal Health and Extending Postpartum Coverage in Medicaid and the Children's Health Insurance Program (CHIP)'' (issued Dec 7, 2021), available at *https://www.medicaid.gov/federal-policy-guidance/downloads/sho21007.pdf. See also* Sec. 2, Division FF, Title V, Subtitle D, Sec. 5113 of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328) *(removing the 5-year limitation on the State option to extend postpartum coverage to 12-months).*

[37] Centers for Medicare & Medicaid Services. (2010). *SHO #10–006: Medicaid and CHIP Coverage of ''Lawfully Residing'' Children and Pregnant Women. https://downloads.cms.gov/cmsgov/archived-downloads/smdl/downloads/sho10006.pdf.*

[38] Centers for Medicare & Medicaid Services. (2012). *SHO #12–002: Individuals with Deferred Action for Childhood Arrivals. https://www.medicaid.gov/federal-policy-guidance/downloads/sho-12-002.pdf.*

enforcement resources are not expended on these low priority cases.'' [39] The DHS memorandum did not address the availability of health insurance coverage through the Exchange, a BHP, Medicaid or CHIP. As such, DACA recipients are not currently eligible for Medicaid or CHIP programs under the CHIPRA 214 option.

We are proposing to define the terms ''lawfully present'' and ''lawfully residing'' at 42 CFR 435.4. For the same reasons as the proposed changes at 45 CFR 155.20, described in section II.C.1. of this proposed rule, and to ensure alignment across CMS programs, the proposed definition of ''lawfully present'' would remove the exclusion of DACA recipients and clarify that they are included in the broader category of those granted deferred action as lawfully residing in the United States for purposes of Medicaid and CHIP eligibility under the CHIPRA 214 option. We are also proposing to add a cross-reference to this definition at 42 CFR 457.320(c) for purposes of determining eligibility for CHIP. Thus, under the proposed rule, DACA recipients who are children under 21 years of age (under age 19 for CHIP) or pregnant, including during the postpartum period,[40] would be eligible for Medicaid and CHIP benefits in States that have elected the option in their State plan to cover all lawfully residing children or pregnant individuals under the CHIPRA 214 option. These individuals would still need to meet all other eligibility requirements for coverage in the State.[41] We propose the definition of ''lawfully residing'' to match the definition as defined in the 2010 SHO, discussed previously in this rule—that an individual is ''lawfully residing'' if they are ''lawfully present'' in the United States and are a resident of the State in which they are applying under the State's Medicaid or CHIP residency rules.

Further, as discussed in section II.C.2. of this proposed rule regarding modifications to the lawfully present definition proposed in 45 CFR 155.20, we propose in 42 CFR 435.4 each of the same clarifications and minor technical changes. The proposed definition of ''lawfully present'' in 42 CFR 435.4 would mirror the current definition of ''lawfully present'' as defined in the 2010 SHO letter with the clarification and minor technical changes described previously in this proposed rule. We are proposing these rules to align with the proposed definition of ''lawfully present'' across programs and for the same rationales described in section II.C.2. of this proposed rule.

The ''lawfully present'' definition proposed at 42 CFR 435.4 is identical to the definition proposed at 45 CFR 155.20, except for two additional paragraphs related to the territories. Consistent with the 2010 SHO definition of ''lawfully present,'' paragraph (14) of the proposed definition of ''lawfully present'' at 42 CFR 435.4 provides that individuals who are lawfully present in American Samoa are considered lawfully present. CMS is not proposing a change from its current policy described in the 2010 SHO regarding individuals who are lawfully present in American Samoa. Paragraph (15) of the proposed definition of ''lawfully present'' at 42 CFR 435.4 provides a revised description of lawfully present individuals in the Commonwealth of the Northern Mariana Islands (CNMI) under 48 U.S.C. 1806(e), as compared to paragraph (8) of the definition of ''lawfully present'' in the 2010 SHO. The 2010 SHO definition covered individuals described in 48 U.S.C. 1806(e)(1), which granted continued lawful presence in the CNMI to certain noncitizens who were lawfully present at that time under former CNMI immigration law. This statutory provision expired on November 28, 2011. However, in the Northern Mariana Islands Long-Term Legal Residents Relief Act (Public Law 116–24, enacted June 25, 2019), Congress subsequently added a new paragraph (6) to section 1806(e) of the Act, creating a new immigration status of ''CNMI Resident'' for certain long-term residents of the CNMI. Our proposed definition of ''lawfully present'' at 45 CFR 435.4 includes CNMI Residents at paragraph (15), with an update to reflect the current statute regarding individuals who are CNMI residents. Similar language is not included in the definition at 45 CFR 155.20 because American Samoa and the CNMI do not have Exchanges.

We also propose a nomenclature change to the definitions of ''citizenship,'' ''noncitizen,'' and ''qualified noncitizen'' in 42 CFR 435.4 in order to remove the hyphen in the term ''non-citizen'' and use the term ''noncitizen'' throughout those definitions to align with terminology used by DHS.

2. Severability

We propose to add a new section at 42 CFR 435.12 addressing the severability of the provisions proposed in this rule. In the event that any portion of a final rule might be declared invalid, CMS intends that the various provisions of the definition of ''lawfully present'' be severable, and that the changes we are proposing with respect to the definitions of ''lawfully present'' in § 435.4 would continue even if some of the proposed changes to any individual category are found invalid. The severability of these provisions is discussed in detail in section III. of this proposed rule.

3. Defining Qualified Noncitizen

As previously discussed, the proposed definition of ''lawfully present'' includes an individual who is a ''qualified noncitizen''. Under our current Medicaid regulations, a ''qualified non-citizen'' is defined at 42 CFR 435.4 and includes an individual described in 8 U.S.C. 1641(b) and (c). The definition is currently used for determining Medicaid eligibility under our regulation at 42 CFR 435.406, and the definition would also be important for determining eligibility of individuals who are seeking CHIPRA section 214 benefits. We are considering whether the current definition of qualified noncitizen at 42 CFR 435.4 should be modified to provide greater clarity and increase transparency for the public. Specifically, we are considering whether the definition should be modified to expressly provide all of the categories of noncitizens covered by 8 U.S.C. 1641(b) and (c), as well as additional categories of noncitizens that Medicaid agencies are required to cover as a result of subsequently enacted

[39] United States Department of Homeland Security. (2012) *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children. https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf.*

[40] The postpartum period for pregnant individuals includes the 60-day period described in sections 1903(v)(4)(A)(i) and 2107(e)(1)(O) of the Act or the extended 12-month period described in sections 1902(e)(16) and 2107(e)(1)(J) of the Act in States that have elected that option.

[41] To date, 35 States, the District of Columbia, and three territories have elected the CHIPRA 214 option for at least one population of children or pregnant individuals in their Medicaid or CHIP programs. A current list of States that elect the CHIPRA 214 option in Medicaid and/or CHIP is available at *https://www.medicaid.gov/medicaid/enrollment-strategies/medicaid-and-chip-coverage-lawfully-residing-children-pregnant-women.*

legislation that was not codified in 8 U.S.C. 1641(b) or (c). For example, Federal law requires certain populations to be treated as ''refugees.'' [42] Additional categories of noncitizens treated as ''refugees'' under Federal law that could be specifically described in the regulation include, for example, victims of trafficking and certain Afghans and Ukrainians.[43] We are considering whether to revise the definition of qualified noncitizen in 42 CFR 435.4 to account for these and other noncitizens for clarity and transparency.

We note that there is at least one difference in how the term ''qualified noncitizen'' applies to Medicaid compared to the other programs discussed in this proposed rule. Generally, although the definition of ''qualified alien'' in 8 U.S.C. 1641 applies to all of the programs, COFA migrants are only considered ''qualified aliens'' for purposes of the Medicaid program. The Consolidated Appropriations Act, 2021 added individuals who lawfully reside in the United States in accordance with COFA to the definition of qualified alien under new paragraph (8) of 8 U.S.C. 1641(b).[44] This paragraph specifies that COFA migrants' eligibility only extends to the designated Federal program defined in 8 U.S.C. 1612(b)(3)(C), which is the Medicaid program.

Since CHIP is not included as a designated Federal program at 8 U.S.C. 1612(b)(3)(C), we acknowledge that COFA migrants would need to be excluded from the definition of qualified noncitizen for separate CHIP through an exception at 42 CFR 457.320(c). However, we also note that under the definition of ''lawfully present,'' COFA migrants with a valid nonimmigrant status, as defined in 8 U.S.C. 1101(a)(15) or otherwise under the immigration laws (as defined in 8 U.S.C. 1101(a)(17)), may be eligible for CHIP in States that have elected the CHIPRA 214 option, if they meet all other eligibility requirements within the State. Similarly, enrollment in a QHP through an Exchange and BHP enrollment are not included as designated Federal programs, and as such, COFA migrants are not considered qualified noncitizens for purposes of eligibility for Exchange coverage, APTC, cost sharing reductions, or BHP eligibility. However, COFA migrants would generally be considered lawfully present under paragraph (2) of the proposed ''lawfully present'' definition at 45 CFR 152.2 regarding nonimmigrants, as they are considered lawfully present under existing regulations in paragraph (2) of the defintion at 45 CFR 152.2 today, and thus would continue to be eligible for Exchange coverage in a QHP, APTC, CSRs, and BHP, if they meet all other eligibility requirements for those programs.

Because noncitizens who are treated as refugees for purposes of Medicaid eligibility are also treated as refugees for purposes of CHIP eligibility, these categories of noncitizens (discussed previously in this proposed rule) are also being considered for the definition of qualified noncitizen for purposes of CHIP. We seek public comment on our consideration of modifying the definition of qualified noncitizen in 42 CFR 435.4 in this manner.

E. Administration, Eligibility, Essential Health Benefits, Performance Standards, Service Delivery Requirements, Premium and Cost Sharing, Allotments, and Reconciliation (42 CFR Part 600)

Section 1331 of the ACA provides States with an option to establish a BHP.[45] In States that elect to implement a BHP, the program makes affordable health benefits coverage available for lawfully present individuals under age 65 with household incomes between 133 percent and 200 percent of the Federal poverty level (FPL) who are not otherwise eligible for Medicaid, CHIP, or affordable employer-sponsored coverage, or for individuals whose income is below these levels but are lawfully present noncitizens ineligible for Medicaid. For those States that have expanded Medicaid coverage under section 1902(a)(10)(A)(i)(VIII) of the Act, the lower income threshold for BHP eligibility is effectively 138 percent of the FPL due to the application of a required 5 percent income disregard in determining the upper limits of Medicaid income eligibility (section 1902(e)(14)(I) of the Act). Currently, there are two States that operate a BHP—Minnesota and New York.[46]

In this rule, we propose conforming amendments to the BHP regulations to remove the current cross-reference to 45 CFR 152.2 in the definition of ''lawfully present'' at 42 CFR 600.5. We also propose to amend the definition of ''lawfully present'' in the BHP regulations at 42 CFR 600.5 to instead cross-reference the definition of ''lawfully present'' proposed in this rule at 45 CFR 155.20. This proposal, if finalized, would result in DACA recipients being considered lawfully present for purposes of eligibility to enroll in a BHP in a State that elects to implement such a program, if otherwise eligible. Also, if the proposals are finalized, this modification would ensure that the definition of ''lawfully present'' used to determine eligibility for coverage under a BHP is aligned with the definition of ''lawfully present'' used for the other insurance affordability programs. This alignment is important because it would help ensure a State could provide continuity of care for BHP enrollees who may have been previously eligible for a QHP or Medicaid. Additionally, pursuant to 42 CFR 600.310(a), the States use the single streamlined application that is used to determine eligibility for a QHP in an Exchange as well as Medicaid and CHIP. An aligned definition of ''lawfully present'' would reduce administrative burdens for the State as well as the potential for incorrect eligibility determinations.

III. Severability

As described in the background section of this proposed rule, the ACA generally [47] requires that in order to enroll in a QHP through an Exchange, an individual must be either a citizen or national of the United States or be

[42] Refugees are listed as a category of noncitizens who are ''qualified aliens'' at 8 U.S.C. 1641(b)(3).

[43] To date, these other Federal laws include the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(b)), relating to certain victims of trafficking; section 602(b)(8) of the Afghan Allies Protection Act of 2009, Public Law 111–8 (8 U.S.C. 1101 note), relating to certain Afghan special immigrants; section 1244(g) of the Refugee Crisis in Iraq Act of 2007 (8 U.S.C. 1157 note), relating to certain Iraqi special immigrants; section 584(c) of Public Law 100–202 (8 U.S.C. 1101 note), relating to Amerasian immigrants; section 2502(b) of the Extending Government Funding and Delivering Emergency Assistance Act of 2021, Public Law 117–43, relating to certain Afghan parolees; and section 401 of the Additional Ukraine Supplemental Appropriations Act of 2022, Public Law 117–128, relating to certain Ukrainian parolees.

[44] Div. CC, Title II, sec. 208, Public Law 116–260.

[45] See 42 U.S.C. 18051. Also see 42 CFR part 600.

[46] Minnesota's program began January 1, 2015, and New York's program began April 1, 2015. For more information, see *https://www.medicaid.gov/basic-health-program/index.html.* Also see, for example, 87 FR 77722, available at *https://www.govinfo.gov/content/pkg/FR-2022-12-20/pdf/2022-27211.pdf.*

[47] States may pursue a waiver under section 1332 of the Affordable Care Act (ACA) that could waive the ''lawfully present'' framework in section 1312(f)(3) of the ACA. See 42 U.S.C. 18052(a)(2)(B). There is currently one State (Washington) with an approved section 1332 waiver that includes a waiver of the ''lawfully present'' framework to the extent necessary to permit all State residents, regardless of immigration status, to enroll in a QHP and Qualified Dental Plan (QDP) through the State's Exchange, as well as to apply for State subsidies to defray the costs of enrolling in such coverage. Consumers who are eligible for Exchange coverage under the waiver remain ineligible for PTC. For more information on this State's section 1332 waiver, see *https://www.cms.gov/cciio/programs-and-initiatives/state-innovation-waivers/section_1332_state_innovation_waivers-.*

''lawfully present'' in the United States.[48] The ACA also generally requires that individuals be ''lawfully present'' in order to be eligible for insurance affordability programs such as PTC,[49] APTC,[50] and CSRs.[51] Additionally, enrollees in a BHP are required to meet the same citizenship and immigration requirements as QHP enrollees.[52] The ACA does not define ''lawfully present'' beyond specifying that an individual is only considered lawfully present if they are reasonably expected to be lawfully present for the period of their enrollment,[53] and that CMS is required to verify that Exchange applicants are lawfully present in the United States.[54] Additionally, the CHIPRA 214 option gives States the option to elect to cover ''lawfully residing'' pregnant individuals and children in their Medicaid and/or CHIP programs. Since 2010, CMS has interpreted ''lawfully residing'' to mean individuals who are ''lawfully present'' in the United States and who are residents of the State in which they are applying under the State's Medicaid or CHIP residency rules.[55] The interpretation of ''lawfully residing'' proposed in this rulemaking is thus consistent with longstanding CMS guidance.

Since 1996, when the Department of Justice's Immigration and Naturalization Service issued an interim final rule defining the term ''lawfully present'' as used in the recently enacted PRWORA, Federal agencies have considered deferred action recipients to be ''lawfully present'' for purposes of certain Social Security benefits (see *Definition of the Term Lawfully Present in the United States for Purposes of Applying for Title II Benefits Under Section 401(b)(2) of Public Law 104–193,* interim final rule, 61 FR 47039). In the intervening years, Congress has been aware of agency actions to clarify definitions of ''lawfully present'' consistent with their statutory authority and has taken no action to codify a detailed definition of ''lawfully present'' for use in administering Federal benefit programs. Given the lack of a statutory definition of ''lawfully present'' or ''lawfully residing'' in the ACA or the CHIPRA, and given the rulemaking authority granted to CMS under 42 U.S.C. 1302, 42 U.S.C. 18051, and 42 U.S.C. 18041, HHS has discretion to determine the best legal interpretations of these terms for purposes of administering its programs. Although the intent of this proposed rule is to make conforming changes to the definition of ''lawfully present'' across all CMS insurance affordability programs, we recognize the underlying statutory authorities and respective regulations contain some differences and apply to different populations. It is CMS' intent that if the rules for one program are found unlawful, the rules for other programs would remain intact. As previously described, CMS' authority to remove the exclusion treating recipients of deferred action under the DACA policy differently from other noncitizens with deferred action under the definition of ''lawfully present'' for purposes of eligibility for insurance affordability programs is well-supported in law and practice and should be upheld in any legal challenge.

Similarly, we have proposed technical changes to the definition of ''lawfully present'' for the purposes of eligibility for insurance affordability programs, and we believe those changes are also well-supported in law and practice and should be upheld in any legal challenge. CMS also believes that its exercise of its authority reflects sound policy.

However, in the event that any portion of a final rule is declared invalid, CMS intends that the other proposed changes to the definition of ''lawfully present'' and within the changes to the regulations defining qualified noncitizens would be severable. For example, if a court were to find unlawful the inclusion of one provision in the definition of ''lawfully present,'' for purposes of eligibility for any health insurance affordability program, CMS intends the remaining features proposed in sections II.C.1., II.C.2., II.D.1., and II.D.3. of this proposed rule to stand. Likewise, CMS intends that if one provision of the changes to the definition of ''lawfully present'' is struck down, that other provisions within that regulation be severable to the extent possible. For example, if one of the provisions discussed in section II.C.2. (Other Proposed Changes to the Definition of Lawfully Present) of this proposed rule is found invalid, CMS intends that the other provisions discussed in that section be severable.

Additionally, a final rule that includes only some provisions of this proposed rule would have significant advantages and be worthwhile in itself. For example, a rule consisting only of the technical and clarifying changes proposed in section II.C.2. of this proposed rule, applied through cross-reference to Exchanges, BHPs, and Medicaid and CHIP in States that elect the CHIPRA 214 option, would allow CMS to more effectively verify lawful presence of noncitizens for purposes of eligibility for health insurance affordability programs. Similarly, a rule consisting only of the changes proposed in section II.D.3. of this rule, would increase transparency for consumers and State Medicaid and CHIP agencies. A rule consisting solely of the changes proposed in section II.C.1. of this proposed rule would have significant benefits because it would increase access to health coverage for DACA recipients. These reasons alone would justify the continued implementation of these policies.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements. Comments, if received, will be responded to within the subsequent final rule.

A. Wage Estimates

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' (BLS's) May 2021 National Occupational Employment and Wage Estimates for all salary estimates (*https://www.bls.gov/oes/current/oes_nat.htm*). In this regard, Table 1 presents BLS's mean hourly wage, our estimated cost of fringe benefits and overhead

[48] 42 U.S.C. 18032(f)(3).

[49] 26 U.S.C. 36B(e)(2).

[50] 42 U.S.C. 18082(d).

[51] 42 U.S.C. 18071(e).

[52] 42 U.S.C. 18051(e).

[53] 42 U.S.C. 18032(f)(3), 42 U.S.C. 18071(e)(2).

[54] 42 U.S.C. 18081(c)(2)(B).

[55] Centers for Medicare & Medicaid Services. (2010). *SHO #10–006: Medicaid and CHIP Coverage of ''Lawfully Residing'' Children and Pregnant Women. https://downloads.cms.gov/cmsgov/archived-downloads/smdl/downloads/sho10006.pdf.*

(calculated at 100 percent of salary), and our adjusted hourly wage.

TABLE 1—NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupational code	Mean hourly wage ($/hr)	Fringe benefits and other indirect costs ($/hr)	Adjusted hourly wage ($/hr)
Computer Programmer	15–1251	46.46	46.46	92.92
Database and Network Administrator & Architect	15–1240	49.25	49.25	98.50
Eligibility Interviewers, Govt Programs	43–4061	23.35	23.35	46.70

For States and the private sector, employee hourly wage estimates have been adjusted by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and other indirect costs vary significantly across employers, and because methods of estimating these costs vary widely across studies. Nonetheless, there is no practical alternative, and we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

We adopt an hourly value of time based on after-tax wages to quantify the opportunity cost of changes in time use for unpaid activities. This approach matches the default assumptions for valuing changes in time use for individuals undertaking administrative and other tasks on their own time, which are outlined in an Assistant Secretary for Planning and Evaluation (ASPE) report on ''Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices.'' [56] We start with a measurement of the usual weekly earnings of wage and salary workers of $998.[57] We divide this weekly rate by 40 hours to calculate an hourly pre-tax wage rate of $24.95. We adjust this hourly rate downwards by an estimate of the effective tax rate for median income households of about 17 percent, resulting in a post-tax hourly wage rate of $20.71. We adopt this as our estimate of the hourly value of time for changes in time use for unpaid activities.

[56] Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. 2017. ''Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices.'' *https://aspe.hhs.gov/reports/valuing-time-us-department-health-human-services-regulatory-impact-analyses-conceptual-framework.*

[57] U.S. Bureau of Labor Statistics. Employed full time: Median usual weekly nominal earnings (second quartile): Wage and salary workers: 16 years and over [LEU0252881500A], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LEU0252881500A.* Annual Estimate, 2021.

B. Adjustment to State Cost Estimates

To estimate the financial burden on States pertaining to Medicaid and CHIP information collection changes, it was important to consider the Federal Government's contribution to the cost of administering the Medicaid program. The Federal Government provides funding based on a Federal medical assistance percentage (FMAP) that is established for each State, based on the per capita income in the State as compared to the national average. FMAPs for care and services range from a minimum of 50 percent in States with higher per capita incomes to a maximum of 83 percent in States with lower per capita incomes. For Medicaid, all States receive a 50 percent matching rate for administrative activities. States also receive higher Federal matching rates for certain administrative activities such as systems improvements, redesign, or operations. For CHIP, States can claim enhanced FMAP for administrative activities up to 10 percent of the State's total computable expenditures within the State's fiscal year allotment. As such, and taking into account the Federal contribution to the costs of administering the Medicaid and CHIP programs for purposes of estimating State burden with respect to collection of information, we elected to use the higher end estimate that the States would contribute 50 percent of the costs, even though the State burden may be much smaller, especially for CHIP administrative activities.

Financial burden pertaining to BHP and State Exchange information collection changes is covered entirely by States, as discussed further in sections IV.C.2. through IV.C.4. of this proposed rule.

C. Proposed Information Collection Requirements (ICRs)

1. ICRs Regarding the CHIPRA 214 Option (42 CFR 435.4 and 457.320(c))

The following proposed changes will be submitted to OMB for review under OMB control number 0938–1147 (CMS–10410) regarding Medicaid and CHIP eligibility.

As discussed previously, the changes proposed to the definition of ''lawfully present'' would impact eligibility for Medicaid and CHIP in States that have elected the CHIPRA 214 option. This proposal would impact the 35 States, the District of Columbia, and three territories that have elected the CHIPRA 214 option for at least one population of children or pregnant individuals in their CHIP or Medicaid programs. For simplicity, in the calculations that follow we will refer to this total as ''States.'' For the purposes of these estimates, we will assume that these proposals do not cause any States to opt in or out of the CHIPRA 214 option. We further note that currently, 10 States cover either children, or children and pregnant individuals regardless of immigration status using State-only funds.[58] However, we are including those States in our estimates, because States may need to adjust their systems to reflect the change in the route of eligibility, or to address the new availability of Federal matching funds for certain individuals.

We estimate that it would take each State 100 hours to develop and code the changes to its Medicaid or CHIP eligibility systems to correctly evaluate and verify eligibility under the revised definition of ''lawfully present'' to include DACA recipients and certain other limited groups of noncitizens in the CHIPRA 214 group, as outlined in section II.C.2. of this proposed rule. Of those 100 hours, we estimate it would take a database and network administrator and architect 25 hours at $98.50 per hour and a computer programmer 75 hours at $92.92 per hour. In aggregate, we estimate a one-time burden of 3,900 hours (39 States ×

[58] As of December 2022, those States are California, the District of Columbia, Illinois, Maine, Massachusetts, New York, Oregon, Rhode Island, Vermont, and Washington. ''Health Coverage and Care of Immigrants,'' Kaiser Family Foundation, *https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-and-care-of-immigrants/. Accessed* March 2, 2023.

100 hours) at a cost of $367,829 (39 States × [(25 hours × $98.50 per hour) + (75 hours × $92.92 per hour)]) for completing the necessary updates to Medicaid systems. Taking into account the 50 percent Federal contribution to Medicaid and CHIP program administration, the estimated State one-time cost would be $4,716 per State, and $183,914 in total for all States.

These proposed requirements, if finalized, would impose additional costs on States to process the applications for individuals impacted by the proposals in this rule. Those impacts are accounted for under OMB control number 0938–1191 (Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Health Insurance Marketplaces, Medicaid and Children's Health Insurance Program Agencies (CMS–10440)), discussed in section IV.C.3. of this proposed rule, which pertains to the streamlined application.

2. ICRs Regarding the BHP (42 CFR 600.5)

The following proposed changes will be submitted to OMB for review under OMB control number 0938–1218 (CMS–10510).

The impact of this change is with regards to the two States with BHPs—Minnesota and New York.[59] We estimate that it would take each State 100 hours to develop and code the changes to its BHP eligibility and verification system to correctly evaluate eligibility under the revised definition of ''lawfully present'' to include DACA recipients and certain other limited groups of noncitizens as outlined in section II.C.2. of this proposed rule. To be conservative in our estimates, we are assuming 100 hours per State, but it is important to note that it may take each State less than 100 hours given the overlap in State eligibility and verification systems, as work completed for the Medicaid or State Exchange system may be the same for its BHP.

Of those 100 hours, we estimate it would take a database and network administrator and architect 25 hours at $98.50 per hour and a computer programmer 75 hours at $92.92 per hour. In the aggregate, we estimate a one-time burden of 200 hours (2 States × 100 hours) at a cost of $18,863 (2 States × [(25 hours × $98.50 per hour) + (75 hours × $92.92 per hour)]) for completing the necessary updates to a BHP application.

[59] Minnesota's program began January 1, 2015, and New York's program began April 1, 2015. For more information, see *https://www.medicaid.gov/basic-health-program/index.html.*

These proposed requirements, if finalized, would impose additional costs on States to process the applications for individuals impacted by the proposals in this rule. Those impacts are accounted for under OMB control number 0938–1191 (Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Health Insurance Marketplaces, Medicaid and Children's Health Insurance Program Agencies (CMS–10440)), discussed in section IV.C.3. of this proposed rule, which pertains to the streamlined application.

3. ICRs Regarding the Exchanges and Processing Streamlined Applications (45 CFR 152.2 and 155.20, 42 CFR 600.5, and 42 CFR 435.4 and 457.320(c))

The following proposed changes will be submitted to OMB for review under control number 0938–1191 (CMS–10440).

As discussed previously, the changes proposed to the definition of ''lawfully present'' would impact eligibility to enroll in a QHP through an Exchange and for APTC and CSRs. This proposal would impact the 18 State Exchanges that run their own eligibility and enrollment platforms, as well as the Federal Government which would make changes to the Federal eligibility and enrollment platform for the States with Federally-facilitated Exchanges (FFEs) and State-based Exchanges on the Federal platform (SBE–FPs). We estimate that it would take the Federal Government and each of the State Exchanges 100 hours in 2023 to develop and code the changes to their eligibility systems to correctly evaluate and verify eligibility under the definition of ''lawfully present'' revised to include DACA recipients and certain other limited groups of noncitizens as outlined in section II.C.2. of this proposed rule.

Of those 100 hours, we estimate it would take a database and network administrator and architect 25 hours at $98.50 per hour and a computer programmer 75 hours at $92.92 per hour. In aggregate for the States, we estimate a one-time burden in 2023 of 1,800 hours (18 State Exchanges × 100 hours) at a cost of $169,767 (18 States × [(25 hours × $98.50 per hour) + (75 hours × $92.92 per hour)]) for completing the necessary updates to State Exchange systems. For the Federal Government, we estimate a one-time burden in 2023 of 100 hours at a cost of $9,432 ((25 hours × $98.50 per hour) + (75 hours × $92.92 per hour)). In total, the burden associated with all system updates would be 1,900 hours at a cost of $179,199.

''Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Health Benefits Exchanges, Medicaid and CHIP Agencies,'' OMB control number 0938–1191 (CMS–10440) accounts for burdens associated with the streamlined application for enrollment in the programs impacted by this rule. As such, the following information collection addresses the burden of processing applications and assisting enrollees with Medicaid, CHIP, BHP, and QHP enrollment, and those impacts are not reflected in the ICRs for Medicaid and CHIP, and BHP, discussed in sections IV.C.1. and IV.C.2. of this proposed rule, respectively.

With respect to assisting additional eligible enrollees and processing their applications, we estimate this would take a government programs eligibility interviewer 10 minutes (0.17 hours) per application at a rate of $46.70 per hour, for a cost of approximately $7.94 per application. As discussed further in section IV.C.4. of this proposed rule, we anticipate that approximately 200,000 individuals impacted by the proposals in this rule would complete the application annually. Therefore, the total application processing burden associated with the proposals in this rule would be 34,000 hours (0.17 hours × 200,000 applications) for a total cost of $1,587,800 (34,000 hours × $46.70 per hour). As discussed further in this section, we anticipate that approximately 54 percent of the application processing burden would fall on States, while the remaining approximately 46 percent would be borne by the Federal Government. We estimate these proportions as follows and seek comment on these estimates and the methodology and assumptions used to calculate them.

To start, we estimate the percentage of applications that would be processed for each of the programs: Medicaid, CHIP, Exchange, and BHP. We assume that the proportion of applications that would be processed for each program would be equivalent to the proportion of individuals impacted by the proposals in this rule that would enroll in each program. As discussed in section VI.C. of this proposed rule, we estimate that of the 129,000 individuals impacted by the proposals in this rule, 13,000 would enroll in Medicaid or CHIP (10 percent), 112,000 in the Exchanges (87 percent), and 4,000 (3 percent) in the BHPs on average each year, including redeterminations and re-enrollments. Using these same proportions, out of the 200,000 applications anticipated to

result from the proposals in this rule, if finalized, we estimate 20,000 applications would be processed for Medicaid and CHIP, 174,000 would be processed for the Exchanges, and 6,000 would be processed for the BHPs on average each year.

Next, we calculate the proportion of each program's application processing costs that are borne by States compared to the Federal Government. As discussed in section IV.B. of this proposed rule, the Federal Government contributes 50 percent of Medicaid and CHIP program administration costs. As such, we assume 50 percent of the Medicaid and CHIP application processing costs would fall on the 39 States referenced in section IV.C.1. of this proposed rule, and the remaining 50 percent would be borne by the Federal Government. As discussed in section IV.C.2. of this proposed rule, the entire information collection burden associated with changes to BHPs falls on the two States with BHPs—Minnesota and New York. As such, we assume 100 percent of the BHP application processing costs would fall on these two States. For the Exchanges, we used data from the 2022 Open Enrollment Period to estimate the proportion of applications that are processed by States compared to the Federal Government, and we determined that 47 percent of Exchange applications were submitted to FFEs/SBE–FPs, and are therefore processed by the Federal Government, while 53 percent were submitted to and processed by the 18 State Exchanges using their own eligibility and enrollment platforms.[60] As such, we anticipate that 47 percent of Exchange application processing costs would fall on the Federal Government and 53 percent of Exchange application processing costs would fall on States.

Finally, we apply the proportion of applications we estimated for each program we discussed earlier to the State and Federal burden proportions. For Medicaid and CHIP, we estimate there would be 20,000 applications processed. Using the per-application processing burden discussed earlier in this ICR (10 minutes, or 0.17 hours, per application at a rate of $46.70 per hour), and applying the 50 percent Federal contribution to Medicaid and CHIP program administration costs, this results in a burden of 1,700 hours, or $79,390, each for States and the Federal Government to process Medicaid and CHIP applications. For the BHPs, if we estimate 6,000 applications would be processed, the burden for all of those would be borne by the States. Using the per-application processing burden of 10 minutes (0.17 hours) per application at a rate of $46.70 per hour, this results in a burden of 1,020 hours, or $47,634, for States to process BHP applications. For the Exchanges, if we estimate 174,000 applications would be processed, 53 percent of those (92,220) would be processed by State Exchanges and 47 percent (81,780) would be processed by the Federal Government. Using the per-application processing burden of 10 minutes (0.17 hours) per application at a rate of $46.70 per hour, this results in a burden of 15,677 hours, or $732,135, for State Exchanges and 13,903 hours, or $649,251, for the Federal Government.

Therefore, the total burden on States to assist eligible beneficiaries and process their applications would be 18,397 hours annually (1,700 hours for Medicaid and CHIP + 1,020 hours for BHP + 15,677 hours for Exchanges) at a cost of $859,140, and the total burden on the Federal Government would be 15,603 hours annually (1,700 hours for Medicaid and CHIP + 13,903 hours for Exchanges) at a cost of $728,660. We seek comment on these estimates and the methodology and assumptions used to calculate them.

4. ICRs Regarding the Application Process for Applicants

The following proposed changes will be submitted to OMB for review under control number 0938–1191 (CMS–10440).

As required by the ACA, there is one application through which individuals may apply for health coverage in a QHP through an Exchange and for other insurance affordability programs like Medicaid, CHIP, and a BHP.[61] Some individuals may apply directly with their State Medicaid or CHIP agency; however, we assume the burden of completing an Exchange application is essentially the same as applying with a State Medicaid or CHIP agency, and therefore are not distinguishing these populations. We seek comment on this assumption.

Based on the enrollment projections discussed in the Regulatory Impact Analysis section later in this rule, we anticipate that DACA recipients would represent the majority of individuals impacted by the proposals in this rule, and we are unable to quantify the number of non-DACA recipients impacted by the other changes in this rule, but we expect the number to be small. We estimate that there are 200,000 uninsured DACA recipients based on USCIS data on active DACA recipients (589,000 in 2022)[62] and a 2021 survey by the National Immigration Law Center stating that 34 percent of DACA recipients are uninsured,[63] and as such, we anticipate that approximately 200,000 individuals impacted by the proposals in this rule would complete the application annually.

In the existing information collection request for this application (OMB control number 0938–1191), we estimate that the application process would take an average of 30 minutes (0.5 hours) to complete for those applying for insurance affordability programs and 15 minutes (0.25 hours) for those applying without consideration for insurance affordability programs.[64] We estimate that of the 200,000 individuals impacted by the proposed changes, 98 percent would be applying for insurance affordability programs and 2 percent would be applying without consideration for insurance affordability programs. Using the hourly value of time for changes in time use for unpaid activities discussed in section IV.A. of this proposed rule (at an hourly rate of $20.71), the average opportunity cost to an individual for completing this task is estimated to be approximately 0.495 hours ((0.5 hours × 98 percent) + (0.25 hours × 2 percent)) at a cost of $10.25. The total annual additional burden on the 200,000 individuals impacted by the proposed changes would be approximately 99,000 hours with an equivalent cost of approximately $2,050,290.

As stated earlier in this proposed rule, CMS, State Exchanges, and States would require individuals completing the application to submit supporting documentation to confirm their lawful presence if it is unable to be verified electronically. An applicant's lawful presence may not be able to be verified if, for example, the applicant opts to not include information about their immigration documentation such as their alien number or employment

[60] Centers for Medicare & Medicaid Services. (2022). 2022 Open Enrollment Report. *https://www.cms.gov/files/document/health-insurance-exchanges-2022-open-enrollment-report-final.pdf.*

[61] 42 U.S.C. 18083.

[62] Count of Active DACA Recipients by Month of Current DACA Expiration as of September 30, 2022. U.S. Citizenship and Immigration Services. *https://www.uscis.gov/sites/default/files/document/data/Active_DACA_Recipients_Sept_FY22_qtr4.pdf.*

[63] Tracking DACA Recipients' Access to Health Care, National Immigration Law Center, 2022. *https://www.nilc.org/wp-content/uploads/2022/06/NILC_DACA-Report_060122.pdf.*

[64] It is possible that some individuals impacted by the proposed changes to the definition of lawful presence in this rule would apply using the paper application, but internal CMS data show that this would be less than 1 percent of applications. Therefore, we are using estimates in this RIA to reflect that nearly all applicants would apply using the electronic application.

authorization document (EAD) number when they fill out the application. We estimate that of the 200,000 individuals impacted by the changes proposed in this rule, approximately 68 percent (or 136,000) of applicants would be able to have their lawful presence electronically verified, and the remaining 32 percent (or 64,000) of applicants would be unable to have their lawful presence electronically verified and would therefore have to submit supporting documentation to confirm their lawful presence.[65] We estimate that a consumer would, on average, spend approximately 1 hour gathering and submitting required documentation. Using the hourly value of time for changes in time use for unpaid activities discussed in section IV.A. of this proposed rule (at an hourly rate of $20.71), the opportunity cost for an individual to complete this task is estimated to be approximately $20.71. The total annual additional burden on the 64,000 individuals impacted by the changes proposed in this rule that are unable to electronically verify their lawful presence and therefore need to submit supporting documentation would be approximately 64,000 hours with an equivalent cost of approximately $1,325,440. We seek comment on these estimates.

As previously stated, for the 200,000 individuals impacted by this rule, the annual additional burden of completing the application would be 0.495 hours per individual on average, which totals to 99,000 hours at a cost of $2,050,290. For the 64,000 individuals who are unable to have their lawful presence electronically verified, the total annual burden of submitting documentation to verify their lawful presence would be 64,000 hours at a cost of $1,325,440. Therefore, the average annual burden per respondent would be 0.815 hours ((0.495 hours × 68 percent of individuals) + (1.495 hours × 32 percent of individuals)), and the total annual burden on all of these individuals impacted by the proposed changes in this rule would be 163,000 hours at a cost of $3,375,730. We seek comment on these burden estimates.

D. Burden Estimate Summary

TABLE 2—SUMMARY OF PROPOSED BURDEN ESTIMATES

Regulation section(s)/ ICR provision	OMB control No./ CMS–ID	Year	Number of respondents	Number of responses	Time per response (hrs)	Total time (hr)	Hourly labor rate ($/hr)	Total labor cost ($)	State share ($)	Total beneficiary cost ($)
42 CFR 435.4 and 457.320(c) Medicaid and CHIP System Changes.	0938–1147 (CMS–10410).	2023	39	39	100	3,900	Varies	$367,828	$183,914	N/A
42 CFR 600.5 BHP System Changes.	0938–1218 (CMS–10510).	2023	2	2	100	200	Varies	18,863	18,863	N/A
45 CFR 152.2 and 155.20 Exchange System Changes.	0938–1191 (CMS–10440).	2023	19	19	100	1,900	Varies	179,199	169,776	N/A
42 CFR 435.4 and 457.320(c), 42 CFR 600.5, 45 CFR 152.2 and 155.20 Streamlined Application Processing.	0938–1191 (CMS–10440).	2024–2027	200,000	200,000	0.17	34,000	46.70	1,587,800	859,140	N/A
42 CFR 435.4 and 457.320(c), 42 CFR 600.5, 45 CFR 152.2 and 155.20 Application Process for Applicants.	0938–1191 (CMS–10440).	2024–2027	200,000	200,000	0.82	163,000	20.71	3,375,730	N/A	3,375,730

E. Submission of PRA-Related Comments

We have submitted a copy of this proposed rule to OMB for its review of the rule's information collection requirements. The requirements are not effective until they have been approved by OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections discussed in this section, please visit the CMS website at *www.cms.hhs.gov/PaperworkReductionActof1995,* or call the Reports Clearance Office at 410–786–1326.

We invite public comments on these potential information collection requirements. If you wish to comment, please submit your comments electronically as specified in the DATES and **ADDRESSES** section of this proposed rule and identify the rule (CMS–9894–P), the ICR's CFR citation, and OMB control number.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Regulatory Impact Analysis

A. Statement of Need

This proposed rule would update the definition of ''lawfully present'' in our regulations. This definition is currently used to determine whether a consumer is eligible to enroll in a QHP through an Exchange and for APTC and CSRs, and whether a consumer is eligible to enroll in a BHP in States that elect to operate a BHP. We are also proposing a similar definition of ''lawfully present'' that would be applicable to eligibility for Medicaid and CHIP in States that have elected to cover ''lawfully residing'' pregnant individuals and children under the CHIPRA 214 option. In addition, we propose to remove the

[65] This estimate is informed by recent data from the FFEs and SBE–FPs. While certain changes proposed in this rule may result in an increase in the proportion of applicants who are able to have their lawful presence electronically verified, we do not have a reliable way to quantify any potential increase.

exception for DACA recipients from the definitions of ''lawfully present'' used to determine eligibility to enroll in a QHP through an Exchange, a BHP, or in Medicaid and CHIP under the CHIPRA 214 option, and instead treat DACA recipients the same as other deferred action recipients. We also propose some modifications to the ''lawfully present'' definition currently at 45 CFR 152.2, and the definition in the SHO letters that incorporate additional detail, clarifications, and some technical modifications for the Exchanges, BHPs, and Medicaid and CHIP under the CHIPRA 214 option.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), and Executive Order 13132 on Federalism (August 4, 1999).

Executive Orders 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). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that may: (1) have an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of OMB's Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product), 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, local, territorial or tribal 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 impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in the Executive order, as specifically authorized in a timely manner by the Administrator of OIRA.

Based on our estimates, OIRA has determined that this rulemaking is a significant regulatory action under section 3(f)(1) Executive Order 12866. Accordingly, we have prepared regulatory impact analysis (RIA) that to the best of our ability presents the costs and benefits of the rulemaking. Therefore, OMB has reviewed these proposed regulations, and we have provided the following assessment of their impact.

C. Detailed Economic Analysis

We prepared the economic impact estimates utilizing a baseline of ''no action,'' comparing the effect of the proposals against not proposing the rule at all.

This analysis reviews the amendments proposed under 42 CFR 435.4, 457.320(c), and 600.5, and 45 CFR 152.2 and 155.20, which would add the following changes to the definition of lawfully present by adding the following new categories of noncitizens to this definition via this regulation:

- Those granted an EAD under 8 CFR 274a.12(c)(35) and (36);
- Those granted deferred action under DACA;
- Additional Family Unity beneficiaries;
- Individuals with a pending application for adjustment of status, without regard to whether they have an approved visa petition;
- Children under 14 with a pending application for asylum, withholding of removal, or relief under the Convention Against Torture or children under 14 who are listed as a dependent on a parent's pending application, without regard to the length of time that the application has been pending; and
- Children with an approved petition for SIJ classification.

The amendments proposed under 42 CFR 435.4, 457.320(c), and 600.5 and 45 CFR 152.2 and 155.20 would also:

- Revise the description of noncitizens who are nonimmigrants to include all nonimmigrants who have a valid and unexpired status;
- Remove individuals with a pending application for asylum, withholding of removal, or the Convention Against Torture who are over age 14 from the definition, as these individuals are covered elsewhere; and
- Simplify the definition of noncitizens with an EAD to include all individuals granted an EAD under 8 CFR 274a.12(c), as these individuals are already covered elsewhere, with the exception of a modest expansion to those granted an EAD under 8 CFR 274a.12(c)(35) and (36), discussed earlier in this proposed rule.

In these respects, these proposals are technical changes or revisions to simplify verification processes, and therefore, we do not anticipate a material impact on individuals' eligibility as a result of these changes. We seek comment on estimates or data sources we could use to provide quantitative estimates for the benefit to these individuals.

The amendments proposed under 42 CFR 435.4 and 457.320(c) would also revise the description of lawfully present individuals in the CNMI in this definition. This proposed amendment is also a technical change, and although we anticipate the number of individuals who would be substantively impacted by this proposal would be small, we do not have a reliable way to quantify these impacts. We seek comment on estimates or data sources we could use to provide quantitative estimates for the benefit to these individuals.

As explained further in this section, we estimate 129,000 DACA recipients could enroll in health coverage and benefit from the proposals in this rule.[66] We are presently unable to quantify the number of additional Family Unity beneficiaries, individuals with a pending application for adjustment of status, children under age 14 with a pending application for asylum or related protection or children listed as dependents on a parent's application for asylum or related protection, and individuals with approved petition for SIJ classification that could enroll in health coverage and benefit from the proposals in this rule, but we expect this number to be small. We seek comment on estimates or data sources we could use to provide quantitative estimates for the benefit to these individuals.

The proposed changes to 42 CFR 435.4 and 457.320(c) would no longer exclude DACA recipients from the definition of ''lawfully present'' used to determine eligibility for Medicaid and CHIP under section 214 of CHIPRA and treat DACA recipients the same as other recipients of deferred action. Thus, under the proposed rule, DACA recipients who are children under 21 years of age (under age 19 for CHIP) or pregnant, including during the

[66] The estimates in this RIA are based on DHS's current policy in alignment with the ruling in *Texas* v. *United States,* 50 F.4th 498 (5th Cir. 2022), whereby DHS continues to accept the filing of both initial and renewal DACA applications, but is only processing renewal requests.

postpartum period,[67] would be eligible for Medicaid and CHIP benefits in States that have elected the option in their State plan to cover all lawfully residing children or pregnant individuals under the CHIPRA 214 option. The proposed changes to 42 CFR 600.5 would no longer exclude DACA recipients from the definition of ''lawfully present'' used to determine eligibility for a BHP in those States that elect to operate the program, if otherwise eligible. The proposed changes to 45 CFR 152.2 and 155.20 would make DACA recipients eligible to enroll in a QHP through an Exchange, and for APTC and CSRs, if otherwise eligible. We present enrollment estimates for these populations in Table 3.

TABLE 3—ENROLLMENT ESTIMATES BY PROGRAM, COVERAGE YEARS 2024–2028

	2024	2025	2026	2027	2028
Medicaid and CHIP Enrollment	13,000	11,000	9,000	8,000	6,000
BHP Enrollment	4,000	4,000	4,000	5,000	5,000
Exchange Enrollment	112,000	114,000	116,000	117,000	119,000
Total Enrollment	129,000	129,000	129,000	130,000	130,000

To estimate the enrollment impact on Medicaid, we developed estimates for the number of pregnant individuals and children who would be eligible in this group. For pregnant individuals, we estimated the number of pregnancies using the DACA population by age and gender and combined this with the fertility rates by age in the United States.[68] For the DACA population, we estimated 43 pregnant individuals per 1,000 persons in 2022, declining to 34 pregnant individuals per 1,000 persons in 2028 as the DACA population ages. We then calculated how many persons would be eligible in States that have elected the CHIPRA 214 option to cover pregnant individuals (28 States and territories, including the District of Columbia).[69] Finally, we assumed that 50 percent of all such persons would be eligible on the basis of income. We estimated about 7,000 pregnant individuals would enroll in 2024, declining to about 6,000 by 2028. For children, we estimated the number of individuals who would be eligible in States that elect the CHIPRA 214 option for children (34 States plus the District of Columbia) and by age, as States may allow for eligibility up to age 19 or up to age 21. We assumed 40 percent of these children would be eligible on the basis of income. We estimated about 6,000 children would enroll in 2024, declining to 0 by 2028 as all DACA individuals age out of eligibility.[70]

To estimate the enrollment impact on the Exchanges and BHPs, we started with an estimate of the DACA population. USCIS has estimated this count to be 589,000 persons as of September 30, 2022, the most recent available data.[71] Based on a 2021 survey from the National Immigration Law Center,[72] roughly 34 percent of DACA recipients were uninsured. Of the roughly 200,000 uninsured DACA recipients, we removed the pregnant women and children estimated to enroll in Medicaid, as discussed in the preceding paragraph. In addition, we assumed that approximately 10 percent of these individuals would be ineligible for APTC and CSRs and that approximately 70 percent of the remaining group would opt to enroll in the Exchanges and BHP. This results in an enrollment impact of about 116,000 persons for both the Exchanges and BHP. Based on data regarding the number of DACA recipients by State, we estimated that 4,000 people would enroll in the BHPs in Minnesota and New York, and the remaining 112,000 would enroll in the Exchanges. We also estimated that the 6,000 children who would age out of Medicaid or CHIP eligibility by 2028 would subsequently enroll in the Exchanges and the BHPs in Minnesota and New York. We seek comment on these estimates and the assumptions and methodology used to calculate them.

The proposed changes to 42 CFR 600.5 would no longer exclude DACA recipients from the definition of lawfully present used to determine eligibility for a BHP in those States that elect to operate the program, if otherwise eligible. There may be an effect on the BHP risk pool as a result of this change, as DACA recipients are relatively younger and healthier than the general population, based on USCIS data showing an average age of 29 years.[73] We seek comment on any estimates or data sources we could use to provide quantitative estimates for the associated effects, including benefit to these individuals.

The proposed changes to 45 CFR 152.2 and 155.20 would make DACA recipients eligible to enroll in a QHP through an Exchange, and for APTC and CSRs, if otherwise eligible. Similar to BHP eligibility, there may be a slight effect on the States' individual market risk pool. In addition, the proposals to modify the definition of ''lawfully present'' discussed in section II.C.2. of this proposed rule would reduce burden on Exchanges, BHPs, and State Medicaid and CHIP agencies by allowing the agencies to more frequently verify an individual's status with a trusted data source and to not have to request additional information from consumers. This change would promote simplicity and consistency in program administration, and further program

[67] The postpartum period for pregnant individuals includes the 60-day period described in sections 1903(v)(4)(A)(i) and 2107(e)(1)(O) of the Act or the extended 12-month period described in sections 1902(e)(16) and 2107(e)(1)(J) of the Act in States that have elected that option.

[68] National Vital Statistics Report, CDC, January 31, 2023. *https://www.cdc.gov/nchs/products/nvsr.htm.*

[69] The States and territories that have elected the CHIPRA 214 option to cover pregnant women are: American Samoa, Arkansas, California, the CNMI, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Maine, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, South Carolina, U.S. Virgin Islands, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. See *https://www.medicaid.gov/medicaid/enrollment-strategies/medicaid-and-chip-coverage-lawfully-residing-children-pregnant-women.*

[70] These estimates are based on DHS's current policy in alignment with the ruling in *Texas* v. *United States,* 50 F.4th 498 (5th Cir. 2022), whereby DHS continues to accept the filing of both initial and renewal DACA applications, but is only processing renewal requests.

[71] Count of Active DACA Recipients by Month of Current DACA Expiration as of September 30, 2022. U.S. Citizenship and Immigration Services. *https://www.uscis.gov/sites/default/files/document/data/Active_DACA_Recipients_Sept_FY22_qtr4.pdf.*

[72] Tracking DACA Recipients' Access to Health Care, National Immigration Law Center, 2022. *https://www.nilc.org/wp-content/uploads/2022/06/NILC_DACA-Report_060122.pdf.*

[73] USCIS. Count of Active DACA Recipients by Month of Current DACA Expiration as of September 30, 2022. *https://www.uscis.gov/sites/default/files/document/data/Active_DACA_Recipients_Sept_FY22_qtr4.pdf.*

integrity resulting from the increased reliance on a trusted Federal data source. We seek comment on estimates or data sources we could use to provide quantitative estimates for this benefit.

In addition, increased access to health coverage for DACA recipients and other noncitizens impacted by the proposals in this rule would advance racial justice and health equity, which in turn may decrease costs for emergency medical expenditures. Further, the proposals in this rule would improve the health and well-being of many individuals that are currently without coverage, as having health insurance makes individuals healthier. Individuals without insurance are less likely to receive preventative or routine health screenings and may delay necessary medical care, incurring high costs and debts. In addition to the improvement of health outcomes, these individuals would be more productive and better able to contribute economically, as studies have found that workers with health insurance are estimated to miss 77 percent fewer workdays than uninsured workers.[74]

We seek comment on these effects and any other potential benefits that may result from the proposals in this rule.

1. Costs

The proposed changes to 42 CFR 435.4 and 457.320(c) would treat DACA recipients the same as other recipients of deferred action, who are included in the definition of ''lawfully present'' used to determine eligibility for Medicaid and CHIP under section 214 of CHIPRA. We note that generally, CMS has received feedback from some States that cover lawfully present individuals under age 21 and pregnant individuals that such States are supportive of a change to include DACA recipients in the definition of lawfully present. The costs to States and the Federal Government as a result of information collection changes associated with this proposal, which include initial system changes costs to develop and update each State's eligibility systems and verification processes and application processing costs to assist individuals with processing their applications, are discussed in sections IV.C.1. and IV.C.3. of this proposed rule, and the costs to consumers as a result of increased information collections associated with this proposal, which include applying for Medicaid or CHIP and submitting additional information to verify their lawful presence, if necessary, are discussed in section IV.C.4. of this proposed rule. These proposals would also increase Federal and State expenditures for States that elect the CHIPRA 214 option due to costs associated with Medicaid and CHIP coverage for newly eligible beneficiaries.

We discuss how we calculated our Medicaid and CHIP enrollment estimates earlier in this RIA. To calculate costs, we estimated the per enrollee costs in Medicaid for pregnant individuals and children based on the projections in the President's Fiscal Year (FY) 2024 Budget. For 2024, we projected annual costs per enrollee would be about $15,700 for pregnant individuals and about $4,900 for children. These costs are projected to increase annually as the price and use of services increase. To calculate Federal versus State costs, we multiplied the total costs for each group by the FMAP for each State, with some minor adjustments to account for differences in FMAP for certain services.

Our estimates for Medicaid and CHIP expenditures as a result of the proposals in this rule, if finalized, are shown in Table 4. We seek comment on these estimates and the assumptions and methodology used to calculate them.

TABLE 4—MEDICAID/CHIP PROJECTED EXPENDITURES, FY 2024–2028

	2024	2025	2026	2027	2028
State Expenditures	$40,000,000	$45,000,000	$50,000,000	$45,000,000	$40,000,000
Federal Expenditures	60,000,000	85,000,000	80,000,000	80,000,000	75,000,000
Total Expenditures	100,000,000	130,000,000	130,000,000	125,000,000	115,000,000

States that are currently using only State funds to provide health benefits to DACA recipients are likely to see decreases in State expenditures due to this change, as Federal dollars would be available to help cover this population for the first time.[75]

The proposed changes to 42 CFR 600.5 would treat DACA recipients the same as other recipients of deferred action, who are lawfully present under the definition used to determine eligibility for BHP, if otherwise eligible. The costs to States as a result of information collection changes associated with this proposal, which include initial system changes costs to develop and update each State's eligibility systems and verification processes and application processing costs to assist individuals with processing their applications, are discussed in sections IV.C.2. and IV.C.3. of this proposed rule, and the costs to consumers as a result of increased information collections associated with this proposal, which include applying for BHP and submitting additional information to verify their lawful presence, if necessary, are discussed in section IV.C.4. of this proposed rule. States operating a BHP may choose to provide additional outreach to the newly eligible. With a potential increase in number of enrollees, there may be an increase in Federal payments to a State's BHP trust fund.

We discuss how we calculated our BHP enrollment estimates earlier in this RIA. BHP funding from the Federal Government to State BHP trust funds is based on the amount of PTC enrollees would receive had they been enrolled in Exchange coverage. Therefore, to calculate costs, we used data from USCIS to determine the average age of a DACA recipient, which is 29, and we used PTC data to determine the average PTC for a 29-year-old, which is estimated to be $289 per month, and multiplied this by 12 months per year and by the projected number of enrollees per year to arrive at annual costs. Our estimates for BHP expenditures as a result of the proposals in this rule, if finalized, are shown in Table 5. We seek comment on these estimates and the assumptions and methodology used to calculate them.

[74] Dizioli, Allan and Pinheiro, Roberto. (2016). *Health Insurance as a Productive Factor.* Labour Economics. *https://doi.org/10.1016/j.labeco.2016.03.002.*

[75] As of December 2022, those States are California, the District of Columbia, Illinois, Maine, Massachusetts, New York, Oregon, Rhode Island, Vermont, and Washington. ''Health Coverage and Care of Immigrants,'' Kaiser Family Foundation, *https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-and-care-of-immigrants/.* Accessed March 2, 2023.

TABLE 5—BHP PROJECTED EXPENDITURES, FY 2024–2028

	2024	2025	2026	2027	2028
Expenditures	$15,000,000	$20,000,000	$15,000,000	$15,000,000	$15,000,000

The proposed changes to 45 CFR 152.2 and 155.20 would make DACA recipients eligible to enroll in a QHP through an Exchange, and for PTC and CSRs, if otherwise eligible. The costs to State Exchanges and the Federal Government as a result of information collection changes, which include initial system changes costs to develop and update each State's eligibility systems and verification processes and application processing costs to assist individuals with processing their applications, are discussed in section IV.C.3. of this proposed rule and the costs to consumers as a result of increased information collections associated with this proposal, which include applying for Exchange coverage and submitting additional information to verify their lawful presence, if necessary, are discussed in section IV.C.4. of this proposed rule. This proposed change may result in slightly increased traffic during open enrollment for the 2024 coverage years and beyond. Further, there may be a potential administrative burden on States and regulated entities that choose to conduct outreach and education efforts to ensure that consumers, agents, brokers, and assisters are aware of the changes proposed in this rule associated with the updated definitions of ''lawfully present'' for the purposes of the Exchanges and BHP and ''lawfully residing'' for the purposes of Medicaid and CHIP under the CHIPRA 214 option. We anticipate that the costs of this additional outreach and education would be minimal and seek comment on that assumption.

Whether the effects discussed above as ''costs'' are appropriately categorized depends on societal resource use. To the extent that resources (for example, labor and equipment associated with provision of medical care) are used differently in the presence of the proposed rule than in its absence, then the estimated effects are indeed costs. If resource use remains the same but different entities in society pay for them, then the estimated effects would instead be transfers. We request comment that would facilitate refinement of the effect categorization.

2. Transfers

Transfers are payments between persons or groups that do not affect the total resources available to society. They are a benefit to recipients and a cost to payers. The proposals at 45 CFR 152.2 and 155.20 would generate a transfer from the Federal Government to consumers in the form of increased PTC payments due to individuals who would be eligible for Exchange coverage and APTC, if the proposals in this rule are finalized.

We discuss how we calculated our Exchange enrollment estimates earlier in this RIA. To calculate costs, we used data from USCIS to determine the average age of a DACA recipient, which is 29. For 2024, the average PTC for a 29-year-old is estimated to be $289 per month. We multiplied this by 12 months per FY and by the number of enrollees to arrive at annual costs.[76] These costs are projected to increase using the trends assumed in the President's FY 2024 Budget.

We present these estimates in Table 6 and seek comment on the estimates and the assumptions and methodology used to calculate them.

TABLE 6—EXCHANGE PROJECTED EXPENDITURES, FY 2024–2028

	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
PTC Expenditures	$300,000,000	$390,000,000	$320,000,000	$310,000,000	$320,000,000

3. Regulatory Review Cost Estimation

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we estimate the cost associated with regulatory review. There is uncertainty involved with accurately quantifying the number of entities that would review the rule. However, for the purposes of this proposed rule, we assume that medical and health service managers would review this rule. Therefore, at least one person from each of the three State Exchanges on the Federal platform would review for applicability, and at least three people from each of the 18 State Exchanges would review, for a total of 57 individuals for the Exchanges. For Medicaid, CHIP, and BHP, we assume at least one person from every State agency and territory would review for applicability; at least two additional people from the 35 States, the District of Columbia, and three territories that have elected the CHIPRA 214 option would review; and at least one person from the two States with BHPs would also review, for a total of 134 individuals for Medicaid, CHIP, and BHP. Combined with reviewers for the Exchanges, this results in an estimate of 191 reviewers. We acknowledge that this assumption may understate or overstate the costs of reviewing this rule. We welcome any comments on the approach in estimating the number of entities which would review this proposed rule.

Using the wage information from the Bureau of Labor Statistics for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is $115.22 per hour, including overhead and fringe benefits (*https://www.bls.gov/oes/current/oes_nat.htm*). Assuming an average reading speed of 250 words per minute, we estimate that it would take approximately 1.4 hours for each individual to review the entire proposed rule (approximately 21,000 words/250 words per minute = 84 minutes). Therefore, we estimate that the total one-time cost of reviewing this regulation is approximately $30,910 ([$115.22 × 1.4 hours per individual review] × 191 reviewers).

[76] The estimate for FY 2024 only includes 9 months, assuming these individuals will enroll in a QHP and receive APTC beginning January 1, 2024. It is possible that individuals impacted by this rule could enroll in coverage effective December 1, 2023, and receive APTC beginning on that date, but we do not have a reliable way to estimate how many individuals would enroll with that coverage effective date.

D. Regulatory Alternatives Considered

With regard to the changes to CMS definitions of ''lawfully present'' proposed in this rule, we considered proposing to update the current regulatory definition at 45 CFR 152.2 that applies to Exchanges and BHPs, and separately updating our SHO guidance that applies to Medicaid and CHIP in States that elect the CHIPRA 214 option, instead of proposing to define a definition of lawfully present at 42 CFR 435.4. While this approach would have had a similar impact to the changes proposed in this rule, we are of the view that the proposed definition of lawfully present that applies to Medicaid and CHIP eligibility in States that elect the CHIPRA 214 option promotes transparency by giving the public an opportunity to review and comment on these proposals. We are also of the view that this approach promotes transparency and lessens administrative burden by making key eligibility information more accessible to State Medicaid and CHIP agencies that are tasked with applying these definitions when determining consumers' eligibility for their programs. Finally, we believe that proposing a definition of ''lawfully present'' in regulation, rather than maintaining a definition in guidance, provides a greater degree of stability for the individual beneficiaries and State agencies that rely on this definition.

In developing this rule, we also considered not proposing the technical and clarifying changes to CMS's definitions of ''lawfully present,'' discussed in section II.C.2. of this proposed rule, as these changes are expected to impact fewer individuals than the proposal to treat DACA recipients the same as other recipients of deferred action. However, in our comprehensive review of current CMS definitions of ''lawfully present,'' we determined that the proposed changes discussed in section II.C.2. of this proposed rule would simplify our eligibility verification processes and increase efficiencies for individuals seeking health coverage and State and Federal entities administrating insurance affordability programs. Additionally, the small number of individuals included in the proposed eligibility categories would benefit from increased access to health coverage and insurance affordability programs.

E. Accounting Statement and Table

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf*), we have prepared an accounting statement in Table 7 showing the classification of the impact associated with the provisions of this proposed rule. We prepared these impact estimates utilizing a baseline of ''no action,'' comparing the effect of the proposals against not proposing the rule at all.

This proposed rule proposes standards for programs that would have numerous effects, including allowing DACA recipients to be treated the same as other deferred action recipients for specific health insurance affordability programs, and increasing access to affordable health insurance coverage. The effects in Table 7 reflect qualitative assessment of impacts and estimated direct monetary costs and transfers resulting from the provisions of this proposed rule for the Federal Government, State Exchanges, BHPs, Medicaid and CHIP agencies, and consumers.

TABLE 7—ACCOUNTING TABLE

Benefits:

Qualitative:

- Additional enrollment in Medicaid and CHIP, anticipated to be 13,000 individuals in 2024, 11,000 in 2025, 9,000 in 2026, 8,000 in 2027, and 6,000 in 2028 due to the proposals in this rule.
- Additional enrollment in the BHP, anticipated to be 4,000 individuals in 2024–2026 and 5,000 individuals in 2027–2028.
- Additional enrollment in the Exchanges, which would be subsidized depending on individuals' household incomes, anticipated to be 112,000 in 2024, 114,0000 in 2025, 116,000 in 2026, 117,000 in 2027, and 119,000 in 2028.
- Increased access to health coverage for DACA recipients and certain other noncitizens, which would advance racial justice and health equity, which in turn may also decrease costs for emergency medical expenditures.
- Improved health and well-being of many DACA recipients and certain other noncitizens currently without health care coverage.
- Greater economic contribution and productivity of DACA recipients and certain other noncitizens from improving their health outcomes.
- Reduced burden on Exchanges, BHPs, and Medicaid and CHIP agencies to determine applicants' immigration statuses.

Costs:	Estimate	Year dollar	Discount rate	Period covered
Annualized Monetized ($/year)	$109.68 Million	2023	7 percent	2023–2027
	$112.21 Million	2023	3 percent	2023–2027

Quantitative:

- Increased State Medicaid and CHIP expenditures of $40 million in 2024, $45 million in 2025, $50 million in 2026, and $45 million in 2027 due to increased enrollment as a result of the proposed changes to the definition of ''lawfully residing'' for purposes of Medicaid and CHIP under the CHIPRA 214 option.
- Increased Federal Medicaid and CHIP expenditures of $60 million in 2024, $85 million in 2025, $80 million in 2026, and $80 million in 2027 due to increased enrollment as a result of the proposed changes to the definition of ''lawfully residing'' for purposes of Medicaid and CHIP under the CHIPRA 214 option.
- Increased Federal BHP expenditures of $15 million in 2024, $20 million in 2025, $15 million in 2026 and $15 million in 2027 due to increased enrollment as a result of proposed changes to the definition of ''lawfully present'' for purposes of a BHP.
- Initial system changes costs estimated at $183,914 for States and $183,915 for the Federal Government in 2023 to develop and code changes to each State's eligibility systems and verification processes to include the categories of noncitizens impacted by this proposed rule with respect to Medicaid and CHIP eligibility.
- System changes costs estimated at $18,863 in 2023 for States to develop and code changes to their eligibility systems and verification processes to include the categories of noncitizens impacted by this proposed rule with respect to BHP eligibility.
- System changes costs estimated at $169,767 for State Exchanges and $9,432 for the Federal Government in 2023 to develop and code changes to each Exchange's eligibility systems and verification processes to include the categories of noncitizens impacted by this proposed rule with respect to Exchange and Exchange-related subsidy eligibility.
- Application processing costs estimated at $859,140 for States and $728,660 for the Federal Government per year starting in 2024 to assist individuals impacted by this proposed rule with processing their applications.

TABLE 7—ACCOUNTING TABLE—CONTINUED

- Costs to individuals impacted by the proposals in this rule of $3,375,730 per year starting in 2024 to apply for Medicaid, CHIP, BHP, or Exchange health coverage, including costs to submit additional information to verify their lawful presence status if it is unable to be verified electronically through the application.

Qualitative:

- Potential administrative burden on States and regulated entities that choose to conduct increased education and outreach related to the updated definitions of ''lawfully present'' for the purposes of the Exchanges and BHP and ''lawfully residing'' for the purposes of Medicaid and CHIP under the CHIPRA 214 option.

Transfers:	Estimate	Year dollar	Discount rate	Period covered
Annualized Monetized ($/year)	$255.00 Million	2023	7 percent	2023–2027
	$260.15 Million	2023	3 percent	2023–2027

Quantitative:

- Increased PTC expenditures from the Federal Government to individuals of $300 million in 2024, $390 million in 2025, $320 million in 2026, and $310 million in 2027 due to increased enrollment and subsidy eligibility as a result of the proposed changes to the definition of ''lawfully present'' for purposes of the Exchanges.

F. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimate that small businesses, nonprofit organizations, and small governmental jurisdictions are small entities as that term is used in the RFA. The great majority of hospitals and most other health care providers and suppliers are small entities, either because they are nonprofit organizations or they meet the Small Business Administration (SBA) definition of a small business (having revenues of less than $8.0 million to $41.5 million in any 1 year). Individuals and States are not included in the definition of a small entity.

For purposes of the RFA, we believe that health insurance issuers and group health plans would be classified under the North American Industry Classification System (NAICS) code 524114 (Direct Health and Medical Insurance Carriers). According to SBA size standards, entities with average annual receipts of $47 million or less would be considered small entities for these NAICS codes. Issuers could possibly be classified in 621491 (HMO Medical Centers) and, if this is the case, the SBA size standard would be $44.5 million or less.[77] We believe that few, if any, insurance companies underwriting comprehensive health insurance policies (in contrast, for example, to travel insurance policies or dental discount policies) fall below these size thresholds. Based on data from medical loss ratio (MLR) annual report submissions for the 2021 MLR reporting year, approximately 78 out of 480 issuers of health insurance coverage nationwide had total premium revenue of $44.5 million or less.[78] This estimate may overstate the actual number of small health insurance issuers that may be affected, since over 76 percent of these small issuers belong to larger holding groups, and many, if not all, of these small companies are likely to have non-health lines of business that will result in their revenues exceeding $44.5 million.

In this proposed rule, we propose standards for eligibility for Exchange enrollment and APTC and CSRs, BHP, and Medicaid and CHIP under the CHIPRA 214 option. Because we believe that insurance firms offering comprehensive health insurance policies generally exceed the size thresholds for ''small entities'' established by the SBA, we do not believe that an initial regulatory flexibility analysis is required for such firms. Furthermore, the proposals related to Medicaid and CHIP would impact State governments, but as States do not constitute small entities under the statutory definition, an impact analysis for these provisions is not required under the RFA.

As its measure of significant economic impact on a substantial number of small entities, HHS uses a change in revenue of more than 3 to 5 percent. We do not believe that this threshold will be reached by the requirements in this proposed rule. Therefore, the Secretary has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. While this rule is not subject to section 1102 of the Act, we have determined that this proposed rule would not adversely affect small rural hospitals. Therefore, the Secretary has certified that this proposed rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

G. Unfunded Mandates Reform Act (UMRA)

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2023, that threshold is approximately $177 million. Based on information currently available, we expect the combined impact on State, local, or tribal governments and the private sector does not meet the UMRA definition of unfunded mandate.

H. Federalism

Executive Order 13132 establishes certain requirements that an agency

[77] *https://www.sba.gov/document/support--table-size-standards.*

[78] Available at *https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.html.*

must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications.

While developing this rule, we attempted to balance States' interests in running their own Exchanges, BHPs, and Medicaid and CHIP programs with CMS's interest in establishing a consistent definition of ''lawfully present'' for use in eligibility determinations across CMS programs. We also attempted to balance States' interests with the overall goals of the ACA, as well as the goals of DHS's DACA policy and the provisions of the DHS DACA Final Rule. By doing so, we complied with the requirements of E.O. 13132.

In our view, while the provisions of this proposed rule related to the Exchanges (45 CFR 152.2 and 155.20) and the BHP (42 CFR 600.5) would not impose substantial direct requirement costs on State and local governments, this regulation has federalism implications due to potential direct effects on the distribution of power and responsibilities among the State and Federal governments relating to determining standards related to eligibility for health insurance through Exchanges and BHPs. For example, State Exchanges and BHPs would be required to update their eligibility systems in order to accurately evaluate applicants' lawful presence, and State Exchanges and BHPs may wish to conduct outreach to groups such as DACA recipients who would newly be considered lawfully present under the rule. By our estimate, these requirements do not impose substantial direct costs on States. In addition, we anticipate that these federalism implications are mitigated because States have the option to operate their own Exchanges and the optional BHP. After establishment, Exchanges must be financially self-sustaining, with revenue sources at the discretion of the State. Current State Exchanges charge user fees to issuers. As indicated earlier, a BHP is optional for States. Therefore, if implemented in a State, it provides access to a pool of Federal funding that would not otherwise be available to the State. Accordingly, federalism implications are mitigated if not entirely eliminated as it pertains to a BHP.

Additionally, the proposals in this rule related to Medicaid and CHIP may impose substantial direct costs on State governments. The Medicaid and CHIP policies also have federalism implications by creating a change in eligibility that may not align with a State's position. However, we believe this effect is mitigated because the eligibility change is under an option that States have the discretion to adopt and maintain. In addition, Medicaid and CHIP costs are shared between the Federal Government and States, further mitigating the impacts of compliance with these new requirements. As such, the costs to States by our estimate do not rise to the level of specified thresholds for significant burden to States.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on April 6, 2023.

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 457

Administrative practice and procedure, Grant programs—health, Health insurance, Reporting and recordkeeping requirements.

42 CFR Part 600

Administrative practice and procedure, Health care, health insurance, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

45 CFR Part 152

Administrative practice and procedure, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

45 CFR Part 155

Administrative practice and procedure, Advertising, Aged, Brokers, Citizenship and naturalization, Civil rights, Conflicts of interests, Consumer protection, Grant programs—health, Grants administration, Health care, Health insurance, Health maintenance organizations (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs—health, Medicaid, Organization and functions (Government agencies), Public assistance programs, Reporting and recordkeeping requirements, Sex discrimination, State and local governments, Taxes, Technical assistance, Women, Youth.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below.

Title 42—Public Health

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

■ 1. The authority citation for part 435 continues to read as follows:

Authority: 42 U.S.C. 1302.

■ 2. Part 435 is amended by—
■ a. Removing all instances of the words ''non-citizen'' and ''non-citizens'' and adding in their places the words ''noncitizen'' and ''noncitizens'', respectively; and
■ b. Removing all instances of the word ''Non-citizen'' and adding in its place the word ''Noncitizen''; and
■ c. Removing all instances of the words ''Qualified Non-Citizen'' and adding in its place the words ''qualified noncitizen''.
■ 3. Section 435.4 is amended by adding the definitions of ''Lawfully present'' and ''Lawfully residing'' in alphabetical order to read as follows:

§ 435.4 Definitions and use of terms.

* * * * *

Lawfully present means a noncitizen who—

(1) Is a qualified noncitizen;

(2) Is in a valid nonimmigrant status, as defined in 8 U.S.C. 1101(a)(15) or otherwise under the immigration laws (as defined in 8 U.S.C. 1101(a)(17));

(3) Is paroled into the United States in accordance with 8 U.S.C. 1182(d)(5) for less than 1 year, except for a noncitizen paroled for prosecution, for deferred inspection or pending removal proceedings;

(4) Is granted temporary resident status in accordance with 8 U.S.C. 1160 or 1255a;

(5) Is granted Temporary Protected Status (TPS) in accordance with 8 U.S.C. 1254a;

(6) Is granted employment authorization under 8 CFR 274a.12(c);

(7) Is a Family Unity beneficiary in accordance with section 301 of Public Law 101–649 as amended; or section 1504 of the LIFE Act Amendments of 2000, title XV of H.R. 5666, enacted by reference in Public Law 106–554 (see section 1504 of App. D to Pub. L. 106–554);

(8) Is covered by Deferred Enforced Departure (DED) in accordance with a decision made by the President;

(9) Is granted deferred action, including, but not limited to individuals granted deferred action under 8 CFR 236.22;

(10) Has a pending application for adjustment of status;

(11)(i) Has a pending application for asylum under 8 U.S.C. 1158, for

withholding of removal under 8 U.S.C. 1231, or for relief under the Convention Against Torture; and

(ii) Is under the age of 14;

(12) Has been granted withholding of removal under the Convention Against Torture;

(13) Has a pending or approved petition for Special Immigrant Juvenile classification as described in 8 U.S.C. 1101(a)(27)(J);

(14) Is lawfully present in American Samoa under the immigration laws of American Samoa; or

(15) Is a Commonwealth of the Northern Mariana Islands (CNMI) resident as described in 48 U.S.C. 1806(e)(6).

Lawfully residing means an individual who is a noncitizen who is considered lawfully present under this section and satisfies the State residency requirements, consistent with § 435.403.

* * * * *

■ 4. Section 435.12 is added to read as follows:

§ 435.12 Severability.

(a) Any part of the definitions of ''lawfully present'' and ''lawfully residing'' in § 435.4 held to be invalid or unenforceable, including as applied to any person or circumstance, shall be construed so as to continue to give the maximum effect to the provision as permitted by law, along with other provisions not found invalid or unenforceable, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this subpart is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this subpart and shall not affect the remainder thereof.

(b) The provisions in § 435.4 with respect to the definitions of ''lawfully present'' and ''lawfully residing'' are intended to be severable from one another and from the definitions of ''lawfully present'' established at 42 CFR 600.5 and 45 CFR 155.20.

PART 457—ALLOTMENTS AND GRANTS TO STATES

■ 5. The authority citation for part 457 continues to read as follows:

Authority: 42 U.S.C. 1302.

■ 6. Section 457.320 is amended by adding paragraph (c) to read as follows:

§ 457.320 Other eligibility standards.

* * * * *

(c) *Definitions.* (1) *Lawfully present* has the meaning assigned at § 435.4 of this chapter.

(2) *Lawfully residing* has the meaning assigned at § 435.4 of this chapter, except that State residency requirements must be consistent with paragraph (e) of this section.

* * * * *

PART 600—ADMINISTRATION, ELIGIBILITY, ESSENTIAL HEALTH BENEFITS, PERFORMANCE STANDARDS, SERVICE DELIVERY REQUIREMENTS, PREMIUM AND COST SHARING, ALLOTMENTS, AND RECONCILIATION

■ 7. The authority citation for part 600 continues to read as follows:

Authority: Section 1331 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148, 124 Stat. 119), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, 124 Stat 1029).

■ 8. Section 600.5 is amended by revising the definition of ''Lawfully present'' to read as follows:

§ 600.5 Definitions and use of terms.

* * * * *

Lawfully present has the meaning given in 45 CFR 155.20.

* * * * *

For the reasons set forth in the preamble, under the authority at 5 U.S.C. 301, the Department of Health and Human Services proposes to amend 45 CFR subtitle A, subchapter B, as set forth below.

Title 45—Public Welfare

PART 152—PRE-EXISTING CONDITION INSURANCE PLAN PROGRAM

■ 9. The authority citation for part 152 continues to read as follows:

Authority: Sec. 1101 of the Patient Protection and Affordable Care Act (Pub. L. 111–148).

■ 10. Section 152.2 is amended by revising the definition of ''Lawfully present'' to read as follows:

§ 152.2 Definitions.

* * * * *

Lawfully present has the meaning given the term at 45 CFR 155.20.

* * * * *

PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

■ 11. The authority citation for part 155 continues to read as follows:

Authority: 42 U.S.C. 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, and 18081–18083.

■ 12. Section 155.20 is amended by revising the definition of ''Lawfully present'' to read as follows:

§ 155.20 Definitions.

* * * * *

Lawfully present means a noncitizen who—

(1) Is a qualified noncitizen as defined at 42 CFR 435.4;

(2) Is in a valid nonimmigrant status, as defined in 8 U.S.C. 1101(a)(15) or otherwise under the immigration laws (as defined in 8 U.S.C. 1101(a)(17));

(3) Is paroled into the United States in accordance with 8 U.S.C. 1182(d)(5) for less than 1 year, except for a noncitizen paroled for prosecution, for deferred inspection or pending removal proceedings;

(4) Is granted temporary resident status in accordance with 8 U.S.C. 1160 or 1255a;

(5) Is granted Temporary Protected Status (TPS) in accordance with 8 U.S.C. 1254a;

(6) Is granted employment authorization under 8 CFR 274a.12(c);

(7) Is a Family Unity beneficiary in accordance with section 301 of Public Law 101–649 as amended; or section 1504 of the LIFE Act Amendments of 2000, title XV of H.R. 5666, enacted by reference in Public Law 106–554 (see section 1504 of App. D to Pub. L. 106–554);

(8) Is covered by Deferred Enforced Departure (DED) in accordance with a decision made by the President;

(9) Is granted deferred action, including but not limited to individuals granted deferred action under 8 CFR 236.22;

(10) Has a pending application for adjustment of status;

(11)(i) Has a pending application for asylum under 8 U.S.C. 1158, for withholding of removal under 8 U.S.C. 1231, or for relief under the Convention Against Torture; and

(ii) Is under the age of 14;

(12) Has been granted withholding of removal under the Convention Against Torture; or (13) Has a pending or approved petition for Special Immigrant Juvenile classification as described in 8 U.S.C. 1101(a)(27)(J).

* * * * *

■ 13. Section 155.30 is added to read as follows:

§ 155.30 Severability.

(a) Any part of the definition of ''lawfully present'' in § 155.20 held to be invalid or unenforceable, including as applied to any person or circumstance, shall be construed so as to continue to give the maximum effect to the provision as permitted by law,

along with other provisions not found invalid or unenforceable, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this subpart is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this subpart and shall not affect the remainder thereof.

(b) The provisions in § 155.20 with respect to the definition of ''lawfully present'' are intended to be severable from one another and from the definitions of ''lawfully present'' and ''lawfully residing'' that are established or cross-referenced in 42 CFR 435.4 and 457.320.

Dated: April 19, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–08635 Filed 4–24–23; 4:15 pm]

BILLING CODE 4150–28–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, 173, 178, and 180

[Docket No. PHMSA–2020–0102 (HM–219D); Notice No. 2023–06]

RIN 2137–AF49

Hazardous Materials: Adoption of Miscellaneous Petitions and Updating Regulatory Requirements

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On March 3, 2023, PHMSA published a notice of proposed rulemaking (NPRM), entitled ''Hazardous Materials: Adoption of Miscellaneous Petitions and Updating Regulatory Requirements (HM–219D),'' proposing changes to update, clarify, improve the safety of, or streamline various regulatory requirements. In response to a request for an extension of the comment period submitted by Worthington Industries, PHMSA is extending the comment period for the HM–219D NPRM for an additional 45 days. Comments to the HM–219D NPRM will now be due by June 16, 2023.

DATES: Comments should be received on or before June 16, 2023. To the extent possible, PHMSA will consider late-filed comments.

ADDRESSES: Comments should reference Docket No. PHMSA–2020–0102 (HM–219D) and may be submitted in the following ways:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Dockets Management System, U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* To the Docket Management System: Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

Instructions: All submissions must include the Agency name and Docket Number (PHMSA–2020–0102) for this notice at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS) and will include any personal information you provide.

Docket: For access to the dockets to read associated documents or comments received, go to *https://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES**).

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its process. DOT posts these comments without change, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.dot.gov/privacy.*

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA; 5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN'' for ''proprietary information.'' Submissions containing CBI should be sent to Steven Andrews, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary that PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Steven Andrews, Standards and Rulemaking Division, 202–366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

PHMSA published the HM–219D NPRM [1] on March 3, 2023, in response to 18 petitions for rulemaking submitted by the regulated community between May 2018 and October 2020 that requested PHMSA address a variety of provisions, including but not limited to those pertaining to packaging, hazard communication, and the incorporation by reference of certain documents. These proposed revisions maintain or enhance the existing high level of safety under the Hazardous Materials Regulations while providing clarity and appropriate regulatory flexibility in the transport of hazardous materials. On April 6, 2023, PHMSA received a comment to the HM–219D NPRM docket submitted by Worthington Industries requesting that PHMSA rescind certain elements of the HM–219D NPRM or (in the alternative) extend the comment period for responding to the NPRM.

II. Comment Period Extension

PHMSA initially provided a 60-day comment period for the HM–219D NPRM, which closes on May 2, 2023. In response to a request to extend the comment period from Worthington Industries, PHMSA is extending the comment period for an additional 45 days. The comment period will now close on June 16, 2023. This extension provides the public with an additional 45 days and should provide adequate opportunity for the public to submit comments; however, PHMSA may at its discretion extend the comment period further if necessary. To the extent possible, PHMSA will also consider late-filed comments.

[1] See *Hazardous Materials: Adoption of Miscellaneous Petitions and Updating Regulatory Requirements NPRM* [88 FR 13624] at *https://www.federalregister.gov/documents/2023/03/03/2023-03366/hazardous-materials-adoption-of-miscellaneous-petitions-and-updating-regulatory-requirements.*

Issued in Washington, DC, on April 20, 2023, under authority delegated in 49 CFR part 1.97.

William S. Schoonover,

Associate Administrator of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2023–08724 Filed 4–25–23; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 673

[Docket No. FTA–2023–0007]

RIN 2132–AB44

Public Transportation Agency Safety Plans

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Federal Transit Administration (FTA) is proposing new requirements for Public Transportation Agency Safety Plans (PTASP) that include revised requirements for Agency Safety Plans (ASP), safety committees, cooperation with frontline transit worker representatives in the development of ASPs, safety risk reduction programs, safety performance targets, de-escalation training for certain transit workers, and addressing infectious diseases through the Safety Management System (SMS) process. FTA also proposes revisions to the regulation to coordinate and align with other FTA programs and safety rulemakings.

DATES: Comments should be filed by June 26, 2023. FTA will consider comments received after that date to the extent practicable.

ADDRESSES: You may send comments, identified by docket number FTA–2023–0007, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery/Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For internet access to the docket to read background documents and comments received, go to *https://www.regulations.gov.* Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave. SE, Docket Operations, M–30, 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.

FOR FURTHER INFORMATION CONTACT: For program matters, contact Stewart Mader, Office of Transit Safety and Oversight, (202) 366–9677 or *stewart.mader@dot.gov.* For legal matters, contact Heather Ueyama, Office of Chief Counsel, (202) 366–7374 or *heather.ueyama@dot.gov.*

Office hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

A. Purpose of Regulatory Action

This Notice of Proposed Rulemaking (NPRM) proposes to amend the Public Transportation Agency Safety Plans (PTASP) regulation at 49 CFR part 673 with new requirements that would incorporate explicit statutory changes in the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117–58; November 15, 2021). The Bipartisan Infrastructure Law amends FTA's safety program at 49 U.S.C. 5329(d) by adding to the PTASP requirements for public transportation systems that receive Federal financial assistance under 49 U.S.C. chapter 53 (chapter 53).

In response to these statutory changes, this NPRM proposes several revisions to the PTASP regulation, including requirements for the development, update, and approval of Agency Safety Plans (ASP); the establishment of a Safety Committee; cooperation with frontline transit worker representatives in the development of ASPs; the establishment of a safety risk reduction program for transit operations to improve safety by reducing the number and rates of safety events, injuries, and assaults on transit workers based on data submitted to the National Transit Database (NTD); the establishment of safety performance targets for risk reduction programs; the establishment of de-escalation training for certain transit workers; and the incorporation of guidelines from the CDC or a State health authority regarding exposure to infectious diseases into the agency's SMS processes. FTA also proposes revisions to 49 CFR part 673 based on coordination and alignment with other FTA programs and forthcoming safety rulemakings.

Prior to publishing this NPRM, FTA engaged in stakeholder outreach regarding the new Bipartisan Infrastructure Law PTASP requirements. In accordance with the Department of Transportation's Guidance on Communication with Parties outside of the Federal Executive Branch (Ex Parte Communications),[1] FTA has added a memorandum summarizing these communications to the docket for this rulemaking. Where FTA has incorporated stakeholder suggestions into its regulatory proposals, FTA discusses such suggestions in the corresponding sections below.

B. Statutory Authority

Congress directed FTA to establish a comprehensive Public Transportation Safety Program, one element of which is the requirement for PTASP, in the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141; July 6, 2012) (MAP–21), which was reauthorized by the Fixing America's Surface Transportation Act (Pub. L. 114–94; December 4, 2015). To implement the requirements of 49 U.S.C. 5329(d), FTA issued a final rule on July 19, 2018, that added part 673, ''Public Transportation Agency Safety Plans,'' to title 49 of the Code of Federal Regulations (83 FR 34418).

The Bipartisan Infrastructure Law continues the Public Transportation Safety Program and adds to the PTASP requirements for public transportation systems that receive Federal financial assistance under chapter 53.

[1] Available at: *https://www.transportation.gov/regulations/memorandum-secretarial-officers-and-heads-operating-administrations.*

The Bipartisan Infrastructure Law made several changes to 49 U.S.C. 5329(d). This proposed rule would revise portions of part 673 to incorporate these new requirements. The Bipartisan Infrastructure Law amended 49 U.S.C. 5329(d)(1)(B) to require that each recipient serving an urbanized area with a population of fewer than 200,000 (small urbanized area) develop its ASP in cooperation with frontline employee representatives.

In addition, the Bipartisan Infrastructure Law added several new requirements that apply to each recipient of Urbanized Area Formula Program funds under 49 U.S.C. 5307 (section 5307) that serves an urbanized area with a population of 200,000 or more (large urbanized area). The statute requires these agencies to undertake the following activities:

- Establish a Safety Committee that is convened by a joint labor-management process and consists of an equal number of (1) frontline employee representatives, selected by a labor organization representing the plurality of the frontline workforce employed by the recipient or, if applicable, a contractor to the recipient, to the extent frontline employees are represented by labor organizations; and (2) management representatives. (49 U.S.C. 5329(d)(5)). This Safety Committee has responsibility, at a minimum, for:
  - Approving the transit agency's ASP and any updates to the ASP before approval by the agency's Board of Directors or equivalent entity (49 U.S.C. 5329(d)(1)(A));
  - Setting safety performance targets for the safety risk reduction program using a three-year rolling average of the data submitted by the transit agency to the NTD (49 U.S.C. 5329(d)(4)(A));
  - Identifying and recommending risk-based mitigations or strategies necessary to reduce the likelihood and severity of consequences identified through the agency's safety risk assessment (49 U.S.C. 5329(d)(5)(A)(iii)(I));
  - Identifying mitigations or strategies that may be ineffective, inappropriate, or were not implemented as intended (49 U.S.C. 5329(d)(5)(A)(iii)(II)); and
  - Identifying safety deficiencies for purposes of continuous improvement (49 U.S.C. 5329(d)(5)(A)(iii)(III)).
- Establish a risk reduction program for transit operations to improve safety by reducing the number and rates of accidents, injuries, and assaults on transit workers based on data submitted to the NTD, including:
  - A reduction of vehicular and pedestrian accidents involving buses that includes measures to reduce visibility impairments for bus operators that contribute to accidents, including retrofits to buses in revenue service and specifications for future procurements that reduce visibility impairments; and
  - The mitigation of assaults on transit workers, including the deployment of assault mitigation infrastructure and technology on buses, including barriers to restrict the unwanted entry of individuals and objects into bus operator workstations when a risk analysis performed by the Safety Committee determines that such barriers or other measures would reduce assaults on and injuries to transit workers ((49 U.S.C. 5329(d)(1)(I)).
- Allocate not less than 0.75 percent of its section 5307 funds to safety-related projects eligible under section 5307 (safety set-aside). In the event the transit agency fails to meet a safety risk reduction program safety performance target:
  - Allocate the transit agency's safety set-aside in the following fiscal year to projects that are reasonably likely to assist the agency in meeting the target, including modifications to rolling stock and de-escalation training (49 U.S.C. 5329(d)(4)).
- Ensure the agency's comprehensive staff training program includes maintenance personnel and de-escalation training. (49 U.S.C. 5329(d)(1)(H)(ii)).

In addition, the Bipartisan Infrastructure Law requires that each agency's ASP address strategies to minimize exposure to infectious diseases, consistent with guidelines of the CDC or a State health authority (49 U.S.C. 5329(d)(1)(D)).

C. Questions About Confidential Close-Call/Near-Miss Transit Worker Safety Reporting Programs

This NPRM does not propose any new requirements related to transit worker safety reporting programs. Through voluntary review of ASPs and technical assistance provided by its PTASP Technical Assistance Center, FTA has observed that many transit agencies have incorporated mechanisms to allow for confidential close call/near-miss reporting as part of their transit worker safety reporting programs. FTA is interested in hearing from the transit industry and other interested stakeholders regarding any experience establishing confidential reporting methods for transit workers and would appreciate feedback to the following questions:

- Have transit agencies offered transit workers methods to submit confidential reports of near-misses or safety concerns?
  - If so, please share a brief summary of such methods, including how transit agencies ensure reports are submitted confidentially.
  - How many reports do such programs receive annually?
  - How has this reporting improved or not improved transit agencies' ability to manage safety risk?
  - What challenges, if any, have transit agencies encountered, including in protecting information to ensure reports remain confidential, and in taking action on reports that are redacted?
  - What has been the annual cost of operating such programs?
- Have transit agencies participated in a close-call or near-miss reporting program facilitated by a third party to protect the confidentiality of reporters?
  - If so, please share a brief summary of how the program works, including whether transit agencies receive only de-identified reports specific to the agency, or if de-identified reports are shared with all participants in the program.
  - How many reports do transit agencies receive annually?
  - How has this participation improved or not improved transit agencies' ability to manage safety risk?
  - What are the annual estimated costs for participation in such programs?
- If transit agencies do not have a confidential close-call or near-miss reporting program, have such agencies assessed the feasibility of establishing a program? What are the expected benefits and barriers that transit agencies have identified, if any?

Respondents may respond to any question and do not need to respond to all questions.

II. Section-by-Section Analysis

FTA proposes several terminology changes that would apply throughout part 673. FTA proposes to change the term ''agency'' to ''transit agency'' for clarity. FTA also proposes to replace the term ''employee'' with ''transit worker'' for consistency with the changes to section 673.5 discussed below. Similarly, where FTA incorporates Bipartisan Infrastructure Law requirements involving transit employees into the regulation, FTA uses the term ''transit worker.''

In addition, FTA proposes three terminology changes to ensure the regulatory language aligns with SMS terminology commonly used in the transit industry. FTA would:

- Replace the term ''risk'' with ''safety risk,''
- Replace the term ''mitigation'' with ''safety risk mitigation,'' and

• Replace the term ''consequence'' with ''potential consequence.''

Subpart A—General

1.1 Applicability

This section sets forth the applicability of the PTASP regulation. Currently, the regulation applies to any State, local governmental authority, and any other operator of a public transportation system that receives Federal financial assistance under 49 U.S.C. chapter 53. FTA has deferred applicability to operators that only receive Federal financial assistance under 49 U.S.C. 5310 or 5311, or both 49 U.S.C. 5310 and 5311.

Through guidance, FTA has consistently interpreted this provision to mean that the PTASP regulation applies to two categories of recipients: (1) section 5307 recipients; and (2) rail transit agencies. For consistency with this existing practice, FTA proposes revising section 673.1(b) to clarify that the exception for section 5310 and section 5311 recipients does not apply to operators of rail fixed guideway public transportation systems. Accordingly, this change clarifies FTA's existing practice that all rail transit agencies must meet the requirements of part 673 if they receive Federal financial assistance under chapter 53.

1.2 Definitions

This section sets forth the definitions of key terms used in the regulation. FTA proposes several changes to this section for clarity, as well as several changes related to Bipartisan Infrastructure Law requirements.

Amendments for Clarity

FTA proposes adding, amending, and deleting several definitions in section 673.5. These modifications provide greater clarity and are not intended to change the application of any existing requirements.

FTA would remove the definitions of ''accident,'' ''event,'' ''incident,'' ''occurrence,'' and ''serious injury'' from section 673.5. In their place, FTA would add a single term: ''safety event.'' This change is intended to simplify the classification of safety events.

FTA proposes to add a definition of ''emergency'' to clarify requirements related to emergency response and preparedness plans. This definition would mirror the statutory definition in 49 U.S.C. 5324.

FTA would replace the existing term ''Equivalent Authority'' with ''equivalent entity'' to conform with the statutory term used in 49 U.S.C. 5329(d)(1)(A).

FTA would add definitions for the terms ''near-miss'' and ''roadway'' to clarify new requirements that FTA is proposing to the regulation.

FTA proposes to add a definition of ''public transportation.'' This definition mirrors the statutory definition provided in 49 U.S.C. 5302. Similarly, FTA would add definitions of the terms ''potential consequence,'' ''recipient,'' ''direct recipient,'' and ''subrecipient'' for clarity. All of these terms are used frequently in the regulation, but they were not defined previously in this section.

FTA proposes to make minor edits to the definition of ''rail fixed guideway public transportation system'' for clarity.

FTA would modify the existing terms ''risk'' and ''risk mitigation'' by adding the word ''safety'' before each to ensure regulatory language aligns with SMS terminology commonly used in the transit industry.

FTA would modify the definition of ''Safety Management Policy,'' ''Safety Management System,'' and ''Safety Risk Management'' for clarity and to ensure regulatory language aligns with SMS terminology commonly used in the transit industry.

FTA would modify the definition of ''small public transportation provider'' to align with the definition of Tier II Provider in FTA's Transit Asset Management regulation (49 CFR 625). This is consistent with FTA's existing interpretation of small public transportation provider. FTA notes that certain transit agencies will meet the definition of both ''small public transportation provider'' and ''large urbanized area provider.'' This would occur if the small public transportation provider serves a large urbanized area. In such cases, the transit agency must meet all large urbanized area provider requirements, including establishing a Safety Committee and safety risk reduction program.

Finally, FTA would amend the definition of ''transit agency'' to clarify FTA's existing practice that PTASP applies only to rail transit agencies and section 5307 recipients and subrecipients, as discussed above.

Amendments Related to the Bipartisan Infrastructure Law

FTA proposes adding definitions to section 673.5 related to the new Bipartisan Infrastructure Law PTASP requirements.

The Bipartisan Infrastructure Law amended 49 U.S.C. 5302 to add a definition of ''assault on a transit worker.'' FTA would incorporate the statutory definition of this term into section 673.5 without change.

FTA proposes to add a definition of ''CDC,'' which relates to the statutory requirement in 49 U.S.C. 5329(d)(1)(D) about minimizing exposure to infectious diseases. In addition, FTA proposes to add definitions for the terms ''joint labor-management process,'' ''safety committee,'' and ''safety set aside.'' Each of these terms relates to Bipartisan Infrastructure Law requirements for Safety Committees and safety risk reduction programs.

Many of the Bipartisan Infrastructure Law PTASP requirements only apply to section 5307 recipients and subrecipients that serve an urbanized area with a population of 200,000 or more (large urbanized area). FTA proposes to capture this category of transit agencies by adding a new defined term to section 673.5: ''large urbanized area provider.'' For clarity, FTA also proposes to define the term ''urbanized area.'' The proposed definition mirrors how the term is defined in 49 U.S.C. 5302.

FTA would make a minor change to the definition of ''State Safety Oversight Agency'' to add a citation to the State Safety Oversight Agency (SSOA) inspection provision at 49 U.S.C. 5329(k), which was added by the Bipartisan Infrastructure Law.

Finally, FTA would add a definition of ''transit worker'' that includes employees, contractors, and volunteers working on behalf of the transit agency. This definition would ensure that transit worker-related requirements, such as training, will apply to volunteers, such as volunteer transit operators who are a crucial part of the staff at some transit agencies, especially in rural areas.

Subpart B—Safety Plans

673.11 General Requirements

This section establishes general PTASP requirements. FTA proposes revising section 673.11(a) to remove language about the initial regulatory deadline for establishing an ASP because the deadline has already passed. FTA also proposes to add the word ''State'' to clarify that States have a role in ASP development for certain small public transportation providers. This is a clarification that does not change any existing requirements.

The Bipartisan Infrastructure Law amended 49 U.S.C. 5329(d) to require that the Safety Committee of section 5307 recipients that serve a large urbanized area must approve the ASP and any updates to the ASP. Per statute, this approval must occur before the

transit agency's Board of Directors or equivalent entity approves the ASP or update. FTA proposes revising section 673.11(a)(1) to incorporate this statutory requirement. The requirement to obtain Safety Committee approval applies only to large urbanized area providers. For all other transit agencies, the existing requirement for Board or equivalent entity approval remains unchanged.

Section 673.11(a)(3) provides that ASPs must include safety performance targets based on the safety performance measures established under FTA's National Public Transportation Safety Plan (NSP). FTA proposes to clarify FTA's existing practice that the safety performance targets are set annually. FTA also proposes revising this section to clarify that performance targets for the safety risk reduction program under section 673.20 are required only for large urbanized providers.

FTA proposes revising section 673.11(a)(6) to add paragraph (ii) requiring rail transit agencies to include or incorporate by reference in their ASPs the policies and procedures regarding rail transit workers on the roadway. This requirement relates to FTA's forthcoming Roadway Worker Protection (RWP) proposed rule. This RWP proposal is responsive to National Transportation Safety Board (NTSB) recommendations related to roadway worker protection.

FTA also proposes revising section 673.11(a)(6) to add paragraph (iii) requiring rail transit agencies to include or incorporate by reference in their ASPs the policies and procedures to provide access to facilities and required data regarding the SSOA's risk-based inspection programs. This proposal relates to Bipartisan Infrastructure Law requirements regarding SSOA risk-based inspection programs at 49 U.S.C. 5329(k).

FTA proposes adding section 673.11(a)(7) to require large urbanized area providers to include in their ASP a safety risk reduction program that meets the requirements of section 673.20. Agencies may choose to document safety risk reduction program elements in the Safety Risk Management and Safety Assurance sections of their ASP.

FTA is not proposing any changes to 673.11(d), which requires a State to draft and certify an ASP for a small public transportation provider that is located in that State. However, FTA wants to make clear that a small public transportation provider may also be a large urbanized area provider and thus required to have an ASP with the attendant provisions, such as a Safety Committee and risk reduction program.

FTA proposes striking the current language at section 673.11(e) to remove reference to the ''System Safety Program Plan'' under part 659. The requirement to have a System Safety Program Plan has been replaced by the requirement to have an ASP, and FTA rescinded part 659 on February 7, 2022 (87 FR 6783). In response to this change, FTA would redesignate existing paragraph (f) as paragraph (e). In the new section 673.11(e), FTA proposes minor wording changes for clarity.

673.13 Certification of Compliance

This section sets forth certification requirements. FTA proposes revising section 673.13(a) to remove an outdated initial certification deadline and to clarify FTA's existing practice that a direct recipient or State's initial PTASP certification must occur by the start of operations. In addition, FTA proposes to revise section 673.13 to clarify that only direct recipients and States must certify compliance with part 673. This is not a change to FTA's current practice. FTA notes for clarity that subrecipients are not required to certify compliance with PTASP; direct recipients certify on behalf of their subrecipients.

673.17 Cooperation With Frontline Transit Worker Representatives

In a new section 673.17, FTA proposes requirements for transit agency cooperation with frontline transit worker representatives, as required by the Bipartisan Infrastructure Law. In section 673.17(a), FTA would incorporate the statutory requirement that a large urbanized area provider must establish a Safety Committee. Section 673.17(b) incorporates the statutory requirement that a transit agency that is not a large urbanized area provider must develop its ASP in cooperation with frontline transit worker representatives, as required by the Bipartisan Infrastructure Law. In this section, FTA also proposes that such providers must include or incorporate by reference in the ASP a description of how frontline transit worker representatives cooperate in the development and update of the ASP.

Subpart C—Safety Committee and Safety Risk Reduction Program

FTA proposes creating a new subpart C, ''Safety Committee and Safety Risk Reduction Program'' that incorporates Bipartisan Infrastructure Law requirements for Safety Committees and Safety Risk Reduction Programs.

673.19 Safety Committee

The Bipartisan Infrastructure Law requires that transit agencies serving a large urbanized area establish a Safety Committee that meets certain requirements. FTA proposes a new section 673.19(a) in response to the statutory requirement that the Safety Committee be convened by a joint-labor management process and adds a requirement that the Safety Committee be appropriately scaled to the size, scope, and complexity of the transit agency.

In section 673.19(b), FTA incorporates the statutory requirement that the Safety Committee consist of an equal number of frontline transit worker representatives and management representatives. FTA notes that there must be an equal number of frontline transit worker representative and management representative voting members on the Safety Committee. However, this requirement does not prohibit designation of additional non-voting participants, such as management representative alternates who may serve in a voting capacity in the event of a management representative voting member absence, or frontline transit worker representative alternates who may serve in a voting capacity in the event of a frontline transit worker representative voting member absence. FTA also proposes a requirement that the Safety Committee include frontline transit worker representatives from major transit service functions to the extent practicable.

The Bipartisan Infrastructure Law requires that the frontline transit worker representatives be selected by a labor organization representing the plurality of the frontline workforce. FTA incorporates this statutory requirement into section 673.19(b). FTA also proposes a requirement that the Safety Committee include frontline transit worker representatives from major transit service functions to the extent practicable. FTA also proposes that if a transit agency's frontline transit workers are not represented by a labor organization, the transit agency must adopt a mechanism to ensure that frontline transit workers select frontline transit worker representatives for the Safety Committee. FTA is proposing this requirement to ensure that in situations where frontline transit workers are not represented by a labor organization, frontline transit workers select the frontline transit worker representatives.

FTA proposes section 673.19(c), which requires that certain policies and procedures about the composition, responsibilities, and operations of the Safety Committee be included or incorporated by reference in the ASP. One of these proposed policies and

procedures addresses how the Safety Committee will manage disputes and tie votes to ensure it carries out its operations. Through outreach meetings with FTA, some stakeholders voiced concerns that Safety Committees could become deadlocked. This has the potential to delay the development or update of an agency's ASP and the operation of the agency's SMS. FTA finds this concern to be valid and therefore proposes that ASPs include policies or procedures to address this situation. Additional details about FTA's stakeholder outreach meetings can be found in the docket to this rulemaking.

FTA proposes section 673.19(d), which identifies statutorily required activities that the Safety Committee must take, including ASP review and approval, setting annual safety performance targets to support the safety risk reduction program, and support of SMS activities. The proposed activities of the Safety Committee implement requirements of the Bipartisan Infrastructure Law.

673.20 Safety Risk Reduction Program

The Bipartisan Infrastructure Law requires recipients serving large urbanized areas to establish a safety risk reduction program for transit operations to improve safety by reducing the number and rates of accidents, injuries, and assaults on transit workers based on data submitted to the NTD, including: (1) a reduction of vehicular and pedestrian accidents involving buses, including measures to reduce visibility impairments for bus operators that contribute to accidents; and (2) the mitigation of assaults on transit workers, including the deployment of assault mitigation infrastructure and technology on buses. Section 5329(d)(1)(I) describes specific mitigations for reducing safety events, including retrofits to buses in revenue service and specifications for future procurements that reduce visibility impairments, and barriers to restrict the unwanted entry of individuals and objects into the workstations of bus operators.

To incorporate this requirement, FTA proposes a new section 673.20(a), which requires large urbanized area providers to establish a safety risk reduction program that includes the two statutory areas discussed above. FTA proposes that a key element of this program would be the consideration of safety risk mitigations consistent with proposed sections 673.20(a)(2) through (a)(4).

In these sections, FTA proposes that when carrying out the Safety Risk Management (SRM) process for risk relating to vehicular and pedestrian safety events involving transit vehicles, and for risk relating to assaults on transit workers, a large urbanized area provider must consider specific mitigations. These safety risk mitigations are based on the mitigations listed in 49 U.S.C. 5329(d)(1)(I) described above. However, section 673.20(a)(2) would require consideration of operator visibility impairment mitigations for any type of transit vehicles, not just buses. Similarly, section 673.20(a)(3) would require consideration of assault mitigation infrastructure and technology in any type of transit vehicle and in transit facilities, not just buses. FTA believes that tying the safety risk reduction program to transit agencies' existing Safety Risk Management (SRM) process will support and reinforce consistent application of SMS practices for all safety risk mitigation, including for the two statutory areas identified in section 5329(d)(1)(I).

FTA is proposing this requirement pursuant to 49 U.S.C. 5329(d)(1)(I) and 49 U.S.C. 5329(d)(1)(C) and (D). In using the word ''including'' when describing the risk reduction program, 49 U.S.C. 5329(d)(1)(I)(i) and (ii) outline a non-exclusive list of program elements. FTA therefore believes that requiring consideration of additional mitigations in the risk reduction program is appropriate. In addition, 49 U.S.C. 5329(d)(1)(C) and (D) require that each agency's ASP include ''methods for identifying and evaluating safety risks throughout all elements of the public transportation system,'' and ''strategies to minimize the exposure of the public, personnel, and property to hazards and unsafe conditions,'' respectively. As described in FTA's 2018 PTASP final rule, ''[e]ach of these requirements is consistent with the second component of SMS—Safety Risk Management.'' (83 FR 34418, at 34453). The proposed requirement to consider specific mitigations through the SRM process would enable agencies to evaluate visibility impairment and transit worker assault safety risks more effectively, and would enable them to minimize the exposure of the public, personnel, and property to related hazards and unsafe conditions. FTA believes that this requirement will lead to improved safety performance at all applicable transit agencies.

To incorporate the statutorily required role of the Safety Committee, FTA proposes section 673.20(a)(4). Pursuant to this section, when a Safety Committee performs a safety risk analysis, determines that particular safety risk mitigations would reduce assaults on transit workers and injuries to transit workers, and recommends such mitigations to the Accountable Executive, the transit agency must implement one or more of these recommended mitigations. Consistent with existing PTASP regulation requirements, the Accountable Executive retains direction over the human and capital resources needed to develop and maintain the ASP and has ultimate accountability for the agency's safety performance. Accordingly, if in exercising this responsibility the Accountable Executive determines that safety risk mitigations recommended by the Safety Committee are not feasible or effective in improving the agency's overall safety performance, it may decline to implement such mitigation. The Accountable Executive should document such decisions consistent with the recordkeeping requirements of section 673.31.

The Bipartisan Infrastructure Law requires that the Safety Committees of recipients serving large urbanized areas establish performance targets for the safety risk reduction program using a 3-year rolling average of data submitted by the recipient to the NTD. FTA proposes to incorporate those requirements into section 673.20(b) and proposes that these targets must be set on an annual basis. These targets will be based on performance measures and standards that FTA will propose in a separate action, the National Public Transportation Safety Plan, which is to be published for public comment at a later date. As required by the Bipartisan Infrastructure Law, these performance measures for a safety risk reduction program must be included in the National Public Transportation Safety Plan (49 U.S.C. 5329(b)(2)(A)). Once those performance measures are established in the National Public Transportation Safety Plan, transit agencies will use these measures to set targets for the safety risk reduction program, as required by 49 U.S.C. 5329(d).

Some large urbanized area providers that qualify as Reduced Reporters for NTD reporting purposes may not currently report detailed safety event information to the NTD. FTA is considering revisions to NTD safety data forms to support more granular data collection from these transit agencies. However, these revisions have not gone into effect yet. Accordingly, for purposes of annual safety performance target setting for the safety risk reduction program, FTA is proposing to require that the Safety Committees of large urbanized area providers set these targets only based on the level of detail the transit agency is required to report

to the NTD. If a transit agency has not been required to report three years of data to the NTD relating to a performance measure yet, the Safety Committee would not set a risk reduction performance target for that specific measure yet. Target setting for the performance measure would begin once the transit agency has been required to report three years of data to the NTD corresponding to the performance measure.

FTA is not proposing to require that a defined amount of annual reduction be reflected in the safety risk reduction program performance targets. FTA believes that Safety Committees should have flexibility regarding the amount of annual reduction defined by their targets, as long as the methodology uses a three-year rolling average of data reported to the NTD and the targets reflect an annual reduction.

FTA also proposes section 673.20(d), which leverages the continuous improvement processes established under section 673.27(d) to require that transit agencies monitor their safety performance against the annual safety performance targets the Safety Committee sets for the safety risk reduction program.

Section 673.20(e) incorporates Bipartisan Infrastructure Law requirements addressing failure to meet an annual safety performance target set under the safety risk reduction program. This includes the requirement that if a large urbanized area provider does not meet one of the safety risk reduction performance targets, it must allocate at least 0.75% of its section 5307 funds in the following fiscal year to safety-related projects eligible under section 5307 that are reasonably likely to assist the agency in meeting the target in the future. FTA proposes that large urbanized area providers that do not meet an established target assess the associated safety risk using the methods or processes established under section 673.25(c) and mitigate associated safety risk based on the results of the safety risk assessment.

Subpart D—Safety Management Systems

FTA proposes redesignating existing subpart C as subpart D, Safety Management Systems.

673.23 Safety Management Policy

In section 673.23(a), FTA proposes adding a requirement for the transit agency's Safety Management Policy to include a description of the transit agency's Safety Committee or approach to cooperation with frontline transit worker representatives, as applicable. This ensures the policy describes the coordination with frontline transit workers required under the Bipartisan Infrastructure Law.

Section 673.23(b) currently requires agencies to establish and implement a safety reporting process. FTA proposes two changes to this paragraph. First, FTA proposes to replace the words ''safety conditions'' with ''safety concerns,'' and to add a few examples of safety concerns. This change describes the reporting process requirement more accurately. Second, with respect to required protections for transit workers who report, FTA also proposes to delete the words ''safety conditions to senior management.'' This wording is duplicative of information already conveyed in the paragraph. This is a minor change that does not alter any existing requirements.

In section 673.23(d)(1), FTA proposes adding a requirement for the Accountable Executive to receive and consider safety risk mitigation recommendations of the Safety Committee. This additional Accountable Executive responsibility ensures that the Safety Committee has a meaningful voice in safety-related decision-making. Further, in section 673.23(d)(3), FTA proposes to require that large urbanized area providers establish the necessary authorities, accountabilities, and responsibilities for the management of safety for the Safety Committee. In section 673.23(d)(5), FTA proposes adding the Safety Committee to the list of groups which the transit agency may designate as key staff in developing, implementing, and operating the transit agency's SMS. This addition relates to Bipartisan Infrastructure Law Safety Committee requirements and requires large urbanized area providers to address new Safety Committee requirements through the Safety Management Policy component of their SMS.

673.25 Safety Risk Management

FTA proposes amending section 673.25(b)(2) to clarify existing requirements for transit agencies to consider certain data and information as a source for hazard identification. In addition, the Bipartisan Infrastructure Law requires ASPs to address minimizing exposure to infectious diseases, consistent with guidelines from the CDC or a State health authority. In response to this statutory requirement, FTA proposes also amending section 673.25(b)(2) to require transit agencies to consider data and information from the CDC or a State health authority regarding exposure to infectious disease as a source for hazard identification. FTA also proposes that transit agencies consider safety concerns identified through the transit agency's Safety Assurance activities. FTA proposes this change to establish the link more clearly between Safety Risk Management and Safety Assurance activities.

In section 673.25(c)(2), FTA proposes wording changes to clarify the application of existing safety risk assessment requirements and the connection between safety risk assessment and safety risk mitigation. One of these changes clarifies that safety risk assessments should ultimately inform the prioritization of safety risk mitigation activity rather than simply the prioritization of identified hazards. This change is intended to clarify FTA's original intent that safety risk assessment activity informs the prioritization of safety resources to mitigate safety risk.

In section 673.25(d)(1), FTA proposes minor wording changes consistent with the changes proposed in section 673.5. FTA also proposes that the safety risk management process of large urbanized area providers must address the role of the agency's Safety Committee. This ensures that the SMS of these providers incorporates the Safety Committee's statutorily required responsibilities relating to safety risk management.

FTA proposes adding section 673.25(d)(2), which would require transit agencies to consider guidance provided by an oversight authority, if applicable, and FTA as a source for safety risk mitigation. In response to Bipartisan Infrastructure Law requirements, this paragraph would also require agencies to consider CDC or State health authority guidelines to prevent or control exposure to infectious diseases.

673.27 Safety Assurance

FTA proposes amending the continuous improvement requirement in section 673.27(d)(1) to specify that a transit agency must establish a process to assess its safety performance annually. FTA proposes that the process include identifying deficiencies in the transit agency's SMS and in the agency's safety performance against its safety performance targets, including safety performance targets required for all transit agencies at section 673.11(a)(3) and safety performance targets set by the Safety Committees of large urbanized area providers for the safety risk reduction program as required at section 673.20(b). This updated requirement clarifies FTA's intent for the frequency and substance of this performance assessment, and addresses industry

concerns that the regulation did not specify a timeline for assessing safety performance. For large urbanized area providers, FTA also proposes that the continuous improvement process must address the role of the transit agency's Safety Committee. This ensures that the SMS of these providers incorporates the Safety Committee's statutorily required responsibilities relating to continuous improvement.

FTA further proposes to require that rail transit agencies must address internal safety review requirements established by SSOAs as part of the continuous improvement element of Safety Assurance. FTA proposes minor wording changes in section 673.25(d)(2) for clarity.

In section 673.27(a), FTA proposes to extend the continuous improvement requirements to small public transportation providers. In the current regulation, small public transportation providers are exempt from this requirement. This change is responsive to the Bipartisan Infrastructure Law, which requires large urbanized area providers to establish a Safety Committee and a safety risk reduction program that involves key elements of continuous improvement, such as safety performance target setting, safety performance monitoring, and the identification of safety deficiencies and safety performance issues. Certain small public transportation providers meet the definition of large urbanized area provider and are therefore subject to these statutory requirements. Additionally, under the existing rule, all small public transportation providers already are required to set safety performance targets based on the safety performance measures established in the NSP. FTA does not believe that the continuous improvement requirements will be burdensome for small public transportation providers. Based on the experience that these providers have gained by operating an SMS and carrying out required safety performance measurement activities, FTA expects they will be able to formalize these continuous improvement activities and document them in their ASP.

In addition, FTA proposes a change to the safety performance monitoring and measurement requirements in section 673.27(b). FTA proposes that for large urbanized area providers, these activities must address the role of the agency's Safety Committee. This ensures that the SMS of these providers incorporates the Safety Committee's statutorily required responsibilities relating to safety performance monitoring and measurement.

673.29 Safety Promotion

Pursuant to 49 U.S.C. 5329(d)(1)(H), each agency's ASP must include a comprehensive staff training program. The Bipartisan Infrastructure Law amended this provision to require that large urbanized area providers include maintenance workers and de-escalation training in their training programs.

To incorporate the de-escalation training requirement, FTA proposes adding language to section 673.29(a) that would require transit agencies to include de-escalation training in their comprehensive safety training program. This requirement would apply to all agencies, not just large urbanized area providers. FTA is proposing this requirement pursuant to 49 U.S.C. 5329(d)(1)(H)(i). In using the word ''including'' when describing the comprehensive safety training program, 49 U.S.C. 5329(d)(1)(H)(i) outlines a nonexclusive list of program elements. FTA therefore believes that requiring de-escalation training for operations personnel and personnel directly responsible for safety at all transit agencies is appropriate. FTA believes this is appropriate and necessary to enhance the safety outcomes for all transit workers and users of transportation, not just those in large urbanized areas.

FTA also proposes that the training program must include training on safety concern identification and reporting. This training requirement would address a common industry need for greater understanding of how to report safety concerns through safety reporting programs.

This section would also incorporate the statutory requirement that large urbanized area providers must include maintenance workers in their training programs in new section 673.29(a)(2).

In section 673.29(b), FTA proposes to require transit agencies to integrate the results of cooperation with frontline transit worker representatives and joint labor-management Safety Committee activities into their safety communication activities. FTA proposes this modified requirement to address the communication impacts resulting from the new requirements for cooperation with frontline transit worker representatives and joint labor-management Safety Committee activities and to make sure that the results of these activities are communicated throughout the organization.

Subpart E—Safety Plan Documentation and Recordkeeping

FTA proposes establishing a new subpart E for Safety Plan Documentation and Recordkeeping.

673.31 Safety Plan Documentation

FTA proposes a minor edit to the safety plan documentation requirements in section 673.31 to clarify that a transit agency must make documents available upon request by a State having jurisdiction.

III. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Order 12866 (''Regulatory Planning and Review''), as supplemented by Executive Order 13563 (''Improving Regulation and Regulatory Review''), directs Federal agencies to assess the benefits and costs of regulations, to select regulatory approaches that maximize net benefits when possible, and to consider economic, environmental, and distributional effects. It also directs the Office of Management and Budget (OMB) to review significant regulatory actions, including regulations with annual economic effects of $100 million or more. OMB has determined that the proposed rule is not significant within the meaning of Executive Order 12866 and has not reviewed it under that order.

Overview and Need for Regulation

The proposed rule, which implements amendments made by the Bipartisan Infrastructure Law, would add requirements for transit agencies subject to the existing regulation for Public Transportation Agency Safety Plans. The applicable agencies include all rail transit agencies and all transit agencies receiving section 5307 funding. Agencies would need to incorporate de-escalation training into their safety training programs and would need to incorporate guidelines for infectious disease exposure into their safety management system processes. In addition, small public transportation providers would need to establish continuous improvement processes to assess safety performance; current regulation requires transit providers to establish processes but exempts small providers.

The proposed rule would also create requirements for transit agencies based on the urbanized areas they serve. Agencies serving urbanized areas with 200,000 or more people would need to establish safety committees, safety risk reduction programs with safety performance targets, and include maintenance workers in their safety training programs. The agencies would need to allocate at least 0.75 percent of

their section 5307 funding to eligible safety projects. If an agency did not meet a safety performance target, it would need to allocate its set-aside funding to projects that are reasonably likely assist the agency in meeting the target. Agencies serving urbanized areas with fewer than 200,000 people would need to develop their agency safety plans in cooperation with frontline transit worker representatives.

Benefits

The proposed rule would reduce the risk of fatalities and injuries for transit workers, bus passengers, drivers, and pedestrians if transit agencies adopt safety risk mitigations that they would not have adopted under current agency safety plans or spending levels. FTA expects that agencies would be more likely to adopt mitigations to reduce the risk of bus collisions and transit worker assault. Example mitigations include bus sensors and surveillance systems to detect objects and pedestrians, or bus operator barriers to protect drivers. At the same time, some mitigations like de-escalation training for transit operators have already been widely adopted. FTA currently does not have information to determine what additional mitigations agencies would adopt due to the proposed rule and has therefore not estimated the associated benefits.

FTA seeks information from commenters to estimate the benefits of the proposed rule. What safety interventions would agencies be more likely to adopt as a result of developing risk reduction programs or explicitly considering bus collisions and transit worker assaults?

Costs

Transit agencies may incur economic costs to adopt safety interventions if the proposed rule leads to changes in safety plans or spending levels. While the proposed rule would require agencies to allocate at least 0.75 percent of section 5307 funds to eligible safety projects, the resulting changes in spending are unknown for two reasons. First, FTA does not have information to estimate the risk reduction targets agencies would set or the likelihood that agencies would not meet the targets. Second, if an agency spends more of its section 5307 funding on safety interventions but can offset the increased spending by spending less of its state and local funding, then total spending may increase by a smaller amount or even remain unchanged.

Transit agencies would also incur costs to meet the new administrative and reporting requirements. To estimate the costs, FTA subject-matter experts estimated the number of transit agencies affected, the number and type of staff involved, and the time needed (Table 1). FTA determined that the requirements would affect 428 agencies in large urbanized areas and 280 agencies in small urbanized areas. Within an agency, safety managers, operations managers, and frontline worker representatives would spend the most time to meet the requirements each year. FTA then used the estimates to calculate costs for the first ten years of the rule from 2023—the assumed effective date of the rule—to 2032.

The estimates in Table 1 account for current transit agency practices. For de-escalation training, almost all agencies established programs after the Transportation Security Administration issued a security directive in January 2021 requiring mask use on public transportation.[2] The directive, which is no longer in effect as of April 2022,[3] required agencies to brief employees responsible for enforcing the directive. Agencies established de-escalation training programs as part of their briefings, and FTA developed free online training resources allowing frontline employees to complete training by themselves.[4] For agency safety plans, FTA has the understanding that most agencies already involve frontline worker representatives; for that reason, the estimated hours and staff for frontline worker involvement only cover new reporting requirements.

Some agencies also began meeting requirements after FTA issued a Dear Colleague letter in February 2022 describing statutory changes in the Bipartisan Infrastructure Law.[5] In that case, however, FTA keeps the agencies in its cost analysis because agencies would not have incorporated the requirements without the Congressional mandate.

TABLE 1—STAFF AND HOURS NEEDED TO MEET ADMINISTRATIVE AND REPORTING REQUIREMENTS

Requirement	Affected entities	Staff	First-year hours	Annual hours
De-escalation training	12,000 frontline employees (5% of 240,000 as of June 2022)	Frontline personnel	2	0.25
Continuous improvement processes	572 small public transit providers	Chief Safety Officer	1	4
		Safety manager	1	8
Safety committee with frontline worker representatives.	428 agencies in large UZAs	HR manager	24	.....
		Safety manager	24	21
		Union representative	24	.....
		Operations manager	.....	21
		Maintenance manager	.....	21
		Frontline representative	.....	63
Risk reduction program	428 agencies in large UZAs	Chief Safety Officer	1	1
		Safety manager	1	2
		Data analyst	.....	8
Frontline worker involvement with agency safety plans.	270 agencies in small UZAs	Chief Safety Officer	.....	2
		Safety manager	4	2

Source: FTA analysis.

To estimate the value of staff time spent on the requirements, FTA used occupational wage data from the Bureau of Labor Statistics as of May 2021 (Table 2).[6] FTA used median hourly wages for workers in the Transit and Ground

[2] Transportation Security Administration (January 31, 2021). ''Security Directive SD 1582/84–21–01.'' *https://www.tsa.gov/sites/default/files/sd-1582_84-21-01.pdf.*

[3] Transportation Security Administration (April 18, 2022). ''Statement regarding face mask use on public transportation.'' *https://www.tsa.gov/news/press/statements/2022/04/18/statement-regarding-face-mask-use-public-transportation.*

[4] Federal Transit Administration (August 2022). ''FTA-Sponsored Training Courses.'' *https://www.transit.dot.gov/regulations-and-guidance/safety/fta-sponsored-training-courses.*

[5] Federal Transit Administration. February 17, 2022. ''Dear Colleague Letter: Bipartisan Infrastructure Law Changes to PTASP Requirements.'' *https://www.transit.dot.gov/safety/public-transportation-agency-safety-program/dear-colleague-letter-bipartisan-infrastructure.*

[6] Bureau of Labor Statistics. 2022. ''May 2021 National Occupational Employment and Wage Estimates: United States.'' *https://www.bls.gov/oes/2021/may/oes_nat.htm.*

Passenger Transportation industry (North American Industry Classification System code 485000) as a basis for the estimates, multiplied by 1.62 to account for employer benefits.[7]

TABLE 2—OCCUPATIONAL CATEGORIES AND WAGES USED TO VALUE STAFF TIME

[$2021]

Staff	Occupational category	Code	Median hourly wage	Wage with benefits
HR manager	Human Resources Managers	11–3121	$45.64	$73.77
Safety manager	Occupational Health and Safety Specialists	19–5011	37.29	60.27
Union representative	Occupational Health and Safety Specialists	19–5011	37.29	60.27
Chief Safety Officer	Health and Safety Engineers	17–2111	49.21	79.54
Data analyst	Operations Research Analysts	15–2031	57.71	93.27
Frontline worker	Transportation and Material Moving Occupations	53–0000	22.10	35.72
Operations manager	General and Operations Manager	11–1021	45.60	73.70
Maintenance manager	Facilities Managers	11–3013	43.88	70.92

Source: Bureau of Labor Statistics, May 2021 National Occupational Employment and Wage Estimates.

The administrative and reporting requirements of the proposed rule have estimated costs of $2.4 million in the first year in 2021 dollars and annual costs of $4.9 million in later years (Table 3). The largest annual costs are for de-escalation training ($2.2 million) and the safety committees ($2.1 million).

TABLE 3—FIRST-YEAR AND ANNUAL COSTS FOR ADMINISTRATIVE AND REPORTING REQUIREMENTS

[$2021]

Requirement	First-year costs	Annual costs
De-escalation training	$868,000	$2,171,000
Continuous improvement processes	76,000	433,000
Safety committee with frontline worker representatives	1,374,000	2,084,000
Risk reduction program	58,000	195,000
Frontline worker involvement with agency safety plans	45,000	52,000
Total	2,420,000	4,934,000

Totals may not sum due to rounding.

Summary

Table 4 summarizes the economic effects of the proposed rule over the ten-year analysis period. The rule would have total costs of $46.8 million in 2021 dollars and annualized costs of $3.3 million at a 7 percent discount rate (discounted to 2023) and $3.9 million at 3 percent. To quantify benefits and assess net benefits, FTA would need information on the safety interventions transit agencies would adopt.

TABLE 4—SUMMARY OF ECONOMIC EFFECTS, 2023–2033

[$2021, discounted to 2023]

Item	Total	Annualized (7%)	Annualized (3%)
Benefits	Unquantified		
Costs:			
De-escalation training	$20,403,000	$1,417,000	$1,677,000
Continuous improvement processes	3,970,000	273,000	325,000
Safety committee with frontline worker representatives	20,132,000	1,411,000	1,662,000
Risk reduction program	1,810,000	125,000	149,000
Frontline worker involvement with agency safety plans	512,000	36,000	42,000
Total costs	46,827,000	3,263,000	3,855,000
Net benefits	Unquantified		

Totals may not sum due to rounding.

[7] Multiplier derived using Bureau of Labor Statistics data on employer costs for employee compensation for June 2022 (*https://www.bls.gov/news.release/archives/ecec_09202022.pdf*). Employer costs for state and local government workers averaged $55.47 an hour, with $34.23 for wages and $21.25 for benefit costs. To estimate full costs from wages, one would use a multiplier of $55.47/$34.23, or 1.62.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*) requires Federal agencies to assess the impact of a regulation on small entities unless the agency determines that the regulation is not expected to have a significant economic impact on a substantial number of small entities. FTA has determined that the proposed rule would not have a significant effect on a substantial number of small entities.

The proposed rule would require public transit agencies serving an urbanized area with a population of less than 200,000 to work with frontline transit worker representatives while developing agency safety plans. Most transit agencies are public-sector organizations. Under the Act, local governments and other public-sector organizations qualify as a small entity if they serve a population of less than 50,000. The rule would affect 280 agencies in small urbanized areas, with some qualifying as small entities under the Regulatory Flexibility Act.

FTA estimates that the requirement would have an annual cost of less than $300 for a transit agency. Most agencies already involve frontline transit worker representatives and would only need to spend time on associated reporting. FTA estimates that a transit agency would need 4 hours of staff time—2 hours for a Chief Safety Officer; 2 hours for a safety manager—to meet the reporting requirement. Using occupational wage data from the Bureau of Labor Statistics as of May 2021, FTA estimates the value of the time spent at $265.00, which would not have a significant effect on the agency.

Unfunded Mandates Reform Act of 1995

FTA has determined that this rule does not impose unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995). This rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted for inflation) in any one year. Additionally, the definition of ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal Transit Act permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and FTA determined this action will not have a substantial direct effect or sufficient federalism implications on the States. FTA also determined this action will not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), and the White House Office of Management and Budget's (OMB) implementing regulation at 5 CFR 1320.8(d), FTA is seeking approval from OMB for a *currently approved information collection* that is associated with a Notice of Proposed Rulemaking. The information collection (IC) was previously approved on October 4, 2022. However, this submission includes revised requirements authorized by the Bipartisan Infrastructure Law, including cooperation with frontline transit worker representatives in the development of an Agency Safety Plan (ASP), establishment of a Safety Committee, Safety Committee approval of an ASP, establishment of a risk reduction program for transit operations, establishment of safety performance targets for the risk reduction program, and establishment of strategies to minimize exposure to infectious diseases.

Type of Collection: Operators of public transportation systems.

Type of Review: OMB Clearance. Previously Approved Information Collection Request.

Summary of the Collection: The information collection includes (1) The development and certification of a Public Transportation Agency Safety Plan; (2) the implementation and documentation of the SMS approach; (3) associated recordkeeping; and (4) periodic requests.

Need for and Expected Use of the Information to be Collected: Collection of information for this program is necessary to ensure that operators of public transportation systems are performing their safety responsibilities and activities required by law at 49 U.S.C. 5329(d). Without the collection of this information, FTA would be unable to determine each recipient's and State's compliance with 49 U.S.C. 5329(d).

Respondents: Respondents include operators of public transportation as defined under 49 U.S.C. 5302. FTA is deferring regulatory action at this time on recipients of FTA financial assistance under 49 U.S.C. 5310 and/or 49 U.S.C. 5311, unless those recipients operate rail transit. The total number of respondents is 758. This figure includes 186 respondents that are States, rail fixed guideway systems, or large bus systems that receive Urbanized Area Formula Program funds under 49 U.S.C. 5307. This figure also includes 572 respondents that receive Urbanized Area Formula Program funds under 49 U.S.C. 5307, operate one hundred or fewer vehicles in revenue service, and do not operate rail fixed guideway service that may draft and certify their own safety plans.

Frequency: Annual, Periodic.

National Environmental Policy Act

Federal agencies are required to adopt implementing procedures for the National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) Those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3) those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This rule qualifies for categorical exclusions under 23 CFR 771.118(c)(4) (planning and administrative activities that do not involve or lead directly to construction). FTA has evaluated whether the rule will involve unusual or extraordinary circumstances and has determined that it will not.

Executive Order 12630 (Taking of Private Property)

FTA has analyzed this rule under Executive Order 12630, Governmental Actions and Interference with

Constitutionally Protected Property Rights. FTA does not believe this rule affects a taking of private property or otherwise has taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FTA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this action will not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this rule under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FTA has determined that this action is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12898 (Environmental Justice)

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) and DOT Order 5610.2(a) (77 FR 27534, May 10, 2012) (*https://www.transportation.gov/transportation-policy/environmental-justice/department-transportation-order-56102a*) require DOT agencies to achieve Environmental Justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority and low-income populations. All DOT agencies must address compliance with Executive Order 12898 and the DOT Order in all rulemaking activities. On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for recipients of FTA financial assistance to incorporate EJ principles into plans, projects, and activities (*https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/environmental-justice-policy-guidance-federal-transit*).

FTA has evaluated this action under the Executive Order, the DOT Order, and the FTA Circular and FTA has determined that this action will not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this rule with the Unified Agenda.

List of Subjects in 49 CFR Part 673

Mass transportation, Safety.

Nuria I. Fernandez,

Administrator.

In consideration of the foregoing, and under the authority of 49 U.S.C. 5329 and 5334, and the delegation of authority at 49 CFR 1.91, the Federal Transit Administration proposes to amend 49 CFR chapter VI by revising part 673 of title 49 of the Code of Federal Regulations to read as follows:

PART 673—PUBLIC TRANSPORTATION AGENCY SAFETY PLANS

Subpart A—General

Subpart B—Safety Plans

Subpart C—Safety Committee and Safety Risk Reduction Program

Subpart D—Safety Management Systems

Subpart E—Safety Plan Documentation and Recordkeeping

Authority: *49 U.S.C. 5329(d), 5334; 49 CFR 1.91.*

Subpart A—General

§ 673.1 Applicability.

(a) This part applies to any State, local governmental authority, and any other operator of a public transportation system that receives Federal financial assistance under 49 U.S.C. chapter 53.

(b) This part does not apply to an operator of a public transportation system that only receives Federal financial assistance under 49 U.S.C. 5310, 49 U.S.C. 5311, or both 49 U.S.C. 5310 and 49 U.S.C. 5311 unless it operates a rail fixed guideway public transportation system.

§ 673.3 Policy.

The Federal Transit Administration (FTA) has adopted the principles and methods of Safety Management Systems (SMS) as the basis for enhancing the safety of public transportation in the United States. FTA will follow the principles and methods of SMS in its development of rules, regulations, policies, guidance, best practices, and technical assistance administered under the authority of 49 U.S.C. 5329. This part sets standards for the Public Transportation Agency Safety Plan, which will be responsive to FTA's Public Transportation Safety Program, and reflect the specific safety objectives, standards, and priorities of each transit agency. Each Public Transportation Agency Safety Plan will incorporate SMS principles and methods tailored to the size, complexity, and scope of the public transportation system and the environment in which it operates.

§ 673.5 Definitions.

As used in this part:

Accountable Executive means a single, identifiable person who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a transit agency; responsibility for carrying out the transit agency's Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and

maintain both the transit agency's Public Transportation Agency Safety Plan, in accordance with 49 U.S.C. 5329(d), and the transit agency's Transit Asset Management Plan in accordance with 49 U.S.C. 5326.

Assault on a transit worker means, as defined under 49 U.S.C. 5302, a circumstance in which an individual knowingly, without lawful authority or permission, and with intent to endanger the safety of any individual, or with a reckless disregard for the safety of human life, interferes with, disables, or incapacitates a transit worker while the transit worker is performing the duties of the transit worker.

CDC means the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

Chief Safety Officer means an adequately trained individual who has responsibility for safety and reports directly to a transit agency's chief executive officer, general manager, president, or equivalent officer. A Chief Safety Officer may not serve in other operational or maintenance capacities, unless the Chief Safety Officer is employed by a transit agency that is a small public transportation provider as defined in this part, or a public transportation provider that does not operate a rail fixed guideway public transportation system.

Direct Recipient means an entity that receives Federal financial assistance directly from the Federal Transit Administration.

Emergency means, as defined under 49 U.S.C. 5324, a natural disaster affecting a wide area (such as a flood, hurricane, tidal wave, earthquake, severe storm, or landslide) or a catastrophic failure from any external cause, as a result of which the Governor of a State has declared an emergency and the Secretary has concurred; or the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

Equivalent entity means an entity that carries out duties similar to that of a Board of Directors, for a recipient or subrecipient of FTA funds under 49 U.S.C. chapter 53, including sufficient authority to review and approve a recipient or subrecipient's Public Transportation Agency Safety Plan.

FTA means the Federal Transit Administration, an operating administration within the United States Department of Transportation.

Hazard means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.

Investigation means the process of determining the causal and contributing factors of a safety event or hazard, for the purpose of preventing recurrence and mitigating safety risk.

Joint labor-management process means a formal approach to discuss topics affecting transit workers and the public transportation system.

Large urbanized area provider means a recipient or subrecipient of financial assistance under 49 U.S.C. 5307 that serves an urbanized area with a population of 200,000 or more as determined by Census data.

National Public Transportation Safety Plan means the plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. chapter 53.

Near-miss means a narrowly avoided safety event.

Operator of a public transportation system means a provider of public transportation.

Performance measure means an expression based on a quantifiable indicator of performance or condition that is used to establish targets and to assess progress toward meeting the established targets.

Performance target means a quantifiable level of performance or condition, expressed as a value for the measure, to be achieved within a time period required by FTA.

Potential Consequence means the effect of a hazard.

Public transportation means, as defined under 49 U.S.C. 5302, regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income; and does not include:

(1) Intercity passenger rail transportation provided by the entity described in 49 U.S.C. chapter 243 (or a successor to such entity);

(2) Intercity bus service;

(3) Charter bus service;

(4) School bus service;

(5) Sightseeing service;

(6) Courtesy shuttle service for patrons of one or more specific establishments; or

(7) Intra-terminal or intra-facility shuttle services.

Public Transportation Agency Safety Plan means the documented comprehensive agency safety plan for a transit agency that is required by 49 U.S.C. 5329 and this part.

Rail fixed guideway public transportation system means any fixed guideway system, or any such system in engineering or construction, that uses rail, is operated for public transportation, is within the jurisdiction of a State, and is not subject to the jurisdiction of the Federal Railroad Administration. These include but are not limited to rapid rail, heavy rail, light rail, monorail, trolley, inclined plane, funicular, and automated guideway.

Rail transit agency means any entity that provides services on a rail fixed guideway public transportation system.

Recipient means a State or local governmental authority, or any other operator of a public transportation system, that receives financial assistance under 49 U.S.C. chapter 53.

Roadway means land on which rail transit tracks and support infrastructure have been constructed to support the movement of rail transit vehicles, excluding station platforms.

Safety assurance means processes within a transit agency's Safety Management System that functions to ensure the implementation and effectiveness of safety risk mitigation, and to ensure that the transit agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information.

Safety Committee means the formal joint labor-management committee on issues related to safety that is required by 49 U.S.C. 5329 and this part.

Safety event means an unexpected outcome resulting in injury or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.

Safety Management Policy means a transit agency's documented commitment to safety, which defines the transit agency's safety objectives and the accountabilities and responsibilities for the management of safety.

Safety Management System (SMS) means the formal, organization-wide approach to managing safety risk and assuring the effectiveness of a transit agency's safety risk mitigation. SMS includes systematic procedures, practices, and policies for managing hazards and safety risk.

Safety Management System (SMS) Executive means a Chief Safety Officer or an equivalent.

Safety performance target means a Performance Target related to safety management activities.

Safety Promotion means a combination of training and communication of safety information to support SMS as applied to the transit agency's public transportation system.

Safety risk means the composite of predicted severity and likelihood of a potential consequence of a hazard.

Safety risk assessment means the formal activity whereby a transit agency determines Safety Risk Management priorities by establishing the significance or value of its safety risk.

Safety Risk Management means a process within a transit agency's Public Transportation Agency Safety Plan for identifying hazards and analyzing, assessing, and mitigating the safety risk of their potential consequences.

Safety risk mitigation means a method or methods to eliminate or reduce the severity and/or likelihood of a potential consequence of a hazard.

Safety set aside means the allocation of not less than 0.75 percent of assistance received by a large urbanized area provider under 49 U.S.C. 5307 to safety-related projects eligible under 49 U.S.C. 5307.

Small public transportation provider means a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in peak revenue service across all non-rail fixed route modes or in any one non-fixed route mode and does not operate a rail fixed guideway public transportation system.

State means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

State of good repair means the condition in which a capital asset is able to operate at a full level of performance.

State Safety Oversight Agency means an agency established by a State that meets the requirements and performs the functions specified by 49 U.S.C. 5329(e) and (k) and the regulations set forth in 49 CFR part 674.

Subrecipient means an entity that receives Federal transit grant funds indirectly through a State or a direct recipient.

Transit agency means an operator of a public transportation system that is a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 or a rail transit agency.

Transit Asset Management Plan means the strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to manage their performance, risks, and costs over their life cycles, for the purpose of providing safe, cost-effective, and reliable public transportation, as required by 49 U.S.C. 5326 and 49 CFR part 625.

Transit worker means any employee, contractor, or volunteer working on behalf of the transit agency.

Urbanized area means, as defined under 49 U.S.C. 5302, an area encompassing a population of 50,000 or more that has been defined and designated in the most recent decennial census as an ''urbanized area'' by the Secretary of Commerce.

Subpart B—Safety Plans

§ 673.11 General requirements.

(a) A transit agency or State must establish a Public Transportation Agency Safety Plan that meets the requirements of this part and, at a minimum, consists of the following elements:

(1) The Public Transportation Agency Safety Plan, and subsequent updates, must be signed by the Accountable Executive and approved by—

(i) For a large urbanized area provider, the Safety Committee established pursuant to § 673.19, followed by the transit agency's Board of Directors or an equivalent entity; or

(ii) For all other transit agencies, the transit agency's Board of Directors or an equivalent entity.

(2) The Public Transportation Agency Safety Plan must document the processes and activities related to Safety Management System (SMS) implementation, as required under subpart D of this part.

(3) The Public Transportation Agency Safety Plan must include annual safety performance targets based on the safety performance measures established under the National Public Transportation Safety Plan. Safety performance targets for the safety risk reduction program are only required for large urbanized area providers.

(4) The Public Transportation Agency Safety Plan must address all applicable requirements and standards as set forth in FTA's Public Transportation Safety Program and the National Public Transportation Safety Plan. Compliance with the minimum safety performance standards authorized under 49 U.S.C. 5329(b)(2)(C) is not required until standards have been established through the public notice and comment process.

(5) Each transit agency must establish a process and timeline for conducting an annual review and update of the Public Transportation Agency Safety Plan.

(6) A rail transit agency must include or incorporate by reference in its Public Transportation Agency Safety Plan:

(i) An emergency preparedness and response plan or procedures that addresses, at a minimum, the assignment of transit worker responsibilities during an emergency; and coordination with Federal, State, regional, and local officials with roles and responsibilities for emergency preparedness and response in the transit agency's service area;

(ii) Any policies and procedures regarding rail transit workers on the roadway the rail transit agency has issued; and

(iii) The transit agency's policies and procedures developed in consultation with the State Safety Oversight Agency to provide access and required data for the State Safety Oversight Agency's risk-based inspection program.

(7) The Public Transportation Agency Safety Plan of each large urbanized area provider must include a safety risk reduction program that meets the requirements of § 673.20.

(b) A transit agency may develop one Public Transportation Agency Safety Plan for all modes of service or may develop a Public Transportation Agency Safety Plan for each mode of service not subject to safety regulation by another Federal entity.

(c) A transit agency must maintain its Public Transportation Agency Safety Plan in accordance with the recordkeeping requirements in subpart E of this part.

(d) A State must draft and certify a Public Transportation Agency Safety Plan on behalf of any small public transportation provider that is located in that State. A State is not required to draft a Public Transportation Agency Safety Plan for a small public transportation provider if that transit agency notifies the State that it will draft its own plan. In each instance, the transit agency must carry out the plan. If a State drafts and certifies a Public Transportation Agency Safety Plan on behalf of a transit agency, and the transit agency later opts to draft and certify its own Public Transportation Agency Safety Plan, then the transit agency must notify the State. The transit agency has one year from the date of the notification to draft and certify a Public Transportation Agency Safety Plan that is compliant with this part. The Public Transportation Agency Safety Plan drafted by the State will remain in effect until the transit agency drafts its own Public Transportation Agency Safety Plan.

(e) Agencies that operate passenger ferries regulated by the United States Coast Guard (USCG) or rail fixed guideway public transportation service regulated by the Federal Railroad Administration (FRA) are not required to develop Public Transportation Agency Safety Plans for those modes of service.

§ 673.13 Certification of compliance.

(a) Each direct recipient, or State as authorized in § 673.11(d), must certify that it has established a Public Transportation Agency Safety Plan meeting the requirements of this part by the start of operations. A direct recipient must certify that it and all applicable subrecipients are in compliance with the requirements of this part. A State Safety Oversight Agency must review and approve a Public Transportation Agency Safety Plan developed by a rail fixed guideway public transportation system, as authorized in 49 U.S.C. 5329(e) and its implementing regulations at 49 CFR part 674.

(b) On an annual basis, a direct recipient, or State must certify its compliance with this part. A direct recipient must certify that it and all applicable subrecipients are in compliance with the requirements of this part.

§ 673.15 Coordination with metropolitan, statewide, and non-metropolitan planning processes.

(a) A State or transit agency must make its safety performance targets available to States and Metropolitan Planning Organizations to aid in the planning process.

(b) To the maximum extent practicable, a State or transit agency must coordinate with States and Metropolitan Planning Organizations in the selection of State and MPO safety performance targets.

§ 673.17 Cooperation with frontline transit worker representatives.

(a) Each large urbanized area provider must establish a Safety Committee that meets the requirements of § 673.19.

(b) Each transit agency that is not a large urbanized area provider must—

(1) Develop its Public Transportation Agency Safety Plan, and subsequent updates, in cooperation with frontline transit worker representatives; and

(2) Include or incorporate by reference in its Public Transportation Agency Safety Plan a description of how frontline transit worker representatives cooperate in the development and update of the Public Transportation Agency Safety Plan.

Subpart C—Safety Committee and Safety Risk Reduction Program

§ 673.19 Safety Committee.

(a) *Establishing the Safety Committee.* Each large urbanized area provider must establish and operate a Safety Committee that is—

(1) Appropriately scaled to the size, scope, and complexity of the transit agency; and

(2) Convened by a joint labor-management process.

(b) *Safety Committee membership.* The Safety Committee must consist of an equal number of frontline transit worker representatives and management representatives. To the extent practicable, the Safety Committee must include frontline transit worker representatives from major transit service functions, such as operations and maintenance, across the transit system.

(1) The labor organization that represents the plurality of the transit agency's frontline transit workers must select frontline transit worker representatives for the Safety Committee.

(2) If the transit agency's frontline transit workers are not represented by a labor organization, the transit agency must adopt a mechanism for frontline transit workers to select frontline transit worker representatives for the Safety Committee.

(c) *Safety Committee procedures.* Each large urbanized area provider must include or incorporate by reference in its Public Transportation Agency Safety Plan procedures regarding the composition, responsibilities, and operations of the Safety Committee which, at a minimum, must address:

(1) The organizational structure, size, and composition of the Safety Committee and how it will be chaired;

(2) How meeting agendas will be developed, and how meeting minutes will be recorded and maintained;

(3) Any required training for Safety Committee members related to the transit agency's Public Transportation Agency Safety Plan and the processes, activities, and tools used to support the transit agency's SMS;

(4) How the Safety Committee will access technical experts, including other transit workers, to serve in an advisory capacity as needed; transit agency information, resources, and tools; and submissions to the transit worker safety reporting program to support its deliberations;

(5) How the Safety Committee will vote and record decisions;

(6) How the Safety Committee will coordinate with the transit agency's Board of Directors, or equivalent entity, and the Accountable Executive;

(7) How the Safety Committee will manage disputes and tie votes to ensure it carries out its operations; and

(8) How the Safety Committee will carry out its responsibilities identified in paragraph (d) of this section.

(d) *Safety Committee responsibilities.* The Safety Committee must conduct the following activities to oversee the transit agency's safety performance:

(1) Review and approve the transit agency's Public Transportation Agency Safety Plan and any updates as required at § 673.11(a);

(2) Set annual safety performance targets for the safety risk reduction program that meet the requirements of § 673.20(b); and

(3) Support operation of the transit agency's SMS by:

(i) Identifying and recommending safety risk mitigations necessary to reduce the likelihood and severity of potential consequences identified through the transit agency's safety risk assessment, including safety risk mitigations associated with any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program;

(ii) Identifying safety risk mitigations that may be ineffective, inappropriate, or were not implemented as intended, including safety risk mitigations associated with any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program; and

(iii) Identifying safety deficiencies for purposes of continuous improvement as required at § 673.27(d), including any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program.

§ 673.20 Safety risk reduction program.

(a) Each large urbanized area provider must establish a safety risk reduction program for transit operations to improve safety performance by reducing the number and rates of safety events, injuries, and assaults on transit workers.

(1) The safety risk reduction program must, at a minimum, address:

(i) Reduction of vehicular and pedestrian safety events involving transit vehicles that includes consideration of safety risk mitigations consistent with paragraph (a)(2) of this section; and

(ii) Reduction and mitigation of assaults on transit workers that includes consideration of safety risk mitigations consistent with paragraph (a)(3) of this section and implementation of safety risk mitigations consistent with paragraph (a)(4) of this section.

(2) When carrying out the safety risk mitigation process under § 673.25(d) for risk relating to vehicular and pedestrian safety events involving transit vehicles, each large urbanized area provider must consider mitigations to reduce visibility impairments for transit vehicle operators that contribute to accidents, such as retrofits to vehicles in revenue

service and specifications for future procurements that reduce visibility impairments.

(3) When carrying out the safety risk mitigation process under § 673.25(d) for risk relating to assaults on transit workers, each large urbanized area provider must consider deployment of assault mitigation infrastructure and technology on transit vehicles. Assault mitigation infrastructure and technology includes barriers to restrict the unwanted entry of individuals and objects into the workstations of bus operators.

(4) When a Safety Committee recommends safety mitigations it has determined would reduce assaults on transit workers and injuries to transit workers based on a safety risk analysis conducted under § 673.25(c), the transit agency must implement one or more of those mitigations to reduce risk to an acceptable level, unless the Accountable Executive determines the mitigation will not improve the agency's overall safety performance.

(b) The Safety Committee of each large urbanized area provider must establish annual safety performance targets for the safety risk reduction program to reduce the number and rates of safety events, injuries, and assaults on transit workers based on the safety performance measures for the safety risk reduction program established in the National Public Transportation Safety Plan. The targets must be set—

(1) Based on a 3-year rolling average of the data submitted by the large urbanized area provider to the National Transit Database (NTD); and

(2) For all modes of public transportation.

(c) The Safety Committee of each large urbanized area provider is required to set targets for the safety risk reduction program only based on the level of detail the large urbanized area provider is required to report to the NTD. The Safety Committee is not required to set a target for a performance measure until the large urbanized area provider has been required to report 3 years of data to the NTD corresponding to such performance measure.

(d) A large urbanized area provider must monitor safety performance against annual safety performance targets set for the safety risk reduction program using the continuous improvement process established under § 673.27(d);

(e) A large urbanized area provider that does not meet an established annual safety performance target set for the safety risk reduction program must—

(1) Assess associated safety risk, using the methods or processes established under § 673.25(c).

(2) Mitigate associated safety risk based on the results of the safety risk assessment using the methods or processes established under § 673.27(d)(1). These mitigations must be included in the plan described in § 673.27(d)(2).

(3) Allocate its safety set aside in the following fiscal year to safety-related projects eligible under 49 U.S.C. 5307 that are reasonably likely to assist the transit agency in meeting the performance target in the future.

Subpart D—Safety Management Systems

§ 673.21 General requirements.

Each transit agency must establish and implement a Safety Management System under this part. A transit agency Safety Management System must be appropriately scaled to the size, scope and complexity of the transit agency and include the following elements:

(a) Safety Management Policy as described in § 673.23;

(b) Safety Risk Management as described in § 673.25;

(c) Safety assurance as described in § 673.27; and

(d) Safety Promotion as described in § 673.29.

§ 673.23 Safety Management Policy.

(a) A transit agency must establish its organizational accountabilities and responsibilities and have a written statement of Safety Management Policy that includes the transit agency's safety objectives and a description of the transit agency's Safety Committee or approach to cooperation with frontline transit worker representatives.

(b) A transit agency must establish and implement a process that allows transit workers to report safety concerns, including assaults on transit workers, near-misses, and unsafe acts and conditions to senior management, includes protections for transit workers who report, and includes a description of transit worker behaviors that may result in disciplinary action.

(c) The Safety Management Policy must be communicated throughout the transit agency's organization.

(d) The transit agency must establish the necessary authorities, accountabilities, and responsibilities for the management of safety amongst the following individuals or groups within its organization, as they relate to the development and management of the transit agency's SMS:

(1) *Accountable Executive.* The transit agency must identify an Accountable Executive. The Accountable Executive is accountable for ensuring that the transit agency's SMS is effectively implemented throughout the transit agency's public transportation system. The Accountable Executive is accountable for ensuring action is taken, as necessary, to address substandard performance in the transit agency's SMS. The Accountable Executive receives and considers recommendations for safety risk mitigations from the Safety Committee, as described in §§ 673.19(d) and 673.20(a)(4). The Accountable Executive may delegate specific responsibilities, but the ultimate accountability for the transit agency's safety performance cannot be delegated and always rests with the Accountable Executive.

(2) *Chief Safety Officer or Safety Management System (SMS) Executive.* The Accountable Executive must designate a Chief Safety Officer or SMS Executive who has the authority and responsibility for day-to-day implementation and operation of a transit agency's SMS. The Chief Safety Officer or SMS Executive must hold a direct line of reporting to the Accountable Executive. A transit agency may allow the Accountable Executive to also serve as the Chief Safety Officer or SMS Executive.

(3) *Safety Committee.* A large urbanized area provider must establish a joint labor-management Safety Committee that meets the requirements of § 673.19.

(4) *Transit agency leadership and executive management.* A transit agency must identify those members of its leadership or executive management, other than an Accountable Executive, Chief Safety Officer, or SMS Executive, who have authorities or responsibilities for day-to-day implementation and operation of a transit agency's SMS.

(5) *Key staff.* A transit agency may designate key staff, groups of staff, or committees to support the Accountable Executive, Chief Safety Officer, Safety Committee, or SMS Executive in developing, implementing, and operating the transit agency's SMS.

§ 673.25 Safety Risk Management.

(a) *Safety Risk Management process.* A transit agency must develop and implement a Safety Risk Management process for all elements of its public transportation system. The Safety Risk Management process must be comprised of the following activities: Safety hazard identification, safety risk assessment, and safety risk mitigation.

(b) *Safety hazard identification.* (1) A transit agency must establish methods

or processes to identify hazards and potential consequences of the hazards.

(2) A transit agency must consider, as a source for hazard identification:

(i) Data and information provided by an oversight authority, including but not limited to FTA, the State, or as applicable, the State Safety Oversight Agency having jurisdiction;

(ii) Data and information regarding exposure to infectious disease provided by the CDC or a State health authority; and

(iii) Safety concerns identified through Safety Assurance activities carried out under § 673.27.

(c) *Safety risk assessment.* (1) A transit agency must establish methods or processes to assess the safety risk associated with identified safety hazards.

(2) A safety risk assessment includes an assessment of the likelihood and severity of the potential consequences of identified hazards, taking into account existing safety risk mitigations, to determine if safety risk mitigation is necessary and to inform prioritization of safety risk mitigations.

(d) *Safety risk mitigation.* (1) A transit agency must establish methods or processes to identify safety risk mitigations or strategies necessary as a result of the transit agency's safety risk assessment to reduce the likelihood and severity of the potential consequences. For large urbanized area providers, these methods or processes must address the role of the transit agency's Safety Committee.

(2) A transit agency must consider, as a source for safety risk mitigation:

(i) Guidance provided by an oversight authority, if applicable, and FTA; and

(ii) Guidelines to prevent or control exposure to infectious diseases provided by the CDC or a State health authority.

§ 673.27 Safety assurance.

(a) *Safety assurance process.* A transit agency must develop and implement a safety assurance process, consistent with this subpart. A rail fixed guideway public transportation system, and a recipient or subrecipient of Federal financial assistance under 49 U.S.C. chapter 53 that operates more than one hundred vehicles in peak revenue service, must include in its safety assurance process each of the requirements in paragraphs (b), (c), and (d) of this section. A small public transportation provider only must include in its safety assurance process the requirements in paragraphs (b) and (d) of this section.

(b) *Safety performance monitoring and measurement.* A transit agency must establish activities to:

(1) Monitor its system for compliance with, and sufficiency of, the transit agency's procedures for operations and maintenance;

(2) Monitor its operations to identify any safety risk mitigations that may be ineffective, inappropriate, or were not implemented as intended. For large urbanized area providers, these activities must address the role of the transit agency's Safety Committee;

(3) Conduct investigations of safety events to identify causal factors; and

(4) Monitor information reported through any internal safety reporting programs.

(c) *Management of change.* (1) A transit agency must establish a process for identifying and assessing changes that may introduce new hazards or impact the transit agency's safety performance.

(2) If a transit agency determines that a change may impact its safety performance, then the transit agency must evaluate the proposed change through its safety risk management process.

(d) *Continuous improvement.* (1) A transit agency must establish a process to assess its safety performance annually.

(i) This process must include the identification of deficiencies in the transit agency's SMS and deficiencies in the transit agency's performance against safety performance targets required in § 673.11(a)(3).

(ii) For large urbanized area providers, this process must also address the role of the transit agency's Safety Committee and include the identification of deficiencies in the transit agency's performance against annual safety performance targets set for the safety risk reduction program required under § 673.20(b).

(iii) Rail transit agencies must also address any specific internal safety review requirements established by their State Safety Oversight Agency.

(2) A transit agency must develop and carry out, under the direction of the Accountable Executive, a plan to address any deficiencies identified through the safety performance assessment described paragraph (d)(1) of this section.

§ 673.29 Safety Promotion.

(a) *Competencies and training.* (1) A transit agency must establish and implement a comprehensive safety training program that includes de-escalation training, safety concern identification and reporting training, and refresher training for all operations transit workers and transit workers directly responsible for safety in the transit agency's public transportation system. The training program must include refresher training, as necessary.

(2) Large urbanized area providers must include maintenance transit workers in the safety training program.

(b) *Safety communication.* A transit agency must communicate safety and safety performance information throughout the transit agency's organization that, at a minimum, conveys information on hazards and safety risk relevant to transit workers' roles and responsibilities and informs transit workers of safety actions taken in response to reports submitted through a transit worker safety reporting program. A transit agency must also communicate the results of cooperation with frontline transit worker representatives as described at § 673.17(b) or the Safety Committee activities described in § 673.19.

Subpart E—Safety Plan Documentation and Recordkeeping

§ 673.31 Safety plan documentation.

At all times, a transit agency must maintain documents that set forth its Public Transportation Agency Safety Plan, including those related to the implementation of its SMS, and results from SMS processes and activities. A transit agency must maintain documents that are included in whole, or by reference, that describe the programs, policies, and procedures that the transit agency uses to carry out its Public Transportation Agency Safety Plan. These documents must be made available upon request by FTA or other Federal entity, or a State or State Safety Oversight Agency having jurisdiction. A transit agency must maintain these documents for a minimum of three years after they are created.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 230419–0105]

RIN 0648–BM06

Fisheries of the Northeastern United States; Monkfish; Framework Adjustment 13

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to approve and implement specifications submitted by the New England and Mid-Atlantic Fishery Management Councils in Framework Adjustment 13 to the Monkfish Fishery Management Plan. This action would set monkfish specifications for fishing years 2023 through 2025, adjust annual Days-At-Sea allocations, and increase the minimum gillnet mesh size for vessels fishing on monkfish Days-At-Sea. This action is needed to establish allowable monkfish harvest levels and management measures that will prevent overfishing and reduce bycatch.

DATES: Public comments must be received by May 11, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0013, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0013 in the Search Box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.

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

Copies of the Framework 13 document, including the Regulatory Flexibility Act Analysis and other supporting documents for the specifications, are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The specifications document is also accessible via the internet at: *https://www.nefmc.org/management-plans/monkfish.*

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Policy Analyst, (978) 281–9232.

SUPPLEMENTARY INFORMATION:

Background

The monkfish fishery is jointly managed under the Monkfish Fishery Management Plan (FMP) by the New England and the Mid-Atlantic Fishery Management Councils. The fishery extends from Maine to North Carolina from the coast out to the end of the continental shelf. The Councils manage the fishery as two management units, with the Northern Fishery Management Area (NFMA) covering the Gulf of Maine and northern part of Georges Bank, and the Southern Fishery Management Area (SFMA) extending from the southern flank of Georges Bank through Southern New England and into the Mid-Atlantic Bight to North Carolina.

The monkfish fishery is primarily managed by landing limits and a yearly allocation of monkfish days-at-sea (DAS) calculated to enable vessels participating in the fishery to catch, but not exceed, the target total allowable landings (TAL) and the annual catch target (ACT), which is the TAL plus an estimate of expected discards, for each management area.

Proposed Measures

1. Specifications

We are proposing to adjust the NFMA and SFMA quotas for fishing years 2023 through 2025 (Table 1), based on the Councils' recommendations.

On October 26, 2022, the New England Council's Scientific and Statistical Committee (SSC) recommended acceptable biological catch (ABC) levels in the NFMA and SFMA for fishing years 2023–2025 based on the I-smooth method applied during the 2022 Monkfish Management Track Assessment. The I-smooth method is a model-free method for developing catch advice that applies a trawl-survey derived multiplier to recent 3-year catch, and was selected for use for monkfish in the absence of an analytic model for either stock. At its December 2022 meeting, the New England Council delayed final action on Framework 13 and remanded the ABC recommendations back to the SSC for further consideration. Specifically, the New England Council requested that the SSC consider setting ABCs for the FY 2023–2025 as the average of the I-smooth approach and a modified I-smooth that applies the trawl survey multipliers to the recent ABCs as an alternative method for determining catch advice. The Mid-Atlantic Council concurred with the New England Council's delay and remand during its December 2022 meeting. On January 20, 2023, the SSC met, considered the New England Council requested method for determining catch advice, and made an updated ABC recommendation. On January 25, 2023, The New England Council approved the updated specifications for 2023–2025, and the Mid-Atlantic Council did the same on February 7, 2023. The Councils' recommendations are based on the results of the 2022 assessment update and the January 20, 2023, recommendations of the New England Council's SSC.

The Council recommended specifications include a 25-percent decrease in the ABC and annual catch limit (ACL) in the NFMA and a 52-percent decrease in the ABC and ACL in the SFMA, when compared to the 2020–2022 specifications. Discards, calculated using the median of the most recent 10 years of data, decreased in both areas, but more significantly in the SFMA. After accounting for discards, the Councils recommend a 20-percent decrease in the TAL for the NFMA and a 41-percent decrease in the TAL for the SFMA. Despite these changes, both Councils recommend no adjustments to day-at-sea allocations or landing limits.

TABLE 1—PROPOSED FRAMEWORK 13 SPECIFICATIONS

Catch limits	Northern area		Southern area	
	Proposed 2023–2025 specs (mt)	Percent change from 2022 *	Proposed 2023–2025 specs (mt)	Percent change from 2022 *
Acceptable Biological Catch	6,224	−25	5,861	−52
Annual Catch Limit	6,224	−25	5,861	−52
Management Uncertainty (3%)	187	.....	176	.....
Annual Catch Target (Total Allowable Landings + discards)	6,038	−25	5,685	−52

TABLE 1—PROPOSED FRAMEWORK 13 SPECIFICATIONS—Continued

Catch limits	Northern area		Southern area	
	Proposed 2023–2025 specs (mt)	Percent change from 2022 *	Proposed 2023–2025 specs (mt)	Percent change from 2022 *
Expected Discards	729	−51	2,205	−64
Total Allowable Landings	5,309	−20	3,481	−41

* Percent change from the previously approved 2020–2022 specifications.

At the end of each fishing year, we evaluate catch information and determine if the quota has been exceeded. The regulations at 50 CFR 648.96(d) require the Councils to revise the monkfish ACT if it is determined that the annual catch limit was exceeded in any given year, or for NMFS to revise the monkfish ACT if the Councils fail to take action. We would publish a notice in the **Federal Register** of any revisions to these proposed specifications if an overage occurs. We expect, based on preliminary 2022 year-end accounting, that no adjustment is necessary for fishing year 2023. We will provide notice of the 2024 and 2025 quotas prior to the start of each respective fishing year.

2. Annual DAS Allocations

Under current regulations, each vessel possessing a limited access monkfish permit is annually allocated a total of 46 DAS, of which up to 37 may be used in the SFMA. This total allocation is reduced by an amount necessary to reserve 500 DAS from the entire fishery for the Monkfish Research Set-Aside (RSA) Program reach year. In addition, vessels may carryover up to 4 unused DAS from one fishing year to the next. The amount of DAS ultimately available to a vessel for a given fishing year is the sum of the initial allocation, plus any eligible DAS carried over and less the annual RSA deduction.

To ensure that the fishery is able to meet, but not exceed, the new TALs proposed for 2023–2025, both Councils recommended that Framework 13 include a set of changes to the yearly DAS allocation. First, the initial allocation of DAS that could previously be used in any area would be split into separate DAS allocations for each of the NFMA and SFMA. The Councils recommended that each limited access vessel be allocated 35 DAS for the NFMA and 37 DAS for the SFMA. Second, the 37 DAS restriction for the SFMA would be removed and replaced with a new limit that would restrict vessels from using more than 46 allocated DAS total during each fishing year. Finally, the annual deduction of RSA DAS from each limited access vessel's DAS allocation would be applied proportionally to the separate DAS allocations for the NFMA and SFMA. The DAS carryover provisions would not be changed by this action; vessels would be eligible for up to 4 carryover DAS in each fishing year that would not count against the allocation limits in either area or the general allocated DAS usage restriction.

3. Minimum Gillnet Mesh Size Increase

To reduce bycatch of small monkfish, both Councils recommended an increase in the minimum gillnet mesh size for vessels on a monkfish DAS or fishing in the Gulf of Maine/Georges Bank Dogfish and Monkfish Gillnet Fishery Exemption from 10 inches (25.4 cm) to 12 inches (30.5 cm) diamond mesh. This change would go into effect at the beginning of May 1, 2026. The additional time would allow any affected vessels not already using the larger mesh size time to make the transition as part of the normal operation and replacement of worn nets. We expect that the delayed implementation will reduce the overall cost of this measure to industry.

4. Regulatory Corrections

Using our authority under section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), we are clarifying the regulation at § 648.92(b)(2)(iii)(B) that describes the interaction between the Northeast (NE) multispecies DAS leasing program at § 648.82(k) and monkfish DAS balances for category C, D, F, G, or H vessels that choose to lease NE multispecies DAS.

When a category C, D, F, G, or H vessel leases NE multispecies DAS to another vessel(s), a certain number of monkfish DAS owned by the lessor vessel become unavailable for use. The current regulatory text does not clearly explain the method used to determine the number of monkfish DAS owned by the lessor vessel that may become unavailable in such transactions. In addition, the current numerical example does not match preceding written examples, and may be confusing.

The proposed changes to § 648.92(b)(2)(iii)(B) are intended to more clearly describe the interaction between the NE multispecies DAS leasing program and monkfish DAS balances for category C, D, F, G, or H vessels that choose to lease NE multispecies DAS. The proposed changes do not substantively change the way in which monkfish DAS balances are affected by leases of NE multispecies DAS.

Classification

NMFS is issuing this rule pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act, which provide specific authority for implementing this action. Section 304(b)(1)(A) authorizes NMFS to initiate an evaluation of proposed regulations to determine whether they are consistent with the fishery management plan, plan amendment, the Magnuson-Stevens Act and other applicable law, and if that determination is affirmative, publish the regulations in the **Federal Register** for public comment.

Additionally, this rule contains a regulatory correction being issued pursuant to MSA section 305(d) that is necessary to carry out the Monkfish FMP. The correction is necessary to carry out the Monkfish FMP because it clarifies regulations describing how monkfish DAS are managed in relation to the Northeast multispecies DAS leasing program. A clear description of this process is necessary for the public and industry to understand it and make decisions regarding to management of DAS. Though this correction is being included in this proposed rule to implement Framework 13, it is not part of Framework 13 as approved by the Councils. The lack of clarity in the current regulatory text was discovered after the approval of Framework 13 by the Councils, and could not be included. Making this correction pursuant to 305(d) authority allows for

the correction to be implemented more quickly than otherwise possible. Though the correction is consistent with the FMP and review was not necessary, the Council did receive the opportunity to review and deem the change to the regulatory text necessary and appropriate.

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Monkfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

NMFS finds that a 15-day comment period for this action provides a reasonable opportunity for public participation in this action, while also ensuring that the final specifications are in place as close to start of the monkfish fishing year on May 1, 2023, as possible. This action was jointly developed by the New England and Mid-Atlantic Fishery Management Councils as part of the annual Framework Adjustment process, during which final action by the Councils was expected in December 2022. However, the Council process was delayed in order to provide time for the New England Fishery Management Council's Scientific and Statistical Committee to re-evaluate its ABC recommendations for 2023 through 2025. This action could not be proposed sooner as a result of the delay in this process. Stakeholder and industry groups have been involved with the development of this action and have participated in public meetings throughout the past year. A prolonged comment period and subsequent potential delay in implementation would be contrary to the public interest, as it would extend the amount of time in which no specifications are in place for fishing year 2023, rather than replacing them with the quotas proposed in this rule, which are based on the best available science. The fishery may continue to operate under current DAS and trip limit regulations without specifications in fishing year 2023, but an extended delay could lead to confusion.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this action, if adopted, would not have a significant economic effect on a substantial number of small entities.

As outlined in the preamble of this rule, the purpose of this action is to implement Framework 13 to the Monkfish FMP. Framework 13 would set monkfish specifications for fishing years 2023–2025, make changes to the yearly allocation of DAS to vessels issued limited access monkfish permits, and increase the minimum mesh size for gillnet vessels from 10 to 12 inches. The specifications in this rule include a TAL for the NFMA in fishing years 2023 through 2025 that is 20 percent lower the TAL in fishing years 2020 through 2022 and a TAL for the SFMA in fishing years 2023 through 2025 that is 41 percent lower than the TAL in fishing years 2020 through 2022. This framework is needed to establish allowable monkfish harvest levels that will prevent overfishing.

We issued 492 limited access monkfish permits and 1,198 open access monkfish permits as of June 1, 2022, for a total of 1,692 permits potentially regulated by this action. Each vessel may be individually owned or part of a larger corporate ownership structure, and for RFA purposes, it is the ownership entity that is ultimately regulated by the proposed action. The current ownership data set is based on calendar year 2021 permits and contains gross sales associated with those permits for calendar years 2019 through 2021. Ownership data collected from permit holders indicate there are 1,207 distinct business entities that held at least one permit that could be directly regulated by this proposed action in 2021. Of these 1,207 entities, 804 are commercial fishing entities, and 137 are for-hire entities.

For the purposes of the Regulatory Flexibility Act, we define a small business in the commercial harvesting sector as a firm with receipts (gross revenues) of up to $11 million for commercial fishing businesses. Of the 804 commercial fishing entities, 793 are categorized as small entities and 11 are categorized as large entities, per the NOAA Fisheries guidelines. All 137 for-hire entities are categorized as small businesses. In 2021, 266 of the 1,207 entities had zero monkfish revenue.

This action is expected to have minimal economic impacts on both large and small entities. Although the proposed action would set TALs lower than what was in place in fishing year 2021, actual landings in that year were far less than the TALs proposed in this action. Because we expect landings to remain constant relative to fishing year 2021, we expect TAL reductions to pose no cost on the fleet relative to 2021 activity. Additionally, the proposed DAS allocation changes are expected to constrain only four vessels based on previous fishing activity; the vast majority of small firms are not impacted by the proposed DAS allocation change. Finally, the increased mesh size regulations do not become effective until 2026 (after the final year of the specifications in this action) and are estimated to impact eight vessels. The delay in implementation allows affected vessels to replace their nets as they become worn out as part of regular net replacement. This cost thus would not be directly tied to the proposed mesh size regulation, but instead is a regular fishing operation cost.

This action is not expected to have a significant impact on a substantial number of small entities. Nearly all monkfish entities (99 percent) are considered small entities. Regulated small entities identified in this analysis are expected to experience no impacts. No impacts are expected to the 12 regulated large entities, as they have little dependence on monkfish revenue. Small entities would not be placed at a competitive disadvantage relative to large entities, and the regulations would not reduce the profit for any small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing.

Dated: April 19, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 648 as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. Amend § 648.10, by revising paragraph (g)(3)(ii) to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(g) * * *

(3) * * *

(ii) An operator of a vessel issued both a NE multispecies permit and a monkfish permit are authorized to change their DAS declaration from a NE multispecies Category A DAS to a monkfish DAS, while remaining subject to the to the NE multispecies DAS usage requirements under § 648.92(b)(1)(iv), during the course of a trip, as provided at § 648.92(b)(1)(vi)(A).

* * * * *

■ 3. Amend § 648.14, by revising paragraphs (m)(2)(i) and (m)(3)(ii) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(m) * * *

(2) * * *

(i) Fish with or use nets with mesh size smaller than the minimum mesh size specified in § 648.91(c) while fishing under a monkfish DAS, except as authorized by § 648.91(c)(1)(v).

* * * * *

(3) * * *

(ii) Fail to comply with the NFMA or SFMA requirements specified at § 648.92(b)(1)(v)

* * * * *

■ 4. Amend § 648.80, by revising paragraph (a)(13)(i)(B) to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(13) * * *

(i) * * *

(B) Minimum Mesh Size.

(*1*) Through April 30, 2026, all gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(*2*) Starting May 1, 2026, all gillnets must have a minimum mesh size of 12-inch (30.5-cm) diamond mesh throughout the net.

* * * * *

■ 5. Amend § 648.91, by revising paragraphs (c)(1)(iii) and (iv) and adding (c)(1)(v) and (vi) to read as follows:

§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(c) * * *

(1) * * *

(iii) *Gillnets while on a monkfish DAS for fishing years 2023, 2024, and 2025.* Until April 30, 2026, the minimum mesh size for any gillnets used by a vessel fishing under a monkfish DAS is 10-inch (25.4-cm) diamond mesh, unless the vessel meets one of the exceptions in paragraph (c)(1)(v) of this section.

(iv) *Gillnets while on a monkfish DAS from fishing year 2026 and beyond.* Starting May 1, 2026, the minimum mesh size for any gillnets used by a vessel fishing under a monkfish DAS is 12-inch (30.5-cm) diamond mesh, unless the vessel meets one of the exceptions in paragraph (c)(1)(v) of this section.

(v) *Exceptions from the minimum mesh size for gillnets on a monkfish DAS.* A vessel fishing with gillnet gear under a monkfish DAS is subject to the minimum mesh size as defined in paragraph (c)(1)(iii) or (c)(1)(iv) of this section, unless:

(A) The owner or operator of a limited access NE multispecies vessel fishing under a NE multispecies category A DAS with gillnet gear in the NFMA changes the vessel's DAS declaration to a monkfish DAS through the vessel's VMS unit during the course of the trip in accordance with the provisions specified under § 648.92(b)(1)(vi);

(B) A vessel issued a Category C or D limited access monkfish permit is fishing under both a monkfish and NE multispecies Category A DAS in the SFMA using roundfish gillnets, as defined at § 648.2, with 6.5-inch (16.5-cm) diamond mesh;

(C) A vessel issued a limited access monkfish permit is fishing on a monkfish-only DAS in the Mid-Atlantic Exemption Area using roundfish gillnets with a minimum mesh size of 5 inches (12.7 cm) in accordance with the provisions specified under § 648.80(c)(5); or

(D) A vessel issued a limited access monkfish permit is fishing on a monkfish-only DAS in the Southern New England Dogfish Exemption Area using roundfish gillnets with a minimum mesh size of 6 inches (15.2 cm) in accordance with the provisions specified under § 648.80(b)(7).

(vi) *Authorized gear while on a monkfish and scallop DAS.* Vessels issued a Category C, D, G, or H limited access monkfish permit and fishing under a monkfish and scallop DAS may only fish with and use a trawl net with a mesh size no smaller than that specified in paragraph (c)(1)(i) of this section.

* * * * *

■ 6. Amend § 648.92, by revising paragraphs (b)(1)(i) through (v), adding (b)(1)(vi), revising paragraphs (b)(2)(ii) and (b)(2)(iii)(B), and revising paragraph (c)(1)(ii)(A) to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(1) * * *

(i) *DAS allocations.* Each vessel issued a limited access monkfish permit will be allocated 35 monkfish DAS each fishing year that may be used only in the Northern Fishery Management Area as defined in § 648.91(a). Each vessel issued a limited access monkfish permit will also be allocated 37 monkfish DAS each fishing year that may be used only in the Southern Fishery Management Area as defined in § 648.91(b). The annual allocation of monkfish DAS to each vessel issued a limited access monkfish permit in the NFMA and SFMA shall be reduced by the amount calculated in paragraph (b)(1)(iii) of this section for the research DAS set-aside. All DAS must be used in accordance with the provisions of this paragraph (b) unless the permit is enrolled in the Offshore Fishery Program in the SFMA, as specified in paragraph (b)(1)(ii) of this section.

(ii) *Offshore fishery program DAS allocation.* A vessel issued a Category F permit, as described in § 648.95, shall be allocated a prorated number of monkfish DAS as specified in § 648.95(g)(2).

(iii) *Research DAS set-aside.* A total of 500 DAS will be set aside and made available for cooperative research programs as described in paragraph (c) of this section. These DAS shall be deducted proportionally from the DAS allocated to each vessel issued a limited access monkfish permit by the process prescribed in this paragraph (b)(1)(iii).

(A) *Calculating the total per vessel DAS deduction.* The total per vessel DAS deduction will be calculated as the quotient of 500 divided by the total number of limited access permits issued in the previous fishing year.

(B) *Calculating the per vessel DAS deduction for the NFMA and SFMA.* The total vessel DAS deduction will be distributed proportionally to the DAS for the NFMA and SFMA allocated to each vessel issued a monkfish limited access permit, as specified in paragraph (b)(1)(i) of this section. To determine the per-vessel deduction from the NFMA DAS allocation, the total per vessel deduction will be multiplied by the quotient of the NFMA DAS allocation divided by the total number of DAS allocated to each monkfish limited access vessel. To determine the per-vessel deduction from the SFMA DAS allocation, the NFMA deduction will be subtracted from the total per vessel deduction.

(C) *Example.* If in the current year, each vessel is allocated 30 NFMA DAS and 20 SFMA DAS, then the total vessel DAS allocation is 50 DAS. In this example, 625 limited access monkfish permits were issued in the previous year. Dividing 500 by the 625 permits equals a total per-vessel DAS deduction of 0.8 DAS. Dividing the NFMA allocation of 30 DAS by the total DAS allocation of 50 DAS equals 0.6. Multiplying 0.6 by 0.8 equals an NFMA DAS deduction of 0.48, which is rounded to 0.5. Subtracting the 0.5 NFMA DAS deduction from the total per vessel deduction of 0.8 results in an SFMA DAS deduction of 0.3 DAS. The

result of is that each limited access monkfish vessel would be allocated 29.5 NFMA DAS and 19.7 SFMA DAS.

(iv) *General DAS usage restrictions.* A vessel issued a limited access monkfish permit may not use more than 46 allocated monkfish DAS in a fishing year. Unless otherwise specified in paragraph (b)(2) of this section or under this subpart F, a vessel issued a limited access NE multispecies or limited access Atlantic sea scallop permit that is also issued a limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with each monkfish DAS utilized.

(v) *DAS declaration requirements.* Each vessel issued a limited access monkfish permit that intends to fish under a monkfish DAS must declare that it will fish in either the NFMA or SFMA through the vessel call-in system or VMS prior to the start of each trip. A vessel intending to fish for, fishing for, possessing, or landing monkfish under a NE multispecies, scallop, or monkfish DAS under the management measures of the NFMA, must fish exclusively in the NFMA for the entire trip. In addition, a vessel that is not required to and does not possess a VMS unit must declare its intent to fish in the NFMA by obtaining a letter of authorization from the Regional Administrator, which is effective for a period of not less than 7 days, and fish exclusively in the NFMA during the effective period of that letter of authorization. A vessel that has not declared into the NFMA under this paragraph (b)(1)(v) shall be presumed to have fished in the SFMA, and shall be subject to the requirements of that area. A vessel that has declared into the NFMA may transit the SFMA, providing that it complies with the transiting and gear storage provision described in § 648.94(e).

(vi) *Monkfish Option provision and declaration requirements.* Any limited access NE multispecies vessel fishing on a sector trip or under a NE multispecies Category A DAS in the NFMA, and issued an LOA as specified in paragraph (b)(1)(v) of this section, may change its DAS declaration to a monkfish DAS through the vessel's VMS unit during the course of the trip after leaving port, but prior to crossing the VMS demarcation line upon its return to port or leaving the NFMA, if the vessel exceeds the incidental catch limit specified under § 648.94(c).

(A) Vessels that change their DAS declaration from a NE multispecies Category A DAS to a monkfish DAS during the course of a trip remain subject to the NE multispecies DAS usage requirements (*i.e.,* use a NE multispecies Category A DAS in conjunction with the monkfish DAS) described in paragraph (b)(2)(iv) of this section.

(B) Gillnet vessels that change their DAS declaration in accordance with this paragraph (b)(1)(vi) are not subject to the gillnet minimum mesh size restrictions found at § 648.91(c)(1)(iii) and (iv), but are subject to the smaller NE multispecies minimum mesh requirements for gillnet vessels found under § 648.80 based upon the NE Multispecies Regulated Mesh Area in which the vessel is fishing.

(2) * * *

(ii) *Monkfish-only DAS.* When a vessel issued a limited access monkfish Category C, D, F, G, or H permit and a limited access NE multispecies DAS permit has an allocation of NE multispecies Category A DAS, specified under § 648.82(d)(1), that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30, that vessel shall be allocated ''monkfish-only'' DAS equal to the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies Category A DAS at the start of a fishing year. For example, if a vessel issued a limited access monkfish Category D permit is allocated 30 monkfish DAS for use in the Northern Fishery Management Area, 20 monkfish DAS for use in the Southern Fishery Management Area, and 26 NE multispecies Category A DAS, it would have 24 monkfish-only DAS at the start of each fishing year. The available balance of monkfish-only DAS may vary throughout the fishing year based upon monkfish-only DAS usage and the acquisition or relinquishment of NE multispecies DAS under the NE Multispecies DAS Leasing Program, as specified in paragraph (b)(2)(iii) of this section. A vessel issued a limited access monkfish Category C, D, F, G, or H permit may use monkfish-only DAS without the concurrent use of a NE multispecies DAS at any time throughout the fishing year, regardless of the number of NE multispecies Category A DAS available. When fishing under a monkfish-only DAS, the vessel must fish under the regulations pertaining to a limited access monkfish Category A or B permit, as applicable, and may not retain any regulated NE multispecies. For example, a vessel issued a limited access monkfish Category C permit must comply with the monkfish landing limits applicable to a Category A monkfish permit when fishing under a monkfish-only DAS.

(iii) * * *

(B) A vessel issued a limited access monkfish Category C, D, F, G, or H permit may forfeit some of its monkfish DAS, if it leases NE multispecies DAS to another vessel(s), pursuant to § 648.82(k). The number of monkfish DAS forfeited by a vessel depends on its balance of Monkfish and NE multispecies DAS at the time of the lease. Any forfeited monkfish DAS will be deducted proportionally between the DAS allocated to the vessel for use in the Northern Fishery Management Area and Southern Fishery Management Area in paragraph (b)(1)(i) of this section.

(*1*) If the vessel's unused monkfish DAS balance is greater than or equal to its unused NE multispecies DAS balance, at the time of the lease, then the vessel will forfeit an amount of monkfish DAS equal to the number of NE multispecies DAS being leased to another vessel. For example, if a vessel has 40 monkfish DAS and 30 NE multispecies DAS and it leases 10 NE multispecies DAS in accordance with § 648.82(k), then, as part of the lease, the vessel would forfeit 10 monkfish DAS and be left with 30 monkfish DAS and 20 multispecies DAS.

(*2*) If the vessel's unused monkfish DAS balance is less than its unused NE multispecies DAS balance, at the time of lease, then the vessel will forfeit an amount of monkfish DAS equal to the number of NE multispecies DAS being leased minus the difference between the vessel's unused NE multispecies DAS balance and the vessel's unused monkfish DAS balance. If the number of NE multispecies DAS being leased is less than the difference between the vessel's unused NE multispecies DAS balance and the vessel's unused monkfish DAS balance, then no monkfish DAS are forfeited. For example, if a vessel has 25 monkfish DAS and 30 NE multispecies DAS at the time of the lease, and it leases 10 NE multispecies DAS, the vessel would forfeit 5 monkfish DAS (10 leased − [30 NE multispecies DAS − 25 monkfish DAS] = 5 forfeited monkfish DAS). If, however, the vessel has 25 monkfish DAS and 40 NE multispecies and the vessel leases 10 NE multispecies DAS, it would not forfeit any monkfish DAS (10 leased NE multispecies DAS − [40 NE multispecies DAS − 25 monkfish DAS] = −5. The number of DAS forfeited cannot be negative, so 0 DAS are forfeited).

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(A) Each panel member shall recommend which research proposals

should be authorized to utilize the research DAS set aside in accordance with paragraph (b)(1)(iii) of this section, based on the selection criteria described in the RFP.

* * * * *

■ 7. In § 648.94, remove and reserve paragraph (f).

■ 8. Amend § 648.95 by revising paragraph (e)(3) to read as follows:

§ 648.95 Offshore Fishery Program in the SFMA.

* * * * *

(e) * * *

(3) A vessel issued a limited access monkfish Category F permit fishing on a monkfish DAS is subject to the minimum mesh size requirements specified in § 648.91(c)(1)(i), (iii) and (iv), as well as the other gear requirements specified in § 648.91(c)(2) and (3).

* * * * *

[FR Doc. 2023–08622 Filed 4–25–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 88, No. 80
Wednesday, April 26, 2023

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities, Comments Request: Understanding States' SNAP Customer Service Strategies

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed collection of information for the *Understanding States' SNAP Customer Service Strategies* study. This is a NEW information collection. This study seeks to describe the key characteristics of State Supplemental Nutrition Assistance Program (SNAP) agencies' customer service strategies through in-depth case studies in up to 9 States, review the current literature on customer service, particularly in government social safety net programs, and identify promising practices in improving, measuring, and monitoring customer service in SNAP.

DATES: Written comments must be received on or before June 26, 2023.

ADDRESSES: Comments may be sent to: Melanie Meisenheimer, Office of Policy Support, FNS, USDA, 1320 Braddock Place, 5th Floor, Alexandria, VA 22314; telephone: 703–305–2770. Comments may also be submitted via email to *melanie.meisenheimer@usda.gov* with ''SNAP CS'' in the subject line. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m.), Monday through Friday at Office of Policy Support, FNS, UDA, 1320 Braddock Place, 5th Floor, Alexandria, VA 22314.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Melanie Meisenheimer, Food and Nutrition Service: by phone at 703–305–2770 or by email at *melanie.meisenheimer@usda.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 that were 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 those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Understanding States' SNAP Customer Service Strategies.

Form Number: Not applicable.

OMB Number: 0584–NEW.

Expiration Date: Not yet determined.

Type of Request: New collection.

Abstract: This is a new information collection request. The Food and Nutrition Service (FNS) is interested in exploring how State agencies define and measure the quality of customer service for Supplemental Nutrition Assistance Program (SNAP) applicants and participants, particularly strategies that go beyond the minimum requirements set by FNS; and how State SNAP agencies implement and refine their customer service approaches. This study will conduct case studies in up to nine states to understand their approaches to defining, measuring, and improving customer service in SNAP.

FNS has identified three objectives for this study:

(1) Describe how each study State defines and measures good and/or bad customer service for SNAP applicants and participants, particularly those that go beyond the minimum requirements set by FNS.

(2) For each study State, describe how the State SNAP agency implements and refine its customer service approach.

(3) Describe the current research and documentation available about customer service standards and measurement broadly, with a particular focus on government programs and safety net programs.

The study will be conducted through two key components:

(1) Review of existing studies, reports, and data on customer services strategies and approaches.

(2) Case studies in up to nine states with diverse approaches to supporting and monitoring customer service in SNAP.

The research team will collect case study data during two-day in-person site visits to each selected State that will include interviews with State, regional (*e.g.,* call center), and local SNAP staff and key stakeholders, review of relevant documents and reports, and observations of staff interactions with customer service systems.

Affected Public: Respondent categories of affected public and the corresponding study participants will include: State and Local or Tribal Government and business not-for-profit organizations.

Estimated Number of Respondents: 116.

The total estimated number of respondents (116) includes: Out of 12 State Agency SNAP Directors contacted, 9 will participate; out of 18 State SNAP Administrative Staff contacted, 18 will participate; out of 14 County and Tribal Government and call center SNAP Directors, 14 will participate; out of 54 County and Tribal SNAP Staff contacted, 54 will participate; and out of 9 business not-for-profit organizations contacted, 18 staff will participate.

Estimated Number of Responses per Respondent: The estimated number of responses per State Government SNAP Director respondent is two: Nine State SNAP Directors will take part in a recruitment call lasting about 20 minutes and an interview lasting approximately 1 hour.

The estimated number of responses per State SNAP Administrative Staff

respondent is two: 18 respondents will take part in a recruitment call lasting about 20 minutes and an interview lasting approximately 1 hour.

The estimated number of responses per Non-profit Organization (Organizations conducting SNAP outreach) is two: 9 respondents will take part in a recruitment call lasting about 20 minutes and 9 respondents will take part in interviews lasting approximately 1 hour.

The estimated number of responses per County and Tribal Government or Call Center SNAP Director is two: 14 respondents will take part in a recruitment call lasting about 20 minutes and an interview lasting approximately 1 hour.

The estimated number of responses per County and Tribal SNAP Staff is one: 54 respondents will take part in an interview or a deskside observation lasting approximately 1 hour.

Estimated Total Annual Responses: 154.

Estimated Time per Response: 1.3 hours.

Estimated Total Annual Burden on Respondents: 119.9 hours (119.0 for responsive participants and 0.9 for nonresponsive participants).

See the table below for estimated total annual burden for each type of respondent, including non-respondents.

BILLING CODE 6410–30–P

			RESPONDENTS					NON-RESPONDENTS					
Respondent Description	**Activity**	**Sample Size**	**Estimated Number of Respondents**	**Frequency of Response (Annually)**	**Total Annual Responses**	**Average Hours per Response**	**Subtotal Estimated Annual Burden (Hours)**	**Estimated Number of Non-Respondents**	**Frequency of Response**	**Total Annual Responses**	**Average Time per Response (Hours)**	**Subtotal Estimated Annual Burden (Hours)**	**Grand Total Burden Estimate**
BUSINESS NOT-FOR PROFIT													
Organizations conducting SNAP outreach	Site visit: Recruitment	9.0	9.0	1.0	9.0	0.3	2.7	0.0	0.0	0.0	0.0	0.0	2.7
Organizations conducting SNAP outreach	Site visit: Semi-structured interviews	9.0	9.0	1.0	9.0	1.0	9.0	0.0	0.0	0.0	0.0	0.0	9.0
Subtotal Business not-for Profit		**18.0**	**18.0**	**2.0**	**18.0**	**1.3**	**11.7**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**11.7**
STATE, LOCAL & TRIBAL SNAP STAFF													
Agency SNAP Directors	Site visit: Recruitment	12.0	9.0	1.0	9.0	0.3	2.7	3.0	1.0	3.0	0.3	0.9	3.6
Agency SNAP Directors	Site visit: Semi-structured interviews	9.0	9.0	1.0	9.0	1.0	9.0	0.0	0.0	0.0	0.0	0.0	9.0
State SNAP Staff	Site visit: Recruitment	18.0	18.0	1.0	18.0	0.3	5.4	0.0	0.0	0.0	0.0	0.0	5.4
State SNAP Staff	Site visit: Semi-structured interviews	18.0	18.0	1.0	18.0	1.0	18.0	0.0	0.0	0.0	0.0	0.0	18.0

			RESPONDENTS					NON-RESPONDENTS						
Respondent Description	**Activity**	**Sample Size**	**Estimated Number of Respondents**	**Frequency of Response (Annually)**	**Total Annual Responses**	**Average Hours per Response**	**Subtotal Estimated Annual Burden (Hours)**	**Estimated Number of Non-Respondents**	**Frequency of Response**	**Total Annual Responses**	**Average Time per Response (Hours)**	**Subtotal Estimated Annual Burden (Hours)**	**Grand Total Burden Estimate**
County and Tribal Government and call center SNAP Directors	Site visit: Recruitment	14.0	14.0	1.0	14.0	0.3	4.2	0.0	0.0	0.0	0.0	0.0	4.2
County and Tribal Government and call center SNAP Directors	Site visit: Interview	14.0	14.0	1.0	14.0	1.0	14.0	0.0	0.0	0.0	0.0	0.0	14.0
County and Tribal SNAP Staff	Site visit: Semi-structured interviews & observations	54.0	54.0	1.0	54.0	1.0	54.0	0.0	0.0	0.0	0.0	0.0	54.0
Subtotal State and Local		**98.0**	**95.0**	**7.0**	**136.0**	-	**107.3**	**3.0**	**1.0**	**3.0**	**0.3**	**0.9**	**108.2**
GRAND TOTAL		**116.0**	**113.0**	**9.0**	**154.0**	-	**119.0**	**3.0**	**1.0**	**3.0**	**0.3**	**0.9**	**119.9**

Tameka Owens,
Deputy Administrator, Food and Nutrition Service.

[FR Doc. 2023–08767 Filed 4–25–23; 8:45 am]
BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities, Proposed Collection: Request for Comments on How Have SNAP State Agencies Shifted Operations in the Aftermath of COVID–19? (SNAP COVID Study)

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a new information collection for the contract of the study titled ''How Have Supplemental Nutrition Assistance Program (SNAP) State Agencies Shifted Operations in the Aftermath of COVID–19? (SNAP COVID study)''. The purpose of the SNAP COVID study is to help FNS develop a comprehensive understanding of how SNAP agencies have adapted their operations and norms during the COVID–19 pandemic and increased their preparedness for another major disruption.

DATES: Written comments must be received on or before June 26, 2023.

ADDRESSES: Comments may be sent to Amanda Wyant, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, 5th floor, Alexandria, VA 22314. Comments may also be submitted via email to *Amanda.Wyant@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Amanda Wyant at 703–305–7537.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the agency's functions, 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 that were 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 those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: How Have SNAP State Agencies Shifted Operations in the Aftermath of COVID–19? (SNAP COVID study).

Form Number: N/A.

OMB Number: 0584–NEW.

Expiration Date: Not yet determined.

Type of Request: New collection.

Abstract. As the cornerstone of the nation's nutrition safety net, the Supplemental Nutrition Assistance Program (SNAP) provides monthly benefits to households with low incomes to reduce food insecurity and improve health and well-being. The COVID–19 pandemic and its economic fallout created extraordinary challenges for SNAP and the broader safety net as whole. To keep processing applications and issuing benefits, SNAP agencies had to pivot sharply to adapt their core operations and deliver services primarily or entirely virtually. Drawing on both new and existing waivers and policy options in this uncharted environment required a host of complicated decisions and choices on the part of State SNAP agencies. The study titled ''How Have SNAP State Agencies Shifted Operations in the Aftermath of COVID–19? (SNAP COVID study)'' will provide the U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) with a comprehensive picture of how State SNAP agencies responded to the pandemic, including their decision-making processes, experiences with program changes in the short and long terms, and how these experiences have prepared States for major disruptions in the future.

The SNAP COVID study will provide information about State SNAP agencies' experiences with the wide range and mix of operational changes made in response to the evolving pandemic. This gives FNS and State SNAP agencies an important opportunity to assess what did and did not work and why; to describe the decision-making processes that led to States' responses to date and their plans for the period after the public health emergency; to identify changes that are here to stay for the foreseeable future; and to consider the lessons learned to inform continued program improvement and increase preparedness for any future disruptions that affect service delivery.

The study will gather detailed data from all 53 State SNAP agencies via a web-based survey and will conduct case studies in five States. In each of the five site visit States, the study team will conduct interviews with State and local SNAP staff and collect individual-level application and case records and/or aggregate performance data. These data will provide insight on how key metrics such as SNAP caseload size and composition changed after the implementation of program changes. The study team will systematically collect publicly available documents through FNS and web searches to inform the development of data collection instruments for the survey and site visit interviews. The team will use these along with non-public documents (for example, State policy guidance) we will collect from States to confirm and clarify survey responses.

Affected public. Members of the public affected by the data collection include State, local, and Tribal governments from 53 State SNAP agencies. Respondent groups identified include: (1) State or territory agency directors; (2) State or territory data and IT staff; (3) State or territory operations and policy staff; (4) Local directors; (5) Local agency supervisors; (4) Local agency frontline staff.

A survey will be conducted with all 53 State SNAP agency directors and staff. Case studies will be conducted with five of the States, affecting State and local SNAP agency directors and staff.

Estimated number of respondents. The total estimated number of unique respondents for both the pretest and study data collection activities is 284, with four nonrespondents. There are 243 State level staff who will participate. This includes 53 State or territory SNAP directors; 127 State or territory SNAP policy and operations staff; 5 State or territory data staff; and 58 State or territory IT staff. There are 41 local level staff who will participate in the study: 11 local SNAP agency directors; 15 local SNAP agency supervisors, and 15 local SNAP agency frontline staff.

The State or territory SNAP agency directors include respondents from 53 U.S. States and territories (50 U.S. States, the District of Columbia, the U.S. Virgin Islands, and Guam). Each State or territory SNAP agency director may designate up to three staff to complete

sections of the survey, accounting for up to an additional 159 State or territory staff participating as respondents (212 survey respondents total). This is the highest possible number of survey respondents; FNS expects fewer to participate in the survey. Prior to data collection we expect three of the State or territory SNAP agency directors will participate in the pretest.

Five States will be selected for the case study. Here is a summary of the respondents for the case study:

- 5 State SNAP agency directors (one from each of the five case study States) will participate in the case study. We expect to reach out to 9 SNAP agency directors about the case study but expect that four States will not be able to participate.
- 20 State SNAP policy and operations staff (four from each of the five States).
- 5 State SNAP data staff (one from each of the five States).
- 5 State SNAP IT staff (one from each of the five States).
- 10 local SNAP agency directors (two from each of the five States).
- 15 local SNAP agency supervisors (three from each of the five States).
- 15 local SNAP agency frontline staff (three from each of the five States).

Prior to the start of data collection, we expect that one State SNAP agency director, one State operations and policy staff person, and one local SNAP agency director will participate in the pretest.

Estimated number of responses per respondent. Across all 284 [1] unique respondents (284 respondents and 4 non-respondents) and 2,373 annual responses, the average number of responses is 8.24. State or territory SNAP directors will respond once to a web-based survey with five modules. State or territory SNAP directors will receive an FNS State outreach email to notify them about the web survey. The contractor will then email the States a study description and invitation to complete the web survey. State or territory SNAP agency directors, SNAP operations and policy staff and SNAP IT staff who have not completed the survey will be emailed biweekly to complete the survey (for a total of five possible emails). Those who have not completed the survey in the last four weeks of data collection will receive an urgent survey reminder email every week (for a total of four possible emails). State or territory SNAP directors, SNAP operations and policy staff and SNAP IT staff will be asked to submit documents related to their COVID–19 procedures as part of the survey. If they do not submit their documents, they will be sent reminder emails (for a total of nine possible emails). Starting in Week 6 of data collection, State or territory SNAP directors will receive reminder phone calls.

Five State SNAP agencies that participated in the initial survey will be selected in collaboration with FNS for a case study. The case study will involve interviews with five State SNAP directors, 20 State SNAP operations and policy staff, 5 State SNAP data staff, 5 State SNAP IT staff, 10 local SNAP agency directors, 15 local SNAP agency supervisors, and 15 local SNAP agency frontline staff. The State or territory SNAP directors will receive an initial email from FNS notifying them about the case studies. Following that, an email will come from the research team introducing the directors to the case studies and asking them to schedule a call with the research team to discuss the case studies. State SNAP directors that do not respond to this initial email will receive a reminder email and, if needed, a reminder call to schedule a time to discuss the case studies with the research team. The State SNAP directors will then participate in an hour-long call to discuss the case study. Once the local agencies are identified in collaboration with the State, the research team will reach out to the local agencies by email to schedule their portion of the site visit.

Prior to the start of data collection, we expect that one State SNAP agency director, one State operations and policy staff person, and one local SNAP agency director will participate in the pretest.

Estimated total annual responses. 2,373

Estimated time per response. The estimated time per response varies from 0.03 hours for activities related to reading email reminders for the survey and case studies to 20 hours for state IT staff to provide administrative data. The response time will vary depending on the respondent group, as shown in the attached table, with an average estimated time of 33.53 minutes (0.56 hours).

Estimated total annual burden on respondents. The total estimated burden on respondents is 22,564.20 minutes (376.07 hours). See the table below for estimated total annual burden for each type of respondent.

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[1] There are a total of 284 unique respondents estimated to participate in this study. The same 5 State SNAP directors who participate in the web survey will also participate in the case studies. We estimate that we will need to reach out to a total of 9 State SNAP directors to ask if they can participate in the study. Of these, we expect 4 State SNAP directors will be non-respondents for the case studies. The 9 State SNAP directors who will be reached out for the case studies are only counted once in the sample size totals.

			RESPONDENTS						NON-RESPONDENTS								
Affected public	Type of respondents	Instruments	Sample size	Number of respondents	Frequency of response	Total annual responses	Hours per response	Annual burden (hours)	Number of non-respondents	Frequency of response	Total annual responses	Hours per response	Annual burden (hours)	Grand total annual burden estimate (hours)	Hourly Wage rate*	Total cost with fringe benefits (33%)	Total annualized cost of respondent burden
State, local, and Tribal government	State or territory SNAP director	SNAP COVID Survey pretest	3	3	1	3	1.7500	5.25	0	0	0	0.0000	0	5.25	$79.46	-	$417.17
	State or territory SNAP director	SNAP COVID Survey	53	53	1	53	0.4167	22.08	0	0	0	0.0000	0	22.08	$79.46	-	$1,754.74
	State or territory SNAP operations and policy staff	SNAP COVID Survey	106	106	1	106	0.5833	61.83	0	0	0	0.0000	0	61.83	$48.20	-	$2,980.37
	State or territory SNAP IT staff	SNAP COVID Survey	53	53	1	53	0.0833	4.42	0	0	0	0.0000	0	4.42	$48.63	-	$214.78
	State or territory SNAP director	FNS State Recruitment Email for Survey	53	53	1	53	0.0667	3.53	0	0	0	0.0000	0	3.53	$79.46	-	$280.76
	State or territory SNAP director	Survey study team outreach email from Mathematica	53	53	1	53	0.1000	5.30	0	0	0	0.0000	0	5.30	$79.46	-	$421.14
	State or territory SNAP director	SNAP COVID Study description	53	53	1	53	0.0333	1.77	0	0	0	0.0000	0	1.77	$79.46	-	$140.38
	State or territory SNAP director	Biweekly reminder email for survey #1	53	47	1	47	0.0333	1.57	0	0	0	0.0000	0	1.57	$79.46	-	$124.49
	State or territory SNAP operations and policy staff	Biweekly reminder email for survey #1	106	94	1	94	0.0333	3.13	0	0	0	0.0000	0	3.13	$48.20	-	$151.03
	State or territory SNAP IT staff	Biweekly reminder email for survey #1	53	47	1	47	0.0333	1.57	0	0	0	0.0000	0	1.57	$48.63	-	$76.19
	State or territory SNAP director	Biweekly reminder email for survey #2	53	41	1	41	0.0333	1.37	0	0	0	0.0000	0	1.37	$79.46	-	$108.60
	State or territory SNAP operations and policy staff	Biweekly reminder email for survey #2	106	82	1	82	0.0333	2.73	0	0	0	0.0000	0	2.73	$48.20	-	$131.75
	State or territory SNAP IT staff	Biweekly reminder email for survey #2	53	41	1	41	0.0333	1.37	0	0	0	0.0000	0	1.37	$48.63	-	$66.46
	State or territory SNAP director	Biweekly reminder email for survey #3	53	35	1	35	0.0333	1.17	0	0	0	0.0000	0	1.17	$79.46	-	$92.70
	State or territory SNAP operations and policy staff	Biweekly reminder email for survey #3	106	70	1	70	0.0333	2.33	0	0	0	0.0000	0	2.33	$48.20	-	$112.47
	State or territory SNAP IT staff	Biweekly reminder email for survey #3	53	35	1	35	0.0333	1.17	0	0	0	0.0000	0	1.17	$48.63	-	$56.74
	State or territory SNAP director	Biweekly reminder email for survey #4	53	29	1	29	0.0333	0.97	0	0	0	0.0000	0	0.97	$79.46	-	$76.81
	State or territory SNAP operations and policy staff	Biweekly reminder email for survey #4	106	58	1	58	0.0333	1.93	0	0	0	0.0000	0	1.93	$48.20	-	$93.19
	State or territory SNAP IT staff	Biweekly reminder email for survey #4	53	29	1	29	0.0333	0.97	0	0	0	0.0000	0	0.97	$48.63	-	$47.01
	State or territory SNAP director	Biweekly reminder email for survey #5	53	23	1	23	0.0333	0.77	0	0	0	0.0000	0	0.77	$79.46	-	$60.92

			RESPONDENTS						NON-RESPONDENTS								
Affected public	Type of respondents	Instruments	Sample size	Number of respondents	Frequency of response	Total annual responses	Hours per response	Annual burden (hours)	Number of non-respondents	Frequency of response	Total annual responses	Hours per response	Annual burden (hours)	Grand total annual burden estimate (hours)	Hourly Wage rate*	Total cost with fringe benefits (33%)	Total annualized cost of respondent burden
	State or territory SNAP operations and policy staff	Biweekly reminder email for survey #5	106	46	1	46	0.0333	1.53	0	0	0	0.0000	0	1.53	$48.20	-	$73.91
	State or territory SNAP IT staff	Biweekly reminder email for survey #5	53	23	1	23	0.0333	0.77	0	0	0	0.0000	0	0.77	$48.63	-	$37.28
	State or territory SNAP director	Urgent reminder email #1	53	17	1	17	0.0333	0.57	0	0	0	0.0000	0	0.57	$79.46	-	$45.03
	State or territory SNAP operations and policy staff	Urgent reminder email #1	106	34	1	34	0.0333	1.13	0	0	0	0.0000	0	1.13	$48.20	-	$54.63
	State or territory SNAP IT staff	Urgent reminder email #1	53	17	1	17	0.0333	0.57	0	0	0	0.0000	0	0.57	$48.63	-	$27.56
	State or territory SNAP director	Urgent reminder email #2	53	11	1	11	0.0333	0.37	0	0	0	0.0000	0	0.37	$79.46	-	$29.14
	State or territory SNAP operations and policy staff	Urgent reminder email #2	106	22	1	22	0.0333	0.73	0	0	0	0.0000	0	0.73	$48.20	-	$35.35
	State or territory SNAP IT staff	Urgent reminder email #2	53	11	1	11	0.0333	0.37	0	0	0	0.0000	0	0.37	$48.63	-	$17.83
	State or territory SNAP director	Urgent reminder email #3	53	5	1	5	0.0333	0.17	0	0	0	0.0000	0	0.17	$79.46	-	$13.24
	State or territory SNAP operations and policy staff	Urgent reminder email #3	106	10	1	10	0.0333	0.33	0	0	0	0.0000	0	0.33	$48.20	-	$16.07
	State or territory SNAP IT staff	Urgent reminder email #3	53	5	1	5	0.0333	0.17	0	0	0	0.0000	0	0.17	$48.63	-	$8.11
	State or territory SNAP director	Urgent reminder email #4	53	1	1	1	0.0333	0.03	0	0	0	0.0000	0	0.03	$79.46	-	$2.65
	State or territory SNAP operations and policy staff	Urgent reminder email #4	106	2	1	2	0.0333	0.07	0	0	0	0.0000	0	0.07	$48.20	-	$3.21
	State or territory SNAP IT staff	Urgent reminder email #4	53	1	1	1	0.0333	0.03	0	0	0	0.0000	0	0.03	$48.63	-	$1.62
	State or territory SNAP director	Document reminder email #1	53	47	1	47	0.0333	1.57	0	0	0	0.0000	0	1.57	$79.46	-	$124.49
	State or territory SNAP operations and policy staff	Document reminder email #1	106	94	1	94	0.0333	3.13	0	0	0	0.0000	0	3.13	$48.20	-	$151.03
	State or territory SNAP IT staff	Document reminder email #1	53	47	1	47	0.0333	1.57	0	0	0	0.0000	0	1.57	$48.63	-	$76.19
	State or territory SNAP director	Document reminder email #2	53	41	1	41	0.0333	1.37	0	0	0	0.0000	0	1.37	$79.46	-	$108.60
	State or territory SNAP operations and policy staff	Document reminder email #2	106	82	1	82	0.0333	2.73	0	0	0	0.0000	0	2.73	$48.20	-	$131.75
	State or territory SNAP IT staff	Document reminder email #2	53	41	1	41	0.0333	1.37	0	0	0	0.0000	0	1.37	$48.63	-	$66.46
	State or territory SNAP director	Document reminder email #3	53	35	1	35	0.0333	1.17	0	0	0	0.0000	0	1.17	$79.46	-	$92.70

				RESPONDENTS					NON-RESPONDENTS								
Affected public	Type of respondents	Instruments	Sample size	Number of respondents	Frequency of response	Total annual responses	Hours per response	Annual burden (hours)	Number of non-respondents	Frequency of response	Total annual responses	Hours per response	Annual burden (hours)	Grand total annual burden estimate (hours)	Hourly Wage rate*	Total cost with fringe benefits (33%)	Total annualized cost of respondent burden
	State or territory SNAP operations and policy staff	Document reminder email #3	106	70	1	70	0.0333	2.33	0	0	0	0.0000	0	2.33	$48.20	-	$112.47
	State or territory SNAP IT staff	Document reminder email #3	53	35	1	35	0.0333	1.17	0	0	0	0.0000	0	1.17	$48.63	-	$56.74
	State or territory SNAP director	Document reminder email #4	53	29	1	29	0.0333	0.97	0	0	0	0.0000	0	0.97	$79.46	-	$76.81
	State or territory SNAP operations and policy staff	Document reminder email #4	106	58	1	58	0.0333	1.93	0	0	0	0.0000	0	1.93	$48.20	-	$93.19
	State or territory SNAP IT staff	Document reminder email #4	53	29	1	29	0.0333	0.97	0	0	0	0.0000	0	0.97	$48.63	-	$47.01
	State or territory SNAP director	Document reminder email #5	53	23	1	23	0.0333	0.77	0	0	0	0.0000	0	0.77	$79.46	-	$60.92
	State or territory SNAP operations and policy staff	Document reminder email #5	106	46	1	46	0.0333	1.53	0	0	0	0.0000	0	1.53	$48.20	-	$73.91
	State or territory SNAP IT staff	Document reminder email #5	53	23	1	23	0.0333	0.77	0	0	0	0.0000	0	0.77	$48.63	-	$37.28
	State or territory SNAP director	Document reminder email #6	53	17	1	17	0.0333	0.57	0	0	0	0.0000	0	0.57	$79.46	-	$45.03
	State or territory SNAP operations and policy staff	Document reminder email #6	106	34	1	34	0.0333	1.13	0	0	0	0.0000	0	1.13	$48.20	-	$54.63
	State or territory SNAP IT staff	Document reminder email #6	53	17	1	17	0.0333	0.57	0	0	0	0.0000	0	0.57	$48.63	-	$27.56
	State or territory SNAP director	Document reminder email #7	53	11	1	11	0.0333	0.37	0	0	0	0.0000	0	0.37	$79.46	-	$29.14
	State or territory SNAP operations and policy staff	Document reminder email #7	106	22	1	22	0.0333	0.73	0	0	0	0.0000	0	0.73	$48.20	-	$35.35
	State or territory SNAP IT staff	Document reminder email #7	53	11	1	11	0.0333	0.37	0	0	0	0.0000	0	0.37	$48.63	-	$17.83
	State or territory SNAP director	Document reminder email #8	53	5	1	5	0.0333	0.17	0	0	0	0.0000	0	0.17	$79.46	-	$13.24
	State or territory SNAP operations and policy staff	Document reminder email #8	106	10	1	10	0.0333	0.33	0	0	0	0.0000	0	0.33	$48.20	-	$16.07
	State or territory SNAP IT staff	Document reminder email #8	53	5	1	5	0.0333	0.17	0	0	0	0.0000	0	0.17	$48.63	-	$8.11
	State or territory SNAP director	Document reminder email #9	53	1	1	1	0.0333	0.03	0	0	0	0.0000	0	0.03	$79.46	-	$2.65
	State or territory SNAP operations and policy staff	Document reminder email #9	106	2	1	2	0.0333	0.07	0	0	0	0.0000	0	0.07	$48.20	-	$3.21
	State or territory SNAP IT staff	Document reminder email #9	53	1	1	1	0.0333	0.03	0	0	0	0.0000	0	0.03	$48.63	-	$1.62
	State or territory SNAP director	Survey reminder call script	53	53	1	53	0.0800	4.24	0	0	0	0.0000	0	4.24	$79.46	-	$336.91

			RESPONDENTS						NON-RESPONDENTS									
Affected public	Type of respondents	Instruments	Sample size	Number of respondents	Frequency of response	Total annual responses	Hours per response	Annual burden (hours)	Number of non-respondents	Frequency of response	Total annual responses	Hours per response	Annual burden (hours)	Grand total annual burden estimate (hours)	Hourly Wage rate*	Total cost with fringe benefits (33%)	Total annualized cost of respondent burden
	State or territory SNAP operations and policy staff	Survey reminder call script	106	106	1	106	0.0800	8.48	0	0	0	0.0000	0	8.48	$48.20	-	$408.74
	State or territory SNAP IT staff	Survey reminder call script	53	56	1	56	0.0800	4.48	0	0	0	0.0000	0	4.48	$48.63	-	$217.86
	State or territory SNAP director	Case Study Discussion Guide pretest	1	1	1	1	1.5000	1.50	0	0	0	0.0000	0	1.50	$79.46	-	$119.19
	State or territory SNAP director	Advance email from FNS for case study	9	5	1	5	0.0333	0.17	4	1	4	0.1000	0.40	0.57	$79.46	-	$45.03
	State or territory SNAP director	Email from Mathematica to discuss case study participation	9	5	1	5	0.0333	0.17	4	1	4	0.1000	0.40	0.57	$79.46	-	$45.03
	State or territory SNAP director	SNAP COVID Study description	9	5	1	5	0.0333	0.17	4	1	4	0.1000	0.40	0.57	$79.46	-	$45.03
	State or territory SNAP director	Reminder email for case study	5	5	1	5	0.0333	0.17	0	0	0	0.0000	0	0.17	$79.46	-	$13.24
	State or territory SNAP director	Case study call script	5	5	1	5	1.0000	5.00	0	0	0	0.0000	0	5.00	$79.46	-	$397.30
	State or territory SNAP director	Case Study Discussion Guide	5	5	1	5	1.5000	7.50	0	0	0	0.0000	0	7.50	$79.46	-	$595.95
	State or territory SNAP operations and policy staff	Case Study Discussion Guide pretest	1	1	1	1	1.5000	1.50	0	0	0	0.0000	0	1.50	$48.20	-	$72.30
	State or territory SNAP operations and policy staff	Case Study Discussion Guide	20	20	1	20	1.0000	20.00	0	0	0	0.0000	0	20.00	$48.20	-	$964.00
	State or territory SNAP data staff	Case Study Discussion Guide	5	5	1	5	1.0000	5.00	0	0	0	0.0000	0	5.00	$48.63	-	$243.15
	State or territory SNAP IT staff	Case Study Discussion Guide	5	5	1	5	20.0000	100.00	0	0	0	0.0000	0	100.00	$48.63	-	$4,863.00
	Subtotal of State or territory agency SNAP director/manager		**243**	**243**	**9.55**	**2,320**	**0.1349**	**313.03**	**4**	**3**	**12**	**0.1000**	**1.20**	**314.23**	**-**	**-**	**$17,286.78**
	Local SNAP agency director	Case Study Discussion Guide pretest	1	1	1	1	1.5000	1.50	0	0	0	0.0000	0	1.50	$79.46	-	$119.19
	Local SNAP agency director	Reminder email for case study	10	10	1	10	0.0333	0.33	0	0	0	0.0000	0	0.33	$79.46	-	$26.49
	Local SNAP agency director	Case Study Discussion Guide	10	10	1	10	1.5000	15.00	0	0	0	0.0000	0	15.00	$79.46	-	$1,191.90
	Local SNAP agency frontline staff	Case Study Discussion Guide	15	15	1	15	1.5000	22.50	0	0	0	0.0000	0	22.50	$21.71	-	$488.48
	Local SNAP agency supervisors	Case Study Discussion Guide	15	15	1	15	1.5000	22.50	0	0	0	0.0000	0	22.50	$79.46	-	$1,787.85
	Subtotal of local agency SNAP director/manager and frontline staff		**41**	**41**	**1.00**	**41**	**1.5081**	**61.83**	**0**	**0**	**0**	**0**	**0.00**	61.83	-	-	**$3,613.90**
Subtotal unique State and Tribal government			284	284	**8.31**	2,361	**0.1568**	**374.87**	**4**	**3**	**12**	**0.4000**	**1.20**	**376.07**	n/a	-	**$20,900.69**
	Grand total		**284**	**284**	**8.31**	**2,361**	**0.1568**	**374.87**	**4**	**3**	**12**	**0.4000**	**1.20**	**376.07**	n/a	**$27,797.91**	**$20,900.69**

Affected public	Type of respondents	Instruments	RESPONDENTS Sample size	Number of respondents	Frequency of response	Total annual responses	Hours per response	Annual burden (hours)	NON-RESPONDENTS Number of non-respondents	Frequency of response	Total annual responses	Hours per response	Annual burden (hours)	Grand total annual burden estimate (hours)	Hourly Wage rate*	Total cost with fringe benefits (33%)	Total annualized cost of respondent burden

* Sources: Department of Labor Wage and Hour Division (http://www.dol.gov/whd/minimumwage.htm). Bureau of Labor Statistics, Occupational Employment Statistics Survey, May 2021. (https://www.bls.gov/oes/current/oes_stru.htm) Individuals/Participant: Federal minimum wage. State, local, or Tribal agency director/supervisor: Average hourly earnings of workers in management of companies and enterprises occupations ($79.46); State or territory IT and Data staff: Average hourly earning of works in Computer and Mathematical Occupations ($48.63); State or Tribal Operations and Policy staff: Average hourly earnings of workers in local government management ($48.20); Local SNAP agency frontline staff: Average hourly earnings of workers in community and social services occupations;

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2023–08817 Filed 4–25–23; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[DOCKET No: RBS–23–CO–OP–0002]

Notice of Funding Opportunity for Rural Cooperative Development Grants for Fiscal Year 2023

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBCS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), invites applications for grants under the Rural Cooperative Development Grant (RCDG) program for Fiscal Year (FY) 2023. This notice is being issued to allow applicants sufficient time to leverage financing, prepare and submit applications, and give the Agency time to process applications within FY 2023. Funding of $5.8 million will be available for FY 2023. Successful applications will be selected by the Agency for funding and subsequently awarded. All applicants are responsible for any expenses incurred in developing their applications.

DATE: Completed applications must be submitted electronically by no later than 11:59 p.m. Eastern Time, June 26, 2023, through *www.grants.gov,* to be eligible for grant funding. Late or incomplete applications are not eligible for funding under this notice and will not be evaluated.

ADDRESSES: All applications must be submitted electronically at *www.grants.gov.* Additional resources are available at *https://www.rd.usda.gov/programs-services/rural-cooperative-development-grant-program.*

Applicants are encouraged to contact the USDA Rural Development State Office for the State where the project will be located in advance of the application deadline to discuss the project and ask any questions about the RCDG program or the application process. Contact information for USDA Rural Development State Office can be found at *https://www.rd.usda.gov/contact-us/state-offices.*

FOR FURTHER INFORMATION CONTACT: Lisa Sharp at *lisa.sharp@usda.gov,* Business Loan and Grant Analyst, Program Management Division, RBCS, USDA, 1400 Independence Avenue SW, Mail Stop-3226, Room 5160-South, Washington, DC 20250–3226, or call (202) 720–1400. Persons with disabilities that require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice); or the 711 Relay Service.

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name: Rural Business-Cooperative Service.

Funding Opportunity Title: Rural Cooperative Development Grants.

Announcement Type: Notice of Funding Opportunity.

Funding Opportunity Number: RBCS–RCDG–2023.

Assistance Listing Number: 10.771.

Dates: Completed applications must be submitted electronically by 11:59 p.m. Eastern Time on, June 26, 2023, through *www.grants.gov,* to be eligible for grant funding. Late or incomplete applications are not eligible for funding under this notice and will not be evaluated.

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

- Assisting rural communities 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; and
- 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 primary objective of the RCDG program is to improve the economic condition of rural areas by helping individuals and businesses start, expand, or improve rural cooperatives and other mutually owned businesses through Cooperative Development Centers.

2. *Statutory and Regulatory Authority.* The RCDG program is authorized under Section 310B(e) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1932(e)), as amended by the Agriculture Improvement Act of 2018 (Pub. L. 115–334, Title VI, Secs. 6412–15, 6601(a)(1)(B), 6701(c), (d)(1)) and implemented by 7 CFR part 4284, subparts A and F.

The Consolidated Appropriations Act, 2023, (Pub. L. 117–328, Division A, Title VII, Section 736) has designated funding for projects in Persistent Poverty Counties (PPC). Persistent poverty counties are defined in Section 736 as ''any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses, and 2007–2011 American Community Survey 5-year average, or any territory or possession of the United States.'' The eligible population in persistent poverty counties includes any county seat of any persistent poverty county that has a population that does not exceed the authorized population limit by more than 10 percent. This provision expanded the current 50,000 population limit to 55,000 for only county seats located in persistent poverty counties.

3. *Definitions.* The definitions applicable to this notice are published at 7 CFR 4284.3 and 7 CFR 4284.504. In addition, the terms ''rural'' and ''rural area,'' defined in 7 U.S.C. 1991(a)(13), are incorporated by reference, and will be used for this program instead of the definition of ''Rural and rural area'' currently published at 7 CFR 4284.3.

Mutually owned business—An organization owned and governed by members who are its consumers, producers, employees, or suppliers.

4. *Application of Awards.* The Agency will review, evaluate, and score applications received in response to this notice based on the provisions found in 7 CFR 4284.511, 7 CFR 4284.512, 7 CFR 4284.513 and as indicated in this notice. Awards under the RCDG program will be made on a competitive basis using specific selection criteria contained in 7 CFR 4284.513.

B. Federal Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2023.

Available Funds: $5.8 million will be available for FY 2023. RBCS 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.

Award Amounts: Maximum amount $200,000.

Anticipated Award Date: September 30, 2023.

Performance Period: The grant performance period should begin no earlier than October 1, 2023 and no later than January 1, 2024 and must include no more than a one-year performance period.

Renewal or Supplemental Awards: None.

Type of Assistance Instrument: Financial Assistance Agreement.

C. Eligibility Information

1. *Eligible Applicants.* Eligible applicants must meet the eligibility requirements of 7 CFR 4284.507. You must be a nonprofit corporation or an institution of higher education to apply for this program. Public bodies and individuals cannot apply for this program. Applicants must be aware of the following:

(a) At the time of application, each applicant must have an active registration in the System for Award (SAM) before submitting its application in accordance with 2 CFR 25.200. To register in SAM, entities will be required to create a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at *https://sam.gov/content/entity-registration.* Further information regarding SAM registration and the UEI can be found in this notice.

(b) Applicants must certify that it has not been debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.'' The Agency will check the Do Not Pay system at the time of application and prior to funding any grant award to determine if the applicant has been debarred or suspended. Applicants are responsible for resolving any issues that are reported in the Do Not Pay system and if issues are not resolved by deadlines found in this Notice, the Agency may proceed to award funds to other eligible applicants. In addition, an applicant must comply with 7 CFR 4284.6 and will be required to certify as part of the application that they do not have an outstanding judgment against them.

(c) The Consolidated Appropriations Act, 2023, Public Law 117–328, Division E, Title VII, Sections 744 and 745 provide that any corporation that has been convicted of a felony criminal violation under any Federal law within the past 24 months or that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that 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 provided with funds appropriated by this Act, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government

2. *Cost Sharing or Matching.* A match of at least 25 percent (5 percent for 1994 Institutions) of the total project cost is required for the application. 7 CFR 4284.513(f). When calculating the matching funds requirement, round up or down to whole dollars as appropriate.

An example of how to calculate matching funds is as follows:

(a) Take the amount of grant funds requested and divide it by .75. This will provide the total project cost.

Example: $200,000 (grant amount)/0.75 (percentage for use of grant funds) = $266,667 (total project cost)

(b) Subtract the amount of grant funds requested from the total project cost. This will provide the matching funds requirement.

Example: $266,667 (total project cost) − $200,000 (grant amount) = $66,667 (matching funds requirement)

(c) A quick way to confirm the correct amount of matching funds is to take the total project cost and multiply it by .25.

Example: $266,667 (total project cost) × .25 (maximum percentage of matching funds requirement) = $66,667 (matching funds requirement)

The applicant must verify that all matching funds are available during the grant performance period and provide documentation with the application in accordance with requirements identified in Section D.2.b.8. If awarded a grant, additional verification documentation may be required to confirm the availability of matching funds.

Other rules for matching funds that applicants must follow are listed below.

(a) They must be spent on eligible expenses during the grant period.

(b) They must be from eligible sources.

(c) They must be spent in advance or as a pro-rata portion of grant funds being spent.

(d) They must be provided by either the applicant or a third party in the form of cash or an in-kind contribution.

(e) They cannot include board/advisory council member's time.

(f) They cannot include other Federal grants unless provided by authorizing legislation.

(g) They cannot include cash or in-kind contributions donated outside of the grant period.

(h) They cannot include over-valued, in-kind contributions.

(i) They cannot include any project costs that are ineligible under the RCDG program.

(j) They cannot include any project costs that are restricted or unallowable under 2 CFR part 200, subpart E, and the Federal Acquisition Regulation (CFR Title 48) (for-profits) or successor regulation.

(k) They can include loan funds from a Federal source.

(l) They can include travel and incidentals for board/advisory council members if the organization has established written policies explaining how these costs are normally reimbursed, including rates. The applicant must include an explanation of this policy in the application, or the contributions will not be considered as eligible matching funds.

(m) The applicant must be able to document and verify the number of hours worked and the value associated with any in-kind contribution being used to meet a matching funds requirement.

(n) In-kind contributions provided by individuals, businesses, or cooperatives which are being assisted by the applicant cannot be provided for the direct benefit of their own projects as RD considers this to be a conflict of interest or the appearance of a conflict of interest.

3. *Other.*

(a) *Purpose eligibility.* Applications must propose the establishment or continuation of a cooperative development center. Applicants must use project funds, including grant and matching funds, for eligible purposes only (see 7 CFR 4284.508). In addition, project funds may also be used for programs providing for the coordination of services and sharing of information among the centers as stated in 7 U.S.C 1932(e)(4)(C)(vi).

(b) *Project eligibility.* All project activities must be for the benefit of a rural area.

(c) *Multiple applications deemed ineligible.* Only one application can be submitted per applicant. If two applications are submitted (regardless of the applicant's name) that include the same Executive Director and/or advisory boards or committees of an existing center, both applications will be determined ineligible for funding.

(d) *Grant performance period.* The application must include no more than a one-year grant performance period, or it will not be considered for funding. The grant performance period should begin no earlier than October 1, 2023, and no later than January 1, 2024. Applications that request funds for a period beginning after January 1, 2024, will not be considered for funding. Projects must be completed within a one-year timeframe. Prior written approval is needed from the Agency if the applicant is awarded a grant and

desires the grant performance period to begin earlier or later than previously approved.

(e) *Satisfactory performance.* Applicants must be performing satisfactorily on any outstanding RCDG award to be considered eligible for a new award. Satisfactory performance includes being up to date on all financial and performance reports as prescribed in the grant award, and current on all tasks and timeframes for utilizing grant and matching funds as approved in the work plan and budget. If applicants have any unspent grant funds on RCDG awards prior to FY 2022, the application will not be considered for funding. If an applicant has prior award(s) with unspent funds of 50 percent or more than what the approved work plan and budget projected at the time a FY 2023 application is being evaluated, the application will not be considered for funding. The Agency will verify the performance status of the applicant's prior awards and make a determination after the FY 2023 application period closes.

(f) *Duplication of Current Services.* Applications must demonstrate that the applicant is providing services to new customers or new services to current customers. If the work plan and budget are duplicative of the applicant's existing award, the application will not be considered for funding. If the workplan and budget are duplicative of a previous or existing RCDG and/or Socially Disadvantaged Groups Grant (SDGG) award, the application will not be considered for funding. The Agency will make this determination at its sole discretion. Please note that the Agency only allows one active award to a grantee to ensure that there is no duplication of services.

(g) *Indirect costs.* Negotiated indirect cost rate approval does not need to be included in the application but will need to be provided if a grant is awarded. Approval for indirect costs that are requested in an application without an approved indirect cost rate agreement is at the discretion of the Agency.

D. Application and Submission Information

1. *Address to Request Application Package.* The RCDG program application template, copies of necessary forms and samples are available at *https://www.rd.usda.gov/programs-services/rural-cooperative-development-grant-program.* The RCDG program regulations are available at 7 CFR part 4284 subparts A and F. For further information, contact the USDA State Office where the project will be located at *http://www.rd.usda.gov/contact-us/state-offices.*

2. *Content and Form of Application Submission.* An application must contain all the required elements outlined in 7 CFR 4284.510 and this notice. Each application must address the applicable scoring criteria presented in 7 CFR 4284.513 and this notice for the type of funding being requested.

Applicants are encouraged, but not required, to utilize the application template found at *https://www.rd.usda.gov/programs-services/rural-cooperative-development-grant-program.* The application template provides specific, detailed instructions for each item of a complete application. The Agency emphasizes the importance of including every item and strongly encourages applicants to follow the instructions carefully, using the examples and illustrations in the application template.

Incomplete applications will be ineligible to compete for funds. Applications lacking sufficient information to determine eligibility and scoring will be considered ineligible. Information submitted after the application deadline will not be accepted.

(a) *Clarifications on Forms.*

(1) *Standard Form (SF) 424,* ''*Application for Federal Assistance.*'' Applicant's Unique Entity Identifier (UEI) number should be identified in the ''Organizational DUNS'' field on the form. A System for Award Management (SAM) Commercial and Government Entity (CAGE) Code and expiration date under the applicant eligibility discussion in the proposal narrative must be provided. If a CAGE Code expiration date and the UEI number in an application are not provided, the application will not be considered for funding.

(2) *Form SF 424B,* ''*Assurances—Non-Construction Programs.*'' This form is no longer required as a part of the application. This information is now collected through the applicant's registration or annual recertification in *SAM.gov* through the Financial Assistance General Representations and Certifications.

(3) ''*Survey on Ensuring Equal Opportunity for Applicants.*'' Nonprofit organizations may voluntarily fill this out and submit as part of the application.

(b) *Clarifications on Proposal Elements.* Requirements below are provided in addition to the requirements provided in 7 CFR 4284.510(c).

(1) *Title Page.* Must include the title of the project as well as any other relevant identifying information.

(2) *Table of Contents.* This must include page numbers for each component of the application.

(3) *Executive Summary.* In addition to the items in 7 CFR 4284.510(c)(3), this must discuss the percentage of work that will be performed among organizational staff, consultants, or other contractors. The summary must not exceed two pages.

(4) *Eligibility.* This discussion must also include matching funds and other eligibility requirements. This discussion must not exceed two pages.

(5) *Proposal Narrative.* Must not exceed 40 pages using at least 11-point font and should describe the essential aspects of the project.

(a) *Information Sheet.* If evaluation criteria are listed on the Table of Contents and then specifically and individually addressed in narrative form, it is not necessary to include an information sheet. Otherwise, it is required as described at 7 CFR 4284.510(c)(5)(ii).

(b) *Goals of the Project.*

(A) Applicant must include a statement providing information outlined in 7 CFR 4284.510(c)(5)(iii)(A), (B), (C) and (D).

(B) Expected economic impacts should be tied to tasks included in the work plan and budget.

(c) *Performance Evaluation Criteria.* The Agency has established annual performance evaluation measures to evaluate the RCDG program and the applicant must provide estimates on the following:

(A) Number of groups assisted who are not legal entities.

(B) Number of businesses assisted that are not cooperatives.

(C) Number of cooperatives assisted.

(D) Number of businesses incorporated that are not cooperatives.

(E) Number of cooperatives incorporated.

(F) Total number of jobs created as a result of assistance.

(G) Total number of jobs saved as a result of assistance.

(H) Number of jobs created for the Center as a result of RCDG funding.

(I) Number of jobs saved for the Center as a result of RCDG funding.

It is permissible to have a zero in a performance element. When calculating jobs created, estimates should be based upon actual jobs to be created by the organization because of the RCDG funding or actual jobs to be created by cooperative businesses or other businesses as a result of assistance from the organization. When calculating jobs

saved, estimates should be based only on actual jobs that would have been lost if the organization did not receive RCDG funding or actual jobs that would have been lost without assistance from the organization.

Additional performance elements may be included. In instances where job creation or job retention may not be a relevant indicator, applicants should provide relevant, specific and measurable performance elements that could be included in an award document. For example, applicants may consider the following as it relates to their specific work: housing cooperatives (number of units created or preserved); worker cooperatives (number of jobs created, number of employee-owned positions created); consumer cooperatives (number of people with access to groceries, renewable energy services); shared services cooperatives (number of businesses with access to affordable products or services, joint marketing, distribution channels); real estate cooperatives (number of community members invested in their community, number of real estate properties created or saved).

(d) *Undertakings.* The applicant must expressly undertake to do the following:

(A) Take all practicable steps to develop continuing sources of financial support for the Center, particularly from sources in the private sector;

(B) Make arrangements for the activities by the nonprofit institution operating the Center to be monitored and evaluated; and

(C) Provide an accounting for the money received by the grantee under this subpart.

(e) *Work Plan.* Work plan and budget proposal elements should be addressed under proposal narrative criterion in 7 CFR 4284.510(c)(5)(iv), utilizing the specific requirements of Section E.1(h) of this notice.

(f) *Delivery of Cooperative Development Assistance.* The applicant must describe its previous accomplishments and outcomes in Cooperative development activities and/or its potential for effective delivery of Cooperative development services to rural areas. The description(s) should be addressed under proposal narrative criterion in 7 CFR 4284.510(c)(5)(vii) utilizing the specific requirements of technical assistance and other services in Section E.1(b) of this notice.

(g) *Qualifications of Personnel.* Applicants must describe the qualifications of personnel expected to perform key center tasks, and whether these personnel are to be full/part-time Center employees or contract personnel. All requirements of 7 CFR 4284.510(c)(5)(viii) should be addressed under the proposal narrative criterion, utilizing the specific requirements of qualifications of those performing the tasks in Section E.1(i) of this Notice.

(h) *Support and Commitments and Future Support.* Applicants must describe the level of support and commitment in the community for the proposed Center and the services it would provide under 7 CFR 4284.510(c)(5)(ix) and the future support and funding under 7 CFR 4284.510(c)(5)(x) utilizing the requirements of commitment in Section E.1(f) and local and future support in Section E.1(j) of this notice.

(i) Applications will not be considered for funding if they do not address all the proposal evaluation criteria. See application review information in Section E.1. of this notice for a description of the proposal evaluation criteria.

(j) Only appendices A–C will be considered when evaluating applications. Do not include resumes of staff or consultants in the application.

(6) *No Current Outstanding Federal Judgments Certification.* Each applicant must certify that the United States has not obtained an unsatisfied judgement against its property, is not delinquent on the payment of federal income taxes or any other federal debt and will not use grant funds to pay judgments obtained by the United States. Applicants should make this certification within their application with this statement in the application: ''[INSERT NAME OF APPLICANT] certifies that the United States has not obtained an unsatisfied judgment against its property, is not delinquent on the payment of Federal income taxes, or any Federal debt, and will not use grant funds to pay any judgments obtained by the United States.'' A separate signature relating to this certification is not required.

(7) *Certification.* Applicants must certify that they have obtained matching funds as required by 7 CFR 4284.510(c)(7). Applicants should make this certification within their certification, with this statement: ''[INSERT NAME OF APPLICANT] certifies that matching funds will be available at the same time grant funds are anticipated to be spent and that expenditures of matching funds shall be pro-rated or spent in advance of grant funding, such that for every dollar of the total project cost, at least 25 cents (5 cents for 1994 Institutions) of matching funds will be expended.'' A separate signature relating to this certification is not required.

(8) *Verification of Matching Funds.* Applicants must verify all matching funds. The documentation must be included in Appendix A of the application and will not count towards the 40-page limitation. The Agency recommends making this verification with a template letter, but the template is not required. Template letters are available for each type of matching funds contribution at: *http://www.rd.usda.gov/programs-services/rural-cooperative-development-grant-program.*

(a) *Matching funds provided in cash.* The following requirements must be met:

(A) *Provided by the Applicant.* The application must include a statement verifying *(1)* the amount of the cash and, *(2)* the source of the cash. Applicants may also provide a bank statement dated 30 days or less from the application deadline date to verify a cash match.

(B) *Provided by a Third-Party.* The application must include a signed letter from the third party verifying *(1)* how much cash will be donated and *(2)* that it will be available corresponding to the proposed time frame or donated on a specific date within the grant performance period.

(b) *Matching funds provided by an in-kind donation.* The following requirements must be met:

(A) *Provided by the Applicant.* The application must include a signed letter from the applicant or the authorized representative verifying *(1)* the nature of the goods and/or services to be donated and how they will be used, *(2)* when the goods and/or services will be donated (*i.e.,* corresponding to the proposed grant performance period or to specific dates within the specified time frame), and *(3)* the value of the goods and/or services. Please note that most applicant contributions for the RCDG program are considered applicant cash match in accordance with this notice. Applicants needing clarification for verification of matching funds should contact the Rural Development State Office. Identifying matching funds improperly can affect application scoring.

(B) *Provided by a Third-Party.* The application must include a signed letter from the third party verifying *(1)* the nature of the goods and/or services to be donated and how they will be used, *(2)* when the goods and/or services will be donated (*i.e.,* corresponding to the proposed grant performance period or to specific dates within the grant performance period), and *(3)* the value of the goods and/or services.

(c) To ensure applicants are identifying and verifying matching

funds appropriately, please note the following:

(A) If applicants are paying for goods and/or services as part of the matching funds requirement, the expenditure is considered a cash match, and must verify it as such. Universities must verify the goods and services they are providing to the project as a cash match and the verification must be approved by the appropriate approval official (*i.e.,* sponsored programs office or equivalent).

(B) If applicants have already received cash from a third party (*e.g.,* a foundation) before the start of the proposed grant performance period, the applicant must verify this as its own cash match and not as a third-party cash match. If applicants are receiving cash from a third party during the grant performance period, then the applicant must verify the cash as a third-party cash match.

(C) Board resolutions for a cash match must be approved at the time of application.

(D) Applicants can only consider goods or services for which no expenditure is made as an in-kind contribution.

(E) If a non-profit or another organization contributes the services of affiliated volunteers, they must follow the third-party, in-kind donation verification requirement for each individual volunteer.

(F) Expected program income may not be used to fulfill the applicant matching funds requirement at the time of the application submission. If the applicant has a contract to provide services in place at the time of application submission, then they must submit the contract with the application, and applicants can verify the amount of the contract as a cash match.

(G) The valuation processes used for in-kind contributions do not need to be included in the application, but applicants must be able to demonstrate how the valuation was derived if a grant is awarded. The grant award may be withdrawn, or the amount of the grant reduced if applicant cannot demonstrate how the valuation was derived.

Successful applicants must comply with requirements identified in Section F, Federal Award Administration Information.

(c) *Completeness.* An application will not be considered for funding if it fails to meet all eligibility criteria by the application deadline or does not provide sufficient information to determine eligibility and scoring. Applicants must include, in one submission to the Agency, all the forms and proposal elements as discussed in the program regulation and as clarified further in this notice. Incomplete applications will not be reviewed by the Agency.

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

(a) At the time of application, each applicant must have an active registration in the System for Award Management (SAM) before submitting its application in accordance with 2 CFR part 25. To register in SAM, entities will be required to obtain a UEI. 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 Representations and Certifications 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, if such requests are made prior to May 26, 2023. Agency contact information can be found in Section G of this notice.

(b) *Application Deadline Date.* Completed applications must be submitted electronically through *www.grants.gov* and received no later than 11:59 p.m. Eastern Time on June 26, 2023, to be eligible for grant funding. Please review the *Grants.gov* website at *https://www.grants.gov/web/grants/register.html* for instructions on the process of registering an organization as soon as possible to ensure that all electronic application deadlines are met. *Grants.gov* will not accept applications submitted after the deadline.

The Agency will not consider new scoring or eligibility information that is submitted after the application deadline. RBCS also reserves the right to ask applicants for clarifying information and additional verification of assertions in the application.

5. *Intergovernmental Review.* Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs,'' applies to this program. This E.O. requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain a SPOC, please see the White House website: *https://www.whitehouse.gov/omb/management/office-federal-financial-management/.* If the applicant's State has a SPOC, then a copy of the application must be submitted for review. Any comments obtained through the SPOC must be provided to the applicant's State Office for consideration as part of the application. If the applicant's State has not established a SPOC, applications may be submitted directly to the Agency. Applications from federally recognized Indian Tribes are not subject to this requirement.

6. *Funding Restrictions.*

(a) The use of grant funds is outlined at 7 CFR 4284.508. Grant funds may be used to pay for up to 75 percent of the cost of establishing and operating centers for rural cooperative development. Grant funds may be used to pay for 95 percent of the cost of establishing and operating centers for rural cooperative development when the applicant is a college identified as a ''1994 Institution'' for purposes of the Equity in Educational Land-Grant Status Act of 1994, as defined by 7 U.S.C. 301 note; Public Law 103–382, as amended.

(b) As required by 7 U.S.C. Chapter 38, Subchapter VII and 7 CFR part 990, no assistance or funding can be provided to a hemp producer unless they have a valid license issued from an approved State, Tribal or Federal plan as defined by 7 U.S.C. 1639*o.* Verification of valid hemp licenses will occur at the time of award.

(c) Project funds, including grant and matching funds, cannot be used for ineligible grant purposes as provided in 7 CFR 4284.10. Also, applicants shall not use project funds for the following:

(1) To purchase, rent, or install laboratory equipment or processing machinery;

(2) To pay for the operating costs of any entity receiving assistance from the Center;

(3) To pay costs of the project where a conflict of interest exists;

(4) To fund any activities prohibited by 2 CFR part 200; or

(5) To fund any activities considered unallowable by 2 CFR part 200, subpart E, ''Cost Principles,'' and the Federal Acquisition Regulation or successor regulations.

(d) In addition, applications will not be considered for funding if it does any of the following:

(1) Focuses assistance on only one cooperative or mutually owned business;

(2) Requests more than the maximum grant amount; or

(3) Proposes ineligible costs that equal more than 10 percent of total project costs. The ineligible costs will NOT be removed at this stage to proceed with application processing. For purposes of this determination, the grant amount requested plus the matching funds amount constitutes the total project costs.

(e) We will consider applications for funding that include ineligible costs of 10 percent or less of total project costs if the remaining costs are determined eligible. If the application is successful, ineligible costs must be removed and replaced with eligible costs before the Agency makes the grant award, or the amount of the grant award will be reduced accordingly. If the Agency cannot determine the percentage of ineligible costs due to lack of detail, the application will not be considered for funding.

7. *Other Submission Requirements.* Applications must be submitted electronically. Note that we cannot accept applications submitted through mail or courier delivery, in-person delivery, email, or fax. For electronic applications, applicants must follow the instruction for this funding announcement at *http://www.grants.gov.* Applicants can locate the *Grants.gov* downloadable application package for this program by using a keyword, the program name, Assistance Listing Number or the Funding Opportunity Number for this program.

Users of *Grants.gov* must already have a UEI number and must also be registered and maintain registration in SAM in accordance with 2 CFR part 25. The UEI is assigned by SAM and replaces the formerly known Dun & Bradstreet DUNS Number. The UEI number must be associated with the correct tax identification number of the RCDG applicant. We strongly recommend that applicants do not wait until the application deadline date to begin the application process through *Grants.gov*.

All application documents must be submitted through *Grants.gov*. Applications must include electronic signatures. Original signatures may be required if funds are awarded. After electronically applying through *Grants.gov*, applicants will receive an automated acknowledgement from *Grants.gov* that contains a *Grants.gov* tracking number.

E. Application Review Information

1. *Criteria.* Scoring criteria will follow statutory criteria in 7 U.S.C. 1932(e), the criteria published in the program regulations at 7 CFR 4284.513, and criteria in this notice. Applicants should also include Content and Form of Application Submission information as described in Section D.2. if addressing these items under the scoring criteria. Evaluators will base scores only on the information provided or cross-referenced by page number in each individual evaluation criterion. The maximum number of points available is 110. Newly established or proposed Centers that do not yet have a track record on which to evaluate the criteria should refer to the expertise and track records of staff or consultants expected to perform tasks related to the respective criteria. Proposed or newly established Centers must be organized well enough at the time of application to address their capabilities for meeting these criteria.

The clarifications provided below are in addition to, and do not replace the guidance provided in 7 CFR 4284.513,

(a) *Administrative Capabilities.* Maximum score of ten points. At a minimum, applicants must discuss the administrative capabilities provided in 7 CFR 4284.513(a) and expertise in administering Federal grant funding within the last five years, including but not limited to past RCDG awards. Please list the name of the Federal grant program(s), the amount(s), and the date(s) of funding received.

Applicants will score higher on this criterion by demonstrating that the Center has independent governance. Applicants that are universities or parent organizations should demonstrate that there is a separate board of directors for the Center.

(b) *Technical Assistance and Other Services.* Maximum score of ten points. Applicants demonstrated expertise within the last five years in providing technical assistance and accomplishing effective outcomes in rural areas to promote and assist the development of cooperatively and mutually owned businesses will be evaluated. At a minimum, applicants must discuss:

(1) Potential for delivering effective technical assistance;

(2) The types of assistance provided;

(3) The expected effects of that assistance;

(4) The sustainability of organizations receiving the assistance; and

(5) The transferability of the applicant's cooperative development strategies and focus to other areas of the United States.

A chart or table showing the outcomes of the demonstrated expertise based upon the performance elements listed in Section D.2. b.5.c or as identified in the award document on previous RCDG awards is recommended. At a minimum, please provide information for FY 2018 to FY 2022 awards. Applicants may also include any performance outcomes from a FY 2022 RCDG award. It is preferred that one chart or table for each award year be provided. The intention is for the applicant to provide actual performance numbers based upon award years (fiscal year) even though the grant performance period for the award was implemented during the next calendar or fiscal year. If applicants have not previously received an RCDG award, provide a narrative of explanation.

Applicants will score higher on this criterion by providing evidence of outcomes for more than three fiscal year awards and demonstrating that any organizations assisted within the last five years are sustainable. Please describe specific project(s) when addressing items 1–5 of paragraph (b) of criteria in this notice. To reduce duplication, descriptions of specific projects and their impacts, outcomes, and roles can be discussed once under criterion (b) or (c) of this notice. Applicants must cross-reference the information under the other criterion.

(c) *Economic Development.* Maximum score of ten points. Applicant's demonstrated ability to assist in the development of the items listed in 7 CFR 4284.513(c) or mutually owned businesses will be evaluated. Examples of facilitating development of new cooperative approaches are organizing cooperatives among underserved individuals or communities; an innovative market approach; a type of cooperative currently not in the applicant's service area; a new cooperative structure; novel ways to raise member equity or community capitalization; conversion of an existing business to cooperative ownership.

Applicants will score higher on the economic development criteria by providing quantifiable economic measurements showing the impacts of past development projects within the

last five years, and details of the applicant's role in economic development outcomes.

(d) *Past performance in Establishing Legal Business Entities.* Maximum score of ten points. Applicants demonstrating past performance in establishing legal cooperative business entities and other legal business entities since October 1, 2018, will be evaluated. Provide the name of the organization(s) established, the date(s) of formation, and the applicant's role(s) in assisting with the incorporation(s) under this criterion. Documentation verifying the establishment of legal business entities must be included in Appendix C of the application and will not count against the 40-page limit for the narrative. The documentation must include proof that organizational documents were filed with the Secretary of State's Office (*i.e.,* Certificate of Incorporation or information from the State's official website naming the entity established and the date of establishment); or if the business entity is not required to register with the Secretary of State, or a certification from the business entity that a legal business entity has been established and when. Please note that applicants are not required to submit articles of incorporation to receive points under this criterion. Applicants that are an established legal cooperative business will score higher on this criterion. If the applicant's State does not incorporate cooperative business entities, please describe how the established business entity operates like a cooperative. Examples may include, but are not limited to, principles and practices of shared ownership, democratic control, and distribution of net income based on use of the business rather than equity contributed. Due to extenuating circumstances of COVID–19, the Agency will utilize information in the narrative to score this criterion. Documentation to verify past performance in establishing legal entities will be required before an award is made.

(e) *Networking and Regional Focus.* Maximum score of ten points. A panel of USDA employees will evaluate the applicant's demonstrated commitment to:

(1) Networking with other cooperative development centers, and other organizations involved in rural economic development efforts, and

(2) Developing multi-organizational and multi-State approaches to addressing the economic development and cooperative needs of rural areas.

Applicants will score higher on this criterion by demonstrating the outcomes of multi-organizational and multi-State approaches. Please describe the project(s), partners and the outcome(s) that resulted from the approach.

(f) *Commitment.* Maximum score of ten points. See 7 CFR 4284.513(e). Applicants will score higher on this criterion by defining and describing the underserved and economically distressed areas within the service area, provide economic statistics, and identify past or current projects within or affecting these areas, as appropriate. Persistent poverty counties provisions are included in the Consolidated Appropriations Act of 2023, therefore projects identified in the work plan and budget that are located in persistent poverty counties, will score higher on this criterion.

(g) *Matching Funds.* Maximum score of ten points. Applicants matching funds requirements will be evaluated on requirements listed in 7 CFR 4284.513(f). A chart or table should be provided to describe all matching funds being committed to the project. Formal documentation to verify all the matching funds must be included in Appendix A of the application. Applicants will be scored on the total amount and type of matching funds (cash vs. in-kind). You will be scored on the total amount and how you identify your matching funds.

(1) If you meet the 25 percent (5 percent for 1994 Institutions) matching funds requirement, points will be assigned as follows:

(i) In-kind only—1 point;

(ii) Mix of in-kind and cash—3–4 points (maximum points will be awarded if the ratio of cash to in-kind is 30 percent or more); or

(iii) Cash only—5 points.

(2) If you exceed the 25 percent (5 percent for 1994 Institutions) matching funds requirement, points will be assigned as follows:

(i) In-kind only—2 points;

(ii) Mix of in-kind and cash—6–7 points (maximum points will be awarded if the ratio of cash to in-kind is 30 percent or more); or

(iii) Cash only—up to 10 points.

(h) *Work Plan/Budget.* Maximum score of ten points. Applicant's work plan will be evaluated for detailed actions and an accompanying timetable for implementing the proposal. The budget must present a breakdown of the estimated costs associated with cooperative and business development activities as well as the operation of the Center and allocate these costs to each of the tasks to be undertaken. Matching funds as well as grant funds must be accounted for separately in the budget. At a minimum, the following should be discussed.

(1) Specific tasks (whether it be by type of service or specific project) to be completed using grant and matching funds;

(2) How customers will be identified;

(3) Key personnel; and

(4) The evaluation methods to be used to determine the success of specific tasks and overall objectives of Center operations. Please provide qualitative methods of evaluation. For example, evaluation methods should go beyond quantitative measurements of completing surveys or number of evaluations.

Applicants will score higher on this criterion by presenting a clear, logical, realistic, and efficient work plan and budget.

(i) *Qualifications of those Performing the Tasks.* Maximum score of ten points. The application will be evaluated to determine if the requirements of 7 CFR 4284.513(i) have been met. The application must indicate whether the personnel expected to perform the tasks are full/part-time employees of the organization or are contract personnel. Applicants will score higher on this criterion by demonstrating commitment and availability of qualified personnel expected to perform the tasks.

(j) *Local and Future Support.* Maximum score of ten points. A panel of USDA employees will evaluate each application for local and future support. Support should be discussed directly when responding to this criterion.

(1) Discussion of local support should include previous and/or expected local support and plans for coordinating with other developmental organizations in the proposed service area, or with state and local government institutions. Applicants will score higher by demonstrating strong support from potential beneficiaries and formal evidence of intent to coordinate with other developmental organizations. Applicants may also submit a maximum of ten letters of support or intent to coordinate with the applicant to verify discussion of local support. These letters should be included in Appendix B of the application and will not count against the 40-page limit for the narrative. Documentation to verify local support will be required before an award is made.

(2) Discussion of future support is required in the applicant's vision for funding operations in future years. Applicants should document:

(i) New and existing funding sources that support applicant goals;

(ii) Alternative funding sources that reduce reliance on Federal, State, and local grants; and

(iii) The use of in-house personnel for providing services versus contracting out for expertise. Please discuss the strategy for building in-house technical assistance capacity.

Applicants will score higher by demonstrating that future support will result in long-term sustainability of the Center, including the fostering of in-house personnel development in order to provide services.

(k) *Administrator Discretionary Points* (maximum of 10 points). The Administrator may choose to award up to 10 points to an eligible non-profit corporation or institution of higher education that has never previously been awarded an RCDG grant or whose application seeks to advance the key priorities addressed in the Supplemental Section of this notice. Data sources for the key priorities are found at: *https://www.rd.usda.gov/priority-points.* Points will be assigned as follows:

(1) Applicant has never received a RCDG award—5 points;

(2) Applicant seeks to advance one or more key priorities addressed in the Supplemental Section of this notice—5 points.

2. *Review and selection process.* The State Offices will review applications to determine if they are eligible for assistance based on requirements in 7 CFR part 4284, subparts A and F, this Notice, and other applicable Federal regulations. If determined eligible, your application will be scored by a panel of USDA employees in accordance with the point allocation specified in this Notice. The Administrator may choose to award up to 10 Administrator priority points based on criterion (k) in section E.1. of this Notice. These points will be added to the cumulative score for a total possible score of 110. Applications will be funded in highest ranking order until the appropriations funding limitation for the RCDG program has been reached. Applications that cannot be fully funded may be offered partial funding at the Agency's discretion. If your application is evaluated, but not funded, it will not be carried forward into the competition for any subsequent fiscal year program funding. Successful applicants must comply with requirements identified in Section F, Federal Award Administration Information.

2. Review and Selection Process. The USDA Rural Development State Office will review applications to determine if they are eligible for assistance based on requirements in 7 CFR part 4284, subparts A and F, this notice, and other applicable Federal regulations. If determined eligible, applications will be scored by a panel of USDA employees in accordance with the point allocation specified in Section E.1 of this notice. The Administrator may choose to award up to ten Administrator priority points based on criteria (k) in Section E.1. of this Notice. These points will be added to the cumulative score for a total possible score of 110. Applications will be funded in highest ranking order until the appropriations funding limitation for the RCDG program has been reached. Applications that cannot be fully funded may be offered partial funding at the Agency's discretion. The Agency reserves the right to offer the applicant less than the grant funding requested. Applications evaluated, but not funded, will not be carried forward into the competition for any subsequent fiscal year program funding. Successful applicants must comply with requirements identified in Section F of this notice.

F. Federal Award Administration Information

1. *Federal Award Notices.* If an application is selected for funding, the applicant will receive a signed notice of Federal award by postal or electronic mail from the USDA Rural Development State Office where the applicant is located containing instructions and requirements necessary to proceed with execution and performance of the award. Applicants must comply with all applicable statutes, regulations, and notice requirements before the grant award will be funded.

Applicants not selected for funding, will be notified in writing via postal or electronic mail and informed of any review and appeal rights. See 7 CFR part 11 for USDA National Appeals Division (NAD) procedures. Note that rejected applicants that are successful in their NAD appeals will not receive funding if all FY 2023 RCDG program funding has already been awarded and obligated to other applicants.

2. *Administrative and National Policy Requirements.* Additional requirements that apply to grantees selected for this program can be found in 7 CFR part 4284, subpart F; the Grants and Agreements regulations of the Department of Agriculture codified in 2 CFR parts 180, 200, 400, 415, 417, 418, 421; 2 CFR parts 25 and 170; and 48 CFR part 31, and successor regulations to these parts.

In addition, all recipients of Federal financial assistance are required to report information about first tier subawards and executive compensation in accordance with 2 CFR part 170. Applicants will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) reporting requirements (see 2 CFR 170.200(b), unless exempt under 2 CFR 170.110(b)).

The following additional requirements apply to grantees selected for awards within this program:

(a) Execution of Form RD 4280–2 Renewable Energy/Energy Efficiency Grant Agreement;

(b) Acceptance of a written Letter of Conditions; and submission of the following Agency forms:

(1) Form RD 1940–1, ''Request for Obligation of Funds.''

(2) Form RD 1942–46, ''Letter of Intent to Meet Conditions.''

(3) SF LLL, ''Disclosure of Lobbying Activities,'' if applicable.

3. *Reporting.* After grant approval and through grant completion, applicants will be required to provide an SF–425, ''Federal Financial Report,'' and a project performance report on a semiannual basis (due 30 working days after the end of the semiannual period). The project performance reports shall include the following:

(a) A comparison of actual accomplishments to the objectives established for that period;

(b) Reasons why established objectives were not met, if applicable;

(c) Reasons for any problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(d) Objectives and timetable established for the next reporting period.

The grantee must provide a final project and financial status report within 90 days after the expiration or termination of the grant performance period with a summary of the project performance reports and final deliverables to close out a grant in accordance with 2 CFR 200.344.

G. Federal Awarding Agency Contact(s)

For general questions about this announcement, please contact the USDA Rural Development State Office provided in the **ADDRESSES** section of this notice.

H. Other Information

1. *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 0570–0006.

2. *National Environmental Policy Act.* All recipients under this Notice are subject to the requirements of 7 CFR part 1970. Awards for technical assistance and training under this Notice are classified as a Categorical Exclusion under to 7 CFR 1970.53(b), and usually do not require any additional documentation. RBCS will review each grant application to determine its compliance with 7 CFR part 1970. The applicant may be asked to provide additional information or documentation to assist RBS with this determination. A review for NEPA compliance is required prior to the award of grant funds.

3. *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 funding are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

4. *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 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).

5. *Nondiscrimination Statement.* In accordance with Federal civil rights laws and 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:

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

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

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

USDA is an equal opportunity provider, employer, and lender.

Karama Neal,

Administrator, Rural Business-Cooperative Service, USDA Rural Development.

[FR Doc. 2023–08761 Filed 4–25–23; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Ruling Applications Filed in Antidumping and Countervailing Duty Proceedings

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

SUMMARY: The U.S. Department of Commerce (Commerce) received scope ruling applications, requesting that scope inquiries be conducted to determine whether identified products are covered by the scope of antidumping duty (AD) and/or countervailing duty (CVD) orders and that Commerce issue scope rulings pursuant to those inquiries. In accordance with Commerce's regulations, we are notifying the public of the filing of the scope ruling applications listed below in the month of March 2023.

DATES: Applicable April 26, 2023.

FOR FURTHER INFORMATION CONTACT: Terri Monroe, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–1384.

Notice of Scope Ruling Applications: In accordance with 19 CFR 351.225(d)(3), we are notifying the public of the following scope ruling applications related to AD and CVD orders and findings filed in or around the month of March 2023. This notification includes, for each scope application: (1) identification of the AD and/or CVD orders at issue (19 CFR 351.225(c)(1)); (2) concise public descriptions of the products at issue, including the physical characteristics (including chemical, dimensional and technical characteristics) of the products (19 CFR 351.225(c)(2)(ii)); (3) the countries where the products are produced and the countries from where the products are exported (19 CFR 351.225(c)(2)(i)(B)); (4) the full names of the applicants; and (5) the dates that the scope applications were filed with Commerce and the name of the ACCESS scope segment where the scope applications can be found.[1] This notice does not include applications which have been rejected and not properly resubmitted. The scope ruling applications listed below are available on Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), at *https://access.trade.gov.*

Scope Ruling Applications

Twist Ties from the People's Republic of China (China) (A–570–131); decorative, attachable bows that include a twist tie permanently attached to the bow;[2] produced in and exported from

[1] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300, 52316 (September 20, 2021) (*Final Rule*) (''It is our expectation that the **Federal Register** list will include, where appropriate, for each scope application the following data: (1) identification of the AD and/or CVD orders at issue; (2) a concise public summary of the product's description, including the physical characteristics (including chemical, dimensional and technical characteristics) of the product; (3) the country(ies) where the product is produced and the country from where the product is exported; (4) the full name of the applicant; and (5) the date that the scope application was filed with Commerce.'')

[2] The products are two models of attachable bows with twist ties. The first model is made of velvet (pile fabric), 100 percent nylon ribbon, ½ inch wide and 4.25 inches long, which is knotted in the center around a twist tie to form a 4-inch-long bow. The twist tie is 4.25 inches long. The second model contains a length of grosgrain ribbon, ½ inch wide

Continued

China; submitted by Essential Ribbons, Inc.; March 7, 2023; ACCESS scope segment ''Attachable Bows.''

Wood Moldings and Millwork Products from China (A–570–117/C–570–118); Edge-Glued Boards; [3] produced in and exported from China; submitted by Hardware Resources, Inc.; March 9, 2023; ACCESS scope segment ''Edge-Glued Boards.''

Utility Scale Wind Towers from China and Spain (A–570–981/C–570–982, A–469–823); monopiles, which are hollow, steel cylinders that form the foundation for offshore wind turbines; [4] produced in and exported from China (A–570–981/C–570–982); produced in and exported from Spain (A–469–823); submitted by Orsted North America Inc.; March 17, 2023; ACCESS scope segment ''Monopiles—Orsted.''

Fresh Garlic from China (A–570–831); certain individually quick-frozen cooked garlic cloves; [5] produced in and exported from China; submitted by Export Packers Company Limited; March 31, 2023; ACCESS scope segment ''Export Packers.''

Notification to Interested Parties

This list of scope ruling applications is not an identification of scope inquiries that have been initiated. In accordance with 19 CFR 351.225(d)(1), if Commerce has not rejected a scope ruling application or initiated the scope inquiry within 30 days after the filing of the application, the application will be deemed accepted and a scope inquiry will be deemed initiated the following day—day 31.[6] Commerce's practice generally dictates that where a deadline falls on a weekend, Federal holiday, or other non-business day, the appropriate deadline is the next business day.[7] Accordingly, if the 30th day after the filing of the application falls on a non-business day, the next business day will be considered the ''updated'' 30th day, and if the application is not rejected or a scope inquiry initiated by or on that particular business day, the application will be deemed accepted and a scope inquiry will be deemed initiated on the next business day which follows the ''updated'' 30th day.[8]

In accordance with 19 CFR 351.225(m)(2), if there are companion AD and CVD orders covering the same merchandise from the same country of origin, the scope inquiry will be conducted on the record of the AD proceeding. Further, please note that pursuant to 19 CFR 351.225(m)(1), Commerce may either apply a scope ruling to all products from the same country with the same relevant physical characteristics, (including chemical, dimensional, and technical characteristics) as the product at issue, on a country-wide basis, regardless of the producer, exporter, or importer of those products, or on a company-specific basis.

For further information on procedures for filing information with Commerce through ACCESS and participating in scope inquiries, please refer to the Filing Instructions section of the Scope Ruling Application Guide, at *https://access.trade.gov/help/Scope_Ruling_Guidance.pdf.* Interested parties, apart from the scope ruling applicant, who wish to participate in a scope inquiry and be added to the public service list for that segment of the proceeding must file an entry of appearance in accordance with 19 CFR 351.103(d)(1) and 19 CFR 351.225(n)(4). Interested parties are advised to refer to the case segment in ACCESS as well as 19 CFR 351.225(f) for further information on the scope inquiry procedures, including the timelines for the submission of comments.

Please note that this notice of scope ruling applications filed in AD and CVD proceedings may be published before any potential initiation, or after the initiation, of a given scope inquiry based on a scope ruling application identified in this notice. Therefore, please refer to the case segment on ACCESS to determine whether a scope ruling application has been accepted or rejected and whether a scope inquiry has been initiated.

Interested parties who wish to be served scope ruling applications for a particular AD or CVD order may file a request to be included on the annual inquiry service list during the anniversary month of the publication of the AD or CVD order in accordance with 19 CFR 351.225(n) and Commerce's procedures.[9]

Interested parties are invited to comment on the completeness of this monthly list of scope ruling applications received by Commerce. Any comments should be submitted to James Maeder, Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, via email to *CommerceCLU@trade.gov.*

This notice of scope ruling applications filed in AD and CVD proceedings is published in accordance with 19 CFR 351.225(d)(3).

Dated: April 20, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–08772 Filed 4–25–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Semiconductor Technology Center Selection Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Solicitation of nominations.

SUMMARY: The Department of Commerce (''Department'') seeks nominations for immediate consideration for a Selection Committee that will play an important role in the success of the national semiconductor technology center (''NSTC''), a public private-sector consortium that the Secretary of Commerce will establish under the CHIPS Act. The Selection Committee is

and 11.25 inches long, tied into a bow. The length of ribbon is folded into two loops and knotted in the center around a twist tie to form the decorative bow. The bow is 2.5 inches long and is stitched to a twist tie that is 4.25 inches long.

[3] The products are solid edge-glued boards made of white birch measuring 8-feet in length and 5/8-inches thick. The height of each board varies from 2.5 to 12 inches. The boards are finger-jointed and edge-glued. A UV coating is applied to the boards except for the bottom edge that is left uncoated/unfinished. The corners of the boards are lightly sanded to smooth the corners to 1/16 of an inch.

[4] The products are monopiles, which are driven into the seabed. Monopiles can be designed to directly interface with the tower section of a wind turbine or connect via a transition piece. Monopiles are welded together at the fabrication point and shipped to the installation point in one piece ranging from 80 to 130 meters in length, however, every monopile is specifically designed for the exact location in which it will be installed.

[5] The products are fresh garlic that is peeled and separated into cloves. The garlic is cleaned using water, boiled in water for 90 seconds, and then quick-frozen. The importer purchases the product from 3 companies in China and then exports it into the United States from Canada under HTS 0710.80.7060.

[6] In accordance with 19 CFR 351.225(d)(2), within 30 days after the filing of a scope ruling application, if Commerce determines that it intends to address the scope issue raised in the application in another segment of the proceeding (such as a circumvention inquiry under 19 CFR 351.226 or a covered merchandise inquiry under 19 CFR 351.227), it will notify the applicant that it will not initiate a scope inquiry, but will instead determine if the product is covered by the scope at issue in that alternative segment.

[7] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[8] This structure maintains the intent of the applicable regulation, 19 CFR 351.225(d)(1), to allow day 30 and day 31 to be separate business days.

[9] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021).

responsible for selecting individuals, who will serve as board members and form an independent, non-profit entity that the Department anticipates will serve as the operator of the NSTC. The Department will choose the Selection Committee members from the nominations submitted in response to this FRN. The Selection Committee will act independently of the Department. The Department seeks nominations of individuals for the Selection Committee, who by virtue of their experience and expertise, will identify distinguished, purpose-driven, visionary leaders for the new independent, non-profit entity.

DATES: Nominations for immediate consideration to serve on the Selection Committee must be received on or before 5:00 p.m. EST on May 10, 2023. Nominations will be accepted on an ongoing basis until the deadline.

ADDRESSES: Please submit nominations via email to Kevin Kimball, Senior Advisor, CHIPS R&D Office, U.S. Department of Commerce, NIST, 100 Bureau Drive, MS1000, Gaithersburg, MD 20899; email: *FRN@chips.gov.*

FOR FURTHER INFORMATION CONTACT: Kevin Kimball, Senior Advisor, CHIPS R&D Office, U.S. Department of Commerce, NIST, 100 Bureau Drive, MS1000, Gaithersburg, MD 20899; email: *FRN@chips.gov;* telephone: 240–778–3977. For additional information about the national semiconductor technology center, please visit *https://www.nist.gov/document/vision-and-strategy-national-semiconductor-technology-center.* For media inquiries, please contact Matt Hill at *Matt.Hill@chips.gov.*

SUPPLEMENTARY INFORMATION:

The NSTC Public Private-Sector Consortium

The Department has a once-in-a-generation opportunity to establish a transformative center for the U.S. to lead in advanced semiconductor R&D, manufacturing, and workforce initiatives for decades to come. The NSTC will provide a platform where government, industry, customers, suppliers, educational institutions, community colleges, large companies, small companies, startups, workforce representatives, investors, and international allies and partners collaborate. A successful NSTC will advance critical semiconductor research and development, while reducing the time and cost of bringing technologies to market. By integrating efforts across a complex ecosystem, the NSTC will expand access to facilities and resources and allow industry, academia and government to build on each other's work. The Department expects that the NSTC will consist of a headquarters facility and an integrated network of NSTC-affiliated technical centers with locations geographically distributed to leverage existing capabilities. It will start an investment fund that enables future innovations in early-stage companies and will create programs that strengthen and expand the semiconductor workforce. To read more about the Department's vision and strategy for the NSTC, see the NSTC White Paper available at *https://www.nist.gov/document/vision-and-strategy-national-semiconductor-technology-center.*

As set forth in the CHIPS Act,[1] the NSTC will be established by the Secretary of Commerce, in collaboration with the Secretary of Defense, and operated as a public private-sector consortium. The Department has also reviewed the governance structures of various existing consortia and similar research centers to identify the best features to incorporate into the governance of the NSTC. To best effectuate its vision and the goals of the CHIPS Act, the Department has determined that the consortium requires a dedicated operator with world-class leadership and a public interest focus. The Department anticipates that a new, purpose-built, independent, non-profit entity will serve in this role.

Selection Committee Information

Through this notice, the Department seeks to encourage the formation of this independent, non-profit entity by inviting the public to nominate individuals for the Selection Committee. The Selection Committee will then select the board members that may form a new independent, non-profit entity. The Selection Committee and selected board members will act independently of the Department. The Department seeks nominations of individuals for immediate consideration. The Department will select the Selection Committee members from the nominations submitted in response to this FRN. The Department expects the Selection Committee to be composed of no more than 7 members. The Department will select members to the Selection Committee based on their qualifications and experience relevant to the Committee's task. The Department seeks nominees with a record of exceptional accomplishment in their field. The nominees must have one of the following qualifications:

- Senior executive experience with large, complex, sophisticated organizations (public or private sector); or
- Senior executive experience at large research institutions, educational institutions, foundations, corporations, or companies that make or purchase semiconductors; or
- Record of distinguished service in the public sector, preferably including a high-level government position in national security.

Additional factors that will be considered include:

- Expertise and experience in semiconductors, advanced technology;
- Expertise and experience in economics, finance, management, workforce, business, or entrepreneurship;
- Public or private sector board service;
- Demonstrated commitment to the public interest.

The Department will review all nominations to ensure they meet the requirements of the qualifications criteria. The applications that do will be reviewed by an internal Department committee. Members will be selected in a manner that ensures that the Selection Committee understands the nation's needs for a robust domestic semiconductor ecosystem and workforce. Diverse membership ensures perspectives and expertise reflecting the full breadth of the Selection Committee's responsibilities.

Nominees must be a U.S. citizen or lawful permanent residents of the United States. Self-nominations are welcomed as are other nominations. Nominees may not be a current semiconductor industry executive or Federal employee. Nominees may not be registered as a foreign agent under the Foreign Agents Registration Act or as a lobbyist under the Lobbying Disclosure Act.

Nominees chosen for the Selection Committee will be notified by the Department. Once selected, members of the Selection Committee will serve in their personal capacity and not in a representative capacity on behalf of any other individual, entity, or organization. Members will not advise the Federal Government, perform a Federal Government function, or be Federal employees. Members will not be compensated for their services or reimbursed for their travel expenses.

[1] ''The CHIPS Act'' or ''the Act'' refers to the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, 9901–9908, 134 Stat. 3388, 4843–4860 (2021) (codified at 15 U.S.C. 4651–4657), as amended by the CHIPS Act of 2022, Public Law 117–167, 101–107, 136 Stat. 1366, 1372–1390 (2022) (codified as amended at 15 U.S.C. 4651–4843).

The Selection Committee shall automatically terminate no later than August 31, 2023.

Nomination Information

All nominations for membership on the Selection Committee should provide the following information:

- Name and relevant contact information (including phone number and email address) of the nominee;
- A short statement (no more than 500 words) of interest in or fit for the role;
- A short biography of relevant credentials;
- An affirmative statement that the nominee meets all eligibility requirements.

Nominations should be emailed to Kevin Kimball, Senior Advisor, CHIPS R&D Office, U.S. Department of Commerce, NIST, 100 Bureau Drive, MS1000, Gaithersburg, MD 20899; email: *FRN@chips.gov,* and must be received on or before 5:00 p.m. EST on May 10, 2023.

Privacy Act Statement

The collection, maintenance, and disclosure of this information is governed by the Privacy Act of 1974 (5 U.S.C. 552a). The Department of Commerce is authorized to collect this information pursuant to authorities that include but are not limited to: 15 U.S.C. 1512; 15 U.S.C. 4656, 4659. The principal purposes for which the Department will use the information is to assist in choosing members of the Selection Committee. Information received will be maintained in a Privacy Act system of records, COMMERCE/DEPT–23, entitled ''Information Collected Electronically in Connection with Department of Commerce Activities, Events, and Programs.'' A notice describing that system, including a complete set of routine disclosures, has been published both in the **Federal Register** and on the Department's website at: *https://www.osec.doc.gov/opog/privacyact/SORNs/dept-23.html.*

Disclosing this information to the Department of Commerce is voluntary. However, if you do not provide this information, or only provide part of the information requested, you may not be considered for membership on the Selection Committee. The nominations the Department receives for the Selection Committee may be shared with the Selection Committee; the Selection Committee may or may not use the nominations to identify board members to form an independent, non-profit entity that the Department anticipates will serve as the operator of the NSTC. By submitting your application, you agree to these disclosure terms.

Authority: 15 U.S.C. 4656, 4659.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–08591 Filed 4–25–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC886]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Mackerel, Squid, and Butterfish Monitoring Committee will hold a public webinar meeting.

DATES: The meeting will be held on Friday, May 12, 2023, from 1 p.m. to 3 p.m. EDT. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. Information on how to connect to the webinar will be posted to *https://www.mafmc.org/council-events/*.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The objectives of this meeting are for the Monitoring Committee to: (1) Review recent butterfish and Atlantic chub mackerel fishery performance and recommendations from the Advisory Panel, the Scientific and Statistical Committee, and Council staff; (2) Review, and if appropriate, recommend changes to the previously implemented 2024 butterfish and chub mackerel specifications. Meeting materials will be posted to *www.mafmc.org.*

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden, (302) 526–5251 at least 5 days prior to the meeting date.

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

Dated: April 21, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–08818 Filed 4–25–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC943]

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Notice for Exempted Fishing Permit Application

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

ACTION: Notice; request for comments.

SUMMARY: The Regional Administrator, West Coast Region, NMFS, announces receipt of an exempted fishing permit (EFP) application, and is considering issuance of an EFP for a third party Electronic Monitoring (EM) provider who would provide EM services for vessels participating in the existing EM EFP fisheries, and also to the vessels participating in this EFP. NMFS requests public comment on the application.

DATES: Comments must be received by May 11, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0063 by the following method:

- *Electronic Submissions:* Submit all public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2023–0063 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments. The EFP application will be available under Supporting and Related Materials through the same link.
- *Instructions:* Comments must be submitted by the above method to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*) submitted voluntarily by the sender will be

publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Matt Dunlap, West Coast Region, NMFS, (206) 316–7944, *matthew.dunlap@noaa.gov.*

SUPPLEMENTARY INFORMATION: This action is authorized by the Pacific Coast Groundfish Fishery Management Plan and the regulations implementing the Magnuson-Stevens Fishery Conservation and Management Act at 50 CFR 600.745, which state that exempted fishing permits (EFP) may be used to authorize fishing activities that would otherwise be prohibited.

On June 28, 2019 (84 FR 31146), at the recommendation of the Pacific Fishery Management Council (Council), NMFS published a final rule that authorized the use of EM in place of human observers to meet requirements for 100-percent at-sea monitoring for catcher vessels in the groundfish trawl catch share fishery (Trawl Rationalization Program). EM video systems are used to record catch and discards by the vessel crew while at sea. Vessel operators are responsible for recording catch and discards in a logbook, which is then used to debit individual fishing quota (IFQ) accounts and cooperative allocations. The Council recommended, and NMFS implemented, a delay to the start of the regulatory program (86 FR 5525, October 6, 2021) until January 2024.

FlyWire, the EFP applicant, seeks to test the third party EM service provider model during the delay, as described in the EM program manual and associated guidelines and under 50 CFR 660.603 and 660.604. The West Coast EM regulatory program established requirements for vessel owners and operators, standards for EM systems, and protocols for handling catch while using EM systems in the Catch Share Program. The EM program also established requirements for third party EM Service Providers, which are companies tasked with providing EM services to the fleet. EM service providers are responsible for the installation and technical support of EM systems, and the collection and review of EM video data. EM vessels submit logbooks to report catch and discard information to NOAA Fisheries, and video data is used to audit logbooks to ensure information is accurately reported. If approved, the applicant would test alternative catch handling approaches for bottom trawl designed to reduce the time and labor burden for vessel crew, in addition to testing the third party model in the maximized retention Pacific whiting fleet. The applicant anticipates providing EM services to approximately five vessels that would participate in the EFP. While the applicant seeks an exemption from the requirement for vessels to carry an at-sea observer, all catch and effort would be covered by existing Individual Fishing Quota, Coop allocations, and associated National Environmental Policy Act and Endangered Species Act analyses. Observers will be required for initial ''shakedown'' cruises, but an observer exemption will be granted for this EFP if the equipment and vessel monitoring plans are consistent with the existing EM EFP guidelines.

If approved, NMFS would issue the permits for the EFP project to the applicant and vessel owners or designated representatives as the ''EFP holder.'' NMFS intends to use an adaptive management approach in which NMFS may revise requirements and protocols to improve the program without issuing another **Federal Register** notice, provided that the modifications fall within the scope of the original EFP. NMFS would also accept additional applications to participate in the same, or similar, exempted fishing activity.

The Regional Administrator has made a preliminary determination that the applications described above contain all of the required information and constitute an activity appropriate for further consideration. After publication of this document in the **Federal Register**, and review and consideration of any public comments received, NMFS may approve and issue permits for the EFP project. NMFS may approve the application in its entirety or may make any alterations needed to achieve the goals of the EFP.

Authority: 16 U.S.C. 1801 *et seq.;* 50 CFR 600.745. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan and the regulations implementing the Magnuson-Stevens Fishery Conservation and Management Act at 50 CFR 600.745, which state that exempted fishing permits (EFP) may be used to authorize fishing activities that would otherwise be prohibited.

Dated: April 20, 2023.

Kelly Denit,

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

[FR Doc. 2023–08731 Filed 4–25–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC932]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC's) Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will hold a public meeting jointly with the Atlantic States Marine Fisheries Commission (ASMFC) Summer Flounder, Scup, and Black Sea Bass Technical Committee.

DATES: The meeting will be held on Thursday, May 11, 2023, from 1 p.m. to 4 p.m. EDT. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted to the calendar at *www.mafmc.org* prior to the meeting.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The MAFMC Summer Flounder, Scup, and Black Sea Bass Monitoring Committee and ASMFC Technical Committee will meet jointly to discuss several issues in preparation for additional meetings later in 2023 regarding 2024 recreational management measures for black sea bass and 2024–25 recreational measures for scup and summer flounder. During this meeting, the groups will discuss the configuration of the Recreational Demand Model and any potential modifications that may be needed. They will also review the process and timeline for setting recreational measures used for 2023 and consider potential improvements to the process for setting measures for the upcoming fishing year(s).

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to

Shelley Spedden, (302) 526–5251 at least 5 days prior to the meeting.

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

Dated: April 21, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–08820 Filed 4–25–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC902]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting via webinar of its Snapper Grouper Recreational Permitting and Reporting Technical Advisory Panel (AP) to discuss reporting and permitting alternatives for the private recreational snapper grouper fishery.

DATES: The AP meeting will be held from 1 p.m. until 3 p.m. on Monday, May 15, 2023.

ADDRESSES: The meeting will be held via webinar. Webinar registration is required. Details are included in the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8440 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Meeting information, including the webinar registration link, online public comment form, agenda, and briefing book materials will be posted on the Council's website at: *https://safmc.net/advisory-council-meetings/.* Comments become part of the Administrative Record of the meeting and will automatically be posted to the website and available for Council consideration.

At this meeting the AP will review guidance from the March 2023 Council meeting, further address a series of permit and education topics posed by the Council and provide feedback on potential benefits of a permit.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: April 21, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–08819 Filed 4–25–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC956]

Fisheries of the Exclusive Economic Zone Off Alaska; Cook Inlet Salmon; Public Hearing

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

ACTION: Notice; public hearing.

SUMMARY: The National Marine Fisheries Service (NMFS) will hold a public hearing via webinar regarding an amendment to the Fishery Management Plan for the Salmon Fisheries in the Exclusive Economic Zone (EEZ) Off Alaska (Salmon FMP). This FMP amendment would establish Federal management for the salmon fisheries in the Federal (EEZ) waters of upper Cook Inlet.

DATES: The public hearing will take place via webinar on Thursday, May 18, 2023, starting at 5 p.m. Alaska Daylight Time (AKDT) and will conclude no later than 8 p.m. AKDT. NMFS may close the hearing 15 minutes after the conclusion of public testimony and after responding to any clarifying questions from hearing participants. Written public comments must be received by 5 p.m. AKDT Thursday, May 25, 2023.

ADDRESSES: The meeting will be held virtually rather than at a physical location. The link to the virtual public meeting is: *https://meet.google.com/bgc-tjpu-qgt.* A phone connection is also available by calling 1 731–393–1334 and entering the following pin number: 300 304 724#.

You may submit written comments regarding salmon fisheries in the upper Cook Inlet EEZ identified by Docket ID NOAA–NMFS–2023–0065 by either of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal eRulemaking Portal. Go to *https://www.regulations.gov,* search for the Docket ID indicated above, click the ''Comment Now!'' or ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Gretchen Harrington, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region NMFS, P.O. Box 21668, Juneau, AK 99082–1668.

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

FOR FURTHER INFORMATION CONTACT: Doug Duncan, *doug.duncan@noaa.gov,* 907–586–7425, or Amy Hadfield, *amy.hadfield@noaa.gov,* 907–586–7376.

SUPPLEMENTARY INFORMATION: NMFS will hold a public hearing on May 18, 2023, to receive input from interested persons on the development of an amendment to the Salmon FMP and implementing regulations. Written and oral comments received at the public hearing will be taken into consideration by NMFS when preparing the amendment and implementing regulations.

As a result of a 2016 Ninth Circuit ruling and the 2022 summary judgment opinion of the Alaska District Court in *UCIDA, et al.* v. *NMFS,* NMFS must implement an amendment to the Salmon FMP by May 1, 2024 to federally manage the salmon fisheries that occur in the exclusive economic zone (EEZ) waters of upper Cook Inlet, consistent with Magnuson-Stevens Fishery Conservation and Management Act (MSA) requirements.

At its April 2023 meeting, the North Pacific Fishery Management Council (Council) considered amending the Salmon FMP to manage the salmon fishery in the Cook Inlet EEZ, but chose not to take action to recommend an FMP amendment. The analysis prepared for the proposed FMP amendment, NMFS's motion for Alternative 3, and additional information and public documents are available on the Council's meeting agenda under item ''C1 Cook Inlet Salmon FMP Amendment—Final Action, Enforcement Committee Report'', available at *https://meetings.npfmc.org/Meeting/Details/2983.* Absent a Council recommendation, NMFS must prepare an FMP amendment and propose implementing regulations pursuant to MSA section 304(c) to meet a court deadline. After receiving public input, NMFS will choose from among the Federal management options included under Alternative 3 in the analysis prepared for the Council.

NMFS staff will provide a brief opening statement before accepting public testimony for the record. The hearing will be recorded for the purpose of preparing transcripts of oral comments received. Attendees will be asked to identify themselves before joining the hearing. After joining the webinar, participants will be automatically muted. During the public testimony portion of the hearing, to indicate you would like to offer a comment press the ''raise hand'' icon, or if connected by phone, respond when asked. When it is your turn to offer your comment, the moderator will recognize and unmute you. Commenters will be asked to provide their full name and the identity of any organization on whose behalf they may be speaking. In the event that attendance at the public hearings is large, the time allotted for each commenter may be limited.

Anyone wishing to make an oral statement at the public hearing is encouraged to also submit a written copy of their statement to NMFS during the comment period by either of the methods identified above (see **ADDRESSES** and **DATES**). There are no limits on the length of written comments. Written statements and supporting data and information submitted during the comment period will be considered with the same weight as oral statements provided during the public hearings.

The schedule is as follows: Thursday, May 18, 2023, Webinar—starting at 5 p.m. AKDT and concluding no later than 8 p.m. AKDT. You may join the public virtual meeting from a computer, tablet, or smartphone by entering the following web address: *https://meet.google.com/bgc-tjpu-qgt* and selecting ''Join now.'' Participants may also connect via phone by calling 1 731–393–1334 and entering the following pin number when prompted: 300 304 724#.

After the public hearing, NMFS will develop an FMP amendment and implementing regulation in the following months. NMFS will then publish a notice in the **Federal Register** that the FMP amendment is available for a 60-day public comment period, as required by MSA 304(c)(4)(B). At the same time, NMFS will publish proposed regulations in the **Federal Register** for a 60-day public comment period, consistent with MSA 304(c)(6). The Council will be invited to submit comments and recommendations on the FMP amendment and proposed regulations during the public comment periods.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Doug Duncan, *doug.duncan@noaa.gov,* 907–586–7425, or Amy Hadfield, *amy.hadfield@noaa.gov,* 907–586–7376 at least 5 working days prior to the meeting date.

Dated: April 21, 2023.

Kelly Denit,

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

[FR Doc. 2023–08794 Filed 4–25–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Information Session for the Public Wireless Supply Chain Innovation Fund's First Notice of Funding Opportunity (NOFO)

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public information session following the launch of the Public Wireless Supply Chain Innovation Fund's first Notice of Funding Opportunity (NOFO). The event will provide an opportunity for the program team to discuss the technical aspects of the NOFO, as well as best practices for applicants navigating the federal awards process. The session will also provide interested applicants with the opportunity to ask questions.

DATES: The meeting will be held May 4, 2023, from 9:00 a.m. to 12:00 p.m., Eastern Standard Time (EST).

ADDRESSES: This meeting will be held in-person at the U.S. Department of the Interior Yates Auditorium (1849 C St. NW, Washington, DC 20240). If you are unable to attend in person, please email *InnovationFund@ntia.gov* with questions you would like to be addressed during the question and answer portion at least two (2) days in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Please refer to *https://ntia.gov/page/public-wireless-supply-chain-innovation-fund* for the most up-to-date information on this event. Stakeholders can register to attend in-person at *https://forms.office.com/g/rfmeqWFbt4.* Please direct questions regarding this Notice to *innovationfund@ntia.gov,* indicating ''Innovation Fund NOFO Launch'' in the subject line, or if by mail, addressed to National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; or by telephone to Sarah Skaluba, 202–482–3806. Please direct media inquiries to NTIA's Office of Public Affairs, *press@ntia.gov.*

SUPPLEMENTARY INFORMATION:

Background: On August 9, 2022, President Biden signed the CHIPS and Science Act of 2022 (Pub. L. 117–167, Div. A, Sect. 106, 136 Stat. 1392) into law, appropriating $1.5 billion for the Public Wireless Supply Chain Innovation Fund (referred to subsequently herein as the ''Innovation Fund''), to support the promotion and deployment of open, interoperable, and standards-based radio access networks (RAN). The Innovation Fund is authorized under section 9202(a)(1) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283; 47 U.S.C. 906(a)(1)). This historic investment aims to support U.S. leadership in the global telecommunications ecosystem, foster competition, lower costs for consumers and network operators, and strengthen our supply chain.

This event will provide an opportunity for the public to learn more about the Innovation Fund and the program's first NOFO, as well as ask the program team questions.

While not required, NTIA asks that attendees provide registration information prior to the event to include name, email address, and organization (optional). Attendees can register at *https://forms.office.com/g/rfmeqWFbt4.*

The agenda, including any updates, will be made available on NTIA's website.

Matters To Be Considered: The launch event will include an overview of the Innovation Fund program, a technical overview of the NOFO, NOFO application best practices and guidelines, and a question and answer discussion. NTIA will post a detailed agenda on its website, *https://ntia.gov/page/public-wireless-supply-chain-innovation-fund,* prior to the meeting.

Time and Date: The meeting will be held on May 4, 2023, from 9:00 a.m. to 12:00 p.m., Eastern Standard Time (EST). The meeting time and the agenda topics are subject to change. Please refer to NTIA's website, *https://ntia.gov/page/public-wireless-supply-chain-innovation-fund,* for the most up-to-date meeting agenda and access information.

Place: This meeting will be conducted in-person and open to the public. Individuals requiring accommodations are asked to notify the Public Wireless Supply Chain Innovation Fund team at *InnovationFund@ntia.gov* at least two (2) business days before the meeting.

Status: Interested parties are invited to join the meeting on May 4 at 9:00 a.m. EST. Interested parties unable to attend in person should submit questions to *InnovationFund@ntia.gov.* Parties wishing to submit written questions for consideration in advance of the meeting are strongly encouraged to submit their comments in Microsoft Word and/or PDF form. Questions must be received two (2) business days before the scheduled meeting date in order to provide sufficient time for review. Comments received after this date will be distributed to the program team but may not be addressed at the meeting. Additionally, please note that there may be a delay in the distribution of questions submitted via postal mail to program team members.

Stephanie Weiner,

Acting Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2023–08784 Filed 4–25–23; 8:45 am]

BILLING CODE 3510–60–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Comment Request; Application Instructions for AmeriCorps State and National Competitive New and Continuation

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing to renew an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by June 26, 2023.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) Electronically through *www.regulations.gov* (preferred method).

(2) By mail sent to: AmeriCorps, Attention Arminda Pappas, 250 E Street SW, Washington, DC 20525.

(3) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (2) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Comments submitted in response to this notice may be made available to the public through *regulations.gov*. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Arminda Pappas, 202–606–6659, or by email at *apappas@cns.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Application Instructions for AmeriCorps State and National Competitive New and Continuation Grants.

OMB Control Number: 3045–0047.

Type of Review: Renewal.

Respondents/Affected Public: Businesses and organizations, and State, local, or Tribal governments.

Total Estimated Number of Annual Responses: 450.

Total Estimated Number of Annual Burden Hours: 18,000.

Abstract: The application instructions conform to AmeriCorps' online grant application system, eGrants, which applicants must use to respond to AmeriCorps Notices of Funding Opportunities. AmeriCorps also seeks to continue using the currently approved information collection until the revised information collection is approved by OMB. The currently approved information collection is due to expire on September 30, 2023.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov*.

Sonali Nijhawan,

Director, AmeriCorps State and National.

[FR Doc. 2023–08729 Filed 4–25–23; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0035]

Privacy Act of 1974; System of Records

AGENCY: Department of Defense (DoD).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the DoD is establishing a new Department-wide system of records titled, ''DoD Claims Management Records,'' DoD–0016. This system of records covers records concerning the investigation, adjudication, and settlement of claims against or by the DoD.

DATES: This system of records is effective upon publication; however, comments on the Routine Uses will be accepted on or before May 26, 2023. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: https://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, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number 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 *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Rahwa Keleta, Privacy and Civil Liberties Division, Directorate for Privacy, Civil Liberties and Freedom of Information, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700; *OSD.DPCLTD@mail.mil;* (703) 571–0070.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is establishing the ''DoD Claims Management Records,'' DoD–0016, as a DoD-wide Privacy Act system of records. A DoD-wide system of records notice (SORN) supports multiple DoD paper or electronic recordkeeping systems operated by more than one DoD component that maintain the same kind of information about individuals for the same purpose. Establishment of DoD-wide SORNs helps the DoD standardize the rules governing the collection, maintenance, use, and sharing of personal information in key areas across the enterprise. DoD-wide SORNs also reduce duplicative and overlapping SORNs published by separate DoD components. The creation of DoD-wide SORNs is expected to make locating relevant SORNs easier for DoD personnel and the public and create efficiencies in the operation of the DoD privacy program.

The purpose of this SORN is to manage records collected, maintained, and disseminated by a DoD Component for addressing personnel and general claims both for and against the Department. This system of records covers all stages in the claims process to include notification, investigation, adjudication, negotiation, and resolution. These records may include information about claimants and their attorneys or representatives; including those with an affiliation to the DoD such as uniformed service personnel and their family members, civilian personnel, and contractors. The records may also include members of the public who have a physical or legal affiliation with the DoD and information about other persons with information pertinent to the claims adjudication process, such as witnesses, or state and local government officials.

DoD SORNs have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Privacy, Civil Liberties, and FOIA Directorate website at *https://dpcld.defense.gov.*

II. Privacy Act

Under the Privacy Act, a ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or lawful permanent resident.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–108, the DoD has provided a report of this system of records to the OMB and to Congress.

Dated: April 20, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

DoD Claims Management Records, DoD–0016.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of Defense (Department or DoD), located at 1000 Defense Pentagon, Washington, DC 20301–1000, and other Department installations, offices, or mission locations. Information may also be stored within a government-certified cloud, implemented, and overseen by the Department's Chief Information Officer (CIO).

SYSTEM MANAGER(S):

The system managers for this system of records are as follows:

A. The United States Air Force Judge Advocate General's Corps, Air Force Claims Service Center, 1940 Allbrook Drive, Bldg. 1 Suite 512, Wright-Patterson AFB, OH 45433, email: *AFCSC.JA@us.af.mil.*

B. United States Army Judge Advocate General's Corps, Claims Service, 4411 Llewellyn Avenue, Fort Meade, Maryland 20755, telephone number: 301–677–7009.

C. United States Navy and U.S. Marine Corps Office of the Judge Advocate General, Admiralty and Claims (Code 15), 1322 Patterson Ave., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number (202) 685–4600.

D. Director, Defense Legal Services Agency, Defense Office of Hearing and Appeals, Claims Division—Reconsideration, P.O. Box 3656, Arlington, Virginia 22203–1995, *osd.pentagon.ogc.list.correspondence-staff@mail.mil.* DOHA serves as the system manager for records produced as part of claims appeal activities.

E. Director, Defense Finance and Accounting Services, Debt and Claims Department, 8899 East 56th Street, Indianapolis, IN 46249–2700, telephone number (866) 912–6488.

F. To obtain information on the system managers at the Combatant Commands, Defense Agencies, or other Field Activities with oversight of the records, please visit *www.FOIA.gov* to contact the component's Freedom of Information Act (FOIA) office.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113, Secretary of Defense; 10 U.S.C. Chapter 163, Military Claims (General Military Law); 10 U.S.C. Chapter 781, Military Claims (Army); 10 U.S.C. Chapter 881, Claims (Navy and Marine Corps); 10 U.S.C. Chapter 981, Military Claims (Air Force); 10 U.S.C. Chapter 55, Medical and Dental Care; 10 U.S.C. 2782, Damage to Real Property: Disposition of Amounts Recovered; 28 U.S.C. 514, Legal Services on Pending

Claims in Departments and Agencies; 28 U.S.C. Chapter 161, United States as Party Generally; 28 U.S.C. Chapter 163, Fines, Penalties, and Forfeitures; 28 U.S.C. Chapter 171, Tort Claims Procedure; 28 U.S.C. Chapter 176, Federal Debt Collection Procedure; 28 U.S.C. 1498, Patent and Copyright Cases; 28 U.S.C. 2672, Administrative Adjustment of Claims; 31 U.S.C. Chapter 37, Claims; 31 U.S.C. Chapter 33, Subchapter II, Payments; 32 U.S.C. 715, Property loss; personal injury or death: activities under certain sections of this title; 32 U.S.C. 716, Claims for overpayment of pay and allowances, and travel and transportation allowances; 42 U.S.C. Chapter 32, Third Party Liability for Hospital and Medical Care; Department of Defense Directive 5515.09, Settlement of Tort Claims; 32 CFR part 281, Settling Personnel and General Claims and Processing Advance Decision Requests; 32 CFR part 282, Procedures for Settling Personnel and General Claims and Processing Advance Decision Requests; 32 CFR part 752, Admiralty Claims; Department of Defense Instruction 1340.21, Procedures for Settling Personnel and General Claims and Processing Advance Decision Requests; and E.O. 9397 (SSN), as amended.

PURPOSE(S) OF THE SYSTEM:

A. To process claims against or by DoD from notice through investigation, adjudication, and decision;

B. To determine validity, timeliness, appropriate legal authority and assignment of responsibility within the DoD Components to accept or deny claims.

C. To collect, maintain and preserve information associated with a claim for the processing and adjudication of the case.

D. To identify, recover, and/or collect funds or property deemed by an authorized official as appropriate compensation for claims made on behalf of the DoD (or DoD Component).

E. To conduct oversight and audit activities, to include budgeting, and management of claims and to support statistical analysis to include evaluating claims program effectiveness and conducting research.

F. To support and assist the Department of Justice when representing the DoD, resulting from a claim referred to litigation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who file claims against or on behalf of the DoD or a component of the DoD, or non-DoD component by agreement with the Department, including uniformed Service members and their family members, civilian personnel, non-appropriated fund employees and the DoD personnel employed or assigned outside of the contiguous United States hires, also known as local national employees, contractors, and members of the public. Individuals against whom DoD has filed a claim or taken other action to collect a debt owed by the individual to the DoD. The records may also contain information about other individuals who are not covered by the system of records, such as witnesses and third parties who may have information relevant to a claim; attorneys, legal personnel, and other representatives; or others with relevant information.

Note: This system of records also applies to the Coast Guard when it is not operating as a Service in the Navy under agreement with the Department of Homeland Security, the Commissioned Corps of the Public Health Service (PHS) under agreement with the Department of Health and Human Services, and the National Oceanic and Atmospheric Administration (NOAA) under agreement with the Department of Commerce (hereafter referred to collectively as ''the non-DoD Components'').

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Personal Information such as: name, DoD ID number; employee ID number; Social Security number; date of birth; physical and email addresses; phone numbers; place of birth; citizenships; medical information/medical records; driver's license number; vehicle registration information; biographical data; financial and property information; and insurance information.

B. Employment Information such as: position/title, rank/grade, duty station; work address, email; military service records, pay and official travel records, and personnel records.

C. Information relevant to the claim such as: evidentiary data in any form (including papers, photographs, electronic recordings, electronic data, or video records), pleadings, legal findings (sentencing reports, court motions, hearing or court transcripts), correspondence, filings, and supporting documents; forms, evidentiary data, investigatory data from adverse actions or administrative actions; statements; investigative reports; and publicly available information.

RECORD SOURCE CATEGORIES:

Records and information stored in this system of records are obtained from:

A. Claimants and their representatives.

B. Witnesses and other organizations or individuals who may have information relevant to a claim.

C. Records from information systems under control of DoD Components (or Non-DoD Components by agreement).

D. Other record sources may include governmental entities (such as federal, state, local or foreign); law enforcement agencies; medical treatment facilities; and relevant records and reports in the Department of Defense; and publicly available information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, all or a portion of the records or information contained herein may specifically be disclosed outside the DoD as a Routine Use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government when necessary to accomplish an agency function related to this system of records.

B. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

C. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

D. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

E. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To a Member of Congress or staff acting upon the Member's behalf when

the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

G. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

H. To another Federal agency or Federal entity, when the DoD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

I. To another Federal, State or local agency for the purpose of comparing to the agency's system of records or to non-Federal records, in coordination with an Office of Inspector General in conducting an audit, investigation, inspection evaluation, or other review as authorized by the Inspector General Act of 1987, amended.

J. To such recipients and under such circumstances and procedures as are mandated by Federal statute, treaty, or international agreement.

K. To government contractors to evaluate, defend or settle actual or prospective claims filed against them, including recovery actions, arising out of the performance of a government contract.

L. To the Department of State or Department of Justice to evaluate, defend or settle an actual or prospective claim arising under the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA); agreements supplemental to the NATO SOFA; and other international agreements with countries not covered by the NATO SOFA.

M. To foreign governments for use in negotiations or settlements of actual or prospective claims under the NATO SOFA or similar international agreements.

N. To private insurers regarding disposition of the relevant claim.

O. To the Internal Revenue Service for tax purposes from settlement of claims and transfer of payment to or from the Department of Defense.

P. To State and local taxing authorities, with which the Secretary of the Treasury has entered into agreements under 5 U.S.C. 5516, 5517, or 5520, to report taxable income.

Q. To financial institutions for the purpose of transferring claim payments to or from the Department of Defense.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records may be stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records may be stored locally on digital media; in agency-owned cloud environments; or in vendor Cloud Service Offerings certified under the Federal Risk and Authorization Management Program (FedRAMP).

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by an identifier or other criteria unique to the individual, such as the individual's name, and/or employee identification number. Information may be retrieved by Social Security number if the underlying system has been approved to do so in accordance with Department policy.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records concerning administrative claims by or against the United States are destroyed 7 years after final action, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The DoD safeguards records in this system of records according to applicable rules, policies, and procedures, including all applicable DoD automated systems security and access policies. DoD policies require the use of controls to minimize the risk of compromise of personally identifiable information (PII) in paper and electronic form and to enforce access by those with a need to know and with appropriate clearances. Additionally, the DoD has established security audit and accountability policies and procedures which support the safeguarding of PII and detection of potential PII incidents. The DoD routinely employs safeguards such as the following to information systems and paper recordkeeping systems: Multifactor log-in authentication including Common Access Card (CAC) authentication and password; physical token as required; physical and technological access controls governing access to data; network encryption to protect data transmitted over the network; disk encryption securing disks storing data; key management services to safeguard encryption keys; masking of sensitive data as practicable; mandatory information assurance and privacy training for individuals who will have access; identification, marking, and safeguarding of PII; physical access safeguards including multifactor identification physical access controls, detection and electronic alert systems for access to servers and other network infrastructure; and electronic intrusion detection systems in DoD facilities.

RECORD ACCESS PROCEDURES:

Individuals seeking access to their records should follow the procedures in 32 CFR part 310. Individuals should address written inquiries to the DoD component with oversight of the records, as the component has Privacy Act responsibilities concerning access, amendment, and disclosure of the records within this system of records. The public may identify the contact information for the appropriate DoD office through the following website: *www.FOIA.gov.* Signed written requests should contain the name and number of this system of records notice along with the full name, current address, and email address of the individual. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the appropriate format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend or correct the content of records about them should follow the procedures in 32 CFR part 310.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should follow the instructions for Record Access Procedures above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2023–08752 Filed 4–25–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0001]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Evaluation of the REL West Supporting Early Reading Comprehension Through Teacher Study Groups Toolkit

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 26, 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 Elizabeth Nolan, (312) 703–1532.

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: Evaluation of the REL West Supporting Early Reading Comprehension through Teacher Study Groups Toolkit.

OMB Control Number: 1850–NEW.

Type of Review: New ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 6,012.

Total Estimated Number of Annual Burden Hours: 1,255.

Abstract: The current authorization for the Regional Educational Laboratories (REL) program is under the Education Sciences Reform Act of 2002, Part D, Section 174, (20 U.S.C. 9564), administered by the Department of Education, Institute of Education Sciences (IES), National Center for Education Evaluation and Regional Assistance (NCEE). The central mission and primary function of the RELs is to support applied research and provide technical assistance to state and local education agencies within their region (ESRA, Part D, section 174[f]). The REL program's goal is to partner with educators and policymakers to conduct work that is change-oriented and supports meaningful local, regional, or state decisions about education policies, programs, and practices to improve outcomes for students.

Elementary-grade students in U.S. public schools continue to struggle with reading comprehension, with only 35 percent of 4th-grade students performing at or above proficient on the National Assessment of Educational Progress (NAEP) scores in reading (Hussar et al., 2020). To address this problem in earlier grades, when schools begin reading comprehension instruction, REL West is developing a toolkit to support teachers in implementing evidence-based instructional strategies to improve reading comprehension among students in grades K–3. The toolkit is based on the Improving Reading Comprehension in Kindergarten Through 3rd Grade IES practice guide (Shanahan et al., 2010) and is being developed in collaboration with state and district partners in Arizona. The toolkit contains the following three parts: (1) Initial Diagnostic and On-going Monitoring Instruments, (2) Professional Development Resources, and (3) Steps for Institutionalizing Supports for Evidence-Based Practice.

This study is designed to measure the efficacy and implementation of the REL West-developed toolkit designed to improve reading comprehension among students in grades K–3. The toolkit evaluation team plans to conduct an independent evaluation using a school-level, cluster randomized controlled trial design to assess the efficacy and cost-effectiveness of the school-based professional development resources included in the toolkit. The evaluation will take place in 70 schools across six districts in Arizona and focus on K–3 reading comprehension for all students. The evaluation will also assess how teachers and facilitators implement the toolkit to provide context for the efficacy findings and guidance to improve the toolkit and its future use. The toolkit evaluation will produce a report for district and school leaders who are considering strategies to improve reading comprehension in kindergarten through 3rd grade. The report will be designed to help district and school leaders decide whether and how to use the toolkit to help them implement the practice guide recommendations.

Dated: April 20, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–08755 Filed 4–25–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Annual Updates to the Income-Contingent Repayment (ICR) Plan Formula for 2023—William D. Ford Federal Direct Loan Program

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces the annual updates to the ICR plan formula for 2023 to give notice to borrowers and the public regarding how monthly ICR payment amounts will be calculated for the 2023–2024 year under the William D. Ford Federal Direct Loan (Direct Loan) Program, Assistance Listing Number 84.063.

DATES: The adjustments to the income percentage factors for the ICR plan formula contained in this notice are applicable from July 1, 2023, to June 30, 2024, for any borrower who enters the ICR plan or has a monthly payment

amount under the ICR plan recalculated during that period.

FOR FURTHER INFORMATION CONTACT: Travis Sturlaugson, U.S. Department of Education, 830 First Street NE, Washington, DC 20202. Telephone: 202–377–4174. Email: *travis.sturlaugson@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: Under the Direct Loan Program, borrowers may choose to repay their non-defaulted Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans made to graduate or professional students, and Direct Consolidation Loans under the ICR plan. The ICR plan bases the borrower's monthly payment amount on the borrower's Adjusted Gross Income (AGI), family size, loan amount, and the interest rate applicable to each of the borrower's loans.

ICR is one of several ''income-driven'' repayment plans that provide a monthly payment amount based on the borrower's income and family size. The other income-driven repayment plans are the Income-Based Repayment (IBR) plan, the Pay As You Earn Repayment (PAYE) plan, and the Revised Pay As You Earn Repayment (REPAYE) plan. The IBR, PAYE, and REPAYE plans generally result in lower payment amounts than the ICR plan.

A Direct Loan borrower who repays under the ICR plan pays the lesser of: (1) the monthly amount that would be required over a 12-year repayment period with fixed payments, multiplied by an income percentage factor; or (2) 20 percent of their discretionary income.

We adjust the income percentage factors annually to reflect changes in inflation and announce the adjusted factors in the **Federal Register**, as required by 34 CFR 685.209(b)(1)(ii)(A). We use the adjusted income percentage factors to calculate a borrower's monthly ICR payment amount when the borrower initially applies for the ICR plan or when the borrower submits annual income documentation, as required under the ICR plan. This notice contains the adjusted income percentage factors for 2023, examples of how the monthly ICR payment amount is calculated, and charts showing sample repayment amounts based on the adjusted ICR plan formula. This information is included in the following three attachments:

- *Attachment 1—Income Percentage Factors for 2023*
- *Attachment 2—Examples of the Calculations of Monthly Repayment Amounts*
- *Attachment 3—Charts Showing Sample Repayment Amounts for Single and Married Borrowers*

In Attachment 1, to reflect changes in inflation, we updated the income percentage factors that were published in the **Federal Register** on August 17, 2022 (87 FR 50615). Specifically, we have revised the table of income percentage factors by changing the dollar amounts of the incomes shown by a percentage equal to the estimated percentage change between the not-seasonally-adjusted Consumer Price Index for all urban consumers for December 2022 and December 2023.

The income percentage factors reflected in Attachment 1 may cause a borrower's payments to be lower than they were in prior years, even if the borrower's income is the same as in the prior year. The revised repayment amount more accurately reflects the impact of inflation on the borrower's current ability to repay.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document 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.

Program Authority: 20 U.S.C. 1087 et seq.

Richard Cordray,

Chief Operating Officer, Federal Student Aid.

Attachment 1—Income Percentage Factors for 2023

INCOME PERCENTAGE FACTORS FOR 2023

Single		Married/head of household	
AGI	% Factor	AGI	% Factor
$13,367	55.00	$13,367	50.52
$18,392	57.79	$21,090	56.68
$23,666	60.57	$25,132	59.56
$29,059	66.23	$32,857	67.79
$34,209	71.89	$40,705	75.22
$40,705	80.33	$51,125	87.61
$51,125	88.77	$64,119	100.00
$64,120	100.00	$77,120	100.00
$77,120	100.00	$96,618	109.40
$92,687	111.80	$129,104	125.00
$118,682	123.50	$174,590	140.60
$168,095	141.20	$244,172	150.00
$192,736	150.00	$398,995	200.00
$343,296	200.00		

Attachment 2—Examples of the Calculations of Monthly Repayment Amounts

General notes about the examples in this attachment:

- We have a calculator that borrowers can use to estimate what their payment amounts would be under the ICR plan. The calculator is called the ''Loan Simulator'' and is available at *studentaid.gov/loan-simulator.* Based on information entered into the calculator by the borrower (for example, income, family size, and tax filing status), this calculator provides a detailed, individualized assessment of a borrower's loans and repayment plan options, including the ICR plan.
- The interest rates used in the examples are for illustration only. The actual interest rates on an individual borrower's Direct Loans depend on the loan type and when the loan was first disbursed.
- The Poverty Guideline amounts used in the examples are from the 2023 U.S. Department of Health and Human Services (HHS) Poverty Guidelines for the 48 contiguous States and the District of Columbia. Different Poverty Guidelines apply to residents of Alaska and Hawaii. The Poverty Guidelines for 2023 were published in the **Federal Register** on January 19, 2023 (88 FR 3424).
- All of the examples use an income percentage factor corresponding to an adjusted gross income (AGI) in the table in Attachment 1. If an AGI is not listed in the income percentage factors table in Attachment 1, the applicable income percentage can be calculated by following the instructions under the ''Interpolation'' heading later in this attachment.
- Married borrowers may repay their Direct Loans jointly under the ICR plan. If a married couple elects this option, we determine a joint ICR payment amount based on the combined outstanding balances of each borrower's Direct Loans and the combined AGIs of both borrowers. We then prorate the joint payment amount for each borrower based on the proportion of that borrower's debt to the total outstanding balance. We bill each borrower separately.
- For example, if a married couple, John and Briana, has a total outstanding Direct Loan debt of $60,000, of which $40,000 belongs to John and $20,000 to Briana, we would apportion 67 percent of the monthly ICR payment to John and the remaining 33 percent to Briana. To take advantage of a joint ICR payment, married couples need not file taxes jointly; they may file separately and subsequently provide the other spouse's tax information to the borrower's Federal loan servicer.

Calculating the monthly payment amount using a standard amortization and a 12-year repayment period.

The formula to amortize a loan with a standard schedule (in which each payment is the same over the course of the repayment period) is as follows:

$$M = P \times <(I \div 12) \div [1 - \{1 + (I \div 12)\}\text{^} - N]>$$

In the formula—

- M is the monthly payment amount;
- P is the outstanding principal balance of the loan at the time the loan entered repayment;
- I is the annual interest rate on the loan, expressed as a decimal (for example, for a loan with an interest rate of 6 percent, 0.06); and
- N is the total number of months in the repayment period (for example, for a loan with a 12-year repayment period, 144 months).

For example, assume that Billy has a $10,000 Direct Unsubsidized Loan with an interest rate of 6 percent.

Step 1: To solve for M, first simplify the numerator of the fraction by which we multiply P, the outstanding principal balance. To do this divide I (the interest rate expressed as a decimal) by 12. In this example, Billy's interest rate is 6 percent. As a decimal, 6 percent is 0.06.

- $0.06 \div 12 = 0.005$

Step 2: Next, simplify the denominator of the fraction by which we multiply P. To do this divide I (the interest rate expressed as a decimal) by 12. Then, add one. Next, raise the sum of the two figures to the negative power that corresponds to the length of the repayment period in months. In this example, because we are amortizing a loan to calculate the monthly payment amount under the ICR plan, the applicable figure is 12 years, which is 144 months. Finally, subtract the result from one.

- $0.06 \div 12 = 0.005$
- $1 + 0.005 = 1.005$
- $1.005 \text{^} - 144 = 0.48762628$
- $1 - 0.48762628 = 0.51237372$

Step 3: Next, resolve the fraction by dividing the result from Step 1 by the result from Step 2.

- $0.005 \div 0.51237372 = 0.0097585$

Step 4: Finally, solve for M, the monthly payment amount, by multiplying the outstanding principal balance of the loan by the result of Step 3.

- $\$10{,}000 \times 0.0097585 = \$97.59$

The remainder of the examples in this attachment will only show the results of the formula. In each of the examples, the Direct Loan amounts represent the outstanding principal balance at the time the loans entered repayment.

Example 1. Kesha is single with no dependents and has $15,000 in Direct Subsidized and Unsubsidized Loans. The interest rate on Kesha's loans is 6 percent, and she has an AGI of $34,209.

Step 1: Determine the total monthly payment amount based on what Kesha would pay over 12 years using standard amortization. To do this, use the formula that precedes Example 1. In this example, the monthly payment amount would be $146.38.

Step 2: Multiply the result of Step 1 by the income percentage factor shown in the income percentage factors table (see Attachment 1 to this notice) that corresponds to Kesha's AGI. In this example, an AGI of $34,209 corresponds to an income percentage factor of 71.89 percent.

- $0.7189 \times \$146.38 = \$105.23$

Step 3: Now, determine the monthly payment amount equal to 20 percent of Kesha's discretionary income (discretionary income is AGI minus the HHS Poverty Guideline amount for a borrower's family size and State of residence). To do this, subtract the HHS Poverty Guideline amount for a family of one from Kesha's AGI, multiply the result by 20 percent, and then divide by 12:

- $\$34{,}209 - \$14{,}580 = \$19{,}629$
- $\$19{,}629 \times 0.20 = \$3{,}925.80$
- $\$3{,}925.80 \div 12 = \$327.15$

Step 4: Compare the amount from Step 2 with the amount from Step 3. In this example, Kesha would pay the amount calculated under Step 2 ($105.23), since this is the lesser of the two payment amounts.

Note: In this example, Kesha would have a slightly higher payment under the ICR Plan than under the PAYE or REPAYE plan, but the ICR monthly payment would be lower than what Kesha would pay under the IBR Plan. Specifically, Kesha's monthly payment would be $102.83 under the PAYE and REPAYE plans, and $154.24 under the IBR plan.

Example 2. Paul is married to Jesse and they have no dependents. They file their Federal income tax return jointly. Paul has a Direct Loan balance of $10,000, and Jesse has a Direct Loan balance of $15,000. Each of their Direct Loans has an interest rate of 6 percent.

Paul and Jesse have a combined AGI of $96,618 and are repaying their loans jointly under the ICR plan (for general information regarding joint ICR payments for married couples, see the fifth and sixth bullets under the heading

''General notes about the examples in this attachment'').

Step 1: Add Paul's and Jesse's Direct Loan balances to determine their combined aggregate loan balance:

- $10,000 + $15,000 = $25,000

Step 2: Determine the combined monthly payment amount for Paul and Jesse based on what both borrowers would pay over 12 years using standard amortization. To do this, use the formula that precedes Example 1. In this example, their combined monthly payment amount would be $243.96.

Step 3: Multiply the result of Step 2 by the income percentage factor shown in the income percentage factors table (see Attachment 1 to this notice) that corresponds to Paul and Jesse's combined AGI. In this example, the combined AGI of $96,618 corresponds to an income percentage factor of 109.40 percent.

- 1.094 × $243.96 = $266.90

Step 4: Now, determine the monthly payment amount equal to 20 percent of Paul and Jesse's combined discretionary income (discretionary income is AGI minus the HHS Poverty Guideline amount for a borrower's family size and State of residence). To do this, subtract the Poverty Guideline amount for a family of two from the combined AGI, multiply the result by 20 percent, and then divide by 12:

- $96,618 − $19,720 = $76,898
- $76,898 × 0.20 = $15,379.60
- $15,379.60 ÷ 12 = $1,281.63

Step 5: Compare the amount from Step 3 with the amount from Step 4. Paul and Jesse would jointly pay the amount calculated under Step 3 ($266.90), since this is the lesser of the two amounts.

Note: For Paul and Jesse, the ICR plan provides the lowest monthly payment of any income-driven repayment plan available. Paul and Jesse would not be eligible for the IBR or PAYE plans, and they would have a combined monthly payment under the REPAYE plan of $558.65.

Step 6: Because Paul and Jesse are jointly repaying their Direct Loans under the ICR plan, the monthly payment amount calculated under Step 5 applies to Paul's and Jesse's combined loans. To determine the amount for which each borrower will be responsible, prorate the amount calculated under Step 4 by each spouse's share of the combined Direct Loan debt. Paul has a Direct Loan debt of $10,000 and Jesse has a Direct Loan debt of $15,000. For Paul, the monthly payment amount will be:

- $10,000 ÷ ($10,000 + $15,000) = 40 percent
- 0.40 × $266.90 = $106.76

For Jesse, the monthly payment amount will be:

- $15,000 ÷ ($10,000 + $15,000) = 60 percent
- 0.60 × $266.90 = $160.14

Example 3. Santiago is single with no dependents and has a combined balance of $60,000 in Direct Subsidized and Unsubsidized Loans. Each of Santiago's loans has an interest rate of 6 percent, and Santiago's AGI is $40,705.

Step 1: Determine the total monthly payment amount based on what Santiago would pay over 12 years using standard amortization. To do this, use the formula that precedes Example 1. In this example, the monthly payment amount would be $585.51.

Step 2: Multiply the result of Step 1 by the income percentage factor shown in the income percentage factors table (see Attachment 1 to this notice) that corresponds to Santiago's AGI. In this example, an AGI of $40,705 corresponds to an income percentage factor of 80.33 percent.

- 0.8033 × $585.51 = $470.34

Step 3: Now, determine the monthly payment amount equal to 20 percent of Santiago's discretionary income (discretionary income is AGI minus the HHS Poverty Guideline amount for a borrower's family size and State of residence). To do this, subtract the HHS Poverty Guideline amount for a family of one from Santiago's AGI, multiply the result by 20 percent, and then divide by 12:

- $40,705 − $14,580 = $26,125
- $26,125 × 0.20 = $5,225
- $5,225 ÷ 12 = $435.42

Step 4: Compare the amount from Step 2 with the amount from Step 3. In this example, Santiago would pay the amount calculated under Step 3 ($435.42), since this is the lesser of the two amounts.

Note: Santiago would have a lower payment under each of the other income-driven plans. Specifically, Santiago's payment would be $156.96 under the PAYE and REPAYE plans and $235.44 under the IBR plan.

Interpolation. If an AGI is not included on the income percentage factor table, calculate the income percentage factor through linear interpolation. For example, assume that Jocelyn is single with an AGI of $50,000.

Step 1: Find the closest AGI listed that is less than Jocelyn's AGI of $50,000 ($40,705) and the closest AGI listed that is greater than Jocelyn's AGI of $50,000 ($51,125).

Step 2: Subtract the lower amount from the higher amount (for this discussion we will call the result the ''income interval''):

- $51,125 − $40,705 = $10,420

Step 3: Determine the difference between the two income percentage factors that correspond to the AGIs used in Step 2 (for this discussion, we will call the result the ''income percentage factor interval''):

- 88.77 percent − 80.33 percent = 8.44 percent

Step 4: Subtract from Jocelyn's AGI the closest AGI shown on the chart that is less than Jocelyn's AGI of $50,000:

- $50,000 − $40,705 = $9,295

Step 5: Divide the result of Step 4 by the income interval determined in Step 2:

- $9,295 ÷ $10,420 = 89.20 percent

Step 6: Multiply the result of Step 5 by the income percentage factor interval that was calculated in Step 3:

- 8.44 percent × 89.20 percent = 7.53 percent

Step 7: Add the result of Step 6 to the lower of the two income percentage factors used in Step 3 to calculate the income percentage factor interval for an AGI of $50,000:

- 7.53 percent + 80.33 percent = 87.86 percent (rounded to the nearest hundredth)

The result is the income percentage factor that we will use to calculate Jocelyn's monthly repayment amount under the ICR plan.

Attachment 3—Charts Showing Sample Income-Driven Repayment Amounts for Single and Married Borrowers

Below are two charts that provide first-year payment amount estimates for a variety of loan debt sizes and AGIs under each of the income-driven repayment plans and the 10-Year Standard Repayment Plan. The first chart is for single borrowers who have a family size of one. The second chart is for a borrower who is married or a head of household and who has a family size of three. The calculations in Attachment 3 assume that the loan debt has an interest rate of 6 percent. For married borrowers, the calculations assume that the borrower files a joint Federal income tax return and that the borrower's spouse does not have Federal student loans. A field with a ''−'' character indicates that the borrower in the example would not be eligible to enter the applicable income-driven repayment plan based on the borrower's AGI, loan debt, and family size.

SAMPLE FIRST-YEAR MONTHLY REPAYMENT AMOUNTS FOR A SINGLE BORROWER

Family Size = 1

Initial debt	Plan	AGI				
		$20,000	$40,000	$60,000	$80,000	$100,000
$20,000	ICR	90	155	188	199	225
	IBR	0	.....	.....	.....	.....
	PAYE	0	151	.....	.....	.....
	REPAYE	0	151	318	484	651
	10-Year Standard	222	222	222	222	222
$40,000	ICR	90	310	376	399	449
	IBR	0	227	.....	.....	.....
	PAYE	0	151	318	.....	.....
	REPAYE	0	151	318	484	651
	10-Year Standard	444	444	444	444	444
$60,000	ICR	90	424	565	598	674
	IBR	0	227	477	.....	.....
	PAYE	0	151	318	484	651
	REPAYE	0	151	318	484	651
	10-Year Standard	666	666	666	666	666
$80,000	ICR	90	424	753	798	898
	IBR	0	227	477	727	.....
	PAYE	0	151	318	484	651
	REPAYE	0	151	318	484	651
	10-Year Standard	888	888	888	888	888
$100,000	ICR	90	424	757	997	1,123
	IBR	0	227	477	727	977
	PAYE	0	151	318	484	651
	REPAYE	0	151	318	484	651
	10-Year Standard	1,110	1,110	1,110	1,110	1,110

SAMPLE FIRST-YEAR MONTHLY REPAYMENT AMOUNTS FOR A MARRIED OR HEAD-OF-HOUSEHOLD BORROWER

Family Size = 3

Initial debt	Plan	AGI				
		$20,000	$40,000	$60,000	$80,000	$100,000
$20,000	ICR	$0	$146	$188	$198	$217
	IBR	0	34	.....	.....	.....
	PAYE	0	23	189	.....	.....
	REPAYE	0	23	189	356	523
	10-Year Standard	222	222	222	222	222
$40,000	ICR	0	252	375	396	433
	IBR	0	34	284	.....	.....
	PAYE	0	23	189	356	.....
	REPAYE	0	23	189	356	523
	10-Year Standard	444	444	444	444	444
$60,000	ICR	0	252	563	594	650
	IBR	0	34	284	534	.....
	PAYE	0	23	189	356	523
	REPAYE	0	23	189	356	523
	10-Year Standard	666	666	666	666	666
$80,000	ICR	0	252	586	792	867
	IBR	0	34	284	534	784
	PAYE	0	23	189	356	523
	REPAYE	0	23	189	356	523
	10-Year Standard	888	888	888	888	888
$100,000	ICR	0	252	586	919	1,083
	IBR	0	34	284	534	784
	PAYE	0	23	189	356	523
	REPAYE	0	23	189	356	523
	10-Year Standard	1,110	1,110	1,110	1,110	1,110

[FR Doc. 2023–08770 Filed 4–25–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Request for Information (RFI) on Opportunities To Reduce Greenhouse Gas Emissions and Other Air Pollutants Associated With U.S. Liquefied Natural Gas (LNG) Exports

AGENCY: Office of Fossil Energy and Carbon Management, Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (DOE) invites public comment on its Request for Information (RFI) number DE–FOA–0003052 regarding the Office of Fossil Energy and Carbon Management's (FECM) Methane Mitigation Technologies and Point Source Carbon Capture research and development activities and regulation of natural gas imports and exports, under the Natural Gas Act of 1938, as amended. FECM is specifically interested in information on strategies and technologies that natural gas and liquefied natural gas (LNG) companies are deploying or could deploy to reduce greenhouse gas emissions and other air pollutants. This includes emissions of carbon dioxide (CO_2), methane, criteria pollutants, and hazardous air pollutants that occur during production through transportation of natural gas delivered to a liquefaction facility; at liquefaction facilities; and during the loading, transport, and delivery of LNG to a regasification facility.

DATES: Responses to the RFI must be received by no later than 5 p.m., Eastern time, June 26, 2023.

ADDRESSES: Interested parties are to submit comments electronically to *ReduceGHGE_LNG_RFI@NETL.DOE.GOV* and include ''Opportunities to Reduce Greenhouse Gas Emissions and Other Air Pollutants Associated with U.S. LNG Exports'' in the subject line of the email. Responses must be provided as attachments to an email. Only electronic responses will be accepted. The RFI document is located at *https://www.fedconnect.net/fedconnect?doc=DE-FOA-0003052&agency=DOE.*

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Jared Ciferno, Program Manager, Methane Mitigation Technologies Division, DOE, *ReduceGHGE_LNG_RFI@NETL.doe.gov* or 240–220–1312. Further instruction can be found in the RFI document posted at *https://www.fedconnect.net/fedconnect?doc=DE-FOA-0003052&agency=DOE.*

SUPPLEMENTARY INFORMATION: The purpose of this RFI is to solicit feedback from industry members, investors, project developers, nongovernmental organizations, academia, research laboratories, government agencies, and other stakeholders on technologies and strategies LNG companies are deploying or could deploy to reduce greenhouse gas emissions and other air pollutants. FECM is particularly interested in data and information related to emissions of carbon dioxide (CO_2), methane, criteria pollutants, and hazardous air pollutants that occur during production through transportation of natural gas delivered to a liquefaction facility; at liquefaction facilities; and during the loading, transport, and delivery of LNG to a regasification facility. Feedback is requested on the following categories outlined in the RFI: (1) Environmental Profile of Upstream Supplies, (2) Strategies to Measure and Reduce Emissions at Liquefaction Facilities, (3) Strategies to Measure and Reduce Emissions during Loading, Transport, and Delivery, and (4) Additional Information. This RFI could help inform DOE's research and development activities within the Office of Research and Development's Methane Mitigation Technologies Division and the Office of Carbon Management Technologies' Point Source Carbon Capture Division. In addition, this data and information could help inform the Office of Regulation, Analysis, and Engagement's capabilities to assess natural gas import and/or export applications under the Natural Gas Act of 1938, as amended.

Confidential Business Information

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Signing Authority

This document of the Department of Energy was signed on April 21, 2023, by Brad Crabtree, Assistant Secretary, Office of Fossil Energy and Carbon Management, 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 April 21, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–08803 Filed 4–25–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF23–5–000]

Western Area Power Administration; Notice of Filing

Take notice that on April 19, 2023, Western Area Power Administration submits tariff filing: OATT_2022–2–20230419 to be effective 6/20/2023.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* 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://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.

Comment Date: 5:00 p.m. Eastern Time on May 19, 2023.

Dated: April 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08785 Filed 4–25–23; 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: ER22–233–004.

Applicants: Portland General Electric Company.

Description: Compliance filing: PGE TRC Post Settlement Compliance Filing to be effective 1/1/2022.

Filed Date: 4/20/23.

Accession Number: 20230420–5134.

Comment Date: 5 p.m. ET 5/11/23.

Docket Numbers: ER23–1660–000.

Applicants: Cleco Power LLC.

Description: Request for Limited Waiver, et al. of Cleco Power LLC.

Filed Date: 4/18/23.

Accession Number: 20230418–5244.

Comment Date: 5 p.m. ET 5/9/23.

Docket Numbers: ER23–1664–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2023–04–20_Attachment FF–3 FF–4 MJMEUC & Jonesboro Integration to be effective 6/20/2023.

Filed Date: 4/20/23.

Accession Number: 20230420–5023.

Comment Date: 5 p.m. ET 5/11/23.

Docket Numbers: ER23–1665–000.

Applicants: NSTAR Electric Company.

Description: § 205(d) Rate Filing: First Amendment to Vineyard Wind LLC Design and Engineering Agreement to be effective 4/21/2023.

Filed Date: 4/20/23.

Accession Number: 20230420–5054.

Comment Date: 5 p.m. ET 5/11/23.

Docket Numbers: ER23–1666–000.

Applicants: Indiana Crossroads Wind Farm LLC.

Description: § 205(d) Rate Filing: Shared Facilities Agreement Amendment Filing to be effective 4/20/2023.

Filed Date: 4/20/23.

Accession Number: 20230420–5085.

Comment Date: 5 p.m. ET 5/11/23.

Docket Numbers: ER23–1667–000.

Applicants: ITC Midwest LLC.

Description: § 205(d) Rate Filing: Joint Use Pole Agreement with CIPCO (ITC Midwest, Rate Schedule No. 225) to be effective 6/20/2023.

Filed Date: 4/20/23.

Accession Number: 20230420–5099.

Comment Date: 5 p.m. ET 5/11/23.

Docket Numbers: ER23–1668–000.

Applicants: Estrella Solar, LLC.

Description: Baseline eTariff Filing: Estrella Solar, LLC MBR Tariff to be effective 5/1/2023.

Filed Date: 4/20/23.

Accession Number: 20230420–5111.

Comment Date: 5 p.m. ET 5/11/23.

Docket Numbers: ER23–1669–000.

Applicants: Raceway Solar 1, LLC.

Description: Baseline eTariff Filing: Raceway Solar 1, LLC MBR Tariff to be effective 5/1/2023.

Filed Date: 4/20/23.

Accession Number: 20230420–5114.

Comment Date: 5 p.m. ET 5/11/23.

Docket Numbers: ER23–1670–000.

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: Tyre Bridge Solar Amended and Restated LGIA Filing to be effective 4/7/2023.

Filed Date: 4/20/23.

Accession Number: 20230420–5122.

Comment Date: 5 p.m. ET 5/11/23.

Docket Numbers: ER23–1671–000.

Applicants: Versant Power.

Description: § 205(d) Rate Filing: Corrected Exhibit 1b (Footnote)—Attachment J, Formula Rates to be effective 6/1/2023.

Filed Date: 4/20/23.

Accession Number: 20230420–5138.

Comment Date: 5 p.m. ET 5/11/23.

Docket Numbers: ER23–1672–000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Transmission Company of Illinois.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2023–04–20_ATXI Single-Issue Depreciation Rates to be effective 7/1/2023.

Filed Date: 4/20/23.

Accession Number: 20230420–5158.

Comment Date: 5 p.m. ET 5/11/23.

Docket Numbers: ER23–1673–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6885; Queue No. AE2–041/AF1–018 to be effective 4/11/2023.

Filed Date: 4/20/23.

Accession Number: 20230420–5159.

Comment Date: 5 p.m. ET 5/11/23.

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: April 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08788 Filed 4–25–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD21–15–000]

Joint Federal-State Task Force on Electric Transmission; Notice Announcing Meeting and Inviting Agenda Topics

On June 17, 2021, the Commission established a Joint Federal-State Task Force on Electric Transmission (Task Force) to formally explore transmission-related topics outlined in the Commission's order.[1] The Commission

[1] *Joint Fed.-State Task Force on Elec. Transmission,* 175 FERC ¶ 61,224 (2021) (Establishing Order).

stated that the Task Force will convene for multiple formal meetings annually, which will be open to the public for listening and observing and on the record.[2] The next public meeting of the Task Force will be held on Sunday, July 16, 2023, from approximately 2:30 p.m. to 5:00 p.m. Central Daylight Time. The meeting will be held at JW Marriott Austin in Austin, TX. Commissioners may attend and participate in this meeting.

The meeting will be open to the public for listening and observing and on the record. There is no fee for attendance and registration is not required. The public may attend in person or via Webcast.[3] This conference will be transcribed. Transcripts will be available for a fee from Ace Reporting, 202–347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

As explained in the Establishing Order, the Commission will issue agendas for each meeting of the Task Force, after consulting with all Task Force members and considering suggestions from state commissions.[4] The Establishing Order set forth a broad array of transmission-related topics that the Task Force has the authority to examine and will focus on topics related to planning and paying for transmission, including transmission to facilitate generator interconnection, that provides benefits from a federal and state perspective.[5] All interested persons, including all state commissions, are hereby invited to file comments in this docket on agenda topics for the next public meeting of the Task Force by May 3, 2023. The Task Force members will consider the suggested agenda topics in developing the agenda for the next public meeting. The Commission will issue the agenda no later than July 2, 2023, for the public meeting to be held on July 16, 2023.

Comments may be filed electronically via the internet.[6] Instructions are available on the Commission's website, *https://www.ferc.gov/ferc-online/overview.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, 202–502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, submissions sent via the U.S. Postal Service must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, Maryland 20852.

More information about the Task Force, including frequently asked questions, is available here: *https://www.ferc.gov/TFSOET.* For more information about this meeting, please contact: Gretchen Kershaw, 202–502–8213, *gretchen.kershaw@ferc.gov;* or Sarah Fitzpatrick, 202–898–2205, *sfitzpatrick@naruc.org.* For information related to logistics, please contact Rob Thormeyer, 202–502–8694, *robert.thormeyer@ferc.gov.*

Dated: April 19, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08742 Filed 4–25–23; 8:45 am]

BILLING CODE 6717–01–P

[2] *Id.* P 4.

[3] A link to the Webcast will be available here on the day of the event: *https://www.ferc.gov/TFSOET.*

[4] Establishing Order, 175 FERC ¶ 61,224 at PP 4, 7.

[5] *Id.* P 6.

[6] *See* 18 CFR 385.2001(a)(1)(iii) (2022).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3442–029]

City of Nashua, New Hampshire; Notice Soliciting Scoping Comments

Take notice that the following application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* P–3442–029.

c. *Date filed:* July 30, 2021.

d. *Applicant:* City of Nashua (the City).

e. *Name of Project:* Mine Falls Hydroelectric Project.

f. *Location:* The existing project is located on the Nashua River in Hillsborough County, New Hampshire. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* James W. Donchess, Mayor, City of Nashua, 229 Main Street, P.O. Box 2019, Nashua, NH 03060; Telephone (603) 589–3260.

i. *FERC Contact:* Khatoon Melick, (202) 502–8433, or email at *khatoon.melick@ferc.gov.*

j. *Deadline for filing scoping comments:* May 19, 2023.

The Commission strongly encourages electronic filing. Please file all documents using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, 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: Mine Falls Hydroelectric Project (P–3442–029).

k. This application is not ready for environmental analysis at this time.

l. *The existing project consists of:* (1) a 242-acre impoundment with a normal storage volume of 1,970 acre-feet and a normal headpond elevation of 158.76 ft (NAVD 88); (2) a rock filled concrete cap, variable in height dam with an approximately 132-foot-long spillway at a permanent crest elevation of 154.66 feet, and nominal 4.0-foot-high wooden flashboards maintaining a normal headpond elevation of 158.76 feet; (3) a 22-foot-wide and 170-foot-long reinforced concrete power canal located between the right bank of the Nashua river and the single flood sluice gate; (4) two 12.5-foot-long wooden stoplog bays located immediately upstream of the intake to the right of the concrete capped spillway (viewed facing downstream) with a 10-foot-wide gate and a short spillway section above the gate; (5) a 40-foot-wide, 20-foot-high intake structure with steel trashrack with two square-to-round transition openings that feed the two penstocks that terminate at the two turbines; (6) two 64-foot-long, 104-inch-diameter steel penstocks between the intake and turbine units; (7) a 44-foot-long, 44-foot-wide multi-level reinforced concrete powerhouse containing two 1,500 kilowatt turbine-generator units; (8) an approximately 22-foot-wide, 1,100-foot-long tailrace that is a channel cut into the Nashua river bedrock downstream of the powerhouse that returns water back

into the Nashua river; (9) a 278-foot-long bypass reach extending from the spillway crest and stoplog bays to the downstream of the powerhouse at the tailrace, bypassing 20 cubic feet per second (cfs) of water for environmental flows; (10) an upstream fish passage; (11) a 610-foot-long, 34.5-kilovolt underground transmission line connects the generator transformer to the interconnect point; and (12) appurtenant facilities. The estimated gross head of the project is 38 feet. The powerplant has a maximum nameplate capacity of 3 MW. The project generates an annual average of 12,563 megawatt-hours.

The City proposes to continue to operate the project in a run-of-river mode with no storage or flood control capacity. The project operates within a flow range of 180 cfs (150 cfs minimum hydraulic capacity to start a single turbine, plus 20 cfs minimum bypass release at the dam and an additional 10 cfs flow routed through the Mill Pond gatehouse to the Mill Pond and canal) and 1,100 cfs (maximum hydraulic capacity of the plant—two turbines combined) or a river flow of 1,130 cfs. Any flow above the capacity of the turbines plus minimum bypass flow and Mill pond diversion is spilled over the dam spillway and through the overflow section of the flood sluice gate.

m. 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. 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.

n. 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.

o. Scoping Process:

The Commission staff intends to prepare an Environmental Assessment (EA) for the Mine Falls Hydroelectric Project in accordance with the National Environmental Policy Act. The EA will consider site-specific environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information, on the Scoping Document (SD) issued on April 19, 2023.

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of the SD may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph m. Based on all written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised schedule, as well as a list of issues, identified through the scoping process.

Dated: April 19, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08738 Filed 4–25–23; 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: RP23–690–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: § 4(d) Rate Filing: Non-Conforming Mercuria and Spotlight May 23 to be effective 11/1/2022.

Filed Date: 4/18/23.

Accession Number: 20230418–5139.

Comment Date: 5 p.m. ET 5/1/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08787 Filed 4–25–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at the North American Electric Reliability Corporation Compliance and Certification Committee Meetings

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following meeting:

Compliance and Certification Committee

ERCOT Austin Offices, 8000 Metropolis Blvd., Building E, Suite 100, Austin, TX 78744

April 26, 2023, 9:00 a.m.–5:00 p.m. Central

April 27, 2023, 9:00 a.m.–12:00 p.m. Central

Further information regarding these meetings may be found at: *https://www.nerc.com/Pages/Calendar.aspx.*

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceeding:

Docket Nos. RD22–4–000, RD22–4–001 Registration of Inverter-Based Resources

For further information, please contact Leigh Anne Faugust (202) 502–6396 or *leigh.faugust@ferc.gov.*

Dated: April 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08786 Filed 4–25–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–33–001]

Northern Natural Gas Company; Notice of Request for Extension of Time

Take notice that on April 13, 2023, Northern Natural Gas Company (Northern) requested that Federal

Energy Regulatory Commission (Commission) grant an extension of time, until May 31, 2025, for the Redfield Broderick Well Replacement Project (Project), to allow sufficient time to complete construction of the Project. Northern received a prior notice authorization for the Project on March 7, 2022, which authorized: Northern to replace the existing Broderick No. 9 well with a new well, the Broderick No. 16 well, along with associated surface facilities at Northern's existing Redfield storage field located in Dallas County, Iowa. The Commission's prior notice regulations require Northern to complete the construction of the Project and make it available for service within one year from issuance, or by March 7, 2023.[1]

In Northern's request for an extension of time, Northern stated that it did not anticipate downhole issues within the Broderick No. 16 well and fully anticipated the drill would be completed within the one-year construction timeframe. Northern has completed the abandonment of the Broderick No. 9 well; however, the Broderick No. 16 well installation has not been completed. Northern reported in the weekly environmental inspector reports that Northern was experiencing downhole cement integrity issues at the Broderick No. 16 well resulting from poor cement bond quality in the production casing. To attempt to remediate the integrity concerns, Northern's contractor conducted two cement squeeze remediations August 2022. Northern's drilling contractor also ran a cement bond log tool, which indicated that the cement squeeze remediations were insufficient. On September 13, 2022, the drill rig was removed from Broderick No. 16 well lot, and Northern continues to work with industry consultants for remedial options. Due to the extenuating circumstances Northern requests an extension of time which to complete the Project from the one-year date of March 7, 2023, to the new projected completion date of May 31, 2025.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on Northern's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).[2]

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,[3] the Commission will aim to issue an order acting on the request within 45 days.[4] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[5] The Commission will not consider arguments that re-litigate the issuance of the Certificate Order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[6] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[7] The OEP Director, or his or her designee, will act on those extension requests that are uncontested.

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. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original copy of the protest or intervention by US mail to Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions by any other courier in docketed proceedings should be delivered to, Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on May 4, 2023.

Dated: April 19, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08740 Filed 4–25–23; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 157.206.

[2] Only motions to intervene from entities that were party to the underlying proceeding will be accepted. Algonquin Gas Transmission, LLC, 170 FERC ¶ 61,144, at P 39 (2020).

[3] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1).

[4] Algonquin Gas Transmission, LLC, 170 FERC ¶ 61,144, at P 40 (2020).

[5] Id. P 40.

[6] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[7] Algonquin Gas Transmission, LLC, 170 FERC ¶ 61,144, at P 40 (2020).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD23–7–000]

PJM Capacity Market Forum; Notice of Forum

Take notice that the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led forum to examine the PJM Interconnection, L.L.C. (PJM) capacity market in the above-captioned proceeding on June 15, 2023, from approximately 12:00 p.m. to 5:00 p.m. Eastern Time. The forum will be held in-person at the Commission headquarters at 888 First Street NE, Washington, DC 20426 in the Commission Meeting Room.

The forum will include three panels to solicit varied perspectives on the current state of the PJM capacity market, potential improvements, and related proposals to address resource adequacy. The first panel, the overview panel, will explore whether the PJM capacity market is achieving its objectives of ensuring resource adequacy at just and reasonable rates. The second panel, the technical panel, will discuss potential market design reforms that may be needed to ensure PJM's capacity market is achieving its objectives. The third panel, a roundtable with state representatives (including state Commissioners), will discuss their views and respond to the first and second panels' discussions. Additional detail on these topics and panels will be shared in subsequent notices.

Individuals interested in participating as panelists should submit a self-nomination email by 5:00 p.m. Eastern Time on April 28, 2023 to *PJM-*

Capacity-Market-Forum@ferc.gov. Each nomination should state the proposed panelist's name, contact information, organizational affiliation, and what topics the proposed panelist would like to speak on.

The workshop will be open to the public and there is no fee for attendance. Information will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event.

The forum will be transcribed and webcast. Transcripts will be available for a fee from Ace Reporting (202–347–3700). A free webcast of this event is available through the Commission's website. Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The Federal Energy Regulatory Commission provides technical support for the free webcasts. Please call (202) 502–8680 or email *customer@ferc.gov* if you have any questions.

Commission workshops are accessible under section 508 of the Rehabilitation Act of 1973. For 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 workshop, please contact Katherine Scott at *katherine.scott@ferc.gov* or (202) 502–6495. For information related to logistics, please contact Sarah McKinley at *sarah.mckinley@ferc.gov* or (202) 502–8368.

Dated: April 19, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08741 Filed 4–25–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5867–054]

Alice Falls Hydro, LLC; Notice of Waiver Period for Water Quality Certification Application

(April 19, 2023)

On April 13, 2023, Alice Falls Hydro, LLC 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 New York State Department of Environmental Conservation (New York DEC), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 4.34(b)(5) of the Commission's regulations,[1] we hereby notify New York DEC of the following:

Date of Receipt of the Certification Request: April 12, 2023.

Reasonable Period of Time to Act on the Certification Request: One year (April 12, 2024).

If New York DEC 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: April 19, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08737 Filed 4–25–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3409–036]

Boyne USA, Inc.; 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:* Temporary variance of license requirement.

b. *Project No.:* 3409–036.

c. *Date Filed:* April 17, 2023.

d. *Applicant:* Boyne USA, Inc.

e. *Name of Project:* Boyne River Hydroelectric Project.

f. *Location:* The project is located on the Boyne River in Charlevoix County, Michigan and does not occupy Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Tyler Prange, Area Manager, Boyne Mountain Resort, Boyne USA, Inc. (231) 549–6076, *Tyler.prange@boynemountain.com.*

i. *FERC Contact:* Brian Bartos, (202) 502–6679, *brian.bartos@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is May 19, 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, MD 20852. The first page of any filing should include docket number P–3409–036. 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 Commission approval, through December 31, 2023, for a temporary variance of the run of river (ROR) requirements at the Boyne Project, as required by Article 25 of the amended project license. The licensee is requesting the variance to perform an 11-foot drawdown of the project reservoir in order to complete necessary maintenance of the hydropower generation system, maintenance of the intake canal, and work to the left embankment to bring factors of safety into compliance with the Commission's guidelines. The temporary variance from ROR requirements would only be necessary during the drawdown and refill periods; ROR operation would be maintained in between. The licensee anticipates the drawdown process to take approximately one month and would initiate drawdown after May 15, 2023. The proposed refill of the impoundment would occur over a period of two weeks in late summer or late fall of 2023 and would maintain a

[1] 18 CFR 4.34(b)(5).

minimum release equivalent to the 95 percent exceedance flow (approximately 30 cubic feet per second). Additionally, the licensee provided a mitigation plan in its application for potentially stranded organisms, including mussels, for all bottomlands exposed during the drawdown, as well as proposed measures to protect endangered species potentially occurring at the project, per resource agency recommendations.

l. *Locations of the Application:* 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 website at *http://www.ferc.gov/docs-filing/elibrary.asp.* 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. Agencies may obtain copies of the application directly from the applicant. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll free, (866) 208–3676 or TTY, (202) 502–8659.

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. 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 Responsive Documents:* All filings 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 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. A copy of all other filings in reference to this application 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 385.2010.

Dated: April 19, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08739 Filed 4–25–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM16–17–001, ER21–331–000, ER21–330–000]

Data Collection for Analytics and Surveillance and Market-Based Rate Purposes, DDP Specialty Electronic Materials US, Inc., MC (US) 3, LLC; Order on Intent To Revoke Market-Based Rate Authority

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d, and 18 CFR part 35 (2022), require, among other things, that all rates, terms, and conditions for jurisdictional services be filed with the Commission. In Order No. 697 and its progeny,[1] the Commission established certain requirements with which sellers [2] must comply in order to obtain and retain market-based rate authority.[3]

In Order No. 860,[4] the Commission revised certain aspects of the substance and format of the ownership information sellers must submit in order to obtain or retain market-based rate authority. Specifically, Order No. 860 requires that, as part of its market-based rate application or baseline submission, a seller must identify its ultimate upstream affiliate(s) through a new relational database.[5]

2. In accordance with Order No. 860, as modified by Order No. 860–A, the Order Adopting Revisions to Information Collection,[6] and the Notice of Extension of Time,[7] each seller with a market-based rate tariff on file with the Commission was required to make a baseline submission to the market-based rate relational database by February 1, 2022.[8] Commission staff's review of the baseline submissions to the market-based rate relational database indicates that the sellers with market-based rate authorization listed in the caption of this order failed to file their baseline submissions. This order notifies these sellers that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the date of issuance of this order.[9]

3. To comply with the Commission's requirements, the above-captioned sellers must file their baseline submissions to the market-based rate relational database consistent with the procedures set forth in Order Nos. 860, 860–A, and the Order Adopting Revisions to Information Collection.

4. In the event any of the above-captioned sellers have already submitted their baseline submissions in compliance with the Commission's requirements, their inclusion herein is inadvertent. Such sellers are directed to make a filing with the Commission, within 15 days of the date of issuance of this order, to identify themselves and provide details about their prior submissions to establish that they

[1] *Mkt.-Based Rates for Wholesale Sales of Elec. Energy, Capacity & Ancillary Servs. by Pub. Utils.,* Order No. 697, 119 FERC ¶ 61,295 *clarified,* 121 FERC ¶ 61,260 (2007), *order on reh'g,* Order No. 697–A, 123 FERC ¶ 61,055, *clarified,* 124 FERC ¶ 61,055, *order on reh'g,* Order No. 697–B, 125 FERC ¶ 61,326 (2008), *order on reh'g,* Order No. 697–C, 127 FERC ¶ 61,284 (2009), *order on reh'g,* Order No. 697–D, 130 FERC ¶ 61,206 (2010), *aff'd sub nom. Mont. Consumer Counsel* v. *FERC,* 659 F.3d 910 (9th Cir. 2011).

[2] A ''seller'' is defined as any person that has authorization to or seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under section 205 of the FPA. 18 CFR 35.36(a)(1) (2022); 16 U.S.C. 824d. Each seller is a public utility under section 205 of the FPA. 16 U.S.C. 824.

[3] Order No. 697, 119 FERC ¶ 61,295 at n.258.

[4] *Data Collection for Analytics & Surveillance and Mkt.-Based Rate Purposes,* Order No. 860, 168 FERC ¶ 61,039 (2019), *order on reh'g,* Order No. 860–A, 170 FERC ¶ 61,129 (2020).

[5] Order No. 860, 168 FERC ¶ 61,039 at P 121.

[6] *Data Collection for Analytics & Surveillance and Mkt.-Based Rate Purposes,* 176 FERC ¶ 61,109 (2021) (Order Adopting Revisions to Information Collection).

[7] *Data Collection for Analytics and Surveillance and Mkt.-Based Rate Purposes,* Notice of Extension of Time, Docket No. RM16–17–000 (Oct. 22, 2021).

[8] A baseline submission consists of ''market-based rate information,'' which includes (a) seller category status for each region in which the seller has market-based rate authority, (b) each market in which the seller is authorized to sell ancillary services at market-based rates, (c) mitigation, if any, and (d) whether the seller has limited the regions in which it has market-based rate authority. A baseline submission also consists of ''market-based rate ownership information,'' which includes ultimate upstream affiliates; and affiliate owners with franchised service areas, market-based rate authority, or that directly own or control generation; transmission, intrastate natural gas transportation, storage or distribution facilities, physical coal supply sources or ownership of or control over who may access transportation of coal supplies, and asset appendix information. Order No. 860, 168 FERC ¶ 61,039 at P 185.

[9] Commission staff contacted or attempted to contact the sellers to remind them of their regulatory obligations. Despite these reminders, however, the sellers listed in the caption of this order have not met these obligations.

complied with the Commission's market-based rate relational database filing requirements.

5. If any of the above-captioned sellers do not wish to continue having market-based rate authority, they may file a notice of cancellation of their market-based rate tariffs with the Commission pursuant to section 205 of the FPA.

The Commission orders:

(A) Within 15 days of the date of issuance of this order, each seller listed in the caption of this order shall file with the Commission its delinquent baseline submission to the market-based rate relational database. If a seller subject to this order fails to make the filings required in this order, the Commission intends to revoke that seller's market-based rate authorization and intends to terminate its electric market-based rate tariff. The Secretary is hereby directed, upon expiration of the filing deadline in this order, to promptly issue a notice, effective on the date of issuance, listing the sellers whose tariffs have been revoked for failure to comply with the requirements of this order and the Commission's market-based rate relational database requirements.

(B) The Secretary is hereby directed to publish this order in the **Federal Register**.

By the Commission.

Issued April 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08800 Filed 4–25–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10906–01–OA]

Public Meetings of the Science Advisory Board BenMAP and Benefits Methods Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office is announcing two public meetings of the Science Advisory Board (SAB) BenMAP and Benefits Methods Panel. The purpose of the meetings is to discuss the panel's draft report on the BenMAP model and benefits methods.

DATES:

Public Meetings: The SAB BenMAP and Benefits Methods Panel will meet on the following dates. All times listed are in Eastern time.

1. Tuesday, May 16, 2023, from 10:00 a.m. to 1:00 p.m. Eastern time.

2. Thursday, June 15, 2023, from 10:00 a.m. to 1:00 p.m. Eastern time.

Comments: See the section titled ''Procedures for Providing Public Input'' under **SUPPLEMENTARY INFORMATION** for instructions and deadlines.

ADDRESSES: The May 16, 2023, and June 15, 2023, meetings will be conducted virtually. Please refer to the SAB website at *https://sab.epa.gov* for information on how to attend the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning this notice may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), via telephone (202) 564–2073, or email at *stallworth.holly@epa.gov.* General information about the SAB, as well as any updates concerning the meetings announced in this notice, can be found on the SAB website at *https://sab.epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB BenMAP and Benefits Methods Panel will hold two public meetings to discuss their draft report reviewing the BenMAP model and EPA's Technical Support Document entitled *Estimating $PM_{2.5}$- and Ozone-Attributable Health Benefits (2023).*

Availability of Meeting Materials: All meeting materials, including the agenda, will be available on the SAB website at *https://sab.epa.gov* by clicking on the meeting date under Meetings and Events. This web page will have a link to panel's draft report, the BenMAP model, the BenMAP User's Manual, the Technical Support Document (cited above), and the Agency Charge Questions.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instruction below to submit comments.

Oral Statements: In general, individuals or groups requesting an oral presentation at a meeting conducted by video will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Persons interested in providing oral statements should contact the DFO, in writing (preferably via email) at the contact information noted above by May 9, 2023, to be placed on the list of registered speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be submitted to the DFO by May 9, 2023, for consideration at the May 16 meeting. Written statements should be supplied to the DFO at the contact information above via email. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without the explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO, at the contact information noted above, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

Meeting cancellation: The June 15, 2023, meeting may be cancelled if the Panel concludes its business on May 16, 2023. If the June 15, 2023, meeting is cancelled, notice will be provided

during the May 16, 2023, meeting and posted on the SAB website.

V. Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2023–08765 Filed 4–25–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2017–0692; FRL–10561–01–OCSPP]

Agency Information Collection Activities; Proposed Renewal and Request for Comment; Lead Training, Certification, Accreditation and Authorization Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces the availability of and solicits public comment on the following Information Collection Request (ICR) that EPA is planning to submit to the Office of Management and Budget (OMB): ''Lead Training, Certification, Accreditation and Authorization Activities,'' identified by EPA ICR No. 2507.05 and OMB Control No. 2070–0195. This ICR represents the renewal of a currently approved ICR that is currently scheduled to expire on February 29, 2024. Before submitting the ICR to OMB for review and approval under the PRA, EPA is soliciting comments on specific aspects of the information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before June 26, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2017–0692, 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 or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Katherine Sleasman, Mission Support Division (7101M), Office of Program Support, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–1204; email address: *sleasman.katherine@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What is the information collection activity?

Title: Lead Training, Certification, Accreditation and Authorization Activities.

EPA ICR No.: 2507.05.

OMB Control No.: 2070–0195.

ICR status: This ICR is currently approved through February 29, 2024. Under the PRA, 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 OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument, electronic reporting system or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR covers the information collection activities associated with the reporting and recordkeeping requirements for individuals, firms and state and local government entities conducting lead-based paint (LBP) activities or renovations of target housing and child-occupied facilities (COFs); training providers; and states/territories/tribes/Alaskan native villages that are promulgated in 40 CFR part 745.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to range between .2 and 28.5 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/affected entities: Entities potentially affected by this ICR include persons who are engaged in LBP activities and/or perform renovations of target housing or COFs for compensation, dust sampling, or dust testing; or who perform LBP inspections, lead hazard screens, risk assessments or abatements in target housing or COFs; or who provide training or operate a training program for individuals who perform any of these activities; or state, territorial or Native American agencies that administer LBP activities and/or renovation programs.

Respondent's obligation to respond: Mandatory under TSCA and 40 CFR part 745.

Frequency of response: Occasional.

Total estimated number of potential respondents: 441,034.

Total estimated average number of responses for each respondent: 61.9.

Total estimated annual burden: 6,290,360 hours.

Total estimated annual costs: $362,279,573. This includes an estimated burden cost of $360,166,618 and an estimated cost of $17,400,556 for capital investment or maintenance and operational costs.

III. What are the changes in the estimates from the last approval?

There is an increase of 1,039,040 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects EPA's estimated increased number of respondents for several of the information collection categories addressed in the ICR. This

change is an adjustment. Several adjustments to the estimates were made, including revisions to the estimated number of respondents based on the number of respondents reporting to EPA for the prior information collection and revisions based on other market factors. Changes in burden estimates reflect changes within the housing renovation market, as measured by EPA's Federal Lead-Based Paint Program (FLPP) database, which tracks LBP and Renovation, Repair, and Painting (RRP) program activity over time, as reported to the Agency. The information submitted under the LBP activities and RRP programs is managed through the use of the FLPP database. Pursuant to the provisions of the Privacy Act of 1974, EPA published a System of Record Notice for the database. The Agency uses the FLPP Database to manage and store information related to the application process for the accreditation of training providers and the certification of firms and individuals who perform abatement and renovation repair and painting activities.

In addition, OMB has requested that EPA move towards using the 18-question format for ICR Supporting Statements used by other federal agencies and departments and that is based on the submission instructions established by OMB in 1995, replacing the alternate format developed by EPA and OMB prior to 1995. The Agency does not expect this change in format to result in substantive changes to the information collection activities or related estimated burden and costs.

IV. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: April 20, 2023.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2023–08793 Filed 4–25–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA–02–2023–2004; FRL 10802–01–R2]

Proposed CERCLA Cost Recovery Settlement for the Gowanus Canal Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region 2, of a proposed cost recovery settlement agreement (''Settlement'') pursuant to CERCLA with Paramount Global and Beam, Inc. (''Settling Parties'') for the Gowanus Canal Superfund Site (''Site'').

DATES: Comments must be submitted on or before May 26, 2023.

ADDRESSES: Requests for copies of the proposed Settlement and submission of comments must be via electronic mail. Comments should reference the Gowanus Canal Superfund Site, Index No. CERCLA–02–2023–2004. For those unable to communicate via electronic mail, please contact the EPA employee identified below.

FOR FURTHER INFORMATION CONTACT: Walter Sainsbury, Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, NY 10007–1866. Email: *sainsbury.walter@epa.gov,* Telephone: 212–637–3177.

SUPPLEMENTARY INFORMATION: Notice is hereby given by EPA, Region 2, of a proposed cost recovery Settlement pursuant to CERCLA with the Settling Parties related to the Site, located in Brooklyn, New York.

The Settling Parties will pay a total of $912,568 ($534,917 from Beam, Inc. and $377,651 from Paramount Global) to the Gowanus Canal Special Account within the EPA Hazardous Substance Superfund (''Fund'') to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Fund. The Settling Parties are compensating EPA for a portion of the total Site costs plus a settlement premium. Payments by Settling Parties shall be made within thirty (30) days of the Effective Date of the Settlement. The Settlement includes a covenant by EPA not to sue or to take administrative action against the Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), to recover EPA's response costs as provided in the Settlement. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the Settlement. EPA will consider all comments received and may modify or withdraw its consent to the Settlement if comments received disclose facts or considerations that indicate that the proposed Settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection online and/or at EPA Region 2, 290 Broadway, New York, New York 10007–1866.

The proposed Settlement is available for public inspection at *https://semspub.epa.gov/src/document/02/654526.*

Dated: April 4, 2023.

Pasquale Evangelista,

Director, Superfund & Emergency Management Division, Environmental Protection Agency, Region 2.

[FR Doc. 2023–08766 Filed 4–25–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10913–01–OMS]

National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation (CEC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, the Environmental Protection Agency (EPA) gives notice of a public meeting of the National Advisory Committee (NAC) and the Governmental Advisory Committee (GAC). The NAC and GAC provide advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. NAC and GAC members represent academia, business/industry, non-governmental organizations, and state, local and tribal governments. The purpose of this meeting is to provide advice to the EPA Administrator on empowering communities to address climate adaptation challenges and other matters related to the Commission for Environmental Cooperation.

DATES: May 18, 2023, from 8 a.m.–4 p.m. (MST). A copy of the agenda will be posted at *www.epa.gov/faca/nac-gac.*

ADDRESSES: The meeting will be held at the U.S. EPA Region 6, El Paso Border Office, 511 E San Antonio Avenue, Suite 145, El Paso, Texas 79901.

The meeting will be conducted in a hybrid environment and is open to the public with limited access available on a first-come, first-served basis. Members of the public wishing to participate in the video/teleconference, should contact Oscar Carrillo at *carrillo.oscar@epa.gov* by May 11, 2023. Requests to make oral comments or submit written public comments to the NAC and GAC should also be directed to Oscar Carrillo at least five business days prior to the meeting. Requests for accessibility and/or accommodations for individuals with disabilities should be directed to Oscar Carrillo at the email address listed above. To ensure adequate time for processing, please make requests for accommodations at least 10 days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Oscar Carrillo in the Federal Advisory Committee Management Division in the Office of Mission Support (1601M), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–0347; email address: *carrillo.oscar@epa.gov.*

SUPPLEMENTARY INFORMATION: The NAC and GAC are Presidential federal advisory committees that advise the U.S. Government via the EPA Administrator on trade and environment matters related to the Environmental Cooperation Agreement (ECA), which entered into force at the same time as the United States-Mexico Canada Agreement (USMCA). The NAC and GAC were created in 1994 and operate in accordance with the Federal Advisory Committee Act. Establishment of the committees is authorized under article 11 of the ECA.

Oscar Carrillo,

Program Analyst.

[FR Doc. 2023–08751 Filed 4–25–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 23–286; FR ID 135735]

Disability Advisory Committee; Announcement of Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission announces and provides an agenda for the first meeting of the fifth term of its Disability Advisory Committee (DAC or Committee).

DATES: Wednesday, April 26, 2023. The meeting will come to order at 1:00 p.m. Eastern Time.

ADDRESSES: The DAC meeting will be held remotely, with video and audio coverage at: *www.fcc.gov/live.*

FOR FURTHER INFORMATION CONTACT: Joshua Mendelsohn, Designated Federal Officer, Federal Communications Commission, Consumer and Governmental Affairs Bureau, (202) 559–7304, or email: *Joshua.Mendelsohn@fcc.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to members of the general public. The meeting will be webcast with sign language interpreters and open captioning at: *www.fcc.gov/live.* In addition, a reserved amount of time will be available on the agenda for comments and inquiries from the public. Members of the public may comment or ask questions of presenters via *livequestions@fcc.gov.*

Requests for other reasonable accommodations or for materials in accessible formats for people with disabilities should be submitted via email to: *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530. Such requests should include a detailed description of the accommodation needed and a way for the FCC to contact the requester if more information is needed to fill the request. Requests should be made as early as possible; last minute requests will be accepted but may not be possible to accommodate.

Proposed Agenda: At this meeting, the DAC is expected to receive briefings from Commission staff on issues of interest to the Committee and may discuss topics of interest to the Committee.

Federal Communications Commission.

Suzanne Singleton,

Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau.

[FR Doc. 2023–08764 Filed 4–25–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201258–003.

Agreement Name: Sealand/Zim Gulf-ECSA Space Charter Agreement.

Parties: Maersk Line A/S d/b/a Sealand; Zim Integrated Shipping Services Ltd.

Filing Party: Wayne Rohde, Cozen O'Connor.

Synopsis: The Amendment changes the amount of space being chartered under the Agreement.

Proposed Effective Date: 6/4/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/13183.

Agreement No.: 201404.

Agreement Name: Sea Lead/Turkon Slot Charter Agreement.

Parties: Sea Lead Shipping DMCC; Turkon Container Transportation and Shipping, Inc.

Filing Party: Wayne Rohde, Cozen O'Connor.

Synopsis: The Agreement authorizes Turkon to charter space to Sea Lead in the trade between Turkey and the U.S. East Coast.

Proposed Effective Date: 6/1/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/80502.

Dated: April 21, 2023.

JoAnne O'Bryant,

Program Analyst.

[FR Doc. 2023–08799 Filed 4–25–23; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Privacy Act of 1974; System of Records

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of a modified system of records.

SUMMARY: To fulfill its conflict resolution and training mission, Federal Mediation and Conciliation Service (FMCS) uses Microsoft SharePoint, Microsoft Outlook, and a case records management system new to FMCS to

enable mediators and managers to manage cases, manage reporting requirements, provide data for research and training, store recorded trainings and meetings, and collect information on Agency operations. The Agency's internal drives, SharePoint, Outlook, Cloud-based services such as *Zoom.gov* and Microsoft Teams, and a case records management system are used to store electronic case tracking information, electronic case files (including mediation agreements), and recorded meetings and trainings, permitting the accurate and timely collection, retrieval, and retention of information maintained by offices of the Agency. Inter-Agency Agreements (IAA), agreements for reimbursable services, and requests for mediation and training are also stored in these locations. IAAs and agreements for reimbursable services allow FMCS to provide requested services, such as training and labor dispute resolution, to other federal agencies. The notice amendment includes administrative updates to refine details published under summary, supplementary information, record source categories, routine uses, and the history section. These sections are amended to refine previously published information about the system of records. The dates, addresses, for further information contact, system name, security classification, system location, system manager, authority for maintenance of the system, purpose of the system, categories of individuals covered by the system, categories of records in the system, policies and practices for storage of records, policies and practices for retrieval of records, policies and procedures for retention and disposal of records, administrative safeguards, record access procedures, contesting records procedures, notification procedures, and exemptions promulgated remain unchanged. This amended SORN deletes and supersedes the SORN published in the **Federal Register** on March 16, 2022.

DATES: This system of records will be effective without further notice on May 26, 2023 unless otherwise revised pursuant to comments received. Comments must be received on or before May 26, 2023.

ADDRESSES: You may send comments, identified by FMCS–0004 by any of the following methods:

- *Mail:* Office of General Counsel, 250 E Street SW, Washington, DC 20427.
- *Email: register@fmcs.gov.* Include FMCS–0004 on the subject line of the message.
- *Fax:* (202) 606–5444.

FOR FURTHER INFORMATION CONTACT: Anna Davis, General Counsel, at *adavis@fmcs.gov* or 202–606–3737.

SUPPLEMENTARY INFORMATION: The notice amendment includes administrative updates to refine details published under summary, supplementary information, record source categories, routine uses, and the history section. These sections are amended to refine previously published information about the system of records. The dates, addresses, for further information contact, system name, security classification, system location, system manager, authority for maintenance of the system, purpose of the system, categories of individuals covered by the system, categories of records in the system, policies and practices for storage of records, policies and practices for retrieval of records, policies and procedures for retention and disposal of records, administrative safeguards, record access procedures, contesting records procedures, notification procedures, and exemptions promulgated remain unchanged.

This system is needed for processing, storing, and maintaining FMCS case records, notices, and agreements.

SYSTEM NAME AND NUMBER:

FMCS–0004 Case Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Mediation and Conciliation Service, 250 E Street SW, Washington, DC 20427. For records stored on Zoom, this system is located at 55 Almaden Blvd., Suite 600, San Jose, CA 95113.

SYSTEM MANAGER(S):

Doug Jones, Director of Information Technology, email *djones@fmcs.gov,* or send mail to Federal Mediation and Conciliation Service, 250 E Street Southwest, Washington, DC 20427, Attn: Doug Jones.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Mediation and Conciliation Service, 29 U.S.C. 172, *et seq.;* The National Labor Relations Act, 29 U.S.C. 151, *et seq.;* Administrative Dispute Resolution Act, 5 U.S.C. 571–584; Negotiated Rulemaking Act of 1990, 5 U.S.C. 561–570; the Federal Labor Relations Act, 5 U.S.C. 7119.

PURPOSE(S) OF THE SYSTEM:

The records in this system are used to process, track, review, and evaluate requests for mediation, training, and other alternate dispute resolution services. Records from this system may be used for training, presentation, and research purposes. The records from this system will also be used in the preparation of internal agency reports, the agency's budget requests, and reports to Congress.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FMCS clients who request or receive FMCS services concerning conflict management services or training. These FMCS clients include representatives from employers, unions, and educational institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Requests for mediation or training completed by parties to include the Agency Form F–7, available on *www.fmcs.gov.* Information collected on the form includes contact information for parties requesting services.

(2) Case processing documents and documents sent to or from parties to a mediation: Agency confirmation letters sent to parties assigning mediators to cases or trainings, mediation agreements, ethics documents concerning mediator involvement and authorizations to participate, and reports and invoices regarding mediations and training.

RECORD SOURCE CATEGORIES:

FMCS clients who are parties to labor agreements/disputes, mediations, or those requesting FMCS services submit notices and requests to FMCS. FMCS personnel create reports, status updates, and other internal processing records based on case progress and management. The National Labor Relations Board and the Federal Labor Relations Authority provide documents to FMCS regarding initial contracts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FMCS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(a) To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule regulation or order where the record, either alone or in conjunction with other information creates an indication of a violation or potential violation of civil or criminal laws or regulations.

(b) To disclose information to contractors, grantees, experts, consultants, detailees, and other non-Government employees performing or working on a contract, service, or other assignment for the agency when necessary to accompany an agency function related to this system of records.

(c) To officials of labor organizations and employers receiving services pursuant to 29 U.S.C. 172, *et seq.*

(d) To officials of labor organizations and federal agencies recognized under 5 U.S.C. Chapter 71 upon receipt of a formal request and in accordance with the conditions of 5 U.S.C. 7114 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

(e) To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of, and at the request of, an individual who is the subject of the record.

(f) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when FMCS or other Agency representing FMCS determines the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(g) To the Department of Justice, including Offices of the U.S. Attorneys, or another Federal agency representing FMCS in pending or potential litigation or proceedings before any court, adjudicative, or administrative body. Such disclosure is permitted only when it is relevant and necessary to the litigation or proceeding, and one of the following is a party to the litigation or has an interest in such litigation:

(1) FMCS, or any component thereof;

(2) Any employee or former employee of FMCS in their official capacity;

(3) Any employee or former employee of FMCS in their capacity where the Department of Justice or FMCS has agreed to represent the employee;

(4) The United States, a Federal agency, or another party in litigation before a court, adjudicative, or administrative body, upon the FMCS General Counsel's approval, pursuant to 5 CFR part 295 or otherwise.

(h) To any agency, organization, or person for the purposes of performing audit or oversight operations related to the operation of this system of records or for federal ethics compliance purposes as authorized by law, but only information necessary and relevant to such audit or oversight function.

(i) To disclose data or information to other federal agencies, educational institutions, or FMCS clients who collaborate with FMCS to provide research or statistical information, services, or training concerning conflict management.

(j) To appropriate agencies, entities, and persons when (1) FMCS suspects or has confirmed that there has been a breach of the system of records, (2) FMCS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, FMCS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FMCS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(k) To another Federal agency or Federal entity, when FMCS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Case records may be received in hardcopy form from FMCS clients. Hardcopy forms are then scanned and stored electronically on FMCS servers. Meetings and trainings that are recorded via *Zoom.gov* are stored in the Cloud on ZoomGov servers requiring a username and password. Meetings recorded in Microsoft Teams are stored on the FMCS employee's OneDrive which requires a username and password. Third-party recording of meetings or trainings on FMCS platforms is not permitted.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

To retrieve records, FMCS personnel may search by the name of the representative or party, the assigned case number, the date, location, type of service provided, or FMCS personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All case records are retained and disposed of in accordance with General Records Schedule 1.1 and 4.2, issued by the National Archives and Records Administration (NARA).

ADMINSTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Case records and agreements are accessible to restricted FMCS personnel or contractors who require access. Access to these electronic records occurs through a web browser to the internet or on the agency's internal drives both requiring a username and password for login. FMCS buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures. The case records management system will store records electronically using a commercial software application run on the Customer Relationship Management (CRM) platform, Microsoft Dynamics, which require a username and password. SharePoint is used to store the IAAs, which requires a username and password. Temporary paper files, notices received through mail, are destroyed once they are scanned into the agency's internal drives which also require a username and password.

RECORD ACCESS PROCEDURES:

Individuals must provide the following information for their records to be located and identified: (1) Full name, (2) Address, and (3) A reasonably identifying description of the record content requested. Requests can be submitted via *fmcs.gov/foia/, via* email to *privacy@fmcs.gov,* or via mail to the Privacy Office at FMCS 250 E Street SW, Washington, DC 20427. See 29 CFR 1410.3.

CONTESTING RECORD PROCEDURES:

Requests for correction or amendment of records, on how to contest the content of any records. Privacy Act requests to amend or correct records may be submitted to the Privacy Office at *privacy@fmcs.gov* or via mail to the Privacy Office at FMCS 250 E Street SW, Washington, DC 20427. Also, see *https://www.fmcs.gov/privacy-policy/.* See 29 CFR 1410.6.

NOTIFICATION PROCEDURES:

See 29 CFR 1410.3(a), Individual access requests.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This amended SORN deletes and supersedes the SORN published in the **Federal Register** on March 16, 2022, at 87 FR 14855.

Dated: April 20, 2023.

Anna Davis,

General Counsel, Federal Mediation and Conciliation Service.

[FR Doc. 2023–08736 Filed 4–25–23; 8:45 am]

BILLING CODE 6732–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

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 the BHC Act (12 U.S.C. 1842(c)).

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 May 26, 2023.

A. Federal Reserve Bank of Dallas (Karen Smith, Director, Mergers & Acquisitions) 2200 N Pearl St., Dallas, Texas 75201. Comments can also be sent electronically to *Comments.applications@dal.frb.org:*

1. *5th Generation Holdings, Inc., Groom, Texas;* to become a bank holding company by acquiring Groom Bancshares, Inc., and thereby indirectly acquiring The State National Bank of Groom, both of Groom, Texas.

Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2023–08814 Filed 4–25–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2023–0027, NIOSH–350]

World Trade Center Health Program; Youth Research Cohort; Request for Information

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Request for information.

SUMMARY: The Centers for Disease Control and Prevention's (CDC) National Institute for Occupational Safety and Health (NIOSH), in the Department of Health and Human Services, announces an opportunity for the public to provide information about approaches to establishing a new World Trade Center (WTC) Health Program research cohort of persons who were exposed to the September 11, 2001, terrorist attacks and were aged 21 years or younger at the time of their exposure. This research cohort will be designed to allow the WTC Health Program to conduct future research studies on the health and educational impacts in the population of persons aged 21 years or younger at the time of their exposures to airborne toxins, or any other hazard or adverse condition, resulting from the terrorist attacks on September 11, 2001. Once established, this new WTC Health Program ''youth cohort'' would serve as the basis for future WTC Health Program research into the health and educational impacts of this potentially vulnerable group, hereafter referred to as ''WTC Youth.'' Information is requested on specific adverse health, social, and educational effects that are of interest for future research; desired characteristics of the proposed cohort and associated control groups (*e.g.,* size and demographics), and methods for identifying, recruiting, and obtaining informed consent from members; as well as data collection, storage, and management methods necessary for future research investigations.

DATES: Comments must be received by August 24, 2023.

ADDRESSES: Comments may be submitted through either of the following two methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* (follow the instructions for submitting comments), or
- *By Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS C–34, 1090 Tusculum Avenue, Cincinnati, Ohio 45226–1998.

Instructions: All written submissions received in response to this notice must include the agency name (Centers for Disease Control and Prevention, HHS) and docket number (CDC–2023–0027, NIOSH–350) for this action. All relevant comments, including any personal information provided, will be posted without change to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rachel Weiss, Program Analyst, 1090 Tusculum Ave., MS C–46, Cincinnati, OH 45226; Telephone (404) 498–2500 (this is not a toll-free number); Email *NIOSHregs@cdc.gov.*

SUPPLEMENTARY INFORMATION: The WTC Health Program was established by Title I of the James Zadroga 9/11 Health and Compensation Act of 2010, Public Law 111–347, as amended by Public Law 114–113, Public Law 116–59, and Public Law 117–328, adding Title XXXIII to the Public Health Service (PHS) Act (codified at 42 U.S.C. 300mm—300mm–62). All references to the Administrator in this document mean the Director of the NIOSH within CDC, or his or her designee.

The WTC Health Program conducts research among its members receiving monitoring or treatment in the Program and in sampled populations outside the New York City disaster area (NYCDA), as defined in section 3306(7) of the PHS Act, in Manhattan as far north as 14th Street and in Brooklyn.[1]

In December 2022, the Consolidated Appropriations Act, 2023[2] amended section 3341 of the PHS Act to direct the Administrator, in consultation with the Secretary of Education, to establish a new research cohort. The cohort must be of sufficient size to conduct future research studies on the health and educational impacts of ''exposure to airborne toxins, or any other hazard or adverse condition, resulting from the September 11, 2001, terrorist attacks, including on the population of individuals who were 21 years of age or younger at the time of exposure, including such individuals who are screening-eligible WTC survivors or

[1] 42 U.S.C. 300mm–51.

[2] Public Law 117–328 (Dec. 29, 2022).

certified-eligible WTC survivors.'' [3] The new WTC Health Program youth research cohort is referred to as ''WTC Youth.'' In accordance with section 3341, the cohort of WTC Youth must:

- Be of sufficient size to conduct future research studies on the health and educational impacts of 9/11 exposures;
- Include in this group sufficient representation of individuals who were 21 years of age or younger at the time of exposure; and
- Include in this group individuals who are screening-eligible WTC survivors or certified-eligible WTC survivors.

The cohort may also include individuals who were 21 years of age or younger on September 11, 2001, who were located outside the NYCDA and in Manhattan not further north than 14th Street; or anywhere within the borough of Brooklyn. Additionally, the cohort may include age-appropriate control populations as needed for research purposes.

In response to these new requirements, the Administrator, following consultation with the Secretary of Education, will engage the public for input on a multi-phased approach for establishing the youth cohort. At this time, the Administrator seeks initial comments on the following approach:

1. *Phase I:* Community Engagement: Gather sufficient information from educators, scientists, and community members on options for establishing a youth cohort that will efficiently support future research.

2. *Phase II:* Options Development: Use the information gathered in Phase I to develop a set of options for moving forward with establishing the youth cohort.

3. *Phase III:* Options Ranking: Engage community in ranking the options developed in Phase II.

4. *Phase IV:* Option Selection and Implementation: Use the information from Phase III to select the preferred option(s) for establishing the youth cohort.

Request for Information

NIOSH is soliciting information from any interested party, including educators, researchers, clinicians, community members, WTC Health Program members, treatment providers, and government agencies at all levels (Federal, State, Territorial, local, and Tribal), regarding the proposed approach to establishing the WTC Health Program youth cohort.

In particular, NIOSH seeks comments on the following items regarding the general approach to assembling the cohort, as described above:

1. Whether the four-phased approach for establishing the youth cohort is comprehensive and adequately incorporates community involvement in selecting a preferred approach for establishing the youth cohort.

2. Any potential partnerships for future actions for establishing the cohort of WTC Youth.

NIOSH also seeks information on the following scientific parameters, best practices, and approaches for assembling a research cohort that is best suited for future research of WTC Youth:

3. Ideas regarding outreach, recruitment, retention, community involvement, and project oversight. NIOSH is interested in descriptions of any anticipated barriers to the project and propose potential risk mitigation strategies.

4. Health conditions and potential social and educational impacts (*i.e.,* adverse effects of interest) that may be priorities for future research on WTC Youth. In light of these adverse effects to be researched, NIOSH is interested in descriptions of the cohort characteristics believed necessary to support future research, including recommendations on data collection requirements, such as describing methods for and frequency of contact with prospective cohort members.

5. The recruitment and retention of appropriate control group(s) for future observational studies of WTC Youth. For example, recruitment methods may differ between exposed and control groups given expected differences in participation rates. These differences may lead to a selection bias. A selection bias may also arise given the long period of time between exposure and recruitment (*i.e.,* a survivorship bias). NIOSH is interested in comments regarding selection of controls using methods that reduce the potential for bias in future research.

Commenters are encouraged to offer information and insights into the specific topics described above, or any other aspect of this activity.

Disclaimer

This notice is intended for planning purposes; it does not constitute a formal announcement for comprehensive applications. In accordance with Federal Acquisition Regulation 48 CFR 15.201(e), responses to this notice are not offers and cannot be accepted by the Government to form a binding award. NIOSH will not provide reimbursement for costs incurred in commenting on this notice.

NIOSH will not respond to individual public comments or publish publicly a compendium of responses. An informational submission in response to this notice does not create any commitment by or on behalf of CDC or HHS to develop or pursue any program or ideas discussed.

John J. Howard,

Administrator, World Trade Center Health Program and Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

[FR Doc. 2023–08756 Filed 4–25–23; 8:45 am]

BILLING CODE 4163–18–P

[3] WTC survivors include individuals who lived, worked, went to school, or attended child or adult day care in the NYC Disaster Area on September 11, 2001, or in the following days, weeks, or months and those otherwise meeting the eligibility criteria in 42 CFR 88.7 or 88.8.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2023–0025]

Draft Infection Control in Healthcare Personnel: Epidemiology and Control of Selected Infections Transmitted Among Healthcare Personnel and Patients: Pregnant Healthcare Personnel Section

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), in the Department of Health and Human Services (HHS), announces the opening of a docket to obtain comment on the *Draft Infection Control in Healthcare Personnel: Epidemiology and Control of Selected Infections Transmitted Among Healthcare Personnel and Patients: Pregnant Healthcare Personnel Section* (''*Draft Guideline: Pregnant Healthcare Personnel Section*''). The *Draft Guideline: Pregnant Healthcare Personnel Section* updates the *Guideline for infection control in health care personnel, 1998* (''*1998 Guideline*''), *Part F: Pregnant Personnel,* and its corresponding recommendations in Part II of the *1998 Guideline.* The updated recommendation in the *Draft Guideline: Pregnant Healthcare Personnel Section* is intended for use by the leaders and staff of Occupational Health Services. This updated recommendation will help facilitate the provision of occupational infection prevention and control

services to healthcare personnel (HCP) who are pregnant or intend to become pregnant.

DATES: Written comments must be received on or before June 26, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0025 by either of the methods listed below. Do not submit comments by email. CDC does not accept comments by email.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Healthcare Infection Control Practices Advisory Committee (HICPAC) Secretariat, Division of Healthcare Quality Promotion, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H16–3, Atlanta, Georgia 30329, Attn: Docket Number CDC–2023–0025

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *http://regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Laura Wells, Division of Healthcare Quality Promotion, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H16–2, Atlanta, Georgia 30329; Telephone: (404) 639–4000.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data related to the *Draft Guideline: Pregnant Healthcare Personnel Section.*

Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. Do not submit comments by email. CDC does not accept comments by email.

Background

The *Draft Guideline: Pregnant Healthcare Personnel Section,* located in the ''Supporting & Related Material'' tab of the docket, updates the *Guideline for infection control in health care personnel, 1998, Part F: Pregnant Personnel,* and its corresponding recommendations in Part II of the *1998 Guideline.* The *1998 Guideline* provided information and recommendations for Occupational Health Services (OHS) of healthcare facilities and systems on the prevention of transmission of infectious diseases among healthcare personnel (HCP) and patients and can be found at *https://stacks.cdc.gov/view/cdc/11563.*

In this document, ''OHS'' is used synonymously with ''Employee Health,'' ''Employee Health Services,'' ''Employee Health and Safety,'' ''Occupational Health,'' and other such programs. OHS refers to the group, department, or program that addresses many aspects of health and safety in the workplace for HCP, including the provision of clinical services for work-related injuries, exposures, and illnesses. In healthcare settings, OHS addresses workplace hazards including communicable diseases; slips, trips, and falls; patient handling injuries; chemical exposures; HCP burnout; and workplace violence.

This *Draft Guideline: Pregnant Healthcare Personnel Section* update is part of a larger guideline update: *Infection Control in Healthcare Personnel.* Part I, *Infrastructure and Routine Practices for Occupational Infection Prevention and Control Services (2019)* and the Diphtheria, Group A *Streptococcus,* Meningococcal Disease, Pertussis, and Rabies sections of Part II, *Epidemiology and Control of Selected Infections Transmitted Among Healthcare Personnel and Patients (2022)* are complete and have been published on the CDC Infection Control Guideline website: *https://www.cdc.gov/infectioncontrol/guidelines/healthcare-personnel/index.html.* The *Draft Guideline: Pregnant Healthcare Personnel Section,* once finalized, is intended for use by the leaders and staff of OHS to guide the provision of occupational infection prevention and control services to HCP who are pregnant or intend to become pregnant.

Since 2015, the Healthcare Infection Control Practices Advisory Committee (HICPAC) has worked with national partners, academicians, public health professionals, healthcare providers, and other partners to develop *Infection Control in Healthcare Personnel* (*https://www.cdc.gov/infectioncontrol/guidelines/healthcare-personnel/index.html*) as a segmental update of the *1998 Guideline.* HICPAC is a federal advisory committee appointed to provide advice and guidance to HHS and CDC regarding the practice of infection control and strategies for surveillance, prevention, and control of healthcare-associated infections, antimicrobial resistance, and related events in United States healthcare settings. HICPAC includes representatives from public health, infectious diseases, regulatory and other federal agencies, professional societies, and other stakeholders. *Draft Guideline: Pregnant Healthcare Personnel Section,* once finalized, will be the next section to be posted to the *Infection Control in Healthcare Personnel* website.

The updated draft recommendation in *Draft Guideline: Pregnant Healthcare Personnel Section* is informed by reviews of the *1998 Guideline;* CDC resources (*e.g.,* CDC infection control website), guidance, and guidelines as noted more specifically in the draft document; and new scientific evidence, when available. CDC is seeking comments on the *Draft Guideline: Pregnant Healthcare Personnel Section.* Please provide references to new evidence and justification to support any suggested revisions or additions. This *Draft Guideline: Pregnant Healthcare Personnel Section* is not a federal rule or regulation.

Tiffany Brown,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2023–08804 Filed 4–25–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Single-Source Cooperative Agreement To Fund the International Organization for Migration (IOM)

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), located within the Department of Health and Human Services (HHS), announces the award of approximately $1,000,000, for Year 1 to International Organization for Migration (IOM). The award will

support public health activities for refugees, immigrants and migrants that are US-bound through the United States Refugee Admission Program and in the United States. Funding amounts for years 2–5 will be set at continuation.

DATES: The period for this award will be September 30, 2023, through September 29, 2028.

FOR FURTHER INFORMATION CONTACT: Travis Myers, Division of Global Migration and Quarantine, Immigrant, Refugee, and Migrant Health Branch, Centers for Disease Control and Prevention, 1600 Clifton Rd. NE, MS H16–4, Atlanta, GA 30329, Telephone: 770–530–6449, Email: *QRK4@cdc.gov*.

SUPPLEMENTARY INFORMATION: The single-source award will establish surveillance for infectious diseases in new locations, evaluate the health status of U.S. bound migrants for the purposes of informing and improving U.S. policy regarding overseas and post-arrival health assessment with physicians and prevent the importation and spread of infectious disease into the United States due to a global decrease in routine immunization coverage and an increase in vaccine-preventable diseases outbreaks.

International Organization of Migration is in a unique position to conduct this work, as it carries out the aims of the program due to its work supporting screening activities of U.S. bound populations with all US Panel Physicians. IOM is an international and intergovernmental organization that has the technical and administrative capacity to conduct health assessment activities to support diseases.

Summary of the Award

Recipient: International Organization of Migration (IOM).

Purpose of the Award: The purpose of this award is to support activities to prevent and control efforts for infectious diseases, including vaccine-preventable disease, in U.S.-bound refugee populations, as well as U.S.-bound immigrant, non-immigrant visa (NIV) applicants, parolees and other migrant categories (from hereto called U.S.-bound migrants) worldwide.

Amount of Award: $1,000,000 in Federal Fiscal Year (FFY) 2023 funds, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation.

Authority: This program is authorized under the Public Health Service Act, sections 307 and 317(k)(1) [42 U.S.C. 2421 and 247b(k)(1)].

Period of Performance: September 30, 2023, through September 29, 2028.

Dated: April 21, 2023.

Terrance Perry,

Chief Grants Management Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–08790 Filed 4–25–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Single-Source Cooperative Agreement To Fund United Way of Middle Tennessee Greater Nashville dba United Way of Greater Nashville

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), located within the Department of Health and Human Services (HHS), announces the award of approximately $4,000,000, for one-year funding period to United Way of Middle Tennessee dba United Way of Greater Nashville. The award will fund a community-based organization (CBO) to expand the implementation of comprehensive high-impact community-based HIV prevention programs in Tennessee.

DATES: The period for this award will be June 1, 2023 through May 31, 2024.

FOR FURTHER INFORMATION CONTACT: Erica K. Dunbar, National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention, 1600 Clifton Rd. NE, MS US8–3, Atlanta, GA 30329–4027, Telephone: 404–639–6048, Email: *CBOFOA@cdc.gov.*

SUPPLEMENTARY INFORMATION: This single-source award will: (1) complement existing programs, such as the Ryan White program and other HHS programs, in the local jurisdictions; and (2) address gaps in HIV prevention services throughout the state of Tennessee via direct funding of the United Way of Middle TN dba United Way of Greater Nashville (UWGN) and indirect funding of CBOs throughout Tennessee. Through this NOFO, a 1-year cooperative agreement will be awarded to ensure a continuity of services, address gaps in services, and enhance CBOs' capacity to implement HIV prevention strategies and activities.

United Way of Middle TN dba United Way of Greater Nashville (UWGN)is in a unique position to conduct this work, as it has successfully served as the fiscal agent and program manager for the CDC HIV prevention and Ending the HIV Epidemic (EHE) programs funds awarded to Tennessee. UWGN has a proven track record of managing the grants, as well as sub-grantee relationships. Further, CBOs are uniquely positioned to complement and extend the reach of HIV prevention efforts implemented by state and local health departments. They support the optimization of services across public, private, and other community-based organizations to achieve objectives of increased identification of HIV diagnoses, referral for pre-exposure prophylaxis (PrEP) and non-occupational post-exposure prophylaxis (nPEP) services, earlier entry to HIV care, and increased consistency of care.

Summary of the Awardee

Recipient: United Way of Middle Tennessee dba United Way of Greater Nashville (UWGN).

Purpose of the Award: The purpose of this award is to enhance the capacity of CBOs, through new and continued funding relationships, to implement integrated HIV programs, that complement programs such as the Ryan White program and other HHS programs, within local health department jurisdictions throughout the State of Tennessee.

Amount of Award: $4,000,000 in Federal Fiscal Year (FFY) 2023 funds, with a total estimated $4,000,000 for the one-year period of performance, subject to availability of funds.

Authority: This program is authorized under Sections 301 and 318(a) of the Public Health Service Act; 42 U.S.C. 241 and 247c, as amended.

Period of Performance: June 1, 2023 through May 31, 2024.

Dated: April 21, 2023.

Terrance Perry,

Chief Grants Management Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–08791 Filed 4–25–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Cooperative Agreement (U01 Clinical Trial Required).

Date: May 19, 2023.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G58, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Anuja Mathew, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G58, Rockville, MD 20852, 301–761–6911, *anuja.mathew@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 20, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08778 Filed 4–25–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Ancillary Studies to the IBD Genetics Consortium.

Date: June 20, 2023.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7017, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 20, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08748 Filed 4–25–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Clinical trials for age-related conditions affecting mobility.

Date: June 6, 2023.

Time: 11:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maurizio Grimaldi, M.D., Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C218, Bethesda, MD 20892, 301–496–9374, *grimaldim2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 20, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08747 Filed 4–25–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: May 11, 2023.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Richard G. Kostriken, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22, Rockville, MD 20852, 240–669–2075, *richard.kostriken@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 20, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08776 Filed 4–25–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; ABCD Study® Data Use Certification (National Institute on Drug Abuse)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institute on Drug Abuse (NIDA) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Elizabeth A. Hoffman, Senior Scientific Program Manager, Division of Extramural Research, National Institute on Drug Abuse, 3WFN Room 09C75 MSC 6021, Gaithersburg, MD 20877, or call non-toll-free number (301) 594–2265 or Email your request, including your address to: *elizabeth.hoffman@nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: ABCD Study® Data Use Certification, 0925–NEW, exp., date XX/XX/XXXX, National Institute on Drug Abuse (NIDA), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose of this proposal is to inform data requestors about terms and conditions for using data generated by the Adolescent Brain Cognitive Development(SM) (ABCD) Study and to obtain signed agreements from requestors and their institutional officials attesting to their commitment to abide by the data use terms and conditions. These include using data for research purposes; adhering to human subjects research requirements; not distributing the data to non-authorized users; minimizing risk of participant identifiability; using data ethically and responsibly; and keeping the data secure. Users must include a brief description of their research project and submit their signed data use agreements to the data repository to gain access to the ABCD Study® data. Users who plan to conduct research studies specifically on American Indian/Alaska Native (AI/AN) populations must submit an additional signed data use certification.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2,000.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Individuals (standard DUC form)	1800	1	1	1800
Individuals (additional AI/AN DUC form when needed)	200	1	1	200
Total		2000		2,000

Lanette A. Palmquist,

Project Clearance Liaison, National Institute on Drug Abuse, National Institutes of Health.

[FR Doc. 2023–08743 Filed 4–25–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topic: Brain Imaging, Vision, Bioengineering and Low Vision Technology Development.

Date: May 25–26, 2023.

Time: 8:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Susan Gillmor, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (240) 762–3076, *susan.gillmor@nih.gov*.

Name of Committee: Cell Biology Integrated Review Group Maximizing Investigators' Research Award—D Study Section.

Date: June 1–2, 2023.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Thomas Y Cho, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Room 710B, Bethesda, MD 20892, (301) 402–4179, *thomas.cho@nih.gov*.

Name of Committee: Cell Biology Integrated Review Group Cellular Signaling and Regulatory Systems Study Section.

Date: June 1–2, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 21, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08780 Filed 4–25–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; CTSA Collaborative and Innovative Acceleration Awards.

Date: May 9, 2023.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1073, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: M. Lourdes Ponce, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1073, Bethesda, MD 20892, (301) 435–0810, *lourdes.ponce@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: April 21, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08781 Filed 4–25–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2023 Notice of Supplemental Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services (HHS).

ACTION: Notice of intent to award supplemental funding.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) is supporting an administrative supplement of up to $900,000 for one grant recipient funded in FY 2019 under the National Center of Excellence for Infant and Early Childhood Mental Health Consultation, Notice of Funding Opportunity (NOFO) SM–19–010, with a project end date of April 29, 2024. The supplemental funding is to support Project LAUNCH and Infant and Early Childhood Mental Health grant recipients by: provide training and technical assistance via individual/grantee-level technical assistance, ECHO style learning communities, peer-to-peer learning, expert presentations, and development of resources on advancing best practices; assist grant recipients in working with state-level systems and leaders to integrate innovations into ongoing initiatives, policies, and sustainable funding streams: assist grant recipients with the development of new early childhood efforts (*e.g.,* statewide mental health consultation systems, infant mental health associations, offices of early childhood mental health); support grant recipients with sharing best practices and advances in infant and early childhood mental health with the early childhood field through webinars, presentations at conferences, and/or development of materials about specific grant programs that can be shared with local, tribal, and state stakeholders; and, conduct a virtual grantee meeting or policy academy to engage all grant recipients in peer learning and technical assistance.

FOR FURTHER INFORMATION CONTACT: Brooke Sims, Government Project Officer, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857, telephone 240–276–1861; *brooke.sims@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Funding Opportunity Title: FY 2019 National Center of Excellence for Infant and Early Childhood Mental Health Consultation SM–19–010.

Assistance Listing Number: 93.243.

Authority: Section 520A of the Public Health Service Act, as amended.

Justification: Eligibility for this supplemental funding is limited to Georgetown University, which was funded in FY 2019 under the National Center of Excellence for Infant and Early Childhood Mental Health Consultation grant program, NOFO SM–18–010. The recipient has special expertise in providing training and technical assistance to support Project LAUNCH and IECMH grant recipients in improving outcomes for children through service provision to children and families, mental health consultation to early childhood programs, and training early childhood providers and clinicians.

This is not a formal request for application. Assistance will only be provided to the COE–IECMHC grant recipient based on the receipt of a satisfactory application and associated budget that is approved by a review group.

Dated: April 19, 2023.

Ann Ferrero,

Public Health Analyst.

[FR Doc. 2023–08651 Filed 4–25–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Height Adjustable Workstations

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of height adjustable workstations. Based upon the facts presented, CBP has concluded that the imported components of the workstations undergo substantial transformation in the United States when made into the final workstations.

DATES: The final determination was issued on April 10, 2023. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination no later than May 26, 2023.

FOR FURTHER INFORMATION CONTACT: Albena Peters, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0321.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on April 10, 2023, U.S. Customs and Border Protection (CBP) issued a final determination concerning the country of origin of height adjustable workstations for purposes of title III of the Trade Agreements Act of 1979. This final determination, HQ H330862, was issued at the request of RightAngle Products, under procedures set forth at 19 CFR part 177, subpart B, which implements title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP has concluded that, based upon the facts presented, the imported components are substantially transformed in the United States when made into the subject workstations.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: April 21, 2023.

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of Trade.

HQ H330862

April 10, 2023
OT:RR:CTF:VS H330862 AP
CATEGORY: Origin

Keeley Boeve
KB Contract Consulting
4444 132nd Avenue
Hamilton, MI 49419

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, CBP Regulations; Country of Origin of Height Adjustable Workstations

Dear Ms. Boeve:

This is in response to your March 24, 2023 request, on behalf of RightAngle Products (''RightAngle''), for a final determination concerning the country of origin of certain height adjustable workstations pursuant to Title III of the Trade Agreements Act of 1979 (''TAA''), as amended (19 U.S.C. 2511 *et seq.*), and subpart B of Part 177, U.S. Customs and Border Protection (''CBP'') Regulations (19 CFR 177.21, *et seq.*). RightAngle is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and 177.23(a) and is therefore entitled to request this final determination.

Facts

The height adjustable workstations at issue are part of the RightAngle's NewHeights™ series, which include the ''Elegante XT,'' ''Eficiente LC,'' ''Bonita ET'' electric height adjustable desks and the ''Levante'' manual height adjustable desk. Each workstation has a laminate desktop and metal legs. The raw materials for the desktop and the legs are sourced from the United States. The laminate desktop is manufactured in the United States from logs which go through a woodchipper and a flaking machine to create particle boards with thermally fused laminate that are cut to size and shape. The metal legs are made and welded together in the United States. The only non-U.S. originating components are the table controller and the digital keyboard for the controller, which are manufactured in Hungary. You explain that these Hungarian components are needed ''to move the table up and down as they are the push button and control box that are wired into the tables and cannot be used on their own.'' The controller will be attached to the bottom of the tabletop by two screws. The square control panels will be mounted from the bottom to the edge of the tabletop in a way that the keys will be easily accessible. The control panels with a cable will be plugged into the connector of the controller.

Issue

Whether the imported components are substantially transformed when made into the height adjustable workstations in the United States.

Law and Analysis

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 CFR 177.21–177.31, which implements Title III of the TAA, as amended (19 U.S.C. 2511–2518).

CBP's authority to issue advisory rulings and final determinations is set forth in 19 U.S.C. 2515(b)(1), which states:

> For the purposes of this subchapter, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 2518(4)(B) of this title, *an article is or would be a product of a foreign country or instrumentality designated pursuant to section 2511(b) of this title.*

Emphasis added.

The Secretary of the Treasury's authority mentioned above, along with other customs revenue functions, are delegated to CBP in the Appendix to 19 CFR part 0—Treasury Department Order No. 100–16, 68 FR 28, 322 (May 23, 2003).

The rule of origin set forth under 19 U.S.C. 2518(4)(B) states:

> An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulation (''FAR''). *See* 19 CFR 177.21. In this regard, CBP recognizes that the FAR restricts the U.S. Government's purchase of products to U.S.-made or designated country end

products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1).

The FAR, 48 CFR 25.003, defines ''U.S.-made end product'' as:

> . . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

Section 25.003 defines ''designated country end product'' as:

> a WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least developed country end product, or a Caribbean Basin country end product.

Section 25.003 defines ''WTO GPA country end product'' as an article that:

> (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
>
> (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

As indicated above, the height adjustable workstations are produced with two non-U.S. components, the table controller and the digital keyboard. The desktop and the legs are manufactured in the United States.

In order to determine whether a substantial transformation occurs, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, CBP considers factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process when determining whether a substantial transformation has occurred. No one factor is determinative.

A new and different article of commerce is an article that has undergone a change in commercial designation or identity, fundamental character, or commercial use. A determinative issue is the extent of the operations performed and whether the materials lose their identity and become an integral part of the new article. *See Nat'l Hand Tool Corp.* v. *United States,* 16 CIT 308 (1992), *aff'd,* 989 F.2d 1201 (Fed. Cir. 1993). In *Carlson Furniture Indus.* v. *United States,* 65 Cust. Ct. 474, Cust. Dec. 4126 (1970), which involved wooden chair parts, the court held that the assembly operations after importation were substantial in nature and more than a simple assembly of parts. The importer assembled, fitted, and glued the wooden parts together, inserted steel pins into the key joints, cut the legs to length and leveled them, and in some instances, upholstered the chairs and fitted the legs with glides and casters. The assembly operations resulted in the creation of a new article of commerce.

Headquarters Ruling Letter (''HQ'') H280512, dated Mar. 7, 2017, considered the origin of a desktop workstation for purposes of U.S. Government procurement. The main components of the sit-to-stand workstation were a Chinese-origin lift assembly of base metal, and a U.S.-originating laminated particle board work surface and keyboard tray. The lift assembly provided user assisted lift functionality by means of spring force to allow adjustment of the workstation between sitting and standing positions. In the United States, the Chinese lift assembly was attached to components fabricated in the United States including the work surface, keyboard tray, right and left keyboard support brackets, and metal support bar to form the workstation. The processes in the United States included sawing, profiling, sanding, hot-pressing and trimming to manufacture the work surface and keyboard tray as well as laser-cutting, bending and painting of the sheet metal components followed by final assembly of the U.S.-origin and the imported components. CBP determined that the imported lift assembly was substantially transformed as a result of the assembly performed in the United States to produce the finished desktop workstation. The decision noted that the lift assembly was not functional to an end user by itself as it did not include the primary features of the U.S.-origin work surface and keyboard tray which allowed the work to be conducted, and without which, the lifting mechanism was incapable of being used as a workstation. CBP found the lift assembly was substantially transformed in the United States into a desktop workstation.

Similar to the lift assembly in HQ H280512, the imported controller and digital keyboard here are substantially transformed when they are mounted to the desktop and when the control panels with a cable are plugged into the connector of the controller to produce the finished height adjustable workstations. The controller and the digital keyboard are not functional to end users by themselves but they become an integral part of the workstations. To move the workstations up and down, the controller and the digital keyboard need to be attached and wired into the desktop.

Based on the foregoing, we find that the last substantial transformation occurs in the United States, and therefore, the height adjustable workstation is not a product of a foreign country or instrumentality designated pursuant to 25 U.S.C. 2511(b). As to whether the workstation produced in the United States qualifies as a ''U.S.-made end product,'' you may wish to consult with the relevant government procuring agency and review *Acetris Health, LLC* v. *United States,* 949 F.3d 719 (Fed. Cir. 2020).

Holding

Based on the information outlined above, we determine that the components imported into the United States undergo a substantial transformation when made into the subject height adjustable workstations.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the U.S. Court of International Trade.

Sincerely,

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of Trade.

[FR Doc. 2023–08771 Filed 4–25–23; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Video Surveillance and Data Management System

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of a video surveillance and data management system. Based upon the facts presented, CBP has concluded in the final determination that the imported components of the subject video surveillance and data management system undergo substantial transformation in the United States when made into the final VMS assembly.

DATES: The final determination was issued on April 10, 2023. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within May 26, 2023.

FOR FURTHER INFORMATION CONTACT: Austen Walsh, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0114.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on April 10, 2023, U.S. Customs and Border Protection (CBP) issued a final determination concerning the country of origin of a video management and surveillance system for purposes of title III of the Trade Agreements Act of 1979. This final determination, HQ H327997, was issued at the request of Security Lab Inc. (''Security Lab''), under procedures set forth at 19 CFR part 177, subpart B, which implements title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP has concluded that, based upon the facts presented, the imported components are substantially transformed in the United States when made into the subject video surveillance and data management system.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: April 21, 2023.

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of Trade.

HQ H327997

April 10, 2023

OT:RR:CTF:VS H327997 AMW

Category

Origin

Gene W. Rosen, Esq., Gene Rosen Law Group, 200 Garden City Plaza, Suite 405, Garden City, NY 11530

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, CBP Regulations; Security Lab Inc.; Country of Origin of Video Surveillance and Data Management System; Substantial Transformation

Dear Mr. Rosen:

This is in response to your request of September 21, 2022, on behalf of your client, Security Lab Inc. (''Security Lab''), for a final determination concerning the country of origin of a video management and surveillance system pursuant to Title III of the Trade Agreements Act of 1979 (''TAA''), as amended (19 U.S.C. 2511 *et seq.*), and subpart B of Part 177, U.S. Customs and Border Protection (''CBP'') Regulations (19 CFR 177.21, *et seq.*). Security Lab is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and 177.23(a) and is therefore entitled to request this final determination.

Facts

Security Lab produces a product described as the ''video management and surveillance system'' (''VMS''). As outlined in your request, the VMS is a hardware system consisting of a camera array and central computer system designed to conduct and manage video surveillance operations that ''is capable of handling up to 64 cameras per server simultaneously and can be used to power hundreds of servers within a single, centrally administered system. . . .''

The VMS comprises foreign-origin components that are assembled in the United States to create hardware that is then combined with U.S.-origin software, including the Security Lab Application Software and Microsoft Windows. The hardware components consist of the following items:

- Chassis (product of Taiwan)
- Partially completed motherboard (product of China)
- Central processing unit (''CPU'') (product of Costa Rica, Vietnam, or Malaysia)
- Hard disk drive (''HDD'') (product of Singapore or Thailand)
- Optical drive (product of China)
- Memory modules (product of China)
- Graphics cards (product of China)
- Alarm boards (product of China)
- Serial attached technology attachment (''SATA Controller'') (product of Taiwan)
- Redundant array independent disk controller (''RAID controller'') (product of Singapore)
- Power supply unit (''PSU'') (product of China)
- Computer fans (product of China)
- Network interface card (''NIC'') (product of Taiwan)
- Network camera (product of Taiwan, the Republic of Korea, or China)
- Computer keyboard (product of China), and
- Computer mouse (product of China)

In addition, you state that the remaining ''minor'' components (*e.g.,* cables, brackets, bezels, screws, and straps) will be sourced from a variety of countries. Your request indicates that, as explained in further detail below, the items will be assembled into a ''computer'' unit (*i.e.,* the ''system assembly''), which is housed in the chassis, and contains the motherboard, CPU, HDD, memory modules, graphics cards, alarm boards, SATA controller, RAID controller, PSU, fans, and NIC. The computer unit will control the operation of the network cameras, and will be operated by a user utilizing the keyboard and mouse. Of the countries of origin provided for each component, Taiwan, Singapore, Costa Rica, and the Republic of Korea are each TAA-designated countries while Vietnam, Malaysia, and China are not.

The VMS manufacturing process consists of the following five phases: (1) order management; (2) hardware manufacturing; (3) application software, operating system and systems installation, configuration and management; (4) quality control and assurance; and (5) order and system closeout and final checks. In greater detail, these steps occur as follows:

- *Order Management:* After receiving a customer order, Security Lab employees issue a work order for the quantity of VMSs to be assembled, identifying the model number and requirements for the items to be manufactured. Security Lab employees then identify the bill of materials necessary.

• *Hardware Manufacturing:* This phase involves the assembly of the VMS hardware, subassemblies, and components. The process involves the use of an electric screwdriver, hot glue, harness connections, and tie strips. The assembly process involves up to 30 steps and occurs over the course of 60–90 minutes.

• *Application Software, Operating System and Systems Installation, Configuration and Management:* During this phase, Security Lab programmers, developers, testers, and hardware engineers design, develop and code the relevant version of the Security Lab Application Software to configure each system on a build-to-order basis. The software is integrated, installed, and configured into the completed hardware via an 18-step process occurring over the course of 60–90 minutes.

• *Quality Control and Assurance:* This phase involves a Security Lab employee conducting a 14-step quality control check and testing process of each VMS, including testing video and audio performance and network functionality. This phase occurs over the course of approximately 60 minutes.

• *Order and System Closeout/Final Checks:* This phase involves a six-step, 15-minute closeout process in which photographs of the complete VMS are taken and a tamper seal is placed along the VMS chassis.

According to your submission, the Security Lab Application Software is designed and coded in the United States by Security Lab programmers on a C, C++ framework. The software includes the following capabilities: real-time audio, video, and data recording, viewing, listening, playback, storage, information management, situational awareness, and security device control. The Security Lab Application Software functions by receiving ''communication'' and ''interoperability'' instructions from the hardware's firmware and application program interfaces (''APIs''). You state that, in this case, the firmware is programming that is written to the hardware device's memory and that an API is a ''software intermediary that allows two applications to 'talk' to each other.''

Issue

Whether the imported components are substantially transformed when made into the subject VMS in the United States.

Law and Analysis

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 CFR 177.21 *et seq.,* which implements Title III, Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–2518).

CBP's authority to issue advisory rulings and final determinations is set forth in 19 U.S.C. 2515(b)(1), which states:

> For the purposes of this subchapter, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 2518(4)(B) of this title, an article is or would be a product of a foreign country or instrumentality designated pursuant to section 2511(b) of this title.

Emphasis added.

The Secretary of the Treasury's authority mentioned above, along with other customs revenue functions, are delegated to CBP in the Appendix to 19 CFR part 0—Treasury Department Order No. 100–16, 68 FR 28, 322 (May 23, 2003).

The rule of origin set forth in 19 U.S.C. 2518(4)(B) states:

> An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Acquisition Regulation (''FAR''). *See* 19 CFR 177.21. In this regard, CBP recognizes that the FAR restricts the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1).

The FAR, 48 CFR 25.003, defines ''U.S.-made end product'' as:

> . . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

Section 25.003 defines ''designated country end product'' as:

> a WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least developed country end product, or a Caribbean Basin country end product.

Section 25.003 defines ''WTO GPA country end product'' as an article that:

> (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
>
> (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Once again, we note that the VMS is assembled in the United States with components sourced from a variety of TAA-designated countries (*i.e.,* Taiwan, Singapore, Costa Rica, and the Republic of Korea) as well as several non-TAA countries (*i.e.,* China, Vietnam, and Malaysia).

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

A new and different article of commerce is an article that has undergone a change in commercial designation or identity, fundamental character, or commercial use. A determinative issue is the extent of the operations performed and whether the materials lose their identity and become an integral part of the new article. *See Nat'l Hand Tool Corp.* v. *United States,* 16 CIT 308 (1992), *aff'd,* 989 F.2d 1201 (Fed. Cir. 1993). ''For courts to find a change in character, there often needs to be a substantial alteration in the characteristics of the article or components.'' *Energizer Battery, Inc.* v.

United States, 190 F. Supp. 3d 1308, 1318 (Ct. Int'l Trade 2016) (citations omitted).

In instances in which component production or assembly occurs in multiple countries and no single country's operations dominate the manufacturing operations, CBP has looked to the location at which final assembly occurs. In CBP Headquarters Ruling (''HQ'') H170315, dated July 28, 2011, CBP was asked to determine the country of origin for an imported satellite telephone that contained Malaysian-origin circuit boards and U.K.-origin software and that underwent final assembly and programming in Singapore. In that matter, CBP noted, there existed ''three countries under consideration where programming and/or assembly operations take place, the last of which is Singapore.'' Although the Malaysian-origin boards and U.K.-origin software were important to the function of the device, CBP determined Singapore to be the proper country of origin because it had been the site of the last substantial transformation. Similarly, in HQ H203555, dated April 23, 2012, CBP considered the country of origin of oscilloscopes containing Malaysian-origin circuit boards assembled in Singapore and programmed with U.S.-origin software. Once again, CBP observed that no one country's operations dominated the manufacturing process, but that the final assembly in Singapore completed the oscilloscopes and, therefore, the last substantial transformation occurred in that country.

In the present matter, you argue that the country of origin of the VMS is the United States because you believe that the last substantial transformation occurs in the United States. You state that hardware assembly and the installation of the U.S.-origin software into the U.S.-assembled system assembly results in a new article with a name, character, and use different from the original hardware components.

Here, a plurality of components is sourced from China, although a combined majority is sourced from Taiwan, Singapore, Costa Rica, Vietnam, Malaysia, and Thailand, and elsewhere. Importantly, the major components do not originate from one country, but are instead sourced from a variety of countries: the CPU will originate from either Costa Rica, Vietnam or Malaysia, the partial motherboard from China, and the cameras from either Taiwan, Korea, or China. The assembly in the United States, meanwhile, fully integrates the subassemblies and various component parts into the complete VMS, at which point the U.S.-origin software is installed. No single country's operations dominate the manufacturing operations of the VMS. The CPU manufactured in Costa Rica, Vietnam or Malaysia is important to the function of the VMS, as is the Chinese-origin motherboard and U.S.-origin firmware and software. The assembly in the United States completes the VMS. This matter is therefore analogous to our determination in HQ H203555, dated April 23, 2012, in which we determined Singapore to be the country of origin for oscilloscope where ''there are three countries under consideration where programming and/or assembly operations take place, the last of which is Singapore'' but ''[n]o one country's operations dominate[d] the manufacturing operations.'' *See also,* HQ H170315, dated July 28, 2011, scenario III.

Based on the foregoing, we find that the last substantial transformation occurs in the United States, and therefore, the VMS is not a product of a foreign country or instrumentality which is not designated pursuant to section 2511(b) of this title (*i.e.,* China, Vietnam, and Malaysia). As to whether the VMS assembled in the United States qualifies as a ''U.S.-made end product,'' you may wish to consult with the relevant government procuring agency and review *Acetris Health, LLC* v. *United States,* 949 F.3d 719 (Fed. Cir. 2020).

Holding

Based on the information outlined above, we determine that the components imported into the United States undergo a substantial transformation when made into the subject video management system by Security Lab.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the U.S. Court of International Trade.

Sincerely,

Alice A. Kipel,

Executive Director, Regulations and Rulings Office of Trade.

[FR Doc. 2023–08768 Filed 4–25–23; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2329]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before July 25, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2329, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and

Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Marion County, Kansas and Incorporated Areas	
Project: 20–07–0019S Preliminary Date: January 13, 2023	
City of Burns	City Hall, 102 North Washington, Burns, KS 66840.
City of Durham	Marion County Offices, 200 South 3rd Street, Marion, KS 66861.
City of Florence	City Hall, 511 North Main Street, Florence, KS 66851.
City of Goessel	City Hall, 101 South Cedar Street, Goessel, KS 67053.
City of Hillsboro	City Hall, 118 East Grand Avenue, Hillsboro, KS 67063.
City of Marion	City Office, 208 East Santa Fe Street, Marion, KS 66861.
City of Peabody	City Hall, 300 North Walnut Street, Peabody, KS 66866.
City of Ramona	City Hall, 302 D Street, Ramona, KS 67475.
City of Tampa	Marion County Offices, 200 South 3rd Street, Marion, KS 66861.
Unincorporated Areas of Marion County	Marion County Offices, 200 South 3rd Street, Marion, KS 66861.

[FR Doc. 2023–08775 Filed 4–25–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been

published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65. The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Colorado:					
Adams (FEMA Docket No.: B–2304).	City of Northglenn (22–08–0178P).	The Honorable Meredith Leighty, Mayor, City of Northglenn, 11701 Community Center Drive, Northglenn, CO 80233.	City Hall, 11701 Community Center Drive, Northglenn, CO 80233.	Mar. 31, 2023	080257
Adams (FEMA Docket No.: B–2304).	City of Thornton (22–08–0178P).	The Honorable Jan Kulmann, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, CO 80229.	City Hall, 9500 Civic Center Drive, Thornton, CO 80229.	Mar. 31, 2023	080007
Adams (FEMA Docket No.: B–2304).	Unincorporated areas of Adams County (22–08–0178P).	The Honorable Lynn Baca, Chair, Adams County Board of Commissioners, 4430 South Adams County Parkway, 5th Floor, Suite C5000A, Brighton, CO 80601.	Adams County Community and Economic Development Department, 4430 South Adams County Parkway, 1st Floor, Suite W2000, Brighton, CO 80601.	Mar. 31, 2023	080001
Connecticut: New Haven (FEMA Docket No.: B–2304).	Town of Branford (22–01–0692P).	The Honorable James B. Cosgrove, First Selectman, Town of Branford Board of Selectmen, 1019 Main Street, Branford, CT 06405.	Engineering Department, 1019 Main Street, Branford, CT 06405.	Mar. 14, 2023	090073
Florida:					
Broward (FEMA Docket No.: B–2304).	City of Hallandale Beach (22–04–2352P).	The Honorable Joy Cooper, Mayor, City of Hallandale Beach, 400 South Federal Highway, Hallandale Beach, FL 33009.	Public Works Department, 630 Northwest 2nd Street, Hallandale Beach, FL 33009.	Mar. 30, 2023	125110
Lake (FEMA Docket No.: B–2314).	City of Leesburg (22–04–1994P).	Al Minner, Manager, City of Leesburg, 501 West Meadow Street, Leesburg, FL 34748.	City Hall, 204 North 5th Street, Leesburg, FL 34748.	Mar. 22, 2023	120136
Monroe (FEMA Docket No.: B–2304).	City of Marathon (22–04–5165P).	The Honorable John Bartus, Mayor, City of Marathon, 9805 Overseas Highway, Marathon, FL 33050.	Planning Department, 9805 Overseas Highway, Marathon, FL 33050.	Mar. 20, 2023	120681
Monroe (FEMA Docket No.: B–2299).	Unincorporated areas of Monroe County (22–04–5025P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Mar. 16, 2023	125129
Sarasota (FEMA Docket No.: B–2304).	City of Sarasota (22–04–5287P).	The Honorable Erik Arroyo, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236.	Development Services Department, 1565 1st Street, Room 101, Sarasota, FL 34236.	Mar. 29, 2023	125150
Maryland: Anne Arundel (FEMA Docket No.: B–2304).	Unincorporated areas of Anne Arundel County (22–03–0389P).	Steuart Pittman, Anne Arundel County Executive, 44 Calvert Street, Annapolis, MD 21401.	Anne Arundel County Department of Inspections and Permits, 2664 Riva Road, Annapolis, MD 21401.	Mar. 20, 2023	240008
Massachusetts: Essex (FEMA Docket No.: B–2304).	City of Gloucester (22–01–0631P).	The Honorable Greg Verga, Mayor, City of Gloucester, 9 Dale Avenue, Gloucester, MA 01930.	City Hall, 3 Pond Road, Gloucester, MA 01930.	Mar. 23, 2023	250082
Montana:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Yellowstone (FEMA Docket No.: B–2314).	City of Billings (22–08–0233P).	The Honorable Bill Cole, Mayor, City of Billings, P.O. Box 1178, Billings, MT 59103.	Building Division, 2825 3rd Avenue North, 4th Floor, Billings, MT 59101.	Mar. 23, 2023	300085
Yellowstone (FEMA Docket No.: B–2314).	Unincorporated areas of Yellowstone County (22–08–0233P).	The Honorable Donald Jones, Chair, Yellowstone County Board of Commissioners, P.O. Box 35000, Billings, MT 59107.	Yellowstone County Public Works Department, 316 North 26th Street, Billings, MT 59101.	Mar. 23, 2023	300142
Pennsylvania: Delaware (FEMA Docket No.: B–2314).	Borough of Folcroft (22–03–0267P).	The Honorable Franny DiCicco, Mayor, Borough of Folcroft, 1555 Elmwood Avenue, Folcroft, PA 19032.	Borough Hall, 1555 Elmwood Avenue, Folcroft, PA 19032.	Mar. 17, 2023	420415
Rhode Island: Washington (FEMA Docket No.: B–2304).	Town of Narragansett (22–01–0734P).	James R. Tierney, Manager, Town of Narragansett, 25 5th Avenue, Narragansett, RI 02882.	Narragansett Planning Board, 25 5th Avenue, Narragansett, RI 02882.	Mar. 16, 2023	445402
Oklahoma: Creek (FEMA Docket No.: B–2314).	City of Sapulpa (22–06–1576P).	The Honorable Craig Henderson, Mayor, City of Sapulpa, 425 East Dewey Avenue, Sapulpa, OK 74066.	City Hall, 424 East Hobson Avenue, Sapulpa, OK 74066.	Apr. 3, 2023	450053
South Dakota:					
Codington (FEMA Docket No.: B–2314).	City of Watertown (22–08–0217P).	Amanda Mack, Manager, City of Watertown, P.O. Box 910, Watertown, SD 57201.	Public Works Department, Engineering Division, 23 2nd Street Northeast, Watertown, SD 57201.	Mar. 20, 2023	460016
Codington (FEMA Docket No.: B–2314).	Unincorporated areas of Codington County (22–08–0217P).	The Honorable Brenda Hanten, Chair, Codington County Commissioners, 14 1st Avenue Southeast, Watertown, SD 57201.	Codington County Zoning Department, 1910 West Kemp Avenue, Watertown, SD 57201.	Mar. 20, 2023	460260
Lawrence (FEMA Docket No.: B–2304).	City of Spearfish (22–08–0442P).	The Honorable John Senden, Mayor, City of Spearfish, 625 North 5th Street, Spearfish, SD 57783.	Building and Development Department, 625 North 5th Street, Spearfish, SD 57783.	Mar. 22, 2023	460046
Texas:					
Bexar (FEMA Docket No.: B–2314).	City of San Antonio (22–06–1174P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	Mar. 20, 2023	480045
Bexar (FEMA Docket No.: B–2314).	City of San Antonio (22–06–1982P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	Mar. 20, 2023	480045
Bexar (FEMA Docket No.: B–2314).	Unincorporated areas of Bexar County (22–06–1470P).	The Honorable Nelson Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78205.	Apr. 3, 2023	480035
Collin (FEMA Docket No.: B–2314).	City of Anna (22–06–1094P).	The Honorable Nate Pike, Mayor, City of Anna, P.O. Box 776, Anna, TX 75409.	Public Works Building Department, 3223 North Powell Parkway, Anna, TX 75409.	Mar. 20, 2023	480132
Collin (FEMA Docket No.: B–2314).	Unincorporated areas of Collin County (22–06–2159P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Engineering Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	Apr. 3, 2023	480130
Dallas (FEMA Docket No.: B–2314).	City of Dallas (22–06–2080P).	The Honorable Eric Johnson, Mayor, City of Dallas, 1500 Marilla Street, Suite 5EN, Dallas, TX 75201.	Oak Cliff Municipal Center, 320 East Jefferson Boulevard, Room 312, Dallas, TX 75203.	Apr. 3, 2023	480171
Ellis (FEMA Docket No.: B–2304).	City of Waxahachie (22–06–1739P).	The Honorable David Hill, Mayor, City of Waxahachie, P.O. Box 757, Waxahachie, TX 75168.	Public Works and Engineering Department, 401 South Roger Street, Waxahachie, TX 75165.	Mar. 23, 2023	480211
Midland (FEMA Docket No.: B–2304).	Unincorporated areas of Midland County (22–06–1520P).	The Honorable Terry Johnson, Midland County Judge, 500 North Loraine Street, Suite 1100, Midland, TX 79701.	Midland County Courthouse, 500 North Loraine Street, Midland, TX 79701.	Mar. 20, 2023	481239
Tarrant (FEMA Docket No.: B–2304).	City of Fort Worth (22–06–0836P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	Mar. 20, 2023	480596
Tarrant (FEMA Docket No.: B–2304).	Unincorporated areas of Tarrant County (22–06–0836P).	The Honorable B. Glen Whitley, Tarrant County Judge, 100 East Weatherford Street, Suite 501, Fort Worth, TX 76196.	Tarrant County, Administration Building, 100 East Weatherford Street, Suite 401, Fort Worth, TX 76196.	Mar. 20, 2023	480582
Utah: Tooele (FEMA Docket No.: B–2314).	City of Tooele (22–08–0553P).	The Honorable Debra E. Winn, Mayor, City of Tooele, 90 North Main Street, Tooele, UT 84074.	Engineering Department, 90 North Main Street, Tooele, UT 84074.	Mar. 30, 2023	490145
Virginia:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Fairfax (FEMA Docket No.: B–2314).	Town of Vienna (22–03–0155P).	Mercury Payton, Town of Vienna Manager, 127 Center Street South, Vienna, VA 22180.	Public Works Department, 127 Center Street South, Vienna, VA 22180.	Mar. 29, 2023	510053
Loudoun (FEMA Docket No.: B–2304).	Unincorporated areas of Loudoun County (22–03–0603P).	Tim Hemstreet, Loudoun County Administrator, 1 Harrison Street Southeast, 5th Floor, Leesburg, VA 20175.	Loudoun County Government Center, 1 Harrison Street, Southeast, 3rd Floor, MSC #60, Leesburg, VA 20175.	Apr. 3, 2023	510090

[FR Doc. 2023–08774 Filed 4–25–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035716; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Michigan, Ann Arbor, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Michigan has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and a present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the University of Michigan. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the University of Michigan at the address in this notice by May 26, 2023.

FOR FURTHER INFORMATION CONTACT: Dr. Ben Secunda, NAGPRA Project Manager, University of Michigan, Office of Research, 3003 South State St., First Floor, Wolverine Tower, Ann Arbor, MI 48109–1274, telephone (734) 615–8936, email *bsecunda@umich.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the University of Michigan, Ann Arbor, MI. The human remains were removed from the Moundville site in Hale and Tuscaloosa Counties, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Michigan professional staff in consultation with representatives of the Alabama-Coushatta Tribe of Texas; Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; Jena Band of Choctaw Indians; Miccosukee Tribe of Indians; Mississippi Band of Choctaw Indians; Poarch Band of Creek Indians; Seminole Tribe of Florida; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the Thlopthlocco Tribal Town (hereafter referred to as ''The Tribes'').

History and Description of the Human Remains

On an unknown date, human remains representing, at minimum, one individual were removed from the Moundville site (1TU500) in Hale and Tuscaloosa Counties, AL. The Moundville site is located near the Black Warrior River. The site consists of multiple mounds surrounding a central plaza, and includes both burial and habitation areas. It is owned and managed by the University of Alabama. First excavated in 1840, the site has been excavated numerous times by multiple individuals. While publications report that thousands of burials were disinterred and objects removed during these excavations, the University of Michigan Museum of Anthropological Archaeology (UMMAA) only possesses the ancestral human remains of a single individual. Not much is known regarding these ancestral human remains at the UMMAA. They were found in the osteological teaching collections during NAGPRA compliance work conducted in the early-1990s, at which time they were accessioned. To date, no records have been found describing when the ancestral human remains were disinterred or how they came into the possession of the UMMAA. The Museum's catalog book describes the ancestral human remains as from a ''field near Mound M, Moundville, Hale Co, ALA 1HA48'' and ''burial 53.'' The ancestral human remains are also labeled ''Moundville, Ala. Field near Md M Burial 53.'' The human remains belong to one adult of indeterminate sex. Based on general dating for the site, this individual was buried between A.D. 1050 and 1550. No known individual was identified. No associated funerary objects are present.

The human remains have been determined to be Native American based on accession documentation and archaeological context. A relationship of shared group identity can be reasonably traced between the Native American human remains from this site and the Muskogean peoples based on historical sources.

Determinations Made by the University of Michigan

Officials of the University of Michigan have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Ben

Secunda, NAGPRA Project Manager, University of Michigan, Office of Research, 3003 South State St., First Floor, Wolverine Tower, Ann Arbor, MI 48109–1274, telephone (734) 615–8936, email *bsecunda@umich.edu,* by May 26, 2023. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The University of Michigan is responsible for notifying The Tribes that this notice has been published.

Dated: April 19, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–08813 Filed 4–25–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035714; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: U.S. Army Corps of Engineers, Mobile District, Mobile, AL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Army Corps of Engineers, Mobile District, intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Itawamba and Tishomingo Counties, MS.

DATES: Repatriation of the cultural items in this notice may occur on or after May 26, 2023.

ADDRESSES: Ms. Alexandria Smith, U.S. Army Corps of Engineers, Mobile District, 109 St. Joseph Street, P.O. Box 2288, Mobile, AL 36628–0001, telephone (251) 690–2728, email *Alexandria.N.Smith@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the U.S. Army Corps of Engineers, Mobile District. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the U.S. Army Corps of Engineers, Mobile District.

Description

Nineteen cultural items were removed from Itawamba County, MS. The White Springs site (22IT537) was originally recorded by Joseph Caldwell and S.D. Lewis in 1971, during a survey of the Canal Section of the Tennessee-Tombigbee Waterway. The site was identified as a 15-to-20-acre village site located in a field on the east side. Archeological phases identified at the site include Early Archaic, Gulf Formational, Middle and Late Woodland, and Mississippian. Testing excavations were conducted in April of 1971, and full-scale excavation was conducted between July and August of the same year by the University of Southern Mississippi. The 19 unassociated funerary objects consist of four lots of ceramics, six lots of lithics, three lots of faunal remains, one lot of shells, one lot of soil samples, one lot of projectile points, one lot of sandstone, one lot of petrified wood, and one lot of charcoal.

Fifteen cultural items were removed from Itawamba County, MS. Joseph Caldwell and S.D. Lewis identified the Walnut site (22IT539) in November of 1971 in a floodplain near the confluence of Mackeys and Big Brown Creeks. The site is located within the operational boundaries of the Canal Section of the Tennessee-Tombigbee Waterway. It was described as a village site measuring 100 feet by 150 feet located on a rise in swamp and low forest. According to the site form, the site had been looted and partly cleared for a powerline. Archeological phases associated with the site include Middle Archaic, Late Archaic, Middle Gulf Formational, and Woodland. The 15 unassociated funerary objects consist of nine lots of perpetuity samples, one lot of macrobotanicals, one preform, one anvil stone, one lot of hammerstones, one lot of projectile points, and one lot of chipped stone fragments.

Seven cultural items were removed from Itawamba County, MS. The Poplar site (22IT576) was recorded in 1975 by J.R. Atkinson in the Canal Section of the Tennessee-Tombigbee Waterway. Atkinson described the site as a circular Woodland midden mound with black soil approximately one half acre in size. The University of Alabama conducted archeological testing at the site in 1979 and full-scale excavations in 1980. Poplar is a multi-component site with Paleoindian, Archaic, and Woodland components. The seven unassociated funerary objects consist of two lots of debris, two lots of faunal remains, one lot of hematite, and two lots of flakes.

Fourteen cultural items were removed from Tishomingo County, MS. The F.L. Brinkley Midden site (22TS729) is located in the Divide Cut Section of the Tennessee-Tombigbee Waterway. The site was documented as a stratified accretional midden dating from the Early Archaic through the Middle Woodland periods. The site was excavated by the Office of Archaeological Research, University of Alabama, between December 5, 1977, and July 7, 1978. The cultural items from this site presently reside at the Cobb Institute, Mississippi State University. Due to preservation concerns, most likely, no human remains were ever removed from the site. The 14 unassociated funerary objects consist of one lot of ceramics, four lots of lithics, one lot of sandstone, one lot of clay, five lots of float samples, and two lots of soil samples.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, geographical, historical, other information, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the U.S. Army Corps of Engineers, Mobile District, has determined that:

- The 55 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Alabama-Coushatta Tribe of Texas; Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; and The Chickasaw Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this

notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after May 26, 2023. If competing requests for repatriation are received, the U.S. Army Corps of Engineers, Mobile District, must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The U.S. Army Corps of Engineers, Mobile District, is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, § 10.10, and § 10.14.

Dated: April 19, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–08807 Filed 4–25–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035711; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: U.S. Army Corps of Engineers, Mobile District, Mobile, AL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Army Corps of Engineers, Mobile District, intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Clay and Lowndes Counties, MS.

DATES: Repatriation of the cultural items in this notice may occur on or after May 26, 2023.

ADDRESSES: Ms. Alexandria Smith, U.S. Army Corps of Engineers, Mobile District, 109 St. Joseph Street, P.O. Box 2288, Mobile, AL 36628–0001, telephone (251) 690–2728, email *Alexandria.N.Smith@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the U.S. Army Corps of Engineers, Mobile District. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the U.S. Army Corps of Engineers, Mobile District.

Description

One cultural item was removed from Clay County, MS. The Kellogg Village site (22CL527), located in the Divide Cut Section of the Tennessee Tombigbee Waterway, contained Middle Archaic, Woodland, and Mississippian components. The site was excavated by the Department of Anthropology, Mississippi State University under principal investigator James R. Atkinson and field director G. Gerald Berry, between June 29 and September 16, 1978. The one unassociated funerary object is a square stone gorget.

Forty-eight cultural items were removed from Lowndes County, MS. The Shell Bluff site (22LO530) is a shell midden and base camp with Late Woodland and Miller III components. Excavation of the site by the University of Southern Mississippi under principal investigators Drs. David Heisler and Robert Gilbert and field directors Thomas Padgett and Don Crusoe began in July and August of 1979 and resumed during mid-October through late November 1979. The 48 lots of unassociated funerary objects consist of 11 lots of ceramics, five lots of lithics, six lots of shells, two lots of ground sandstone, six lots of faunal remains, four lots of miscellaneous fill, three lots of daub, three lots of sandstone fragments, four lots of soil samples, two lots of burial fill, one lot of firecracked rock, and one lot of fired clay.

Eleven cultural items were removed from Lowndes County, MS. The Vaughn Mound site (22LO538) has Middle Archaic, Woodland, Miller III, and Miller IV components. The site was identified by Marc D. Rucker as part of a field survey, and it was excavated by the Mississippi State University's Department of Anthropology under Rucker's direction, with the assistance of James R. Atkinson and Michael D. Walls, over a ten-week period during the summer of 1973. The 11 lots of unassociated funerary objects consist of five lots of faunal remains, four lots of shell, one lot of clay, and one lot of shell ornaments.

One cultural item was removed from Lowndes County, MS. The Tibbee Creek site (22LO600) has components from the early Gulf Formational through the Mississippian, with the most concentrated occupation occurring during the late Woodland Miller III phase. The site was excavated by the Department of Anthropology, Mississippi State University under the direction of Crawford Blakeman, Principal Investigator, and John O'Hear, Project Director (and later Principal Investigator), beginning in November 1976. Excavation was completed in August of 1977. The one unassociated funerary object is one lot of ceramics.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, geographical, historical, other information, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the U.S. Army Corps of Engineers, Mobile District has determined that:

- The 61 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and The Chickasaw Nation and The Choctaw Nation of Oklahoma.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian

organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after May 26, 2023. If competing requests for repatriation are received, the U.S. Army Corps of Engineers, Mobile District must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The U.S. Army Corps of Engineers, Mobile District is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: April 19, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–08809 Filed 4–25–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–SSB–NPS0034735; PPWONRANDE2, PMP00E105.YP0000; OMB Control Number 1024–0224]

Agency Information Collection Activities; Programmatic Clearance for NPS-Sponsored Public Surveys

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before May 26, 2023.

ADDRESSES: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to *http://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–ICCO), 12201 Sunrise Valley Drive, (MS–242) Reston, VA 20191 (mail); or *phadrea_ponds@nps.gov* (email). Please include ''1024–0224'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Bret Meldrum by email at *bret_meldrum@nps.gov* or by telephone at 970–267–7295. Please reference OMB Control Number 1024–0224 in the subject line of your comments. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (PRA, 44 U.S.C. 3501 *et seq.*) and 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.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on February 8, 2022 (87 FR 7206). No comments were received.

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.

(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 NPS is authorized by the National Park Service Protection, Interpretation, and Research in System (54 U.S.C. 100701) statutes to collect information used to enhance the management and planning of parks and their resources. The NPS Social Science Program (SSP) relies heavily on this generic approval to submit survey requests to OMB in an expedited manner. This process significantly streamlines the information collection process in a manner that allows the NPS to submit at least 25 requests per year, which is 5 times as many requests that can be processed annually using the regular submission route.

The Programmatic Clearance applies to all NPS social science collections (*e.g.,* questionnaires, focus groups, interviews, etc.) designed to furnish usable information to NPS managers and planners concerning visitor experiences, perceptions of services, programs, and planning efforts in areas managed by the NPS. To qualify for the NPS generic programmatic review process each information request must show clear ties to NPS management and planning needs in areas managed by the NPS or involve research that will directly benefit the NPS. The scope of the programmatic review process is limited to issues that are non-controversial or unlikely to attract significant public interest.

All collections must be reviewed by the NPS Social Science Program and approved by OMB before a collection is administered. The Pool of Known Questions (PKQ) serves as a collection of example questions. We acknowledge that the PKQ is not a comprehensive collection of all possible survey questions; therefore, we are requesting

leeway to allow requestors to add park/research-specific questions not in the PKQ. However, all questions must fit within the scope of the approved Topic Areas. The Social Science Program will continue to conduct necessary reviews and quality control before submitting each information collection request to OMB for expedited review and approval before the collection is administered.

The submission materials contain the request for continued flexibility in survey design within the bounds of the requirements and guidelines for individual collections leveraging this clearance. The NPS is requesting the following updates and revisions for this clearance. The previously approved 11 Topic Areas and subcategories were reorganized and expanded. A climate change subcategory was added under Topic Area 8: Environmental Health and Resource Management. Topic Area 10 was renamed Environmental Justice and expanded to have the following subcategories: Constraints and Barriers; Diversity, Equity, and Inclusion; Accessibility; and Traditional Ecological Knowledge. Finally, the PKQ was streamlined to remove redundant questions. It was also reorganized to accommodate changes to the Topic Areas. Questions were added to the new subcategories and to existing sections throughout the PKQ to include question variations principal investigators and NPS staff requested over the last three years.

Title of Collection: Programmatic Clearance for NPS-Sponsored Public Surveys.

OMB Control Number: 1024–0224.

Form Number: Form 10–201.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals/Households.

Total Estimated Number of Annual Respondents: 44,125 (depending on activity) Onsite Surveys—30,000; Mail-back Surveys—2,000; All Non-response surveys—5,000; Focus Groups/Interview—2,125; and On-line Survey—5,000.

Estimated Completion Time per Response: (depending on activity) onsite Surveys—15 minutes; Mail-back Surveys—20 minutes; All Non-response surveys—3 minutes; Focus Groups/Interview—60 minutes; and On-line Survey—15 minutes.

Total Estimated Number of Annual Burden Hours: 11,792 Hours (depending on activity) onsite Surveys—7500 hours; Mail-back Surveys—667 hours; All Non-response surveys—250 hours; Focus Groups/Interview—2125 hours; and On-line Survey—1250 hours.

Total Estimated Number of Annual Responses: 44,125 (depending on activity) Onsite Surveys—30,000; Mail-back Surveys—2,000; All Non-response surveys—5,000; Focus Groups/Interview—2,125; and On-line Survey—5,000.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct, or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2023–08555 Filed 4–25–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035710; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: U.S. Army Corps of Engineers, Mobile District, Mobile, AL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Army Corps of Engineers, Mobile District, intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Lowndes and Monroe Counties, MS.

DATES: Repatriation of the cultural items in this notice may occur on or after May 26, 2023.

ADDRESSES: Ms. Alexandria Smith, U.S. Army Corps of Engineers, Mobile District, 109 St. Joseph Street, P.O. Box 2288, Mobile, AL 36628–0001, telephone (251) 690–2728, email *Alexandria.N.Smith@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the U.S. Army Corps of Engineers, Mobile District. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the U.S. Army Corps of Engineers, Mobile District.

Description

Thirty cultural items were removed from Lowndes County, MS. The Cofferdam Site (22LO599) is an Early through Late Woodland occupation site featuring some Miller II components. Cofferdam was identified by Army Corps of Engineers personnel during the excavation of the cofferdam for the Columbus Lock and Dam of the Tennessee-Tombigbee Waterway, and it was excavated by the Mississippi State University Department of Anthropology under the direction of James R. Atkinson and field crew chief G. Gerald Berry from mid-August to the first week of October 1975. The 30 lots of unassociated funerary objects are consist of four lots of lithics, one lot of noncultural rock, two lots of pebbles, two lots ceramics, three lots of shells, seven lots of faunal remains, one lot of flotation samples, one lot of sandstone, three lots of clay, one lot of daub, two lots of firecracked rock, two lots of groundstone, and one lot of nuts.

Nine cultural items were removed from Lowndes County, MS. The River Cut site (22LO860) is a small village site containing Woodland and Mississippian components as well as Miller III components with some signs of possible Miller II habitation. The site was reported to the USACE, Mobile District, in 1983, and following the salvage removal of a burial from an eroding bank in 1984, the site was excavated by the Cobb Institute of Archaeology, Mississippi State University, under principal investigator Janet Rafferty, with Mary Evelyn Starr, between December 29 and 30, 1985 and from July 23 through September 29, 1986. The nine lots of unassociated funerary objects consist of four lots of ceramics, one lot of lithics, one lot of faunal remains, one lot of shells, one lot of charcoal, and one lot of soil samples.

Three cultural items were removed from Monroe County, MS. One of several sites identified during early mitigation measures for the prospective Tennessee Tombigbee Waterway, the SW Amory site (22MO710) was excavated between December 1978 and May 1979 under the direction of Judith A. Bense. No further work was ever conducted. The three lots of unassociated funerary objects consist of one lot of faunal remains, one lot of lithics, and one lot of soil samples.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, geographical, historical, other information, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the U.S. Army Corps of Engineers, Mobile District has determined that:

- The 42 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and The Chickasaw Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after May 26, 2023. If competing requests for repatriation are received, the U.S. Army Corps of Engineers, Mobile District must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The U.S. Army Corps of Engineers, Mobile District is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: April 19, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–08808 Filed 4–25–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035712; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion Amendment: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has amended a Notice of Inventory Completion Amendment published in the **Federal Register** on September 15, 2022. This notice amends the number of associated funerary objects in a collection removed from Marion County, TN.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after May 26, 2023.

ADDRESSES: Patricia Capone, PMAE, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by PMAE.

Amendment

This notice amends the determinations published in a Notice of Inventory Completion and Notice of Inventory Completion Amendment in the **Federal Register** (83 FR 65733–65734, December 21, 2018 and 87 FR 56697–56698, September 15, 2022). Disposition of the items in the original and Amended Notice of Inventory Completion notices has not occurred. This notice amends the count of the number of associated funerary objects.

ASSOCIATED FUNERARY OBJECTS

Site	Original No.	Amended No.	Amended description
Cave near Jasper in Marion County, TN.	33	27	26 faunal bone fragments and one ground stone.
Holloway Mounds in Marion County, TN.	59	57	one biface, 14 projectile points, one broken projectile point, one quartz discoidal, 39 shell beads, and one box of shell beads.

Determinations (As Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, PMAE has determined that:

- The human remains represent the physical remains of 23 individuals of Native American ancestry.
- The 84 objects are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects were removed from the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary

objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 26, 2023. If competing requests for disposition are received, PMAE must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. PMAE is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.11, and 10.13.

Dated: April 19, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–08812 Filed 4–25–23; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2023–0025]

Commercial Leasing for Wind Power Development on the Gulf of Maine Outer Continental Shelf (OCS)—Call for Information and Nominations

AGENCY: Bureau of Ocean Energy Management (BOEM or we), Interior.

ACTION: Call for information and nominations; request for comments.

SUMMARY: This call for information and nominations (Call or notice) invites public comment on, and assesses interest in, possible commercial wind energy leasing on the U.S. OCS in the Gulf of Maine. On August 19, 2022, BOEM initiated the competitive leasing process by issuing a request for interest (RFI) to solicit indications of interest and other information for BOEM to determine whether competitive interest existed for scheduling lease sales. This Call represents the next step in the competitive leasing process. The Call area is identified and described in section 6 below. Those interested in providing comments or information regarding site conditions, resources, and multiple uses in close proximity to or within the Call area should provide the information requested in section 7, ''Requested Information from Interested or Affected Parties,'' under the ''Supplementary Information'' heading of this Call. Those interested in leasing within the Call area for a commercial wind energy project should provide the information described in section 8, ''Required Nomination Information,'' under ''Supplementary Information.'' BOEM may or may not offer a lease for a commercial offshore wind energy project within the Call area after further government consultations, public participation, and environmental analyses.

DATES: Your interest in or comments on commercial leasing within the Call area must be received by BOEM no later than June 12, 2023. Late submissions may not be considered.

ADDRESSES: Please submit nomination information for commercial leasing as discussed in section 8 entitled ''Required Nomination Information'' electronically via email to *renewableenergy@boem.gov* or hard copy by mail to the following address: Zachary Jylkka, Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road, Mailstop: VAM–OREP, Sterling, VA 20166. If you elect to mail a hard copy, also include an electronic copy on a portable storage device. Do not submit nominations via the Federal eRulemaking Portal. BOEM will list the qualified parties that submitted nominations and the aggregated locations of nominated areas on its website after review of the nominations.

Please submit all other comments and information by either of the following two methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* In the search box at the top of the web page, enter BOEM–2023–0025 and then click ''search.'' Follow the instructions to submit public comments and to view supporting and related materials.

2. *By mail to the following address:* Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road, Mailstop: VAM–OREP, Sterling, VA 20166.

Treatment of confidential information is addressed in section 9 of this notice entitled ''Protection of Privileged, Personal, or Confidential Information.'' BOEM will post all comments received on *regulations.gov* unless labeled as confidential.

FOR FURTHER INFORMATION CONTACT: Zachary Jylkka, Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road (VAM–OREP), Sterling, Virginia 20166. (978) 491–7732 or *Zachary.Jylkka@boem.gov.*

For information regarding qualification requirements to hold an OCS wind energy lease, contact Gina Best, BOEM Office of Renewable Energy Programs, at *Gina.Best@boem.gov* or (703) 787–1341.

SUPPLEMENTARY INFORMATION:

1. Authority

This Call is published under subsection 8(p)(3) of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1337(p)(3), and its implementing regulations at 30 CFR 585.210 and 585.211.

2. Purpose

The OCSLA requires BOEM to award leases competitively unless BOEM determines that there is no competitive interest (43 U.S.C. 1337(p)(3)). The primary purpose of this Call is to collect further information and feedback on industry interest, site conditions, resources, and ocean uses within, and surrounding, the Call area.

An essential part of BOEM's renewable energy leasing process is working closely with Federal agencies, Tribes, State and local governments, industry, and ocean users to identify areas that may be suitable for potential offshore wind development to power the Nation. BOEM has not yet determined which areas, if any, within the Call area may be offered for lease. Your input is essential and will help BOEM determine areas that may be suitable for offshore wind development. There will be multiple opportunities to provide feedback throughout the renewable energy planning and leasing process, including if BOEM receives any project proposals in the future. A detailed description of the Call area may be found below in section 6, ''Description of Call Area.'' For more information about BOEM's competitive and noncompetitive leasing processes, please see section 4, ''BOEM's Planning and Leasing Process.''

3. Background

The Energy Policy Act of 2005 amended OCSLA by adding subsection 8(p)(1)(C), which authorizes the Secretary of the Interior (Secretary) to grant leases, easements, and rights-of-

way (ROWs) on the OCS for activities that are not otherwise authorized by law and that produce or support production, transportation, or transmission of energy from sources other than oil or gas, including renewable energy sources. The Secretary delegated this authority to the BOEM Director. On April 29, 2009, the Department of the Interior published regulations entitled ''Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf,'' [1] which were subsequently re-codified at 30 CFR part 585.[2] The regulations were reorganized by final rule on January 31, 2023, transferring certain regulations related to safety and enforcement to the Bureau of Safety and Environmental Enforcement.[3]

In March 2021, the Biden-Harris administration established the goal to deploy 30 gigawatts (GW) of offshore wind energy capacity by 2030. Last year, the Biden-Harris administration announced expanded plans to grow the floating offshore wind energy industry, and set a target to deploy 15 GW of floating offshore wind energy capacity by 2035. BOEM is committed to both of these ambitious goals. BOEM is responsibly fostering the growth of offshore wind energy capacity and participating in collaborative, data-based planning to inform decisions involving shared ocean resources and the many users that depend on them.

BOEM appreciates the importance of coordinating its planning with other OCS users, regulators, and relevant Federal agencies including, but not limited to, the U.S. Fish and Wildlife Service, the National Park Service, the U.S. Army Corps of Engineers, the U.S. Coast Guard (USCG), the National Oceanic and Atmospheric Administration (NOAA), and the Department of Defense (DOD). BOEM also regularly coordinates with, and requests input from, the Northeast Regional Ocean Council, which includes federally recognized Tribes, Federal and State agencies, and fishery management councils. BOEM also uses information contained in the Northeast Ocean Data Portal [4] in its decision-making, among other sources of information, because the portal includes maps of marine life, habitat areas, cultural resources, transportation links, fishing areas, and other human uses that must be considered when offshore energy or other infrastructure projects are proposed.

In 2019, BOEM received a letter from Governor Sununu of New Hampshire, requesting the establishment of an intergovernmental offshore wind renewable energy task force for the State. Given the regional interest in offshore wind energy development, BOEM decided to establish the Gulf of Maine Intergovernmental Renewable Energy Task Force (''Task Force''), which comprises Federal officials and elected Tribal, State, and local officials (or their designated employees with authority to act on their behalf) from Maine, New Hampshire, and Massachusetts. Two Task Force meetings have been held to date: on December 12, 2019, and May 19, 2022. Materials from the Task Force meetings are available on the BOEM website at: *https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine.*

4. BOEM's Planning and Leasing Process

a. Determination of Competitive Interest

Subsection 8(p)(3) of OCSLA states that ''the Secretary shall issue a lease, easement, or right-of-way . . . on a competitive basis unless the Secretary determines after public notice of a proposed lease, easement, or right-of-way that there is no competitive interest.''

If BOEM determines that competitive interest exists in acquiring a lease to develop offshore wind energy and the areas within the Call area are appropriate to lease, BOEM may hold one or more competitive lease sales for those areas. If BOEM holds a lease sale, all qualified bidders, including bidders that did not submit a nomination in response to this Call, will be able to participate in the lease sale.

BOEM reserves the right to refrain from offering for lease any areas that are nominated as a result of this Call and to modify nominated areas before offering them for lease.

b. Competitive Leasing Process

BOEM will follow the remaining steps required by 30 CFR 585.211 through 585.225 if it decides to proceed with the competitive leasing process after analyzing the responses to this Call. Those steps are:

(1) *Area Identification:* Based on all the information received, including information in response to this Call, BOEM will identify areas for environmental analysis and consideration for leasing. Those areas will constitute wind energy areas (WEAs) and will be subject to environmental analysis in consultation with appropriate Federal agencies, federally recognized Tribes, State and local governments, and other interested parties. Before finalizing the WEAs, BOEM has committed to publishing draft WEAs and will hold a 30-day comment period with a docket on *Regulations.gov*.

(2) *Proposed Sale Notice (PSN):* If BOEM decides to proceed with a competitive lease sale within the WEAs, BOEM will publish a PSN in the **Federal Register** with a comment period of 60 days. The PSN will describe the areas BOEM intends to offer for leasing, the proposed conditions of a lease sale, the proposed auction format of the lease sale, and the lease instrument, including proposed lease addenda. Additionally, the PSN will describe the criteria and process for evaluating bids in the lease sale.

(3) *Final Sale Notice (FSN):* After considering the comments on the PSN and completing its environmental analysis and consultations, if BOEM decides to proceed with a competitive lease sale, it will publish an FSN in the **Federal Register** at least 30 days before the date of the lease sale.

(4) *Bid Submission and Evaluation:* Following publication of the FSN in the **Federal Register**, BOEM will offer the lease areas through a competitive sale process, using procedures specified in the FSN. BOEM will review the sale, including bids and bid deposits, for technical and legal adequacy. BOEM will ensure that bidders have complied with all applicable regulations. BOEM reserves the right to reject any and all bids and to withdraw an offer to lease an area, even after bids have been submitted.

(5) *Issuance of a Lease:* Following identification of the winning bidder on a lease area, BOEM will notify that bidder and provide the lease documents for signature.

5. Development of the Call Area

Following the RFI comment period, which closed on October 3, 2022, BOEM analyzed all submissions and identified recurring themes around recommended areas for removal from leasing consideration, areas of significant concern, and key datasets. This analysis, conducted in partnership with the NOAA National Centers for Coastal Ocean Science (NCCOS), resulted in the boundaries of a draft Call area (see section 5.a for more information on the BOEM/NCCOS partnership). The draft Call area was posted on BOEM's website on January 10, 2023, and was the subject of a series of in-person and virtual information exchanges throughout January and February 2023. During the information exchanges, BOEM solicited

[1] 74 FR 19638 (April 29, 2009).

[2] 76 FR 64432 (October 18, 2011).

[3] 88 FR 6376 (January 31, 2023).

[4] The Northeast Ocean Data Portal (maintained by the Northeast Regional Ocean Council *https://www.northeastoceandata.org/*) draws upon data from the *MarineCadastre.gov* national data portal, which was developed through a partnership between NOAA and BOEM. *MarineCadastre.gov* is an integrated marine information system that provides data, tools, and technical support for ocean and Great Lakes planning, designed specifically to support renewable energy siting on the OCS, but also used for other ocean-related efforts and recognized by regional ocean governance groups as the central place for authoritative Federal ocean data, metadata, and map services.

feedback on the draft Call area and the proposed approach for the eventual identification of WEAs.

These information exchanges varied in approach, with in-person meetings intended for a broad audience, and virtual meetings focused on specific ocean users and resource concerns (*e.g.,* shipping and maritime transportation, commercial and recreational fisheries, environment, and wildlife). To see draft Call area meeting dates and materials, visit: *https://www.boem.gov/renewable-energy/state-activities/gulf-maine-draft-call-area-engagement-meetings.* BOEM also engaged in discussions with several Federal agencies and Tribal and State governments before deciding upon the Call area boundaries.

Responses to the Call will assist BOEM in identifying portions of the OCS that require further analysis. That analysis includes comparing commercial nominations with public comments submitted in response to this Call so that potential use conflicts can be analyzed before WEAs are designated (area identification). BOEM's analysis during area identification will further evaluate the appropriateness of the Call area for offshore wind energy development, balanced with potential ocean user conflicts. BOEM will consider information from environmental reviews, consultations, public comments, and continued coordination with the Task Force. Consequently, BOEM anticipates designating specific WEAs within the Call area and developing lease terms and conditions to mitigate any possible adverse impacts from leasing and site assessment activities.

a. BOEM/NCCOS Partnership

In September 2022, BOEM announced enhancements to its area identification process. These changes included a commitment to using the best available science and modeling approaches, including a partnership with NCCOS to employ a spatial model that analyzes entire marine ecosystems to identify the best areas for wind energy sites. NCCOS and BOEM are leveraging a team of expert spatial planners, marine and fisheries scientists, project coordinators, environmental policy analysts, and other subject matter experts to develop the Gulf of Maine Offshore Wind Suitability Model (suitability model). The team conducted initial spatial analyses of the RFI area, relying largely on RFI comments, to remove areas from the draft Call area boundaries. BOEM and NCCOS intend to use the same methods previously applied to offshore wind energy siting efforts in the Gulf of Mexico and Central Atlantic to inform Gulf of Maine draft WEAs. NCCOS's spatial modeling approach provides a powerful tool for identifying areas that are most suitable for offshore wind energy development. Additionally, BOEM intends for this partnership and modeling approach to enhance transparency, improve engagement, and provide a consistent, reproducible methodology for understanding and deconflicting ocean space.

b. Coordination With DOD

The DOD has conducted a preliminary assessment of compatibility between offshore wind energy development and DOD activities in the Gulf of Maine. At the May 2022 task force meeting, the Military Aviation and Installation Assurance Siting Clearinghouse (''DOD Clearinghouse'') [5] identified several concerns that will need to be evaluated further as BOEM advances in its planning process and refines possible WEAs. DOD operations and missions that potentially may be affected and will require additional analysis include:

- North American Aerospace Defense Command long-range radar;
- U.S. Navy sea trials of Arleigh Burke-class destroyers conducted in the vicinity of Bath, ME;
- Naval Computer and Telecommunications Area Master Station Atlantic: Detachment Cutler operations;
- Special Use Airspace Warning Area W–103: Air National Guard training area.

The DOD Clearinghouse prefers that BOEM avoid the entirety of W–103 but recognizes that a number of ocean use considerations exist in the area. The DOD Clearinghouse is willing to take a closer look at potential compatibility with offshore wind energy development should BOEM identify areas within W–103 in a later phase of the planning process.

BOEM may refine portions of the Call area during the area identification process should DOD issue an updated compatibility assessment between its activities and commercial offshore wind energy development. DOD assessments typically identify wind energy exclusion areas and areas that may require site-specific conditions and stipulations to ensure offshore wind energy facilities are compatible with DOD activities. These stipulations may include, among others: hold and save harmless agreements; mandatory coordination with DOD on specified activities; restrictions on electromagnetic emissions; and evacuation procedures from the lease area for safety reasons when notified by the DOD. BOEM may remove from leasing consideration any OCS blocks identified as incompatible with DOD's activities in the updated assessment.

c. Coordination With USCG

On April 6, 2023, USCG published notice of a final report titled ''Port Access Route Study: Approaches to Maine, New Hampshire, Massachusetts'' (MNMPARS) (USCG–2022–0047–0062) in the **Federal Register**.[6] BOEM is aware of potential conflicts with the recommended fairways published in the MNMPARS. BOEM is working closely with USCG to ensure WEAs and fairways are deconflicted during area identification and subsequent phases of the leasing process.

6. Description of Call Area

To determine the boundaries of the Call area, BOEM analyzed comments received in response to the RFI.[7] Through this analysis, BOEM identified key themes and focused on areas where a considerable number of comments and supporting information pointed to: a) overlapping conflicts and b) recommendations for area exclusions where established boundaries protect against existing ocean activities (*e.g.,* habitat management areas). NCCOS supported this effort and analysis through the development of a ''constraints model.'' This model incorporated RFI comment recommendations and spatial data referenced in BOEM's Gulf of Maine Data Inventory (released with the RFI in August 2022 and available on BOEM's website: *https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine*). Areas considered as constraints and removed from the Call area include (note: several of these areas overlapped with one another):

- Areas within 20 nautical miles (nm) of the coastline (not including islands)
- Groundfish closure areas
- Closed Area I North
- Gulf of Maine cod spawning protection area
- Habitat management areas
- Coral protection areas
- Traffic separation schemes (2 nm setback from the sides; 5 nm setback from the entry and exit)
- Jeffreys Ledge (depths shallower than 120 meters)

[5] For more on the DOD Clearinghouse's authority and mission, visit: *https://www.acq.osd.mil/dodsc/about/index.html.*

[6] 88 FR 20547 (April 6, 2023).

[7] 87 FR 51129 (August 19, 2022).

- Jordan Basin Dedicated Habitat Research Area
- Areas identified as ''critical'' and ''high'' impact zones for next generation and terminal doppler weather radar systems (0–35 kilometers from radar installations identified by NOAA National Weather Service)
- Environmental Protection Agency designated ocean disposal sites
- Environmental sensors and buoys identified by NOAA's Marine Environmental Buoy Database
- Liquid natural gas installations and pipelines

In addition to the constraint areas listed above, BOEM removed from the Call area an OCS maritime area claimed by both Canada and the United States that was previously included in the RFI. BOEM determined, in consultation with the U.S. Department of State, that consideration of leasing in this area of territorial dispute, otherwise referred to as ''the Gray Zone'' in the vicinity of Machias Seal Island and North Rock, would negatively affect the prospects for resolution of this maritime dispute as well as the underlying territorial dispute regarding Machias Seal Island and North Rock. BOEM and the U.S. Department of State are coordinating closely with the Government of Canada, including Natural Resources Canada, Canada Energy Regulator, the Canada-Nova Scotia Offshore Petroleum Board, and the Canada Newfoundland Labrador Offshore Petroleum Board. BOEM welcomes Canadian feedback on all elements of this Call.

BOEM also took action to refine the southern boundary of the draft Call area. As explained in the RFI development framework (available here: *https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Gulf%20of%20Maine%20RFI%20Development%20Framework_05092022.pdf*), BOEM intended to establish the southern boundary of the draft Call area so that the area included only the physiographic, oceanographic, and biotic variables that together uniquely define the Gulf of Maine. The goal of this approach was avoiding Georges Bank. Comments on the RFI and feedback provided during the draft Call area information exchanges suggested that portions of Georges Bank remained in the draft Call area and should be removed. Given that was BOEM's goal, BOEM is following a recommendation of the New England Fishery Management Council to remove from the Call area those areas that intersect with the 140-meter line of bathymetry to avoid Georges Bank. (BOEM derived the 140-meter contour line from the NOAA coastal relief bathymetry raster model, available here: *https://www.ncei.noaa.gov/products/coastal-relief-model.*)

The Call Area exclusions detailed above resulted in an approximately 29 percent reduction in comparison to the RFI Area. The Call Area consists of 9,804,429 acres located off the coasts of Massachusetts, New Hampshire, and Maine (see Figure 1). The map depicting the Call Area, and a spreadsheet listing its specific OCS blocks are available for download on the BOEM website at *https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine.*

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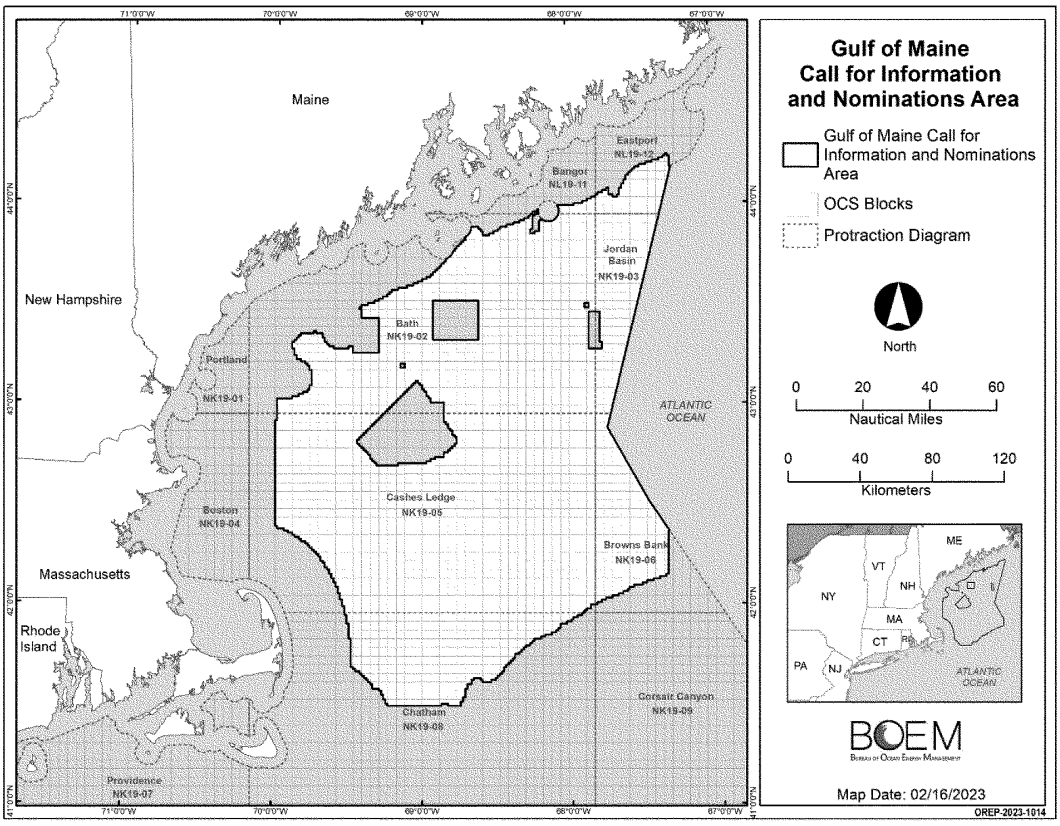

Figure 1: Gulf of Maine Call for Information and Nominations Area

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BOEM recognizes that the Call area still includes areas that are conflicted by existing ocean uses (*e.g.,* fishing, shipping) and by sensitive habitat that are important to the conservation and recovery of protected species. BOEM requests additional information on these areas through this notice and will use the NCCOS model to assist in the identification of areas suitable for WEAs through the next phase of the planning process.

7. Requested Information From Interested or Affected Parties

BOEM requests comments regarding the following features, activities, mitigations, or concerns within or around the Call area. Commenters should be as specific and detailed as possible to help BOEM understand and address the comments. Where applicable, spatial information should be submitted in a format compatible with ESRI ArcGIS (ESRI shapefile or ESRI file geodatabase) in the NAD 83 geographic coordinate system.

a. BOEM and NCCOS Suitability Modeling

i. In partnership with NCCOS (described in section 5.a), BOEM published a list of the datasets it plans to use to inform the WEA suitability model. The datasets are available at *https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine.* BOEM requests comments on the identified datasets and information responsive to the following questions: Are these data the best available? Do the data reflect the most relevant and important time series and ranges? Are there any known gaps or limitations in the data?

ii. Transmission—BOEM requests recommendations on data to inform suitability modeling for areas between the Call area and the coastline. This work would build upon the data and approach used in the WEA site suitability model. Working with our partners in Tribal, State, and local governments will be essential for procuring available data and identifying data gaps.

b. Call Area: Areas Requiring Further Analysis

Through the draft Call area information exchange meetings in January 2023, BOEM identified several areas that have not been removed and require further analysis. This list reflects areas that BOEM heard about most frequently during meetings and through feedback, but is not exhaustive. BOEM currently plans to include all these areas in the WEA suitability model (described in section 5.a), which could result in a finding that they have low or high suitability for offshore wind. However, BOEM asks for additional information on the specific areas listed below to inform whether alternative action may be necessary (*e.g.,* removing or constraining the areas prior to running the suitability model). Specifically, BOEM seeks data and science-based justifications for how boundaries and any buffers or setbacks should be determined for these areas (in the cases where none presently exist), as well as information regarding whether or not any effects from floating offshore wind could be mitigable.

i. Atlantic Large Whale Take Reduction Plan (ALWTRP) Restricted Areas

ALWTRP restricted areas place seasonal restrictions on commercial lobster and crab trap and pot fisheries to reduce serious injuries and mortalities to North Atlantic right whales, humpback, and fin whales.

ii. Platts Bank

Several commentors identified Platts Bank as a sensitive area with complex habitat that supports numerous productive commercial fisheries.

iii. Georges Bank

As described in section 6, BOEM removed areas from the southern edge of the Call area along the 140-meter line of bathymetry to avoid Georges Bank. However, BOEM recognizes that the boundary between the Gulf of Maine and Georges Bank is a sensitive habitat area, contributing to oceanic processes such as upwelling, while also supporting important fisheries, such as scalloping grounds.

iv. Lobster Management Area (LMA) 1

Several commentors recommended BOEM avoid leasing in LMA 1 due to the high density of lobster fishing activity and importance of this fishery to coastal economies and cultural heritage. BOEM removed from the Call area portions of LMA 1, though some overlap remains.

c. In addition to the areas listed in section 7.b above, BOEM seeks information about potentially conflicting uses of the Call area, including, but not limited to:

i. Recreational and commercial fishery use of the Call area, including the types of fishing gear used and the potential compatibility (if any) of those gear types with floating offshore wind installations. Please include any recommendations for reducing current use conflicts and how to treat any anticipated redistribution of targeted species (and their habitat and prey) as a result of climate change.

ii. Habitat areas that may require special attention during siting and construction.

iii. Areas that are of particular importance to protected species, as well as recommendations on how to treat any anticipated redistribution of these species (and their habitat and prey) as a result of climate change.

iv. Known archaeological and cultural resource sites.

d. Information regarding the identification of historic properties or potential effects to historic properties from leasing, site assessment activities (including the construction of meteorological towers or the installation of meteorological buoys), or commercial wind energy development in the Call area. This includes potential offshore archaeological sites or other historic properties within the areas described in this notice and onshore historic properties that could potentially be affected by renewable energy activities within the Call area. This information will inform BOEM's review of future undertakings conducted pursuant to section 106 of the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA).

e. Information relating to visual resources and aesthetics, key observation points, the potential impacts of wind turbines and associated infrastructure to those resources, and potential strategies to help minimize or mitigate any visual effects.

f. Information regarding the potential for interference with radar systems covering the Call area, including, but not limited to, the use of surface and airborne radar systems for offshore search and rescue operations and for environmental monitoring.

g. Information on the constraints and advantages of possible electrical cable transmission routes, including onshore landing and interconnection points for cables connecting offshore wind energy facilities to the onshore electrical grid; information regarding future demand for electricity in the region.

h. BOEM is continuing to take a planned approach to transmission, including potentially requiring the use of shared infrastructure for interconnection, where appropriate. BOEM requests expressions of general interest by developers in constructing a backbone transmission system, or other shared infrastructure methods that would transport electricity generated by wind projects in the Call area to the onshore grid. Comments should include a general description of the transmission

system's proposed path, capacity, technologies proposed, and potential interconnection points. Feedback may also include comment from potential lessees on ways to better incentivize use of shared infrastructure for transmission.

i. Information regarding the size and number of WEAs, taking into consideration the offshore wind energy goals of States surrounding the Call area. BOEM requests further information on what additional factors should be considered in determining the size and number of WEAs, including factors specifically related to the deployment of floating wind turbine technology.

j. Information regarding spatial data on lobster fishery effort and revenue for LMAs 1 and 3. BOEM recognizes that there is a general deficiency in lobster data within the Gulf of Maine and seeks recommendations on best available data. BOEM also requests information regarding the timeline for the availability of new data that will be collected as a result of recent changes in monitoring and reporting requirements.

k. Information regarding potential auction formats that BOEM may consider as part of the leasing process. In particular, BOEM is interested in feedback regarding the use of bidding credits as a part of a multi-factor auction. In determining the winning bidder, how should BOEM consider factors such as supply chain investments, workforce training commitments, commitments to connect to a regional or inter-regional transmission solution, nature-inclusive design, and compensatory mitigation to fisheries potentially impacted by wind energy development in the Call area? Are there other factors BOEM should consider in a multi-factor auction?

l. Are there impact considerations BOEM should be aware of between the different floating wind turbine foundation, mooring, and anchor technologies as they relate to the Gulf of Maine? BOEM is also interested in information regarding foundation type impacts on potential port infrastructure opportunities and operations and on maintenance practices, specifically when considering greater transmission distance and deeper water depth.

m. Feedback on possible offshore wind farm configurations. It is not currently clear what avoidance buffers or distance requirements may be proposed for floating wind turbines, mooring lines, and dynamic cables. The 1×1 nm grid developed for fixed foundation wind farms proposed on the OCS offshore Rhode Island and Massachusetts may not be the most suitable layout for floating wind farms. Thus, considerations for the spacing and possible clustering of turbine arrays to allow for navigation and fishing access near and through floating wind farms must be considered.

n. Information related to Tribal Nations in the Gulf of Maine and interactions with potential offshore wind energy facilities, such as potential impacts to Tribal cultural practices; lands; treaty rights; resources; ancestral lands; sacred sites, including sites that are submerged; and access to traditional areas of cultural or religious importance on federally managed lands and waters; and the ability of a Tribe to govern or provide services to its members.

o. Socioeconomic information for communities potentially affected by wind energy leasing in the Call area, including community profiles, vulnerability and resiliency data, and information on environmental justice communities. BOEM also solicits comments on how best to meaningfully engage with these communities.

p. Information on coastal or onshore activities needed to support offshore wind development, such as port and transmission infrastructure, and associated potential impacts to recreation, scenic, cultural, historic, and natural resources relating to those activities.

q. Any other relevant information that you think BOEM should consider during its planning and decision-making process for the purpose of identifying areas to lease within the Call area.

8. Required Nomination Information

BOEM published the indications of competitive interest for a wind energy lease received in response to the RFI on its website, including both a heatmap of all the indications of competitive interest and maps identifying areas of interest by individual company. BOEM has received information that its practice of publishing the areas nominated by each qualified company in response to a Call may disincentivize entities from submitting nominations. Nominations and the accompanying rationale are extremely useful to help BOEM understand and model the commercial viability of portions of the OCS. Therefore, BOEM will not publish individual maps of each company's nominations received in response to this Call. We will publish a heatmap that shows an aggregated view of all the nominations and a list of the qualified companies that submitted nominations. Where applicable, spatial information should be submitted in a format compatible with ESRI ArcGIS (ESRI shapefile or ESRI file geodatabase) in the NAD 83 geographic coordinate system.

If you wish to nominate one or more areas for a commercial wind energy lease within the Call area, you must provide the following information for each nomination:

(a) The BOEM protraction name, number, and the specific whole or partial OCS blocks within the Call area that you are interested in leasing. If your nomination includes one or more partial blocks, please describe those partial blocks in terms of sixteenths (*i.e.,* sub-block) of an OCS block. Each area you nominate should be sized appropriately to accommodate the development of a reasonable wind energy facility (*e.g.,* a facility with the generation capacity of up to 1,500 megawatts). For context, BOEM would consider the nomination of an area containing 150,000 acres appropriate to support a generation capacity of up to 1,500 megawatts (assuming a conservative power density of 0.01 megawatts per acre). Nominations that considerably exceed the acreage needed to support a generation capacity of up to 1,500 megawatts, such as a nomination for the entire Call area, may be deemed unreasonable and not accepted by BOEM.

(b) A rationale describing why the areas nominated were selected. The more detailed the rationale provided, the more informative it will be to BOEM's process. BOEM is particularly interested in how factors like wind speed, water depth, seafloor slope and bottom type, and interconnection points factor into the nomination process.

(c) A description of your objectives and the facilities that you would use to achieve those objectives.

(d) A preliminary schedule of proposed activities, including those leading to commercial operations.

(e) Available and pertinent data and information concerning renewable energy resources and environmental conditions in each area that you wish to lease, including energy and resource data, and other information used to evaluate the area.

(f) Documentation demonstrating that you are legally, technically, and financially qualified to hold an OCS wind energy lease, as set forth in 30 CFR 585.107–585.108. Qualification materials should be developed in accordance with the guidelines available at *https://www.boem.gov/Renewable-Energy-Qualification-Guidelines/*. For examples of documentation appropriate for demonstrating your legal qualifications and related guidance, contact Gina Best, BOEM Office of Renewable Energy

Programs, at *Gina.Best@boem.gov* or 703–787–1341.

9. Protection of Privileged, Personal, or Confidential Information

a. Freedom of Information Act

BOEM will protect privileged or confidential information that you submit when required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly label it and request that BOEM treat it as confidential. BOEM will not disclose such information if BOEM determines under 30 CFR 585.114(b) that it qualifies for exemption from disclosure under FOIA. Please label privileged or confidential information ''Contains Confidential Information'' and consider submitting such information as a separate attachment.

BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such privileged or confidential information. Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release.

b. Personally Identifiable Information

BOEM encourages you not to submit anonymous comments. Please include your name and address as part of your comment. You should be aware that your entire comment, including your name, address, and any personally identifiable information (PII) included in your comment, may be made publicly available. All submissions from identified individuals, businesses, and organizations will be available for public viewing on regulations.gov. Note that BOEM will make available for public inspection all comments, in their entirety, submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses.

For BOEM to consider withholding your PII from disclosure, you must identify any information contained in your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm. Even if BOEM withholds your information in the context of this rulemaking, your submission is subject to FOIA and, if your submission is requested under the FOIA, your information will only be withheld if a determination is made that one of the FOIA's exemptions to disclosure applies. Such a determination will be made in accordance with the Department's FOIA regulations and applicable law.

c. Section 304 of the NHPA (54 U.S.C. 307103(a))

After consultation with the Secretary, BOEM is required to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities should designate information that falls under section 304 of NHPA as confidential.

10. BOEM's Environmental Review Process

Before deciding whether leases may be issued, BOEM will prepare an environmental assessment (EA) under NEPA (including public comment periods to determine the scope of the EA and to review and comment on the draft EA). The EA will analyze anticipated impacts from leasing and site characterization and assessment activities that BOEM may approve after a lease is issued. Site characterization activities include geophysical, geotechnical, archaeological, and biological surveys; site assessment activities include installation and operation of meteorological buoys. BOEM also will conduct appropriate consultations with Federal agencies and Tribal, State, and local governments during the EA. These consultations include, but are not limited to, those required by the Coastal Zone Management Act, the Magnuson-Stevens Fishery Conservation and Management Act, Endangered Species Act, section 106 of the NHPA, and Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.''

Before BOEM may allow the construction of a wind energy project in the Call area, a construction and operations plan (COP) needs to be submitted and approved by BOEM. Prior to the approval of a COP, BOEM will need to consider the potential environmental effects of the construction and operation of any wind energy facility under a separate, project-specific NEPA analysis. This analysis will include additional opportunities for public involvement and may result in the publication of an environmental impact statement.

Elizabeth Klein,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2023–08670 Filed 4–25–23; 8:45 am]

BILLING CODE 4340–98–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1351]

Certain Active Matrix Organic Light-Emitting Diode Display Panels and Modules for Mobile Devices, and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Granting Complainant Samsung Display Co., Ltd.'s Motion for Leave To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 8) granting a motion of complainant Samsung Display Co., Ltd. (''Samsung Display'') for leave to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Paul Lall, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2043. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (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 *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: On February 3, 2023, the Commission instituted this investigation based on a complaint filed by Samsung Display of the Republic of Korea. 88 FR 7463–64 (Feb. 3, 2023). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 based upon the importation into the United States, the sale for importation,

or sale within the United States after importation of certain active matrix organic light-emitting diode display panels and modules for mobile devices, and components thereof by reason of the infringement of certain claims of U.S. Patent Nos. 9,818,803; 10,854,683; 7,414,599; and 9,330,593. *Id.* The Commission's notice of investigation named the following respondents: Apt-Ability LLC d/b/a MobileSentrix of Chantilly, VA (''Apt-Ability''); Mobile Defenders, LLC of Caledonia, MI (''Mobile Defenders''); DFW Imports LLC d/b/a DFW Cellphone and Parts of Dallas, TX (''DFW Imports''); Electronics Universe, Inc. d/b/a *Fixez.com* of Las Vegas, NV and Electronics Universe, Inc. d/b/a Repairs Universe, Inc. of Las Vegas, NV (''Electronics Universe''); eTech Parts Plus LLC of Southlake, TX (''eTech Parts Plus''); Gadgetfix Corp. of Irvine, CA (''Gadgetfix''); Injured Gadgets, LLC of Norcross, GA (''Injured Gadgets''); LCTech International Inc. d/b/a *SEGMobile.com* of City of Industry, CA (''LCTech International''); Parts4Cells Inc. of Houston, TX (''Parts4Cells''); Phone LCD Parts LLC of Wayne, NJ; Parts4LCD of Wayne, NJ; Wholesale Gadget Parts, Inc. of Bixby, OK (''Wholesale Gadget Parts''); Group Vertical, LLC of Grand Rapids, MI; Sourcely Plus, LLC of Tempe, AZ; Captain Mobile Parts, Inc. of Dallas, TX; and Mengtor Inc. of El Monte, CA. *Id.* The Office of Unfair Import Investigations (''OUII'' or ''Staff'') was also named as a party in this investigation. *Id.*

On March 15, 2023, the presiding ALJ granted Mianyang BOE Optoelectronics Technology Co., Ltd.'s (''Mianyang BOE'') unopposed motion to intervene as a respondent in this investigation and accorded Mianyang BOE respondent status. (Order No. 7) (Mar. 15, 2023) *unreviewed by,* Comm'n Notice (Mar. 22, 2023).

On March 10, 2023, Samsung Display moved for leave to amend the complaint and notice of investigation to add allegations of infringement related to claims 1–6, 10, 12, 17, 19, 21–23, 40–47, and 51–52 of U.S. Patent No. 11,594,578 (''the '578 patent''). ID at 1. In its motion, Samsung argued that the '578 patent recently issued and ''is a continuation of two other patents (U.S. Patent Nos. 9,818,803 ('the '803 patent') and 10,854,683 ('the '683 patent')) asserted in this investigation.'' *Id.* at 2. Samsung further claimed that it worked ''diligently to prepare the instant motion'' and that respondents ''will not be prejudiced as the investigation is 'in its early stages' and 'no new technologies or products will be implicated by addition of the '578 Patent.' '' *Id.* at 2.

On March 22, 2023, respondents Apt-Ability, Mobile Defenders, DFW Imports, Electronics Universe, eTech Parts Plus, Gadgetfix, Injured Gadgets, LCTech International, Parts4Cells, Phone LCD Parts LLC d/b/a Parts4LCD (together, ''Phone LCD Parts''), and Wholesale Gadget Parts (collectively, the ''Participating Respondents'') filed a response opposing the motion. *Id.* at 1. They argued that ''the '578 patent was allowed on December 23, 2022, almost three months ago, and before Samsung Display filed its complaint.'' *Id.* at 2. They also claimed that '' 'forcing [them] to defend against twenty-five additional claims would be burdensome and prejudicial.' '' *Id.* at 3 (brackets in ID). They asked that if the motion is granted, the procedural schedule should be extended ''to mitigate any prejudice.'' *Id.*

Also on March 22, 2023, Staff filed a response in support of Samsung Display's motion. *See id.* at 2–3. The Staff argued that adding the '578 patent is in the public interest '' 'because doing so would allow for the efficient adjudication of all three patents.' '' However, the Staff requested that ''the parties be permitted to submit a joint proposal regarding a revised procedural schedule'' to avoid any prejudice to respondents. *See id.* at 3.

''Respondent [Mianyang BOE] filed a notice of joinder as to the Participating Respondents' opposition on March 23, 2023.'' *Id.* at 1–2.

On March 28, 2023, the ALJ issued the subject ID (Order No. 8), granting Samsung Display's motion. The ID finds that Samsung Display had established good cause for the proposed amendment pursuant to Commission Rule 210.14(b) (19 CFR 210.14(b)). As the ID explains, ''[w]hile the '578 patent was allowed in December, it formally issued on February 28, 2023. . . . Samsung Display could therefore not have asserted the '578 patent at the time it filed its complaint or prior to institution of this investigation.'' *Id.* at 4. The ID also states that ''the '578 patent is a continuation of the '683 patent, which itself is a continuation of the '803 patent.'' *Id.* The ID notes that all three patents are '' 'in the same family, name the same inventor, and share the same written description,' and '[t]he products accused of infringing the '578 Patent are the same as those accused of infringing the '803 and '683 Patents.' '' *Id.* (brackets in ID). However, the ID determines that ''to avoid prejudicing the Participating Respondents (and Staff), an extension of the procedural schedule is warranted.'' *Id.* at 5.

No party filed a petition for review of the subject ID.

The Commission has determined not to review the subject ID. Pursuant to Commission Rule 210.14, the Notice of Investigation is amended to include claims 1–6, 10, 12, 17, 19, 21–23, 40–47, and 51–52 of the '578 patent.

The Commission vote for this determination took place on April 20, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 20, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–08733 Filed 4–25–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Quarterly Census of Employment and Wages Business Supplement

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Bureau of Labor Statistics (BLS)-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 agency receives on or before May 26, 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 Quarterly Census of Employment and Wages Business Supplement (QBS) is a versatile collection instrument designed to capture information on the US economy quicky and efficiently using the BLS Annual Refiling Survey as the data collection platform. The QBS collection is designed to incorporate new questionnaires as the need arises to allow BLS to collect and publish information quickly so that stakeholders and data users can understand the impact of specific events on the US economy as they occur. The initial QBS survey, the 2021 Business Response Survey, collected information on how establishments were responding to the coronavirus pandemic and was followed by the 2022 Business Response Survey that captured information on telework, hiring, and vacancies at establishments as the economy began to emerge from the pandemic. This third QBS survey, the 2023 Business Response Survey, is being conducted on behalf of the Department of Labor's Employment and Training Administration (ETA). It will collect information on employer's experiences with layoffs since the start of the coronavirus pandemic and their familiarity with state workforce programs to better understand current labor market conditions at this stage of the coronavirus pandemic recovery and inform ETA of business' familiarity with the Short-Time Compensation (STC) program and other state workforce programs. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 3, 2021 (86 FRN 8037).

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 authorization for this information collection under OMB Control Number 1220–0198. The current approval is scheduled to expire on July 31, 2024.

Agency: DOL–BLS.

Title of Collection: Quarterly Census of Employment and Wages Business Supplement.

OMB Control Number: 1220–0198.

Affected Public: Businesses or other for-profit institutions, not-for-profit institutions, and farms.

Total Estimated Number of Respondents: 80,000.

Total Estimated Number of Responses: 80,000.

Total Estimated Annual Time Burden: 8,000 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–08757 Filed 4–25–23; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Federal Transit Act Urban Program Transit Worker Protections

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Labor-Management Standards (OLMS)-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 May 26, 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) if the information will be processed and used in a timely manner; (3) 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; (4) ways to enhance the quality, utility and clarity of the information collection; and (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.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 5333(b), when Federal funds are used to acquire, improve, or operate a transit system, DOL must ensure that the recipient of those funds establishes arrangements to protect the rights of affected transit employees. Federal law requires such arrangements to be ''fair and equitable,'' and DOL must certify the arrangements before the U.S. Department of Transportation's Federal Transit Administration (FTA) can award certain funds to grantees. Pursuant to 29 CFR part 215, upon receipt of copies of applications for Federal assistance subject to 49 U.S.C. 5333(b) from the FTA, together with a request for the certification of employee protective arrangements from the Department of Labor, DOL will process those applications. This ICR contains the information collected when DOL refers for review the grant application and the proposed terms and conditions to unions representing transit employees in the service area of the project and to the applicant and/or sub-recipient. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 23, 2022 (87 FR 78998).

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–OLMS.

Title of Collection: Federal Transit Act Urban Program Transit Worker Protections.

OMB Control Number: 1245–0006.

Affected Public: State, Local, and Tribal Governments; Private Sector—Not-for-profit institutions.

Total Estimated Number of Respondents: 1,879.

Total Estimated Number of Responses: 1,879.

Total Estimated Annual Time Burden: 15,032 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: April 20, 2023.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2023–08758 Filed 4–25–23; 8:45 am]

BILLING CODE 4510–86–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Job Corps Enrollee Allotment Determination

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-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 May 26, 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) if the information will be processed and used in a timely manner; (3) 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; (4) ways to enhance the quality, utility and clarity of the information collection; and (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.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Workforce Innovation and Opportunity Act authorizes this information collection. 29 U.S.C. 3194–3195. Job Corps student enrollees who have dependents may elect to have a portion of their readjustment allowance/transition payment sent to a dependent biweekly. Form ETA 658 is used to administer these allotments. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 9, 2023 (88 FR 8476).

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–ETA.

Title of Collection: Job Corps Enrollee Allotment Determination.

OMB Control Number: 1205–0030.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 1,749.

Total Estimated Number of Responses: 1,749.

Total Estimated Annual Time Burden: 87 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D).)

Dated: April 21, 2023.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2023–08815 Filed 4–25–23; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Technical Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Technical Advisory Committee will meet on Friday, May 19, 2023. This meeting will be held virtually from 10 a.m. to 4 p.m. EST.

The Committee presents advice and makes recommendations to the Bureau of Labor Statistics (BLS) on technical aspects of data collection and the formulation of economic measures and makes recommendations on areas of research. The BLS presents issues and then draws on the expertise of Committee members representing specialized fields within the academic disciplines of economics, statistics, data science, and survey design.

The schedule and agenda for the meeting are as follows:

10 a.m. Acting Commissioner's Welcome and Review of Agency Developments

10:30 a.m. Imputation Methods for Asset and Liabilities Data in the Consumer Expenditure Interview Survey

12 p.m. Data Collection During and After the COVID–19 Pandemic

1:45 p.m. Progress on Standardizing the Task Data in ORS

3:15 p.m. New JOLTS Measures Using Existing Data

4 p.m. Approximate Conclusion

The meeting is open to the public. Any questions concerning the meeting should be directed to Sarah Dale, Bureau of Labor Statistics Technical Advisory Committee, at *BLSTAC@bls.gov.* Individuals planning to attend the meeting should register at *https://blstac.eventbrite.com.* Individuals who require special accommodations should contact Ms. Dale at least two days prior to the meeting date.

Signed at Washington, DC, this 20th day of April 2023.

Eric Molina,

Acting Chief, Division of Management Systems.

[FR Doc. 2023–08806 Filed 4–25–23; 8:45 am]

BILLING CODE 4510–24–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–136 and CP2023–138; MC2023–137 and CP2023–139]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 1, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–136 and CP2023–138; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 19 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 19, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* May 1, 2023.

2. *Docket No(s).:* MC2023–137 and CP2023–139; *Filing Title:* USPS Request to Add Priority Mail Contract 778 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 19, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Arif Hafiz; *Comments Due:* May 1, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–08728 Filed 4–25–23; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. PI2023–4; Order No. 6488]

Changes Associated With the Delivering for America Plan

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is initiating a proceeding to examine the recent and planned network changes associated with the Postal Service's Delivering for America strategic plan. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: None.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Commission establishes Docket No. PI2023–4 to examine the recent and planned network changes associated with the Postal Service's Delivering for America strategic plan.[1]

II. Background

On March 23, 2021, the Postal Service published a 10-Year Strategic Plan announcing potential changes intended to achieve financial stability and service excellence. *See* Postal Service Strategic Plan. The Plan contains 11 key strategies for achieving these goals and discusses, at a high level, various initiatives it intends to undertake in furtherance of each strategy. *Id.* at 5, 22–39. The Plan also states that the Postal Service will provide opportunities for stakeholder input and engagement, including by the Postal Service requesting advisory opinions from the Commission.[2]

Subsequently, the Postal Service filed three requests with the Commission for

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

[1] *See* United States Postal Service, Delivering for America: Our Vision and Ten-Year Plan to Achieve Financial Sustainability and Service Excellence, March 23, 2021, available at *https://about.usps.com/what/strategic-plans/delivering-for-america/assets/USPS_Delivering-For-America.pdf* (Postal Service Strategic Plan).

[2] *Id.* at 26–27, 35, 41, 52. *See* United States Postal Service, Delivering for America, Responses of the United States Postal Service to the Reporting Requirements Specified in the Postal Service Reform Act of 2022, FY 2022 3rd and 4th Quarter, December 2, 2022, at 23 n.4, available at *https://www.prc.gov/docs/124/124453/REDACTED_Final_DFA-PSRA_Section_207_Report_12.02.2022.pdf* (Postal Service DFA PSRA Responses).

advisory opinions on proposed service standard changes related to the strategic plan that involved First-Class Mail, Periodicals, First-Class Package Service, Retail Ground, and Parcel Select Ground.[3] After providing an opportunity for a formal on-the-record hearing, pursuant to 5 U.S.C. 3661(c), the Commission issued advisory opinions on the Postal Service's proposed service standard changes, analyzing the estimated impact of the proposals on the Postal Service's service performance, financial condition, operational flow, transportation network, customer satisfaction, and mail volume.[4]

Most recently, the Postal Service announced plans to create sorting and delivery centers (S&DCs).[5] The purpose of the S&DCs is to ''reduce transportation and mail handling costs'' [6] by aggregating delivery units into ''larger Sort and Delivery Centers with adequate space, docks and material handling equipment to operate more efficiently.'' [7] The daily operating function of the S&DC will be essentially the same as a destination delivery unit (DDU), ''except on a larger scale and with much greater efficiency, operational reliability and staffing flexibility.'' [8] The first S&DC opened in Athens, Georgia in November 2022.[9] Likewise, the Postal Service anticipates transforming its network through standardized Regional Processing and Distribution Centers (RPDCs) and Local Processing Centers (LPCs). *See* Postal Service DFA PSRA Responses at 9, 20.

The Commission discussed potential impacts to flats operations and costs due to the new S&DCs in its Flats Operations Study Report, largely based on information provided to stakeholders and Postal employees.[10] However, the Commission notes that stakeholders have expressed concerns regarding a lack of a forum to explore the impacts of these proposed changes.[11] The Commission previously found that an advisory opinion on the entirety of the Postal Service Strategic Plan was not warranted.[12] The instant docket is not intended as an advisory opinion process on the Postal Service Strategic Plan. However, the Commission finds it beneficial to the interest of transparency to provide a forum to learn more about these strategic plan initiatives that may have a significant impact on the postal community. Accordingly, the Commission opens this Public Inquiry to provide a forum to seek additional information about the planned S&DCs, as well as other planned initiatives associated with the Postal Service Strategic Plan.

III. Public Inquiry

The Commission establishes this proceeding to provide a forum to garner information regarding proposed changes related to the Postal Service's Strategic Plan. The Commission anticipates that it will issue information requests to gather information about the proposed changes to the network and the impact of recent changes to the postal network. Interested parties also may propose questions by filing motions seeking information requests following the procedures listed at 39 CFR part 3010.170(e).

Materials filed in this proceeding will be available for review on the Commission's website, unless the information contained therein is subject to an application for non-public treatment. The Commission's rules on non-public materials (including access to documents filed under seal) appear in 39 CFR part 3011. Additional information may be accessed via the Commission's website at *http://www.prc.gov.* Pursuant to 39 U.S.C. 505, Kenneth R. Moeller will serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. PI2023–4 to review issues related to the Postal Service's Delivering for America Strategic Plan.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller will serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

3. The Secretary shall arrange for publication of this Notice in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2023–08762 Filed 4–25–23; 8:45 am]

BILLING CODE 7710–FW–P

[3] *See* Docket No. N2021–1, United States Postal Service Request for an Advisory Opinion on Changes in the Nature of Postal Services, April 21, 2021; Docket No. N2021–2, United States Postal Service Request for an Advisory Opinion on Changes in the Nature of Postal Services, June 17, 2021; Docket No. N2022–1, United States Postal Service's Request for an Advisory Opinion on Changes in the Nature of Postal Services, March 21, 2022.

[4] Docket No. N2021–1, Advisory Opinion on Service Changes Associated with First-Class Mail and Periodicals, July 20, 2021, at 2; Docket No. N2021–2, Advisory Opinion on the Service Standard Changes Associated with First-Class Package Service, September 29, 2021, at 3; Docket No. N2022–1, Advisory Opinion on the Service Standard Changes Associated with Retail Ground and Parcel Select Ground, June 9, 2022, at 2.

[5] *See* United States Postal Service, *Video and Transcript of Postmaster General Louis DeJoy's Keynote Address During the 2022 National Postal Forum,* May 18, 2022, available at *https://about.usps.com/newsroom/national-releases/2022/0518-video-and-transcript-of-pmg-louis-dejoys-keynote-address-during-2022-national-postal-forum.htm.*

[6] *See* United States Postal Service, Letter to Edmund A. Carley, National President, United Postmasters and Managers of America from James Lloyd, Director, Labor Relations Policies and Programs, July 29, 2022, available at *https://www.unitedpma.org/docs/default-source/default-document-library/resources/notification-0729202246b67af2-353b-48a5-9ca8-87cf43e95d81.pdf?sfvrsn=6055688d_3.*

[7] *See* United States Postal Service, *The Eagle Magazine,* Volume 1, Issue 4, July 2022, at 11, available at *https://about.usps.com/resources/eaglemag/em20220802.pdf.*

[8] *See* United States Postal Service, *The Eagle Magazine,* Volume 2, Issue 2, Feb. 2023, at 11, available at *https://about.usps.com/resources/eaglemag/em20230131.pdf.*

[9] *See* KBTX 3 News, *Proposed USPS sorting & delivery plan could impact mail delivery across the region,* Jan. 23, 2023, available at *https://www.kbtx.com/2023/01/24/proposed-usps-sorting-delivery-plan-could-impact-mail-delivery-across-region/.*

[10] *See* Docket No. SS2022–1, Flats Operations Study Report, April 6, 2023, at 198–99.

[11] *See, e.g.,* Steve Hutkins, *The S&DC rollout rolls on: Implementation & Impacts of Delivery Network Transformation,* Save the Post Office, Jan. 26, 2023, available at *https://www.savethepostoffice.com/sdc-rollout-rolls-on-implementation-impacts-of-delivery-network-transformation* (''Some details about the plan have been revealed over the past several months, but the Postal Service has, for the most part, been reluctant to share much with stakeholders and the public.''); Bill McAllister, *USPS outlines plans for new sorting and delivery centers,* LINN's Stamp News, Sep. 6, 2022, available at *https://www.linns.com/news/us-stamps-postal-history/usps-outlines-plans-for-new-sorting-and-delivery-centers* (''Postal officials have disclosed few specifics about DeJoy's plans . . .'').

[12] *See* Docket No. C2022–1, Order Granting Motion to Dismiss Complaint, December 17, 2021 (Order No. 6067).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34892; 812–15428]

Two Roads Shared Trust and Hypatia Capital Management LLC

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 (''Act'') for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and sections 6–

07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements'').

SUMMARY OF APPLICATION: The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with subadvisers without shareholder approval and would grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisers.

APPLICANTS: Two Roads Shared Trust and Hypatia Capital Management LLC.

FILING DATES: The application was filed on January 24, 2023 and amendments on March 21, 2023 and April 14, 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 May 15, 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: Stacy H. Louizos, *stacy.louizos@blankrome.com* and Timothy Burdick, *tburdick@ultimusfundsolutions.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' amended and restated application, dated April 14, 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.

Dated: April 20, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08754 Filed 4–25–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97341; File No. SR–IEX–2023–05]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow Non-Displayed Discretionary Limit Orders To Be Submitted With a Minimum Quantity Instruction

April 20, 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 April 7, 2023, the Investors Exchange LLC (''IEX'' or the ''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

Pursuant to the provisions of 19(b)(1) under the Act,[3] and Rule 19b–4 thereunder,[4] IEX is filing with the Commission a proposal to allow non-displayed Discretionary Limit orders to be submitted with a minimum quantity instruction. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[5]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] 17 CFR 240.19b–4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in s A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule filing is to amend IEX Rule 11.190(b)(7) to offer Members [6] the option of including a Minimum Quantity (''MQTY'') [7] instruction on a non-displayed [8] Discretionary Limit (''D-Limit'') order. As proposed, a non-displayed D-Limit MQTY order would function exactly like any other MQTY order at IEX.

Background

Since the approval of its exchange application, IEX, like other equities exchanges,[9] has offered Members [10] the option of including a MQTY instruction on a non-displayed order. IEX's rulebook defines a MQTY order as a non-displayed, non-routable order that enables a Member to specify an ''effective minimum quantity'', which is the minimum share amount at which the order will execute.[11] A MQTY order will not execute unless the volume of contra-side liquidity available to execute against the order meets or exceeds the effective minimum quantity.

IEX understands that some market participants use MQTY orders as part of a trading strategy designed to limit the price impact on a security when passively executing larger orders. In other words, MQTY orders are often used to reduce the likelihood of a larger resting order interacting with small orders entered by professional traders,

[6] *See* IEX Rule 1.160(s).

[7] *See* IEX Rule 11.190(b)(11).

[8] *See* IEX Rule 11.190(b)(3).

[9] *See, e.g.,* Cboe BZX Exchange, Inc. Rule 11.9(c)(5); MEMX, LLC Rule 11.6(f); The Nasdaq Stock Market LLC Rule 4703(e); and New York Stock Exchange LLC Rule 7.31(i)(3).

[10] *See* IEX Rule 1.160(s).

[11] *See* IEX Rule 11.190(b)(11).

possibly adversely impacting the execution of their larger order. For example, professional traders may use small pinging orders to detect the presence of a large resting order and then use that information to cause the quotes in that security to widen or skew in a manner that adversely impacts the price that the resting order can trade at. The Commission has long recognized this concern:

> Another type of implicit transaction cost reflected in the price of a security is short-term price volatility caused by temporary imbalances in trading interest. For example, a significant implicit cost for large investors (who often represent the consolidated investments of many individuals) is the price impact that their large trades can have on the market. Indeed, disclosure of these large orders can reduce the likelihood of their being filled.'' [12]

A MQTY order resting on the IEX Order Book [13] will only execute with a willing [14] contra-side order that satisfies the resting order's effective minimum quantity. For active orders,[15] IEX offers Members three options for how a MQTY order will determine satisfaction of its effective limit quantity parameter: Composite; Minimum Execution Size with Cancel Remaining (''MinExec Cancel Remaining''); and Minimum Execution Size with All or None Remaining (''MinExec AON Remaining'').[16] When an active MQTY order is marked Composite, it will execute against all willing contra-side resting orders of any size, provided that the aggregate execution size is equal to or greater than the active order's effective minimum quantity. When an active MQTY order is marked either MinExec Cancel Remaining or MinExec AON Remaining, it will execute against each willing contra-side resting order in priority, provided that each individual execution size meets the active order's effective minimum quantity and satisfies the MQTY order's time-in-force (''TIF'') terms.[17] Upon reaching a resting order that would trade with the active MQTY order based on its price, but does not satisfy its effective minimum quantity, the active MQTY order will post to the Order Book or cancel back to the User as per the order's TIF and MQTY terms. For example, if the active MQTY order has a TIF of IOC or is designated as MinExec Cancel Remaining, then any unexecuted shares will cancel back to the Member. But if the active MQTY order is designated as MinExec AON Remaining and has a TIF of DAY, GTX, SYS, or GTT, then any unexecuted shares will post to the Order Book. If the remaining size of a MQTY order designated as MinExec AON Remaining is smaller than the effective minimum quantity of the order, the effective minimum quantity of the order will change to equal the number of shares remaining.

In October 2020,[18] IEX introduced a new type of limit order, the D-Limit order,[19] which is designed to help protect liquidity providers from potential adverse selection during periods of quote instability in a fair and nondiscriminatory manner.[20] A D-Limit order may be a displayed or non-displayed limit order that upon entry and when posting to the Order Book is priced to be equal to and ranked at the order's limit price, but will be adjusted to a less-aggressive price during periods of quote instability, as defined in IEX Rule 11.190(g).[21]

Currently, both displayed and non-displayed D-Limit orders cannot be a MQTY order.[22] While IEX offers most non-displayed orders the ability to include a MQTY instruction, IEX did not offer non-displayed D-Limit MQTY orders at the time of their introduction to reduce technical complexity. However, in the more than two years since the introduction of D-Limit orders, IEX has received informal feedback from Members indicating that they would like to be able to submit non-displayed D-Limit orders with a MQTY instruction to decrease the potential price impact of large D-Limit orders. Additionally, these Members indicate that they would submit more non-displayed D-Limit orders if they could use a MQTY instruction to set a minimum size for each fill. Based on this feedback, IEX proposes to enable fully non-displayed D-Limit orders to be MQTY orders, which is consistent with how IEX treats other fully non-displayed limit orders.[23] Specifically, IEX proposes to amend IEX Rule 11.190(b)(7)(F)(vi), which currently states that a D-Limit order may not be a MQTY,[24] to instead read as follows: ''Non-displayed Discretionary Limit orders may be a MQTY, as defined in paragraph (11) below. Displayed and partially displayed (*i.e.,* reserve) Discretionary Limit orders may not be a MQTY, as defined in paragraph (11) below.'' [25] IEX is proposing no other changes to D-Limit orders and no changes at all to MQTY functionality.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with 6(b) of the Act,[26] in general, and furthers the objectives of 6(b)(5),[27] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and 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. Specifically, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it is designed to provide more flexibility and opportunities for Members to add non-displayed liquidity to the Exchange. As noted in the Purpose section, the proposed rule change is responsive to informal feedback from some Members, stating that they want to combine the benefits of a non-displayed D-Limit order with those of a MQTY order.

By providing additional functionality to non-displayed D-Limit orders, IEX believes that the proposed rule change may attract additional liquidity to the Exchange by incentivizing Members to submit larger, non-displayed D-Limit orders to the Exchange, in particular Members that are not currently resting non-displayed D-Limit orders on IEX. To the extent this proposal is successful in attracting more non-displayed D-Limit orders to the Exchange, IEX believes it will provide an overall

[12] *See* Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577, 10581 (February 28, 2000) (SR–NYSE–99–48).

[13] *See* IEX Rule 1.160(p).

[14] Pursuant to IEX Rule 11.190(b)(11) a ''willing'' contra-side order is one that is priced so as to be marketable against the MQTY order in question.

[15] An ''active order'' is an order checking the Order Book for contra-side interest against which to execute and includes new incoming orders as well as orders rechecking the Order Book pursuant to IEX Rule 11.230(a)(4)(D). There can only be one active order for each symbol at any given time. *See* IEX Rule 1.160(b).

[16] *See* IEX Rule 11.190(b)(11)(G).

[17] *See* IEX Rule 11.190(c). For example, an active MQTY order with a TIF of FOK, like any FOK order, will only execute for its full quantity, or otherwise be canceled.

[18] *See* IEX Trading Alert 2020–029, available at *https://iextrading.com/alerts/#/126.*

[19] *See* Securities Exchange Act Release No. 89686 (August 26, 2020), 85 FR 54438 (September 1, 2020) (SR–IEX–2019–15) (''D-Limit Approval Order'').

[20] *See* Securities Exchange Act Release No. 87814 (December 20, 2019), 84 FR 71997, 71998 (December 30, 2019) (SR–IEX–2019–15) (''D-Limit Proposal'').

[21] *See* IEX Rules 11.190(b)(7) and 11.190(g).

[22] *See* IEX Rule 11.190(b)(7)(F)(vi).

[23] *See* IEX Rule 11.190(a)(2)(F). Reserve orders, being partially displayed and partially non-displayed, are not able to be MQTY orders. *See* IEX Rule 11.190(b)(2)(H). Consistent with this functionality, IEX's proposal would not change the fact that a D-Limit reserve order cannot be a MQTY order.

[24] *See* IEX Rule 11.190(b)(7)(F)(vi).

[25] *See* Proposed IEX Rule 11.190(b)(7)(F)(vi).

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

benefit to market participants generally, even though these larger MQTY orders will not always interact with smaller orders that are not able to satisfy the MQTY constraints. Thus, IEX believes this proposal supports the purposes of the Act to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Exchange further believes that the proposed rule change is consistent with the Act because it would be available to all Members on a fair, equal and nondiscriminatory basis regardless of their technological sophistication. Moreover, the proposal is designed to incentivize the entry of additional non-displayed D-Limit orders by providing MQTY functionality to support Members' ability to control the size and price impact of the execution of such orders. To the extent that such incentive is successful in increasing the overall liquidity pool available at IEX, all market participants, including takers of liquidity, will benefit.

Furthermore, because MQTY orders surrender execution priority if their MQTY conditions are not satisfied,[28] when a D-Limit MQTY order is unable to trade with a contra-side order because of its MQTY instruction, if there is another order resting on the Order Book behind the D-Limit order, such order could trade with the contra-side order. Therefore, IEX does not believe that increasing the number of MQTY orders on the Exchange (which is designed to increase liquidity on IEX) would necessarily reduce the overall likelihood of MQTY contra-side orders executing on IEX, which is consistent with the purposes of the Act to protect investors and the public interest.

In addition, as noted in the Purpose section, a D-Limit MQTY order is a combination of two order types the Commission has already approved—MQTY orders—which are also a common order type on equity exchanges[29]—and D-Limit orders.[30] And all Members would be eligible to include the optional MQTY instruction on their fully non-displayed D-Limit orders in the same manner.

Thus, IEX does not believe that the proposed changes raise any new or novel material issues that have not already been considered by the Commission in connection with existing order types offered by IEX and other national securities exchanges.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

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. To the contrary, the proposal is designed to enhance IEX's competitiveness with other markets by further enhancing IEX's D-Limit order type functionality. As discussed in the Purpose section, the proposal is designed to incentivize the entry of additional non-displayed liquidity providing orders on IEX by offering Members the flexibility of including an optional MQTY instruction on fully non-displayed D-Limit orders. By giving more opportunities to Members to tailor D-Limit orders to their trading strategies, IEX believes this proposal will increase the overall liquidity profile on the Exchange, as discussed in the Statutory Basis section.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. All Members would be eligible to include the optional MQTY instruction on their fully non-displayed D-Limit orders in the same manner. Moreover, the proposal would provide potential benefits to all Members, as discussed in the Statutory Basis section, to the extent that there is more liquidity available on IEX as a result of increased use of D-Limit orders attributable to the ability to enter such orders with a MQTY instruction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under 19(b)(3)(A)[31] of the Act and Rule 19b–4(f)(6)[32] thereunder. Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[33]

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b–4[34] because it would not significantly affect the protection of investors or the public interest. Rather, the proposed rule change neither significantly affects the protection of investors or the public interest, nor does it impose any burden on competition because it would merely combine the attributes of two existing order types—D-Limit orders and MQTY orders—to expand the functionality available to Members, as discussed in the Purpose section, and does not raise any new or novel material issues that have not already been considered by the Commission in connection with existing order types offered by IEX. Accordingly, IEX has designated this rule filing as non-controversial under 19(b)(3)(A) of the Act[35] and paragraph (f)(6) of Rule 19b–4 thereunder.[36]

The Exchange will implement the proposed rule change within 90 days of filing, subject to the 30-day operative delay, and provide at least ten (10) days' notice to Members and market participants of the implementation timeline.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under 19(b)(2)(B)[37] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[28] *See* IEX Rule 11.220(a)(5).

[29] *See supra* note 9.

[30] *See supra* note 12.

[31] 15 U.S.C. 78s(b)(3)(A).

[32] 17 CFR 240.19b–4(f)(6).

[33] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[34] 17 CFR 240.19b–4(f)(6).

[35] 15 U.S.C. 78s(b)(3)(A).

[36] 17 CFR 240.19b–4(f)(6).

[37] 15 U.S.C. 78s(b)(2)(B).

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–IEX–2023–05 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–IEX–2023–05. 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 offices of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–IEX–2023–05, and should be submitted on or before May 17, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08753 Filed 4–25–23; 8:45 am]

BILLING CODE 8011–01–P

[38] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17838 and #17839; Mississippi Disaster Number MS–00152]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Mississippi

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA–4697–DR), dated 03/30/2023.

Incident: Severe Storms, Straight-line Winds, and Tornadoes.

Incident Period: 03/24/2023 through 03/25/2023.

DATES: Issued on 04/20/2023.

Physical Loan Application Deadline Date: 05/30/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/02/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Mississippi, dated 03/30/2023, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Washington.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–08779 Filed 4–25–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0663]

PennantPark SBIC II, LP; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and section 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company License No. 02/02–0663 issued to PennantPark SBIC II, LP, said license is hereby declared null and void.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2023–08730 Filed 4–25–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 12055]

Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union (Title VIII)

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the Department of State has filed the renewed Charter for the Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union (Advisory Committee) for an additional 2 years.

The Advisory Committee was established under the authority of 22 U.S.C. 4503 to provide advice and recommendations to the Secretary of State or his or her designated representative concerning implementation of the Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983, Public Law 98–164, as amended (The Act).

The Advisory Committee recommends grant policies for the advancement of the objectives of the Act. In proposing recipients for grants under the Act, the Advisory Committee strives to give the highest priority to national organizations with an interest and expertise in conducting research and training concerning the countries of the former Soviet Union and Eastern Europe and in disseminating the results of such.

Catherine Kuchta-Helbling,

Executive Director, Advisory Committee for Study of Eastern Europe and the Independent States of the Former Soviet Union, Department of State.

[FR Doc. 2023–08750 Filed 4–25–23; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–1035]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewal Approval of Information Collection 2120–0768, Part 107 Authorizations and Waivers Under 14 CFR Part 107; Correction

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 Information Collection 2120–0768. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 6, 2023 (88 FR 91105). The FAA proposes renewal of the collection of information related to requests made under 14 CFR part 107 to operate small Unmanned Aircraft Systems (UAS) in controlled airspace. FAA will use the collected information to make determinations whether to authorize or deny the requested operation of UAS in controlled airspace. The proposed information collection is necessary to issue such authorizations or denials consistent with the FAA's mandate to ensure safe and efficient use of national airspace. The FAA received no comments to the 60-day notice. This is a corrected **Federal Register** Notice to update a **Federal Register** Notice posted on April 20, 2023 under Docket Number 2022–0176. This corrected **Federal Register** Notice updates the Docket Number to FAA–2023–1035.

DATES: Written comments should be submitted by May 26, 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.

FOR FURTHER INFORMATION CONTACT: Victoria Gallagher by email at: *Victoria.Gallagher@faa.gov;* phone: 202–674–3826.

SUPPLEMENTARY INFORMATION:

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.

OMB Control Number: 2120–0768.

Title: Part 107 Authorizations and Waivers under 14 CFR part 107.

Form Numbers: There are no forms associated with this collection.

Type of Review: Renewal of existing information collection.

Background: This is a corrected **Federal Register** Notice to update a **Federal Register** Notice posted on April 20, 2023 under Docket Number 2022–0176. This corrected **Federal Register** Notice updates the Docket Number to FAA–2023–1035.

There has been an increased number of operations of small Unmanned Aircraft Systems in the National Air Space (NAS) in recent years and regulations and statutes have been enacted to establish the use of small UAS in the NAS. Included in these is 14 CFR part 107. Section 107.41 states that ''no person may operate a small unmanned aircraft in Class B, Class C, or Class D airspace or within the lateral boundaries of the surface areas of Class E airspace designated for an airport unless that person has prior authorization from Air Traffic Control (ATC).'' Such authorization may be obtained in the form of either an airspace authorization issued by the FAA or a waiver of the authorization requirements of 14 CFR 107.41 (known as an airspace waiver).

In order to process authorization and airspace waiver requests, the FAA requires the operator's name, the operator's contact information, and information related to the date, place, and time of the requested small UAS operation. This information is necessary for the FAA to meet its statutory mandate of maintaining a safe and efficient national airspace. See 49 U.S.C. 40103, 44701, and 44807. The FAA will use the requested information to determine if the proposed UAS operation can be conducted safely.

The FAA proposes to use the Low Altitude Authorization and Notification Capability (LAANC) and a web portal to process authorization requests from the public to conduct Part 107 flight operations pursuant to Section 107.41. The FAA also proposes to use the web portal to process requests from the public to conduct Part 107 flight operations that requires an airspace waiver.

Respondents: Small UAS operators seeking to conduct flight operations under 14 CFR part 107 within controlled airspace or flight operations that require waiver from the provisions of 14 CFR 107.41. Between 2023–2026, the FAA estimates that it will receive a total of 1,477,965 requests for airspace authorizations and 0 requests for airspace waivers.

Frequency: The requested information will need to be provided each time a respondent requests an airspace authorization to operate a small UAS under 14 CFR part 107 in controlled airspace and each time a respondent requests a waiver from the provisions of 14 CFR 107.41 to operate a small UAS in controlled airspace.

Estimated Average Burden per Response: The FAA estimates the respondents using LAANC will take five (5) minutes per airspace authorization request and those using the web portal will take thirty (30) minutes per request. For those making airspace waiver requests through the web portal, the FAA estimates it takes 30 minutes per request.

Estimated Total Annual Burden: For airspace authorizations, the FAA estimates that the average annual burden will be 61,582 burden hours. This includes 36,949 burden hours for 443,389 LAANC respondents and 24,633 burden hours for 49,266 web portal respondents.

Issued in Washington, DC, on 21 of April, 2023.

Victoria Gallagher,

UAS LAANC Program Manager.

[FR Doc. 2023–08811 Filed 4–25–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0362]

Medical Review Board (MRB); Notice of Closed Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of closed meeting.

SUMMARY: This notice announces a meeting of the MRB.

DATES: The meeting will be held on Wednesday, May 10, 2023, from 9:30 a.m. to 4:30 p.m. ET. The meeting will be closed to the public for its entirety.

ADDRESSES: The meeting will be held virtually for its entirety. FMCSA will make the MRB task statement relating to the review of medical examiner certification test questions and an agenda for the meeting available at *www.fmcsa.dot.gov/mrb* at least 1 week in advance of the meeting. Copies of the meeting minutes will be available at the website following the meeting. You may visit the MRB website at *www.fmcsa.dot.gov/mrb* for further information on the committee and its activities.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Advisor to the Associate Administrator for Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 360–2925, *mrb@dot.gov.* Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

MRB was created under the Federal Advisory Committee Act (FACA) in accordance with section 4116 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users [1] to provide FMCSA ''with medical advice and recommendations on medical standards and guidelines for the physical qualifications of operators of commercial motor vehicles, medical examiner education, and medical research'' (49 U.S.C. 31149(a)(1)). MRB operates in accordance with FACA under the terms of the MRB charter, filed November 25, 2021.

II. Agenda

The MRB will complete its review of test questions to be used to determine eligibility of healthcare professionals to be certified as medical examiners and be listed on the National Registry of Certified Medical Examiners. MRB began this review at its September 14, 2022, meeting.

III. Public Participation

The meeting will be closed to the public due to the discussion of specific test questions to be used to certify medical examiners, which are not available for release to the public. Premature disclosure of secure test information would compromise the integrity of the examination and therefore exemption 9(B) of section 552b(c) of Title 5 of the United States Code justifies closing this portion of the meeting pursuant to 41 CFR 102–3.155(a).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–08773 Filed 4–25–23; 8:45 am]

BILLING CODE 4910–EX–P

[1] Public Law 109–59, 119 Stat. 1144, 1726 (2005).

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0030]

Massachusetts Bay Transportation Authority's Request for Approval To Begin Field Testing on Its Positive Train Control Network

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on April 11, 2023, the Massachusetts Bay Transportation Authority (MBTA) submitted a request to field test its trains that have been equipped with MBTA's Advanced Civil Speed Enforcement System II (ACSES II) technology on its South Coast Rail commuter rail lines. MBTA states that the tests will be performed and operation verified for all ACSES II PTC functions. FRA is publishing this notice and inviting public comment on MBTA's request to test its PTC system.

DATES: FRA will consider comments received by June 26, 2023. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary testing on a PTC system.

ADDRESSES:

Comments: Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0030. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/research-development/program-areas/train-control/ptc/railroads-ptc-dockets.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) Section 20157(h) requires FRA to certify that a host railroad's PTC system complies with Title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. On June 30, 2020, FRA certified MBTA's ACSES II PTC system under 49 CFR 236.1015 and 49 U.S.C. 20157(h). Pursuant to 49 CFR 236.1035, a railroad must obtain FRA's approval before field testing an uncertified PTC system, or a product of an uncertified PTC system, or any regression testing of a certified PTC system on the general rail system. *See* 49 CFR 236.1035(a). There are three stages of testing for which approval is being requested, starting with track database validation, followed by pre-certification and integration testing, and the final stage involving test results and documentation completion. MBTA's test request contains the required information, including a complete description of MBTA's Concept of Operations and its specific test procedures, including the measures that will be taken to ensure safety during testing, are available for review online at *https://www.regulations.gov* in Docket No. FRA–2010–0030.

Interested parties are invited to comment on MBTA's Test Request by submitting written comments or data. During FRA's review of this railroad's request, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying testing of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1035. Under 49 CFR 236.1035, FRA maintains the authority to approve, approve with conditions, or deny a railroad's test request at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their

organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2023–08746 Filed 4–25–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2023–0018]

Beat the Street Interiors, Inc.—Receipt of Petition for Temporary Exemption From Shoulder Belt Requirement for Side-Facing Seats on Motorcoaches

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of receipt of petition for temporary exemption; request for comment.

SUMMARY: Beat the Street Interiors, Inc. (''BTS'') has petitioned NHTSA for a temporary exemption from a shoulder belt requirement of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection,'' for side-facing seats on motorcoaches. The petitioner seeks to install Type 1 seat belts (lap belt only) at side-facing seating positions instead of Type 2 seat belts (lap and shoulder belts) required by FMVSS No. 208. The petitioner states that, absent the requested exemption, it will otherwise be unable to sell a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempted vehicle. NHTSA is publishing this document to notify the public of the receipt of the petition and to request comment on it, in accordance with statutory and administrative provisions.

DATES: If you would like to comment, you should submit your comment not later than June 26, 2023.

FOR FURTHER INFORMATION CONTACT: Callie Roach, Office of the Chief Counsel, NCC–200, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–366–2992; Fax: 202–366–3820.

ADDRESSES: You may submit your comment, identified by the docket number in the heading of this document, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. To be sure someone is there to help you, please call (202) 366–9322 before coming.

Instructions: All submissions must include the agency name and docket number.

Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. NHTSA will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, NHTSA will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays. Telephone: 202–366–9826. To be sure someone is there to help you, please call (202) 366–9322 before coming.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, the agency encourages commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please see below.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you must submit your request directly to NHTSA's Office of the Chief Counsel. Requests for confidentiality are governed by part 512. NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under part 512. If you would like to submit a request for confidential treatment, you may email your submission to Dan Rabinovitz in the Office of the Chief Counsel at *Daniel.Rabinovitz@dot.gov* or you may contact Dan for a secure file transfer link. At this time, you should not send a duplicate hardcopy of your electronic CBI submissions to DOT headquarters. If you claim that any of the information or documents provided to the agency constitute confidential business information within the meaning of 5 U.S.C. 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with part 512, to the Office of the Chief Counsel. Your request must include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR 512.8) and a certificate, pursuant to § 512.4(b) and part 512, appendix A. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket at the address given above.

SUPPLEMENTARY INFORMATION:

I. Background

a. Statutory Authority for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified as 49 U.S.C. chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis, under specified circumstances, and on terms the Secretary considers appropriate, motor vehicles from a motor vehicle safety standard or bumper standard. This authority and circumstances are set forth in 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA.

NHTSA established 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions. Under part 555 subpart A, a vehicle manufacturer seeking an exemption must submit a petition for exemption containing specified information. Among other things, the petition must set forth (a) the reasons why granting the exemption would be in the public interest and consistent with the

objectives of the Safety Act, and (b) required information showing that the manufacturer satisfies one of four bases for an exemption.[1] The petitioner is applying on the basis that compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles (*see* 49 CFR 555.6(d)). A manufacturer is eligible for an exemption under this basis only if NHTSA determines the exemption is for not more than 2,500 vehicles to be sold in the U.S. in any 12-month period. An exemption on this basis may be granted for not more than two years, but may be renewed upon reapplication.[2]

b. FMVSS No. 208

On November 25, 2013, NHTSA published a final rule amending FMVSS No. 208 to require seat belts for each passenger seating position in all new over-the-road buses (OTRBs) (regardless of gross vehicle weight rating (GVWR)), and all other buses with GVWRs greater than 11,793 kilograms (kg) (26,000 pounds (lb)) (with certain exclusions).[3]

In the notice of proposed rulemaking (NPRM) preceding the final rule (75 FR 50958, August 18, 2010), NHTSA proposed to permit manufacturers the option of installing either a Type 1 (lap belt) or a Type 2 (lap and shoulder belt) on side-facing seats.[4] The proposed option was consistent with a provision in FMVSS No. 208 that allows lap belts for side-facing seats on buses with a GVWR of 4,536 kg (10,000 lbs.) or less. NHTSA proposed the option because the agency was unaware of any demonstrable increase in associated risks using lap belts when compared to using lap and shoulder belts on side-facing seats. In the NPRM, NHTSA noted that[5] ''a study commissioned by the European Commission regarding side-facing seats on minibuses and motorcoaches found that due to different seat belt designs, crash modes and a lack of real-world data, it cannot be determined whether a lap belt or a lap/shoulder belt would be the most effective.''[6]

However, after the NPRM was published, the Motorcoach Enhanced Safety Act of 2012 was enacted as part of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141 (July 6, 2012). Section 32703(a) of MAP–21 directed the Secretary of Transportation (authority delegated to NHTSA) to ''prescribe regulations requiring safety belts to be installed in motorcoaches at each designated seating position.''[7] As MAP–21 defined ''safety belt'' to mean an integrated lap and shoulder belt, the final rule amended FMVSS No. 208 to require lap and shoulder belts at all designated seating positions, including side-facing seats, on OTRBs.[8]

Even as it did so, however, the agency reiterated its view that ''the addition of a shoulder belt at [side-facing seats on light vehicles] is of limited value, given the paucity of data related to side facing seats.''[9] NHTSA also reiterated that there have been concerns expressed in literature in this area about shoulder belts on side-facing seats, noting in the final rule that, although the agency has no direct evidence that shoulder belts may cause serious neck injuries when applied to side-facing seats, there are simulation data indicative of potential carotid artery injury when the neck is loaded by the shoulder belt.[10] The agency also noted that Australian Design Rule ADR 5/04, ''Anchorages for Seatbelts'' specifically prohibits shoulder belts for side-facing seats.

Given that background, and believing there would be few side-facing seats on OTRBs, NHTSA stated in the November 2013 final rule that manufacturers may petition NHTSA for a temporary exemption under 49 CFR part 555 to install lap belts instead of lap and shoulder belts at side-facing seats.[11] NHTSA further explained that a manufacturer could seek such an exemption on the basis that the applicant is otherwise unable to sell a vehicle whose overall level of safety is at least equal to that of an non-exempted vehicle, stating that the agency would be receptive to an argument that, for side-facing seats, lap belts provide an equivalent level of safety to lap and shoulder belts.[12]

II. Receipt of Petition

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, BTS, a final-stage manufacturer of entertainer motorcoaches, submitted a petition on September 13, 2022, asking NHTSA for a temporary exemption from the shoulder belt requirement of FMVSS No. 208 for side-facing seats on its vehicles. The petitioner seeks to install Type 1 seat belts (lap belt only) at side-facing seating positions, instead of Type 2 seat belts (lap and shoulder belts) as required by FMVSS No. 208. The basis for the petition is that compliance would prevent the petitioner from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles (49 CFR 555.6(d)).[13]

A copy of the petition has been placed in the docket listed in the heading of this notice. To view the petition, go to *http://www.regulations.gov* and enter the docket number in the heading.

c. Brief Overview of the Petition

BTS states that it is a final-stage manufacturer of over-the-road buses and customizes motorcoaches to meet the needs of its entertainer clients and other specialized customers. BTS states that it typically receives a bus shell[14] from a manufacturer of incomplete vehicles and then builds out the complete

[1] 49 CFR 555.5(b)(5) and 555.5(b)(7).

[2] 555.8(b) and 555.8(e).

[3] 78 FR 70415 (November 25, 2013); response to petitions for reconsideration, 81 FR 19902 (April 6, 2016). The final rule became effective November 28, 2016 for buses manufactured in a single stage, and a year later for buses manufactured in more than one stage.

[4] 75 FR at 50971.

[5] 75 FR at 50971–50972.

[6] *http://ec.europa.eu/enterprise/automotive/projects/safety_consid_long_stg.pdf.*

[7] MAP–21 states at § 32702(6) that ''the term 'motorcoach' has the meaning given the term 'over-the-road bus' in section 3038(a)(3) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note), but does not include a bus used in public transportation provided by, or on behalf of, a public transportation agency; or a school bus, including a multifunction school activity bus.'' Section 3038(a)(3) (49 U.S.C. 5310 note) states: ''The term 'over-the-road bus' means a bus characterized by an elevated passenger deck located over a baggage compartment.''

[8] For side-facing seats on buses other than OTRBs, in the final rule NHTSA permitted either lap or lap/shoulder belts at the manufacturer's option.

[9] 78 FR at 70448, quoting from the agency's Anton's Law final rule which required lap/shoulder belts in forward-facing rear seating positions of light vehicles, 59 FR 70907.

[10] Fildes, B., Digges, K., ''Occupant Protection in Far Side Crashes,'' Monash University Accident Research Center, Report No. 294, April 2010, pg. 57.

[11] 78 FR at 70448.

[12] *Id.*

[13] The petition is similar to petitions for temporary exemption NHTSA received from 14 other final stage manufacturers on the same shoulder belt requirement of FMVSS No. 208 for side-facing seats on entertainer buses. The first petition was submitted by Hemphill Brothers Leasing Company, LLC (Hemphill). (Notice of receipt of petition, 84 FR 11735 (March 28, 2019); notice of grant of petition, 84 FR 69966 (November 14, 2019)). In its original petition, Hemphill stated that 39 ''other petitioners'' were covered by it. Later, NHTSA granted 13 additional petitions submitted by All Access Coach Leasing LLC, Amadas Coach, Creative Mobile Interiors, D&S Classic Coach Inc., Farber Specialty Vehicles, Florida Coach, Inc., Geomarc, Inc., Integrity Interiors LLC, Nitetrain Coach Company, Inc., Pioneer Coach Interiors LLC, Roberts Brothers Coach Company, Russell Coachworks LLC, and Ultra Coach Inc. (Notice of receipt of the petitions, 85 FR 51550 (August 20, 2022); notice of grant of petitions, 87 FR 33299 (June 1, 2022)).

[14] The petition describes the bus shell as generally containing the following components: exterior frame; driver's seat; dash cluster, speedometer, emissions light and emissions diagnosis connector; exterior lighting, headlights, marker lights, turn signals lights, and brake lights; exterior glass, windshield and side lights with emergency exits; windshield wiper system; braking system; tires, tire pressure monitoring system and suspension; and engine and transmission.

interior of the vehicle. The petitioner states that the motorcoaches it completes are primarily used for touring artists and their crews. BTS states that it is a small business and expects to manufacture no more than 14 vehicles during the exemption period.

Pursuant to 49 CFR 555.6(d), an application must provide ''[a] detailed analysis of how the vehicle provides the overall level of safety or impact protection at least equal to that of nonexempt vehicles.''

BTS reiterates the agency's discussion from the November 2013 seat belt final rule, summarized above. BTS also references the 14 petitions that NHTSA has granted to other similar manufacturers.[15] BTS states that NHTSA has not conducted testing on the impact or injuries to passengers in side-facing seats in motorcoaches, so ''there is no available credible data that supports requiring a Type 2 belt at the side-facing seating positions.'' [16] BTS states that it believes that if not exempted from the requirement, BTS will be required to offer its customers ''a motorcoach with a safety feature that could make the occupants less safe, or certainly at least no more safe, than if the feature was not installed.'' [17]

Pursuant to 49 CFR 555.5(b)(7), petitioners must state why granting an exemption allowing it to install Type 1 instead of Type 2 seat belts in side-facing seats would be in the public interest and consistent with the objectives of the Safety Act.

The petitioner states that granting an exemption would enable it to sell vehicles with Type 1 lap belts on its side-facing seats.[18] BTS further states that granting this petition will provide relief to a small business.[19] Additionally, because this petition follows NHTSA granting 14 similar petitions, BTS states that granting this exemption will assist in providing a consistent, objective standard that is easy for manufacturers to understand and meet.[20]

BTS also states that it believes that an option for Type 1 belts at side-facing seats is consistent with the objectives of the Safety Act because, as stated in its petition—

an option for Type 1 or Type 2 belts at side-facing seating allows the manufacturer to determine the best approach to motor vehicle safety depending on the intended use of the vehicle and its overall design. This option is consistent with current analysis of the NHTSA along with the European Commission that indicates no demonstrable difference in risk between the two types of belts when installed in sideways-facing seats.[21]

In support of its petition, BTS also states that it produces only a small number of motorcoaches annually, expecting to manufacture only about 14 motorcoaches under the period of exemption, well below the limit of 2,500 vehicles.[22]

The petitioner also indicates that it expects to seek to renew this exemption, if granted, at the end of the exemption period.[23]

III. Comment Period

The agency seeks comment from the public on the merits of the petition requesting a temporary exemption, for side-facing seats, from FMVSS No. 208's shoulder belt requirement. NHTSA would like to make clear that the petitioner seeks to install lap belts at the side-facing seats only; it does not seek to be completely exempted from the FMVSS No. 208 seat belt requirement. The petitioner's request does not pertain to forward-facing designated seating positions on its vehicles. Under FMVSS No. 208, forward-facing seating positions on motorcoaches must have Type 2 lap and shoulder belts, and the petitioner is not raising issues about that requirement for forward-facing seats. After considering public comments and other available information, NHTSA will publish a notice of final action on the petition in the **Federal Register**.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.95 and 501.8.

Raymond Ryan Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2023–08801 Filed 4–25–23; 8:45 am]

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[15] BTS petition at page 2.

[16] *Id.* at page 5.

[17] *Id.* at page 6.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.* at page 7.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0004; Notice 2]

Daimler Trucks North America, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Daimler Trucks North America, LLC (DTNA), has determined that certain model year (MY) 2013–2018 Thomas Built Buses do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 222, *School Bus Passenger Seating and Crash Protection.* DTNA filed a noncompliance report dated November 27, 2017. DTNA in collaboration with SynTec Seating Solutions, LLC (SynTec), the seating manufacturer, subsequently petitioned NHTSA on December 15, 2017, and later amended it on September 21, 2018, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of DTNA's petition.

FOR FURTHER INFORMATION CONTACT: Daniel Lind, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–7235.

SUPPLEMENTARY INFORMATION:

I. Overview

DTNA has determined that certain MY 2013–2018 Thomas Built Buses do not fully comply with paragraph S5.3.1.3 of FMVSS No. 222, *School Bus Passenger Seating and Crash Protection* (*See* 49 CFR 571.222). DTNA filed a noncompliance report dated November 27, 2017, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* DTNA subsequently petitioned NHTSA on December 15, 2017, and later amended it on September 21, 2018, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Noncompliance or Defect.*

Notice of receipt of DTNA's petition was published, with a 30-day public comment period on May 13, 2019, in the **Federal Register** (*See* 84 FR 20951). One comment was received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2018–0004.''

II. Buses Involved

Affected are approximately 3,222 MY 2013–2018 versions of the following Thomas Built Buses, manufactured between August 24, 2012, and May 1, 2017, specifically:

- Thomas Built Buses Saf-T-Liner C2
- Thomas Built Buses Saf-T-Liner EFX

- Thomas Built Buses Saf-T-Liner HDX
- Thomas Built Buses Minotour DRW

III. Noncompliance

DTNA explains that the noncompliance is that the subject buses are equipped with seats that have Type 2 (lap/shoulder) seat belts, manufactured by SynTec, that do not meet the head form force distribution requirements as specified in paragraph S5.3.1.3 of FMVSS No. 222. Specifically, the Type 2 seat belts include a plastic bezel, where the seat belt is routed through the seat, located within the head protection zone.

IV. Rule Requirements

Paragraph S5.3.1.3 of FMVSS No. 222, titled ''Head form force distribution'' includes the requirements relevant to this petition:

> When any contactable surface of the vehicle, within the zones specified in paragraph S5.3.1.1, is impacted from any direction at 6.7 m/s by the head form described in paragraph S6.6, the energy necessary to deflect the impacted material shall be not less than 4.5 joules before the force level on the head form exceeds 667 N. When any contactable surface, within such zones, is impacted by the head form from any direction at 1.5 m/s the contact area on the head form surface shall be not less than 1,935 mm^2.

S4 of the standard defines ''contactable surface'' as follows:

> Contactable surface means any surface within the zone specified in S5.3.1.1 that is contactable from any direction by the test device described in S6.6, except any surface on the front of a seat back or restraining barrier 76 mm or more below the top of the seat back or restraining barrier.

V. Summary of DTNA's Petition

DTNA described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, DTNA provided the following background information:

1. In January 2011, SynTec introduced the M2K lap/shoulder seat to provide several additional safety features to passengers. The company sold 2,272 M2K lap/shoulder seats to Thomas Built Buses before discontinuing the product in 2012. SynTec then improved upon the M2K lap/shoulder seat design with the S3C seat, which the Company introduced in 2012. The seat backs of these seats are substantially higher than earlier school bus passenger seats and are equipped with lap/shoulder seat belts. The seat also includes: color coding and key buckles to prevent improper buckling, a fixed buckle anchorage to prevent side occupant incursion, flip up buckles in pockets to be out of the way from debris, high shoulder anchorage, and contoured seat cushion. The plastic ''bezel'' (the location from which the lap/shoulder harness exits the seat back) was intentionally set high on the seat fronts to provide protection to the maximum range of occupants. Some M2K and S3C seats also are equipped with an integrated child seat.

2. To ensure that the Affected Seats complied with all laws and regulations, SynTec contracted with a third party, MGA Research Corporation (MGA), to conduct certification testing under FMVSS No. 222. Specifically, MGA conducted tests on the M2K seat in June 2011, and on the S3C seat in August 2012. The M2K and S3C complied with FMVSS No. 222 requirements with respect to the back of the seat. Consistent with the industry norm and MGA's past practice, MGA did not test targets on the front of the seat. Based on its interactions and conversations with MGA, SynTec understood that back seat-only testing represents the industry norm. Front of the seat testing is not conducted due to the low risk of harm from the front, and because the small head impact zone makes it impossible to conduct the test per the recommended test procedure. Indeed, as referenced above, the testing was designed to ensure that the back of the seat was an energy absorber and that various hazards were eliminated from the top. Nonetheless, these early MGA tests results, specifically, the product's head injury criterion (HIC) values and the strong contact area and impact velocity scores on the back of the seat, highlighted the improved safety benefits of SynTec's new seat design.

In support of its petition, DTNA provided the following reasoning:

1. The S5.3.1.3 tests are outmoded for the front of the seat and the equipment's HIC scores represent the most accurate accounting of the seat's safety.

2. As highlighted above, the original intent of the contact surface test was to precipitate the elimination of metal grab bars and other hostile objects above the passenger seats that could come into contact with the occupant's head in the event of a crash. *See* 38 FR 4776 (Feb. 22, 1973) (Proposed Rule) stating the goal of ''eliminating exposed metal bars and similar designs and making the seat itself a significant energy absorber.'' Likewise, the head form force distribution test was designed to ensure that the seat would depress and distribute the force of impact in a manner that could not be achieved with exposed metal surfaces on the seat.

3. Although SynTec was noncompliant with these two tests, the requirements are now outmoded with respect to the front of the affected seats because the various hazards they are seeking to guard against no longer exist. Indeed, the noncompliance did not occur because of a hazard that the regulations were designed to protect against. Rather, as explained below, the noncompliance resulted from a high-placed bezel that actually makes the affected seats safer for more occupants. The two tests were crafted for a school bus seat design that was substantially different and less safe than the superior versions that exist in the market today.

4. Given that these tests are outmoded, the most accurate measure of head safety for the front of the seat is the product's HIC value. The HIC is the most widely accepted measure of head injury in use today. Indeed, it is the standard measure of head injury throughout the FMVSSs. *See, e.g.,* FMVSS No. 201 and 208. Similarly, HIC is the metric used by NHTSA's New Car Assessment Program. *See* 80 FR 78522, 78533 (2015) noting that the HIC value ''is currently in use in FMVSS No. 208 and frontal NCAP tests.'' The HIC measure is particularly valuable since it accounts for energy absorption and contact area by measuring the deceleration of the head form over time.

5. Over the past few years, both SynTec and NHTSA, internally and at accredited external test agencies, have conducted HIC testing on the front of the affected seats. During testing, the seats were positioned at various angles, and impacts were performed on multiple locations of the seat within the head protection zone ''hits'', including on the portion of the plastic bezel that protrudes into the top 76 mm on the front. These test results always produced a HIC value well below 1,000. For instance, since March 2017 SynTec has conducted 253 ''hits'' on the front of the seat. The average HIC value during these tests was 114.1, with a low score of 51.7 and a high HIC value of 311.8. Even the product's highest HIC value falls far short of the 1,000 maximum requirement. These values illustrate the safety of SynTec's product and the inconsequentiality of the noncompliance with the other FMVSS No. 222 test requirements.

6. Simply stated, the tests which prompted DTNA and SynTec's 573 Reports, are searching for hazards on the front of the seat that do not exist in the affected seats. *See* 38 FR 4776 (Feb. 22, 1973) (Proposed Rule). As the product's HIC values show, the technical noncompliance of the SynTec seats on these two tests is not relevant to the

product's safety. Accordingly, NHTSA should grant this petition for inconsequentiality.

7. The source of SynTec's noncompliance enhances the product's safety. SynTec's seats are safer than regulators could have envisioned in 1976. Indeed, the cause of the noncompliance, the location of the plastic bezel, renders the seat safer than it would be with a bezel that was not placed in the head protection zone. This higher positioning combined with higher seat backs provides a belt for a maximum range of occupants and keeps hard objects away from the most vulnerable passengers. SynTec utilized automotive best practices and BELFIT software from the Motor Industry Research Association to determine the optimum geometric place for the belt position. SynTec's objective was to provide maximum protection, considering the wide range of occupant sizes riding on a school bus. Based on this analysis, it placed the bezel at the higher portion of the seat. The position also allowed for more adjustment by the d-ring, for better torso restraint, and for a more comfortable fit (thereby encouraging use).

8. The higher shoulder harnesses also keep hard surfaces away from small occupants who are most vulnerable. A typical occupant in the vehicle would have a greater chance of coming into contact with a lower bezel. In seats with lap/shoulder belts with a lower bezel, the bezel would land in a smaller occupant's head area. Similarly, most designs that include an integrated child seat, have a hard surface that sits behind a smaller occupant's head. In contrast, the affected seat's higher bezel location places the bezel outside of a smaller occupant's head area. Likewise, for smaller occupants using integrated child seats, the bezel also falls outside of the occupant head area. Essentially, the higher bezel ensures better protection for the most vulnerable riders. Rather than cause any safety issues, the noncompliance, which occurred because of the location of the plastic bezels, makes the affected seats safer.

9. The noncompliance at issue relates to front-of-seat tests designed to address features that are no longer present in school buses, such as metal bars at the top of seat backs and low seat backs. Therefore, DTNA believes the noncompliance is inconsequential as it relates to school bus safety. Moreover, the location of the plastic bezel on the lap/shoulder belts, which is the source of the noncompliance, is actually a safety improvement, in that its high position allows for maximum occupant ranges and fit and protects the smallest seat occupants. A typical occupant in the vehicle would have a greater chance of encountering a compliant lower bezel.

10. Thus, the design represents an enhanced level of safety for school bus occupants, especially younger passengers who are more vulnerable in the event of a crash. Consistent with the enhanced safety design of the lap/shoulder belt, DTNA is not aware of any complaints, injuries or reports of safety concerns regarding this issue. DTNA's seat supplier, SynTec, implemented a new seat design which corrected the noncompliance by replacing the hard plastic bezel with a soft vinyl harness cover and increasing the seat thickness by 3/8 inches as of May 3, 2017.

11. NHTSA Precedents—DTNA notes that NHTSA has previously granted petitions for decisions of inconsequential noncompliance for a wide range of issues where a technical non-compliance exists but does not create a negative impact on safety. In the case detailed within this petition, the lap/shoulder belt is an optional feature on the clear majority of school buses. When added, lap/shoulder belts increase the safety of the occupants as compared to a bus without passenger seatbelts. Also, the high bezel increases the child protection performance requirements by reducing the likelihood of an occupant coming into contact with the hard surface. The following examples are petitions for inconsequentiality that were granted by NHTSA and are described within this petition to support DTNA's argument that, while technically non-compliant, NHTSA has previously granted inconsequentiality for cases where an additional level of safety above the requirements of the standard is provided.

12. *See* 70 FR. 24464 (May 9, 2005), Docket No. NHTSA 2005–20545 (Grant of Petition for IC Corporation) for an example of a petition for inconsequentiality that was granted by NHTSA. In this instance, school buses were manufactured that were not compliant with FMVSS 217, but it was deemed inconsequential because it did not compromise safety. ''. . . The Agency agrees with IC that in this case the noncompliance does not compromise safety in terms of emergency exit capability in proportion to maximum occupant capacity, access to side emergency doors, visibility of the exits, or the ability of bus occupants to exit after an accident.''

13. *See* also 63 FR 32694 (June 15, 1998), Docket No. NHTSA 98–3791 (Grant of Petition for New Flyer of America, Inc.) for another example of a petition for inconsequentiality that was granted. In this case, non-school buses were manufactured that were not compliant with FMVSS No. 217 but were granted inconsequentiality because the buses had additional safety features that were not required in the standard. The following quote is from NHTSA's notice granting the petition: ''Thus, the buses have the minimum number of emergency exits required by FMVSS No. 217. However, these exits were not distributed properly. Instead of a second emergency exit on the right side, these buses have an additional roof exit. This additional roof exit would provide for much needed emergency exit openings should the bus occupants need to evacuate due to a rollover incident. While this additional roof exit is not required by the standard, it does provide for an additional level of safety in the above situation. In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it described above is inconsequential to motor vehicle safety.'' Id.

DTNA's complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: *https://www.regulations.gov/* and following the online search instructions to locate the docket number listed in the title of this notice.

In summation, DTNA believes that the described noncompliance in the subject buses is inconsequential as it relates to motor vehicle safety, and that its petition to exempt DTNA from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. Public Comments

One comment was received from Freedman Seating Company (FSC), which has designed and manufactured passenger seats for the school/activity bus market for over 20 years. The commenter agreed with DTNA's arguments regarding rear surface seat back-only testing represents the industry norm, that front of the seat back testing is generally not conducted due to the low risk of harm from the front, that the front surface of the seat back is low risk for head impact and injury potential as the normal position of the seat occupant is with the head against the front surface of the seat back or very close to it, that the head impact zones identified in the FMVSS No. 222 test procedure are relatively small areas and would make it challenging to do head impact testing given the size of the

head form and the seat contour of some seat designs, and that the most accurate measure of head safety for the front of the seat is the product's HIC values.

VII. NHTSA's Analysis

A. General Principles

Congress passed the National Traffic and Motor Vehicle Safety Act of 1966 (the ''Safety Act'') with the express purpose of reducing motor vehicle accidents, deaths, injuries, and property damage. *See* 49 U.S.C. 30101. To this end, the Safety Act empowers the Secretary of Transportation to establish and enforce mandatory Federal Motor Vehicle Safety Standards (FMVSS). *See* 49 U.S.C. 30111. The Secretary has delegated this authority to NHTSA. *See* 49 CFR 1.95.

NHTSA adopts an FMVSS only after the agency has determined that the performance requirements are objective and practicable and meet the need for motor vehicle safety. *See* 49 U.S.C. 30111(a). Thus, there is a general presumption that the failure of a motor vehicle or item of motor vehicle equipment to comply with an FMVSS increases the risk to motor vehicle safety beyond the level deemed appropriate by NHTSA through the rulemaking process. To protect the public from such risks, manufacturers whose products fail to comply with an FMVSS are normally required to conduct a safety recall under which they must notify owners, purchasers, and dealers of the noncompliance and provide a free remedy. *See* 49 U.S.C. 30118–30120. However, Congress has recognized that, under some limited circumstances, a noncompliance could be ''inconsequential'' to motor vehicle safety. It therefore established a procedure under which NHTSA may consider whether it is appropriate to exempt a manufacturer from its notification and remedy (*i.e.,* recall) obligations. *See* 49 U.S.C. 30118(d), 30120(h). The agency's regulations governing the filing and consideration of petitions for inconsequentiality exemptions are set out at 49 CFR part 556.

Under the Safety Act and Part 556, inconsequentiality exemptions may be granted only in response to a petition from a manufacturer, and then only after notice in the **Federal Register** and an opportunity for interested members of the public to present information, views, and arguments on the petition. In addition to considering public comments, the agency will draw upon its own understanding of safety-related systems and its experience in deciding the merits of a petition. An absence of opposing argument and data from the public does not require NHTSA to grant a manufacturer's petition. Neither the Safety Act nor Part 556 define the term ''inconsequential.'' Rather, the agency determines whether a particular noncompliance is inconsequential to motor vehicle safety based upon the specific facts before it in a particular petition. In some instances, NHTSA has determined that a manufacturer met its burden of demonstrating that a noncompliance is inconsequential to safety. For example, a label intended to provide safety advice to an owner or occupant may have a misspelled word, or it may be printed in the wrong format or the wrong type size. Where a manufacturer has shown that the discrepancy with the safety requirement is unlikely to lead to any misunderstanding, NHTSA has granted an inconsequentiality exemption, especially where other sources of correct information are available. *See, e.g.,* General Motors, LLC., Grant of Petition for Decision of Inconsequential Noncompliance, 81 FR 92963 (Dec. 20, 2016).

The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.[1] Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely deemed inconsequential.

An important issue to consider in determining inconsequentiality based upon NHTSA's prior decisions on noncompliance issues was the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[2] NHTSA also does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. ''Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.'' [3] ''[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.'' [4]

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition.[5] Similarly, NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant who is exposed to the consequence of that noncompliance.[6]

B. Response to DTNA's Arguments

NHTSA reviewed DTNA's arguments that the subject noncompliance is inconsequential to motor vehicle safety. DTNA contends that the plastic bezel, where the Type 2 seat belt is routed through the seat, being located within the head protection zone and not meeting the head form force distribution requirements as specified in paragraph S5.3.1.3 of FMVSS No. 222, poses little, if any, risk to motor vehicle safety. NHTSA agrees. NHTSA's decision considered the following arguments:

The purpose of FMVSS No. 222 is to reduce the number of deaths and the severity of injuries that result from the

[1] *Cf. Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

[2] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[3] *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21666 (Apr. 12, 2016).

[4] *United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it ''results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future'').

[5] *See Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance,* 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

[6] *See Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco, Inc.; Denial of Application for Decision of Inconsequential Noncompliance,* 64 FR 29408, 29409 (June 1, 1999).

impact of school bus occupants against structures within the vehicle during crashes and sudden driving maneuvers (*See* 49 CFR 571.222 S2). The requirements at S5.3.1.3 *Head Form Force Distribution* of FMVSS No. 222, at issue here, are specific to the areas of school bus seats where one's head may impact during an emergency event. The head protection zone is an area in front of each school passenger seat that is not occupied by bus sidewall, window, or door structure.[7] For seats other than the front seat, this area encompasses the seat back of the seat in front of it. When the front of a seat back falls within the head protection zone of the seat behind it, only the top 76 mm (3 inches) of the front of the seat back is a contactable surface. The seat backs of the rearmost seats do not fall within the head protection zone and are not contactable surfaces. We can therefore conclude that the head protection requirements were not designed to protect an occupant from impacting a surface located behind them.

The requirements at issue are twofold: (1) the energy absorbed by the seat ''shall be not less than 4.5 joules'', and (2) the contact made with the seat by the test headform ''shall be not less than 1,935 mm^2.'' In the present case, the seats fail to meet both of these requirements at the locations where the plastic ''bezel'' (the location from which the lap/shoulder harness exits the seat back) for the Type 2 seatbelts are integrated into the seats. However, the head protection requirements are intended to protect occupants of the seat located behind the seat back on which the bezel is mounted and it is unlikely that such occupant's head would impact the bezel given the size of the bezel, particularly if the occupant is belted. For this reason, NHTSA accepts DTNA's argument that, in this case, the safety benefits of the high-placed bezel location outweigh the safety risks. This is further discussed below.

Reviewing the history of this standard and the definitions for the *Head Protection Zone* and *Contactable Surface,* we found FMVSS No. 222 was initially proposed as a new vehicle safety standard on February 22, 1973 (*See* 38 FR 4776). The preamble in the proposed rule described the intention behind the modern-day requirements of paragraph S5.3.1.3, as it stated:

''A final characteristic of present bus seats, notably in school buses and transit type buses, is the presence of metal bars on the seat back to be used by standees. There is evidence that these hard surfaces are often the causes of injury, particularly to the head and face. A compilation of data from oral surgeons indicated that approximately 1,350 mouth injuries occurred during 1971. This represents only a part of the painful and disfiguring injuries that are due to these features.

To eliminate exposed metal bars and similar designs and to make the seat itself a significant energy absorber, NHTSA proposes to require all surfaces within a specified area ahead of the seat to meet a head impact criterion, similar to the one included in Standard 208, occupant crash protection. The test is administered by impacting a head form device into any surface within a specified area in front of each seat. The impacted surface must be able to keep the deceleration of the head form below a certain level. In addition, the surface must depress in a manner that absorbs energy and distributes the force of impact. Most types of exposed metal surfaces would be too hard and would therefore not meet the requirements of the proposed standard.''

In response to comments received on the proposed rule, a revised proposed rule was published on July 30, 1974 (*See* 39 FR 27585). This revised version of the proposed rule included the modern-day requirements[8] specified in paragraph S5.3.1.3 (albeit using English units), including the definition for ''contactable surface'',[9] which is referred to in paragraph S5.3.1.3,

''Contactable surface means any surface within the zone specified in S5.3.1.1 that is contactable from any direction by the test device described in S6.6, except any surface on the front of a seat back or restraining barrier 76 mm or more below the top of the seat back or restraining barrier.''

Regarding the intent of the requirements at S5.3.1.3 related to the top 76 mm of the front of each school bus seat, NHTSA agrees with DTNA that such requirements were primarily for a time when the school bus industry utilized exposed metal bars for standing passengers, which is no longer the case. However, NHTSA does not agree with DTNA's argument that the requirements at S5.3.1.3 are outmoded, as it is important to retain such requirements to prevent the return of such hazards to passengers riding school buses. As such, NHTSA is persuaded by DTNA's argument that the original hazards which prompted the requirements at S5.3.1.3 no longer exist, but NHTSA is not persuaded that such requirements are outmoded.

Regarding the safety benefits of the high-placed bezel, NHTSA agrees with DTNA that in this case, the safety benefits of the high-placed bezel outweigh the safety risks. The head protection requirements are intended to protect the occupant located behind the seat back on which the bezel is located. While this location is a contactable surface, it is unlikely that the occupant will override the seat and impact the bezels given the location and size of the bezels, particularly if the occupant is belted. Additionally, the low HIC values presented by DTNA's testing and the higher location of the bezel placements, indicate a low safety risk to passengers, especially more vulnerable passengers. As such, NHTSA is persuaded by DTNA's argument that the safety benefits of the high-placed bezel outweigh the safety risks in the present case.

Regarding the ability to test the front areas within the *Head Protection Zone* and *Contactable Surface,* NHTSA does not agree with DTNA's argument that it is impossible to conduct head impact testing within the top 76 mm of the front of each school bus seat, as NHTSA's own testing laboratories have been able to successfully perform such tests, as part of the school bus compliance test program. Additionally, DTNA's own argument indicates successful testing both ''internally and at accredited external test agencies'' for HIC measurements on seat backs where the bezels are located. As such, NHTSA is not persuaded by DTNA's argument that it is impossible to conduct such testing on the front of seats.

C. Remaining Arguments

DTNA referenced two inconsequential noncompliance petitions NHTSA had previously granted to support its petition.

The first petition, from IC Corporation (IC) (*See* 70 FR 24464), involved school buses where two side emergency exit doors were located opposite each other within the same post and roof bow panel space. IC argued that the requirement prohibiting two exit doors from being located in this manner appeared to be related to the structural integrity of a bus body with this configuration. IC indicated that it had no reports of any structural failures in the area around the emergency doors but stated that it would extend to owners of the noncompliant vehicles a 15-year warranty for any structural or

[7] These areas are defined as a combination of the *Head Protection Zone* (*See* 49 CFR 571.222 S5.3.1) and *Contactable Surface* (*See* 49 CFR 571.222 S4).

[8] There were two more proposed FMVSS No. 222 rules published, as the rule continued to be developed and comments were received on different sections of the proposed rule (*See* 40 FR 17855, April 23, 1975 and 40 FR 47141, October 8, 1975), however no further updates were made to the definition of ''contactable surface'' or to the requirements specified in paragraph S5.3.1.3. The final rule was published on January 28, 1976 (*See* 41 FR 4018).

[9] The definition for ''contactable surface'' includes the top 76 mm of the front of each school bus seat, which is the area at issue here, and where the plastic bezels are located within.

panel failures related to the location of the doors. NHTSA agreed with IC that, in this case, the noncompliance did not compromise safety in terms of emergency exit capability in proportion to maximum occupant capacity, access to side emergency doors, visibility of the exits, or the ability of bus occupants to exit after an accident. NHTSA does not agree that granting this prior petition supports DTNA's arguments in this case. Here, the issue is occupant crash protection against structures within the vehicle.

The second petition, from New Flyer of America, Inc. (*See* 63 FR 32694), involved transit buses that had only one emergency exit on the right side of the bus instead of two, as required by FMVSS No. 217. In this case, these buses had 3.28 times the required exit area, with two emergency exit windows on the left side, one emergency exit window on the right side and two roof exits. Thus, the buses had the minimum number of emergency exits required by FMVSS No. 217. However, these exits were not distributed properly. Instead of a second emergency exit on the right side, these buses had an additional roof exit. The agency decided that the additional roof exit provided for an additional level of safety during a rollover event and granted the petition. Again, NHTSA does not agree that granting this prior petition supports granting DTNA's petition here, because occupant crash protection against structures within the vehicle was not at issue.

D. Response to Public Comment Received

In response to the comment received, NHTSA agrees with the commenter regarding rear surface seat back-only testing represents the industry norm, as the industry has moved away from metal bars on the seat back to be used by standees and the contactable surface of the front of the seat is generally constructed only of soft materials. NHTSA does not agree with the commenter that the head impact zones identified in the FMVSS No. 222 test procedure are relatively small areas and would make it challenging to do head impact testing, as such testing has been successfully completed by NHTSA contracted labs in past school bus compliance tests. NHTSA also agrees with the commenter that the HIC values are an important measurement for evaluating head impact protection in the head form force distribution requirements at S5.3.1.3 of FMVSS No. 222, but notes that the energy absorption requirements in S5.3.1.3 are also an important measurement to determine how much energy a seat can absorb in an emergency event.

VIII. NHTSA's Decision

In the instant case, NHTSA has determined that it is unlikely given the bezels' size and location that the occupants for which the head protection requirements are intended to protect will impact the bezel, and the overall safety benefits of retaining seats with three-point seat belts in this application outweigh the safety risks of the actual noncompliance. In consideration of the foregoing, NHTSA finds that DTNA has met its burden of persuasion that the FMVSS No. 222 noncompliance is inconsequential as it relates to motor vehicle safety. Accordingly, DTNA's petition is hereby granted and DTNA is exempted from the obligation of providing notification of, and a remedy for, the noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that DTNA no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after DTNA notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2023–08735 Filed 4–25–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2023–0009]

Advisory Committee on Underride Protection; Notice of Public Meeting

AGENCY: National Highway Traffic Safety Administration, U.S. Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a meeting of the Advisory Committee on Underride Protection (ACUP). This notice announces the date, time, and location of the meeting, which will be open to the public. The purpose of the ACUP is to provide advice and recommendations to the Secretary of Transportation on safety regulations to reduce underride crashes and fatalities relating to underride crashes.

DATES: This meeting will be held on May 25, 2023, from 12:30 p.m. to 4:30 p.m. ET. Pre-registration is required to attend this online meeting. A link permitting access to the meeting will be distributed to registrants within 24 hours of the meeting start time.

ADDRESSES: The meeting will be held virtually via Zoom. Information and registration for the meeting will be available on the NHTSA website (*https://www.nhtsa.gov/events-and-public-meetings*) at least one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: James Myers, U.S. Department of Transportation, Special Vehicles & Systems Division, 1200 New Jersey Avenue SE, Washington, DC 20590, *acup@dot.gov* or (202) 493–0031.

SUPPLEMENTARY INFORMATION:

I. Background

The ACUP was established as a statutory committee pursuant to section 23011(d) of the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act, Public Law 117–58 (2021), and in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. app. 2. The purpose of the ACUP is to provide information, advice, and recommendations to the Secretary of Transportation on safety regulations to reduce underride crashes and fatalities relating to underride crashes.

The Committee duties include the following:

a. Gathering information as necessary to discuss issues presented by the Designated Federal Officer.

b. Deliberating on issues relevant to safety regulations related to underride crashes and fatalities from underride crashes.

c. Providing written consensus advice to the Secretary on underride protection to reduce underride crashes and fatalities relating to underride crashes.

II. Agenda

At the meeting, the agenda will cover the following topics:

- Committee Purpose and Guidelines
- Committee Member Introductions
- Selection of the Committee Chair

III. Public Participation

This meeting will be open to the public. We are committed to providing equal access to this meeting for all participants. Persons with disabilities in need of an accommodation should send a request to the individual in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than May 17, 2023.

Members of the public may also submit written materials, questions, and comments to the Committee in advance to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than May 17, 2023.

All advance submissions will be reviewed by the Designated Federal Officer. If approved, advance submissions shall be circulated to the ACUP representatives for review prior to the meeting. All advance submissions will become part of the official record of the meeting.

Authority: The Committee is established as a statutory committee under the authority of section 23011 of the Infrastructure Investment and Jobs Act, Public Law 117–58 (2021), and in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. app. 2.

Issued in Washington, DC, under authority delegated in 49 CFR 501.5.

Sophie Shulman,

Deputy Administrator.

[FR Doc. 2023–08810 Filed 4–25–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0102; Notice 1]

Hercules Tire & Rubber Company, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Hercules Tire & Rubber Company, (Hercules), has determined that certain Hercules Power ST2 radial trailer tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds).* Hercules filed an original noncompliance report dated October 5, 2022. Hercules subsequently petitioned NHTSA on October 21, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Hercules' petition.

DATES: Send comments on or before May 26, 2023.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/*. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, Safety Compliance Engineer, Office of Vehicle Safety Compliance, NHTSA, (325) 655–0547.

SUPPLEMENTARY INFORMATION:

I. *Overview:* Hercules determined that certain Hercules Power ST2 radial trailer tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds).* Hercules filed an original noncompliance report dated October 5, 2022, pursuant to FMVSS 119, S6.5(b), *New pneumatic tires for motor vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds)* (49 CFR 571.119). Hercules petitioned NHTSA on October 21, 2022, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of Hercules' petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Tires Involved: Approximately 700 Hercules Power ST2 radial trailer tires, size ST175/80R13, manufactured between October 4, 2021, and October 10, 2021, were reported by the manufacturer.

III. Noncompliance: Hercules explains that the noncompliance is that the date code portion of the Tire Identification Number (TIN) on the subject tires was inverted, and, therefore, do not comply with the requirements specified in paragraph S6.5(b) of FMVSS No. 119.

IV. Rule Requirements: Paragraph S6.5(b) of FMVSS No. 119 includes the requirements relevant to these petitions. S6.5(b) provides that the TIN must meet the requirements as stated in 49 CFR 574 and may be marked on only one sidewall. 49 CFR 574.5(a) requires, in relevant part, that each new tire

manufacturer must conspicuously label on one sidewall of each tire it manufactures, by permanently molding into or onto the sidewall, a TIN consisting of 13 symbols that contains the plant code, manufacturer's code, and date code, as described in paragraphs (b)(1) through (b)(3) of 49 CFR 574.5.

V. Summary of Hercules's Petition: The following views and arguments presented in this section, ''V. Summary of Hercules Petition,'' are the views and arguments provided by Hercules. They have not been evaluated by the Agency and do not reflect the views of the Agency. Hercules describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Hercules states that although the date code is inverted, the subject tires are clearly marked and contain the correct date code that specifies the correct week and year of manufacture. Hercules says that consumers can easily read the date code and if needed rotate the tire so that the date code ''appears perceptually upright.''

Hercules also states that the TIN on the subject tires complies with the TIN marking requirements and ''otherwise conform to the performance requirements applicable to trailer tires.''

Hercules says that NHTSA has granted previous inconsequential noncompliance petitions relating to inverted date codes and cited the following:

1. Grant of Petition of Hankook Tire, 87 FR 6941, (February 7, 2022).

2. Grant of Petition of Hankook Tire, 86 FR 49411, (September 2, 2021). [the date code] is properly located in the right-most position and shows the correct week and year of manufacture but has been imprinted upside-down, and the upside-down font cannot be confused with right-side up font. If a consumer reads the label as it is, the fact that the date code is inverted would become self-evident. In such a case, it would not be difficult to rotate the tire to a position where the code could be read and deciphered.''

3. Grant of Petition of Cooper Tire & Rubber Company, 81 FR 43708, (July 5, 2016).

Hercules contends that the TIN is located in the ''right-most'' position and is clearly printed on the subject tires, similar to the previous petitions that NHTSA has granted. Hercules says that the subject noncompliance does not prohibit them from tracking the tire or notifying consumers in the event of a recall.

Hercules concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the tires that Hercules no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve commodity distributors of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Hercules notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2023–08734 Filed 4–25–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity: Bond Guarantee Program

Funding Opportunities: Bond Guarantee Program, FY 2023; Notice of Guarantee Availability.

Funding Opportunity Title: Notice of Guarantee Availability (NOGA) inviting Qualified Issuer Applications and Guarantee Applications for the Community Development Financial Institutions (CDFI) Bond Guarantee Program.

Announcement Type: Announcement of opportunity to submit Qualified Issuer Applications and Guarantee Applications.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.011.

Dates: Qualified Issuer Applications and Guarantee Applications may be submitted to the CDFI Fund starting on the date of publication of this NOGA. In order to be considered for the approval of a Guarantee in fiscal year (FY) 2023, Qualified Issuer Applications must be submitted by 11:59 p.m. Eastern Time (ET) on June 2, 2023 and Guarantee Applications must be submitted by 11:59 p.m. ET on June 9, 2023. For the 2023 application round the CDFI Fund is not currently accepting new CDFI Certification Applications. An applicant for a Guarantee that is not currently a Certified CDFI must have submitted a CDFI Certification Application by September 30, 2022 to be considered. Under FY 2023 authority, Bond Documents and Bond Loan documents must be executed, and Guarantees will be provided, in the order in which Guarantee Applications are approved or by such other criteria that the CDFI Fund may establish, in its sole discretion, and in any event by December 31, 2023.

Executive Summary: This NOGA is published in connection with the CDFI Bond Guarantee Program, administered by the Community Development Financial Institutions Fund (CDFI Fund), the U.S. Department of the Treasury (Treasury). Through this NOGA, the CDFI Fund announces the availability of up to $500 million of Guarantee Authority in FY 2023. This NOGA explains application submission and evaluation requirements and processes, and provides agency contacts and information on CDFI Bond Guarantee Program outreach. Parties interested in being approved for a Guarantee under the CDFI Bond Guarantee Program must submit Qualified Issuer Applications and Guarantee Applications for consideration in accordance with this NOGA. Capitalized terms used in this NOGA and not defined elsewhere are defined in the CDFI Bond Guarantee Program regulations (12 CFR 1808.102) and the CDFI Program regulations (12 CFR 1805.104).

I. Guarantee Opportunity Description

A. Authority. The CDFI Bond Guarantee Program was authorized by the Small Business Jobs Act of 2010 (Pub. L. 111–240; 12 U.S.C. 4713a) (the Act). Section 1134 of the Act amended the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701, *et seq.*) to provide authority to the Secretary of the Treasury (Secretary) to establish and administer the CDFI Bond Guarantee Program.

B. Bond Issue size; Amount of Guarantee authority. In FY 2023, the Secretary may guarantee Bond Issues having a minimum Guarantee of $100 million each, and up to an aggregate total of $500 million, or other amounts authorized by FY 2023 Appropriations.

C. Program summary. The purpose of the CDFI Bond Guarantee Program is to support CDFI lending by providing Guarantees for Bonds issued for Eligible Community or Economic Development Purposes, as authorized by section 1134 and 1703 of the Act. The Secretary, as the Guarantor of the Bonds, will provide a 100% Guarantee for the repayment of the Verifiable Losses of Principal, Interest, and Call Premium of Bonds issued by Qualified Issuers. Qualified Issuers, approved by the CDFI Fund, will issue Bonds that will be purchased by the Federal Financing Bank. The Qualified Issuer will use 100% of Bond Proceeds to provide Bond Loans to Eligible CDFIs, which will use Bond Loan proceeds for Eligible Community and Economic Development Purposes, including providing Secondary Loans to Secondary Borrowers in accordance with the Secondary Loan Requirements. Secondary Loans may support lending in the following asset classes: CDFI-to-CDFI, CDFI to Financing Entity, Charter Schools, Commercial Real Estate, Daycare Centers, Healthcare Facilities, Rental Housing, Rural Infrastructure, Owner-Occupied Home Mortgages, Licensed Senior Living and Long-Term Care Facilities, Small Business, and Not-for-Profit Organizations, as these terms are defined in the Secondary Loan Requirements (Underwriting Review Checklist), which can be found on the CDFI Fund's website at *www.cdfifund.gov/bond.*

D. Review Guarantee Applications, in general.

1. Qualified Issuer Applications submitted with Guarantee Applications will have priority for review over Qualified Issuer Applications submitted without Guarantee Applications. With the exception of the aforementioned prioritized review, all Qualified Issuer Applications and Guarantee Applications will be reviewed by the CDFI Fund on an ongoing basis, in the order in which they are received, or by such other criteria that the CDFI Fund may establish in its sole discretion.

2. Guarantee Applications that are incomplete or require the CDFI Fund to request additional or clarifying information may delay the ability of the CDFI Fund to move the Guarantee Application to the next phase of review. Submitting an incomplete Guarantee Application earlier than other applicants does not ensure first approval.

3. Qualified Issuer Applications and Guarantee Applications that were received in FY 2022 and that were neither withdrawn nor declined in FY 2022 will be considered under FY 2023 authority.

4. Pursuant to the Regulations at 12 CFR 1808.504(c), the Guarantor may limit the number of Guarantees issued per year or the number of Guarantee Applications accepted to ensure that a sufficient examination of Guarantee Applications is conducted.

E. Additional reference documents. In addition to this NOGA, the CDFI Fund encourages interested parties to review the following documents, which have been posted on the CDFI Bond Guarantee Program page of the CDFI Fund's website at *http://www.cdfifund.gov/bond.*

1. Guarantee Program Regulations. The regulations that govern the CDFI Bond Guarantee Program were published on February 5, 2013 (78 FR 8296; 12 CFR part 1808) (the Regulations), and provide the regulatory requirements and parameters for CDFI Bond Guarantee Program implementation and administration including general provisions, eligibility, eligible activities, applications for Guarantee and Qualified Issuer, evaluation and selection, terms and conditions of the Guarantee, Bonds, Bond Loans, and Secondary Loans.

2. Application materials. Details regarding Qualified Issuer Application and Guarantee Application content requirements are found in this NOGA and the respective application materials. Interested parties should review the template Bond Documents and Bond Loan documents that will be used in connection with each Guarantee. The template documents are posted on the CDFI Fund's website for review. Such documents include, among others:

a. The Secondary Loan Requirements, which contain the minimum required criteria (in addition to the Eligible CDFI's underwriting criteria) for a loan to be accepted as a Secondary Loan or Other Pledged Loan. The Secondary Loan Requirements include the General Requirements and the Underwriting Review Checklist;

b. The Agreement to Guarantee, which describes the roles and responsibilities of the Qualified Issuer, will be signed by the Qualified Issuer and the Guarantor, and will include term sheets as exhibits that will be signed by each individual Eligible CDFI;

c. The Term Sheet(s), which describe the material terms and conditions of the Bond Loan from the Qualified Issuer to the Eligible CDFI. The CDFI Fund website includes template term sheets for the General Recourse Structure (GRS), the Alternative Financial Structure (AFS), and for the CDFI to Financing Entity Asset Class utilizing pooled tertiary loans;

d. The Bond Trust Indenture, which describes the responsibilities of the Master Servicer/Trustee in overseeing the Trust Estate and the servicing of the Bonds, which will be entered into by the Qualified Issuer and the Master Servicer/Trustee;

e. The Bond Loan Agreement, which describes the terms and conditions of Bond Loans, and will be entered into by the Qualified Issuer and each Eligible CDFI that receives a Bond Loan;

f. The Bond Purchase Agreement, which describes the terms and conditions under which the Bond Purchaser will purchase the Bonds issued by the Qualified Issuer, and will be signed by the Bond Purchaser, the Qualified Issuer, the Guarantor and the CDFI Fund; and

g. The Future Advance Promissory Bond, which will be signed by the Qualified Issuer as its promise to repay the Bond Purchaser. The template documents may be updated periodically, as needed, and will be tailored, as appropriate, to the terms and conditions of a particular Bond, Bond Loan, and Guarantee. Additionally, the CDFI Fund may impose terms and conditions that address risks unique to the Eligible CDFI's business model and target market, which may include items such as concentration risk of a specific Eligible CDFI, geography or Secondary Borrower. The Bond Documents and the Bond Loan documents reflect the terms and conditions of the CDFI Bond Guarantee Program and will not be substantially revised or negotiated prior to execution.

F. Frequently Asked Questions. The CDFI Fund may periodically post on its website responses to questions that are asked by parties interested in applying to the CDFI Bond Guarantee Program.

G. Designated Bonding Authority. The CDFI Fund has determined that, for purposes of this NOGA, it will not solicit applications from entities seeking to serve as a Qualified Issuer in the role of the Designated Bonding Authority, pursuant to 12 CFR 1808.201, in FY 2023.

H. Noncompetitive process. The CDFI Bond Guarantee Program is a non-competitive program through which Qualified Issuer Applications and Guarantee Applications will undergo a merit-based evaluation (meaning, applications will not be scored against each other in a competitive manner in which higher ranked applicants are favored over lower ranked applicants).

I. *Relationship to other CDFI Fund programs.*

1. Award funds received under any other CDFI Fund Program cannot be used by any participant, including

Qualified Issuers, Eligible CDFIs, and Secondary Borrowers, to pay principal, interest, fees, administrative costs, or issuance costs (including Bond Issuance Fees) related to the CDFI Bond Guarantee Program, or to fund the Risk-Share Pool for a Bond Issue.

2. Bond Proceeds may not be used to refinance any projects financed and/or supported with proceeds from the Capital Magnet Fund (CMF). This restriction remains in place so long as the property or project is financed or supported by a CMF award, until the end of the defined CMF award investment period, or when the loan funded by the CMF award has been replaced by a newer loan for a different phase of the project (for instance a permanent loan to replace a construction loan).

3. Bond Proceeds may not be used to refinance a leveraged loan during the seven-year NMTC compliance period. However, Bond Proceeds may be used to refinance a QLICI after the seven-year NMTC compliance period has ended, so long as all other programmatic requirements are met.

4. The terms Qualified Equity Investment, Community Development Entity, and QLICI are defined in the NMTC Program's authorizing statute, 26 U.S.C. 45D.

J. Relationship and interplay with other Federal programs and Federal funding. Eligible CDFIs may not use Bond Loans to refinance existing Federal debt or to service debt from other Federal credit programs.

1. The CDFI Bond Guarantee Program underwriting process will include a comprehensive review of the Eligible CDFI's concentration of sources of funds available for debt service, including the concentration of sources from other Federal programs and level of reliance on said sources, to determine the Eligible CDFI's ability to service the additional debt.

2. In the event that the Eligible CDFI proposes to use other Federal funds to service Bond Loan debt or as a Credit Enhancement for Secondary Loans, the CDFI Fund may require, in its sole discretion, that the Eligible CDFI provide written assurance from such other Federal program in a form that is acceptable to the CDFI Fund and that the CDFI Fund may rely upon, that said use is permissible.

K. Contemporaneous application submission. Qualified Issuer Applications may be submitted contemporaneously with Guarantee Applications; however, the CDFI Fund will review an entity's Qualified Issuer Application and make its Qualified Issuer determination prior to approving a Guarantee Application. As noted above in D(1), review priority will be given to any Qualified Issuer Application that is accompanied by a Guarantee Application.

L. Other restrictions on use of funds. Bond Proceeds may not be used to finance or refinance any trade or business consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off-premises. Bond Proceeds may not be used to finance or refinance tax-exempt obligations or to finance or refinance projects that are also financed by tax-exempt obligations if: (a) such financing or refinancing results in the direct or indirect subordination of the Bond Loan or Bond Issue to the tax-exempt obligations, or (b) such financing or refinancing results in a corresponding guarantee of the tax-exempt obligation. Qualified Issuers and Eligible CDFIs must ensure that any financing made in conjunction with tax-exempt obligations complies with CDFI Bond Guarantee Program Regulations.

II. General Application Information

The following requirements apply to all Qualified Issuer Applications and Guarantee Applications submitted under this NOGA, as well as any Qualified Issuer Applications and Guarantee Applications submitted under the FY 2022 NOGA that were neither withdrawn nor declined in FY 2022.

A. CDFI Certification Requirements.

1. In general. By statute and regulation, the Qualified Issuer applicant must be either a Certified CDFI (an entity that the CDFI Fund has officially notified that it meets all CDFI certification requirements as set forth in 12 CFR 1805.201) or an entity designated by a Certified CDFI to issue Bonds on its behalf. An Eligible CDFI must be a Certified CDFI as of the Bond Issue Date and must maintain its CDFI certification throughout the term of the corresponding Bond.

2. CDFI Certification requirements. Pursuant to the regulations that govern CDFI certification (12 CFR 1805.201), an entity may be certified if it is a legal entity (meaning, that it has properly filed articles of incorporation or other organizing documents with the State or other appropriate body in the jurisdiction in which it was legally established, as of the date the CDFI Certification Application is submitted) and meets the following requirements:

a. Primary Mission requirement (12 CFR 1805.201(b)(1)): To be a Certified CDFI, an entity must have a primary mission of promoting community development, which mission must be consistent with its Target Market. In general, the entity will be found to meet the primary mission requirement if its incorporating documents or board-approved narrative statement (*i.e.,* mission statement or resolution) clearly indicate that it has a mission of purposefully addressing the social and/or economic needs of Low-Income individuals, individuals who lack adequate access to capital and/or financial services, distressed communities, and other underserved markets. An Affiliate of a Controlling CDFI, seeking to be certified as a CDFI (and therefore, approved to be an Eligible CDFI to participate in the CDFI Bond Guarantee Program), must demonstrate that it meets the primary mission requirement on its own merit, pursuant to the regulations and the CDFI Certification Application and related guidance materials posted on the CDFI Fund's website.

b. Financing Entity requirement (12 CFR 1805.201(b)(2)): To be a Certified CDFI, an entity must demonstrate that its predominant business activity is the provision of Financial Products and Financial Services, Development Services, and/or other similar financing. On April 10, 2015, the CDFI Fund published a revision of 12 CFR 1805.201(b)(2), the section of the CDFI certification regulation that governs the ''financing entity'' requirement. The regulatory change creates a means for the CDFI Fund, in its discretion, to deem an Affiliate (meaning, in this case, an entity that is Controlled by a certified CDFI; see 12 CFR 1805.104) to have met the financing entity requirement based on the financing activity or track record of the Controlling CDFI (Control is defined in 12 CFR 1805.104), solely for the purpose of participating in the CDFI Bond Guarantee Program as an Eligible CDFI. This change is key to the creation of an AFS for the Bond Guarantee Program (see Section II(B)(2) of this NOGA for more information on the AFS). In order for the Affiliate to rely on the Controlling CDFI's financing track record, (A) the Controlling CDFI must be a Certified CDFI; (B) there must be an operating agreement that includes management and ownership provisions in effect between the two entities (prior to the submission of a CDFI Certification Application and in form and substance that is acceptable to the CDFI Fund). For the 2023 application round the CDFI Fund is not currently accepting new

CDFI Certification Applications. An applicant for an affiliate certification must have submitted an affiliate application by September 30, 2022 in order for it to be considered for CDFI certification and participation in the FY 2023 application round of the CDFI Bond Guarantee Program. This regulatory revision affects only the Affiliate's ability to meet the financing entity requirement for purposes of CDFI certification: said Affiliate must meet the other certification criteria in accordance with the existing regulations governing CDFI certification.

i. The revised regulation also states that, solely for the purpose of participating in the CDFI Bond Guarantee Program, the Affiliate's provision of Financial Products and Financial Services, Development Services, and/or other similar financing transactions does not need to be arms-length in nature if such transaction is by and between the Affiliate and Controlling CDFI, pursuant to an operating agreement that (a) includes management and ownership provisions, (b) is effective prior to the submission of a CDFI Certification Application, and (c) is in form and substance that is acceptable to the CDFI Fund.

ii. An Affiliate whose CDFI certification is based on the financing activity or track record of a Controlling CDFI is not eligible to receive financial or technical assistance awards or tax credit allocations under any other CDFI Fund program until such time that the Affiliate meets the financing entity requirement based on its own activity or track record.

iii. If an Affiliate elects to satisfy the financing entity requirement based on the financing activity or track record of a Controlling CDFI, and if the CDFI Fund approves such Affiliate as an Eligible CDFI for the sole purpose of participation in the CDFI Bond Guarantee Program, said Affiliate's CDFI certification will terminate if: (A) it does not enter into Bond Loan documents with its Qualified Issuer within one (1) year of the date that it signs the term sheet (which is an exhibit to the Agreement to Guarantee); (B) it ceases to be an Affiliate of the Controlling CDFI; or (C) it ceases to adhere to CDFI certification requirements.

iv. An Affiliate electing to satisfy the financing entity requirement based on the financing activity or track record of a Controlling CDFI does not need to have completed any financing activities prior to the date the CDFI Certification Application is submitted or approved. However, the Affiliate and the Controlling CDFI must have entered into the operating agreement described in (b)(i)(B) above, prior to such date, in form and substance that is acceptable to the CDFI Fund.

c. Target Market requirement (12 CFR 1805.201(b)(3)): To be a Certified CDFI, an entity must serve at least one eligible Target Market (either an Investment Area or a Targeted Population) by directing at least 60% of all of its Financial Product activities to one or more eligible Target Markets.

i. Solely for the purpose of participation as an Eligible CDFI in the FY 2023 application round of the CDFI Bond Guarantee Program, an Affiliate of a Controlling CDFI may be deemed to meet the Target Market requirement by virtue of serving either:

(A) an Investment Area through ''borrowers or investees'' that serve the Investment Area or provide significant benefits to its residents (pursuant to 12 CFR 1805.201(b)(3)(ii)(F)). For purposes of this NOGA, the term ''borrower'' or ''investee'' includes a borrower of a loan originated by the Controlling CDFI that has been transferred to the Affiliate as lender (which loan must meet Secondary Loan Requirements), pursuant to an operating agreement with the Affiliate that includes ownership/investment and management provisions, which agreement must be in effect prior to the submission of a CDFI Certification Application and in form and substance that is acceptable to the CDFI Fund. Loans originated by the Controlling CDFI do not need to be transferred prior to application submission; however, such loans must be transferred before certification of the Affiliate is effective. If an Affiliate has more than one Controlling CDFI, it may meet this Investment Area requirement through one or more of such Controlling CDFIs' Investment Areas; or (B) a Targeted Population, which shall mean the individuals, who are Low Income persons or lack adequate access to Financial Products or Financial Services in the entity's Target Market meeting the requirements of 12 CFR 1805.201(b)(3)(iii) of the CDFI Program Regulations as designated in the Recipient's most recently approved CDFI certification documentation. Pursuant to 12 CFR 1805.201(b)(3)(iii)(B) if a loan originated by the Controlling CDFI has been transferred to the Affiliate as lender (which loan must meet Secondary Loan Requirements) and the Controlling CDFI's financing entity activities serve the Affiliate's Targeted Population pursuant to an operating agreement that includes ownership/investment and management provisions by and between the Affiliate and the Controlling CDFI, which agreement must be in effect prior to the submission of a CDFI Certification Application and in form and substance that is acceptable to the CDFI Fund. Loans originated by the Controlling CDFI do not need to be transferred prior to application submission; however, such loans must be transferred before certification of the Affiliate is effective. If an Affiliate has more than one Controlling CDFI, it may meet this Targeted Population requirement through one or more of such Controlling CDFIs' Targeted Populations.

An Affiliate that meets the Target Market requirement through paragraphs (ii)(A) or (B) above, is not eligible to receive financial or technical assistance awards or tax credit allocations under any other CDFI Fund program until such time that the Affiliate meets the Target Market requirements based on its own activity or track record.

ii. If an Affiliate elects to satisfy the target market requirement based on paragraphs (c)(ii)(A) or (B) above, the Affiliate and the Controlling CDFI must have entered into the operating agreement as described above, prior to the date that the CDFI Certification Application is submitted, in form and substance that is acceptable to the CDFI Fund.

d. Development Services requirement (12 CFR 1805.201(b)(4)): To be a Certified CDFI, an entity must provide Development Services in conjunction with its Financial Products. Solely for the purpose of participation as an Eligible CDFI in the FY 2023 application round of the CDFI Bond Guarantee Program, an Affiliate of a Controlling CDFI may be deemed to meet this requirement if: (i) its Development Services are provided by the Controlling CDFI pursuant to an operating agreement that includes management and ownership provisions with the Controlling CDFI that is effective prior to the submission of a CDFI Certification Application and in form and substance that is acceptable to the CDFI Fund and (ii) the Controlling CDFI must have provided Development Services in conjunction with the transactions that the Affiliate is likely to purchase, prior to the date of submission of the CDFI Certification Application.

e. Accountability requirement (12 CFR 1805.201(b)(5)): To be a Certified CDFI, an entity must maintain accountability to residents of its Investment Area or Targeted Population through representation on its governing board and/or advisory board(s), or through focus groups, community meetings, and/or customer surveys. Solely for the purpose of participation as an Eligible CDFI in the FY 2023 application round of the CDFI Bond Guarantee Program, an

Affiliate of a Controlling CDFI may be deemed to meet this requirement only if it has a governing board and/or advisory board that has the same composition as the Controlling CDFI and such governing board or advisory board has convened and/or conducted Affiliate business prior to the date of submission of the CDFI Certification Application. If an Affiliate has multiple Controlling CDFIs, the governing board and/or advisory board may have a mixture of representatives from each Controlling CDFI so long as there is at least one representative from each Controlling CDFI.

f. Non-government Entity requirement (12 CFR 1805.201(b)(6)): To be a Certified CDFI, an entity can neither be a government entity nor be Controlled by one or more governmental entities.

g. For the FY 2023 application round of the CDFI Bond Guarantee Program, only one Affiliate per Controlling CDFI may participate as an Eligible CDFI. However, there may be more than one Affiliate participating as an Eligible CDFI in any given Bond Issue.

3. Operating agreement: An operating agreement between an Affiliate and its Controlling CDFI, as described above, must provide, in addition to the elements set forth above, among other items: (i) conclusory evidence that the Controlling CDFI Controls the Affiliate, through investment and/or ownership; (ii) explanation of all roles, responsibilities and activities to be performed by the Controlling CDFI including, but not limited to, governance, financial management, loan underwriting and origination, record-keeping, insurance, treasury services, human resources and staffing, legal counsel, dispositions, marketing, general administration, and financial reporting; (iii) compensation arrangements; (iv) the term and termination provisions; (v) indemnification provisions, if applicable; (vi) management and ownership provisions; and (vii) default and recourse provisions.

4. For more detailed information on CDFI certification requirements, please review the CDFI certification regulation (12 CFR 1805.201) and CDFI Certification Application materials/guidance posted on the CDFI Fund's website. Interested parties should note that there are specific regulations and requirements that apply to Depository Institution Holding Companies, Insured Depository Institutions, Insured Credit Unions, and State-Insured Credit Unions.

5. For the 2023 application round only, uncertified entities, including an Affiliate of a Controlling CDFI, that wish to apply to be certified and designated as an Eligible CDFI in the FY 2023 application round of the CDFI Bond Guarantee Program must have submitted a CDFI Certification Application to the CDFI Fund by 11:59 p.m. ET on September 30, 2022. Any CDFI Certification Application received after such date and time, as well as incomplete applications, will not be considered for the FY 2023 application round of the CDFI Bond Guarantee Program.

6. In no event will the Secretary approve a Guarantee for a Bond from which a Bond Loan will be made to an entity that is not an Eligible CDFI. The Secretary must make FY 2023 Guarantee Application decisions prior to the end of FY 2023, and the CDFI Fund must close the corresponding Bonds and Bond Loans, prior to the end of Calendar Year 2023 (December 31, 2023). Accordingly, it is essential that CDFI Certification Applications are submitted timely and in complete form, with all materials and information needed for the CDFI Fund to make a certification decision. Information on CDFI certification, the CDFI Certification Application, and application submission instructions may be found on the CDFI Fund's website at *www.cdfifund.gov.*

B. Recourse and Collateral Requirements.

1. General Recourse Structure (GRS). Under the GRS, the Bond is a nonrecourse obligation to the Qualified Issuer, and the Bond Loan is a full general recourse obligation to the Eligible CDFI.

2. Alternative Financial Structure (AFS). An AFS can be used as a limited recourse option to a Controlling CDFI or group of Controlling CDFIs. The AFS is an Affiliate of a Controlling CDFI(s) that is created for the sole purpose of participation as an Eligible CDFI in the CDFI Bond Guarantee Program. The AFS must be an Affiliate of a Controlling CDFI(s) and must be certified as a CDFI in accordance with the requirements set forth in Section II(A) of this NOGA. The AFS, as the Eligible CDFI, provides a general full recourse obligation to repay the Bond Loan, and the Bond Loan is on the balance sheet of the AFS. The requirements for the AFS are delineated in the template term sheet located on the CDFI Fund website at *https://www.cdfifund.gov/programs-training/Programs/cdfi-bond/Pages/apply-step.aspx#step2.*

C. Application Submission.

1. Electronic submission. All Qualified Issuer Applications and Guarantee Applications must be submitted through the CDFI Fund's Awards Management Information System (AMIS). Applications sent by mail, fax, or other form will not be permitted, except in circumstances that the CDFI Fund, in its sole discretion, deems acceptable. Please note that Applications will not be accepted through *Grants.gov*. For more information on AMIS, please visit the AMIS Landing Page at *https://amis.cdfifund.gov.*

2. Applicant identifier numbers. Please note that, pursuant to Office of Management and Budget (OMB) guidance (68 FR 38402), each Qualified Issuer applicant and Guarantee applicant must provide, as part of its Application, its Unique Entity Identifier (UEI), if applicable, as well as UEI numbers for its proposed Program Administrator, its proposed Servicer, and each Certified CDFI that is included in the Qualified Issuer Application and Guarantee Application. In addition, each Application must include a valid and current Employer Identification Number (EIN), with a letter or other documentation from the IRS confirming the Qualified Issuer applicant's EIN, as well as EINs for its proposed Program Administrator, its proposed Servicer, and each Certified CDFI that is included in any Application. An Application that does not include such UEI numbers, EINs, and documentation is incomplete and will be rejected by the CDFI Fund. Applicants should allow sufficient time for the IRS and/or Dun and Bradstreet to respond to inquiries and/or requests for the required identification numbers.

3. System for Award Management (SAM). Registration with SAM is required for each Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, and each Certified CDFI that is included in any Application. The CDFI Fund will not consider any Applications that do not meet the requirement that each entity must be properly registered before the date of Application submission. The SAM registration process may take one month or longer to complete. A signed notarized letter identifying the SAM authorized entity administrator for the entity associated with the UEI number is required. This requirement is applicable to new entities registering in SAM, as well as to existing entities with registrations being updated or renewed in SAM. Applicants without UEI and/or EIN numbers should allow for additional time as an applicant cannot register in SAM without those required numbers. Applicants that have previously completed the SAM registration process must verify that their SAM accounts are current and

active. Each applicant must continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an Application under consideration by a Federal awarding agency. The CDFI Fund will not consider any applicant that fails to properly register or activate its SAM account and these restrictions also apply to organizations that have not yet received a UEI or EIN number. Applicants must contact SAM directly with questions related to registration or SAM account changes as the CDFI Fund does not maintain this system and has no ability to make changes or correct errors of any kind. For more information about SAM, visit *https://www.sam.gov.*

4. AMIS accounts. Each Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, and each Certified CDFI that is included in the Qualified Issuer Application or Guarantee Application must register User and Organization accounts in AMIS. Each such entity must be registered as an Organization and register at least one User Account in AMIS. As AMIS is the CDFI Fund's primary means of communication with applicants with regard to its programs, each such entity must make sure that it updates the contact information in its AMIS account before any Application is submitted. For more information on AMIS, please visit the AMIS Landing Page at *https://amis.cdfifund.gov.*

D. Form of Application.

1. As of the date of this NOGA, the Qualified Issuer Application, the Guarantee Application, and related application instructions for this round may be found on the CDFI Bond Guarantee Program's page on the CDFI Fund's website at *http://www.cdfifund.gov/bond.*

2. Paperwork Reduction Act. Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the Qualified Issuer Application, the Guarantee Application, and the Secondary Loan Requirements have been assigned the following control number: 1559–0044.

3. Application deadlines. In order to be considered for the issuance of a Guarantee under FY 2023 program authority, Qualified Issuer Applications must be submitted by 11:59 p.m. ET on June 2, 2023, and Guarantee Applications must be submitted by 11:59 p.m. ET on June 9, 2023. Qualified Issuer Applications and Guarantee Applications received in FY 2022 that were neither withdrawn nor declined will be considered under FY 2023 authority. If applicable, CDFI Certification Applications must have been received by the CDFI Fund by 11:59 p.m. ET on September 30, 2022.

4. Format. Detailed Qualified Issuer Application and Guarantee Application content requirements are found in the Applications and application guidance. The CDFI Fund will read only information requested in the Application and reserves the right not to read attachments or supplemental materials that have not been specifically requested in this NOGA, the Qualified Issuer, or the Guarantee Application. Supplemental materials or attachments such as letters of public support or other statements that are meant to bias or influence the Application review process will not be read.

5. Application revisions. After submitting a Qualified Issuer Application or a Guarantee Application, the applicant will not be permitted to revise or modify the Application in any way unless authorized or requested by the CDFI Fund.

6. Material changes.

a. In the event that there are material changes after the submission of a Qualified Issuer Application prior to the designation as a Qualified Issuer, the applicant must notify the CDFI Fund of such material changes information in a timely and complete manner. The CDFI Fund will evaluate such material changes, along with the Qualified Issuer Application, to approve or deny the designation of the Qualified Issuer.

b. In the event that there are material changes after the submission of a Guarantee Application (including, but not limited to, a revision of the Capital Distribution Plan or a change in the Eligible CDFIs that are included in the Application) prior to or after the designation as a Qualified Issuer or approval of a Guarantee Application or Guarantee, the applicant must notify the CDFI Fund of such material changes information in a timely and complete manner. The Guarantor will evaluate such material changes, along with the Guarantee Application, to approve or deny the Guarantee Application and/or determine whether to modify the terms and conditions of the Agreement to Guarantee. This evaluation may result in a delay of the approval or denial of a Guarantee Application.

E. Eligibility and completeness review. The CDFI Fund will review each Qualified Issuer and Guarantee Application to determine whether it is complete and the applicant meets eligibility requirements described in the Regulations, this NOGA, and the Applications. An incomplete Qualified Issuer Application or Guarantee Application, or one that does not meet eligibility requirements, will be rejected. If the CDFI Fund determines that additional information is needed to assess the Qualified Issuer's and/or the Certified CDFIs' ability to participate in and comply with the requirements of the CDFI Bond Guarantee Program, the CDFI Fund may require that the Qualified Issuer furnish additional, clarifying, confirming or supplemental information. If the CDFI Fund requests such additional, clarifying, confirming or supplemental information, the Qualified Issuer must provide it within the timeframes requested by the CDFI Fund. Until such information is provided to the CDFI Fund, the Qualified Issuer Application and/or Guarantee Application will not be moved forward for the substantive review process.

F. Regulated entities. In the case of Qualified Issuer applicants, proposed Program Administrators, proposed Servicers, and Certified CDFIs that are included in the Qualified Issuer Application or Guarantee Application that are Insured Depository Institutions and Insured Credit Unions, the CDFI Fund will consider information provided by, and views of, the Appropriate Federal and State Banking Agencies. If any such entity is a CDFI bank holding company, the CDFI Fund will consider information provided by the Appropriate Federal Banking Agencies of the CDFI bank holding company and its CDFI bank(s). Throughout the Application review process, the CDFI Fund will consider financial safety and soundness information from the Appropriate Federal Banking Agency. Each regulated applicant must have a composite CAMELS/CAMEL rating of at least ''3'' and/or no material concerns from its regulator. The CDFI Fund also reserves the right to require a regulated applicant to improve safety and soundness conditions prior to being approved as a Qualified Issuer or Eligible CDFI. In addition, the CDFI Fund will take into consideration Community Reinvestment Act assessments of Insured Depository Institutions and/or their Affiliates.

G. Prior CDFI Fund recipients. All applicants must be aware that success under any of the CDFI Fund's other programs is not indicative of success under this NOGA. Prior CDFI Fund recipients should note the following:

1. Pending resolution of default or noncompliance. If a Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, or

any of the Certified CDFIs included in the Qualified Issuer Application or Guarantee Application is a prior recipient or allocatee under any CDFI Fund program and (i) it has submitted reports to the CDFI Fund that demonstrate default or noncompliance with a previously executed agreement with the CDFI Fund, and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in default or noncompliant with its previously executed agreement, the CDFI Fund will consider the Qualified Issuer Application or Guarantee Application pending full resolution, in the sole determination of the CDFI Fund, of the default or noncompliance.

2. Previous findings of default or noncompliance. If a Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, or any of the Certified CDFIs included in the Qualified Issuer Application or Guarantee Application is a prior recipient or allocatee under any CDFI Fund program and the CDFI Fund has made a final determination that the entity is in default or noncompliant with a previously executed agreement with the CDFI Fund, but has not notified the entity that it is ineligible to apply for future CDFI Fund program awards or allocations, the CDFI Fund will consider the Qualified Issuer Application or Guarantee Application. However, it is strongly advised that the entity take action to address such default or noncompliance finding, as repeat findings of default or noncompliance may result in the CDFI Fund determining the entity ineligible to participate in future CDFI Fund program rounds, which could result in any pending applications being deemed ineligible for further review. The CDFI Bond Guarantee Program staff cannot resolve compliance matters; instead, please contact the CDFI Fund's Office of Compliance Monitoring and Evaluation Unit (OCME) by AMIS Service Request if your organization has questions about its current compliance status or has been found not in compliance with a previously executed agreement with the CDFI Fund.

3. Ineligibility due to default or noncompliance. The CDFI Fund will not consider a Qualified Issuer Application or Guarantee Application if the applicant, its proposed Program Administrator, its proposed Servicer, or any of the Certified CDFIs included in the Qualified Issuer Application or Guarantee Application, is a prior recipient or allocatee under any CDFI Fund program and if, as of the date of Qualified Issuer Application or Guarantee Application submission, (i) the CDFI Fund has made a determination that such entity is in default or noncompliant with a previously executed agreement and (ii) the CDFI Fund has provided written notification that such entity is ineligible to apply for any future CDFI Fund program awards or allocations. Such entities will be ineligible to submit a Qualified Issuer or Guarantee Application, or be included in such submission, as the case may be, for such time period as specified by the CDFI Fund in writing.

H. Review of Bond and Bond Loan documents. Each Qualified Issuer and proposed Eligible CDFI will be required to certify that its appropriate senior management, and its respective legal counsel, has read the Regulations (set forth at 12 CFR part 1808, as well as the CDFI certification regulations set forth at 12 CFR 1805.201, as amended, and the environmental quality regulations set forth at 12 CFR part 1815) and the template Bond Documents and Bond Loan documents posted on the CDFI Fund's website including, but not limited to, the following: Bond Trust Indenture, Supplemental Indenture, Bond Loan Agreement, Promissory Note, Bond Purchase Agreement, Designation Notice, Secretary's Guarantee, Collateral Assignment, Reimbursement Note, Opinion of Bond Counsel, Opinion of Counsel to the Borrower, Escrow Agreement, and Closing Checklist.

I. Contact the CDFI Fund. A Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, or any Certified CDFIs included in the Qualified Issuer Application or Guarantee Application that are prior CDFI Fund recipients and/or allocatees are advised to: (i) comply with requirements specified in CDFI Fund assistance, allocation, and/or award agreement(s), and (ii) contact the CDFI Fund to ensure that all necessary actions are underway for the disbursement or deobligation of any outstanding balance of said prior award(s). Any such parties that are unsure about the disbursement status of any prior award should submit a Service Request through that organization's AMIS Account.

All outstanding reporting and compliance questions should be directed to the Office of Compliance Monitoring and Evaluation help desk by AMIS Service Requests. The CDFI Fund will respond to applicants' reporting, compliance, or disbursement questions between the hours of 9:00 a.m. and 5:00 p.m. ET, starting on the date of the publication of this NOGA.

J. Evaluating prior award performance. In the case of a Qualified Issuer, a proposed Program Administrator, a proposed Servicer, or Certified CDFI that has received awards from other Federal programs, the CDFI Fund reserves the right to contact officials from the appropriate Federal agency or agencies to determine whether the entity is in compliance with current or prior award agreements, and to take such information into consideration before issuing a Guarantee. In the case of such an entity that has previously received funding through any CDFI Fund program, the CDFI Fund will review the entity's compliance history with the CDFI Fund, including any history of providing late reports, and consider such history in the context of organizational capacity and the ability to meet future reporting requirements.

The CDFI Fund may also bar from consideration any such entity that has, in any proceeding instituted against it in, by, or before any court, governmental, or administrative body or agency, received a final determination within the three years prior to the date of publication of this NOGA indicating that the entity has discriminated on the basis of race, color, national origin, disability, age, marital status, receipt of income from public assistance, religion, or sex, including, but not limited, to discrimination under (i) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (ii) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, 1685–1686), which prohibits discrimination on the basis of sex; (iii) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (iv) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (v) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (vi) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (vii) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (viii) Title VIII of the Civil Rights Act of 1968 (42

U.S.C. 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (ix) any other nondiscrimination provisions in the specific statute(s) under which Federal assistance is being made; and (x) the requirements of any other nondiscrimination statutes which may apply to the CDFI Bond Guarantee Program.

K. Civil Rights and Diversity. Any person who is eligible to receive benefits or services from the CDFI Fund or Recipients under any of its programs is entitled to those benefits or services without being subject to prohibited discrimination. The Department of the Treasury's Office of Civil Rights and Equal Employment Opportunity enforces various Federal statutes and regulations that prohibit discrimination in financially assisted and conducted programs and activities of the CDFI Fund. If a person believes that s/he has been subjected to discrimination and/or reprisal because of membership in a protected group, s/he may file a complaint with: Director, Office of Civil Rights, and Equal Employment Opportunity, 1500 Pennsylvania Ave. NW, Washington, DC 20220 or (202) 622–1160 (not a toll-free number).

L. Statutory and national policy requirements. The CDFI Fund will manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, Federal Law, and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

M. Changes to review procedures. The CDFI Fund reserves the right to change its completeness, eligibility and evaluation criteria, and procedures if the CDFI Fund deems it appropriate. If such changes materially affect the CDFI Fund's decision to approve or deny a Qualified Issuer Application, the CDFI Fund will provide information regarding the changes through the CDFI Fund's website.

N. Decisions are final. The CDFI Fund's Qualified Issuer Application decisions are final. The Guarantor's Guarantee Application decisions are final. There is no right to appeal the decisions. Any applicant that is not approved by the CDFI Fund or the Guarantor may submit a new Application and will be considered based on the newly submitted Application. Such newly submitted Applications will be reviewed along with all other pending Applications in the order in which they are received, or by such other criteria that the CDFI Fund may establish, in its sole discretion.

III. Qualified Issuer Application

A. General. This NOGA invites interested parties to submit a Qualified Issuer Application to be approved as a Qualified Issuer under the CDFI Bond Guarantee Program.

1. Qualified Issuer. The Qualified Issuer is a Certified CDFI, or an entity designated by a Certified CDFI to issue Bonds on its behalf, that meets the requirements of the Regulations and this NOGA, and that has been approved by the CDFI Fund pursuant to review and evaluation of its Qualified Issuer Application. The Qualified Issuer will, among other duties: (i) organize the Eligible CDFIs that have designated it to serve as their Qualified Issuer; (ii) prepare and submit a complete and timely Qualified Issuer and Guarantee Application to the CDFI Fund; (iii) if the Qualified Issuer Application is approved by the CDFI Fund and the Guarantee Application is approved by the Guarantor, prepare the Bond Issue; (iv) manage all Bond Issue servicing, administration, and reporting functions; (v) make Bond Loans; (vi) oversee the financing or refinancing of Secondary Loans; (vii) ensure compliance throughout the duration of the Bond with all provisions of the Regulations, and Bond Documents and Bond Loan Documents entered into between the Guarantor, the Qualified Issuer, and the Eligible CDFI; and (viii) ensure that the Master Servicer/Trustee complies with the Bond Trust Indenture and all other applicable regulations. Further, the role of the Qualified Issuer also is to ensure that its proposed Eligible CDFI applicants possess adequate and well performing assets to support the debt service of the proposed Bond Loan.

2. Qualified Issuer Application. The Qualified Issuer Application is the document that an entity seeking to serve as a Qualified Issuer submits to the CDFI Fund to apply to be approved as a Qualified Issuer prior to consideration of a Guarantee Application.

3. Qualified Issuer Application evaluation, general. Each Qualified Issuer Application will be evaluated by the CDFI Fund and, if acceptable, the applicant will be approved as a Qualified Issuer, in the sole discretion of the CDFI Fund. The CDFI Fund's Qualified Issuer Application review and evaluation process is based on established procedures, which may include interviews of applicants and/or site visits to applicants conducted by the CDFI Fund. Through the Application review process, the CDFI Fund will evaluate Qualified Issuer applicants on a merit basis and in a fair and consistent manner. Each Qualified Issuer applicant will be reviewed on its ability to successfully carry out the responsibilities of a Qualified Issuer throughout the life of the Bond. The Applicant must currently meet the criteria established in the Regulations to be deemed a Qualified Issuer. Qualified Issuer Applications that are forward-looking or speculate as to the eventual acquisition of the required capabilities and criteria are unlikely to be approved. Qualified Issuer Application processing will be initiated in chronological order by date of receipt; however, Qualified Issuer Applications that are incomplete or require the CDFI Fund to request additional or clarifying information may delay the ability of the CDFI Fund to deem the Qualified Issuer Application complete and move it to the next phase of review. Submitting a substantially incomplete application earlier than other applicants does not ensure first approval.

B. Qualified Issuer Application: Eligibility.

1. CDFI certification requirements. The Qualified Issuer applicant must be a Certified CDFI or an entity designated by a Certified CDFI to issue Bonds on its behalf.

2. Designation and attestation by Certified CDFIs. An entity seeking to be approved by the CDFI Fund as a Qualified Issuer must be designated as a Qualified Issuer by at least one Certified CDFI. A Qualified Issuer may not designate itself. The Qualified Issuer applicant will prepare and submit a complete and timely Qualified Issuer Application to the CDFI Fund in accordance with the requirements of the Regulations, this NOGA, and the Application. A Certified CDFI must attest in the Qualified Issuer Application that it has designated the Qualified Issuer to act on its behalf and that the information in the Qualified Issuer Application regarding it is true, accurate, and complete.

C. Substantive review and approval process.

1. Substantive review.

a. If the CDFI Fund determines that the Qualified Issuer Application is complete and eligible, the CDFI Fund will undertake a substantive review in accordance with the criteria and procedures described in the Regulations, this NOGA, the Qualified Issuer Application, and CDFI Bond Guarantee Program policies.

b. As part of the substantive evaluation process, the CDFI Fund reserves the right to contact the

Qualified Issuer applicant (as well as its proposed Program Administrator, its proposed Servicer, and each designating Certified CDFI in the Qualified Issuer Application) by telephone, email, mail, or through on-site visits for the purpose of obtaining additional, clarifying, confirming, or supplemental application information. The CDFI Fund reserves the right to collect such additional, clarifying, confirming, or supplemental information from said entities as it deems appropriate. If contacted for additional, clarifying, confirming, or supplemental information, said entities must respond within the time parameters set by the CDFI Fund or the Qualified Issuer Application will be rejected.

2. Qualified Issuer criteria. All materials provided in the Qualified Issuer Application will be used to evaluate the applicant. Qualified Issuer determinations will be made based on Qualified Issuer applicants' experience and expertise, in accordance with the following criteria:

a. Organizational capability.

i. The Qualified Issuer applicant must demonstrate that it has the appropriate expertise, capacity, experience, and qualifications to issue Bonds for Eligible Purposes, or is otherwise qualified to serve as Qualified Issuer, as well as manage the Bond Issue on the terms and conditions set forth in the Regulations, this NOGA, and the Bond Documents, satisfactory to the CDFI Fund.

ii. The Qualified Issuer applicant must demonstrate that it has the appropriate expertise, capacity, experience, and qualifications to originate, underwrite, service and monitor Bond Loans for Eligible Purposes, targeted to Low-Income Areas and Underserved Rural Areas.

iii. The Qualified Issuer applicant must demonstrate that it has the appropriate expertise, capacity, experience, and qualifications to manage the disbursement process set forth in the Regulations at 12 CFR 1808.302 and 1808.307.

b. Servicer. The Qualified Issuer applicant must demonstrate that it has (either directly or contractually through another designated entity) the appropriate expertise, capacity, experience, and qualifications, or is otherwise qualified to serve as Servicer. The Qualified Issuer Application must provide information that demonstrates that the Qualified Issuer's Servicer has the expertise, capacity, experience, and qualifications necessary to perform certain required administrative duties (including, but not limited to, Bond Loan servicing functions).

c. Program Administrator. The Qualified Issuer applicant must demonstrate that it has (either directly or contractually through another designated entity) the appropriate expertise, capacity, experience, and qualifications, or is otherwise qualified to serve as Program Administrator. The Qualified Issuer Application must provide information that demonstrates that the Qualified Issuer's Program Administrator has the expertise, capacity, experience, and qualifications necessary to perform certain required administrative duties (including, but not limited to, compliance monitoring and reporting functions).

d. Strategic alignment. The Qualified Issuer applicant will be evaluated on its strategic alignment with the CDFI Bond Guarantee Program on factors that include, but are not limited to: (i) its mission's strategic alignment with community and economic development objectives set forth in the Riegle Act at 12 U.S.C. 4701; (ii) its strategy for deploying the entirety of funds that may become available to the Qualified Issuer through the proposed Bond Issue; (iii) its experience providing up to 30-year capital to CDFIs or other borrowers in Low-Income Areas or Underserved Rural Areas as such terms are defined in the Regulations at 12 CFR 1808.102; (iv) its track record of activities relevant to its stated strategy; and (v) other factors relevant to the Qualified Issuer's strategic alignment with the program.

e. Experience. The Qualified Issuer applicant will be evaluated on factors that demonstrate that it has previous experience: (i) performing the duties of a Qualified Issuer including issuing bonds, loan servicing, program administration, underwriting, financial reporting, and loan administration; (ii) lending in Low-Income Areas and Underserved Rural Areas; and (iii) indicating that the Qualified Issuer's current principals and team members have successfully performed the required duties, and that previous experience is applicable to the current principals and team members.

f. Management and staffing. The Qualified Issuer applicant must demonstrate that it has sufficiently strong management and staffing capacity to undertake the duties of Qualified Issuer. The applicant must also demonstrate that its proposed Program Administrator and its proposed Servicer have sufficiently strong management and staffing capacity to undertake their respective requirements under the CDFI Bond Guarantee Program. Strong management and staffing capacity is evidenced by factors that include, but are not limited to: (i) a sound track record of delivering on past performance; (ii) a documented succession plan; (iii) organizational stability including staff retention; and (iv) a clearly articulated, reasonable, and well-documented staffing plan.

g. Financial strength. The Qualified Issuer applicant must demonstrate the strength of its financial capacity and activities including, among other items, financially sound business practices relative to the industry norm for bond issuers, as evidenced by reports of Appropriate Federal Banking Agencies, Appropriate State Agencies, or auditors. Such financially sound business practices will demonstrate: (i) the financial wherewithal to perform activities related to the Bond Issue such as administration and servicing; (ii) the ability to originate, underwrite, close, and disburse loans in a prudent manner; (iii) whether the applicant is depending on external funding sources and the reliability of long-term access to such funding; (iv) whether there are foreseeable counterparty issues or credit concerns that are likely to affect the applicant's financial stability; and (v) a budget that reflects reasonable assumptions about upfront costs as well as ongoing expenses and revenues.

h. Systems and information technology. The Qualified Issuer applicant must demonstrate that it (as well as its proposed Program Administrator and its proposed Servicer) has, among other things: (i) a strong information technology capacity and the ability to manage loan servicing, administration, management, and document retention; (ii) appropriate office infrastructure and related technology to carry out the CDFI Bond Guarantee Program activities; and (iii) sufficient backup and disaster recovery systems to maintain uninterrupted business operations.

i. Pricing structure. The Qualified Issuer applicant must provide its proposed pricing structure for performing the duties of Qualified Issuer, including the pricing for the roles of Program Administrator and Servicer. Although the pricing structure and fees shall be decided by negotiation between market participants without interference or approval by the CDFI Fund, the CDFI Fund will evaluate whether the Qualified Issuer applicant's proposed pricing structure is feasible to carry out the responsibilities of a Qualified Issuer over the life of the Bond to help ensure sound implementation of the program.

j. Other criteria. The Qualified Issuer applicant must meet such other criteria as may be required by the CDFI Fund, as set forth in the Qualified Issuer

Application or required by the CDFI Fund in its sole discretion, for the purposes of evaluating the merits of a Qualified Issuer Application. The CDFI Fund may request an on-site review of Qualified Issuer applicant to confirm materials provided in the written application, as well as to gather additional due diligence information. The on-site reviews are a critical component of the application review process and will generally be conducted for all applicants not regulated by an Appropriate Federal Banking Agency or Appropriate State Agency. The CDFI Fund reserves the right to conduct a site visit of regulated entities, in its sole discretion.

k. Third-party data sources. The CDFI Fund, in its sole discretion, may consider information from third-party sources including, but not limited to, periodicals or publications, publicly available data sources, or subscriptions services for additional information about the Qualified Issuer applicant, the proposed Program Administrator, the proposed Servicer, and each Certified CDFI that is included in the Qualified Issuer Application. Any additional information received from such third-party sources will be reviewed and evaluated through a systematic and formalized process.

D. Notification of Qualified Issuer determination. Each Qualified Issuer applicant will be informed of the CDFI Fund's decision in writing, by email using the addresses maintained in the entity's AMIS account. The CDFI Fund will not notify the proposed Program Administrator, the proposed Servicer, or the Certified CDFIs included in the Qualified Issuer Application of its decision regarding the Qualified Issuer Application; such contacts are the responsibility of the Qualified Issuer applicant.

E. Qualified Issuer Application rejection. In addition to substantive reasons based on the merits of its review, the CDFI Fund reserves the right to reject a Qualified Issuer Application if information (including administrative errors) comes to the attention of the CDFI Fund that adversely affects an applicant's eligibility, adversely affects the CDFI Fund's evaluation of a Qualified Issuer Application, or indicates fraud or mismanagement on the part of a Qualified Issuer applicant or its proposed Program Administrator, its proposed Servicer, and any Certified CDFI included in the Qualified Issuer Application. If the CDFI Fund determines that any portion of the Qualified Issuer Application is incorrect in any material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the Application.

IV. Guarantee Applications

A. This NOGA invites Qualified Issuers to submit a Guarantee Application to be approved for a Guarantee under the CDFI Bond Guarantee Program.

1. Guarantee Application.

a. The Guarantee Application is the application document that a Qualified Issuer (in collaboration with the Eligible CDFI(s) that seek to be included in the proposed Bond Issue) must submit to the CDFI Fund in order to apply for a Guarantee. The Qualified Issuer shall provide all required information in its Guarantee Application to establish that it meets all criteria set forth in the Regulations at 12 CFR 1808.501 and this NOGA and can carry out all CDFI Bond Guarantee Program requirements including, but not limited to, information that demonstrates that the Qualified Issuer has the appropriate expertise, capacity, and experience and is qualified to make, administer and service Bond Loans for Eligible Purposes. An Eligible CDFI may be an existing certified or certifiable CDFI (the GRS), or the Eligible CDFI may be an Affiliate of a Controlling CDFI(s) that is created for the sole purpose of participation as an Eligible CDFI in the CDFI Fund Bond Guarantee Program (the AFS; see Section II(B) of this NOGA for Recourse and Collateral Requirements and Section II(A) of this NOGA for certification requirements for certifiable CDFIs and Affiliates of Controlling CDFIs).

b. The Guarantee Application comprises a Capital Distribution Plan and at least one Secondary Capital Distribution Plan, as well as all other requirements set forth in this NOGA or as may be required by the Guarantor and the CDFI Fund in their sole discretion, for the evaluation and selection of Guarantee applicants.

2. Guarantee Application evaluation, general. The Guarantee Application review and evaluation process will be based on established standard procedures, which may include interviews of applicants and/or site visits to applicants conducted by the CDFI Fund. Through the Application review process, the CDFI Fund will evaluate Guarantee applicants on a merit basis and in a fair and consistent manner. Each Guarantee applicant will be reviewed on its ability to successfully implement and carry out the activities proposed in its Guarantee Application throughout the life of the Bond. Eligible CDFIs must currently meet the criteria established in the Regulations to participate in the CDFI Bond Guarantee Program. Guarantee Applications that are forward-looking or speculate as to the eventual acquisition of the required capabilities and criteria by the Eligible CDFI(s) are unlikely to be approved. Guarantee Application processing will be initiated in chronological order by date of receipt; however, Guarantee Applications that are incomplete or require the CDFI Fund to request additional or clarifying information may delay the ability of the CDFI Fund to deem the Guarantee Application complete and move it to the next phase of review. Submitting a substantially incomplete application earlier than other applicants does not ensure first approval.

B. Guarantee Application: eligibility.

1. Eligibility; CDFI certification requirements. If approved for a Guarantee, each Eligible CDFI must be a Certified CDFI as of the Bond Issue Date and must maintain its respective CDFI certification throughout the term of the corresponding Bond. For more information on CDFI Certification and the certification of affiliated entities, including the deadlines for submission of certification applications, see part II of this NOGA.

2. Qualified Issuer as Eligible CDFI. A Qualified Issuer may not participate as an Eligible CDFI within its own Bond Issue, but may participate as an Eligible CDFI in a Bond Issue managed by another Qualified Issuer.

3. Attestation by proposed Eligible CDFIs. Each proposed Eligible CDFI must attest in the Guarantee Application that it has designated the Qualified Issuer to act on its behalf and that the information pertaining to the Eligible CDFI in the Guarantee Application is true, accurate and complete. Each proposed Eligible CDFI must also attest in the Guarantee Application that it will use Bond Loan proceeds for Eligible Purposes and that Secondary Loans will be financed or refinanced in accordance with the applicable Secondary Loan Requirements.

C. Guarantee Application: preparation. When preparing the Guarantee Application, the Eligible CDFIs and Qualified Issuer must collaborate to determine the composition and characteristics of the Bond Issue, ensuring compliance with the Act, the Regulations, and this NOGA. The Qualified Issuer is responsible for the collection, preparation, verification, and submission of the Eligible CDFI information that is presented in the Guarantee Application. The Qualified Issuer will submit the Guarantee Application for the proposed Bond

Issue, including any information provided by the proposed Eligible CDFIs. In addition, the Qualified Issuer will serve as the primary point of contact with the CDFI Fund during the Guarantee Application review and evaluation process.

D. Review and approval process.

1. Substantive review.

a. If the CDFI Fund determines that the Guarantee Application is complete and eligible, the CDFI Fund will undertake a substantive review in accordance with the criteria and procedures described in the Regulations at 12 CFR 1808.501, this NOGA, and the Guarantee Application. The substantive review of the Guarantee Application will include due diligence, underwriting, credit risk review, and Federal credit subsidy calculation, in order to determine the feasibility and risk of the proposed Bond Issue, as well as the strength and capacity of the Qualified Issuer and each proposed Eligible CDFI. Each proposed Eligible CDFI will be evaluated independently of the other proposed Eligible CDFIs within the proposed Bond Issue; however, the Bond Issue must then cumulatively meet all requirements for Guarantee approval. In general, applicants are advised that proposed Bond Issues that include a large number of proposed Eligible CDFIs are likely to substantially increase the review period.

b. As part of the substantive review process, the CDFI Fund may contact the Qualified Issuer (as well as the proposed Eligible CDFIs included in the Guarantee Application) by telephone, email, mail, or through an on-site visit for the sole purpose of obtaining additional, clarifying, confirming, or supplemental application information. The CDFI Fund reserves the right to collect such additional, clarifying, confirming or supplemental information as it deems appropriate. If contacted for additional, clarifying, confirming, or supplemental information, said entities must respond within the time parameters set by the CDFI Fund or the Guarantee Application will be rejected.

2. Guarantee Application criteria.

a. In general, a Guarantee Application will be evaluated based on the strength and feasibility of the proposed Bond Issue, as well as the creditworthiness and performance of the Qualified Issuer and the proposed Eligible CDFIs. Guarantee Applications must demonstrate that each proposed Eligible CDFI has the capacity for its respective Bond Loan to be a secured, general recourse obligation of the proposed Eligible CDFI and to deploy the Bond Loan proceeds within the required disbursement timeframe as described in the Regulations. Unless receiving significant support from a Controlling CDFI, or Credit Enhancements, Eligible CDFIs should not request Bond Loans greater than their current total asset size or which would otherwise significantly impair their net asset or net equity position. In general, an applicant requesting a Bond Loan more than 50% of its total asset size should be prepared to clearly demonstrate that it has a reasonable plan to scale its operations prudently and in a manner that does not impair its net asset or net equity position. Further, an entity with a limited operating history or a history of operating losses is unlikely to meet the strength and feasibility requirements of the CDFI Bond Guarantee Program, unless it receives significant support from a Controlling CDFI, or Credit Enhancements.

b. The Capital Distribution Plan must demonstrate the Qualified Issuer's comprehensive plan for lending, disbursing, servicing and monitoring each Bond Loan in the Bond Issue. It includes, among other information, the following components:

i. *Statement of Proposed Sources and Uses of Funds:* Pursuant to the requirements set forth in the Regulations at 12 CFR 1808.102(bb) and 1808.301, the Qualified Issuer must provide: (A) a description of the overall plan for the Bond Issue; (B) a description of the proposed uses of Bond Proceeds and proposed sources of funds to repay principal and interest on the proposed Bond and Bond Loans; (C) a certification that 100% of the principal amount of the proposed Bond will be used to make Bond Loans for Eligible Purposes on the Bond Issue Date; and (D) description of the extent to which the proposed Bond Loans will serve Low-Income Areas or Underserved Rural Areas;

ii. *Bond Issue Qualified Issuer cash flow model:* The Qualified Issuer must provide a cash flow model displaying the orderly repayment of the Bond and the Bond Loans according to their respective terms. The cash flow model shall include disbursement and repayment of Bonds, Bond Loans, and Secondary Loans. The cash flow model shall match the aggregated cash flows from the Secondary Capital Distribution Plans of each of the underlying Eligible CDFIs in the Bond Issue pool. Such information must describe the expected distribution of asset classes to which each Eligible CDFI expects to disburse funds, the proposed disbursement schedule, quarterly or semi-annual amortization schedules, interest-only periods, maturity date of each advance of funds, and assumed net interest margin on Secondary Loans above the assumed Bond Loan rate;

iii. *Organizational capacity:* If not submitted concurrently, the Qualified Issuer must attest that no material changes have occurred since the time that it submitted the Qualified Issuer Application;

iv. *Credit Enhancement (if applicable):* The Qualified Issuer must provide information about the adequacy of proposed risk mitigation provisions designed to protect the financial interests of the Federal Government, either directly or indirectly through supporting the financial strength of the Bond Issue. This includes, but is not limited to, the amount and quality of any Credit Enhancements, terms and specific conditions such as renewal options, and any limiting conditions or revocability by the provider of the Credit Enhancement. For any third-party providing a Credit Enhancement, the Qualified Issuer must provide the following information on the third-party: most recent three years of audited financial statements, a brief analysis of the such entity's creditworthiness, and an executed letter of intent from such entity that indicates the terms and conditions of the Credit Enhancement. Any Credit Enhancement must be pledged, as part of the Trust Estate, to the Master Servicer/Trustee for the benefit of the Federal Financing Bank;

v. *Proposed Term Sheets:* The CDFI Fund website includes template term sheets for the GRS, the AFS, and the asset class CDFI to Financing Entity utilizing pooled tertiary loans. For each Eligible CDFI that is part of the proposed Bond Issue, the Qualified Issuer must submit a proposed Term Sheet using the applicable template provided on the CDFI Fund's website. The proposed Term Sheet must clearly state all relevant and critical terms of the proposed Bond Loan including, but not limited to: the Bond Loan Collateral Requirements described in Section II(B) of this NOGA, any requested prepayment provisions, unique conditions precedent, proposed covenants and exact amounts/percentages for determining the Eligible CDFI's ability to meet program requirements, and terms and exact language describing any Credit Enhancements. Terms may be either altered and/or negotiated by the CDFI Fund in its sole discretion, based on the proposed structure in the application, to ensure that adequate protection is in place for the Guarantor;

vi. *Secondary Capital Distribution Plan(s):* Each proposed Eligible CDFI must provide a comprehensive plan for financing, disbursing, servicing and

monitoring Secondary Loans, address how each proposed Secondary Loan will meet Eligible Purposes, and address such other requirements listed below that may be required by the Guarantor and the CDFI Fund. For each proposed Eligible CDFI relying, for CDFI certification purposes, on the financing entity activity of a Controlling CDFI, the Controlling CDFI must describe how the Eligible CDFI and the Controlling CDFI, together, will meet the requirements listed below:

(A) Narrative and Statement of Proposed Sources and Uses of Funds: Each Eligible CDFI will: (1) provide a description of proposed uses of funds, including the extent to which Bond Loans will serve Low-Income Areas or Underserved Rural Areas, and the extent to which Bond Loan proceeds will be used (i) to make the first monthly installment of a Bond Loan payment, (ii) pay Issuance Fees up to 1% of the Bond Loan, and (iii) finance Loan Loss Reserves related to Secondary Loans; (2) attest that 100% of Bond Loan proceeds designated for Secondary Loans will be used to finance or refinance Secondary Loans that meet Secondary Loan Requirements; (3) describe a plan for financing, disbursing, servicing, and monitoring Secondary Loans; (4) indicate the expected asset classes to which it will lend under the Secondary Loan Requirements; (5) indicate examples of previous lending and years of experience lending to a specific asset class, especially with regards to the number and dollar volume of loans made in the five years prior to application submission to the specific asset classes to which an Eligible CDFI is proposing to lend Bond Loan proceeds; (6) provide a table detailing specific uses and timing of disbursements, including terms and relending plans if applicable; and (7) a community impact analysis, including how the proposed Secondary Loans will address financing needs that the private market is not adequately serving and specific community benefit metrics;

(B) Eligible CDFI cash flow model: Each Eligible CDFI must provide a cash flow model of the proposed Bond Loan which: (1) matches each Eligible CDFI's portion of the Qualified Issuer's cash flow model; and (2) tracks the flow of funds through the term of the Bond Issue and demonstrates disbursement and repayment of the Bond Loan, Secondary Loans, and any utilization of the Relending Fund, if applicable. Such information must describe: the expected distribution of asset classes to which each Eligible CDFI expects to disburse funds, the proposed disbursement schedule, quarterly or semi-annual amortization schedules, interest-only periods, maturity date of each advance of funds, and the assumed net interest margin on Secondary Loans above the assumed Bond Loan rate;

(C) Organizational capacity: Each Eligible CDFI must provide documentation indicating the ability of the Eligible CDFI to manage its Bond Loan including, but not limited to: (1) organizational ownership and a chart of affiliates; (2) organizational documents, including policies and procedures related to loan underwriting and asset management; (3) management or operating agreement, if applicable; (4) an analysis by management of its ability to manage the funding, monitoring, and collection of loans being contemplated with the proceeds of the Bond Loan; (5) information about its board of directors; (6) a governance narrative; (7) description of senior management and employee base; (8) independent reports, if available; (9) strategic plan or related progress reports; and (10) a discussion of the management and information systems used by the Eligible CDFI;

(D) Policies and procedures: Each Eligible CDFI must provide relevant policies and procedures including, but not limited to: a copy of the asset-liability matching policy, if applicable; and loan policies and procedures which address topics including, but not limited to: origination, underwriting, credit approval, interest rates, closing, documentation, asset management, and portfolio monitoring, risk-rating definitions, charge-offs, and loan loss reserve methodology;

(E) Financial statements: Each Eligible CDFI must provide information about the Eligible CDFI's current and future financial position, including but not limited to: (1) audited financial statements for the prior three (3) most recent Fiscal Years; (2) current year-to-date or interim financial statement for the immediately prior quarter end of the Fiscal Year; (3) a copy of the current year's approved budget or projected budget if the entity's Board has not yet approved such budget; and (4) a three (3) year pro forma projection of the statement of financial position or balance sheet, statement of activities or income statement, and statement of cash flows in the standardized template provided by the CDFI Fund;

(F) Loan portfolio information: Each Eligible CDFI must provide information including, but not limited to: (1) loan portfolio quality report; (2) pipeline report; (3) portfolio listing; (4) a description of other loan assets under management; (5) loan products; (6) independent loan review report; (7) impact report case studies; and (8) a loan portfolio by risk rating and loan loss reserves; and

(G) Funding sources and financial activity information: Each Eligible CDFI must provide information including, but not limited to: (1) current grant information; (2) funding projections; (3) credit enhancements; (4) historical investor renewal rates; (5) covenant compliance; (6) off-balance sheet contingencies; (7) earned revenues; and (8) debt capital statistics.

vii. Assurances and certifications that not less than 100% of the principal amount of Bonds will be used to make Bond Loans for Eligible Purposes beginning on the Bond Issue Date, and that Secondary Loans shall be made as set forth in subsection 1808.307(b); and

viii. Such other information that the Guarantor, the CDFI Fund and/or the Bond Purchaser may deem necessary and appropriate.

c. The CDFI Fund will use the information described in the Capital Distribution Plan and Secondary Capital Distribution Plan(s) to evaluate the feasibility of the proposed Bond Issue, with specific attention paid to each Eligible CDFI's financial strength and organizational capacity. For each proposed Eligible CDFI relying, for CDFI certification purposes, on the financing entity activity of a Controlling CDFI, the CDFI Fund will pay specific attention to the Controlling CDFI's financial strength and organizational capacity as well as the operating agreement between the proposed Eligible CDFI and the Controlling CDFI. All materials provided in the Guarantee Application will be used to evaluate the proposed Bond Issue. In total, there are more than 100 individual criteria or sub-criteria used to evaluate each Eligible CDFI. Specific criteria used to evaluate each Eligible CDFI shall include, but not be limited to, the following criteria below. For each proposed Eligible CDFI relying, for CDFI certification purposes, on the financing entity activity of a Controlling CDFI, the following specific criteria will also be used to evaluate both the proposed Eligible CDFI and the Controlling CDFI:

i. *Historical financial ratios:* Ratios which together have been shown to be predictive of possible future default will be used as an initial screening tool, including total asset size, net asset or Tier 1 Core Capital ratio, self-sufficiency ratio, non-performing asset ratio, liquidity ratio, reserve over nonperforming assets, and yield cost spread;

ii. *Quantitative and qualitative attributes under the ''CAMELS'' framework:* After initial screening, the CDFI Fund will utilize a more detailed

analysis under the ''CAMELS'' framework, including but not limited to the following. If a Guarantee Application receives a summary rating of materially deficient during the CAMELS review the application will be recommended for denial.

(A) Capital Adequacy: Attributes such as the debt-to-equity ratio, status, and significance of off-balance sheet liabilities or contingencies, magnitude, and consistency of cash flow performance, exposure to affiliates for financial and operating support, trends in changes to capitalization, and other relevant attributes;

(B) Asset Quality: Attributes such as the charge-off ratio, adequacy of loan loss reserves, sector concentration, borrower concentration, asset composition, security and collateralization of the loan portfolio, trends in changes to asset quality, and other relevant attributes;

(C) Management: Attributes such as documented best practices in governance, strategic planning and board involvement, robust policies and procedures, tenured and experienced management team, organizational stability, infrastructure and information technology systems, and other relevant attributes;

(D) Earnings and Performance: Attributes such as net operating margins, deployment of funds, self-sufficiency, trends in earnings, and other relevant attributes;

(E) Liquidity: Attributes such as unrestricted cash and cash equivalents, ability to access credit facilities, access to grant funding, covenant compliance, affiliate relationships, concentration of funding sources, trends in liquidity, and other relevant attributes;

(F) Sensitivity: The CDFI Fund will stress test each Eligible CDFI's projected financial performance under scenarios that are specific to the unique circumstance and attributes of the organization. Additionally, the CDFI Fund will consider other relevant criteria that have not been adequately captured in the preceding steps as part of the due diligence process. Such criteria may include, but not be limited to, the size and quality of any third-party Credit Enhancements or other forms of credit support.

iii. Other criteria: (A) Overcollateralization: The commitment by an Eligible CDFI to over- collateralize a proposed Bond Loan with excess Secondary Loans is a criterion that may affect the viability of a Guarantee Application by decreasing the estimated net present value of the long-term cost of the Guarantee to the Federal Government, by decreasing the probability of default, and/or increasing the recovery rate in the event of default. An Eligible CDFI committing to overcollateralization may not be required to deposit funds in the Relending Account, subject to the maintenance of certain unique requirements that are detailed in the template Agreement to Guarantee and Bond Loan Agreement.

(B) Credit Enhancements: The provision of third-party Credit Enhancements, including any Credit Enhancement from a Controlling CDFI or any other affiliated entity, is a criterion that may affect the viability of a Guarantee Application by decreasing the estimated net present value of the long-term cost of the Guarantee to the Federal Government. Credit Enhancements are considered in the context of the structure and circumstances of each Guarantee Application.

(C) On-Site Review: The CDFI Fund may request an on-site review of an Eligible CDFI to confirm materials provided in the written application, as well as to gather additional due diligence information. The on-site reviews are a critical component of the application review process and will generally be conducted for all applicants not regulated by an Appropriate Federal Banking Agency or Appropriate State Agency. The CDFI Fund reserves the right to conduct a site visit of regulated entities, in its sole discretion.

(D) Secondary Loan Asset Classes: Eligible CDFIs that propose to use funds for new products or lines of business must demonstrate that they have the organizational capacity to manage such activities in a prudent manner. Failure to demonstrate such organizational capacity may be factored into the consideration of Asset Quality or Management criteria as listed above in this section.

3. Credit subsidy cost. The credit subsidy cost is the net present value of the estimated long- term cost of the Guarantee to the Federal Government as determined under the applicable provisions of the Federal Credit Reform Act of 1990, as amended (FCRA). Treasury has not received appropriated amounts from Congress to cover the credit subsidy costs associated with Guarantees issued pursuant to this NOGA. In accordance with FCRA, Treasury must consult with, and obtain the approval of, OMB for Treasury's calculation of the credit subsidy cost of each Guarantee prior to entering into any Agreement to Guarantee.

E. Guarantee approval; Execution of documents.

1. The Guarantor, in the Guarantor's sole discretion, may approve a Guarantee, after consideration of the recommendation from the CDFI Bond Guarantee Program's Credit Review Board and/or based on the merits of the Guarantee Application.

2. The Guarantor reserves the right to approve Guarantees, in whole or in part, in response to any, all, or none of the Guarantee Applications submitted in response to this NOGA. The Guarantor also reserves the right to approve any Guarantees in an amount that is less than requested in the corresponding Guarantee Application. Pursuant to the Regulations at 12 CFR 1808.504(c), the Guarantor may limit the number of Guarantees made per year to ensure that a sufficient examination of Guarantee Applications is conducted.

3. The CDFI Fund will notify the Qualified Issuer in writing of the Guarantor's approval or disapproval of a Guarantee Application. Bond Documents and Bond Loan documents must be executed, and Guarantees will be provided, in the order in which Guarantee Applications are approved or by such other criteria that the CDFI Fund may establish, in its sole discretion, and in any event by September 30, 2023.

4. Please note that the most recently dated templates of Bond Documents and Bond Loan documents that are posted on the CDFI Fund's website will not be substantially revised or negotiated prior to closing of the Bond and Bond Loan and issuance of the corresponding Guarantee. If a Qualified Issuer or a proposed Eligible CDFI does not understand the terms and conditions of the Bond Documents or Bond Loan documents (including those listed in Section II.H., above), it should ask questions or seek technical assistance from the CDFI Fund. However, if a Qualified Issuer or a proposed Eligible CDFI disagrees or is uncomfortable with any term/condition, or if legal counsel cannot provide a legal opinion in substantially the same form and content of the required legal opinion, it should not apply for a Guarantee.

5. The Guarantee shall not be effective until the Guarantor signs and delivers the Guarantee.

F. Guarantee denial. The Guarantor, in the Guarantor's sole discretion, may deny a Guarantee, after consideration of the recommendation from the Credit Review Board and/or based on the merits of the Guarantee Application. If any Guarantee Application receives a summary rating of materially deficient during the CAMELS underwriting review, the application will not be recommended for approval. In addition,

the Guarantor reserves the right to deny a Guarantee Application if information (including any administrative error) comes to the Guarantor's attention that adversely affects the Qualified Issuer's eligibility, adversely affects the evaluation or scoring of an Application, or indicates fraud or mismanagement on the part of the Qualified Issuer, Program Administrator, Servicer, and/or Eligible CDFIs.

Further, if the Guarantor determines that any portion of the Guarantee Application is incorrect in any material respect, the Guarantor reserves the right, in the Guarantor's sole discretion, to deny the Application.

V. Guarantee Administration

A. Pricing information. Bond Loans will be priced based upon the underlying Bond issued by the Qualified Issuer and purchased by the Federal Financing Bank (FFB or Bond Purchaser). As informed by CDFI Fund underwriting according to the criteria laid out in Section II ''General Application Information'' and Section IV ''Guarantee Applications'' of this NOGA, the FFB will set the liquidity premium at the time of the Bond Issue Date, based on the duration and maturity of the Bonds according to the FFB's lending policies (*www.treasury.gov/ffb*). Liquidity premiums will be charged in increments of 1/8th of a percent (*i.e.,* 12.5 basis points).

B. Fees and other payments. The following table includes some of the fees that may be applicable to Qualified Issuers and Eligible CDFIs after approval of a Guarantee of a Bond Issue, as well as Risk-Share Pool funding, prepayment penalties or discounts, and Credit Enhancements. The table is not exhaustive; additional fees payable to the CDFI Fund or other parties may apply.

Fee	Description
Agency Administrative Fee	Payable monthly to the CDFI Fund by the Eligible CDFI Equal to 10 basis points (annualized) on the amount of the unpaid principal of the Bond Issue.
Bond Issuance Fees	Amounts paid by an Eligible CDFI for reasonable and appropriate expenses, administrative costs, and fees for services in connection with the issuance of the Bond (but not including the Agency Administrative Fee) and the making of the Bond Loan. Fees negotiated between the Qualified Issuer, the Master Servicer/Trustee, and the Eligible CDFI. Up of 1% of Bond Loan Proceeds may be used to finance Bond Issuance Fees.
Servicer Fee	The fees paid by the Eligible CDFI to the Qualified Issuer's Servicer. Servicer fees are negotiated between the Qualified Issuer and the Eligible CDFI.
Program Administrator Fee	The fees paid by the Eligible CDFI to the Qualified Issuer's Program Administrator. Program Administrator fees are negotiated between the Qualified Issuer and the Eligible CDFI.
Master Servicer/Trustee Fee	The fees paid by the Qualified Issuer and the Eligible CDFI to the Master Servicer/Trustee to carry out the responsibilities of the Bond Trust Indenture. In general, the Master Servicer/Trustee fee for a Bond Issue with a single Eligible CDFI is the greater of 16 basis points per annum or $6,000 per month once the Bond Loans are fully disbursed. Fees for Bond Issues with more than one Eligible CDFI are negotiated between the Master Servicer/Trustee, Qualified Issuer, and Eligible CDFI. Any special servicing costs and resolution or liquidation fees due to a Bond Loan default are the responsibility of the Eligible CDFI. Please see the template legal documents at *https://www.cdfifund.gov/programs-training/Programs/cdfi-bond/Pages/closing-disbursement-step.aspx#step4* for more specific information.
Risk-Share Pool Funding	The funds paid by the Eligible CDFIs to cover Risk- Share Pool requirements; capitalized by pro rata payments equal to 3% of the amount disbursed on the Bond Loan from all Eligible CDFIs within the Bond Issue.
Prepayment Premiums or Discounts	Prepayment premiums or discounts are determined by the FFB at the time of prepayment.
Credit Enhancements	Pledges made to enhance the quality of a Bond and/or Bond Loan. Credit Enhancements include, but are not limited to, the Principal Loss Collateral Provision and letters of credit. Credit Enhancements must be pledged, as part of the Trust Estate, to the Master Servicer/Trustee for the benefit of the Federal Financing Bank.

C. Terms for Bond Issuance and disbursement of Bond Proceeds. In accordance with 12 CFR 1808.302(f), each year, beginning on the one year anniversary of the Bond Issue Date (and every year thereafter for the term of the Bond Issue), each Qualified Issuer must demonstrate that no less than 100% of the principal amount of the Guaranteed Bonds currently disbursed and outstanding has been used to make loans to Eligible CDFIs for Eligible Purposes. If a Qualified Issuer fails to demonstrate this requirement within the 90 days after the anniversary of the Bond Issue Date, the Qualified Issuer must repay on that portion of Bonds necessary to bring the Bonds that remain outstanding after such repayment is in compliance with the 100% requirement above.

D. Secondary Loan Requirements. In accordance with the Regulations, Eligible CDFIs must finance or refinance Secondary Loans for Eligible Purposes (not including loan loss reserves) that comply with Secondary Loan Requirements. The Secondary Loan Requirements are found on the CDFI Fund's website at *https://www.cdfifund.gov/programs-training/Programs/cdfi-bond/Pages/compliance-step.aspx#step5.* Applicants should become familiar with the published Secondary Loan Requirements (both the General Requirements and the Underwriting Review Checklist). Secondary Loan Requirements are subject to a Secondary Loan commitment process managed by the Qualified Issuer. Eligible CDFIs must execute Secondary Loan documents (in the form of promissory notes) with Secondary Borrowers as follows: (i) no later than 12 months after the Bond Issue Date, Secondary Loan documents representing at least 50% of the Bond Loan proceeds allocated for Secondary Loans, and (ii) no later than 24 months after the Bond Issue Date, Secondary Loan documents representing 100% of the Bond Loan proceeds allocated for Secondary Loans. In the event that the Eligible CDFI does not comply with the foregoing requirements of clauses (i) or (ii) of this paragraph, the available Bond Loan proceeds at the end of the applicable period shall be reduced by an amount equal to the difference between the amount required by clauses (i) or (ii) for the applicable period minus the amount previously committed to the Secondary Loans in the applicable

period. Secondary Loans shall carry loan maturities suitable to the loan purpose and be consistent with loan-to-value requirements set forth in the Secondary Loan Requirements. Secondary Loan maturities shall not exceed the corresponding Bond or Bond Loan maturity date. It is the expectation of the CDFI Fund that interest rates for the Secondary Loans will be reasonable based on the borrower and loan characteristics.

E. Secondary Loan Collateral Requirements.

1. The Regulations state that Secondary Loans must be secured by a first lien of the Eligible CDFI on pledged collateral, in accordance with the Regulations (at 12 CFR 1808.307(f)) and within certain parameters. Examples of acceptable forms of collateral may include, but are not limited to: real property (including land and structures), leasehold interests, machinery, equipment and movables, cash and cash equivalents, accounts receivable, letters of credit, inventory, fixtures, contracted revenue streams from non-Federal counterparties, provided the Secondary Borrower pledges all assets, rights and interests necessary to generate such revenue stream, and a Principal Loss Collateral Provision. Intangible assets, such as customer relationships and intellectual property rights, are not acceptable forms of collateral. Loans secured by real property that are still in a construction phase will only be permitted when backed by a letter of credit issued by a bank deemed acceptable by the CDFI Bond Guarantee Program, in a format deemed acceptable to the CDFI Bond Guarantee Program, that guarantees the full value of the pledged collateral until at minimum completion of the construction and stabilization phases.

2. The Regulations require that Bond Loans must be secured by a first lien on a collateral assignment of Secondary Loans, and further that the Secondary Loans must be secured by a first lien or parity lien on acceptable collateral.

3. Valuation of the collateral pledged by the Secondary Borrower must be based on the Eligible CDFI's credit policy guidelines and must conform to the standards set forth in the Uniform Standards of Professional Appraisal Practice (USPAP) and the Secondary Loan Requirements.

4. Independent third-party appraisals are required for the following collateral: real estate, leasehold interests, fixtures, machinery and equipment, movables stock valued in excess of $250,000, and contracted revenue stream from non-Federal creditworthy counterparties. Secondary Loan collateral shall be valued using the cost approach, net of depreciation and shall be required for the following: accounts receivable, machinery, equipment and movables, and fixtures.

F. Qualified Issuer approval of Bond Loans to Eligible CDFIs. The Qualified Issuer shall not approve any Bond Loans to an Eligible CDFI where the Qualified Issuer has actual knowledge, based upon reasonable inquiry, that within the past five (5) years the Eligible CDFI: (i) has been delinquent on any payment obligation (except upon a demonstration by the Qualified Issuer satisfactory to the CDFI Fund that the delinquency does not affect the Eligible CDFI's creditworthiness), or has defaulted and failed to cure any other obligation, on a loan or loan agreement previously made under the Act; (ii) has been found by the Qualified Issuer to be in default of any repayment obligation under any Federal program; (iii) is financially insolvent in either the legal or equitable sense; or (iv) is not able to demonstrate that it has the capacity to comply fully with the payment schedule established by the Qualified Issuer.

G. Credit Enhancements; Principal Loss Collateral Provision

1. In order to achieve the statutory zero-credit subsidy constraint of the CDFI Bond Guarantee Program and to avoid a call on the Guarantee, Eligible CDFIs are encouraged to include Credit Enhancements and Principal Loss Collateral Provisions structured to protect the financial interests of the Federal Government. Any Credit Enhancement or Principal Loss Collateral Provision must be pledged, as part of the Trust Estate, to the Master Servicer/Trustee for the benefit of the Federal Financing Bank.

2. Credit Enhancements may include, but are not limited to, payment guarantees from third parties or Affiliate(s), non-Federal capital, lines or letters of credit, or other pledges of financial resources that enhance the Eligible CDFI's ability to make timely interest and principal payments under the Bond Loan.

3. As distinct from Credit Enhancements, Principal Loss Collateral Provisions may be provided in lieu of pledged collateral and/or in addition to pledged collateral. A Principal Loss Collateral Provision shall be in the form of cash or cash equivalent guarantees from non-Federal capital in amounts necessary to secure the Eligible CDFI's obligations under the Bond Loan after exercising other remedies for default. For example, a Principal Loss Collateral Provision may include a deficiency guarantee whereby another entity assumes liability after other default remedies have been exercised, and covers the deficiency incurred by the creditor. The Principal Loss Collateral Provision shall, at a minimum, provide for the provision of cash or cash equivalents in an amount that is not less than the difference between the value of the collateral and the amount of the accelerated Bond Loan outstanding.

4. In all cases, acceptable Credit Enhancements or Principal Loss Collateral Provisions shall be proffered by creditworthy providers and shall provide information about the adequacy of the facility in protecting the financial interests of the Federal Government, either directly or indirectly through supporting the financial strength of the Bond Issue. The information provided must include the amount and quality of any Credit Enhancements, the financial strength of the provider of the Credit Enhancement, the terms, specific conditions such as renewal options, and any limiting conditions or revocability by the provider of the Credit Enhancement.

5. For Secondary Loans benefitting from a Principal Loss Collateral Provision (*e.g.,* a deficiency guarantee), the entity providing the Principal Loss Collateral Provision must be underwritten based on the same criteria as if the Secondary Loan were being made directly to that entity with the exception that the guarantee need not be collateralized.

6. If the Principal Loss Collateral Provision is provided by a financial institution that is regulated by an Appropriate Federal Banking Agency or an Appropriate State Agency, the guaranteeing institution must demonstrate performance of financially sound business practices relative to the industry norm for providers of collateral enhancements as evidenced by reports of Appropriate Federal Banking Agencies, Appropriate State Agencies, and auditors, as appropriate.

7. In the event that the Eligible CDFI proposes to use other Federal funds to service Bond Loan debt or as a Credit Enhancement, the CDFI Fund may require, in its sole discretion, that the Eligible CDFI provide written assurance from such other Federal program, in a form that is acceptable to the CDFI Fund and that the CDFI Fund may rely upon, that said use is permissible.

H. Reporting Requirements

1. Reports.

a. General. As required pursuant to the Regulations at 12 CFR 1808.619, and as set forth in the Bond Documents and the Bond Loan documents, the CDFI Fund will collect information from each

Qualified Issuer which may include, but will not be limited to:

(i) quarterly and annual financial reports and data (including an OMB single audit per 2 CFR 200 Subpart F, as applicable) for the purpose of monitoring the financial health, ratios and covenants of Eligible CDFIs that include asset quality (nonperforming assets, loan loss reserves, and net charge-off ratios), liquidity (current ratio, working capital, and operating liquidity ratio), solvency (capital ratio, self-sufficiency, fixed charge, leverage, and debt service coverage ratios); (ii) annual reports as to the compliance of the Qualified Issuer and Eligible CDFIs with the Regulations and specific requirements of the Bond Documents and Bond Loan documents; (iii) Master Servicer/Trustee summary of program accounts and transactions for each Bond Issue; (iv) Secondary Loan Certifications describing Eligible CDFI lending, collateral valuation, and eligibility; (v) financial data on Secondary Loans to monitor underlying collateral, gauge overall risk exposure across asset classes, and assess loan performance, quality, and payment history; (vi) annual certifications of compliance with program requirements; (vii) material event disclosures including any reports of Eligible CDFI management and/or organizational changes; (viii) annual updates to the Capital Distribution Plan (as described below); (ix) supplements and/or clarifications to correct reporting errors (as applicable); (x) project level reports to understand overall program impact and the manner in which Bond Proceeds are deployed for Eligible Community or Economic Development Purposes; and (xi) such other information that the CDFI Fund and/or the Bond Purchaser may require, including but not limited to racial and ethnic data showing the extent to which members of minority groups are beneficiaries of the CDFI Bond Guarantee Program, to the extent permissible by law.

b. Additional reporting by Qualified Issuers. A Qualified Issuer receiving a Guarantee shall submit annual updates to the approved Capital Distribution Plan, including an updated Proposed Sources and Uses of Funds for each Eligible CDFI, noting any deviation from the original baseline with regards to both timing and allocation of funding among Secondary Loan asset classes. The Qualified Issuer shall also submit a narrative, no more than five (5) pages in length for each Eligible CDFI, describing the Eligible CDFI's capacity to manage its Bond Loan. The narrative shall address any Notification of Material Events and relevant information concerning the Eligible CDFI's management information systems, personnel, executive leadership or board members, as well as financial capacity. The narrative shall also describe how such changes affect the Eligible CDFI's ability to generate impacts in Low-Income or Underserved Rural Areas.

c. Change of Secondary Loan asset classes. Any Eligible CDFI seeking to expand the allowable Secondary Loan asset classes beyond what was approved by the CDFI Bond Guarantee Program's Credit Review Board or make other deviations that could potentially result in a modification, as that term is defined in OMB Circulars A–11 and A–129, must receive approval from the CDFI Fund before the Eligible CDFI can begin to enact the proposed changes. The CDFI Fund will consider whether the Eligible CDFI possesses or has acquired the appropriate systems, personnel, leadership, and financial capacity to implement the revised Capital Distribution Plan. The CDFI Fund will also consider whether these changes assist the Eligible CDFI in generating impacts in Low-Income or Underserved Rural Areas. Such changes will be reviewed by the CDFI Bond Guarantee Program and presented to the Credit Review Board for approval, and, if required, appropriate consultation will be made with OMB to ensure compliance with OMB Circulars A–11 and A–129, prior to notifying the Eligible CDFI if such changes are acceptable under the terms of the Bond Loan Agreement.

d. Reporting by Affiliates and Controlling CDFIs. In the case of an Eligible CDFI relying, for CDFI certification purposes, on the financing entity activity of a Controlling CDFI, the CDFI Fund will require that the Affiliate and Controlling CDFI provide certain joint reports, including but not limited to those listed in subparagraph 1(a) above.

e. Detailed information on specific reporting requirements and the format, frequency, and methods by which this information will be transmitted to the CDFI Fund will be provided to Qualified Issuers, Program Administrators, Servicers, and Eligible CDFIs through the Bond Loan Agreement, correspondence, and webinar trainings, and/or scheduled outreach sessions.

f. Reporting requirements will be enforced through the Agreement to Guarantee and the Bond Loan Agreement, and will contain a valid OMB control number pursuant to the Paperwork Reduction Act, as applicable.

g. Each Qualified Issuer will be responsible for the timely and complete submission of the annual reporting documents, including such information that must be provided by other entities such as Eligible CDFIs, Secondary Borrowers or Credit Enhancement providers. If such other entities are required to provide annual report information or documentation, or other documentation that the CDFI Fund may require, the Qualified Issuer will be responsible for ensuring that the information is submitted timely and complete. Notwithstanding the foregoing, the CDFI Fund reserves the right to contact such entities and require that additional information and documentation be provided directly to the CDFI Fund.

h. Annual Assessments. Each Qualified Issuer and Eligible CDFI will be required to have an independent third-party conduct an Annual Assessment of its Bond Loan portfolio. The Annual Assessment is intended to support the CDFI Fund's annual monitoring of the Bond Loan portfolio and to collect financial health, internal control, investment impact measurement methodology information related to the Eligible CDFIs. This assessment is consistent with the program's requirements for Compliance Management and Monitoring (CMM) and Portfolio Management and Loan Monitoring (PMLM), and will be required pursuant to the Bond Documents and the Bond Loan documents. The assessment will also add to the Department of the Treasury's review and impact analysis on the use of Bond Loan proceeds in underserved communities and support the CDFI Fund in proactively managing portfolio risks and performance. The Annual Assessment criteria for Qualified Issuers and Eligible CDFIs is available on the CDFI Fund's website.

i. The CDFI Fund reserves the right, in its sole discretion, to modify its reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Qualified Issuers. Additional information about reporting requirements pursuant to this NOGA, the Bond Documents and the Bond Loan documents will be subject to the Paperwork Reduction Act, as applicable.

2. Accounting.

a. In general, the CDFI Fund will require each Qualified Issuer and Eligible CDFI to account for and track the use of Bond Proceeds and Bond Loan proceeds. This means that for every dollar of Bond Proceeds received from the Bond Purchaser, the Qualified

Issuer is required to inform the CDFI Fund of its uses, including Bond Loan proceeds. This will require Qualified Issuers and Eligible CDFIs to establish separate administrative and accounting controls, subject to the applicable OMB Circulars.

b. The CDFI Fund will provide guidance to Qualified Issuers outlining the format and content of the information that is to be provided on an annual basis, outlining and describing how the Bond Proceeds and Bond Loan proceeds were used.

VI. Agency Contacts

A. General information on questions and CDFI Fund support. The CDFI Fund will respond to questions and provide support concerning this NOGA, the Qualified Issuer Application and the Guarantee Application between the hours of 9:00 a.m. and 5:00 p.m. ET, starting with the date of the publication of this NOGA. The final date to submit questions is May 25, 2023. Applications and other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's website at *http://www.cdfifund.gov.* The CDFI Fund will post on its website responses to questions of general applicability regarding the CDFI Bond Guarantee Program.

B. The CDFI Fund's contact information is as follows:

TABLE 2—CONTACT INFORMATION

Type of question	Telephone number (not toll free)	Email addresses
CDFI Bond Guarantee Program	(202) 653–0421 Option 5	*bgp@cdfi.treas.gov.*
CDFI Certification	(202) 653–0423	*ccme@cdfi.treas.gov.*
Compliance Monitoring and Evaluation	(202) 653–0423	*ccme@cdfi.treas.gov.*
Information Technology Support	(202) 653–0422	*AMIS@cdfi.treas.gov.*

C. Communication with the CDFI Fund. The CDFI Fund will communicate with applicants, Qualified Issuers, Program Administrators, Servicers, Certified CDFIs and Eligible CDFIs, using the contact information maintained in their respective AMIS accounts. Therefore, each such entity must maintain accurate contact information (including contact person and authorized representative, email addresses, fax numbers, phone numbers, and office addresses) in its respective AMIS account. For more information about AMIS, please see the AMIS Landing Page at *https://amis.cdfifund.gov.*

VII. Information Sessions and Outreach

The CDFI Fund may conduct webcasts, webinars, or information sessions for organizations that are considering applying to, or are interested in learning about, the CDFI Bond Guarantee Program. The CDFI Fund intends to provide targeted outreach to both Qualified Issuer and Eligible CDFI participants to clarify the roles and requirements under the CDFI Bond Guarantee Program. For further information, or to sign up for alerts, please visit the CDFI Fund's website at *https://www.cdfifund.gov.*

Authority: Pub. L. 111–240; 12 U.S.C. 4701, *et seq.;* 12 CFR part 1808; 12 CFR part 1805; 12 CFR part 1815.

Jodie L. Harris,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2023–08749 Filed 4–25–23; 8:45 am]

BILLING CODE 4810–70–P

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 U.S. 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 (SDN 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.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

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 Actions

On April 19, 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 authority listed below.

Individual

1. ROTHSCHUH ANDINO, Octavio Ernesto, Nicaragua; DOB 02 Dec 1967; POB Nicaragua; nationality Nicaragua; Gender Male; Cedula No. 1210212670001Y (Nicaragua) (individual) [NICARAGUA].

Designated pursuant to section 1(a)(iii) of Executive Order 13851 of November 27, 2018, ''Blocking Property of Certain Persons Contributing to the Situation in Nicaragua'' (E.O. 13851), as amended by Executive Order 14088 of October 24, 2022, ''Taking Additional Steps To Address the National Emergency With Respect to the Situation in Nicaragua'' (E.O. 13851, as amended), for being an official of the Government of Nicaragua or having served as an official of the Government of Nicaragua at any time on or after January 10, 2007.

2. TARDENCILLA RODRIGUEZ, Nadia Camila, Nicaragua; DOB 16 Jul 1983; POB Nicaragua; nationality Nicaragua; Gender Female; Cedula No. 0011607830002Y (Nicaragua) (individual) [NICARAGUA].

Designated pursuant to section 1(a)(iii) of E.O. 13851, as amended, for being an official of the Government of Nicaragua or having served as an official of the Government of Nicaragua at any time on or after January 10, 2007.

3. RODRIGUEZ MEJIA, Ernesto Leonel, Nicaragua; DOB 05 Apr 1973; POB Nicaragua; nationality Nicaragua;

Gender Male; Cedula No. 4410504730003N (Nicaragua) (individual) [NICARAGUA].

Designated pursuant to section 1(a)(iii) of E.O. 13851, as amended, for being an official of the Government of Nicaragua or having served as an official of the Government of Nicaragua at any time on or after January 10, 2007.

Dated: April 19, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–08783 Filed 4–25–23; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2023–0051, Sequence No. 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2023–03; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2023–03. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective dates see the separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

RULES LISTED IN FAC 2023–03

Item	Subject	FAR case	Analyst
I	Removal of FAR Subpart 8.5, Acquisition of Helium	2022–007	Jackson.
II	Exemption of Certain Contracts from the Periodic Inflation Adjustments to the Acquisition-Related Thresholds.	2022–002	Ryba.
III	Technical Amendments.		

ADDRESSES: The FAC, including the SECG, is available at *https://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2023–03 amends the FAR as follows:

Item I—Removal of FAR Subpart 8.5, Acquisition of Helium (FAR Case 2022–007)

This final rule amends the FAR to implement the statutory expiration of the Federal Helium System in accordance with the Helium Stewardship Act of 2013 (Pub. L. 113–40). The Helium Stewardship Act required the disposal of the Federal Helium System by September 30, 2021. The Federal In-Kind Program ended a year later, on September 30, 2022. Agencies now procure helium on the open market as they do for other requirements.

The final rule will not have a significant economic impact on a substantial number of small entities because it removes all of the procedures and reporting requirements associated with helium procurements currently in the FAR. Procurements for helium shall be conducted using the most appropriate methods in the FAR.

Item II—Exemption of Certain Contracts From the Periodic Inflation Adjustments to the Acquisition-Related Thresholds (FAR Case 2022–002)

This final rule amends the FAR to add a new statutory exception for certain performance and payment bonds requirements for construction contracts to the already established list of acquisition-related thresholds not subject to escalation. These updates ensure that the current dollar thresholds are retained for performance and payment bonds as well as the threshold for alternatives to such bonds. This rule is not expected to have a significant impact on the Government or industry, to include small entities, because the rule maintains acquisition-related thresholds that have been in the FAR for several years.

Item III—Technical Amendments

Administrative change is made at FAR 7.403.

William F. Clark,
Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2023–03 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2023–03 is effective April 26, 2023 except for Items I through III, which are effective May 26, 2023.

John M. Tenaglia,
Principal Director, Defense Pricing and Contracting, Department of Defense.

Jeffrey A. Koses,
Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Karla Smith Jackson,
Assistant Administrator for Procurement, Senior Procurement Executive, National Aeronautics and Space Administration.

[FR Doc. 2023–08196 Filed 4–25–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 8, 51, and 52

[FAC 2023–03; FAR Case 2022–007; Item I; Docket No. FAR–2022–0004; Sequence No. 1]

RIN 9000–AO44

Federal Acquisition Regulation: Removal of FAR Subpart 8.5, Acquisition of Helium

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement the statutory expiration of the Federal Helium System in accordance with the Helium Stewardship Act of 2013.

DATES: Effective May 26, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949 or by email at *michaelo.jackson@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2023–03, FAR Case 2022–007.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 87 FR 57166 on September 19, 2022, to implement the final disposition of the Federal Helium System in accordance with the Helium Stewardship Act of 2013 (Pub. L. 113–40), which required the disposal of the Federal Helium System by September 30, 2021. The Act required the Department of the Interior (DOI), through the Director of the Bureau of Land Management (BLM), to begin offering helium for auction or sale on an annual basis. Under the Federal In-Kind Program, Federal agencies were required to purchase all of their refined helium from private suppliers who, in turn, were required to purchase an equivalent amount of crude helium from the Federal Helium Reserve.

On April 16, 2020, the BLM announced the process and timeline for disposal of the remaining helium and helium assets to meet the September 30, 2021, statutory deadline. Excess helium and helium assets remaining after September 30, 2021, were transferred to GSA, in accordance with the statutory disposal process. Federal In-Kind users were provided access to helium until September 30, 2022, while GSA completed the disposal process. Federal In-Kind users are now required to seek new sources of helium on the open market.

II. Discussion and Analysis

There were no public comments submitted in response to the proposed rule, and no changes were made to the final rule.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), or for Commercial Services

This final rule removes FAR clause 52.208–8, Required Sources for Helium and Helium Usage Data; FAR subpart 8.5—Acquisition of Helium; and other associated language in FAR parts 1, 8, and 51. The final rule does not impose any new requirements on contracts at or below the simplified acquisition threshold, for commercial products including commercially available off-the-shelf items, or for commercial services.

IV. Expected Impact of the Rule

This final rule is not expected to have a significant impact on the Government or industry because the operation of the Federal Helium Reserve ceased on September 30, 2021, and agencies were notified that the Federal In-Kind Program would end on September 30, 2022. Agencies now have to procure helium on the open market as they do for other requirements.

V. 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 rule is not 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.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the ''Submission of Federal Rules Under the Congressional Review Act'' form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The FRFA is summarized as follows:

This rule implements the statutory expiration of the Federal Helium System in accordance with the Helium Stewardship Act of 2013 (Pub. L. 113–40). The Helium Stewardship Act required the disposal of the Federal Helium System by September 30, 2021. The Federal In-Kind Program ended a year later, on September 30, 2022.

The objective of the rule is to remove the Federal Helium System requirements from the FAR to comply with the statutory direction.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis provided in the proposed rule.

This rule applies to all solicitations and contracts for the procurement of helium. The final rule removes all of the procedures and reporting requirements associated with helium procurements currently in the FAR. Procurements for helium shall be conducted using the most appropriate methods in the FAR. The rule is not expected to impact a significant number of entities.

According to data from the Bureau of Land Management, there were approximately seven remaining entities participating in the Federal In-Kind Program in calendar year 2020. Data obtained from the System for Award Management as of June 14, 2022, indicates that of those seven entities, there are no small entities participating in the Federal In-Kind Program.

This final rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities. Rather, this rule removes current reporting and compliance requirements for small entities.

There are no known significant alternative approaches to the final rule.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

The Helium Stewardship Act of 2013 (Pub. L. 113–40) required the disposal of the Federal Helium System by September 30, 2021. The operation of the Federal Helium Reserve has ended, and agencies now procure helium on the open market as they do for other requirements. OMB Control Number 9000–0113, Acquisition of Helium, was discontinued. Therefore, this rule does not contain information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Action (44 U.S.C. 3501–3521).

List of Subjects in 48 CFR Parts 1, 8, 51, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 8, 51, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 8, 51, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. In section 1.106 amend the table by removing FAR segment ''8.5'' and the corresponding OMB Control Number ''9000–0113''.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.003 [Amended]

■ 3. Amend section 8.003 by removing paragraph (e).

Subpart 8.5 [Removed and Reserved]

■ 4. Remove and reserve subpart 8.5, consisting of sections 8.500 through 8.505.

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

■ 5. Amend section 51.102 by—

■ a. Removing from the end of paragraph (c)(3) ''20420;'' and adding ''20420; or'' in its place;

■ b. Removing paragraph (c)(4);

■ c. Redesignating paragraph (c)(5) as paragraph (c)(4);

■ d. Removing from the newly redesignated paragraph (c)(4) the words ''(1) through (4) above'' and adding the phrase ''paragraphs (c)(1) through (c)(3) of this section'' in its place;

■ e. Removing from the end of paragraph (e)(3)(i) the word ''DoD;'' and adding ''DoD; and'' in its place;

■ f. Removing from the end of paragraph (e)(3)(ii) the word ''and''; and

■ g. Removing paragraph (e)(3)(iii).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.208–8 [Removed and Reserved]

■ 6. Remove and reserve section 52.208–8.

[FR Doc. 2023–08197 Filed 4–25–23; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1

[FAC 2023–03, FAR Case 2022–002, Item II; Docket No. FAR–2022–0002, Sequence No. 1]

RIN 9000–AO39

Federal Acquisition Regulation: Exemption of Certain Contracts From the Periodic Inflation Adjustments to the Acquisition-Related Thresholds

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2022 that provides a statutory exception to the periodic inflation adjustments of acquisition-related thresholds for certain bond requirements.

DATES: Effective May 26, 2023.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Marissa Ryba, Procurement Analyst, at 314–586–1280 or by email at *Marissa.Ryba@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2023–03, FAR Case 2022–002.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 87 FR 58300 on September 26, 2022, to implement section 861 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117–81), which provides for a statutory exception to the periodic inflation adjustments of acquisition-related thresholds under 41 U.S.C. 1908. Three respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. All of the respondents expressed support for the rule because maintaining the current thresholds for performance and payment bonds ensures continued payment protections benefiting small businesses. The Councils acknowledge this support. No changes were made to the final rule as a result of public comments.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Services and Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items

This rule does not create new solicitation provisions or contract clauses or revise the text of any existing provisions or clauses. The rule does not change any current requirements in the provisions or clauses but does prevent future periodic inflation adjustments to acquisition-related thresholds.

IV. Expected Impact of the Rule

This rule does not have a significant impact on the Government or industry because this rule maintains acquisition-related thresholds that have been in the FAR for several years without significant change.

The FAR threshold for performance and payment bonds at FAR 28.102 had one escalation adjustment in 2010, which raised the threshold by $50,000 from $100,000 and has since remained unchanged. The FAR threshold for alternatives to payment bonds at FAR 28.102 is currently $35,000; it was escalated twice, one in 2006 and again in 2015. Each adjustment raised the threshold by $5,000 starting from $25,000. Since the second adjustment, this threshold has also remained unchanged.

Because the acquisition-related thresholds under FAR 28.102 have remained mostly unchanged, there is little expectation for future increases or changes that would affect Government and industry. There is also no expected cost impact of this rule since the acquisition-related thresholds will remain the same. There may be some benefit of consistency to the public by ensuring that the thresholds remain the same.

V. 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 is not 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.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the ''Submission of Federal Rules Under the Congressional Review Act'' form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The FRFA is summarized as follows:

DoD, GSA, and NASA are amending the Federal Acquisition Regulation (FAR) to implement section 861 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117–81) that provides a statutory exception to the periodic inflation adjustments of acquisition-related thresholds for certain bond requirements.

The objective of the final rule is to retain the current dollar thresholds for performance and payments bonds as well as the threshold for alternatives to such bonds.

There were no significant issues raised by the public in response to the initial flexibility analysis provided in the proposed rule.

The final rule applies to small entities performing construction services for the Government; however, the impact is expected to be de minimis. Contract actions with a value between $35,000 and $150,000 will still require an alternative to payment bonds for payment protection, and those with a value exceeding $150,000 will still require performance and payment bonds. The rule makes permanent the thresholds that have been in place for several years, resulting in no changes for any entity performing construction services.

Data obtained from the Federal Procurement Data System (FPDS) for FY 2019, 2020, and 2021 indicates that an average of 678 unique small entities received an estimated 1,219 awards annually that require alternatives to payment bonds. FPDS data also indicates that an average of 1,340 unique small entities received an estimated 2,706 awards that are subject to performance and payment bonds annually. Approximately 2,018 (678 + 1,340) unique small entities will continue to comply with current bond requirements as a result of this final rule.

The final rule does not include additional reporting or record keeping requirements.

There are no available alternatives to the final rule to accomplish the desired objective of the statute.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C 3501–3521) applies to the information collection described in this rule; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0045, Bid Guarantees, Performance and Payment Bonds, and Alternative Payment Protection.

List of Subjects in 48 CFR Part 1

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 1 as set forth below:

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 1. The authority citation for 48 CFR part 1 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

■ 2. Amend section 1.109 by revising paragraph (c)(1) to read as follows:

1.109 Statutory acquisition-related dollar thresholds—adjustment for inflation.

* * * * *

(c) * * *

(1) 40 U.S.C. chapter 31—

(i) Subchapter III, Bonds; and

(ii) Subchapter IV, Wage Rate Requirements (Construction);

* * * * *

[FR Doc. 2023–08198 Filed 4–25–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 7

[FAC 2023–03; Item III; Docket No. FAR–2023–0052; Sequence No. 2]

Federal Acquisition Regulation; Technical Amendments

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes an amendment to the Federal Acquisition Regulation (FAR) in order to make needed editorial changes.

DATES: Effective: May 26, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Lois Mandell, Regulatory Secretariat Division (MVCB), at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2023–03, Technical Amendments.

SUPPLEMENTARY INFORMATION: This document makes an editorial change to 48 CFR part 7.

List of Subjects in 48 CFR Part 7

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 7 as set forth below:

PART 7—ACQUISITION PLANNING

■ 1. The authority citation for 48 CFR part 7 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

7.403 [Amended]

■ 2. Amend section 7.403 by removing from paragraph (c)(1) ''(*https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A94/a094.pdf*)'' and adding ''(*https://www.whitehouse.gov/wp-content/*

uploads/legacy_drupal_files/omb/circulars/A94/a094.pdf)'' in its place.

[FR Doc. 2023–08199 Filed 4–25–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2023–0051, Sequence No. 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2023–03; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide (SECG).

SUMMARY: This document is issued under the joint authority of DoD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2023–03, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding these rules by referring to FAC 2023–03, which precedes this document.

DATES: April 26, 2023.

ADDRESSES: The FAC, including the SECG, is available at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2023–03 and the FAR Case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared.

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*I	Removal of FAR Subpart 8.5, Acquisition of Helium	2022–007	Jackson.
*II	Exemption of Certain Contracts from the Periodic Inflation Adjustments to the Acquisition-Related Thresholds.	2022–002	Ryba.
III	Technical Amendments..		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2023–03 amends the FAR as follows:

Item I—Removal of FAR Subpart 8.5, Acquisition of Helium (FAR Case 2022–007)

This final rule amends the FAR to implement the statutory expiration of the Federal Helium System in accordance with the Helium Stewardship Act of 2013 (Pub. L. 113–40). The Helium Stewardship Act required the disposal of the Federal Helium System by September 30, 2021. The Federal In-Kind Program ended a year later, on September 30, 2022. Agencies now procure helium on the open market as they do for other requirements.

The final rule will not have a significant economic impact on a substantial number of small entities because it removes all of the procedures and reporting requirements associated with helium procurements currently in the FAR. Procurements for helium shall be conducted using the most appropriate methods in the FAR.

Item II—Exemption of Certain Contracts From the Periodic Inflation Adjustments to the Acquisition-Related Thresholds (FAR Case 2022–002)

This final rule amends the FAR to add a new statutory exception for certain performance and payment bonds requirements for construction contracts to the already established list of acquisition-related thresholds not subject to escalation. These updates ensure that the current dollar thresholds are retained for performance and payment bonds as well as the threshold for alternatives to such bonds. This rule is not expected to have a significant impact on the Government or industry, to include small entities, because the rule maintains acquisition-related thresholds that have been in the FAR for several years.

Item III—Technical Amendments

Administrative change is made at FAR 7.403.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2023–08200 Filed 4–25–23; 8:45 am]

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