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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Doc. No. AMS–SC–21–0061]

Washington Apricots; Termination of Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; termination of order.

SUMMARY: This final rule terminates Federal Marketing Order No. 922 (the Order) regulating the handling of apricots grown in designated counties in Washington, and the rules and regulations issued thereunder. This final rule also removes the Order from the Code of Federal Regulations. The United States Department of Agriculture (USDA) has determined the Order is no longer necessary to maintain orderly marketing conditions.

DATES: Effective July 27, 2023.

FOR FURTHER INFORMATION CONTACT: Joshua R. Wilde, Marketing Specialist, or Gary Olson, Chief, Western Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724 or Email: *Joshua.R.Wilde@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085 or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, terminates regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Order No. 922, as amended (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington. Part 922 is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Washington Apricot Marketing Committee (Committee) locally administers the Order and is comprised of producers and handlers operating within the production area.

The Agricultural Marketing Service (AMS) is issuing this final rule in conformance with Executive Orders 12866 and 13563. 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

In addition, this final rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined this final rule is unlikely to have substantial direct effects 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.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under 7 U.S.C. 608c(15)(A) of the Act, any handler subject to a marketing order may file with USDA a petition stating that the marketing order, any provision of the marketing order, or any obligation imposed in connection with the marketing order is not in accordance with law and request a modification of the marketing order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule terminates the Order regulating the handling of apricots grown in designated counties in Washington and removes the Order from the Code of Federal Regulations. Following its meeting on May 11, 2021, the Committee unanimously recommended this action after determining the Order is no longer necessary to maintain orderly marketing conditions. On April 13, 2022, AMS published a final rule which indefinitely suspended reporting and assessment collection requirements under the Order, effective May 13, 2022, while it continued to consider the Committee's recommendation and information submitted (87 FR 21741).

Section 922.64(b) of the Order provides that USDA shall terminate or suspend any or all provisions of the Order when a finding is made that the Order does not tend to effectuate the declared policy of the Act. In addition, section 608c(16)(A) of the Act provides that USDA terminate or suspend the operation of any order whenever the Order or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act. After reviewing the Committee's recommendation, years without apricot marketing program activity, the decline in apricot production, and the indefinite suspension of reporting and assessment collection requirements, USDA determined that the Order no longer tends to effectuate the declared policy of the Act.

The Order has been in effect since 1957 and has provided the Washington apricot industry with authority for grade, size, quality, maturity, pack, and container regulations, as well as authority for mandatory product inspection.

The Committee meets regularly to consider recommendations for modification, suspension, or termination of the Order's regulatory

requirements. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS reviews Committee recommendations, including information provided by the Committee and from other available sources, and determines whether modification, suspension, or termination would tend to effectuate the declared policy of the Act.

In 2006, the Committee unanimously recommended USDA suspend container regulations after determining they were no longer necessary to ensure orderly marketing and that suspension would provide greater flexibility to handlers for packing and shipping apricots. Following the Committee's recommendation, AMS suspended container regulations for apricots (9 CFR 922.306) for the 2006 shipping season (71 FR 16979), and subsequently extended that suspension indefinitely in 2007 (72 FR 16263).

In 2013, the Committee unanimously recommended USDA suspend handling regulations after determining the cost of complying with the Order's handling and inspection requirements outweighed its benefits to both producers and handlers of apricots. Based on the Committee's recommendation, AMS issued an interim rule indefinitely suspending the handling regulations for apricots (§§ 922.111 and 922.321) on October 23, 2013 (78 FR 62963). A final rule affirming the indefinite suspension was published in the **Federal Register** on March 20, 2014 (79 FR 15539).

Following these regulatory suspensions, the Committee continued to levy assessments to maintain its functionality. The Committee believed that it should continue to fund its full operational capability, collect industry statistics on an ongoing basis, and maintain the program in the event market conditions warranted regulation.

Committee met and discussed current market dynamics, budget, and assessments, and deliberated the continuance of the Order. During the meeting, the Committee discussed that the volume of apricots produced in Washington has declined over the years, and in 2020, the industry experienced a significant drop in crop produced from the prior year's production. Management and administrative costs to maintain the Order have also increased.

The Committee also discussed keeping the Order in place. To achieve that, the Order would require an assessment rate increase of approximately 300 percent, from $2.86 to $13.30 per ton. The Committee determined that the decrease in the 2020 crop suggests an overall decline in apricot production, and an assessment rate increase of 300 percent would not benefit apricot producers and handlers. The industry has functioned without container and handling regulations for a combined period of more than 14 years. The Committee believes the suspension of container and handling requirements has not adversely affected the marketing of Washington apricots and terminating the Order would not negatively impact the industry. The Committee ultimately concluded that the Order is no longer necessary to maintain orderly marketing conditions and voted unanimously to terminate the Order.

On July 7, 2021, the Committee formally recommended USDA terminate the Order. In preparing to terminate the Order, the Committee recommended USDA suspend the collection of assessments and reporting requirements. The Committee also recommended a budget of expenditures of $5,508 for the period beginning April 1, 2021 and ending with the termination of the Order.

Following the Committee's recommendation, USDA indefinitely suspended the remaining reporting and assessment collection requirements under the Order while it considered termination. AMS published a proposed rule to indefinitely suspend reporting and assessment collection requirements (§ 922.235) in the **Federal Register** on November 23, 2021 (86 FR 66462). AMS received one comment that did not address the merits of the rule. Accordingly, no changes were made to the rule as proposed and the final rule was published on April 13, 2022 (87 FR 21741).

The suspension of regulations, reporting requirements, and assessment collections continued while USDA evaluated the Committee's recommendation for terminating the Order. After reviewing the Committee's recommendation, years without marketing program activity, the decline in apricot production, and the decision to indefinitely suspend reporting and assessment collection requirements, USDA determined that the Order no longer effectuates the declared policy of the Act.

This final rule terminates the Order and the rules and regulations issued thereunder.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 315 growers of Washington apricots and approximately 8 apricot handlers in the production area subject to regulation under the Order. Small agricultural service firms (postharvest crop activities except cotton ginning, NAICS code 115114) are defined by the Small Business Administration (SBA) as those having annual receipts of $30,000,000 or less, and small agricultural producers (other noncitrus fruit farming, NAICS code 111339) are defined as those having annual receipts of $3,000,000 or less (13 CFR 121.201).

Based on USDA National Agricultural Statistics Service (NASS) data, and given the number of Washington apricot growers, average grower revenue is well below $3,000,000. NASS's 2020 value of utilized Washington apricot crop production was $3.866 million. Dividing the $3.866 million crop value by 315 growers equals average annual receipts per grower of $12,273. Thus, most Washington apricot growers would be considered small businesses under the SBA definition.

In addition, according to data from USDA's Market News, the estimated Washington apricot 2020 season average Free on Board (f.o.b.) shipper (handler) price per carton was approximately $31.59 (for Washington apricots, 2-layer tray pack carton, all sizes, June–July 2020, midpoint of the ''mostly low'' and ''mostly high'' prices). With a standard Market News weight of 18 pounds per tray pack carton of apricots, the f.o.b. price was approximately $1.755 per pound ($31.59 divided by 18 pounds), or $3,510 per ton. The Committee reported that the industry shipped 1,628 tons for the 2020 season. Total 2020 estimated handler receipts are $5.714 million (1,628 tons multiplied by $3,510 per ton). Average annual receipts per handler are approximately $714,000 ($5.714 million divided by 8 handlers). Thus, most Washington apricot handlers would be considered small businesses under the SBA definition.

This final rule terminates the Order, and the rules and regulations issued thereunder, and will remove the Order from the Code of Federal Regulations. On July 7, 2021, the Committee made

the recommendation to terminate the Order because the Order is no longer necessary to ensure the orderly marketing of apricots. The alternative, to maintain the Order, would require the Committee to increase the assessment rate by approximately 300 percent, from $2.86 to $13.30 per ton. However, the 2020–2021 crop production was the smallest crop on record, and evidence suggests that this decline is a continuation of an industry trend.

In addition, the prior suspension of the container and handling regulations, effectuated by a separate rulemaking published on April 5, 2006 (71 FR 16979), has not adversely affected the marketing of Washington apricots in any of the subsequent years. AMS confirmed data from the past 7 years shows that apricots can be marketed from the production area in the absence of the Order's requirements without a negative economic impact on the industry.

Section 922.64(b) of the Order provides that USDA shall terminate or suspend any or all provisions of the Order when a finding is made that the Order does not tend to effectuate the declared policy of the Act. In addition, section 608c(16)(A) of the Act provides that USDA terminate or suspend the operation of any order whenever the order or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act. An additional provision requires that Congress be notified no later than 60 days before the date the Order would be terminated.

After considering the alternative, the Committee concluded that regulating the handling of apricots under the Order is no longer necessary to ensure orderly marketing of Washington apricots. The costs associated with the administration of the Order outweigh the benefits, and that termination of the Order would not have a negative impact on industry. Therefore, the Committee unanimously voted to terminate the Order.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0189 Fruit Crops. After finalizing termination AMS will extract the remaining apricot marketing order-related forms from the forms package during the next three-year renewal process.

This rule effectuates the removal of reporting and recordkeeping requirements on apricot handlers, both small and large. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, AMS has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The Committee meetings were widely publicized throughout the Washington apricot industry, and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Meetings were held virtually or in a hybrid style with participants having a choice on whether to attend in person or virtually.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A proposed rule inviting comments on the termination of the Order, was published in the **Federal Register** on October 19, 2022 (87 FR 63433). A 60-day comment period was provided to allow interested persons an opportunity to respond to the proposed termination of the Order. In addition, AMS published on its website and distributed to industry stakeholders a notice to trade announcing the proposed termination of the marketing order. One comment was received in support of termination.

Based on the foregoing, and pursuant to 7 U.S.C. section 608c(16)(A) of the Act and § 922.64 of the Order, it is hereby found that Federal Marketing Order No. 922 regulating the handling of apricots grown in designated counties in Washington does not tend to effectuate the declared policy of the Act and is therefore terminated.

Following termination, trustees will be appointed to conclude and liquidate the Committee affairs and will continue in that capacity until discharged by USDA. In addition, pursuant to 7 U.S.C. 608c(16)(A) of the Act, USDA is required to notify Congress 60 days in advance of termination. Congress was so notified on March 3, 2023.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

PART 922—[REMOVED]

■ For the reasons set forth in the preamble, and under the authority of 7 U.S.C 601–674, 7 CFR part 922 is removed.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–13597 Filed 6–26–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1396; Project Identifier MCAI–2023–00701–T; Amendment 39–22486; AD 2023–13–01]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2008–23–01, which applies to certain Airbus SAS Model A318, A319, A320, and A321 series airplanes. AD 2008–23–01 required inspecting to determine the part number and serial number of the fuel tank boost pumps and, for airplanes with affected pumps, revising the operator's airplane flight manual (AFM) and FAA-approved maintenance program. AD 2008–23–01 also required modifying or replacing certain fuel tank boost pumps, which terminated the AFM limitations and the maintenance program revisions. Since the FAA issued AD 2008–23–01, it has been determined that airplanes fitted with a different fuel pump can be subject to cavitation erosion on the wiring conduit. This AD requires inspecting affected fuel pumps for discrepancies and replacement if necessary, as specified in a European Union Aviation Safety Agency (EASA). This AD also requires replacing certain other fuel pumps. This AD also limits the installation of affected fuel pumps under certain conditions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 12, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 12, 2023.

The FAA must receive comments on this AD by August 11, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1396; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–1396.

FOR FURTHER INFORMATION CONTACT: Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3667; email: *Timothy.P.Dowling@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1396; Project Identifier MCAI–2023–00701–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3667; email: *Timothy.P.Dowling@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2008–23–01, Amendment 39–15722 (73 FR 67379, November 14, 2008) (AD 2008–23–01), for certain Airbus SAS Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes; Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes.

AD 2008–23–01 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2007–0218, dated August 10, 2007, to correct an unsafe condition.

AD 2008–23–01 required inspecting to determine the part number and serial number of the fuel tank boost pumps and, for airplanes with affected pumps, revising the AFM and the FAA-approved maintenance program. AD 2008–23–01 also required modifying or replacing the fuel tank boost pumps (part numbers (P/Ns) 568–1–27202–001, 568–1–27202–002, and 568–1–27202–005), which terminated the AFM limitations and the maintenance program revisions. The FAA issued AD 2008–23–01 to address electrical arcing in the fuel tank boost pump motor, which, in the presence of a combustible air-fuel mixture in the pump, could result in an explosion and loss of the airplane.

Actions Since AD 2008–23–01 Was Issued

Since the FAA issued AD 2008–23–01, EASA superseded AD 2007–0218R2, dated October 10, 2014 (EASA AD 2007–0218R2), and issued EASA AD 2023–0106, dated May 25, 2023 (EASA AD 2023–0106) (also referred to as the MCAI), to correct an unsafe condition for all Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability. The MCAI states that since EASA AD 2007–0218R2 was issued to address fuel pump A (P/Ns 568–1–27202–001, 568–1–27202–002, and 568–1–27202–005), it has been determined that airplanes equipped with fuel pump B (P/N 568–1–27202–02R, which is one of the replacement fuel pumps for fuel pump A) can be subject to cavitation erosion on the wiring conduit. This condition, if not detected and mitigated, could lead to be the source of an in-tank ignition, affecting the integrity of the airplane structure and systems.

Paragraph (1) of EASA AD 2023–0106 prohibits operation of an airplane equipped with fuel pump A. However, this AD does not include that requirement. Instead, as specified in paragraph (h)(3) of this AD, for airplanes equipped with fuel pump A, operators must, before further flight, replace fuel pump A with a fuel pump other than

fuel pump A, except as specified in paragraphs (7) and (8) of EASA AD 2023–0106. Paragraph (j) of AD 2008–23–01 required the replacement or modification of fuel pump A, which operators should have done within 5,000 flight hours or 18 months, whichever occurs first after December 19, 2008 (the effective date of AD 2008–23–01). Therefore, paragraph (h)(3) of this AD continues to require the replacement of fuel pump A.

The FAA is issuing this AD to address the unsafe condition on these products. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1396.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0106 specifies procedures for doing a general visual inspection of fuel pump B for discrepancies and replacement if necessary. Discrepancies include any erosion on the wiring conduit, holes in the inlet guide vanes, and erosion on the inlet guide vane that is less than 12mm (0.47 in) from the outer edge to the start of the erosion. EASA AD 2023–0106 also prohibits operation of an airplane equipped with fuel pump A.

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

FAA's Determination

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

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2023–0106 described previously, except for any differences identified as exceptions in the regulatory text of this AD. This AD also limits the installation of affected fuel pumps under certain conditions.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2023–0106 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2023–0106 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0106 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0106. Service information required by EASA AD 2023–0106 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1396 after this AD is published.

Interim Action

The FAA considers that this AD is an interim action and further AD action might follow.

FAA's Justification and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because airplanes fitted with fuel pump B are subject to cavitation erosion on the wiring conduit, which could lead to be the source of an in-tank ignition, affecting the integrity of the airplane structure and systems. In addition, the required inspection must be done within 30 or 90 days, depending on fuel pump location, in order to address the unsafe condition. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

The FAA estimates that this AD affects 1,899 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action *	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
New actions	1 work-hour × $85 per hour = $85	$0	$85	$161,415

* U.S. operators have already replaced fuel pump A; therefore the costs are not included in this table. For any affected airplane that is imported and placed on the U.S. Register in the future that has not done the replacement, refer to the cost estimates in the ''Estimated costs on on-condition actions'' table below, which specifies replacement costs.

The FAA estimates the following costs to do any necessary on-condition action that would be required based on the results of any required actions. The FAA has no way of determining the

number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
3 work-hours × $85 per hour = $255	$6,625	$6,880

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2008–23–01, Amendment 39–15722 (73 FR 67379, November 14, 2008); and

■ b. Adding the following new AD:

2023–13–01 Airbus SAS: Amendment 39–22486; Docket No. FAA–2023–1396; Project Identifier MCAI–2023–00701–T.

(a) Effective Date

This airworthiness directive (AD) is effective July 12, 2023.

(b) Affected ADs

This AD replaces AD 2008–23–01, Amendment 39–15722 (73 FR 67379, November 14, 2008) (AD 2008–23–01).

(c) Applicability

This AD applies to all Airbus SAS airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by a determination that airplanes fitted with a certain fuel pump other than the fuel pumps identified in AD 2008–23–01 can be subject to cavitation erosion on the wiring conduit. The FAA is issuing this AD to address this condition, which could lead to be the source of an in-tank ignition, affecting the integrity of the airplane structure and systems.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0106, dated May 25, 2023 (EASA AD 2023–0106).

(h) Exceptions to EASA AD 2023–0106

(1) Where EASA AD 2023–0106 refers to its effective date, this AD requires using the effective date of this AD.

(2) Paragraph (1) of EASA AD 2023–0106 is not adopted by this AD. Instead, for airplanes equipped with ''fuel pump A'' as defined in EASA AD 2023–0106, before further flight, replace ''fuel pump A'' with a fuel pump other than ''fuel pump A,'' except as specified in paragraphs (7) and (8) of EASA AD 2023–0106.

Note 1 to paragraph (h)(2) of this AD: Guidance for replacing fuel pumps can be found in paragraph 2.2. of ''The AOT'' as defined in EASA AD 2023–0106.

(3) Where paragraphs (4) and (5) of EASA AD 2023–0106 refer to ''discrepancies, as defined in the AOT,'' for this AD, discrepancies include any erosion on the wiring conduit, holes in the inlet guide vanes, and erosion on the inlet guide vane that is less than 12mm (0.47 in) from the outer edge to the start of the erosion.

(4) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0106.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information referenced in EASA AD 2023–0106 contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Timothy Dowling, Aviation Safety Engineer, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3667; email: *Timothy.P.Dowling@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0106, dated May 25, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0106, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at regulations.gov under Docket No. FAA–2023–1396.

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

Issued on June 20, 2023.

Michael Linegang,

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

[FR Doc. 2023–13743 Filed 6–23–23; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 141

[Docket Nos. RM22–16–000, AD21–13–000; Order No. 897]

One-Time Informational Reports on Extreme Weather Vulnerability Assessments Climate Change, Extreme Weather, and Electric System Reliability

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is adopting a reporting requirement to direct transmission providers to file one-time informational reports describing their current or planned policies and processes for conducting extreme weather vulnerability assessments. The Commission defines an extreme weather vulnerability assessment as any analysis that identifies where and under what conditions jurisdictional transmission assets and operations are at risk from the impacts of extreme weather events, how those risks will manifest themselves, and what the consequences will be for system operations. Specifically, the Commission requires transmission providers to file a one-time informational report on whether, and if so how, they establish a scope, develop inputs, identify vulnerabilities and exposure to extreme weather hazards, and estimate the costs of impacts in their extreme weather vulnerability assessments, as well as how they use the results of those assessments to develop risk mitigation measures.

DATES: This rule is effective September 25, 2023. Each transmission provider must file the one-time informational report required by this final rule by October 25, 2023.

FOR FURTHER INFORMATION CONTACT:

Alyssa Meyer (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6835, *Alyssa.Meyer@ferc.gov*

Neal Anderson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8760, *Neal.Anderson@ferc.gov*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

1. In this final rule, the Federal Energy Regulatory Commission (Commission) directs transmission providers to file one-time informational reports, pursuant to section 304 of the Federal Power Act (FPA),[1] describing their current or planned policies and processes for conducting extreme weather vulnerability assessments of their Commission-jurisdictional transmission assets and operations. For the purpose of these reports, we define an extreme weather vulnerability assessment as an analysis that identifies where and under what conditions jurisdictional transmission assets and operations are at risk from the impacts of extreme weather events, how those risks will manifest themselves, and what the consequences will be for system operations.

2. As explained in the Notice of Proposed Rulemaking (NOPR),[2] we find that while weather events have impacted the transmission grid throughout its history, the frequency and severity of extreme weather events is increasing.[3] A robust and growing body of scientific evidence attributes this trend to climate change and indicates that this trend will persist.[4] For the reasons discussed below, we find that that the trend threatens livelihoods, electric system reliability, and the Commission's ability to ensure just and reasonable jurisdictional rates. Our actions in this final rule will result in a fuller record as to whether and how transmission providers assess and mitigate vulnerabilities to extreme weather and will enable coordination among transmission providers as well as information sharing on best practices.

3. As discussed further below, in this final rule, we direct each transmission provider[5] to file, in the above-captioned dockets, a one-time informational report on its extreme weather vulnerability assessment and risk mitigation efforts within 120 days of the publication of this final rule in the **Federal Register**. This one-time informational report should include whether, and if so how, transmission providers: (1) establish a scope; (2) develop inputs; (3) identify vulnerabilities and exposure to extreme weather hazards; (4) estimate the costs

[1] 16 U.S.C. 825c.

[2] *One-Time Informational Reps. on Extreme Weather Vulnerability Assessments,* Notice of Proposed Rulemaking, 87 FR 39 414 (July 1, 2022), 179 FERC ¶ 61,196 (2022) (NOPR).

[3] *See* National Oceanic and Atmospheric Administration., National Centers for Environmental. Information, *U.S. Billion-Dollar Weather and Climate Disasters* (2023), *https://www.ncei.noaa.gov/access/billions/;* Environmental Protection Agency, *Climate Change Indicators: Weather and Climate* (May 12, 2021) (EPA Climate Change Indicators), *https://www.epa.gov/climate-indicators/weather-climate; see also* NOPR, 179 FERC ¶ 61,196 at P 2.

[4] Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation, and Vulnerability* (2022); National Academies of Sciences, Engineering, and Medicine, *Attribution of Extreme Weather Events in the Context of Climate Change* (2016); Herring, S.C., N. Christidis, A. Hoell, M.P. Hoerling, and P.A. Stott, Eds., *Explaining Extreme Events of 2020 from a Climate Perspective,* 103 Bulletin of the American Meteoreorological Society 3 (2022).

[5] *See infra* PP 47–50. In this final rule, unless otherwise noted, we use the term ''transmission provider'' to mean any public utility that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce. *See* 16 U.S.C. 824(e); 18 CFR 35.28 (2022). To be clear, this term encompasses public utility transmission owners that are members of Regional Transmission Organizations (RTO) and Independent System Operators (ISO). Accordingly, the reports we are proposing herein would be filed by either the public utility members of RTOs/ISOs, the RTOs/ISOs themselves, or both, as well as other public utility transmission providers outside of RTO/ISO regions.

of impacts in their extreme weather vulnerability assessments; and (5) use the results of those assessments to develop risk mitigation measures. This final rule only seeks to gather information on current and planned policies and processes from transmission providers, not to establish new requirements.

4. We largely adopt the Commission's proposal in the NOPR issued on June 16, 2022, with certain modifications. Among other things, we have revised aspects of the NOPR proposal to ask how each transmission provider defines extreme weather in its vulnerability assessments and how RTOs/ISOs account for differences between transmission owner members' assessment assumptions and results. Additionally, we revise questions 8 and 19, which were proposed in the NOPR, by replacing references to disadvantaged and vulnerable communities, and affected and frontline communities, respectively, with the term ''affected communities.'' We use the term ''affected communities'' in this final rule to include disadvantaged,[6] vulnerable, and frontline communities,[7] and any other community or stakeholder group respondents consider in their extreme weather vulnerability assessments that may be affected, currently or in the future, by the impacts of extreme weather on jurisdictional electric transmission assets and operations.

II. Background

5. The NOPR, as supplemented by the record in this proceeding, as well as recent events illustrate the increasing frequency and severity of extreme weather events and their impact on reliability and rates.

6. While the nature of extreme weather and the extent of transmission impairments will vary across different regions of the U.S., no region will be unaffected. Indeed, in its 2022 Long-Term Reliability Assessment, the North American Electric Reliability Corporation (NERC) lists the need for the industry and policymakers to include extreme weather scenarios in resource and system planning among its top recommendations to address reliability risks.[8] Similarly, the Government Accountability Office (GAO) issued a report in May 2021 stating that climate change is expected to have far-reaching effects on the electric grid that could cost billions of dollars and could affect the ability of grid operators to transmit electricity.[9] GAO identified potential impacts of climate change-driven extreme weather to the grid in every region of the U.S. and discussed the risk that, absent measures to increase resilience, more frequent and severe weather associated with climate change is likely to increase the cost of outages, imposing billions of dollars in costs on utility customers.[10] GAO recommended that the Commission take steps to identify and assess climate change risks to the grid in order to ensure the Commission is well-positioned to determine the actions needed to enhance resilience to those risks.[11]

7. In early 2023, the National Oceanic and Atmospheric Administration's (NOAA) National Centers for Environmental Information released the final update to its 2022 figures on weather and climate disasters. That update identifies each disaster that caused damages exceeding one billion dollars,[12] using insurance data to estimate damage costs.[13] The update shows that the U.S. experienced 18 separate billion-dollar weather and climate disasters in 2022, as well as a macro-level trend of increasingly costly, numerous, and intense disasters. NOAA reports that 2022 had the third highest number of billion-dollar weather and climate disasters since it began tracking in 1980, tied with 2011 and 2017, and that, at $165 billion in damages, 2022 also ranked third highest in total damage costs, behind 2017 and 2005.[14]

8. Reliable electric service is vital to the nation's economy, national security, public health, and safety. Yet, in the past three years alone, region-wide heat waves, cold snaps, hurricanes, and wildfires have resulted in outages or other significant reliability impacts, often while contributing to substantial consumer costs.[15]

9. In December 2022, Winter Storm Elliot impacted a swath of the U.S. with record cold temperatures and blizzard conditions in some areas, causing 1.6 million customers to lose power.[16] PJM Interconnection, L.L.C. (PJM) and Midcontinent Independent System Operator, Inc. (MISO) saw high load forecast errors during this period due to the unprecedented nature and scale of that storm. As unusually low temperatures drove electricity demand up, almost 65 GW of generating capacity was forced offline between these two RTOs/ISOs.[17] These outages highlight, first, the difficulty in preparing for extreme weather patterns that increasingly diverge from historical trends, and second, how extreme weather events can often drive the need for potentially lifesaving energy when it

[6] Exact definitions and thresholds used to identify disadvantaged communities vary. However, we note that the California Public Utilities Commission (CPUC) explains that ''[d]isadvantaged communities refers to the areas throughout California which most suffer from a combination of economic, health, and environmental burdens. These burdens include poverty, high unemployment, air and water pollution, presence of hazardous wastes as well as high incidence of asthma and heart disease.'' CPUC, *Disadvantaged Communities* (last visited May 17, 2023), *https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/infrastructure/disadvantaged-communities#:~:text=Disadvantaged%20communities%20refers%20to%20the,of%20asthma%20and%20heart%20disease.*

[7] Georgetown Climate Center explains that ''[f]rontline communities include people who are both highly exposed to climate risks (because of the places they live and the projected changes expected to occur in those places) and have fewer resources, capacity, safety nets, or political power to respond to those risks (*e.g.,* these people may lack insurance or savings, inflexible jobs, low levels of influence over elected officials, etc.).'' Georgetown Climate Center, *Equitable Adaptation Legal & Policy Toolkit* (last visited May 18, 2023), *https://www.georgetownclimate.org/adaptation/toolkits/equitable-adaptation-toolkit/introduction.html.*

[8] NERC, *2022 Long-term Reliability Assessment* 8 (Dec. 2022), *https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2022.pdf.*

[9] GAO, *Electricity Grid Resilience: Climate Change Is Expected to Have Far-Reaching Effects and DOE and FERC Should Take Actions* (Mar. 2021), *https://www.gao.gov/assets/gao-21-423t.pdf.*

[10] *Id.* at 4.

[11] *Id.* at 8.

[12] NOAA, Adam Smith, *2022 U.S. Billion-Dollar Weather and Climate Disasters in Historical Context* (last visited June 1, 2023), *https://www.ncei.noaa.gov/access/billions/.*

[13] *See* Adam B. Smith, Richard W. Katz, *U.S. Billion-dollar Weather and Climate Disasters: Data Sources, Trends, Accuracy, and Biases,* 67 *Natural Hazards* 387 (Feb. 3, 2013), *https://www.ncei.noaa.gov/monitoring-content/billions/docs/smith-and-katz-2013.pdf.*

[14] NOAA, Adam Smith, *2022 U.S. Billion-Dollar Weather and Climate Disasters in Historical Context* (last visited June 1, 2023), *https://www.ncei.noaa.gov/access/billions/.* NOAA notes that increasing population and material wealth throughout the country, especially in regions vulnerable to extreme weather events, is an important factor in the rising costs described. NOAA also notes that 2022's figures may rise by several billion additional dollars when the costs of Winter Storm Elliot in the Central and Eastern United States are fully accounted for. Furthermore, this total only captures the costs of those weather and climate disasters that exceeded $1 billion in damages, based on insurance data.

[15] Indeed, NERC found that all of the days in 2021 with the highest severity risk index, a quantitative measure of the relative severity of risks to the bulk-power system, were attributed to some type of weather occurrence. NERC, *2022 State of Reliability Report* 20 (2022), *https://www.nerc.com/pa/RAPA/PA/Performance%20Analysis%20DL/NERC_SOR_2022.pdf.*

[16] FERC, *2022 State of the Markets* (Mar. 16, 2023), *https://www.ferc.gov/media/report-2022-state-market.*

[17] *See* MISO, *Overview of Winter Storm Elliott December 23, Maximum Generation Event* 10 (Jan. 17, 2023), *https://cdn.misoenergy.org/20230117%20RSC%20Item%2005%20Winter%20Storm%20Elliott%20Preliminary%20Report627535.pdf;* PJM, *Winter Storm Elliott* 11 (2023), *https://pjm.com/-/media/committees-groups/committees/mic/2023/20230111/item---winter-storm-elliott-overview.ashx.*

is most difficult for the bulk-power system to deliver it.

10. Hurricane Ian, a strong Category 4 storm in September 2022, left 2.6 million customers without power and caused an estimated $113 billion of damage.[18] Hurricane Ida resulted in outages for more than one million customers across eight states in August 2021,[19] with the most severe impacts in Louisiana, which saw the collapse of a transmission tower and an outage of more than 2,000 miles of transmission lines outside of New Orleans.[20] Some customers were without electricity for nearly a month after Hurricane Ida's landfall.[21] In July 2021, wildfires in Oregon limited the ability to import electricity into California as temperatures soared above 100 degrees Fahrenheit, ultimately triggering emergency demand response measures to avoid reliability impacts.[22] During Winter Storm Uri in February 2021, more than four and half million people in Texas alone lost power, and in some cases the outages contributed to loss of life.[23] Winter Storm Uri caused over 65 GW of unplanned generation outages, the nation's largest controlled firm load shed, at 23,418 MW, and drove energy prices to historic levels across Texas and the South-Central U.S.[24] In August 2020, California experienced rolling outages during a West-wide extreme heat event that impacted nearly 500,000 customers.[25]

11. The record shows that extreme weather events can also increase electricity prices because grid operators are forced to dispatch higher-priced generators to account for transmission line outages.[26] The level of increased electricity prices depends on a number of variables, including the clearing price for electricity, the duration of the outage, and the load.[27] For example, Winter Storm Uri had a significant impact on consumers as energy prices rose to historic levels in the wholesale markets serving Texas and the South-Central region during the event.[28] Above-average temperatures exacerbate reliability risks by contributing to prolonged periods of high electricity demand, decreased transmission capacity, and higher forced outage rates for generation and other elements of the bulk-power system. The historic 2021 drought across much of the western U.S. also reduced hydropower generation, a key component of the generation fleet in that region, to 48% below the 10-year average in California and 14% below the 10-year average in the Pacific Northwest.[29] Heavy precipitation during winter 2022–2023 has since reduced the area of the western U.S. classified as ''in drought'' from 74% to 25% [30] and increased snowpack from 22% of the historic median to 232%.[31] However, although the U.S. Energy Information Administration (EIA) forecasts a 72% increase in California hydropower generation in 2023, it forecasts total hydropower generation to remain roughly equal to 2022 levels due to continued below normal precipitation and a mixed water supply forecast in the Pacific Northwest.[32]

12. On June 1–2, 2021, in the aftermath of Winter Storm Uri's impact on the South-Central U.S., Commission staff hosted a technical conference on Climate Change, Extreme Weather, and Electric System Reliability. The technical conference and comments underscored the importance of planning appropriately for extreme weather. But the record did not provide the Commission with a clear understanding of whether and to what extent transmission providers are currently conducting, or planning to conduct, extreme weather vulnerability assessments, the method(s) used to conduct those assessments, and what is done with the information from those assessments.[33]

13. On June 16, 2022, the Commission issued the NOPR in this proceeding and

[18] NOAA National Centers for Environmental Information, *September 2022 National Climate Report: Hurricane Ian Special Summary* (Oct. 2022), *https://www.ncei.noaa.gov/access/monitoring/monthly-report/national/202209/supplemental/page-5*.

[19] U.S. Energy Information Administration., *Hurricane Ida Caused At Least 1.2 Million Customers to Lose Power* (Sept. 15, 2021), *https://www.eia.gov/todayinenergy/detail.php?id=49556*.

[20] *See* S. Van Voorhis, *Transmission Tower Destroyed by Ida Likely to Complicate Power Restoration in New Orleans, Experts Say, Utility Dive* (Aug. 31, 2021), *https://www.utilitydive.com/news/transmission-tower-destroyed-by-ida-likely-to-complicate-power-restoration/605826/*.

[21] U.S. Department of Energy, *Hurricanes Ida and Nicholas Update # 20* (Sept. 23, 2021), *https://www.energy.gov/sites/default/files/2021-09/TLP-WHITE_DOE%20Situation%20Update_Hurricane%20Ida_20.pdf*.

[22] *See* Cal. Indep. Sys. Operator Corp., *California ISO Issues Flex Alert for Monday, July 12 Due to Wildfires, Heat* (July 11, 2021), *https://www.caiso.com/Documents/California-ISO-Issues-Flex-Alert-for-Monday-July-12-due-to-Wildfires-Heat.pdf*.

[23] FERC, *FERC–NERC–Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South Central United States* 9 (Nov. 16, 2021), *https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and*.

[24] *Id.* at 8–9; *see also* Elec. Reliability Council of Texas, *Review of February 2021 Extreme Cold Weather Event* 22 (2021), *https://www.ercot.com/files/docs/2021/03/03/Texas_Legislature_Hearings_2-25-2021.pdf* (average system wide pricing during event greater than $6000/MWh compared to $18–20/MWh in more typical conditions); Sw. Power Pool, Inc, *A Comprehensive Review of SPP's Response to the February 2021 Winter Storm* 72 (2021), *https://spp.org/documents/65037/comprehensive%20review%20of%20spp's%20response%20to%20the%20feb.%202021%20winter%20storm%202021%2007%2019.pdf* (''SPP experienced historically high market settlements for the impacted operating days''); Midcontinent Indep. Sys. Operator, *The February Artic Event: Event Details, Lessons Learned, and Implications for MISO's Reliability Imperative* 45 (2021), *https://cdn.misoenergy.org/2021%20Arctic%20Event%20Report554429.pdf* (Independent Market Monitor reports average energy prices rose 226 percent in February because of the Artic Event in February).

[25] *See* Cal. Indep. Sys. Operator Corp., *Final Root Cause Analysis: Mid-August 2020 Extreme Heat Wave* 35 (Jan. 13, 2021), *http://www.caiso.com/Documents/Final-Root-Cause-Analysis-Mid-August-2020-Extreme-Heat-Wave.pdf*.

[26] *See, e.g.,* Dale et al., *Assessing the Impact of Wildfires on the California Electricity Grid: A report for California's Fourth Climate Assessment* 16–18 (Aug. 2018), *https://www.energy.ca.gov/sites/default/files/2019-12/Forests_CCCA4-CEC-2018-002_ada.pdf* (estimating multi-million-dollar cost increases per event due to disruption of transmission paths caused by wildfires).

[27] *Id.*

[28] *See* Elec. Reliability Council of Tex., *Review of February 2021 Extreme Cold Weather Event* 22 (2021), *https://www.ercot.com/files/docs/2021/03/03/Texas_Legislature_Hearings_2-25-2021.pdf* (average system wide pricing during event greater than $6000/MWh compared to $18–20/MWh in more typical conditions); Sw. Power Pool, Inc., *A Comprehensive Review of SPP's Response to the February 2021 Winter Storm* 72 (2021), *https://spp.org/documents/65037/comprehensive%20review%20of%20spp's%20response%20to%20the%20feb.%202021%20winter%20storm%202021%2007%2019.pdf* (''SPP experienced historically high market settlements for the impacted operating days . . . .''); MISO, *The February Artic Event: Event Details, Lessons Learned, and Implications for MISO's Reliability Imperative* 45 (2021), *https://cdn.misoenergy.org/2021%20Arctic%20Event%20Report554429.pdf* (Independent Market Monitor reports average energy prices rose 226% in February because of the Artic Event in February).

[29] U.S. Energy Information Administration, *Drought Effects on Hydroelectricity Generation in Western U.S. Differed by Region in 2021* (Mar. 30, 2022), *https://www.eia.gov/todayinenergy/detail.php?id=51839*.

[30] Jennifer Yachnin, *NOAA Reports Big Decrease in Western Drought Conditions,* E&E NewsPM (4:15PM May 9, 2023).

[31] FERC, *Summer Energy Market and Electric Reliability Assessment* 3, 43–44 (May 2023), *https://www.ferc.gov/media/report-2023-summer-energy-market-and-electric-reliability-assessment*.

[32] EIA, *Mixed Water Supply Condition Across Western States Affects 2023 Hydropower Outlook* (May 2023), *https://www.eia.gov/todayinenergy/detail.php?id=56440*.

[33] Based on the record developed during the technical conference, these assessments did not appear to be widespread among transmission providers at that time. In addition, of the six jurisdictional RTOs/ISOs, only New York Independent System Operator, Inc. appeared to have conducted such an assessment. Yet not every RTO/ISO or transmission provider has indicated whether or not it performs these assessments. Therefore, we believe that this one-time informational reporting requirement will provide the necessary information for the Commission to understand the extent to which transmission providers are currently performing these assessments.

proposed to require transmission providers to report on whether and how they assess and mitigate the risks of extreme weather to jurisdictional transmission assets and operations. In response to the NOPR, the Commission received 18 comments from a diverse set of stakeholders.

14. On July 12, 2022, the Commission issued an errata notice to correct a series of NOPR question paragraphs with numbering errors.[34] In this final rule, we refer to the questions as listed in Appendix A.

III. Need for Reports

A. NOPR Proposal

15. In the NOPR, the Commission stressed that the trend of the increasing frequency and severity of extreme weather events threatens livelihoods, electric system reliability, and the Commission's ability to ensure just and reasonable jurisdictional rates. The Commission found that it does not yet know enough about how transmission providers assess and mitigate the threat of extreme weather to their transmission assets and operations. Accordingly, the Commission proposed to require one-time informational reports on extreme weather vulnerability assessments and mitigation efforts pursuant to FPA section 304, which allows the Commission to order reports as ''necessary or appropriate to assist the Commission in the proper administration of [the FPA].'' [35] The Commission preliminarily found that the proposed reports could also facilitate coordination among transmission providers and promote information sharing about extreme weather vulnerability assessments.

B. Comments

16. Most commenters support the Commission's proposal to require transmission providers to file one-time informational reports on extreme weather vulnerability assessments, including: Ameren Services Company (Ameren), Bureau of Reclamation, Edison Electric Institute (EEI), Electric Power Supply Association (EPSA), Electric Reliability Organization Enterprise (ERO Enterprise),[36] Environmental Defense Fund and Columbia Law School's Sabin Center for Climate Change Law (EDF/Sabin Center), Eversource Energy Service Company (Eversource), Indicated PJM Transmission Owners (PJM TO),[37] MISO Transmission Owners (MISO TO),[38] National Association of Mutual Insurance Companies (NAMIC), National Mining Association, PJM, Public Interest Organizations,[39] San Diego Gas & Electric Company (SDG&E), and WE ACT for Environmental Justice (WE ACT).[40] ERO Enterprise notes that extreme weather events, particularly extreme heat and cold conditions, have threatened reliability multiple times over the past decade, and that the grid is increasingly vulnerable to the effects of extreme weather.[41] Public Interest Organizations state that in February 2022, the United Nations Intergovernmental Panel on Climate Change (IPCC) reported that the effects of climate change are already pervasive and acknowledged that more frequent and intense extreme weather events are putting stress on the grid.[42] Public Interest Organizations argue that it is imperative that the Commission understand the impacts of extreme weather on the transmission system and how transmission providers are addressing them.[43] EEI agrees that the informational reports can help the Commission understand the extent to which transmission providers are assessing extreme weather vulnerabilities and help inform transmission providers when developing their own extreme weather vulnerability assessment practices.[44] EPSA notes that data from recent seasonal assessments highlights that extreme weather impacts not only all regions but all resource types in some manner. EPSA argues that information on whether and how transmission providers are assessing weather and other reliability risks over the near- and longer-term will be critical in establishing a reality-based understanding of how transmission providers are addressing these issues, what may need to be reformed, and whether to reassess reliability planning criteria, capacity accreditation approaches, and new products or services to mitigate extreme weather reliability risks.[45] EDF/Sabin Center highlight a 2020 study that found that failing to build resilience into infrastructure from the start could lead to a 25% increase in transmission and distribution spending each year by 2090.[46] Conversely, the same study found that building such infrastructure for projected climate conditions can halve the expected annual costs of climate change experienced by 2090.[47]

17. Several commenters express concern over the impact extreme weather will have on jurisdictional rates. Public Interest Organizations aver that the extent to which transmission providers assess their vulnerabilities to

[34] *One-Time Informational Reps. on Extreme Weather Vulnerability Assessments,* Errata Notice, 180 FERC ¶ 61,020, at 1 (2022).

[35] 16 U.S.C. 825c.

[36] ERO Enterprise includes NERC and the six Regional Entities.

[37] PJM TOs include: Exelon Corporation; the FirstEnergy Transmission Companies, including American Transmission Systems, Incorporated, Jersey Central Power & Light Company, Mid-Atlantic Interstate Transmission LLC, West Penn Power Company, The Potomac Edison Company, Monongahela Power Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; and Virginia Electric and Power Company d/b/a Dominion Energy Virginia.

[38] MISO TOs consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Cooperative Energy; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Entergy Arkansas, LLC; Entergy Louisiana, LLC; Entergy Mississippi, LLC; Entergy New Orleans, LLC; Entergy Texas, Inc.; Great River Energy; GridLiance Heartland LLC; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC Transmission; ITC Midwest LLC; Lafayette Utilities System; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company LLC; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power, Inc.; Republic Transmission, LLC; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a CenterPoint Energy Indiana South); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

[39] Public Interest Organizations consist of: Sustainable FERC Project, Natural Resources Defense Council, Sierra Club, Southern Environmental Law Center, and Western Resource Advocates.

[40] Ameren Comments at 1, 4; Bureau of Reclamation Comments at 1; EDF/Sabin Center Comments 3–4; EEI Comments at 3; EPSA Comments at 3; ERO Enterprise Comments at 2, 4–5; Eversource Comments at 3; MISO TOs Comments at 2, 4; NAMIC Comments at 2; National Mining Association Comments at 2; PJM Comments at 3; PJM TOs Comments at 2; Public Interest Organizations Comments at 1; SDG&E Comments at 1; WE ACT Comments at 2.

[41] ERO Enterprise Comments at 4.

[42] Public Interest Organizations Comments at 1–2 (citing IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability—Summary for Policymakers* 7 (Feb. 27, 2022), *https://report.ipcc.ch/ar6wg2/pdf/IPCCAR6WGIISummaryForPolicymakers.pdf*).

[43] *Id.* at 2.

[44] EEI Comments at 3.

[45] EPSA Comments at 7.

[46] EDF/Sabin Center Comments at 10 (citing Charles Fant et al., *Climate Change Impacts and Costs to U.S. Electricity Transmission and Distribution Infrastructure,* 195 Energy 116,899, at 1, 7 (Mar. 2020)).

[47] *Id.* (citing Charles Fant et al., *Climate Change Impacts and Costs to U.S. Electricity Transmission and Distribution Infrastructure,* 195 Energy 116,899, at 7 (Mar. 2020)).

extreme weather events is unclear, and without access to this information, the Commission cannot assess whether and how those practices are leading to unjust and unreasonable rates.[48] NAMIC states that extreme weather, coupled with inadequate resiliency, will impact insurance markets and the public in addition to the power sector. NAMIC asserts that federal and state energy regulators' failure to ensure grid resiliency will negatively impact consumers and the broader economy.[49]

18. Commenters also agree that the Commission has authority to direct reports on extreme weather vulnerability assessments.[50] Public Interest Organizations agree with the Commission that if transmission providers do not assess their vulnerability to extreme weather, or do so inadequately, consumers ultimately bear the cost of increased outages and replacing damaged facilities.[51] ERO Enterprise notes that, while the Commission proposed these reports to aid in its statutory obligations under FPA section 215, the reports will also aid ERO Enterprise in carrying out its own statutory obligations with respect to reliability.[52]

19. Many commenters argue that the one-time reports will offer a record to develop best practices.[53] SDG&E contends that the proposed one-time reports could be a useful means of sharing information and best practices and aiding transmission provider efforts to manage reliability risks.[54] Similarly, ERO Enterprise agrees that the proposed reports would improve transparency and information sharing between transmission providers, which could ultimately benefit reliability.[55]

C. Commission Determination

20. FPA section 304 authorizes the Commission to require the filing of special reports the Commission ''prescribe[s] as necessary or appropriate to assist the Commission in the proper administration of [the FPA].'' [56] FPA section 215 provides the Commission with jurisdiction for overseeing the development and enforcement of reliability standards for the bulk-power system.[57] Additionally, FPA sections 205 and 206 require that the Commission ensure that the rates, terms, and conditions of Commission-jurisdictional services are just and reasonable and not unduly discriminatory or preferential.[58]

21. As discussed above, the frequency and severity of extreme weather events have been increasing, are likely to continue to increase, and, thereby, will likely continue to jeopardize system reliability and affect jurisdictional electric rates.

22. The record shows that extreme weather events can significantly impact reliability of the bulk-power system. The events outlined above exemplify the reliability impacts of Hurricane Ian in September 2022, Winter Storm Elliott in December 2022, Winter Storm Uri in February 2021, and Hurricane Ida in August 2021, as well as the wildfires in July 2021 and the extreme west-wide heat event in August 2020.

23. Generally, as the Commission explained in the NOPR, the failure to assess and mitigate the risks of extreme weather could increase the frequency of loss of load events, burden consumers with more frequent outages and costs, and lead to higher prices for wholesale electricity.[59] SDG&E notes that the frequency, intensity, and duration of wildfires in southern California are increasing due to climate change, which threatens public safety and also requires mitigation efforts in the form of public safety power shutoff.[60] Public Interest Organizations similarly argue that more frequent and intense extreme weather events will put stress on the grid, leading to the loss of power and increasing consumer prices. Public Interest Organizations agree with the NOPR that the failure of transmission providers to adequately assess their vulnerabilities to such extreme weather events will result in increased outages and consumer costs.[61] EDF/Sabin Center also agree that the increasing frequency, severity, and duration of extreme weather poses a reliability threat to the bulk-power system.[62] NERC reports on short- and long-term reliability issues highlight the impact of extreme weather on system reliability, as well as the Commission's concern that such events are likely to increase in frequency and severity.

24. The record shows that extreme weather events can also impact jurisdictional rates. EDF/Sabin Center agree that considering and planning for the impacts of extreme weather can help reduce the need for costly future retrofits.[63] Public Interest Organizations point out that consumers will bear the costs of increased outages and replacing facilities damaged during extreme weather events, which flow through into transmission rates.[64]

25. As discussed above, the record before the Commission demonstrates a lack of consistency in whether and how transmission providers plan for the impacts of extreme weather.[65] Based on the foregoing, we find that requiring transmission providers to file one-time informational reports is justified because the reports will allow the Commission to understand whether and how transmission providers assess their vulnerabilities to extreme weather events and enhance the Commission's ability to fulfill its obligations to ensure system reliability and just and reasonable rates.

26. In addition to our finding that the reports will assist the Commission in administering the FPA, the record shows that the reports will provide the opportunity to facilitate coordination among transmission providers and promote information sharing about vulnerability assessments, including best practices for vulnerability assessments among transmission providers. Several commenters, including SDG&E, Xcel, and Eversource explained that the reports could be used to establish such best practices. For instance, as explained by ERO Enterprise, the proposed reports will improve transparency and information sharing between transmission providers, which could ultimately benefit reliability.[66]

27. Several commenters acknowledged the value of extreme weather vulnerability assessments, such as helping transmission providers mitigate extreme weather risks to the bulk-power system.[67] While we expect that the reports will promote information sharing about how

[48] Public Interest Organizations Comments at 4 (arguing that if transmission providers do not assess their vulnerability to extreme weather, or do so inadequately, consumers ultimately bear the cost of increased outages and replacing damaged facilities).

[49] NAMIC Comments at 2.

[50] EDF/Sabin Center Comments at 11–13; Public Interest Organizations Comments at 3–4.

[51] Public Interest Organizations Comments at 4 (citing NOPR, 179 FERC ¶ 61,196 at P 16).

[52] ERO Enterprise Comments at 6.

[53] *E.g.,* Eversource Comments at 3; Xcel Comments at 5–6.

[54] SDG&E Comments at 3.

[55] ERO Enterprise Comments at 5–6.

[56] 16 U.S.C. 825c.

[57] *Id.* 824o; *see* NOPR, 179 FERC ¶ 61,196 at P 15.

[58] 16 U.S.C. 824d, 824e; *see* NOPR, 179 FERC ¶ 61,196 at P 15.

[59] NOPR, 179 FERC ¶ 61,196 at P 16; *see also* GAO, *Electricity Grid Resilience: Climate Change Is Expected to Have Far-Reaching Effects and DOE and FERC Should Take Actions* 4, 5–6 (Mar. 2021), *https://www.gao.gov/products/gao-21-423t;* Public Interest Organizations Comments at 4; EDF/Sabin Center Comments at 10.

[60] SDG&E Comments at 3.

[61] Public Interest Organizations Comments at 1–2, 4.

[62] EDF/Sabin Center Comments at 3–4.

[63] *Id.* at 10.

[64] Public Interest Organizations Comments at 4.

[65] *See supra* P 12.

[66] ERO Enterprise Comments at 5–6.

[67] EDF/Sabin Center Comments at 8–9; ERO Enterprise Comments at 4–5.

transmission providers conduct extreme weather vulnerability assessments, in this final rule we do not require transmission providers to conduct extreme weather vulnerability assessments.

28. Some commenters ask that the Commission indicate how it plans to use the information provided in the reports and establish additional procedures, such as disseminating best practices or setting extreme weather vulnerability assessment requirements.[68] We do not set forth in this final rule what additional steps, if any, the Commission may take in the future in response to the informational reports. After the reports are filed and the public comments on them, the Commission will consider any further action.

IV. Discussion on Required Reports

A. Reporting Requirement

1. NOPR Proposal

29. In the NOPR, the Commission proposed to require transmission providers to file one-time informational reports describing their current or planned policies and processes for conducting extreme weather vulnerability assessments and mitigating identified extreme weather risks within 90 days of the publication of any final rule in this proceeding in the **Federal Register**.

30. For the purposes of this rulemaking, the Commission proposed to define an extreme weather vulnerability assessment as any analysis that identifies where and under what conditions jurisdictional transmission assets and operations are at risk from the impacts of extreme weather events, how those risks will manifest themselves, and what the consequences will be for transmission system operations. The Commission further stated that the extreme weather threats analyzed by these reports may include those extreme weather events exacerbated by climate change (*e.g.,* extended heat waves or storm surge due to sea level rise).[69]

31. The Commission explained that transmission providers may use such extreme weather vulnerability assessments to develop mitigation solutions in the form of extreme weather resilience plans, which outline measures to reduce risks to vulnerable assets and operations. The Commission further explained that extreme weather resilience efforts can take many forms but generally involve both measures to prevent or minimize damage to vulnerable assets (*e.g.,* investments in asset hardening or relocation) and to manage the consequences of such damage when it occurs (*e.g.,* investments in system recoverability).[70]

32. The Commission stated that it did not intend in the NOPR to require transmission providers to conduct extreme weather vulnerability assessments where they do not do so already, or to require transmission providers to change how they conduct or plan to conduct such assessments.[71] Instead, the Commission expressly stated that the goal of this proceeding is to gather information, not to establish new requirements. In addition, the Commission did not propose for transmission providers to file their actual vulnerability assessments, the results of their extreme weather vulnerability assessments, or lists of affected assets and operations, specific vulnerabilities, or asset- or operation-specific mitigation strategies in the informational reports. Rather, the Commission proposed that the one-time informational reports focus on describing current or planned policies and processes to assess and mitigate extreme weather risks.

33. Finally, the Commission stated that while individual extreme weather vulnerability assessments may not follow the same processes or include the same analyses, the topic areas included in the NOPR (and adopted in this final rule)—Scope, Inputs, Vulnerabilities and Exposure to Extreme Weather Hazards, Costs of Impacts, Risk Mitigation—reflect typical practices and considerations in the development of extreme weather vulnerability assessments. If respondents' policies and processes for developing their own extreme weather vulnerability assessments differ from those the Commission described, the Commission proposed to require that transmission providers still describe in their one-time reports the policies and processes that most closely align with the topics discussed.

2. Comments

34. Commenters generally support the proposed reporting requirement in the NOPR. EPSA argues that it is important to have transparency and current data available to inform discussions on assessment, planning, operational, and market approaches to ensuring grid reliability.[72] EPSA and EEI specifically support the five areas of inquiry set out in the NOPR.[73] MISO, however, argues the reporting requirement is redundant because it submitted pre- and post-conference comments in Docket No. AD21–13–000 detailing its current and planned actions under its Reliability Imperative, on which MISO continues to focus.[74] MISO further explains that it, with ERO Enterprise, participated in a Commission technical conference on generator winter readiness.[75] MISO asserts that preparing the report would be complex and, because of resource constraints related to its ongoing reliability work, it requests a four-week extension if the Commission moves forward with requiring these reports.[76]

35. With respect to who has to file the reports, Ameren agrees with the NOPR that public utility transmission providers, including both RTOs/ISOs and transmission owner members, are the appropriate entities covered under the reporting obligation.[77] Ameren explains that requiring RTOs/ISOs to file, in addition to having the transmission-owning members of the RTOs/ISOs file, makes sense because the RTOs/ISOs have a wider view than individual transmission owner members.

36. However, other commenters suggest allowing transmission providers to file their informational reports either individually or jointly with their RTO/ISO.[78] Public Interest Organizations suggest that RTOs/ISOs could report on the effects of extreme weather on their market in a single RTO/ISO filing.[79] PJM adds that RTO/ISO transmission owner members could supplement joint reports with additional information on their own transmission facilities.[80] PJM TOs, Eversource, and EEI contend that joint reports have two benefits: they would

[68] *See, e.g.,* EEI Comments at 7–8; Eversource Comments at 5; MISO TOs Comments at 3–5; PJM TOs Comments at 2–3; Xcel Comments at 5–6.

[69] NOPR, 179 FERC ¶ 61,196 at P 20.

[70] R.M. Webb, M. Panfil, and S. Ladin, *Climate Risk in the Electric Sector: Legal Obligations to Advance Climate Resilience Planning by Electric Utilities* 10 (Dec. 2020), *https://perma.cc/V25A-KBNP.*

[71] Similarly, while the NOPR proposed that transmission providers may describe what they ''plan'' to do with respect to various issues, the Commission explained that the proposed reporting requirement was meant only to capture plans that have already been made, but not yet been implemented. The NOPR emphasized that transmission providers would not be required to speculate on how they would conduct extreme weather vulnerability analysis where they have no firm plans to do so.

[72] EPSA Comments at 3.

[73] EEI Comments at 5; EPSA Comments at 7.

[74] MISO Comments at 1–2.

[75] *Id.* at 3.

[76] *Id.* at 10.

[77] Ameren Comments at 4.

[78] EEI Comments at 6–7; Eversource Comments at 6; PJM Comments at 8; PJM TOs Comments at 6–7.

[79] Public Interest Organizations Comments at 7.

[80] PJM Comments at 8.

incorporate regional extreme weather assessment practices absent from individual reports and align the reporting process with the joint nature of system planning and operation.[81] PJM TOs similarly contend that joint reports would provide the Commission with a more holistic view of extreme weather assessment and preparation because they would incorporate the perspectives of RTOs/ISOs and their transmission owner members in a single report.[82] MISO TOs state that much of the information the Commission proposes to collect is aggregated at the RTO/ISO level and that RTOs/ISOs are more capable of providing much of the information than their transmission owner members.[83] MISO TOs explain that MISO itself does most weather forecasting and risk mitigation for its region, evaluates issues like winter readiness and resource availability, and coordinates with neighboring entities.[84] MISO TOs add that RTOs/ISOs can provide information on vulnerability assessments over wide areas and among planning regions.[85]

37. Commenters have different views on the proposed definitions of an extreme weather vulnerability assessment and an extreme weather event. EPSA, Ameren, EEI, and Eversource, support the NOPR's definition of an extreme weather vulnerability assessment, and Ameren, EEI, and Eversource state that the definition is sufficiently flexible to allow transmission providers to describe their practices and processes, even if they differ from the NOPR's conceptualization of extreme weather vulnerability assessments.[86] Other commenters, by contrast, suggest that the definition of extreme weather vulnerability assessment may be too narrow. Xcel states that the NOPR's definition may be too narrow and exclude other types of studies that inform transmission providers' responses to extreme weather risks.[87] For example, Xcel states that utilities are constantly collecting and evaluating operating and performance data, and may perform studies on specific extreme weather system impacts that could inform the utility's response.[88] Given this, Xcel requests the Commission be prescriptive about the types of studies and evaluations it is seeking reports on.[89] Xcel states that doing so would prevent transmission providers from failing to report or underreporting.[90] Public Interest Organizations similarly request that the Commission expand the definition of extreme weather vulnerability assessment.[91]

38. PJM TOs request that the Commission provide guidance on what constitutes an extreme weather event.[92] PJM TOs point out that the NOPR neither defines the term ''extreme weather'' nor provide guidance or criteria for what constitutes an ''extreme weather'' event.[93] As a result, PJM TOs contend that in response to a final rule, transmission providers would have to determine, for example, whether winter storms in the northeast or hurricanes in the southeast are ''extreme weather events'' or ordinary weather events.[94] PJM TOs suggest the Commission could distinguish weather events between those that may be deemed ''predictable'' or ''expected'' based on historical trends and those that are associated with climate change.[95] Given that intermittent generation will increase in the future, PJM TOs contend that cloud cover or lack of wind, especially over extended periods of time, may need to be included in the definition of extreme weather events and in planning studies.[96] PJM TOs argue that although transmission providers already incorporate weather events into transmission planning and vulnerability assessments, extreme and ordinary weather events will vary greatly depending on geography.[97] At the same time, PJM TOs caution that the Commission should not starkly delineate extreme weather impacts from other low-probability, high impact events that transmission providers should also plan for to improve overall grid resiliency.[98]

39. Other commenters argue that extreme weather should be defined broadly. PJM and Xcel assert that the definition for extreme weather should allow for regional flexibility as to what types of extreme weather events should be included in the one-time reports.[99] PJM suggests including windstorms, ice/snowstorms, and geo-magnetic disturbance within the definition of ''extreme weather events.'' [100]

40. Some commenters suggest expanding the reporting requirement. EDF/Sabin Center suggest adding climate-related risks to the scope of the reporting requirement because the reasons the Commission cites in the NOPR for requiring reports on extreme weather vulnerability assessments apply equally to climate-related impacts to the grid.[101] EDF/Sabin Center argue that changing climate baselines will impact the operation of transmission infrastructure, as well as generation and distribution assets, in ways that could impair the reliability of the electric system. EDF/Sabin Center explain that increasing air and water temperatures can reduce the capacity of the bulk-power system to generate and transmit electricity and decrease asset lifetimes.[102] EDF/Sabin Center also explain that shifting precipitation patterns could reduce hydroelectric operations by reducing snowmelt and increasing drought.[103] Finally, EDF/Sabin Center explain that, as sea levels rise, more bulk-power systems will be at risk of nuisance flooding, storm surge, and permanent inundation.[104]

41. EDF/Sabin Center also argue that the reporting requirement should be expanded to include information on whether and how transmission providers incorporate risks to interconnected generators, electric

[81] EEI Comments at 6; Eversource Comments at 6; PJM TOs Comments at 6–7.

[82] PJM TOs Comments at 6–7.

[83] MISO TOs Comments at 6.

[84] *Id.* at 6–7.

[85] *Id.* at 7.

[86] Ameren at 5; EEI Comments at 3–4; EPSA Comments at 7; Eversource Comments at 3.

[87] Xcel Comments at 3–4.

[88] *Id.* at 4.

[89] *Id.* at 5.

[90] *Id.* at 5–6.

[91] Public Interest Organizations Comments at 7.

[92] PJM TOs Comments at 3.

[93] *Id.*

[94] *Id.* at 4.

[95] *Id.*

[96] *Id.* at 4–5.

[97] *Id.* at 3–4.

[98] *Id.* at 5.

[99] PJM Comments at 6; Xcel Comments at 6.

[100] PJM Comments at 6.

[101] EDF/Sabin Center Comments at 3, 13–14.

[102] *Id.* at 4–6 (citing Jayant Sathaye et al., *Estimating Risk to California Energy Infrastructure from Projected Climate Change* 25–27 (2011), *https://doi.org/10.2172/1026811;* Craig D. Zamuda et al., *Energy Supply, Delivery, and Demand,* in Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II 174, 181 (D.R. Reidmiller et al. eds., 2018), *https://perma.cc/ZP2G-JJRK;* Dennis Wamsted and Seth Feaster, *May Heat Wave Exposes Myth of Fossil Fuel Reliability as Texas Coal- and Gas-fired Generators Fail Early Season Performance Test, Inst. for Energy Econs. and Fin. Analysis* (June 27, 2022), *https://ieefa.org/resources/may-heat-wave-exposes-myth-fossil-fuel-reliability-texascoal-and-gas-fired-generators;* U.S. Department of Energy, U.S. Energy Sector Vulnerabilities to Climate Change and Extreme Weather 10–11 (2013), *https://perma.cc/FMB6-RSRK*).

[103] *Id.* at 6 (citing D.R. Easterling et al., *Precipitation Change in the United States,* in Climate Science Special Report: Fourth National Climate Assessment, Volume I 207, 207, 217 (D.J. Wuebbels et al. eds., 2017), *https://perma.cc/MV9S-NMAS;* U.S. Department of Energy, Office of Energy Policy and Systems Analysis, *Climate Change and the Electricity Sector: Guide for Climate Resilience Planning* 10–11 (Sept. 2016), *https://toolkit.climate.gov/sites/default/files/Climate%20Change%20and%20the%20Electricity%20Sector%20Guide%20for%20Climate%20Change%20Resilience%20Planning%20September%202016_0.pdf* (DOE Guide for Resilience Planning)).

[104] *Id.* at 7 (citing DOE Guide for Resilience Planning at 89–90).

demand, and distribution system assets in their assessments.[105] In particular, EDF/Sabin Center contend that questions 6, 8, 14, and 15 should specifically request information on whether the transmission provider includes generation assets and operations in its assessments and whether the transmission provider considers interdependencies of its assets with independently-owned generation assets.[106] EDF/Sabin Center note that relationships between transmission providers and generation owners can take a number of different forms that could affect whether and how the transmission provider assesses climate risks to generating units.[107]

42. Public Interest Organizations similarly request that the Commission expand the reporting requirement to include generation assets and demand side resources; specifically, they request that the definition include any analysis concerning where and under what conditions generation assets or demand-side resources within the transmission provider's footprint are at risk from the impacts of extreme weather events, how those risks will manifest themselves, and what the consequences will be for the ability to serve load. Public Interest Organizations argue that the reporting requirement should be expanded because ''even if a transmission provider does not also own generation or demand-side resources, it will need to understand the effect of extreme weather on those resources because they are often large contingencies within its footprint.'' [108] In addition, Public Interest Organizations aver that the NOPR only mentions disadvantaged communities in the context of transmission providers' stakeholder outreach; they argue that, instead, the Commission should require transmission providers to file information on whether, and if so how, they consider the effects on these communities in each section of the NOPR.[109]

43. Some commenters raise concerns that a one-time reporting requirement may be insufficient. Ameren agrees that a one-time reporting requirement is appropriate but expresses concern that report collection alone may not make information and insights accessible enough to the industry and suggests that the Commission also convene a forum on extreme weather vulnerability assessments and barriers to transmission providers improving assessments.[110] Similarly, Bureau of Reclamation asserts that one-time informational reports may be useful to establish a baseline regarding extreme weather event information, but it is unlikely that one-time submissions alone will satisfy the Commission's desire for this information.[111] EPSA urges that, in order to move forward as expeditiously as possible, the Commission convene a technical conference soon after the reports are filed in order to (1) assess the information gathered, (2) highlight best practices, and (3) publicly discuss information sharing avenues.[112] WE ACT contends that the Commission should assess any gaps or deficiencies revealed by the reports and require transmission providers to develop appropriate mitigation strategies that promote resilience and affordable rates.[113]

44. Commenters offer the following comments on the reporting burden. EPSA states that the reporting requirement will minimally burden transmission providers.[114] It explains that this is because the Commission is only seeking information on policies and processes already in place or planned by each transmission provider and concerning only one aspect of reliability risks, and does not seek the results or conclusions reached by any individual transmission provider.[115] Ameren, EEI, and Eversource agree that transmission providers should not have to hypothesize how they might conduct an extreme weather vulnerability assessment if they have no plans of doing so.[116]

45. Bureau of Reclamation recommends that the Commission use an online or electronic database or form with fillable fields to collect the information to enhance the quality, utility, and clarity of the information collected and to minimize the burden on responding entities.[117] Xcel also requests that the Commission specify in what form or format transmission providers should file their reports to minimize the burden of the data request.[118]

46. Lastly, EDF/Sabin Center offer several suggestions on best practices for conducting extreme weather vulnerability assessments. EDF/Sabin Center explain that resilience planning should prevent maladaptation by identifying measures consistent with reducing greenhouse gas emissions that exacerbate climate risks.[119] EDF/Sabin Center explain that forward-looking climate resilience planning with a long-range view that considers interactions between sectors can identify climate-related risks that other planning processes that rely on historic weather data may miss, and ensure that transmission providers make informed investments based on future conditions within the lifespan of their assets.[120]

3. Commission Determination

47. We adopt the NOPR proposal to require one-time informational reports from all transmission providers, including RTOs/ISOs and their transmission owner members, and adopt, with modification, the questions proposed in the NOPR.[121] We find that the reporting requirement is necessary for the Commission's proper administration of the FPA by providing the Commission with information related to its statutory responsibilities regarding reliability and rates.[122] We also find that the reporting requirement will also promote information sharing and best practices about extreme weather vulnerability assessments as well as coordination among transmission providers. The questions for transmission providers as modified by this final rule are listed in Appendix A below.[123]

48. We modify the proposal to allow each transmission owner that is a member of an RTO/ISO to either file its one-time informational report individually or jointly with its RTO/ISO. That is, a transmission owner member of an RTO/ISO and an RTO/ISO may satisfy its reporting requirement by filing a joint one-time informational report without needing to also file separate one-time informational reports. For example, an RTO/ISO could work with all of its interested transmission owner members to complete and submit a joint one-time report.

49. We find that RTOs/ISOs and their transmission owner members will have a unique view of their own practices with respect to assessing and mitigating vulnerabilities. By allowing joint one-time informational reports from RTOs/

[105] *Id.* at 3, 16.

[106] *Id.* at 16.

[107] *Id.* at 16–17.

[108] Public Interest Organizations Comments at 7.

[109] *Id.* at 11.

[110] Ameren Comments at 4, 6.

[111] Bureau of Reclamation Comments at 1.

[112] EPSA Comments at 4.

[113] WE ACT Comments at 5.

[114] EPSA Comments at 7.

[115] *Id.* at 7–8.

[116] Ameren Comments at 5; EEI Comments at 4; Eversource Comments at 3.

[117] Bureau of Reclamation Comments at 2.

[118] Xcel Comments at 5.

[119] EDF/Sabin Center Comments at 10.

[120] *Id.*

[121] NOPR, 179 FERC ¶ 61,196 at P 1.

[122] 16 U.S.C. 825c. FPA section 304(a) states ''Such reports shall be made under oath unless the Commission otherwise specifies.'' We specify that the one-time informational reports filed under this final rule need not be made under oath. *Id.* 825c(a).

[123] *See infra* Appendix A—Report Questions.

ISOs and their transmission owner members, any joint reports will provide the perspectives of multiple entities in a single filing, align the reporting process with the joint and collaborative nature of system planning and operation, and potentially streamline the reporting process.[124]

50. In a joint informational report, the RTO/ISO itself must also convey information about its own extreme weather vulnerability assessment as well as information provided by its transmission owner members about any extreme weather vulnerability assessments they conduct. Joint informational reports must include each participating transmission owner member's response to every question listed in this final rule. Joint filers must list the RTO/ISO and transmission owner members that participated in the development of the joint informational report.

51. To reiterate the expectation stated in the NOPR, we do not intend to require transmission providers to conduct extreme weather vulnerability assessments where they do not do so already, or to require transmission providers to change how they conduct or plan to conduct such assessments.[125] The goal of this proceeding is to allow the Commission to understand whether and how transmission providers currently assess their vulnerabilities to extreme weather events, not to establish new requirements.[126] If a transmission provider does not currently assess its vulnerabilities to extreme weather events, it should report that in its responses. If transmission providers' policies and processes for developing their own extreme weather vulnerability assessments differ from those described in the questions in Appendix A, transmission providers must still describe their relevant policies and processes, or indicate their lack thereof, in their responses. We note that the final rule does not require transmission providers to file the results of their extreme weather vulnerability assessments or include lists of affected assets and operations, specific vulnerabilities, or asset- or operation-specific mitigation.[127]

52. For the purposes of the required reporting, we adopt the definition of extreme weather vulnerability assessment proposed in the NOPR: an extreme weather vulnerability assessment is any analysis that identifies where and under what conditions jurisdictional transmission assets and operations are at risk from the impacts of extreme weather events, how those risks will manifest themselves, and what the consequences will be for system operations. We find that this definition provides sufficient guidance to transmission providers on which analyses should be described in their reporting. Further, this definition ensures that the Commission receives information regarding the transmission assets and operations that are within its jurisdiction; it also ensures that the Commission receives information relevant to its statutory responsibilities regarding reliability and rates.

53. Further, as noted by Ameren, EEI, and Eversource, this definition provides flexibility for transmission providers to describe their practices and processes. In contrast, Xcel expresses concern that the Commission's definition of an extreme weather vulnerability assessment may be too narrow. We disagree with Xcel. As a threshold matter, this definition of extreme weather vulnerability assessment was crafted to guide transmission providers filing in compliance with the one-time reports required by this final rule. These reports are meant to aid the Commission's understanding of these issues with respect to jurisdictional transmission assets and operations.[128] In that context, we find that the definition the Commission proposed for extreme weather vulnerability assessments properly focuses the reporting requirement on analyses that evaluate impacts of extreme weather and provides flexibility for respondents to report on their analyses that fall within this description.

54. To preserve the flexibility of the definition of extreme weather vulnerability assessments and to avoid making the reporting requirement too narrow, we decline to define the term ''extreme weather,'' as requested by some commenters. One of the purposes of the required reports is to share information and best practices, including on how transmission providers define extreme weather for purposes of assessing vulnerabilities. A specific definition of ''extreme weather'' would hinder this purpose by unnecessarily narrowing the reporting.

55. However, to further the purpose of the sharing of information and best practices for extreme weather vulnerability assessments, we will require each transmission provider to explain how it defines extreme weather in its vulnerability assessments by responding to a new question, question 3, in the list of questions in Appendix A. In responding to question 3, a transmission provider will explain whether, and if so how, it defines extreme weather events in relation to ordinary or historical weather events or patterns for the purposes of their extreme weather vulnerability assessments. For instance, a transmission provider's definition of extreme weather may be consistent with the explanation from NOAA that extreme weather can be considered as a weather event in which the magnitude of one or more variables (such as temperature, precipitation, drought, flooding, or duration) falls outside a certain threshold relative to historical measurements, or one whose estimated probability of occurrence falls below a certain historical value.[129]

56. We find that this approach to the term ''extreme weather'' and the new question will promote information sharing and best practices and further the overall goal of the required reporting to assist the Commission in fulfilling its statutory responsibilities regarding reliability and rates. We note that some commenters identified best practices in their comments [130] and we believe that the one-time informational reports will foster such information sharing. We find that this modification to the NOPR proposal also accommodates the flexibility requested by PJM to consider events such as windstorms, ice/snowstorms, and geo-magnetic disturbance as extreme weather events.

57. We decline to adopt EDF/Sabin Center's recommendation to require transmission providers to report on whether, and if so how, they evaluate climate risks beyond those risks caused by extreme weather. The focus of this rulemaking and the one-time informational reports is on risks and mitigation of the effects of extreme weather events such as those described above. Although we acknowledge that climate change is expected to exacerbate

[124] *See* EEI Comments at 6; Eversource Comments at 6; PJM TOs Comments at 6–7.

[125] While we require transmission providers to describe what they ''plan'' to do with respect to various issues, this is meant only to capture plans that have been made but not yet implemented; transmission providers are not required to speculate on how they would conduct extreme weather vulnerability analysis where they have no plans to do so.

[126] *See* NOPR, 179 FERC ¶ 61,196 at P 22.

[127] *Id.*

[128] Our use of this definition for these reports in no way limits the ability of transmission providers or others to assess vulnerabilities to other assets and operations, such as those for generation and distribution systems.

[129] David Herring, *What Is an 'Extreme Event'? Is There Evidence that Global Warming Has Caused or Contributed to Any Particular Extreme Event?,* NOAA (Oct. 29, 2020), *https://www.climate.gov/news-features/climate-qa/what-extreme-event-there-evidence-global-warming-has-caused-or-contributed.*

[130] EDF/Sabin Center Comments at 9–10.

the frequency and severity of extreme weather events, we believe that climate risks manifest in wider, more gradually onsetting risks that are not the focus of this proceeding.[131] In addition, question 9 requires respondents to describe the ''methods and processes the transmission provider uses, or plans to use, to determine the meteorological data needed for its assessment'' and question 10 requires respondents to describe how they determine whether to use scenario analysis. We adopt these questions in this final rule and, as discussed further in the Inputs section, expect respondents to discuss in their reports the extent to which they incorporate or consider climatic trends in determining the meteorological data needed and identifying and/or developing extreme weather projections or scenarios for their assessments, if applicable.

58. Public Interest Organizations and EDF/Sabin Center seek to expand the scope of the reporting requirement beyond transmission assets and operations to include analysis of generation, distribution, and demand side resources. We decline to expand the reporting requirement. As discussed above, the focus of this rulemaking is extreme weather impacts to jurisdictional transmission assets and operations. We have chosen to focus this rulemaking on jurisdictional transmission providers because of the key role that the transmission system can play in ensuring reliability and resilience. In addition, expanding the scope of this final rule would result in adding a significant number of additional respondents; increase the burden on respondents that own transmission as well as generation and/or distribution; and increase the burden on the Commission to review and analyze the responses.

59. We further disagree with MISO's assertion that the NOPR's proposed reporting requirement would provide the Commission with little new information on how transmission providers assess and mitigate the impacts of extreme weather to their systems. We instead find that the information provided through these reports will help the Commission carry out its responsibilities under the FPA to oversee the development and enforcement of reliability standards for the bulk-power system and ensure that the rates, terms, and conditions of Commission-jurisdictional services are just and reasonable and not unduly discriminatory or preferential.

60. Regarding commenters' assertions that a one-time information collection may not be sufficient, and that the NOPR's proposed reporting requirement could likely lead to additional information collections or technical conferences, we reiterate that we are neither requiring a recurring reporting requirement nor are we establishing further proceedings at this time. We are not persuaded by commenters that request that the Commission also commit at this time to convene a technical conference or forum to address these issues after the reports are filed. The Commission will assess whether further actions are appropriate after reviewing the reports. As discussed herein, and consistent with the Commission's broad discretion in formulating its procedures, we find that the approach in this final rule that requires transmission providers to file the one-time informational reports to be appropriate.[132]

61. Finally, we decline Bureau of Reclamation's request that the Commission collect informational reports using an online form. Respondents must file reports using the Commission's eFiling portal, as they would with any other submission to the Commission. Likewise, in response to Xcel's request for guidance on report formatting, we confirm that transmission providers should provide narrative responses to each individual question listed in Appendix A. They may file their reports in these dockets using a file format allowable under the eFiling portal.

B. Scope

1. NOPR Proposal

62. In the NOPR, the Commission proposed to require each transmission provider to explain, as a threshold matter, whether it conducts extreme weather vulnerability assessments. Further, the Commission proposed to require each transmission provider to file information on the policies and processes it employs, or plans to employ, in determining the scope of its extreme weather vulnerability assessments. Specifically, through the questions on scope, the Commission proposed to seek a description of the types of extreme weather events for which the transmission provider conducts, or plans to conduct, vulnerability assessments, if any, as well as a description of how the transmission provider determined which extreme weather hazards and which transmission assets and operations to examine. The Commission also proposed to seek a description of how the transmission provider determines the assessment's geographic or regional scope, and whether the transmission provider also considers, or plans to consider, external interdependencies (such as other critical infrastructure sectors and supply chain-related vulnerabilities). The Commission further proposed to seek information on whether, and to what extent, the transmission provider coordinates, or plans to coordinate, with neighboring utilities or other relevant entities while completing their assessment. Finally, the Commission proposed to seek information on whether, and to what extent, the transmission provider engages, or plans to engage, with stakeholders in the scoping phase of the assessment, inclusive of processes used to identify and engage with relevant groups, including disadvantaged and vulnerable communities, and incorporate relevant feedback.[133]

2. Comments

63. Commenters generally support the questions in the NOPR on the scope of the extreme weather vulnerability assessments. Ameren agrees that the six scope-related questions—ranging from a description of the types of extreme weather events for which the transmission provider conducts, or would conduct, extreme weather vulnerability assessments, to whether and to what extent the transmission provider considers, or plans to consider, external interdependencies—are reasonable.[134] WE ACT supports transmission providers incorporating broad geographic or regional scopes and assessing long-term extreme weather events such as drought.[135] WE ACT also praises the Commission for highlighting PG&E as a case study for exemplifying the consideration of external interdependencies including utilities and community- and customer-level resilience.[136]

64. Some commenters contend that the scope of the extreme weather vulnerability assessment should be modified in various ways. EDF/Sabin Center argue that transmission providers

[131] Respondents may of course voluntarily describe the extent to which they analyze climate risks, if they so desire.

[132] *See, e.g., Vt. Yankee Nuclear Power Corp.* v. *Natural Res. Def. Council, Inc.,* 435 U.S. 519, 524–25 (1978) (agencies have broad discretion over the formulation of their procedures); *Stowers Oil & Gas Co.,* 27 FERC ¶ 61,001 (1984) (stating that the Commission is generally the master of its own calendar and procedures).

[133] NOPR, 179 FERC ¶ 61,196 at P 28.

[134] Ameren Comments at 7.

[135] WE ACT Comments at 5–6.

[136] *Id.*

should be required to specifically report on the frequency with which assessments are conducted or updated.[137] WE ACT asserts that transmission providers should also assess vulnerabilities to upstream and downstream interdependencies, such as water, telecommunications, and community and customer-level resilience.[138] Public Interest Organizations similarly argue the Commission should require transmission providers to report on gas-electric coordination, including ''natural gas production, storage, and transportation systems'' as critical interdependencies with the bulk-power system.[139] PJM contends that transmission providers should be required to describe any steps being taken to enhance gas-electric coordination to better integrate the development of new natural gas infrastructure with the development of new generation infrastructure.[140] EDF/Sabin Center similarly assert that some questions, such as question 6, should be expanded to request specific information on whether and how the transmission provider coordinates with distribution system operators and considers interdependencies with the distribution system.[141]

65. EDF/Sabin Center and WE ACT assert that transmission providers should engage in a process of vulnerability assessment and resilience planning regularly, assessing climate-related vulnerabilities and any updates to methodologies, while evaluating measures to reduce those vulnerabilities.[142] WE ACT supports periodic reports and states that they may allow the Commission to stay up-to-date with climate science and evolving extreme weather vulnerability assessment methodologies.[143] EDF/Sabin Center state that although these risks will vary on a regional basis, there are certain general principles for assessing and planning for the impacts of climate change that all transmission providers should follow.[144]

66. Commenters argue that the reports should also highlight impacts on disadvantaged communities. Public Interest Organizations contend that transmission providers should report on how they engage with disadvantaged and vulnerable communities as stakeholders, arguing that these communities have distinct perspectives on how extreme weather impacts on the power system affect them, and that it is insufficient for transmission providers only to seek information on these communities from other stakeholders.[145] Public Interest Organizations further argue that the Commission should require transmission providers to report on any ways in which they consider the effect of extreme weather vulnerabilities on disadvantaged or vulnerable communities in their extreme weather vulnerability assessments.[146]

67. WE ACT agrees that transmission providers should report on their efforts to identify and engage with disadvantaged communities, as well as community and environmental justice groups, during the scoping phase of their extreme weather vulnerability assessments and how they incorporate feedback from such engagement into their assessment process.[147] WE ACT notes that communities of color and environmental justice and frontline communities experience disproportionately higher burdens from extreme weather due to higher energy burdens, lack of backup supplies and backup generators, higher reliance on electrical medical equipment, lower prioritization for power outage restoration, historic underinvestment in infrastructure, and disinvestment from redlining.[148] WE ACT asserts that transmission providers should report on the processes used to identify and engage them and to incorporate their feedback into the extreme weather vulnerability assessment.

3. Commission Determination

68. We adopt the NOPR proposal to require transmission providers to report on how they determine the scope of their extreme weather vulnerability assessments. However, as explained below we modify the threshold reporting question, question 1, so that the question addresses frequency of assessments. We also add question 3 on the definition of extreme weather as discussed below. Otherwise, the Commission in this final rule is requiring transmission providers to respond to the set of questions regarding scope as proposed in the NOPR, set forth as question 2 and questions 4 through 8.

69. We modify the NOPR proposal to require transmission providers to report on the frequency with which they conduct extreme weather vulnerability assessments.[149] Such responses will help the Commission understand the extent to which transmission providers are performing extreme weather vulnerability assessments, a point noted by EDF/Sabin Center.[150]

70. With respect to commenters' assertions that the Commission should require transmission providers to report specifically on gas-electric coordination, we find that no modification of the NOPR proposal is necessary. Question 6 requires transmission providers to describe ''whether and to what extent the transmission provider considers, or plans to consider, external interdependencies, such as interconnected utilities, other critical infrastructure sectors (*e.g.,* water, telecommunications) and supply chain-related vulnerabilities, in the [extreme weather vulnerability] assessment.'' Natural gas delivery systems qualify as a type of external interdependency and would fall under this description. Therefore, to the extent that a transmission provider considers gas-electric interdependencies in its extreme weather vulnerability assessment, it should report on how it evaluates such interdependencies in its report.

C. Inputs

1. NOPR Proposal

71. In the NOPR, the Commission proposed to require each transmission provider to provide information about the inputs it uses, or plans to use, for any extreme weather vulnerability assessment. Specifically, through the questions on inputs, the Commission proposed to seek a description of methods and processes the transmission provider uses, or plans to use, to determine the meteorological data needed for its assessment. The Commission requested that the description include how the

[137] EDF/Sabin Center Comments at 14–15.

[138] WE ACT Comments at 5–6.

[139] Public Interest Organizations Comments at 8.

[140] PJM TOs Comments at 7–8.

[141] EDF/Sabin Center Comments at 17–18.

[142] *Id.* at 8–9; WE ACT Comments at 5.

[143] WE ACT Comments at 5.

[144] *Id.;* EDF/Sabin Center Comments at 9 (stating that climate vulnerability assessments should (1) be based on scientifically credible climate projections that anticipate future conditions; (2) examine long time horizons and all possible climate change impacts that could occur over assets' useful lives; and (3) recognize interactions between the bulk-power system, distribution systems, load impacts, and other sectors).

[145] Public Interest Organizations Comments at 11.

[146] *Id.* at 3.

[147] WE ACT Comments at 6.

[148] *Id.* at 1–2 (citing Reuters, *Creaky U.S. Power Grid Threatens Progress on Renewables, EVs* (May 12, 2022 10:00 a.m.), *https://www.reuters.com/investigates/special-report/usa-renewables-electric-grid/*).

[149] For clarity, we have modified the NOPR's proposed threshold question into a standalone question, question 1, in the reporting requirement. Although the question was previously set forth in the body of the NOPR, this modification will help ensure respondents fully comply with the reporting requirement.

[150] EDF/Sabin Center at 8–9.

transmission provider determines whether it can rely on existing extreme weather projections, and if so, whether such projections are adequately robust. The Commission also proposed to seek a description of how the transmission provider determines whether to use scenario analysis, and if so, whether the analysis includes multiple scenarios. The Commission proposed that the transmission provider discuss the extent to which it reviews neighboring transmission providers' extreme weather vulnerability assessments, if available, to evaluate the consistency of extreme weather projections between transmission providers, as well as the timeframe(s) and discount rate(s) selected for the extreme weather vulnerability assessment. Finally, the Commission proposed to seek a description of the methods and processes the transmission provider uses, or plans to use, to create an inventory of potentially vulnerable assets and operations.[151]

2. Comments

72. Commenters generally support the questions on extreme weather vulnerability assessment inputs proposed in the NOPR.[152] Ameren avers that the questions are generally appropriate and answerable in a narrative format. Eversource supports the flexibility the Commission proposed to grant to transmission providers to determine the timeframes selected for the reports.[153]

73. Several commenters, however, provide suggestions on specific questions. In response to question 11, regarding the extent to which a transmission provider reviews neighboring transmission providers' extreme weather vulnerability assessments, Public Interest Organizations recommend that the Commission require transmission providers to report on how they coordinate and share their assessment information with neighboring transmission providers, rather than only requiring transmission providers to report on how they review their neighbors' assessments.[154] Ameren also notes that question 11 assumes a level of information sharing and/or alignment on extreme weather events between neighboring transmission providers that may not exist.[155] Therefore, Ameren recommends the Commission also (1) ask transmission providers whether, and to what extent, they share information and align on events with neighboring transmission providers, and (2) ask RTOs/ISOs how they account for differences in transmission owner members' assumptions about extreme weather events.[156]

74. Public Interest Organizations recommend that the Commission ''add more specificity to the inputs the transmission provider must report on.'' [157] Public Interest Organizations recommend that the Commission require transmission providers to explain whether they use historical or forward-looking weather data, whether and how they account for how climate change increases the frequency and magnitude of extreme weather events, and whether and how they account for the increasing frequency and severity of extreme weather in their analyses.[158]

75. EDF/Sabin Center assert that transmission providers should be required to describe the sources or data underlying the climate projections they use, how they determine whether existing projections are adequate or whether new projections are required, and whether they have a process for identifying or generating new projections or updating previously-used ones to make them more robust.[159] EDF/Sabin Center also assert that a question should be added to the inputs section requesting information on ''methods, processes, and data sources the transmission provider uses to determine anticipated electric demand.'' [160] Additionally, EDF/Sabin Center argue that the questions about scenario analysis will not enable the Commission to determine whether transmission providers analyze worst-case scenarios.[161] EDF/Sabin Center recommend that the Commission request information on whether and how transmission providers determine which scenarios to use in their assessments.[162]

76. PJM states that it currently uses forecasting data to perform vulnerability analyses for the development of operating plans, generation owner/operator and transmission owner outage coordination, and interregional coordination. PJM argues that these assessments should be used as the framework for any extreme weather vulnerability assessment and be reviewed to incorporate appropriate levels of extreme weather testing.[163]

3. Commission Determination

77. We adopt, with one modification, the NOPR proposal to require each transmission provider to report on the inputs it uses, or plans to use, for its extreme weather vulnerability assessment. Thus, we require transmission providers to respond to the set of questions regarding inputs as proposed in the NOPR, set forth as questions 9 through 13, with modification to question 11 requiring that each RTO/ISO provide a description of how it accounts for differences between transmission owner members' extreme weather vulnerability assessment assumptions and results.

78. We find that this revision, as proposed by Ameren, will allow RTOs/ISOs to describe how they account for differences in transmission owner members' assumptions about extreme weather events. Such information will give the Commission and the public a better understanding of how RTOs'/ISOs' own extreme weather vulnerability assessments address the variations in assumptions among their members. As Ameren expressed in its comments, this information will also avoid assuming that transmission providers use any information from neighboring transmission providers.

79. In response to Public Interest Organizations' and Ameren's concerns that the Commission should require transmission providers to report on coordination with neighboring transmission providers, we note that question 7 requires such reporting. It requires reporting on coordination with neighboring transmission providers as well as with neighboring utilities and other entities that could be relevant to the extreme weather vulnerability assessment. Additionally, question 11 requires reporting on the extent to which transmission providers review neighboring transmission providers' extreme weather vulnerability assessments. In response to commenters' requests that the Commission require reporting on whether, and to what extent, transmission providers share information with neighboring transmission providers, in question 19 transmission providers must explain how they inform, or plan to inform, relevant stakeholders of identified extreme weather risks, including neighboring transmission providers.

[151] *See* NOPR, 179 FERC ¶ 61,196 at P 34.

[152] Ameren Comments at 9; Public Interest Organizations Comments at 13.

[153] Eversource Comments at 3 (citing NOPR, 179 FERC ¶ 61,196 at P 32).

[154] Public Interest Organizations at 3, 13.

[155] Ameren Comments at 9–10.

[156] *Id.* at 10.

[157] Public Interest Organizations Comments at 3.

[158] *Id.* at 13.

[159] EDF/Sabin Center Comments at 15.

[160] *Id.* at 17–18.

[161] *Id.* at 15.

[162] *Id.*

[163] PJM Comments at 5 (citing PJM Technical Conference Comments, Docket AD21–13, at 3).

80. We decline to require transmission providers to provide more specific information regarding the inputs used in their assessments. The questions regarding inputs address more broadly the policies and processes each transmission provider uses to select inputs as part of its extreme weather vulnerability assessment. For instance, question 9 requires a transmission provider to report on how it determines whether it can rely on existing extreme weather projections and whether its extreme weather projections are adequately robust. To the extent that a transmission provider considers historical versus forward-looking data as a factor in determining whether a projection is reliable and/or adequately robust, it may describe such considerations in its report.

81. Similarly, we decline to require reporting on whether and how transmission providers account for the increasing frequency and severity of extreme weather, as requested by Public Interest Organizations. To the extent that a transmission provider considers increasing frequency and severity of extreme weather events in evaluating extreme weather projections or in their scenario analysis, we find question 9 on extreme weather projection and question 10 on scenario analysis will allow the Commission to understand whether transmission providers account for these considerations.

D. Vulnerabilities and Exposure to Extreme Weather Hazards

1. NOPR Proposal

82. In the NOPR, the Commission proposed to direct each transmission provider to provide information about the methods or processes it uses, or plans to use, to assess the vulnerability of its transmission assets and operations to extreme weather events. Specifically, through the questions on this topic, the Commission proposed to require each transmission provider to describe how it: (1) identifies the transmission assets or operations vulnerable to the extreme weather events for which it conducts assessments; (2) uses, or plans to use, screening analyses to test for potential vulnerabilities; and (3) examines, or plans to examine, the sensitivities of the transmission assets and operations being studied to types and magnitudes of extreme weather events.[164]

2. Comments

83. While Ameren supports the type of information the NOPR proposes to require, it also expresses concern that making information on how transmission providers identify vulnerable assets publicly available could expose vulnerabilities in transmission providers' processes that could be taken advantage of.[165] Therefore, Ameren suggests the Commission reconsider these questions to prevent the potential for information to be released that could be used by bad actors.[166]

3. Commission Determination

84. We adopt the NOPR proposal to require transmission providers to report on the methods or processes they use, or plan to use, in their extreme weather vulnerability assessments to identify vulnerabilities and determine exposure to extreme weather hazards of their transmission assets and operations. Thus, we require transmission providers to respond to questions 14 and 15 regarding this topic.

85. As discussed below, the one-time informational reports do not require submission of the extreme weather vulnerability assessments themselves and should avoid the need for respondents to file Critical Energy/Electric Infrastructure Information.[167] We find that Ameren has not explained why disclosing information on how transmission providers identify assets that are vulnerable to extreme weather could, by itself, expose vulnerabilities that could be exploited by a bad actor.

E. Costs of Impacts

1. NOPR Proposal

86. The Commission proposed to require each transmission provider to provide information on whether, and if so how, it estimates, or plans to estimate, the costs associated with extreme weather impacts in its extreme weather vulnerability assessments. Specifically, through the questions on costs of impacts, the Commission proposed to seek a description of the methodology or process, if any, the transmission provider uses, or plans to use, to estimate the potential costs of extreme weather impacts on identified vulnerable transmission assets and operations. If the transmission provider estimates such potential costs, the Commission further proposed to seek a description of: (a) direct costs, such as replacements or repair costs, restoration costs, associated labor costs, or opportunity costs of lost sales; and (b) indirect costs, such as costs associated with loss of service to electric customers and other utilities that purchase power from the transmission provider, including equipment damage, spoilage, and health and safety effects, in calculating the costs of extreme weather impacts.[168]

2. Comments

87. Commenters generally support the Commission's proposal.[169] EEI states that additional flexibility may be necessary with respect to how transmission providers can define direct costs and indirect costs as they relate to extreme weather impacts.[170] EEI elaborates that there is currently no broad agreement across the industry on methodologies for calculating the costs of extreme weather impacts.[171] Therefore, EEI requests that the Commission clarify that it will not require reporting of such information where agreed-upon methodologies are not yet developed.[172] Ameren's comments similarly underscore the need for flexibility, noting that some transmission providers may use value of lost load to assess impacts without directly quantifying economic losses.[173] Therefore, Ameren suggests that the Commission may want to consider seeking information on that approach and thresholds used.[174]

88. WE ACT notes that low-income communities and communities of color, who already experience higher energy burdens, will be disproportionately impacted by rising energy costs due to rebuilding the grid from and adapting it to extreme weather.[175] Public Interest Organizations assert that the Commission should revise the NOPR proposal to require information about how transmission providers consider extreme weather impacts on disadvantaged and vulnerable communities in each section of the report and to report on how they consider the costs of extreme weather vulnerabilities to these communities, at each time interval of the outage, for example, 15 minutes out, hourly, or daily.[176]

3. Commission Determination

89. We adopt, with one modification, the NOPR proposal to require transmission providers to report on how they estimate, or plan to estimate, the costs associated with extreme weather impacts in their extreme weather

[164] NOPR, 179 FERC ¶ 61,196 at P 39.

[165] Ameren Comments at 11.

[166] *Id.*

[167] *See infra* P 109.

[168] NOPR, 179 FERC ¶ 61,196 at P 43.

[169] *See, e.g.,* Ameren Comments at 12.

[170] EEI Comments at 5–6.

[171] *Id.* at 6.

[172] *Id.*

[173] Ameren Comments at 12.

[174] *Id.*

[175] WE ACT Comments at 3.

[176] Public Interest Organizations Comments at 11.

vulnerability assessments. Thus, we require transmission providers to respond to the questions regarding costs of impacts as proposed in the NOPR, set forth as questions 16 and 17.

90. In response to EEI's concerns around flexibility regarding the reporting of costs, as stated in the NOPR,[177] transmission providers that neither currently estimate nor plan to estimate the costs associated with extreme weather impacts in their extreme weather vulnerability assessments—or that do not conduct extreme weather vulnerability assessments at all—are not required to develop new methods to comply with this reporting requirement and may simply state that they do not perform such cost estimations. In response to Ameren's similar concerns about flexibility, we clarify that transmission providers should describe any methodologies or processes used to estimate the potential costs of extreme weather impacts on identified vulnerable transmission assets and operations, such as value of lost load, including those that do not directly quantify economic losses.

F. Risk Mitigation

1. NOPR Proposal

91. In the NOPR, the Commission proposed to require each transmission provider to report on the policies and processes it uses, or plans to use, to determine and implement appropriate measures for mitigating extreme weather risks identified by its vulnerability assessments. Specifically, through the questions on risk mitigation, the Commission proposed to require transmission providers to provide information regarding how they currently, or plan to: (1) use extreme weather vulnerability assessment results to identify appropriate mitigation actions, including methods for determining highest impact and lowest cost mitigation measure portfolios; (2) inform relevant stakeholders and government agencies of vulnerabilities and mitigation plans; (3) incorporate extreme weather risk mitigation into local and regional transmission planning processes; and (4) measure the success of risk mitigation measures and incorporate findings into future mitigation actions.[178]

2. Comments

92. Ameren supports the NOPR's proposed questions on risk mitigation. Ameren states that Winter Storm Uri provides a recent example of the widespread effects of an extreme weather event. Ameren argues that it is incumbent on transmission providers to assess these and other types of extreme weather events and plan to have robust transmission systems and operational arrangements in place.[179] Public Interest Organizations generally support the proposed questions on risk mitigation.[180]

93. Public Interest Organizations and WE ACT support requiring information on how transmission providers inform disadvantaged, vulnerable, and frontline communities of extreme weather risks and mitigation measures.[181] Public Interest Organizations recommend that the Commission expand the list of relevant stakeholders in question 19 to include disadvantaged and vulnerable communities and market monitors.[182] Public Interest Organizations further urge the Commission to require transmission providers to discuss whether they consider performance impacts in specific disadvantaged or vulnerable communities when evaluating extreme weather risk mitigation measures.[183]

94. PJM suggests that the questions should not necessarily be limited to ''extreme weather risks and mitigation measures'' but should also include additional questions such as how local and regional planning address the potential need for storm hardening of certain facilities and the steps being taken to reduce the criticality of CIP–14 facilities[184] through their planning processes.[185]

3. Commission Determination

95. We adopt the NOPR proposal to require transmission providers to report on the policies and processes they use, or plan to use, to determine and implement appropriate measures to mitigate risks identified by their extreme weather vulnerability assessments. Thus, we require transmission providers to respond to the set of questions regarding risk mitigation as proposed in the NOPR, set forth as questions 18 through 21.

96. With respect to the list of relevant stakeholders in question 19, that list was intended to provide examples of relevant stakeholders, it was not intended to be exhaustive of all potential stakeholders. To the extent that transmission providers inform, or plan to inform, all affected communities, market monitors, or any other relevant stakeholder groups not listed in question 19 of identified extreme weather risks and selected mitigation measures, they should report on how they currently, or plan to, do so.

97. Regarding PJM's request to require reporting on how local and regional transmission planning processes address the need for storm hardening, we find no modification of the NOPR proposal is necessary. Question 20 requires respondents to report ''[a] description of the extent to which the transmission provider incorporates, or plans to incorporate, identified extreme weather risks and mitigation measures into local and regional transmission planning processes.'' Therefore, to the extent transmission providers incorporate, or plan to incorporate, identified risk mitigation measures into, and seek to address that risk through, local or regional transmission planning processes, they should report on that.

G. Compliance Issues

1. Deadline for Filing the One-Time Informational Reports

a. NOPR Proposal

98. The Commission proposed to require transmission providers to file the one-time informational reports within 90 days of the publication of any final rule in this proceeding in the **Federal Register**.

b. Comments

99. Commenters have different views about the proposed 90-day deadline for filing the one-time reports. Eversource, EEI, and MISO request that the Commission extend the submission period to at least 120 days after the publication of a final rule. Eversource states that a 120-day deadline would balance the urgency of the issues and the sensitivity of the information.[186] Eversource and EEI argue that a transmission provider's policies and practices would have to be internally vetted to avoid disclosing sensitive information.[187] EEI states that, in some cases, subject to the transmission provider's development of such policies and practices, the reporting requirement may require it to expend significant time and resources.[188] MISO asserts that preparing the report will be complex

[177] NOPR, 179 FERC ¶ 61,196 at P 43.

[178] *Id.* P 48.

[179] Ameren Comments at 13.

[180] Public Interest Organizations Comments at 14.

[181] *Id.* at 15; WE ACT Comments at 6.

[182] Public Interest Organizations Comments at 15.

[183] *Id.* at 11.

[184] CIP–14 facilities are transmission stations and substations, and their associated primary control centers, that if rendered inoperable or damaged as a result of a physical attack could result in widespread instability, uncontrolled separation, or cascading within an interconnection.

[185] PJM Comments at 7–8.

[186] Eversource Comments at 3–4.

[187] *Id.;* EEI Comments at 8.

[188] EEI Comments at 8.

and that its work on the Reliability Imperative causes resource constraints, and therefore requests a four-week extension.[189] PJM TOs prefer a longer timeline of 180 days, which they argue is more reasonable if transmission providers are required to develop and implement new protocols and metrics or acquire new software and technology to assess their extreme weather vulnerabilities.[190] On the other hand, EPSA argues that the information the Commission proposes to collect could be gathered more quickly than proposed.[191]

c. Commission Determination

100. We extend the submission deadline proposed in the NOPR and, accordingly, we alter the proposed compliance schedule. Specifically, we require transmission providers to file in the above-captioned dockets (that is, RM22–16–000 and AD21–13–000) the one-time reports within 120 days after the publication of this final rule in the **Federal Register**. We agree with commenters that extending the deadline could improve the quality of responses and facilitate coordination. We do not require transmission providers to develop new metrics, and therefore, we find that an extension beyond 120 days is unnecessary.[192]

2. Public Comment on the One-Time Informational Reports

a. NOPR Proposal

101. The Commission proposed to seek public comment on the reports 30 days after they are filed.

b. Comments

102. EEI, Eversource, and Ameren do not support the Commission's proposal to seek public comments on the reports, while EDF/Sabin Center request that the comment period be extended to 60 days after the reports are filed.[193] EEI and Eversource claim that, generally, the Commission does not allow public comment on informational reports provided to the Commission and doing so would be a departure from Commission precedent.[194] EEI and Eversource state that informational reporting, including the one-time report proposed in the NOPR, is inappropriate for public comment because it threatens to turn good-faith and impartial information sharing into a de facto adversarial proceeding in which entities are compelled to defend themselves.[195] Eversource adds that an adversarial proceeding may undermine the Commission's use of the reports to assist its administration of the FPA and industry efforts to improve extreme weather policies and procedures.[196] Ameren asserts that comments on the substance of a particular transmission provider's report are likely of little value because the proposed rule seeks descriptive information about the transmission provider's policies and practices without a standard by which to measure or judge them.[197] Ameren contends that the Commission did not contemplate an opportunity for transmission providers to respond to comments on the transmission provider's explanations or propose reforms. Eversource and Ameren add that if the Commission decides to pursue future reforms, including updates to its regulations, based on the information filed in the one-time reports, that proceeding would be the appropriate place to seek comments.[198]

103. Conversely, EPSA states that while the public should be afforded the opportunity to comment on Commission action, that part of the timeline is extremely compressed for any entity that may be impacted by multiple transmission providers.[199] EDF/Sabin Center assert that the Commission should allow at least 60 days for stakeholders to review and submit comments on the one-time reports.[200] WE ACT asserts that the reports should be available for public scrutiny, and notes that the Commission's Office of Public Participation could play an important role in facilitating vigorous and meaningful public engagement.[201]

c. Commission Determination

104. We adopt the NOPR proposal to provide for public comment on the one-time informational reports.[202] We modify the due date for public comments so that public comments are due 60 days after the due date for filing the informational reports. By allowing the filing of comments 60 days after the due date for the filing of informational reports (rather than 30 days after as proposed), we address EPSA's concern that the comment period is extremely compressed for any entity that may be impacted by multiple transmission providers.

105. Given the impacts of extreme weather on transmission assets and operations, we believe that the Commission, transmission providers, and the stakeholder community at large will benefit from comments on the informational reports by establishing a more robust record. In turn, a record that includes public comments would better meet the goals of this reporting requirement to provide the Commission with information related to its statutory responsibilities regarding reliability and rates as well as to promote information sharing and best practices.

106. In response to EEI's and Eversource's statement that, generally, the Commission does not allow public comment on informational reports provided to the Commission and that doing so would be a departure from Commission precedent, we note that the Commission has previously allowed public comment on informational reports filed with the Commission.[203] We disagree with Ameren's claim that public comments are likely of little value. As stated above, we believe public comment will in fact be beneficial because it will help establish a more robust record.

3. Treatment of Confidential Information

a. NOPR Proposal

107. The Commission suggested that transmission providers should not need to file Critical Energy/Electric Infrastructure Information (CEII) given the focus of the one-time informational reports on policies and processes for assessing vulnerabilities rather than the assessments themselves. The Commission proposed that to the extent transmission providers believe that information they file warrants protections, they may make a request for such treatment pursuant to §§ 388.112 and 388.113 of the Commission's regulations.[204]

b. Comments

108. Commenters raised concerns about the sensitive nature of information about proposed or existing critical infrastructure. EEI and Eversource state that, because vulnerability assessments contain highly-sensitive information, they agree with the Commission's decision to

[189] MISO Comments at 4.

[190] PJM TOs Comments at 5–6.

[191] EPSA Comments at 8.

[192] *See* NOPR, 179 FERC ¶ 61,196 at P 22.

[193] Ameren Comments at 14; EDF/Sabin Center Comments at 19; EEI Comments at 8–9; Eversource Comments at 4–5.

[194] Eversource Comments at 4.

[195] EEI Comments at 8–9; Eversource Comments at 4–5.

[196] Eversource Comments at 4–5.

[197] Ameren Comments at 14.

[198] *Id.;* Eversource Comments at 5.

[199] EPSA Comments at 3–4.

[200] EDF/Sabin Center Comments at 18–19.

[201] WE ACT Comments at 5.

[202] NOPR, 179 FERC ¶ 61,196 at PP 10, 19.

[203] *E.g., Modernizing Wholesale Elec. Mkt. Design,* 179 FERC ¶ 61,029, at P 1 (2022); *Grid Resilience in Reg'l Transmission Orgs. and Independent System Operators,* 162 FERC ¶ 61,012, at P 19 (2018).

[204] 18 CFR 388.112–113 (2022); NOPR, 179 FERC ¶ 61,196 at P 22.

require transmission providers to report process-related information, rather than outcomes.[205] EEI states that transmission providers should be able to request protective treatment for certain information they file in their reports.[206] ERO Enterprise requests that the Commission share on a confidential basis with ERO Enterprise all reliability information filed to the Commission in these dockets that is afforded privileged treatment.[207] Eversource contends that the Commission should grant requests for privileged treatment in information contained in the reports marked as Critical Energy/Electric Infrastructure Information, or as confidential business or commercial information.[208]

c. Commission Determination

109. We reiterate that the Commission did not propose to require that transmission providers file extreme weather vulnerability assessments. Instead, the Commission proposed that the one-time informational reports focus on describing the current or planned policies and processes that respondents have in place, or plan to implement, to assess and mitigate extreme weather risks.[209] As stated in the NOPR, we continue to believe that this focus of the one-time informational reports should avoid the need for respondents to file privileged information or CEII.[210] However, to the extent a transmission provider believes that information it will file warrants protections, it may make a request for privileged or CEII treatment pursuant to §§ 388.112 and 388.113 of the Commission's regulations, and the Commission will address requests for privileged information or CEII consistent with applicable Commission regulations.[211] But again, we reiterate that we do not expect privileged information or CEII will need to be included in these one-time reports.

H. Issues Outside the Scope of This Final Rule

1. Comments

110. National Mining Association expresses concern that the retirement of coal generation could exacerbate extreme weather risks to the bulk-power system.[212] National Mining Association asserts that baseload coal generation is essential to ensuring grid reliability, especially during adverse weather events such as those contemplated by the Commission.[213] Ampjack states that today's grid calls for a new holistic approach that brings together all utilities to fully maximize existing transmission line assets to increase capacity and optimize operating revenue.[214]

111. WE ACT argues that the Commission should reframe its approach to regulation to center on environmental justice and encourage a more holistic and accurate accounting of extreme weather impacts, inclusive of acknowledging inequitable energy burdens and how distributed renewables can increase resilience and lower costs for ratepayers.[215]

112. Public Interest Organizations contend that RTO/ISOs should be required to describe what, if any, effect extreme weather has on their markets.[216] Public Interest Organizations also recommend that the Commission require RTOs/ISOs to explain how they use extreme weather vulnerability assessment results to revise their market rules to mitigate extreme weather risks.[217] Public Interest Organizations argue that, because extreme weather impacts market functions, the Commission needs to understand how RTOs/ISOs use information on extreme weather risks in market formation.[218]

2. Commission Determination

113. The NOPR focuses on whether and how transmission providers are assessing and mitigating extreme weather risks to Commission-jurisdictional transmission assets and operations. Therefore, these comments are outside the scope of this proceeding and will not be addressed here.

V. Information Collection Statement

114. The information collection requirements contained in this final rule are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[219] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[220] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

115. This final rule, pursuant to FPA section 304, requires transmission providers [221] to file one-time reports on their extreme weather vulnerability assessment policies and processes. The Commission believes requiring transmission providers to submit a one-time informational report on their current or planned efforts to assess the vulnerabilities of their jurisdictional transmission assets and operations to extreme weather events will assist in the proper administration of the FPA.

Title: One-Time Informational Reports on Extreme Weather Vulnerability Assessments.

Action: Newly Implemented FERC–1004 collection of information in accordance with Docket Nos. RM22–16–000 and AD21–13–000.

OMB Control No.: 1902–TBD.

Respondents: Transmission providers (including public utility transmission owners that are members of RTOs/ISOs and the RTOs/ISOs themselves).

Frequency of Information Collection: One time.

Necessity of Information: The Commission seeks to address the increasing risks of extreme weather to bulk-power system reliability and jurisdictional rates, and to better understand how transmission providers assess and mitigate those risks. The Commission believes the informational reports directed by this rulemaking will assist the Commission in the proper administration of the FPA.

Internal Review: The Commission has reviewed the reporting requirement and

[205] EEI Comments at 4; Eversource Comments at 3.

[206] EEI Comments at 5.

[207] ERO Enterprise Comments at 6.

[208] Eversource Comments at 5.

[209] NOPR, 179 FERC ¶ 61,196 at P 22.

[210] *Id.*

[211] 18 CFR 388.112–113. Section 388.112 of the Commission's regulations specifies that any person submitting a document to the Commission may request privileged treatment for some or all of the information contained in a particular document that it claims is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, and that should be withheld from public disclosure. *See* 5 U.S.C. 552. Section 388.113 of the Commission's regulations governs the procedures for submitting, designating, handling, sharing, and disseminating Critical Energy/Electric Infrastructure Information submitted to or generated by the Commission.

[212] National Mining Association Comments at 2–3.

[213] *Id.* at 7.

[214] Ampjack Comments at 4.

[215] WE ACT Comments at 3.

[216] Public Interest Organizations Comments at 7.

[217] *Id.* at 15.

[218] *Id.*

[219] 44 U.S.C. 3507(d) (2022).

[220] 5 CFR 1320.11 (2022).

[221] As noted above, in this final rule, unless otherwise noted, we use the term ''transmission provider'' to mean any public utility that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce. *See* 16 U.S.C. 824(e); 18 CFR 35.28. To be clear, this term encompasses public utility transmission owners that are members of RTOs/ISOs. Accordingly, the reports we are proposing herein would be filed by either the public utility members of RTOs/ISOs, the RTOs/ISOs themselves, or both, as well as other public utility transmission providers outside of RTO/ISO regions.

has determined that such a requirement is necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has specific, objective support for the burden estimates associated with the information collection requirements. Interested persons may obtain information on the reporting requirements by contacting Ellen Brown, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 via email (*DataClearance@ferc.gov*) or telephone ((202) 502–8663).

Public Reporting Burden: Our estimates are based on the NERC Compliance Registry as of April 7, 2023 and each RTO/ISO's list of participating transmission owners per their websites, which indicates that there are 47 transmission providers [222] (including the six RTOs/ISOs) and 81 transmission owners that are registered with NERC within the United States and are subject to this rulemaking.[223]

116. The Commission estimates that the burden [224] and cost of the FERC–1004 are as follows:

FERC–1004, FINAL RULE IN DOCKET NOS. RM22–16–000 AND AD21–13

A. Area of modification	B. Annual number of respondents	C. Annual estimated number of responses (1 per respondent)	D. Average burden hours & cost [225] per response	E. Total estimated burden hours & total estimated cost (column C × column D)
Report on Extreme Weather Vulnerability Assessment (one-time).	128 (47 TPs [226] and 81 TOs).	128	Year 1: 94.5 hours; $8,599.50. Subsequent Years: 0 hours per year; $0.	Year 1: 12,096 hours; $1,100,736. Subsequent Years: 0 hours per year; $0.

VI. Environmental Analysis

117. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[227] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules regarding information gathering, analysis, and dissemination, and for rules regarding sales, exchange, and transportation of natural gas that require no construction of facilities.[228] Therefore, an environmental review is unnecessary and has not been prepared in this rulemaking.

VII. Regulatory Flexibility Act

118. The Regulatory Flexibility Act of 1980 (RFA) [229] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and minimize any significant economic impact on a substantial number of small entities.[230] The Small Business Administration (SBA) sets the threshold for what constitutes a small business. Under SBA's size standards,[231] transmission providers (including RTOs/ISOs) and transmission owners fall under the category of Electric Bulk Power Transmission and Control (NAICS code 221121),[232] with a size threshold of 950 employees (including the entity and its associates).[233]

119. We estimate that there are 128 total transmission providers and owners that (including the six RTOs/ISOs) are affected by the final rule. Using the list of transmission service providers from the NERC Registry (dated April 7, 2023), we estimate that approximately 19% of those entities are small entities. We estimate an additional average one-time cost of $8,599.50 for each of the 128 entities affected by the final rule.

120. According to SBA guidance, the determination of significance of impact ''should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors.'' [234] We do not consider the estimated cost to be a significant economic impact. As a result, pursuant to section 605(b) of the RFA,[235] the Commission certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

VIII. Document Availability

121. 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*).

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

123. User assistance is available for eLibrary and the Commission's website during normal business hours from the

[222] The transmission service provider (TSP) function is a NERC registration function which is similar to the transmission provider that is referenced in the pro forma Open Access Transmission Tariff. The TSP function is being used as a proxy to estimate the number of transmission providers that are impacted by this proposed rulemaking.

[223] The number of entities listed from the NERC Compliance Registry reflects the omission of the Texas RE registered entities.

[224] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3 (2022).

[225] Commission staff estimates that respondents' hourly wages plus benefits are comparable to those of FERC employees. Therefore, the hourly cost used in this analysis is $91.00 (or $188,922 per year).

[226] The number of entities listed from the NERC Compliance Registry reflects the omission of the Texas RE registered entities.

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

[228] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5) & 380.4(a)(27) (2022).

[229] 5 U.S.C. 601–612.

[230] *Id.* 603(c).

[231] 13 CFR 121.201 (2022).

[232] The North American Industry Classification System (NAICS) is an industry classification system that Federal statistical agencies use to categorize businesses for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy. United States Census Bureau, North American Industry Classification System, *https://www.census.gov/eos/www/naics/.*

[233] The threshold for the number of employees indicates the maximum allowed for an entity and its affiliates to be considered small. 13 CFR 121.201.

[234] U.S. Small Business Administration, *A Guide for Government Agencies How to Comply with the Regulatory Flexibility Act* 18 (August 2017), *https://cdn.advocacy.sba.gov/wp-content/uploads/2019/06/21110349/How-to-Comply-with-the-RFA.pdf.*

[235] 16 U.S.C. 605(b).

Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

IX. Effective Date and Congressional Notification

124. This rule will become effective September 25, 2023. Each transmission provider must file the one-time informational report required by this final rule by October 25, 2023. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission.

Chairman Phillips and Commissioner Clements are concurring with a joint statement attached.

Commissioner Danly is concurring in part with a separate statement attached.

Issued: June 15, 2023.

Kimberly D. Bose,

Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

X. Appendix A: Report Questions

For the reasons discussed in this final rule we direct transmission providers to file a one-time informational report related to their extreme weather vulnerability assessment policies and processes, if any. The report must respond to the following questions.

(Q1) As a threshold matter, state whether the transmission provider conducts extreme weather vulnerability assessments, and if so, how frequently it conducts those assessments.

A. Scope

(Q2) A description of the types of extreme weather events for which the transmission provider conducts, or plans to conduct, extreme weather vulnerability assessments, if any. For transmission providers that conduct, or plan to conduct, such assessments, a description of how the transmission provider determined which extreme weather hazards to include in the assessment (*e.g.,* extreme storms such as hurricanes and the associated flooding and high winds, wildfires, extreme prolonged heat or cold, or drought conditions);

(Q3) A description of how the transmission provider defines an extreme weather event for the purposes of its extreme weather vulnerability assessment, including what thresholds it uses relative to historical measurements or probabilities of occurrence, if applicable;

(Q4) A description of how the transmission provider selects, or plans to select, the set of assets and operations that will be examined;

(Q5) A description of how the transmission provider determines, or plans to determine, the geographic or regional scope of the analysis;

(Q6) A description of whether and to what extent the transmission provider considers, or plans to consider, external interdependencies, such as interconnected utilities, other critical infrastructure sectors (*e.g.,* water, telecommunications) and supply chain-related vulnerabilities, in the assessment;

(Q7) A description of whether and to what extent the transmission provider coordinates, or plans to coordinate, with neighboring utilities and/or entities in other sectors that could potentially be relevant to the assessment;

(Q8) A description of whether and to what extent the transmission provider engages, or plans to engage, with stakeholders in the scoping phase of the assessment, including the processes used to identify and engage relevant stakeholder groups and incorporate stakeholder feedback into the extreme weather vulnerability assessment, including all affected communities.

B. Inputs

(Q9) A description of methods and processes the transmission provider uses, or plans to use, to determine the meteorological data needed for its assessment. In particular, how the transmission provider determines whether it can rely on existing extreme weather projections, and if so, whether such projections are adequately robust;

(Q10) A description of how the transmission provider determines whether to use scenario analysis, and if so, whether to do so with multiple scenarios;

(Q11) The extent to which it reviews neighboring transmission providers' extreme weather vulnerability assessments, if available, to evaluate the consistency of extreme weather projections between transmission providers. Further, for RTOs/ISOs, a description of how it accounts for differences between transmission owner members' extreme weather vulnerability assessment assumptions and results;

(Q12) The timeframe(s) and discount rate(s) selected for the extreme weather vulnerability assessment;

(Q13) A description of the methods and processes the transmission provider uses, or plans to use, to create an inventory of potentially vulnerable assets and operations.

C. Vulnerabilities and Exposure to Extreme Weather Hazards

(Q14) A description of how the transmission provider identifies the transmission assets or operations vulnerable to the extreme weather events for which it conducts assessments;

(Q15) A description of how the transmission provider uses, or plans to use, screening analyses to test for potential vulnerabilities, as well as how the transmission provider examines, or plans to examine, the sensitivities of the transmission assets and operations being studied to types and magnitudes of extreme weather events.

D. Costs of Impacts

(Q16) A description of the methodology or process, if any, the transmission provider uses, or plans to use, to estimate the potential costs of extreme weather impacts on identified vulnerable assets and operations;

(Q17) If the transmission provider estimates such potential costs, a description of the types of: (a) direct costs, such as replacements or repair costs, restoration costs, associated labor costs, or opportunity costs of lost sales, and (b) indirect costs, such as costs associated with loss of service to electric customers and other utilities that purchase power from the transmission provider, including equipment damage, spoilage, and health and safety effects, in calculating the costs of extreme weather impacts.

E. Risk Mitigation

(Q18) A description of how the transmission provider uses, or plans to use, the results of its assessment to develop measures to mitigate extreme weather risks, including:

i. How the transmission provider determines which risks should be mitigated and the appropriate time horizon for mitigation;

ii. How the transmission provider determines appropriate extreme weather risk mitigation measures, including any analyses used to determine the lowest-cost or most impactful portfolio of measures;

(Q19) A description of how the transmission provider informs, or plans to inform, relevant stakeholders—such as neighboring transmission providers, RTOs/ISOs of which the transmission provider is a member, electric customers, all affected communities, emergency management agencies, local and state administrations, and state

utility regulators—of identified extreme weather risks and selected mitigation measures;

(Q20) A description of the extent to which the transmission provider incorporates, or plans to incorporate, identified extreme weather risks and mitigation measures into local and regional transmission planning processes;

(Q21) A description of how the transmission provider measures, or plans to measure, the progress and success of extreme weather risk mitigation measures (*e.g.,* through reduced outages) and how it incorporates these observations into ongoing and future extreme weather risk mitigation actions.

XI. Appendix B: Edits Demonstrating Modifications To Report Questions Proposed in the NOPR

The following compares the reporting requirement proposed in the NOPR with the reporting requirement adopted in this final rule. Deletions from the NOPR proposal appear in brackets and additions appear in italics. Please note that this convention does not apply to question numbers, which appear as they do in the final rule:

For the reasons discussed in this final rule we direct transmission providers to file a one-time informational report related to their extreme weather vulnerability assessment policies and processes, if any. The report must respond to the following questions.

(Q1) *As a threshold matter, state whether the transmission provider conducts extreme weather vulnerability assessments, and if so, how frequently it conducts those assessments.*

A. Scope

[As a threshold matter, we propose that each transmission provider state whether it conducts extreme weather vulnerability analyses. Further, we propose to require each transmission provider to provide the following information on the policies and processes they employ, or plan to employ, for determining the scope of extreme weather vulnerability assessments:]

(Q2) A description of the types of extreme weather events for which the transmission provider conducts, or plans to conduct, extreme weather vulnerability assessments, if any. For transmission providers that conduct, or plan to conduct, such assessments, a description of how the transmission provider determined which extreme weather hazards to include in the assessment (*e.g.,* extreme storms such as hurricanes and the associated flooding and high winds, wildfires, extreme prolonged heat or cold, or drought conditions);

(Q3) *A description of how the transmission provider defines an extreme weather event for the purposes of its extreme weather vulnerability assessment, including what thresholds it uses relative to historical measurements or probabilities of occurrence, if applicable;*

(Q4) A description of how the transmission provider selects, or plans to select, the set of assets and operations that will be examined;

(Q5) A description of how the transmission provider determines, or plans to determine, the geographic or regional scope of the analysis;

(Q6) A description of whether and to what extent the transmission provider considers, or plans to consider, external interdependencies, such as interconnected utilities, other critical infrastructure sectors (*e.g.,* water, telecommunications) and supply chain-related vulnerabilities, in the assessment;

(Q7) A description of whether and to what extent the transmission provider coordinates, or plans to coordinate, with neighboring utilities and/or entities in other sectors that could potentially be relevant to the assessment;

(Q8) A description of whether and to what extent the transmission provider engages, or plans to engage, with stakeholders in the scoping phase of the assessment, including the processes used to identify and engage relevant stakeholder groups and incorporate stakeholder feedback into the extreme weather vulnerability assessment, [especially with regard to disadvantaged or vulnerable] *including all affected* communities.

B. Inputs

(Q9) A description of methods and processes the transmission provider uses, or plans to use, to determine the meteorological data needed for its assessment. In particular, how the transmission provider determines whether it can rely on existing extreme weather projections, and if so, whether such projections are adequately robust;

(Q10) A description of how the transmission provider determines whether to use scenario analysis, and if so, whether to do so with multiple scenarios;

(Q11) The extent to which it reviews neighboring transmission providers' extreme weather vulnerability assessments, if available, to evaluate the consistency of extreme weather projections between transmission providers. *Further, for RTOs/ISOs, a description of how it accounts for differences between transmission owner members' extreme weather vulnerability assessment assumptions and results;*

(Q12) The timeframe(s) and discount rate(s) selected for the extreme weather vulnerability assessment;

(Q13) A description of the methods and processes the transmission provider uses, or plans to use, to create an inventory of potentially vulnerable assets and operations.

C. Vulnerabilities and Exposure to Extreme Weather Hazards

(Q14) A description of how the transmission provider identifies the transmission assets or operations vulnerable to the extreme weather events for which it conducts assessments;

(Q15) A description of how the transmission provider uses, or plans to use, screening analyses to test for potential vulnerabilities, as well as how the transmission provider examines, or plans to examine, the sensitivities of the transmission assets and operations being studied to types and magnitudes of extreme weather events.

D. Cost of Impacts

(Q16) A description of the methodology or process, if any, the transmission provider uses, or plans to use, to estimate the potential costs of extreme weather impacts on identified vulnerable assets and operations;

(Q17) If the transmission provider estimates such potential costs, a description of the types of: (a) direct costs, such as replacements or repair costs, restoration costs, associated labor costs, or opportunity costs of lost sales, and (b) indirect costs, such as costs associated with loss of service to electric customers and other utilities that purchase power from the transmission provider, including equipment damage, spoilage, and health and safety effects, in calculating the costs of extreme weather impacts.

E. Risk Mitigation

(Q18) A description of how the transmission provider uses, or plans to use, the results of its assessment to develop measures to mitigate extreme weather risks, including:

i. How the transmission provider determines which risks should be mitigated and the appropriate time horizon for mitigation;

ii. How the transmission provider determines appropriate extreme weather risk mitigation measures, including any analyses used to determine the lowest-cost or most impactful portfolio of measures;

(Q19) A description of how the transmission provider informs, or plans to inform, relevant stakeholders—such as neighboring transmission providers, RTOs/ISOs of which the transmission provider is a member, electric customers, *all* affected [and frontline] communities, [shareholders and investors,] emergency management agencies, local and state administrations, and state utility regulators—of identified extreme weather risks and selected mitigation measures;

(Q20) A description of the extent to which the transmission provider incorporates, or plans to incorporate, identified extreme weather risks and mitigation measures into local and regional transmission planning processes;

(Q21) A description of how the transmission provider measures, or plans to measure, the progress and success of extreme weather risk mitigation measures (*e.g.,* through reduced outages) and how it incorporates these observations into ongoing and future extreme risk mitigation actions.

Federal Energy Regulatory Commission

	Docket Nos.
One-Time Informational Reports on Extreme Weather Vulnerability Assessments.	RM22–16–000
Climate Change, Extreme Weather, and Electric System Reliability.	AD21–13–000

PHILLIPS, Chairman, and CLEMENTS, Commissioner, *concurring:*

1. Today's final rule will facilitate better preparation for extreme weather by requiring transmission providers to file one-time informational reports with the Commission discussing vulnerability assessments that they carry out. We write separately to encourage transmission providers to include within those reports a discussion of the intersection of these assessments and disadvantaged and vulnerable communities.[1]

2. In this proceeding and in response to a recent Commission-led Roundtable on Environmental Justice and Equity in Infrastructure Permitting, commenters highlighted that disadvantaged communities may face disproportionate risks from the increasing frequency and severity of extreme weather events, including higher utility prices and prolonged outages.[2] Panelists and commenters underscored that environmental justice communities are particularly vulnerable to Commission decisions on electric and gas rates, reliability, resiliency, and resource mix because they suffer from higher energy burden [3] and often are both more vulnerable to and more at risk of outages.[4] For example, during Winter Storm Uri, low-income Texans bore the brunt of prolonged power loss. Commenters noted that areas with lower household incomes and higher percentages of ethnic minorities remained without power for longer.[5]

3. Reports to the Commission could address how transmission providers respond to these impacts in several ways. First, in answering question eight regarding stakeholder engagement, we encourage transmission providers to specifically report on how they engage with disadvantaged and vulnerable communities as stakeholders, rather than merely discussing how they obtain information about these communities from other stakeholders.[6] Transmission providers should report on how they incorporate feedback from disadvantaged and vulnerable community stakeholders into their extreme weather vulnerability assessments.

4. Second, beyond addressing the questions set forth in this final rule, we encourage transmission providers to discuss how they estimate or evaluate the cost of extreme weather vulnerabilities of transmission assets and operations that will be specifically borne by disadvantaged and vulnerable communities. Such discussion would benefit from a description of how such estimates or evaluations are carried out, including what types of direct, indirect, and/or other costs are considered in such analyses, and whether and how duration of extreme weather impacts are included in such estimates or evaluations. Providing the Commission and the public with information on how transmission providers evaluate impacts to disadvantaged and vulnerable communities in their footprints could be a first step in developing industry best practices for considering impacts to disadvantaged and vulnerable communities of extreme weather risks.[7]

5. Third, we encourage transmission providers, in responding to question 21, to include a description of how the transmission provider measures, or plans to measure the progress and success of mitigation measures, specifically in disadvantaged and vulnerable communities. The final rule requires transmission providers to describe how they inform affected and frontline communities, and other stakeholders, of risks identified by extreme weather vulnerability assessments and selected mitigation measures.[8] Including a specific description of how mitigation measures in disadvantaged and vulnerable communities will be evaluated will help provide the Commission with a more complete picture of how transmission providers address impacts generally.

For these reasons, we respectfully concur.

Willie L. Phillips,
Chairman.

Allison Clements,
Commissioner.

[1] The Commission is requiring these reports pursuant to section 304 of the Federal Power Act. Section 304 empowers the Commission to seek information ''necessary or appropriate to assist the Commission in the proper administration of [the FPA].'' 16 U.S.C. 825c(a). Congress provided such reports could be on a broad range of topics. These topics include ''among other things, full information as to assets and liabilities . . . generation, transmission, distribution, delivery, use, and sale of electric energy.'' *Id.* Although some have asked that the Commission indicate what it plans to do with the information, as the final rule makes clear, ''the Commission will assess whether further actions are appropriate after viewing the reports.'' Final Rule at P 61; *see also J.P. Morgan Ventures Energy Corp.,* 142 FERC ¶ 61,150 at PP 11–12 (2013) (stating that ''the Commission controls its own dockets and has substantial discretion to manage its proceedings.''); *Fla. Mun. Power Agency* v. *FERC,* 315 F.3d 362, 366 (D.C. Cir. 2003) (noting that administrative agencies enjoy broad discretion to manage their own dockets).

[2] *See* WE ACT Comments at 2–4; WE ACT Comments, Docket No. AD23–5–000, at 6–7 (filed May 16, 2023); Center for Biological Diversity Comments, Docket No. AD23–5–000, at 6 (filed May 12, 2023).

[3] Energy burden is defined as the percentage of a household's annual income spent on energy consumption. High energy burdens are often defined as allocating greater than 6% of income towards energy costs, while severe energy burdens are those greater than 10% of income. Department of Health and Human Servs., *LIHEAP Energy Burden Evaluation Study* 8 (2005), *www.acf.hhs.gov/sites/default/files/ocs/comm_liheap_energyburdenstudy_apprise.pdf.*

[4] Environmental Defense Fund Comments, Docket No. AD23–5–000, at 4 (filed May 15, 2023).

[5] Americans for a Clean Energy Grid Comments, Docket No. AD23–5–000, at 4–5 (filed May 15, 2023).

[6] *See* WE ACT Comments at 6; Public Interest Organizations Comments at 11.

[7] WE ACT argues that ''transmission planners need to assess vulnerabilities and mitigate'' the risks of extreme weather events ''on the electric grid, including the negative consequences for areas of low-income and communities of color.'' WE ACT Comments at 5.

[8] *See* Final Rule, Question 19 (requiring a ''description of how the transmission provider informs, or plans to inform relevant stakeholders—such as . . . all affected communities''); P 4 (''We use the term 'affected communities' in this final rule to include disadvantaged, vulnerable, and frontline communities'').

	Docket Nos.
One-Time Informational Reports on Extreme Weather Vulnerability Assessments.	RM22–16–000
Climate Change, Extreme Weather, and Electric System Reliability.	AD21–13–000

Federal Energy Regulatory Commission

DANLY, Commissioner, *concurring in the result:*

1. Last June, I concurred with the Commission's Notice of Proposed Rulemaking (NOPR) requiring one-time informational reports on extreme weather vulnerability assessments.[9] I wrote separately to express that, while the question of the weather's effect on reliability is a subject that doubtless merits study and planning, misguided government policies (not weather) have been the root cause of the impending reliability crises facing our markets.[10]

2. Today, I write separately, not to repeat my assessment that the United States is heading toward a reliability crisis (a prediction that is widely shared),[11] but to caution the Commission that it should not lose sights of the limits of its authority under the Federal Power Act (FPA). I acknowledge that the final rule generally adopts the NOPR without significant modification,[12] and that in my concurrence, I agreed that informational reports may help the Commission identify opportunities to avoid adverse rate impacts.[13] However, a question repeated by *nearly a third* of the commenters has given me pause and forced me to reconsider the information requested: How exactly does the Commission intend to use the information provided in the one-time informational reports?[14] In posing that question, one must also ask the question of whether the Commission can or should request that information in the first instance.

3. While FPA section 304 [15] empowers the Commission to require special reports, it does not give the Commission *carte blanche* to require public utilities to file special reports disclosing *anything* it sees fit. The Commission must find that the special report is ''necessary or appropriate to assist [it] in the proper administration'' of the FPA [16]—that is, the information sought must ''aid the Commission in exercising its powers.'' [17] For instance, information on a public utilities' community service, which had no effect on the rates charged, would not ''aid[] the Commission in exercising its powers.''

4. In addition, the Paperwork Reduction Act requires that the Commission only collect information that is ''necessary for the proper performance of the functions of the agency, including whether the information [will] have practical utility'' [18] Can the agency ''use [the] information'' it collects? [19] If the information proposed to be collected by an agency is found ''unnecessary[,] for any reason, the [Commission] may not engage in the collection of [the] information.'' [20]

5. The final rule declares that the one-time informational report on policies and processes related to extreme weather vulnerability assessments is ''necessary or appropriate'' for the Commission to oversee the development and enforcement of reliability standards under FPA section 215 and to ensure that rates, terms, and conditions are just and reasonable and not unduly discriminatory or preferential under FPA sections 205 and 206.[21] A persuasive case can be made that most of the information to be collected in the one-time informational reports could aid the Commission in exercising these powers. However, the practical utility of the information sought from two of the questions is uncertain at best: *first,* question 8, which asks how a transmission provider identifies and engages ''affected communities'' and incorporates those communities' feedback into its extreme weather vulnerability assessment,[22] and *second,* question 19, which asks how a transmission provider informs ''affected communities'' of identified extreme weather risks and selected mitigation measures.[23]

6. How exactly are ''affected communities'' relevant here, and under what provision of the FPA? FPA sections 205 and 206 empower the Commission to ensure that *wholesale* transmission rates, terms, and conditions are just and reasonable and not unduly discriminatory or preferential. FPA section 215 empowers the Commission to oversee the development and enforcement of mandatory standards to ensure the reliability of the bulk-power system, which ''*does not include facilities used in the local distribution of electric energy.*'' [24] A ''community,'' defined as

[9] *One-Time Informational Reports on Extreme Weather Vulnerability Assessments,* 179 FERC ¶ 61,196 (2022) (Danly, Comm'r, concurring) (NOPR).

[10] *Id.* (Danly, Comm'r, concurring at PP 2–5).

[11] *See Full Committee Hearing to Examine the Reliability & Resiliency of Elec. Servs. in the U.S. in Light of Recent Reliability Assessments & Alerts Before the S. Comm. on Energy & Natural Res.,* 118th Cong. (2023), *https://www.energy.senate.gov/hearings/2023/6/full-committee-hearing-to-*examine-the-reliability-and-resiliency-of-electric-services-in-the-u-s-in-light-of-recent-reliability-assessments-and-alerts (statements of North American Electric Reliability Corporation President and CEO Jim Robb and PJM Interconnection, L.L.C. President and CEO Manu Asthana in response to Senator Hoeven citing FERC Commissioners Mark Christie and Danly).

[12] *See One-Time Informational Reports on Extreme Weather Vulnerability Assessments,* Final Rule, 183 FERC ¶ 61,192 (2023) (Final Rule).

[13] NOPR, 179 FERC ¶ 61,196 (Danly, Comm'r, at P 2).

[14] *See* Edison Electric Institute, August 31, 2022 Initial Comments, at 3 (''the Commission should . . . clarify how the one-time informational reports will be used.''); *id.* at 7 (''The Commission should specify how it plans to use the information contained in the onetime reports. While the Commission notes that the reports 'will enhance the Commission's understanding of whether, and if so, how transmission providers are assessing risks to transmission assets and operations as a result of extreme weather events,' and that 'it is important for the Commission to understand whether and to what extent such assessments are being conducted to assist the Commission in the proper administration of the [Federal Power Act],' it does not detail how it plans to utilize the information included in the reports to accomplish these ends.'') (footnote omitted); Eversource Energy Service Co., August 30, 2022 Comments, at 5 (''Eversource also respectfully requests that the Commission clarify how it will use the one-time reports and the information contained therein.''); PJM Transmission Owners, August 30, 2022 Comments, at 2 (''The Commission should provide clarification regarding how the one-time reports will be used for developing future transmission planning requirements.''); *id.* (''[T]he Indicated PJM Transmission Owners would like to better understand how the Commission intends to use this data.''); MISO Transmission Owners, August 30, 2022 Comments, at 2. (''[T]he MISO Transmission Owners encourage the Commission to explain in the final rule how it intends to act on the information provided by respondents.''1); *id.* at 4 (''The Extreme Weather Reports NOPR does not explain how these one-time reports will assist the Commission in accomplishing its goals.''); Xcel Energy Services, August 29, 2022 Initial Comments, at 5 (''the Commission should provide clarity about how it intends to use the information provided under this NOPR, if adopted''); *id.* at 6 (''[T]he manner in which the Commission intends to use information obtained through this NOPR, if adopted, is unclear.'').

[15] 16 U.S.C. 825c(a).

[16] *Id.*

[17] *FPC* v. *Panhandle E. Pipe Line Co.,* 337 U.S. 498, 505 (1949) (discussing the similar power set forth in section 10(a) of the Natural Gas Act (NGA)). ''It is, of course, well settled that the comparable provisions of the [NGA] and the [FPA] are to be construed *in pari materia.*'' *Ky. Utils. Co.* v. *FERC,* 760 F.2d 1321, 1325 n.6 (D.C. Cir. 1985) (citations omitted). Case law involving the FPA has stated similarly. *See Duke Power Co.* v. *FPC,* 401 F.2d 930, 947 & n.131 (D.C. Cir. 1968) (''utilities are required . . . to supply the Commission with *essential information*'') (emphasis added) (citing 16 U.S.C. 825(b), 825(c)(a)).

[18] 44 U.S.C. 3508; *id.* § 3502(11) (defining ''practical utility'' as meaning ''the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion'').

[19] *Id.* section 3502(11).

[20] *Id.* section 3508.

[21] Final Rule, 183 FERC ¶ 61,192 at PP 20, 59.

[22] *Id.* App. A, Question 8.

[23] *Id.* App. A, Question 19.

[24] 16 U.S.C. 824o (emphasis added).

a ''neighborhood, vicinity, or locality,'' [25] does not exactly evoke an image of a customer paying wholesale transmission rates. Rather, one imagines local retail customers paying the local utility to deliver electricity on a distribution line to power one's business or dwelling.

7. I wonder what we expect to hear back in response. Under what circumstances would a wholesaler *ever* engage with and inform a retail customer? Would we expect a wholesale food vendor, Sysco, for example, to engage with a restaurant's retail customers on how it plans for potential disruptions of the beef supply, and to then inform those customers when supplies have been disrupted and then further consult with them on how limited supplies will be allocated? No. Put in the terms of the FPA, would engaging retail customers in forecasting or informing retail customers of risks and mitigation measures render otherwise unlawful wholesale transmission rates just and reasonable? Doubtful. Could it be that the Commission envisions that transmission providers will submit information on some type of ''flex alert'' initiative that encourages retail customers to voluntarily conserve electricity, which may relate to the adequate reliability of the bulk-power system under FPA section 215? Perhaps. But if so, why not just make that clear.

8. The Commission ought to be more judicious in use of FPA section 304. Its powers are not without limit. Congress has declared that the burdens of these reports should be minimized, and that the usefulness of information collected by the government maximized.[26] We should better explain why we are asking for this data or not collect it at all. The Commission should not require transmission providers to file information for which it has no use or is unwilling to explain why it is being asked for in the first place.

For these reasons, I respectfully concur in the result.

James P. Danly,
Commissioner.

[FR Doc. 2023–13268 Filed 6–26–23; 8:45 am]

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[25] *Community,* Black's Law Dictionary (11th ed. 2019).

[26] *See* 44 U.S.C. 3501.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9972]

RIN 1545–BN36

Electronic-Filing Requirements for Specified Returns and Other Documents; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9972) that were published in the **Federal Register** on Thursday, February 23, 2023. Those final regulations amend the rules for filing electronically and affect persons required to file partnership returns, corporate income tax returns, unrelated business income tax returns, withholding tax returns, certain information returns, registration statements, disclosure statements, notifications, actuarial reports, and certain excise tax returns. The final regulations reflect changes made by the Taxpayer First Act (TFA) and are consistent with the TFA's emphasis on increasing electronic filing.

DATES: This correction is effective on June 27, 2023 and is applicable beginning February 23, 2023.

FOR FURTHER INFORMATION CONTACT: Casey R. Conrad of the Office of the Associate Chief Counsel (Procedure and Administration), (202) 317–6844 (not a toll-free number). The phone number above may also be reached by individuals who are deaf or hard of hearing or who have speech disabilities through the Federal Relay Service toll-free at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The final regulations included in TD 9972 (88 FR 11754, Feb. 23, 2023) that are the subject of this correction are under section 6050I of the Internal Revenue Code. Both the Notice of Proposed Rulemaking (NPRM) that was published in the **Federal Register** on July 23, 2021 (86 FR 39910), and TD 9972 inadvertently omitted two sentences from § 1.6050I–1(a)(3)(ii) and (c)(1)(iv) in the drafting process, which resulted in the two sentences being removed from the Code of Federal Regulations. The first omitted sentence has been included in § 1.6050I–1 since the original publication of the final regulation (TD 8098) on September 4, 1986 (51 FR 31611). The second omitted sentence was added to § 1.6050I–1 in final regulations (TD 8373) published on November 15, 1991 (56 FR 57976, 57977). The 1986 and 1991 final regulations that included these two sentences were both submitted as NPRMs for public comments and a public hearing was held for both NPRMs before they were published as final regulations.

The inadvertent omission of these two sentences has no material impact on TD 9972 or the electronic-filing rules included in the regulation. The omitted sentences are favorable to cash recipients and provide safe-harbors to cash recipients who receive cash in excess of $10,000 but who may be exempt from reporting under § 1.6050I–1(a)(1)(i). The removal of these safe-harbors may cause a cash recipient who would otherwise be exempt from reporting under § 1.6050I–1(a)(1)(i) to report the cash transaction out of an abundance of caution, which would impose additional burdens on the cash recipient and the IRS.

The Treasury Department and the IRS received one public comment on the NPRM that addressed the proposed amendments to the regulations under section 6050I. The comment addressed the situation of certain filers for whom using the technology required to file electronically conflicts with their religious beliefs being nevertheless obligated to file Form 8300, Report of Cash Payments Over $10,000 Received in a Trade or Business, electronically. The final regulations acknowledge that comment and adopt a rule that a waiver granted under § 301.6011–(c)(6) for any return required to be filed under § 301.6011–2(b)(1) or (2) will be deemed to have waived the electronic-filing requirement for any Form 8300 the filer is required to file during the calendar year. See § 301.6011–2(c)(6)(i).

The Treasury Department and the IRS believe that the inclusion of these two sentences in the NPRM would not have resulted in substantive comments from the public that recommended the sentences be removed from the regulation.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.6050I–1 is amended by adding a sentence to the end of paragraphs (a)(3)(ii) and (c)(1)(iv) to read as follows:

§ 1.6050I–1 Returns relating to cash in excess of $10,000 received in a trade or business.

(a) * * *

(3) * * *

(ii) * * * An agent will be deemed to have met the disclosure requirements of this paragraph (a)(3)(ii) if the agent discloses only the name of the principal and the agent knows that the recipient has the principal's address and taxpayer identification number.

* * * * *

(c) * * *

(1) * * *

(iv) * * * The recipient may rely on a copy of the loan document, a written statement from the bank, or similar documentation (such as a written lien instruction from the issuer of the instrument) to substantiate that the instrument constitutes loan proceeds.

* * * * *

Oluwafunmilayo A. Taylor,

Branch Chief, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2023–13555 Filed 6–26–23; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0509]

RIN 1625–AA00

Safety Zone; City of Toledo Fireworks; Maumee River; Toledo, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters on the Maumee River in Toledo, OH. The safety zone is needed to protect marine traffic and spectators from hazards associated with the City of Toledo Fireworks. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Detroit, or his designated representative. This temporary safety zone is necessary to protect marine traffic and spectators from hazards associated with fireworks.

DATES: This rule is effective from 9 through 11:30 p.m. on July 1, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0509 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Karl Dirksmeyer, Marine Safety Unit Toledo, Coast Guard; telephone (419) 392–0324, email *D09-SMB-MSUToledo-WWM@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 sponsor notified the Coast Guard with insufficient time to accommodate the comment period. Thus, delaying the effective date of this rule to wait for the comment period to run would be impracticable and contrary to the public interest because it would prevent the Captain of the Port Detroit from keeping marine traffic and spectators safe from hazards associated with the City of Toledo Fireworks.

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 ensure the safety of marine traffic and spectators from hazards associated with the City of Toledo Fireworks.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Detroit (COTP) has determined that potential hazards associated with the City of Toledo Fireworks on July 1, 2023, will be a safety concern within a 500 foot radius of the launch site along the Maumee River from 9 to 11:30 p.m. This rule is needed to protect marine traffic and spectators in the navigable waters within the safety zone while the event is taking place.

IV. Discussion of the Rule

This rule establishes a safety zone that will be enforced from 9 through 11:30 p.m. on July 1, 2023. The safety zone will encompass all U.S. navigable waters of the Maumee River within a 500 foot radius of the launch site at 41°38′44″ N, 083°31′51″ W. The duration of the zone is intended to protect marine traffic and spectators in the navigable waters while the City of Toledo Fireworks are taking place. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Detroit or his designated representative. The Captain of the Port, Sector Detroit or his designated representative may be contacted via VHF Channel 16.

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. This safety zone would impact a small designated area of the Maumee River for a short duration, during the evening when vessel traffic is normally low. Vessel traffic will be able to transit after the time of the event. 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 three and one half hours that will prohibit entry within a 500 foot radius of the launch site along the Maumee River, Toledo, OH. It is categorically excluded from further review under paragraph L[60] 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 record keeping 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.T09–0509 to read as follows:

§ 165.T09–0509 Safety Zone; City Of Toledo Fireworks; Maumee River; Toledo, OH.

(a) *Location.* The following area is a temporary safety zone: All U.S. navigable waters of the Maumee River within a within a 500-foot radius of the launch site along the Maumee River, Toledo, OH located at position 41°38′44″ N, 083°31′51″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated representative.

(3) The ''designated representative'' of the Captain of the Port Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Detroit to act on his behalf. The designated representative of the Captain of the Port Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port Detroit or his designated representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the

Captain of the Port Detroit or his designated representative.

(c) *Enforcement Period.* This regulation will be enforced from 9 through 11:30 p.m. on July 1, 2023. The Captain of the Port Detroit, or a designated representative may suspend enforcement of the safety zone at any time.

Dated: June 20, 2023.

Brad W. Kelly,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2023–13594 Filed 6–26–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0491]

RIN 1625–AA87

Security Zones; Corpus Christi Ship Channel, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary, 500-yard radius, moving security zones around the Motor Vessel (M/V) ARC DEFENDER and M/V OCEAN JAZZ. These zones are needed to protect the vessels, which will be carrying military cargo onboard, while they are transiting the Corpus Christi Ship Channel, in Corpus Christi, TX. Entry of vessels or persons into the zones are prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative.

DATES: This rule is effective without actual notice from June 27, 2023, through July 19, 2023. For the purposes of enforcement, actual notice will be used from June 21, 2023 through July 19, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Anthony Garofalo, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *Anthony.M.Garofalo@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Corpus Christi
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 it is impracticable. We must establish this security zone by June 21, 2023 to ensure security of the vessel and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to provide for the security of the vessel and cargo.

III. Legal Authority and Need for Rule

The Coast Guard may issue security zone regulations under authority in 46 U.S.C. 70051 and 70124. The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with the transit of the M/V ARC DEFENDER and M/V OCEAN JAZZ when loaded with military cargo will be a security concern within a 500-yard radius of the vessel. This rule is needed to provide for the safety and security of the vessels, their cargo, and surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other events of a similar nature from June 21, 2023 through July 19, 2023.

IV. Discussion of the Rule

The Coast Guard is establishing two 500-yard radius temporary security zones around M/V ARC DEFENDER and M/V OCEAN JAZZ. The vessel names will be clearly marked on the port, starboard, and stern. The zone for the vessel will be enforced from the time the vessel transits the Corpus Christi Ship Channel between June 21, 2023 and July 19, 2023. The duration of the zone is intended to protect the vessel and military cargo on board while the vessel is in transit. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

Entry into these security zones is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Corpus Christi. Persons or vessels desiring to enter or pass through each zone must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 361–939–0450. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate for the enforcement times and dates for each security zone.

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, duration, and location of the security zone. This rule will impact a small designated area of the Corpus Christi Ship Channel during the vessel's transits while loaded with cargo over a thirty-day period. Moreover, the Coast Guard will issue BNMs via VHF–FM marine channel 16 about the zones as appropriate and the rule allows vessels to seek permission to enter the zones.

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 temporary security 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 contact 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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 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 security zone lasting for the duration of time that the M/V ARC DEFENDER and M/V OCEAN JAZZ are within the Corpus Christi Ship Channel. It will prohibit entry within a 500 yard radius of the M/V ARC DEFENDER and M/V OCEAN JAZZ while the vessel is carrying military cargo onboard and transiting within the Corpus Christi Ship Channel. It is categorically excluded from further review under L60(a) in 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 contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0491 to read as follows:

§ 165.T08–0491 Security Zones; Corpus Christi Ship Channel. Corpus Christi, TX.

(a) *Location.* The following area are security zones: All navigable waters encompassing a 500-yard radius around the M/V ARC DEFENDER and M/V OCEAN JAZZ while the vessel is carrying military cargo onboard and in the Corpus Christi Ship Channel.

(b) *Enforcement period.* This section will be enforced from June 21, 2023 through July 19, 2023.

(c) *Regulations.* (1) The general regulations in § 165.33 of this part apply. Entry into the zones is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Corpus Christi.

(2) Persons or vessels desiring to enter or pass through the zones must request permission from the COTP Sector Corpus Christi on VHF–FM channel 16 or by telephone at 361–939–0450.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local

Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate of the enforcement times and dates for these security zones.

Dated: June 16, 2023.

J.B. Gunning,

Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.

[FR Doc. 2023–13586 Filed 6–26–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0437]

Safety Zones; Fireworks Displays in the Fifth Coast Guard District—Brick Township, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Metedeconk River, Brick Township, NJ Safety Zone for fireworks displays on four separate periods. The safety zone will be enforced on July 6, 2023, July 13, 2023, July 20, 2023, and July 27, 2023, or on a rain date of August 10, 2023, to provide for the safety of life on navigable waterways during each of the four separate land-based fireworks displays. Our regulation for marine events within the Fifth Coast Guard District identifies the boundaries of the regulated area for this event near the shoreline at Brick Township, NJ. During the enforcement period, no person or vessel may enter, remain in, or transit through the regulated area, and anyone in the vicinity must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The portion of the regulation 33 CFR 165.506 for Brick Township, NJ, will be enforced for the location identified in entry 5 of table 1 to paragraph (h)(1), from 9 through 9:45 p.m. on July 6, 2023, July 13, 2023, July 20, 2023, and July 27, 2023, or on a rain date of August 10, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, you may call or email Petty Officer Dylan Caikowski, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, telephone 215–271–4814, email *SecDelBayWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the safety zone in table 1 to paragraph (h)(1) to 33 CFR 165.506, entry No. 5 for four periods, for four separate land-based fireworks displays. The enforcement periods will be from 9 through 9:45 p.m. on July 6, 2023, July 13, 2023, July 20, 2023, and July 27, 2023, or on a rain date of August 10, 2023. This action is necessary to ensure the safety of life on the navigable waters of the United States immediately prior to, during, and immediately after fireworks displays. Our regulation for safety zones of fireworks displays within the Fifth Coast Guard District, table 1 to paragraph (h)(1) to 33 CFR 165.506, entry 5 specifies the location of the regulated area as all waters of the Metedeconk River within a 300-yard radius of the fireworks launch platform in approximate position latitude 40°03′23″ N, longitude 074°06′39″ W, near the shoreline at Brick Township, NJ. During the enforcement period, as reflected in section 165.506(d), vessels may not enter, remain in, or transit through the safety zone unless authorized by the Captain of the Port or designated Coast Guard patrol personnel on-scene.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide notification of this enforcement period via Local Notice to Mariners and Broadcast Notice to Mariners.

Dated: June 21, 2023.

Kate F. Higgins-Bloom,

Captain, U.S. Coast Guard, Captain of the Port, Sector Delaware Bay.

[FR Doc. 2023–13590 Filed 6–26–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0234]

RIN 1625–AA00

Safety Zone; Fireworks Display, Great Egg Harbor Bay, Ocean City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters of Great Egg Harbor Bay in Ocean City, NJ. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a barge-based fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Delaware Bay. Vessels within the zone prior to the enforcement period must leave the zone before the enforcement period begins.

DATES: This rule is effective from 9 to 9:45 p.m. on July 29, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0234 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 Petty Officer Dylan Caikowski, Sector Delaware Bay, Waterways Management Division, U.S. Coast Guard; telephone (215) 271–4814, email *SecDelBayWWM@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

On February 16, 2023, Ocean City, New Jersey notified the Coast Guard that it will be conducting a fireworks display from 9:15 to 9:30 p.m. on July 29, 2023. The fireworks are to be launched from a barge in Great Egg Harbor Bay, in the vicinity of Rainbow Channel. In response, on April 24, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Delaware Bay, Lower Township, NJ. There, we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended May 24, 2023, we received one comment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with a barge-based fireworks display will be a safety concern for anyone within 600 feet of the fireworks barge. The purpose of this rule is to ensure the safety of vessels and of persons who might be in the navigable waters in the safety zone before, during, and after a barge-based fireworks display.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published April 24, 2023. The comment stated that the proposed creation of a safety zone in Great Egg Harbor Bay, Ocean City, NJ, is justified based on the government's compelling interest in protecting the safety of individuals and the environment during a fireworks show, outweighing the minimal restriction on individual freedom. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a temporary safety zone from 9 to 9:45 p.m. on July 29, 2023. The safety zone will cover all navigable waters within 600 feet of a barge in Great Egg Harbor Bay located at approximate position latitude 39°17′23.7″ N, longitude 074°34′31.3″ W. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:15 to 9:30 p.m. fireworks display. 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 section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the following factors: (1) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the COTP or a designated representative, they may operate in the surrounding area during the enforcement period; (2) persons and vessels will still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the COTP; and (3) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to 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 temporary safety zone lasting 45 minutes that would prohibit entry within 600 feet of a fireworks barge. 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.T05–0234 to read as follows:

§ 165.T05–0234 Safety Zone; Fireworks Display, Great Egg Harbor Bay, Ocean City, NJ.

(a) *Location.* All navigable waters within 600 feet of a barge in Great Egg Harbor Bay located at approximate position latitude 39°17′23.7″ N, longitude 074°34′31.3″ W.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or on board a federal, state, or local law enforcement vessel assisting the Captain of the Port (COTP), Sector Delaware Bay 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 or remain in 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 or remain in the zone, contact the COTP or the COTP's representative via VHF–FM channel 16 or 215–271–4807. 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.

(3) No vessel authorized to enter or remain in the zone may take on bunkers or conduct lightering operations within the safety zone during its enforcement period.

(4) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This zone will be enforced from approximately 9 to 9:45 p.m. on July 29, 2023.

Dated: June 21, 2023.

Kate F. Higgins-Bloom,

Captain, U.S. Coast Guard, Captain of the Port, Sector Delaware Bay.

[FR Doc. 2023–13591 Filed 6–26–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0515]

Safety Zones; Annual Events in the Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulations.

SUMMARY: The Coast Guard will enforce a safety zone that encompasses certain navigable waters of the Cleveland Inner Harbor East Basin on Lake Erie, for the 2023 Cleveland National Airshow in Cleveland, Ohio. This action is necessary and intended for the safety of life and property on the navigable waters during this event. During the enforcement periods, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Buffalo or a designated representative.

DATES: The regulations listed in 33 CFR 165.939, Table 165.939(d)(2) will be enforced from 8 a.m. through 6 p.m. on Friday September 1, 2023, through Monday September 4, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LT Jared Stevens, Waterways Management Division, U.S. Coast Guard Marine Safety Unit Cleveland; telephone 216–937–0124, email *D09-SMB-MSUCLEVELAND-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce ''Safety Zones; Annual Events in the Captain of the Port Buffalo Zone'', as listed in 33 CFR 165.939, Table 165.939 (d)(2). This safety zone will be enforced for all U.S. waters of Lake Erie near Burke Lakefront Airport in Cleveland, Ohio from position 41°30′20″ N and 081°42′20″ W to 41°30′50″ N and 081°42′49″ W, to 41°32′09″ N and 081°39′49″ W, to 41°31′53″ N and 081°39′24″ W, then return to the original position (NAD 83).

Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within the safety zone during an enforcement period is prohibited unless authorized by the Captain of the Port Buffalo or a designated representative. Those seeking permission to enter the safety zone may request permission from the Captain of Port Buffalo via channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Buffalo or his designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice of enforcement is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552 (a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Buffalo determines that the safety zone needs not be enforced for the full duration stated in this notice, they may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone.

Dated: June 21, 2023.

J.B. Bybee,

Commander, U.S. Coast Guard, Captain of the Port Buffalo, By direction.

[FR Doc. 2023–13592 Filed 6–26–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0477]

Safety Zone; Recurring Events in Captain of the Port Duluth—City of Superior 4th of July Fireworks

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the City of Superior 4th of July Fireworks in Superior, WI from

10 p.m. through 10:20 p.m. This action is necessary to protect participants and spectators during the City of Superior 4th of July Fireworks taking place in Superior Bay. During the enforcement period, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or their designated on-scene representative.

DATES: The regulations in 33 CFR 165.943, table 1, paragraph (8) will be enforced from 10 p.m. through 10:20 p.m. on July 4, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LT Joe McGinnis, telephone 218–725–3818, email *DuluthWWM@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone in 33 CFR 165.943, table 1, paragraph (8) on all waters of Superior Bay in Superior, WI bounded by the arc of a circle with a 1,120-foot radius from the fireworks launch site with its center in position 46°43′28″ N, 092°03′38″ W from 10 p.m. through 10:20 p.m. on July 04, 2023. This action is necessary to protect participants and spectators during the City of Superior 4th of July Fireworks.

Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or their designated on-scene representative. The Captain of the Port's designated on-scene representative may be contacted via VHF Channel 16.

This document is issued under authority of 33 CFR 165.943 and 5 U.S.C. 552 (a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement of this safety zone via Broadcast Notice to Mariners.

Dated: June 20, 2023.

J.M. DeWitz,

Commander, U.S. Coast Guard, Captain of the Port Duluth.

[FR Doc. 2023–13658 Filed 6–26–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0236]

Safety Zones; Recurring Safety Zones in Captain of the Port Sault Sainte Marie Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce various safety zones in the Captain of the Port Sault Sainte Marie Zone. Enforcement of these safety zones is necessary to protect the safety of life and property on the navigable waters immediately prior to, during, and immediately after the events. During the aforementioned periods, the Coast Guard will enforce restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after events. During each enforcement period, vessels must stay out of the established safety zone and may only enter with permission from the designated representative of the Captain of the Port Sault Sainte Marie.

DATES: The regulations listed in 33 CFR 165.918 will be enforced for the safety zones identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified.

FOR FURTHER INFORMATION CONTACT: If you have questions about this publication, call or email Waterways Management division, LT Deaven Palenzuela, Coast Guard Sector Sault Sainte Marie, U.S. Coast Guard; telephone 906–635–3223, email *ssmprevention@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones in 33 CFR 165.918, Table 165.918, at the following dates and times for the following events:

(1) Jordan Valley Freedom Festival Fireworks (East Jordan, MI) from 10 through 10:30 p.m. on June 24, 2023. The zone encompasses all U.S. navigable waters of Lake Charlevoix within the arc of a circle with an approximate 1200-foot radius from the fireworks launch site in position 45°09′18″ N, 085°07′48″ W.

(2) Grand Marais Splash-In (Grand Marais, MI) from 1 p.m. through 5 p.m. on June 17, 2023. The zone encompasses all U.S. navigable waters within the southern portion of West Bay bound within the following coordinates: 46°40′22.08″ N, 085°59′0.12″ W, 46°40′22.08″ N, 85°58′22.08″ W, and 46°40′14.64″ N, 85°58′19.56″ W, with the West Bay shoreline forming the South and West boundaries of the zone.

Under the provisions of 33 CFR 165.918, entry into, transiting, or anchoring within the safety zones during an enforcement period is prohibited unless authorized by the Captain of the Port Sault Sainte Marie or his designated representative. Those seeking permission to enter the safety zone may request permission from the Captain of Port Sault Sainte Marie via channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of Port Sault Sainte Marie or his designated representatives. While within the safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice of enforcement is issued under authority of 33 CFR 165.918 and 5 U.S.C. 552 (a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Sault Sainte Marie determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may suspend such enforcement and notify the public of the suspension via Broadcast Notice to Mariners and grant general permission to enter the respective safety zone.

Dated: June 20, 2023.

A.R. Jones,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2023–13593 Filed 6–26–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0474]

Safety Zone; Recurring Events in Captain of the Port Duluth—Duluth Fourth Fest Fireworks

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Duluth Fourth Fest Fireworks in Duluth, MN from 10 p.m. through 10:30 p.m. This action is necessary to protect participants and spectators during the Duluth Fourth Fest Fireworks. During the enforcement period, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or their designated on-scene representative.

DATES: The regulations in 33 CFR 165.943, table 1, paragraph (5) will be enforced from 10:00 p.m. through 10:30 p.m. on July 4, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LT Joe McGinnis, telephone 218–725–3818, email *DuluthWWM@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone in 33 CFR 165.943, table 1, paragraph (5) on all waters of Duluth Harbor bounded by the arc of a circle with a 1,120-foot radius from the fireworks launch site with its center in position 46°46′14″ N, 092°06′16″ W from 10 p.m. through 10:30 p.m. on July 4, 2023. This action is necessary to protect participants and spectators during the Duluth Fourth Fest Fireworks.

Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or their designated on-scene representative. The Captain of the Port's designated on-scene representative may be contacted via VHF Channel 16.

This document is issued under authority of 33 CFR 165.943 and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement of this safety zone via Broadcast Notice to Mariners. The Captain of the Port Duluth or their on-scene representative may be contacted via VHF Channel 16.

Dated: June 20, 2023.

J.M. DeWitz,

Commander, U.S. Coast Guard, Captain of the Port Duluth.

[FR Doc. 2023–13657 Filed 6–26–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0423]

Safety Zone; Annual Fireworks Displays and Other Events in the Eighth Coast Guard District Requiring Safety Zones—Mandeville July 4th Celebration

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Mandeville July 4th Celebration fireworks display located on the navigable waters of Lake Pontchartrain near Mandeville, LA. Our regulation for marine events within the Eighth Coast Guard District Sector New Orleans Annual and Recurring Safety Zones identifies the regulated area for this event. This action is necessary to provide for the safety of life on these navigable waterways during this event. During the enforcement period, entry into this safety zone is prohibited unless authorized by the Captain of the Port or a designated representative.

DATES: The regulations in 33 CFR 165.801 will be enforced for the location identified in Item 16 of Table 5 to § 165.801, from 7:30 through 9 p.m. on July 3, 2023.

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

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone in 33 CFR 165.801, Table 5 to § 165.801, item 16 for the Mandeville July 4th Celebration fireworks display event. This safety zone will be enforced from 7:30 through 9 p.m. on July 3, 2023. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for annual fireworks displays and other events in the Sector New Orleans Annual and Recurring Safety Zones in § 165.801, Item 16, specifies the location of the regulated area on Lake Pontchartrain near Mandeville, LA. During the enforcement period, as reflected in § 165.801 (a), entry into this safety zone is prohibited unless authorized by the Captain of the Port or a designated representative.

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

Dated: June 14, 2023.

K.K. Denning,

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

[FR Doc. 2023–13589 Filed 6–26–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0504]

Safety Zones; Recurring Events in Captain of the Port Duluth—City of Bayfield 4th of July Fireworks Display

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the City of Bayfield Fireworks in Bayfield, WI. This action is necessary to protect participants and spectators during the City of Bayfield Fireworks. During the enforcement period, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or designated on-scene representative.

DATES: The regulations in 33 CFR 165.943, table 1, paragraph (3) will be enforced from 9:30 p.m. through 10 p.m. on July 4, 2023, for the City of Bayfield Fireworks safety zone.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email LT Joe McGinnis, telephone (218)–725–3818, email *DuluthWWM@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for the annual City of Bayfield 4th of July Fireworks Display in 33 CFR 165.943 from 9:30 p.m. through 10 p.m. on July 4, 2023. All waters of the Lake Superior North Channel in Bayfield, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°48′40″ N, 090°48′32″ W.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or their designated on-scene representative. The Captain of the Port's designated on-scene representative may be contacted via VHF Channel 16.

This document is issued under authority of 33 CFR 165.943 and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement of this safety zone via Broadcast Notice to Mariners.

Dated: June 21, 2023.

J.M. DeWitz,

Commander, U.S. Coast Guard, Captain of the Port Duluth.

[FR Doc. 2023–13660 Filed 6–26–23; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register
Vol. 88, No. 122
Tuesday, June 27, 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.

FINANCIAL STABILITY OVERSIGHT COUNCIL

12 CFR Part 1310

[Docket No. FSOC–2023–0002]

Authority To Require Supervision and Regulation of Certain Nonbank Financial Companies

AGENCY: Financial Stability Oversight Council

ACTION: Proposed interpretive guidance; extension of comment period.

SUMMARY: The Financial Stability Oversight Council (Council) is extending by 30 days the comment period on its proposed interpretive guidance, which would replace the Council's existing interpretive guidance on nonbank financial company determinations and which describes the process the Council intends to take in determining whether to subject a nonbank financial company to supervision and prudential standards by the Board of Governors of the Federal Reserve System. The comment period will now close on July 27, 2023.

DATES: *Comment due date:* July 27, 2023.

ADDRESSES: You may submit comments by either of the following methods. All submissions must refer to the document title and docket number FSOC–2023–0002.

Electronic Submission of Comments: You may submit comments electronically through the Federal eRulemaking Portal at *https://www.regulations.gov*. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Council to make them available to the public. Comments submitted electronically through the *https://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Mail: Send comments to Financial Stability Oversight Council, Attn: Eric Froman, 1500 Pennsylvania Avenue NW, Room 2308, Washington, DC 20220.

All properly submitted comments will be available for inspection and downloading at *https://www.regulations.gov*.

In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Eric Froman, Office of the General Counsel, Treasury, at (202) 622–1942; Devin Mauney, Office of the General Counsel, Treasury, at (202) 622–2537; or Carol Rodrigues, Office of the General Counsel, Treasury, at (202) 622–6127.

SUPPLEMENTARY INFORMATION: On April 28, 2023, at 88 FR 26234 the Council published in the **Federal Register** proposed interpretive guidance describing the process the Council intends to take in determining whether to subject a nonbank financial company to supervision and prudential standards by the Board of Governors of the Federal Reserve System (Proposed Guidance). Comments on the Proposed Guidance were originally due on June 27, 2023.

The Council has received a request to extend the comment period to allow interested parties additional time to review and comment on the Proposed Guidance. The Council is therefore extending the comment period on the Proposed Guidance by 30 days to July 27, 2023.

Dated: June 22, 2023.

Sandra Lee,

Deputy Assistant Secretary, Financial Stability Oversight Council.

[FR Doc. 2023–13648 Filed 6–26–23; 8:45 am]

BILLING CODE 4810–AK–P–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1218; Project Identifier MCAI–2022–01025–A]

RIN 2120–AA64

Airworthiness Directives; Vulcanair S.p.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Vulcanair S.p.A. Model V1.0 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as corrosion on the lower fuselage truss. This proposed AD would require a detailed visual inspection of the right-hand (RH) and left-hand (LH) lower rear attachments of the fuselage truss for corrosion, a tactile inspection of the lower rear attachments for missing sealant, and a general visual inspection of the lower fuselage truss welded pipes for corrosion and the related rivets for missing stems and, depending on findings, additional inspections and actions (including a tap test) and applicable corrective actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by August 11, 2023.

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

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

p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1218; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the MCAI, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Vulcanair S.p.A., via G. Pascoli, 7, 80026 Casoria (NA), Italy; phone: +39 081 5918111; email: *info@vulcanair.com;* website: *support.vulcanair.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: John DeLuca, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7369; email: *john.p.deluca@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1218; Project Identifier MCAI–2022–01025–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

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.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to John DeLuca, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0155, dated August 1, 2022 (referred to after this as ''the MCAI''), to correct an unsafe condition on certain serial-numbered Vulcanair S.p.A. Model V1.0 airplanes.

The MCAI was prompted by reports of corrosion on the lower fuselage truss on two Vulcanair Model V1.0 airplanes. Missing sealant or missing rivet stems were determined to be the root cause of corrosion by allowing water ingress into the lower fuselage truss. In both reported cases, corrosion was externally visible, having penetrated the thickness of the pipes. However, corrosion could be present inside the pipes and remain undetected without proper inspection. This condition, if not detected and corrected, could result in loss of control of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1218.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Vulcanair Aircraft V1 series Service Bulletin VA–22, rev. 0, dated June 15, 2022 (Vulcanair SB VA–22). This service information specifies procedures for inspections of the lower fuselage truss for corrosion, missing sealant, and missing rivet stems; and, in case of findings, additional inspections and actions to detect corrosion, including a tap test and raising the airplane nose. This service information specifies to contact Vulcanair for corrective actions.

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the MCAI, except as discussed under ''Differences Between this Proposed AD and the MCAI.''

Differences Between This Proposed AD and the MCAI

Although Vulcanair SB VA–22 specifies that ''in case of doubts, raise the aircraft nose and audibly detect the presence of corrosion residues inside the fuselage truss,'' this proposed AD would not require that action.

Paragraph (1) of the MCAI states to ''accomplish a general visual and tactile inspection of the right-hand (RH) and left-hand (LH) lower rear attachments of the fuselage truss'' in accordance with the instructions of Part A of Vulcanair SB VA–22. However, step 14, Part A, of Vulcanair SB VA–22 specifies to do a detailed visual inspection. In email communication between EASA and the FAA, EASA clarified that this should be a detailed visual inspection performed in accordance with the procedures specified in Vulcanair SB VA–22; therefore, this proposed AD would require a detailed visual inspection of the RH and LH lower rear attachments of the fuselage truss for corrosion.

The MCAI requires contacting the manufacturer for approved corrective action instructions if any corrosion is found on the lower fuselage truss. This proposed AD would require contacting either the Manager, International Validation Branch, FAA; or EASA; or Vulcanair's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 17 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed visual inspection and tactile inspection of the RH and LH lower rear attachments, and a general visual inspection of the pipes.	8 work-hours × $85 per hour = $680	$0	$680	$11,560

The FAA estimates the following costs to do any necessary actions that would be required based on the results of the proposed inspections.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Remove sealant and detailed inspection of inner face of longitudinal tubes connected to lower rear attachments.	4 work-hours × $85 per hour = $340	$0	$340
Detailed visual inspection and tap test of the lower fuselage truss pipes.	4 work-hours × $85 per hour = $340	0	340
Installation of plug P/N 5034–011 on RH and LH lower rear attachments.	0.50 work-hour × $85 per hour = $42.50 ...	130	172.50

The corrective action instructions that may be needed as a result of these inspections could vary significantly from airplane to airplane. The FAA has no data to determine the costs to accomplish those corrective actions or the number of airplanes that would need these corrective actions.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Vulcanair S.p.A.: Docket No. FAA–2023–1218; Project Identifier MCAI–2022–01025–A.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 11, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Vulcanair S.p.A. Model V1.0 airplanes, serial numbers (S/Ns) 1001 through 1034 inclusive, except S/Ns 1008 and 1019, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5311, Fuselage Main, Frame.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as corrosion on the lower fuselage truss. The FAA is issuing this AD to address the unsafe condition. The unsafe condition, if not addressed, could result in loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

Within 100 hours time-in-service or 12 months after the effective date of this AD, whichever occurs first, do a detailed visual inspection of the right-hand (RH) and left-hand (LH) lower rear attachments of the fuselage truss for corrosion, a tactile inspection of the RH and LH lower rear attachments of the fuselage truss for missing sealant, a general visual inspection of the

pipes on the lower fuselage truss for corrosion, and a general visual inspection of the pipes on the lower fuselage truss for rivets with missing stems, in accordance with steps 13 and 14 of Part A, in Part 2, Work Procedure, of Vulcanair Aircraft V1 series Service Bulletin VA–22, rev. 0, dated June 15, 2022 (Vulcanair SB VA–22).

(1) If, during the inspections required by the introductory text of paragraph (g) of this AD, no missing sealant and no corrosion of the LH and RH lower rear attachments are detected, and no corrosion and no missing rivet stems of the lower fuselage truss pipes are detected, before further flight, install part number (P/N) 5034–011 plugs on both the RH and LH rear attachments, in accordance with step 16 of Part A, in Part 2, Work Procedure, of Vulcanair SB VA–22. After installation of the plugs, no further action is required by this AD.

(2) If, during the inspections required by the introductory text of paragraph (g) of this AD, corrosion, missing sealant, or missing rivet stems are detected, before further flight, do the following as applicable:

(i) If corrosion or missing sealant is detected during the detailed visual inspection or tactile inspection of the RH and LH lower rear attachments, remove any sealant and do a detailed visual inspection for corrosion in accordance with step 26 of Part B, in Part 2, Work Procedure, of Vulcanair SB VA–22.

(ii) If corrosion or missing rivet stems are detected during the general visual inspection of the lower fuselage truss pipes, do a detailed visual inspection and tap test for corrosion in accordance with steps 27 and 28 of Part B, in Part 2, Work Procedure, of Vulcanair SB VA–22.

(3) If, during any inspection required by paragraph (g)(2) of this AD, any corrosion is detected on the lower fuselage truss, before further flight, contact the Manager, International Validation Branch, FAA; or European Union Aviation Safety Agency (EASA); or Vulcanair's EASA Design Organization Approval (DOA) for corrective action instructions and do the corrective actions. If approved by the DOA, the approval must include the DOA-authorized signature.

(4) If, during the inspections required by paragraph (g)(2) of this AD, no corrosion is detected, before further flight, apply sealant on rivets with absent stems, restore as necessary the sealant inside the RH and LH lower rear attachments, and install plugs P/N 5034–011 on both the RH and LH rear attachments, in accordance with the instructions in steps 31 and 32 of Part B, in Part 2, Work Procedure, of Vulcanair SB VA–22.

(h) Special Flight Permits

Special flight permits are prohibited.

(i) Alternative Methods of Compliance (AMOCs)

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (j)(2) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Additional Information

(1) Refer to EASA AD 2022–0155, dated August 1, 2022, for related information. This EASA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1218.

(2) For more information about this AD, contact John DeLuca, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7369; email: *john.p.deluca@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Vulcanair Aircraft V1 series Service Bulletin VA–22, rev. 0, dated June 15, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Vulcanair S.p.A., via G. Pascoli, 7, 80026 Casoria (NA), Italy; phone: +39 081 5918111; email: *info@vulcanair.com;* website: *support.vulcanair.com.*

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

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

Issued on June 20, 2023.

Gaetano A. Sciortino,

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

[FR Doc. 2023–13497 Filed 6–26–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1398; Project Identifier AD–2023–00472–P]

RIN 2120–AA64

Airworthiness Directives; Hamilton Sundstrand Corporation Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Hamilton Sundstrand Corporation (Hamilton Sundstrand) Model 14SF–17 and 14SF–19 propellers. This proposed AD was prompted by a report of an auxiliary motor and pump failing to feather a propeller in flight. This proposed AD would require replacement of a certain auxiliary motor and pump. This proposed AD would also prohibit installation of a certain auxiliary motor and pump on any propeller. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 27, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2023–1398; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Hamilton Sundstrand, One Hamilton Road, Windsor Locks, CT 06096–1010, phone: (877) 808–7575; email: *CRC@collins.com.*

• You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Isabel Saltzman, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (781) 238–7649; email: *9-AVS-AIR-BACO-COS@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1398; Project Identifier AD–2023–00472–P'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

The FAA has been informed that Hamilton Sundstrand has done some outreach with affected operators regarding the proposed corrective actions for this unsafe condition. As a result, affected operators are already aware of the proposed corrective actions and, in some cases, have already begun planning for replacement of certain auxiliary motors and pumps. Therefore, the FAA has determined that a 30-day comment period is appropriate given the particular circumstances related to the proposed correction of this unsafe condition.

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

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.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Isabel Saltzman, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA received a report of an auxiliary motor and pump installed on a non-Hamilton Sundstrand propeller failing to feather the propeller in flight through either the primary or the backup means. The failure was caused by motor magnets in the auxiliary motor and pump that were de-bonded due to corrosion at the magnet and housing interface. The de-bonded motor magnets prevented motor rotation. Hamilton Sundstrand Model 14SF–17 and 14SF–19 propellers use the same auxiliary motor and pump. These propellers are installed on, but not limited to, Viking Air Limited (Type Certificate previously held by Bombardier Inc.; Canadair Limited) Model CL–215–6B11 (CL–215T & CL–415 Variants) airplanes. This condition, if not addressed, could result in reduced controllability of the aircraft and consequent loss of control of the aircraft.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Hamilton Sundstrand Service Bulletin (SB) 14SF–61–168, Revision 1, dated December 21, 2016. This service information specifies instructions for replacing the auxiliary motor and pump. Hamilton Sundstrand Corporation is a UTC Aerospace Systems Company. This service information is identified as both Hamilton Sundstrand Corporation and UTC Aerospace Systems. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require the removal from service of an auxiliary motor and pump having part number (P/N) 782655–3 (Aerocontrolex P/N 4122–006009) and replacement with an auxiliary motor and pump having P/N 782655–4 (Aerocontrolex P/N 4122–056000). This proposed AD would also prohibit installation of an auxiliary motor and pump having P/N 782655–3 (Aerocontrolex P/N 4122–006009) on any propeller.

Differences Between This Proposed AD and the Service Information

Where the service information specifies returning certain parts to Hamilton Sundstrand, this proposed AD does not contain that requirement.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 20 propellers installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace auxiliary motor and pump.	2 work-hours × $85 per hour = $170	$11,000	$11,170	$223,400
Perform post-installation system test.	1 work-hour x $85 per hour = $85	0	85	1,700

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Hamilton Sundstrand Corporation: Docket No. FAA–2023–1398; Project Identifier AD–2023–00472–P.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 27, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Hamilton Sundstrand Corporation (Hamilton Sundstrand) Model 14SF–17 and 14SF–19 propellers.

Note 1 to paragraph (c): These propellers are known to be installed on, but not limited to, Viking Air Limited (Type Certificate previously held by Bombardier Inc.; Canadair Limited) Model CL–215–6B11 (CL–215T and CL–415 Variants) airplanes.

(d) Subject

Joint Aircraft System Component (JASC) Code 6123, Propeller Feathering/Reversing.

(e) Unsafe Condition

This AD was prompted by a report of an auxiliary motor and pump failing to feather a propeller in flight. The FAA is issuing this AD to prevent the failure of a certain auxiliary motor and pump to feather propellers. The unsafe condition, if not addressed, could result in reduced controllability of the aircraft and consequent loss of control of the aircraft.

(f) Compliance

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

(g) Required Actions

(1) Within 90 days after the effective date of this AD, remove from service an auxiliary motor and pump having part number (P/N) 782655–3 (Aerocontrolex P/N 4122–006009) and replace with an auxiliary motor and pump having P/N 782655–4 (Aerocontrolex P/N 4122–056000) in accordance with the Accomplishment Instructions, paragraphs 3.B., 3.C., and 3.E. of Hamilton Sundstrand Service Bulletin (SB) 14SF–61–168, Revision 1, dated December 21, 2016 (Hamilton Sundstrand SB 14SF–61–168, Revision 1).

(2) After replacement of the auxiliary motor and pump, perform a post-installation system test in accordance with the Accomplishment Instructions, paragraph 3.F. of Hamilton Sundstrand SB 14SF–61–168, Revision 1.

(h) Installation Prohibition

After the effective date of this AD, do not install an auxiliary motor and pump having P/N 782655–3 (Aerocontrolex P/N 4122–006009) on any propeller.

(i) No Return of Parts

Where the service information referenced in the Accomplishment Instructions, paragraph 3.B. of Hamilton Sundstrand SB 14SF–61–168, Revision 1, specifies returning certain parts to the manufacturer for modification, this AD does not include that requirement.

(j) Credit for Previous Actions

You may take credit for the actions required by paragraph (g) of this AD if you performed those actions before the effective date of this AD using Hamilton Sundstrand SB 14SF–61–168, Original Issue, dated December 14, 2016.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, East Certification Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the branch office, send it to the attention of the person identified in paragraph (l)(1) of this AD. Information may be emailed to: *9-AVS-AIR-BACO-COS@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Related Information

(1) For more information about this AD, contact Isabel Saltzman, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (781) 238–7649; email: *9-AVS-AIR-BACO-COS@faa.gov*.

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

(m) Material Incorporated by Reference

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

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

(i) Hamilton Sundstrand Corporation Service Bulletin 14SF–61–168, Revision 1, dated December 21, 2016.

Note 2 to paragraph (m)(2)(i): Hamilton Sundstrand Corporation is a UTC Aerospace Systems Company. This service information is identified as both Hamilton Sundstrand Corporation and UTC Aerospace Systems.

(ii) [Reserved]

(3) For service information identified in this AD, contact Hamilton Sundstrand, One Hamilton Road, Windsor Locks, CT 06096–1010, phone: (877) 808–7575; email: *CRC@collins.com.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on

the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on June 21, 2023.

Michael Linegang,

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

[FR Doc. 2023–13582 Filed 6–26–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1220; Project Identifier MCAI–2023–00478–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A330–200 series airplanes; Model A330–200 Freighter series airplanes; Model A330–300 series airplanes; Model A330–800 series airplanes; Model A330–900 series airplanes; Model A340–200 series airplanes; and Model A340–300 series airplanes. This proposed AD was prompted by a report of cracks found in the fuel control unit housing assembly of a Honeywell GTCP331–350 auxiliary power unit (APU), which caused fuel leakage in the APU compartment. This proposed AD would require replacing any affected APU fuel control unit or affected APU, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). This proposed AD would also prohibit the installation of affected parts under certain conditions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 11, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1220; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–1220.
- For Honeywell service information identified in this NPRM, contact Honeywell International, Inc., 111 South 34th Street, Phoenix, AZ 85034; phone: (800) 601–3099; fax: (602) 365–5577; website: *myaerospace.honeywell.com/wps/portal.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 206–231–3667; email *Timothy.P.Dowling@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1220; Project Identifier MCAI–2023–00478–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

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.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 206–231–3667; email *Timothy.P.Dowling@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0057, dated March 16, 2023 (EASA AD 2023–0057), to correct an unsafe condition for all Airbus SAS Model 330–201, A330–202, A330–203, A330–223, A330–223F, A330–243, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, A330–343, A330–841, A330–941, A330–743L, A340–211, A340–212, A340–213, A340–311, A340–312, and A340–313 airplanes. Airbus SAS Model A330–743L airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. The MCAI states cracks were found in the fuel control unit housing assembly of a Honeywell GTCP331–350 APU, which caused fuel leakage in the APU compartment. This condition, if not addressed, could lead to an

uncommanded in-flight shutdown of the APU, or a fire in the APU compartment, possibly resulting in damage to the airplane.

The FAA is proposing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1220.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0057 specifies procedures for replacing affected APU fuel control units or APUs. EASA AD 2023–0057 also prohibits the installation of affected parts under certain conditions.

Honeywell Service Bulletin GTCP331–49–7954, dated December 19, 2007, specifies serial numbers for affected APU fuel control units.

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0057, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0057 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0057 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same, as the heading of a particular section in EASA AD 2023–0057 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0057. Service information required by EASA AD 2023–0057 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1220 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 128 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 5 work-hours × $85 per hour = $425	*$	Up to $425	Up to $54,400.

*The FAA has received no definitive data on which to base the parts cost estimate.

The FAA has included all known costs in its cost estimate. According to the APU manufacturer, however, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2023–1220; Project Identifier MCAI–2023–00478–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 11, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes specified in paragraphs (c)(1) through (7) of this AD, certificated in any category.

(1) Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Model A330–223F and –243F airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Model A330–841 airplanes.

(5) Model A330–941 airplanes.

(6) Model A340–211, –212, and –213 airplanes.

(7) Model A340–311, –312, and –313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 49, Airborne Auxiliary Power.

(e) Unsafe Condition

This AD was prompted by a report of cracks in the fuel control unit housing assembly of a Honeywell GTCP331–350 auxiliary power unit (APU), which caused fuel leakage in the APU compartment. The FAA is issuing this AD to address the cracked fuel control unit housing assemblies. The unsafe condition, if not addressed, could result in an uncommanded APU in-flight shutdown, or fire in the APU compartment, which could result in damage to the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0057, dated March 16, 2023 (EASA AD 2023–0057).

(h) Exceptions to EASA AD 2023–0057

(1) Where EASA AD 2023–0057 refers to its effective date; this AD requires using the effective date of this AD.

(2) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0057.

(3) Where EASA AD 2023–0057 defines ''the SB,'' for this AD, operators must use Honeywell Service Bulletin GTCP331–49–7954, dated December 19, 2007.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 206–231–3667; email *Timothy.P.Dowling@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0057, dated March 16, 2023.

(ii) Honeywell Service Bulletin GTCP331–49–7954, dated December 19, 2007.

(3) For EASA AD 2023–0057, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) For Honeywell service information identified in this AD, contact Honeywell International, Inc., 111 South 34th Street, Phoenix, AZ 85034; phone: (800) 601–3099; fax: (602) 365–5577; website: *myaerospace.honeywell.com/wps/portal.*

(5) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on June 21, 2023.

Michael Linegang,

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

[FR Doc. 2023–13574 Filed 6–26–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1221; Project Identifier MCAI–2023–00070–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2020–06–10, which applies to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2020–06–10 requires repetitive inspections for cracking of the vertical stiffeners of the left- and right-hand sides of the window frames and corrective actions if necessary. Since the FAA issued AD 2020–06–10, it was determined that certain compliance times need to be reduced. This proposed AD would retain the requirements of AD 2020–06–10, with amended compliance times, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 11, 2023.

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

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1221; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

• For the EASA AD identified in this NPRM, you may contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–1221.

• You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3667; email *Timothy.P.Dowling@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1221; Project Identifier MCAI–2023–00070–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

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.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3667; email *Timothy.P.Dowling@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2020–06–10, Amendment 39–19879 (85 FR 17490, March 30, 2020) (AD 2020–06–10), for certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2020–06–10 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2019–0173, dated July 18, 2019, to correct an unsafe condition.

AD 2020–06–10 requires repetitive inspections for cracking of the vertical stiffeners of the left- and right-hand sides of the window frames and corrective actions if necessary. The FAA issued AD 2020–06–10 to address cracking of the vertical stiffeners of the left- and right-hand sides of the window frames, which could affect the structural integrity of the airplane.

Actions Since AD 2020–06–10 Was Issued

Since the FAA issued AD 2020–06–10, it was determined that certain compliance times need to be reduced, based on further analysis. EASA superseded EASA AD 2019–0173, dated July 18, 2019, and issued EASA AD 2023–0009, dated January 16, 2023 (EASA AD 2023–0009) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. The MCAI states that, during an inspection, cracking was found on the frame of the right-hand side sliding window in the flight deck. This condition, if not corrected, could lead to reduced structural integrity of the airplane.

The FAA is proposing this AD to address the unsafe condition on these products. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1221.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2020–06–10, this proposed AD would retain the requirements of AD 2020–06–10. Those requirements are referenced in EASA AD 2023–0009, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0009 specifies procedures for repetitive inspections for cracking of the vertical stiffeners of the left- and right-hand sides of the window frame and corrective actions if necessary. Corrective actions include modification, rework, and repair. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop

in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0009 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0009 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0009 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0009 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0009. Service information required by EASA AD 2023–0009 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1221 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,525 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2020–06–10.	11 work-hours × $85 per hour = $935.	$0	$935	$1,425,875 per inspection cycle.

* Table does not include estimated costs for reporting.

The FAA estimates that it would take about 1 work-hour per product to comply with the proposed reporting requirement in this proposed AD. The average labor rate is $85 per hour. Based on these figures, The FAA estimates the cost of reporting the inspection results on U.S. operators to be $129,625, or $85 per product.

The FAA estimates the following costs to do any necessary on-condition modifications that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need this on-condition modification:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
5 work-hours × $85 per hour = $425	(*)	* $425

* The FAA has received no definitive data on which to base the parts cost estimates for the on-condition modification specified in this proposed AD.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the other on-condition actions specified in this proposed AD.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the

national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2020–06–10, Amendment 39–19879 (85 FR 17490, March 30, 2020); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2023–1221; Project Identifier MCAI–2023–00070–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 11, 2023.

(b) Affected ADs

This AD replaces AD 2020–06–10, Amendment 39–19879 (85 FR 17490, March 30, 2020) (AD 2020–06–10).

(c) Applicability

This AD applies to Airbus SAS Model airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0009, dated January 16, 2023 (EASA AD 2023–0009).

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report of cracking found on the frame of the right-hand side sliding window in the flight deck, and a determination that certain compliance times need to be reduced. The FAA is issuing this AD to address cracking of the vertical stiffeners of the left- and right-hand sides of the window frames, which could affect the structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0009.

(h) Exceptions to EASA AD 2023–0009

(1) Where EASA AD 2023–0009 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2023–0009 refers to August 1, 2019 (the effective date of EASA AD 2019–0173), this AD requires using May 4, 2020 (the effective date of AD 2020–06–10).

(3) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0009.

(4) Paragraph (3) of EASA AD 2023–0009 specifies to report inspection results to Airbus within a certain compliance time. For this AD, report inspection results (in case of findings only) at the applicable time specified in paragraph (h)(4)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 90 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

(5) Where paragraph (5) of EASA AD 2023–0009 specifies credit for certain actions, this AD provides credit for using the torque values specified in Section 13 of the Airbus technical adaptations (TAs) identified in paragraphs (h)(5)(i) through (vi) of this AD, when installing a certain eccentric referenced in ''Airbus SB A320–53–1402 original issue'' or ''Airbus SB A320–53–1403 original issue,'' as specified in the applicable TA, before the effective date of this AD.

(i) Airbus TA 80662272/007/2019, Issue 1, dated August 29, 2019.

(ii) Airbus TA 80662272/008/2019, Issue 1, dated August 29, 2019.

(iii) Airbus TA 80662272/009/2019, Issue 1, dated August 29, 2019.

(iv) Airbus TA 80662272/010/2019, Issue 1, dated August 29, 2019.

(v) Airbus TA 80696258/006/2019, Issue 1, dated October 29, 2019.

(vi) Airbus TA 80696258/007/2019, Issue 1, dated October 29, 2019.

(6) Where Table 1 of EASA AD 2023–0009 specifies configurations, replace the text ''post SB'' with ''post embodiment of SB'' and replace the text ''pre SB'' with ''pre embodiment of SB.''

(i) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, may be issued to operate the airplane to a location where the requirements of this AD can be accomplished, but concurrence by the Manager, International Validation Branch, FAA, is required before issuance of the special flight permit.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(ii) AMOCs approved previously for AD 2020–06–10 are approved as AMOCs for the corresponding provisions of EASA AD 2023–0009 that are required by paragraph (g) of this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Additional Information

For more information about this AD, contact Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY; telephone 206–231–3667; email *Timothy.P.Dowling@faa.gov.*

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this

paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0009, dated January 16, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0009, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on June 21, 2023.

Michael Linegang,

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

[FR Doc. 2023–13566 Filed 6–26–23; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 17

RIN 3038–AF27

Large Trader Reporting Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing revisions to the Commission's regulations that set forth large trader position reporting requirements for futures and options. First, the Commission is proposing to remove an outdated 80-character submission standard and delegate certain authority to the Office of Data and Technology to designate a modern submission standard for certain reports required to be submitted. Second, the Commission is proposing to replace certain enumerated data fields with an appendix specifying applicable data elements and a separate Guidebook specifying the form and manner for reporting. These revisions would modernize large trader position reporting and align it with other reporting structures set out in the Commission's regulations.

DATES: Comments must be submitted on or before August 28, 2023.

ADDRESSES: You may submit comments, identified by ''Large Trader Reporting Requirements, RIN 3038–AF27,'' by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov/.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (''FOIA''), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all submissions from *https://www.comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

FOR FURTHER INFORMATION CONTACT: Owen Kopon, Associate Chief Counsel, at (202) 418–5360 or *okopon@cftc.gov,* Paul Chaffin, Assistant Chief Counsel, at (202) 418–5185 or *pchaffin@cftc.gov,* Division of Market Oversight, James Fay, IT Specialist, at (202) 418–5293 or *jfay@cftc.gov,* Division of Data, or Daniel Prager, Research Economist, (202) 418–5801 or *dprager@cftc.gov,* Office of the Chief Economist, in each case at the Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Part 17 of the Commission's regulations governs large trader reporting for futures and options.[2] Among other things, those rules require futures commission merchants (''FCMs''), foreign brokers, clearing members, and certain reporting markets[3] (FCMs, foreign brokers, clearing members, and such reporting markets are collectively referred to herein as ''reporting firms'') to report daily position information of the largest futures and options traders to the Commission.[4]

The Commission uses these § 17.00(a) large trader reports to carry out its market surveillance programs, which include detection and prevention of price manipulation, as well as enforcement of speculative limits.[5] Among other things, data reported under Part 17 enable the Commission to identify large positions in single markets or across markets, including by aggregating the positions of a particular beneficial owner across multiple accounts held with multiple clearing members. In addition to supporting the Commission's surveillance programs, aggregated position data collected under Part 17 serves as the basis of the Commission's weekly Commitments of Traders (''COT'') report.[6] Historically, a wide range of both commercial and speculative traders have used the COT report for a variety of purposes related to their trading activities.[7] Finally, Part

[1] 17 CFR 145.9.

[2] 17 CFR part 17.

[3] For exclusively self-cleared contracts, designated contract markets (''DCMs'') must report data required to be reported under regulation 17.00(a) on behalf of clearing members. *See* 17 CFR 17.00(i).

[4] 17 CFR 17.00(a).

[5] *See, e.g.,* Final Rule, Reports; General Provisions; Adoption of Final Rules, 49 FR 46116, 46116 (Nov. 23, 1984).

[6] *See, e.g.,* Comprehensive Review of the Commitments of Traders Reporting Program, 71 FR 35627, 35630 (June 21, 2006) (stating that the Commission generates the COT report using Part 17 data); Final rule and corrections, Reporting Requirements for Contract Markets, Futures Commission Merchants, Members of Exchanges and Large Traders, 46 FR 59960, 59961 n.6 (Dec. 8, 1981) (''[I]n addition to market surveillance and enforcement of speculative limits, large trader data provides the basis for the Commission's monthly report on commitments of large traders.'').

[7] *See, e.g.,* CFTC, ''Commission Actions in Response to the Comprehensive Review of the Commitments of Traders Reporting Program,'' at 6 (Dec. 5, 2006), *available at https://www.cftc.gov/idc/groups/public/@commitmentsoftraders/documents/file/noticeonsupplementalcotrept.pdf; see also* CFTC, Staff Report on Commodity Swap

17 data is an important source of data for fulfillment of the Commission's market analysis program and to support Commission research projects.

Since the 1980s, § 17.00(g) has set forth both the submission standard and data fields to be used in § 17.00(a) large trader reports.[8] Section 17.00(g) requires reporting firms to submit data in a highly-specified 80-character record format that is unique to § 17.00(a) large trader reports. As technology and markets have evolved, this record format has become outdated. It does not accommodate information needed to represent certain contracts, and necessitates manual work by staff to validate and ingest data.[9] The Commission is issuing a proposal to update data reporting under § 17.00(a) by removing § 17.00(g)'s 80-character record format and delegating authority to the Director of the Office of Data and Technology to designate a modern data submission standard. Additionally, the Commission proposes to replace the data fields enumerated in that § 17.00(g) record format with a proposed Appendix C to Part 17 specifying the data elements required to be reported, and to delegate to the Director of the Office of Data and Technology the authority to specify the form, manner, coding structure, and electronic data transmission procedures for reporting these data elements under Part 17. These changes would both address shortcomings of the current format for Part 17 data and align Part 17 reporting with the reporting structure set out in Parts 16, 20, 39, 43, and 45.[10]

B. Statutory and Regulatory Framework for § 17.00(a) Large Trader Reporting for Futures and Options

The reporting rules contained in Parts 15, 16, 17, 18, 19, and 21 of the Commission's regulations are structured to ensure that the Commission receives adequate information to facilitate oversight of futures and options markets via its market surveillance programs.[11] Part 16 requires contract markets to submit certain data; Parts 17 and 21 require FCMs, clearing members, foreign brokers, and certain reporting markets to submit certain data; and Parts 18 and 19 require individual traders to submit certain data.[12]

The reporting rules are implemented by the Commission based on the authority of sections 4a, 4c(b), 4g, and 4i of the Commodity Exchange Act (''CEA''). Section 4a of the CEA permits the Commission to set and approve exchange-set limits and enforce speculative position limits.[13] Section 4c(b) of the CEA gives the Commission plenary authority to regulate transactions that involve commodity options.[14] Section 4g of the CEA imposes reporting and recordkeeping obligations on registered entities, and requires each registered entity to file such reports as the Commission may require on proprietary and customer transactions and positions in commodities for future delivery executed on any board of trade.[15] Additionally, Section 4g of the CEA requires registered entities to maintain daily trading records as required by the Commission and permits the Commission to require that such daily trading records be made available to the Commission.[16] Section 4i of the CEA requires the filing of such reports as the Commission may require when positions made or obtained on DCMs equal or exceed Commission-set levels.[17]

The Commission's large trader reporting regime for futures and options requires reporting firms to submit, pursuant to § 17.00(a), daily reports to the Commission providing positions in open contracts [18] and identifying information for the futures and options trader accounts that exceed Commission-set reporting levels—called special accounts [19]—and requires large traders themselves to provide certain identifying information.[20] More specifically, § 17.00(a) requires reporting firms to submit a § 17.00(a) large trader position report—historically referred to as a ''series '01 report'' [21]—that itemizes by special account certain positions, deliveries of futures, and exchanges of futures for related positions associated with each account that carries a reportable position.[22] Section 17.01 requires, separately, that reporting firms submit information, via Form 102A,[23] identifying the traders behind special accounts by name, address, and occupation, once an account accrues a reportable position.[24] Reporting firms, as appropriate, submit Forms 102 to the Commission for each account when that account becomes reportable as a special account.[25] By aggregating information from § 17.00(a) large trader position reports and Forms 102, the Commission can determine the size of each reportable trader's overall positions across special accounts held with multiple FCMs, clearing members, or foreign brokers.

These data reported under Part 17 are used for the Commission's market surveillance program, for generating the weekly COT report, for market analysis, and for research projects.[26] Section 17.00(g) provides the data submission standard and data elements for the reportable positions by special accounts—§ 17.00(a) large trader report data, or series '01 report data—in the form of an 80-character record format.[27]

The Commission receives § 17.00(a) large trader reports by 9 a.m. on the business day following the day to which the information pertains.[28] Information obtained from such reports is ingested into the Commission's Integrated Surveillance System (''ISS''), where it may be linked to ownership and control information for special accounts reported pursuant to § 17.01.[29]

Dealers & Index Traders with Commission Recommendations, at 46 (Sept. 2008), *available at https://www.cftc.gov/idc/groups/public/@newsroom/documents/file/cftcstaffreportonswapdealers09.pdf* (describing various market participants' and researchers' uses for the COT report).

[8] The final rule promulgating regulation 17.00(g) was published in 1986. Final Rule, Reports Filed by Contract Markets, Futures Commission Merchants, Clearing Members, Foreign Brokers, and Large Traders, 51 FR 4712 (Feb. 7, 1986).

[9] 17 CFR 17.00(g).

[10] *See* 17 CFR part 16; 17 CFR part 20; 17 CFR part 39; 17 CFR part 43; 17 CFR part 45.

[11] *See, e.g.,* Final Rule, Reporting Levels and Recordkeeping, 69 FR 76392, 76392 (Dec. 21, 2004).

[12] *See* 17 CFR parts 16–19, 21.

[13] 7 U.S.C. 6a. Section 4a of the CEA also permits the Commission to set, approve, and enforce speculative position limits with respect to swaps.

[14] 7 U.S.C. 6c(b).

[15] 7 U.S.C. 6g.

[16] *See id.*

[17] 7 U.S.C. 6i.

[18] ''Open contract'' means any commodity or commodity option position held by any person on or subject to the rules of a board of trade which have not expired, been exercised, or offset. *See* 17 CFR 1.3 and 17 CFR 15.00(n).

[19] A ''special account'' means any commodity futures or options account in which there is a ''reportable position.'' 17 CFR 15.00(r). A ''reportable position'' is any open contract position held or controlled by a trader at the close of business in any one futures contract of a commodity traded on any one contract market that equals or exceeds the reportable levels fixed by the Commission in regulation 15.03. 17 CFR 15.03.

[20] 17 CFR part 18.

[21] *See, e.g.,* 17 CFR 15.02 (enumerating reports by ''Form No.'').

[22] 17 CFR 17.00(a).

[23] *See* 17 CFR part 17, App'x A.

[24] 17 CFR 17.01.

[25] 17 CFR 17.02(b).

[26] *See, e.g.,* Final Rule, Reports Filed by Contract Markets, Futures Commission Merchants, Clearing Members, Foreign Brokers, and Large Traders, 51 FR 4712, at 4712 (Feb. 7, 1986).

[27] 17 CFR 17.00(g).

[28] 17 CFR 17.02(a).

[29] ISS receives and stores end-of-day position reports submitted to the CFTC and allows the Commission's divisions and offices to monitor daily activities of large traders. *See, e.g.,* Final Rule, Ownership and Control Reports, Form 102/102S, 40/40S, and 71, 78 FR 69178, 69180 (Nov. 18, 2013). Among other things, ISS is used to generate the COT report.

C. Shortcomings of the § 17.00(g) Record Format

Section 17.00(g)'s 80-character record format has been in place since 1986,[30] and has become outdated and difficult for staff to use. Historically, Part 17 has evolved alongside technological advances in data transmission. At the time of the Commission's establishment, daily reports with respect to special accounts could be submitted to the Commission on paper series '01 forms.[31] In 1984, the Commission amended Part 17 to permit, but not require, reporting firms to submit Part 17 reports on certain Commission-compatible data processing media—at that time, computer printouts or magnetic tape.[32] The Commission found these methods improved data quality and saved time, money, and effort for both the Commission and market participants.[33] In 1986, the Commission revised Part 17 to specifically require that a reporting firm submit reports in a machine-readable form compatible with the Commission's data processing system, unless otherwise authorized by the Commission.[34] At that time, newly-established § 17.00(g) set out the data fields to be reported and introduced an 80-character submission standard based on Cobol Programming Language descriptions.[35] Market participants were required to submit § 17.00(a) large trader position reports using compatible data processing media, defined to include magnetic tape, magnetic diskette, or dial-up data transmission at speeds up to 1200 baud asynchronous transmission and 4800 baud synchronous transmission.[36] The Commission made minor amendments to the particulars of the 80-character record format in 1997 and, in recognition of evolving data transmission methods, revised the definition of ''compatible data-processing media'' to delete its list of specific compatible media and delegate to staff the authority to define acceptable media.[37] The 80-character record format has remained largely unchanged since 1997. In 2004, the Commission revised requirements that specified that reports be transmitted by ''dial-up'' to allow for more general transmission via internet connection,[38] and expanded the requirement that reporting firms include information concerning volume attributable to exchanges of futures for physicals to include information concerning exchanges of futures for derivatives positions.[39]

Technology for financial reporting has further advanced since the 1990s. As a result, the record format for § 17.00(a) large trader reports has become outdated.

First, the Cobol Language submission standard embedded in current § 17.00(g) is outdated. No other CFTC reporting regime relies in the same manner on a Cobol Language submission standard today.[40] Outside of the Part 17 context, the Commission has transitioned to more modern data submission standards, such as Financial Products Markup Language (''FpML''),[41] the Financial Information eXchange (''FIX'') Protocol or Financial Information eXchange Markup Language (''FIXML''),[42] and other submission standards using extensible markup language (''XML'').[43] XML standards have the ability to capture complex or customizable information about products[44] beyond the capabilities of the simpler Cobol Language used in the current § 17.00(g) standard. The Commission converted reporting for transaction data reporting by DCMs to an FIXML standard in the 2009 to 2010 period.[45] XML-based standards like FpML and FIXML both have been widely used by market participants and regulators to represent financial data for purposes of electronically messaging and confirming derivatives trades since at least 2011.[46]

Second, the current § 17.00(g) record format has grown error-prone. Correcting errors in § 17.00(a) data is burdensome for both Commission staff and industry. Uncorrected errors in such data impair the Commission's ability to utilize data for surveillance and market analysis. In addition to relying on data reported under § 17.00(a) for market surveillance, the Commission generates the weekly COT report based on such data.[47] Because the current § 17.00(g) record format does not support automated data quality checks from the Commission back to reporting firms, Commission staff must manually contact reporting firms to address errors, which has proven time-consuming and inefficient. Reporting firms must, in turn, submit error corrections. This error correction process puts the timeliness of the COT report in jeopardy. The error correction process also imposes costs on the Commission and on industry that could be reduced or avoided if the Commission were able to implement automated data quality checks.

Third, data received in the § 17.00(g) record format is difficult to query outside of ISS, limiting staff's flexibility in working with this data and impeding staff's ability to integrate this data with other data housed outside of ISS.

Fourth, new contract features have been introduced to the market since the last revisions to § 17.00(g), including certain features which are in some cases not readily susceptible to representation

[30] *See* 51 FR 4712.

[31] *See, e.g.,* Final Rule, Rules Under the Commodity Exchange Act, 41 FR 3192, 3208 (Jan. 21, 1976) (regulation 17.03 permitted reporting of series 01 information on ''compatible data-processing punched cards'' in addition to magnetic tape or discs). The Commission's predecessor agency received regulation 17.00(a) large trader reporting in a similar format. *See, e.g.,* Supersedure of Certain Regulations, 26 FR 2968, 2969 (Apr. 7, 1961).

[32] Final Rule, Reports Filed by Contract Markets, Futures Commission Merchants, Clearing Members, Foreign Brokers and Large Traders, 51 FR 4712–01, 4713–14 (Feb. 7, 1986).

[33] *Id.* at 4714; *see also* Proposed Rule, Reporting Requirements for Contract Markets, Futures Commission Merchants, Clearing Members and Traders, 50 FR 30450–01, 30452 (Jul. 26, 1985).

[34] 51 FR at 4714.

[35] 17 CFR 17.00(g) (1986). ''Cobol'' refers to Common Business Oriented Language.

[36] 17 CFR 15.00(1) (1986); *see also* 51 FR at 4714. By 1995, the Commission received 95 percent of its futures large trader data through dial-up transmission or on machine-readable media. *See* Proposed Rule, Futures Commission Merchants, Clearing Members and Foreign Brokers; Option Large Trader Reports Daily Filing Requirements, 61 FR 37409–01, 37411 (Jul. 18, 1996).

[37] *See* Final Rule, Recordkeeping: Reports by Futures Commission Merchants, Clearing Members, Foreign Brokers, and Large Traders, 85 FR 24026, 24028 (May 2, 1997).

[38] *See* Final Rule, Reporting Levels and Recordkeeping, 69 FR 76392–01, 76394 (Dec. 21, 2004).

[39] *See id.* at 76394.

[40] In 2004, the Commission removed a Cobol Language record format used for special calls under regulation 21.02 as part of the process of modernizing the rules covering data and hard copy submissions to the Commission under Parts 15 through 21. *See id.* at 76400 (removing regulation 21.02).

[41] FpML is a freely-licensed business information exchange standard for derivatives. *See* FpML, ''What is FpML®?,'' *available at https://www.fpml.org/about/what-is-fpml/* (last visited April 26, 2023).

[42] *See* FIX Trading, ''What is FIX?,'' *available at https://www.fixtrading.org/what-is-fix/* (last visited April 26, 2023).

[43] *See, e.g.,* Large Trader Reporting for Physical Commodity Swaps: Division of Market Oversight Guidebook for Part 20 Reports (June 22, 2015), *available at https://www.cftc.gov/idc/groups/public/@newsroom/documents/file/ltrguidebook062215.pdf* (incorporating FpML and FIXML data standards for Part 20 reporting); CFTC Technical Specification, Parts 43 and 45 swap data reporting and public dissemination requirements, Version 3.0 (Sept. 30, 2021), *available at https://www.cftc.gov/media/6576/Part43_45TechnicalSpecification093021CLEAN/download* (incorporating FIXML data standard for Parts 43 and 45 reporting).

[44] *See id.*

[45] *See* Advanced Notice of Proposed Rulemaking, Account Ownership and Control Information, 74 FR 31642, 31644 (July 2, 2009).

[46] *See* CFTC and SEC, ''Joint Study on the Feasibility of Mandating Algorithmic Descriptions for Derivatives,'' at 11 (Apr. 7, 2011), *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/dfstudy_algo_040711.pdf.*

[47] *See, e.g.,* 46 FR at 59961 n.6.

in § 17.00(g)'s current 80-character record format. For example, the current § 17.00(g) submission standard contains a single data field that allows the reporting firm to indicate the strike for an option position, but cannot accommodate reporting strikes for a bounded option position—a position in a contract that has both an upper and lower strike—in that single data field. To accommodate data reporting for such contracts, the Commission must undertake additional manual work, including ingesting supplemental data reports. This is time-consuming, inefficient, and introduces unnecessary risks of error.

In light of the above, the Commission is proposing to amend Part 17 to (1) remove the outdated 80-character record format and replace it with provisions that delegate to staff the authority to designate a modern data submission standard, and (2) replace the data fields represented in the 80-character record format with an appendix of applicable data elements and a Part 17 Guidebook to provide the form and manner for submitting data reports. In introducing an appendix of applicable data elements, the Commission also proposes to add data elements necessary to represent positions in certain innovative contracts in § 17.00(a) reports and to indicate the types of transactions that resulted in day-to-day changes in positions as described below.

II. Proposed Rules

A. Sections 17.00(g), 17.00(h), and 17.03(d)—Submission Standard

As discussed above, the current § 17.00(g) record format has become outdated, error-prone, and difficult to use. The Commission is proposing amendments to remove § 17.00(g)'s current, outdated 80-character record format and to replace it with provisions that allow the Commission to implement modern data submission standards.[48] Specifically, the Commission proposes to remove current § 17.00(g)'s 80-character record format and amend § 17.03(d) to delegate authority to the Director of the Office of Data and Technology to designate a submission standard for reports required under § 17.00(a). That submission standard would be published in a Part 17 Guidebook. The Commission proposes replacing current § 17.00(g) with a provision requiring that a report under § 17.00(a) include all applicable data elements specified in a proposed Appendix C to Part 17, and be submitted in the form and manner provided in the Part 17 Guidebook. Delegated authority would facilitate implementing a submission standard that accommodates technological advances and provides efficiencies to market participants required to submit reports required by § 17.00(a).

1. Removal of the § 17.00(g) Record Format and Delegation of Authority to the Office of Data and Technology To Require Modern Submission Standards

As discussed above, the current § 17.00(g) record format has become outdated. The Cobol Language submission standard is used nowhere else in CFTC reporting, as the Commission has otherwise transitioned to more modern data submission standards for data reporting across its reporting regulations.[49] That record format is also error-prone and difficult to query outside of ISS, rendering large trader position data difficult to integrate with other Commission data. And, that submission standard lacks the flexibility to accommodate certain features of innovative contracts.

To replace the current § 17.00(g) record format, the Commission proposes to revise §§ 17.00(g) and 17.03(d) to explicitly delegate authority to the Director of the Office of Data and Technology to determine the form and manner for reporting data required to be reported under § 17.00(a), including to establish the data submission standard for such reports. Concurrently with the issuance of this notice, the Office of Data and Technology has published a proposed Part 17 Guidebook on the Commission's website, *https://www.cftc.gov*. The proposed Part 17 Guidebook will specify the data submission standard for reports required under § 17.00(a), among other things. Such an approach is consistent with the Commission's practice in other data reporting regimes.[50] To facilitate adaptation to modern data standards, the Commission has delegated authority to the Divisions to determine which data standards to permit or require in order to accommodate the needs of different communities of users.[51] The Divisions exercise delegated authority through the publication of guidebooks or technical specifications that set out the form, manner, and timing for reporting data.

The proposed Part 17 Guidebook specifies that reporting firms submit § 17.00(a) data in FIXML format. In its other reporting regimes, the Commission typically requires modern XML submission standards, such as FpML[52] or FIXML.[53] Receiving Part 17 data in a modern submission format comparable to that used in the submission of other datasets the Commission relies on would enable staff to more easily analyze Part 17 data outside of ISS and to more easily integrate Part 17 data with other Commission datasets. Notably, the Commission receives Trade Capture Reports and Ownership and Control Reports in a FIXML format.[54] Section 17.00(a) position data can be linked to § 16.02 transaction data through ownership and control data required to

[48] 17 CFR 17.00(g).

[49] *See, e.g., See* Advanced Notice of Proposed Rulemaking, Account Ownership and Control Information, 74 FR 31642, 31644 (July 2, 2009) (regulation 16.02 data to be reported in FIXML); Large Trader Reporting for Physical Commodity Swaps: Division of Market Oversight Guidebook for Part 20 Reports (June 22, 2015), *available at https://www.cftc.gov/idc/groups/public/@newsroom/documents/file/ltrguidebook062215.pdf* (incorporating FpML and FIXML data standards for Part 20 reporting); CFTC Technical Specification, Parts 43 and 45 swap data reporting and public dissemination requirements, Version 3.0 (Sept. 30, 2021), *available at https://www.cftc.gov/media/6576/Part43_45TechnicalSpecification093021CLEAN/download* (incorporating FIXML data standard for Parts 43 and 45 reporting).

[50] *See, e.g.,* 17 CFR 45.15(a)(2) (delegating authority to staff to determine whether to require reporting swap data using one or more particular data standards (such as FIX, FpML, ISO 20022, or some other standard), to accommodate the needs of different communities of users); 17 CFR 20.8(d) (delegating authority to staff to provide instructions or determine the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required for large trader swaps reporting under Part 20).

[51] *See, e.g.,* 17 CFR 20.8; 17 CFR 45.11; 17 CFR 45.15(a)(2).

[52] *See, e.g.,* Large Trader Reporting for Physical Commodity Swaps: Division of Market Oversight Guidebook for Part 20 Reports (June 22, 2015), *available at https://www.cftc.gov/idc/groups/public/@newsroom/documents/file/ltrguidebook062215.pdf* (permitting submission using FpML).

[53] *See, e.g., id.* (permitting submission of Part 20 reports using FIXML); *see also See* Advanced Notice of Proposed Rulemaking, Account Ownership and Control Information, 74 FR 31642, 31644 (July 2, 2009) (FIXML is used for reporting transaction data for futures and options reporting under regulation 16.02). FIXML is an XML standard using the Financial Information eXchange Protocol (''FIX''); *see also* Notice of Proposed Rulemaking, Account Ownership and Control Report, 75 FR, 41775, 41784 (July 19, 2010) (''Reporting entities should submit the [ownership and control reports required under regulation 17.01] weekly, in FIXML . . .''); *see also* Notice of Proposed Rulemaking, Reporting and Information Requirements for Derivatives Clearing Organizations, 87 FR 76698, 76704 (Dec. 15, 2022) (addressing use of FIXML standard for daily reporting required of derivatives clearing organizations).

[54] *See* Advanced Notice of Proposed Rulemaking, Account Ownership and Control Information, 74 FR 31642, 31644 (July 2, 2009) (FIXML scheduled to be implemented for Trade Capture Reports in 2009); Notice of Proposed Rulemaking, Account Ownership and Control Report, 75 FR, 41775, 41784 (July 19, 2010) (''Reporting entities should submit the [ownership and control reports required under regulation 17.01] weekly, in FIXML . . .'').

be reported under § 17.01.[55] Receiving § 17.00(a) position data via FIXML and storing the same in ISS would facilitate linking ISS data to Trade Capture Report data stored in the Commission's Trade Surveillance System (''TSS''). Adopting an XML-based standard for large trader position reports required under § 17.00(a) should also improve data quality by reducing the rate of errors.

The Commission has previously recognized the importance of flexibility with respect to promulgating reporting submission standards to accommodate technological advances. For example, for Part 17 reporting, the Commission previously revised the definition of ''compatible data-processing media'' to remove enumeration of specific media in part because it was impractical to define the term by regulation since electronic media were evolving at such a rapid pace.[56] Elsewhere, for swaps large trader reporting under Part 20, the Commission delegated to staff the authority to provide instructions for and determine the format, coding structure, and electronic data transmission procedures for submitting data records in order to allow the Commission to respond to changing market and technological conditions for the purpose of ensuring timely and accurate data reporting.[57] Such an approach allows the Commission to consult with market participants and update reporting submission standards to remain consistent with industry best practices.[58]

Amending §§ 17.00(g) and 17.03(d) to facilitate implementation of a modern data submission standard should also simplify reporting for reporting firms. Although updating submission standards will require technological changes for reporting firms, the Commission believes that eliminating the use of the unique § 17.00(g) record format and replacing it with a more commonly-used submission standard may result in more efficient reporting. Additionally, using a modern submission standard should facilitate automated data quality checks from the Commission back to reporting firms, which should reduce burdens associated with correcting data errors and the time necessary to complete the correction process. A more efficient error correction process will also, in turn, assist staff in timely generating the weekly COT report. The Commission invites comments on all aspects of the proposed Part 17 Guidebook in addition to comments on this notice of proposed rulemaking.

2. Secure FTP Feed Versus Portal Submission

The Commission recognizes that reporting firms' technological capabilities may vary based on relative size and experience of a given reporting firm. For example, the Commission understands that today, although some firms have automated the process for creating reports required by § 17.00(a), other firms manually create those reports. Accordingly, the proposed Part 17 Guidebook offers two submission methods for § 17.00(a) data: (a) an XML-based, secure file transfer protocol (''FTP'') data feed, and (b) a web-based portal to ingest manual submissions. The Commission anticipates that such an approach will provide greater flexibility to reporting firms. Reporting firms may consider their existing data reporting infrastructure and the volume of reports they expect to submit, among other factors, when selecting their preferred submission method. The proposed Part 17 Guidebook provides detailed instructions for submitting under each method.

3. Delegation of Authority To Determine the Form and Manner for Error Corrections

Current § 17.00(h) provides that, unless otherwise approved by the Commission or its designee, corrections of errors and omissions in data required to be reported under § 17.00(a) shall be filed on series '01 forms or in the format, coding structure and data transmission procedures approved in writing by the Commission or its designee.[59] Consistent with the Commission's proposal to revise Part 17 to modernize the reporting of data under § 17.00(a), the Commission proposes updating the submission standard for error corrections to mirror the submission standard for the data to be corrected.

Today, reporting firms submit error corrections using the current § 17.00(g) record format.[60] Upon receipt of a correction, staff replaces the original, erroneous record with the corrected record. Staff will employ a similar process to ingest error corrections following the proposed removal of the current § 17.00(g) record format, such that corrected and omitted data will be submitted using the new data submission standard published by the Office of Data and Technology in the proposed Part 17 Guidebook pursuant to delegated authority.[61]

Currently, staff manually notifies reporting firms when it identifies errors in § 17.00(a) reports submitted by those firms. Following implementation of this proposal, the Commission expects to automate this process to notify reporting firms of errors on the same day erroneous reports are submitted. The Commission expects automating this process will facilitate more rapid corrections to reported data, which will improve the quality of the data used by Commission staff.

Request for Comment

The Commission requests comments on all aspects of the proposed changes to regulations in Part 17, including proposed changes to §§ 17.00(a), 17.00(g) and 17.03(d). The Commission requests specific comment on the following:

(1) The advantages and disadvantages of the proposed Part 17 Guidebook requiring a FIXML submission standard for reports required under § 17.00(a), including with respect to data quality, implementation costs, and ongoing costs post-implementation.

(2) The proposal to permit reporting firms to submit § 17.00(a) large trader position reports through the Commission's web-based portal as an alternative to submission by secure FTP.

(3) The advantages and disadvantages of correcting errors in data required to be reported under § 17.00(a) in the manner provided in the proposed Part 17 Guidebook, including with respect to data quality, implementation costs, and ongoing costs post-implementation.

[55] 17 CFR 17.01. Trade Capture Reports contain trade and related order book data at the transaction level organized by trading account numbers, but do not generally contain biographical information for the owners of those trading accounts. *See* Advanced Notice of Proposed Rulemaking, Account Ownership and Control Information, 74 FR 31642, 31644 (July 2, 2009). Such biographical information is provided separately through Ownership and Control Reports, which are submitted for special accounts identified under Part 17. *See id.*

[56] 62 FR at 24028; 17 CFR 15.00(d) (defining ''compatible data processing media'' as data processing media approved by the Commission or its designee).

[57] Final Rule, Large Trader Reporting for Physical Commodity Swaps, 76 FR 43851, 43857 (Jul. 22, 2011).

[58] *See, e.g.,* 76 FR at 43857 n.20 (explaining that ''the Commission anticipates consulting with clearing organizations and reporting entities before determining the format, coding structure, and electronic data transmission procedures'' for Part 20 reports).

[59] 17 CFR 17.00(h).

[60] Reports that correct errors or omissions populate the ''Record Type'' data field with a character that identifies that the submitted record corrects an error or omission and provides further information about that correction. *See* 17 CFR 17.00(g)(2)(xiv).

[61] As discussed below, the Commission proposes to retain the current ''Record type'' data field as a data element that will serve to identify reports that correct errors or omissions.

B. Appendix C to Part 17 and § 17.03(d)—Data Elements

1. Appendix C

As discussed above, in order to facilitate implementation of a modern submission standard, the Commission proposes removing the record format set out in § 17.00(g). Removing that record format will remove the data fields as well. To replace the data fields proposed to be deleted from § 17.00(g), the Commission proposes to add an Appendix C to Part 17 specifying required data elements and defining those elements. Enumerating required data elements in an appendix is consistent with the approach taken for certain other Commission data reporting regulations.[62] In addition to retaining the data currently required to be reported under § 17.00(a), proposed Appendix C would provide revised definitions and add certain data elements not currently required by the § 17.00(g) record format.

The Commission is proposing to remove the definitions set out in current § 17.00(g)(2). The Commission is proposing to include related definitions in Appendix C, revised to remove language providing the form and manner for reporting data. Given that the current § 17.00(g) record format will be removed from the rule and updated guidance on the form and manner for reporting will be required, certain of the § 17.00(g)(2) definitions contain language that would become superfluous. For example, for the ''Report Type'' data element, the Commission is proposing not to include in Appendix C the portion of the definition that specifies that ''[v]alid values'' to submit include ''RP'' for reporting positions, ''DN'' for reporting notices, and ''EP'' for reporting exchanges of futures for a commodity or for a derivatives position.[63]

Rather than specifying the form and manner for reporting the § 17.00(a) data elements in the rule, the Commission is proposing to delegate authority to determine the form and manner for reporting each data element to the Director of the Office of Data and Technology. To implement this delegation of authority, the Commission is proposing to amend § 17.03(d) to provide that the Director of the Office of Data and Technology would specify the form, manner, coding structure, and electronic data transmission procedures for reports and submissions under § 17.00(a). The proposed Part 17 Guidebook would set forth the form, manner, coding structure, and electronic data transmission procedures for reporting the data elements in proposed Appendix C to Part 17, and to determine whether to permit or require one or more particular data standards.

Providing form and manner requirements through a Part 17 Guidebook would bring the Part 17 framework in line with reporting under Parts 16, 20, 43, and 45, for which, rather than embedding technical reporting details into regulation text, the Commission has delegated authority to staff to set the form and manner for reporting outside of the regulation text through a published technical specification or guidebook.[64] Implementing form and manner requirements through a Part 17 Guidebook will facilitate the Commission's ability to respond to changing market conventions and technological conditions, to harmonize submission standards with those of other authorities,[65] and to accommodate the introduction of innovative products.

As discussed above, concurrently with the issuance of this notice, the Commission has published a proposed Part 17 Guidebook on its website, *https://www.cftc.gov.* Commenters are invited to comment on both the data submission standard in the proposed Part 17 Guidebook and on the data elements in proposed Appendix C.

Request for Comment

The Commission requests comments on all aspects of the proposed Part 17 Guidebook published at the time of publication of this notice of proposed rulemaking.

2. Data Elements in Appendix C

Proposed Appendix C will maintain certain data elements included in the current § 17.00(g) record format, revise certain data elements included in the current § 17.00(g) record format, and add certain data elements not previously included in the § 17.00(g) record format. The proposed additional data elements capture information not captured by the current § 17.00(g) record format that is necessary to fulfill the Commission's surveillance and market analysis missions. The form and manner for reporting each of these data elements would be set forth in the proposed Part 17 Guidebook. The Commission invites comment on any of the data elements proposed in Appendix C. This section discusses these data elements below by category.

First, proposed Appendix C includes data elements currently captured by the fields in the current § 17.00(g) record format. In some instances, those data elements are revised to account for the introduction of a modern data submission standard. Second, proposed Appendix C includes data elements necessary to facilitate a modern, XML-based data submission standard, including data elements used to manage ingestion of data, such as ''Total Message Count'' and ''Message Type.'' Third, proposed Appendix C would add data elements necessary to capture product-identifying information not captured by the current record format, such as ''Ticker Symbol'' as well as certain data elements necessary to capture information to represent innovative contracts such as ''bounded contracts,'' options expiring to baskets of futures, and other novel contracts. The current record format does not allow reporting firms to represent all economically material terms of such contracts, and as a result the Commission is in some instances unable to determine whether certain special accounts carry positions in the same or different products. Fourth, proposed Appendix C would add data elements necessary to capture accurate information concerning changes in positions of special accounts that is not available in current § 17.00(a) large trader reporting but would benefit the Commission's surveillance programs and market analysis.

[62] *See, e.g.,* 17 CFR part 20 App'x B; 17 CFR part 43 App'x A; 17 CFR part 45 App'x 1.

[63] 17 CFR 17.00(g)(2)(i).

[64] *See, e.g.,* 17 CFR 16.07(c), (d) (delegating authority to staff to approve the format, coding structure and electronic data transmission procedures used by reporting markets and to determine the specific content of any daily trade and supporting data report); 17 CFR 20.2(d) (delegating authority to staff for providing instructions or determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under this part); 17 CFR 43.7(a) (delegating authority to staff to publish the technical specification providing the form and manner for reporting and publicly disseminating the swap transaction and pricing data elements in appendix A of Part 43); 17 CFR 45.15(b)(1) (delegating authority to staff to publish the technical specifications providing the form and manner for reporting the swap data elements in appendix 1 to Part 45 to swap data repositories).

[65] Final Rule, Swap Data Recordkeeping and Reporting Requirements, 85 FR 75503, 75535 (Nov. 25, 2020) (''The Commission . . . believes delegation to DMO will benefit data element harmonization.''); *see also* Final Rule, Large Trader Reporting for Physical Commodity Swaps, 76 FR 43851, 43857 (Jul. 22, 2011) (the purpose of delegating authority to staff to provide ''instructions for determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under [Part 20] . . . is to facilitate the ability of the Commission to respond to changing market and technological conditions for the purpose of ensuring timely and accurate data reporting'').

a. Category 1: Currently Reported Data Elements

Proposed Appendix C retains data elements capturing certain of the information currently captured by § 17.00(g)'s 80-character record format.[66] The 80-character record format captures certain information necessary to process data,[67] information concerning the reporting firm and special account,[68] product-identifying information,[69] and information concerning the direction or nature of the trades underlying the position.[70]

Proposed Appendix C calls for certain of this information in a different format than currently provided. For example, whereas the current § 17.00(g) record format captures information concerning whether a position is long or short in a single field, proposed Appendix C would capture long and short positions using separate data elements (''Long Position'' and ''Short Position''). Similarly, whereas the current § 17.00(g) record format identifies exchanges of futures for related positions using a single ''Report type'' field, proposed Appendix C would capture information concerning such exchanges in greater granularity through several data elements. As discussed further below, this greater granularity will facilitate Commission market surveillance and analysis programs.

b. Category 2: XML Implementation and Data Processing

Proposed Appendix C calls for certain data elements to facilitate processing of data.[71] Such data elements generally do not correspond to analogous data elements in § 17.00(g)'s record format. These include data elements concerning the submission of messages to the Commission, data elements identifying the sender and special account controller, and data elements identifying the date and time of the report. This information is necessary to enable the Commission to track and manage reports received using an XML submission standard.

The ''Special Account Controller LEI'' data element captures the legal entity identifier (''LEI'') of the account controller. An LEI is a unique code assigned to an entity in accordance with the standards set by the Global Legal Identifier System.[72] The ''Special Account Controller LEI'' data element would allow the Commission to link data reports submitted under § 17.00(a) with other data reports concerning the same counterparty. The Commission notes that not all special account controllers possess a legal entity identifier, or ''LEI.'' Some special account controllers may be ineligible to receive an LEI. For example, it is highly likely that a natural person who controls a special account would be unable to obtain an LEI.[73] For clarity, the Commission expects the ''Special Account Controller LEI'' data element will be conditional—an LEI must be reported for special accounts for which the special account controller is eligible to receive an LEI, but an LEI need not be reported for special accounts for which the special account controller is ineligible for an LEI. For such accounts, the Commission will receive identifying information via Form 102A.

c. Category 3: Product Identification

Proposed Appendix C calls for reporting of certain data elements that, where applicable, are necessary to identify and distinguish the futures or option contract pertaining to the reported position. Specifically, additional data elements are necessary to draw more granular distinctions between certain contracts for reportable positions,[74] to accommodate reporting of positions in bounded or barrier contracts,[75] to accommodate reporting of positions in contracts with non-price or non-numeric strikes,[76] and to accommodate reporting of positions in other innovative contracts.[77]

Distinguishing Products. Certain additional fields are necessary to precisely identify the product for a reported position. When § 17.00(g) was promulgated and revised in the 1980s and 1990s, exchanges listed a less diverse array of futures and options contracts than those available today. More granular data is required to distinguish among products in today's futures and options markets. Section 17.00(g)'s current record format allows the Commission to identify the product for a given position based on a combination of data points that indicate whether the product is a futures or option contract and identify the underlying commodity. That record format, however, is limited. For example, that record format allows the Commission to identify the underlying commodity through a ''Commodity Code'' field, which is populated with an exchange-assigned code corresponding to a relevant underlier.[78] However, the ''Commodity Code'' field does not currently enable the Commission to draw more granular distinctions between products that reference the same commodity but have material differences. A proposed ''Product Type'' field would allow the Commission to differentiate between futures and options contracts that use the same ''Commodity Code'' without separately relying on other reported fields, which may be insufficient to adequately distinguish between products in some instances.[79] A proposed ''Ticker Symbol'' field would provide the Commission with the published ticker symbol associated with the product on

[66] These fields would include (1) Data Element #7 Record Type (Action), (2) Data Element #8 Report Date, (3) Data Element #9 (Reporting Firm ID), (4) Data Element #11 Account ID, (5) Data Element #12 Exchange Indicator, (6) Data Element #13 Commodity Clearing Code, (7) Data Element #16 Maturity Month Year, (8) Data Element #20 Strike Level, (9) Data Element #26 Put or Call Indicator, (10) Data Element #27 Exercise Style, (11) Data Element #30 Underlying Contract ID, (12) Data Element #31 Underlying Maturity Month Year, (13) Data Element #32 Long Position, (14) Data Element #33 Short Position, (15) Data Element #38 Delivery Notices Stopped, and (16) Data Element #39 Delivery Notices Issued.

[67] For example, ''Report Date,'' and ''Record Type.'' 17 CFR 17.00(g)(1).

[68] For example, ''Reporting Firm'' and ''Account Number.'' 17 CFR 17.00(g)(1).

[69] For example, ''Commodity Code,'' ''Expiration Date,'' and ''Exchange Code.''

[70] For example, ''Report type,'' ''Put or Call,'' ''Strike Price,'' ''Exercise Style,'' ''Long—Buy—Stopped,'' and ''Short—Sell—Issued.''

[71] These fields would include (1) Data Element #1 Total Message Count, (2) Data Element #2 Message Type, (3) Data Element #3 Sender ID, (4) Data Element #4 To ID, (5) Data Element #5 Message Transmit Datetime, (6) Data Element #6 Report ID, and (7) Data Element #10 Special Account Controller LEI.

[72] The Global Legal Identifier System was established by the finance ministers and the central bank governors of the Group of Twenty nations and the Financial Stability Board. *See* Charter of the Regulatory Oversight Committee For the Global Legal Entity Identifier System, available at *https://www.leiroc.org/publications/gls/roc_20190130-1.pdf*.

[73] The Commission has elsewhere discussed this issue in regulations concerning reporting of swap data. *See, e.g.,* Final Rule, Swap Data Reporting and Recordkeeping, 85 FR 75503, 75520 (Nov. 25, 2020).

[74] These fields would include (1) Data Element #14 Product Type, (2) Data Element #15 Ticker Symbol, (3) Data Element #17 Maturity Time, (4) Data Element #18 Listing Date, and (5) Data Element #19 Earliest Exercise Date.

[75] These fields would include (1) Data Element #22 Cap Level, (2) Data Element #23 Floor Level, (3) Data Element #24 Bound or Barrier Type, (4) Data Element #25 Bound or Barrier Level, (5) Data Element #28 Payout Amount, and (6) Data Element #29 Payout Type.

[76] These fields would include Data Element #21 Alpha Strike, as well as transposing the ''Strike Price'' field in the current regulation 17.00(g) record format to Data Element #20, ''Strike Level,'' in proposed Appendix C.

[77] For example, Data Element #50 Product-Specific Terms.

[78] 17 CFR 17.00(g)(2)(vii) (the ''Commodity'' field reflects an exchange-assigned commodity code for the futures and options contract).

[79] The Commission proposes to retain the ''Commodity Code'' field, but to rename it to ''Commodity Clearing Code,'' which more accurately reflects industry terminology and provides consistency in labeling between reports provided under Part 17 and Part 16.

the listing contract market.[80] Proposed Appendix C would provide for ''Maturity Month Year'' and ''Underlying Maturity Month Year'' data elements, where applicable, to be populated with a specific day when necessary to characterize a product.[81] Similarly, a ''Maturity Time'' data element, where applicable, would be populated with the expiration time of an option or last trading time of a future for contracts that have multiple expiration times within a single day. A ''Listing Date'' data element, where applicable, would be populated with the listing date for options that had early expirations and were relisted with identical strikes and expirations, allowing the Commission to distinguish between tranches of closely related contracts. Absent such a field, different tranches of certain options contracts might be indistinguishable in ISS.[82] An ''Earliest Exercise Date'' data element would provide, where applicable, the date when American or Bermuda options [83] may be exercised, which would assist the Commission in identifying more complex positions.

Bounded or Barrier Contracts. Certain of these data elements are necessary to accurately report ''bounded'' [84] or ''barrier'' [85] contracts, including ''Cap Level,'' ''Floor Level,'' and ''Bound or Barrier Level,'' as the current § 17.00(g) record format does not accommodate this information. A ''Bound or Barrier Type'' data element would be necessary to identify the behavior of a product when it hits a bound or barrier, including to distinguish between ''knock-in,'' ''knock-out,'' and capped products.[86] Receiving data sufficient to understand the economics of bounded and barrier contracts would, among other things, support the Commission's surveillance program. Position data that more completely reflects the economics of positions in bounded or barrier options would provide the Commission with greater insight into, for example, potential cross-market manipulation. Where a bounded or barrier contract references the price or value of a contract or commodity listed in another market, a manipulative trader may trade in that other market for the purpose of influencing the price or value of that contract in order to hit or avoid a bound or barrier for an options position held in the first market.

To obtain comprehensive data concerning positions in bounded and barrier contract and certain binary option contracts based on the occurrence or non-occurrence of a specified event, proposed Appendix C also includes ''Payout Amount'' and ''Payout Type'' data elements. The proposed ''Payout Amount'' data element is intended to capture a cash amount of the payout associated with a product where that amount may not otherwise be determined based on reported data. The proposed ''Payout Type'' data element would allow the Commission to distinguish between vanilla, capped, binary, and other options that use the same Commodity Clearing Code.

Non-Price and Non-Numeric Strike Levels. Certain of the data elements in Proposed Appendix C are necessary to accurately capture information for options contracts that contain non-price and non-numeric strike levels. Specifically, § 17.00(g)'s record format's ''Strike Price'' field would be converted to two separate data elements: ''Strike Level'' and ''Alpha Strike.'' These data elements, respectively, would accommodate reporting of certain listed options contracts with non-monetary threshold levels and non-numeric threshold levels. For example, a binary option with U.S. Gross Domestic Product (''GDP'') as an underlier would have a non-price strike—a GDP figure. Other contracts that incorporate the occurrence or non-occurrence of a specified event as an underlier might specify as strikes non-numeric units, which would more appropriately be reported as a strike ''value,'' or ''Alpha Strike.'' For example, a binary option with different categories of hurricane landfalls as strike values might include as ''Alpha Strikes'' different categories of hurricane—for example, ''Category 1 or higher'' or ''Category 2 or higher.''

Product-Specific Terms. To account for the likelihood that exchanges will introduce contracts that include novel features, proposed Appendix C includes a ''Product-Specific Terms'' data element. For innovative contracts, this data element would be populated with data reflecting economically material terms of contracts are not otherwise able to be represented in the proposed Appendix C data elements. The data element would not require reporting of any information that is not already separately recorded by a DCM for recordkeeping purposes. Future editions of the proposed Part 17 Guidebook would specify the form and manner of reporting positions in products subject to reporting that includes the ''Product-Specific Terms'' data element.

Reporting under this data element—as well as certain other data elements designed to represent particular products, such as the aforementioned fields designed to capture terms of bounded and barrier contracts—would only be required to be reported for contracts that cannot otherwise be represented in Part 17 reporting. Put differently, for reporting firms that facilitate trading or clearing of contracts that can be adequately represented in the other data elements in the proposed Part 17 Guidebook, reporting data pursuant to the ''Product-Specific Terms'' data element would not be required. Reporting firms that do become involved in trading futures and options contracts for which economically material terms are not otherwise reportable under § 17.00(a) may be required to report such data. Pursuant to the proposed rule, the Director of the Office of Data and Technology would have delegated authority to publish the form and manner of any product-specific terms required to be reported pursuant to this proposed data element.

[80] Ticker symbols typically include a product code consisting of a multi-letter code assigned to the underlier, a month code consisting of a single alphabetical character assigned to a month or quarter, and a year code consisting of a numerical code representing a particular year.

[81] This responds to the advent of certain futures and options contracts with more varied maturity or expiration dates.

[82] If a DCM lists an option that settles based on the occurrence of a specified event—as opposed to expiring at a future time that is certain at the time the contract is executed—and that specified event may occur serially at multiple times, a ''Listing Date'' data element would permit the Commission to distinguish between iterations of that contract as it is re-listed following expirations.

[83] An American Option is an option that can be exercised at any time prior to or on the expiration date. *See* CFTC, Futures Glossary, *available at https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/CFTCGlossary/index.htm* (last visited April 26, 2023). A Bermuda Option is an option which can be exercised on a specified set of predetermined dates during the life of the option. *See id.* In contrast, a European Option is an option that may only be exercised on the expiration date. *See id.*

[84] A bounded futures contract specifies upper and lower boundaries, which limit short and long interest exposure. *See, e.g.,* Eris Exchange, LLC, ''CFTC Regulation 40.2(a) Certification. Notification Regarding the Initial Listing of Eris Exchange Financially Settled Bounded Futures Contract on Bitcoin and Ether'' (Aug. 21, 2020), *available at https://www.cftc.gov/sites/default/files/filings/ptc/20/08/ptc082420erisdcmdcm001.pdf.*

[85] A barrier option contract specifies a ''barrier,'' either a price or an event, the occurrence of which triggers either a knock-in or knock-out provision.

[86] A knock-in is a provision in an option or other derivative contract whereby the contract is activated only if the price of the underlying instrument reaches a specified level before a specified expiration date. A knock-out is a provision in an option whereby the contract is immediately canceled if the price of the underlying instrument reaches a specified level during the life of the contract. *See* CFTC, Futures Glossary, *available at https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/CFTCGlossary/index.htm* (last visited April 26, 2023).

d. Category 4: Information Concerning Changes in Positions

Proposed Appendix C would add data elements necessary to capture accurate information regarding changes in positions that is not fully-captured by the current § 17.00(g) record format.[87] Understanding the nature and quantity of transactions that resulted in day-to-day changes in positions of special accounts will provide Commission staff with additional information for surveillance purposes, and will allow Commission staff to link position data reported at the special account level pursuant to § 17.00(a) with transaction data reported at the trading account level under § 16.02.[88] Additionally, information identifying the nature and quantity of transactions that resulted in day-to-day changes in positions of special accounts should provide reporting firms with an additional tool to perform an internal consistency review on data reported under § 17.00(a), and therefore enhance data quality.

Changes in positions are generally effected by buying and selling contracts; the expiration or settlement of contracts, which may result in assignments of contracts; or off-exchange transactions, such as block-trades, exchanges of derivatives for related positions (''EDRPs''), and transfers. Although the current § 17.00(g) record format requires reporting of the aggregate of certain EDRPs each day and the total delivery notices issued and stopped via the ''Report Type'' and ''Long-Buy-Stopped (Short-Sell-Issued)'' [89] fields, it otherwise does not capture data concerning changes in position. Proposed Appendix C would include data elements necessary to capture this information, as follows.

Contracts Bought and Sold. Proposed Appendix C includes data elements to capture ''Contracts Bought'' and ''Contracts Sold.'' The current § 17.00(g) record format captures aggregate positions, but does not reflect the amount of buying and selling associated with a particular special account. Obtaining reliable and accurate counts of gross buys and sells associated with a special account would enhance the Commission's ability to differentiate between large position holders that appear passive and large position holders that also trade in significant quantities of contracts daily.

In addition to contracts bought and sold on-exchange, contracts bought or sold via block trades are included in the sums reported as ''Contracts Bought'' and ''Contracts Sold.'' The Commission also expects that contracts acquired through give-ups [90] and allocations will be included in the totals of ''Contracts Bought'' and ''Contracts Sold,'' as such contracts would be treated as positions in the carrying accounts through which they are ultimately cleared rather than positions in the accounts that execute the transactions, if such accounts differ from the accounts through which such transactions are cleared.

Exchanges of Derivatives for Related Positions (EDRPs). A DCM's rules may authorize, for bona fide business purposes, privately-negotiated exchanges of derivatives for related positions, or ''EDRPs.'' [91] As discussed, the current § 17.00(g) record format requires reporting of aggregate EDRPs, but does not provide more granular data necessary to understand whether a position was exchanged for a physical commodity (exchanges for physical, or ''EFPs''), exchanged for a swap or other derivative (exchanges for swaps, or ''EFSs,'' sometimes referred to as exchanges for risk, or ''EFRs''), exchanged for an option, or exchanged for some other related position. Proposed Appendix C includes an ''Exchanges of Derivatives for Related Positions'' data element that is defined to require reporting firms to disaggregate EDRP transactions by type of EDRP in the form and manner for reporting set forth in the proposed Part 17 Guidebook. The proposed Part 17 Guidebook requires reporting firms to disaggregate reporting of EDRPs into EFPs bought and sold, EFSs bought and sold, and exchanges of options for option (''EOOs'') bought and sold.[92]

This would also effect an update to a record format devised largely during the 1970s and 1980s, before EDRPs other than EFPs were commonly used.[93] EFSs, for example, were not explicitly authorized under the CEA until 2000, years after the initial § 17.00(g) record format had been promulgated.[94] In 2004, when the Commission amended the § 17.00(g) record format to require reporting of EDRPs generally, including EFSs, rather than just EFPs, it did not require reporting firms to distinguish among these different types of transactions, but rather required that such reporting group together all EFPs, EFSs, EFRs, EFOs [95] or other exchanges of futures for a commodity or for a derivatives position permitted by exchange rules, and report the sum under the same category.[96] At the time,

[87] These fields would include (1) Data Element #34 Contracts Bought, (2) Data Element #35 Contracts Sold, (3) Data Element #36 EDRPs Bought, (4) Data Element #37 EDRPs Sold, (5) Data Element #38 Delivery Notices Stopped, (6) Data Element #39 Delivery Notices Issued, (7) Data Element #40 Long Options Expired, (8) Data Element #41 Short Options Expired, (9) Data Element #42 Long Options Exercised, (10) Data Element #43 Short Options Exercised, (11) Data Element #44 Long Futures Assigned, (12) Data Element #45 Short Futures Assigned, (13) Data Element # 46 Long Transfers Sent, (14) Data Element #47 Long Transfers Received, (15) Data Element #48 Short Transfers Sent, and (16) Data Element #49 Short Transfers Received.

[88] DCMs identify traders by account numbers, but certain DCMs do not routinely collect detailed trader-identifying data. *See, e.g.,* Final Rule, Significant Price Discovery Contracts on Exempt Commercial Markets, 74 FR 12178, 12185 (Mar. 23, 2009). The Commission instead generally obtains such trader-identifying data from FCMs, clearing members, and foreign brokers through regulation 17.01. 17 CFR 17.01.

[89] 17 CFR 17.00(g)(2)(i), (xi).

[90] The term ''give-up'' means an order executed by one broker on behalf of another broker which clears and settles the order.

[91] *See* 17 CFR 38.500 (authorizing ''exchange[s] of'' ''[f]utures in connection with a cash commodity transaction,'' ''[f]utures for cash commodities,'' and ''[f]utures for swaps''). In practice, such transactions are often referred to as ''exchanges of futures for related positions'' or ''EFRPs.'' The Commission has used the terminology ''exchanges of derivatives for related positions'' or ''EDRPs'' because it believes this is a more accurate and descriptive term given it includes transactions not limited to futures, such as swaps. Noticed of Proposed Rulemaking, Core Principles and Other Requirements for Designated Contract Markets, 75 FR 80572, 80593 (Dec. 22, 2010).

[92] The Commission believes these three categories of EDRPs capture current market practices, but recognizes the possibility that a DCM or DCMs may, in the future, introduce additional EDRPs. For example, DCMs could conceivably permit exchanges of futures for futures. *See, e.g.,* 75 FR at 80588 (recognizing that the term ''exchanges of derivatives for related position'' describes a panoply of off-exchange transactions currently offered by DCMs including, in addition to EFPs and EFSs, exchanges of futures for futures). The Commission expects that if any DCM revises its rulebook to permit an additional type of EDRP transaction, reporting firms would also submit disaggregated data reflecting changes of position effected through that type of EDRP transaction. For example, if a DCM revised its rulebook to permit exchanges of futures for futures, the proposed Part 17 Guidebook would be updated to facilitate reporting firms submitting information reflecting changes in positions resulting from exchanges of futures for futures.

[93] *Cf.* CFTC, Division of Trade and Markets: Report on Exchange of Futures for Physicals (1987) (analysis of EFPs published in 1987, relying in part on data reported pursuant to regulation 17.00(a)).

[94] *See, e.g.,* Concept Release, Regulation of Noncompetitive Transactions Executed on or Subject to the Rules of a Contract Market, 63 FR 3708 (Jan. 26, 1998) (requesting comment on whether Commission regulations should be modified in order to permit EFSs and exchanges of futures for options); Proposed Rules, Execution of Transactions: Regulation 1.38 and Guidance on Core Principle 9, 69 FR 39880, 39881 (July 1, 2004) (proposing amendments to regulation 1.38 to permit DCMs to allow exchanges of futures for another derivatives position following the Commodity Futures Modernization Act of 2000 amending the CEA to ''specifically allow[] the exchange of futures for swaps''); *see also* 7 U.S.C. 7(b)(3).

[95] ''EFOs'' refers to ''exchanges of futures for options.'' Final Rule, Reporting Levels and Recordkeeping, 69 FR 76392, 76394 (Dec. 21, 2004).

[96] 69 FR at 76395.

the Commission found this to be ''an appropriate approach because all of these trades are similar in that they permit the exchange of a futures position for an off-exchange position.'' [97] The Commission now, based on experience surveilling EDRP practices in futures and options markets, proposes to require more granular differentiation in reporting of different types of EDRPs. More granular differentiation between the types of off-exchange transactions that effect changes in positions will provide a better understanding of the methods by which traders exit and enter positions. In particular, disaggregated EDRP data allows staff to confirm market integrity when there are concerns about a potential squeeze or other matters near the expiration of the physical delivery contract.

Expirations and Settlement of Contracts. In addition to EDRP counts and counts of contracts bought and sold, proposed Appendix C would add data elements necessary to capture expirations and settlements, including whether options were exercised and contracts assigned. Proposed Appendix C would capture such information in ''Delivery Notices Stopped,'' ''Delivery Notices Issued,'' ''Long Options Expired,'' ''Short Options Expired,'' ''Long Options Exercised,'' ''Short Options Exercised,'' ''Long Futures Assigned,'' and ''Short Futures Assigned'' data elements. The current § 17.00(g) record format captures information concerning delivery notices stopped and issued, but does not capture information concerning changes in positions due to option expirations and exercises.

Transfers. The Commission also proposes to include ''Long Transfers Sent,'' ''Long Transfers Received,'' ''Short Transfers Sent,'' and ''Short Transfers Received'' data elements to capture transfers of contracts that effect a change in position in a special account. This information is not directly captured by the current § 17.00(g) record format.

Internal Consistency Check for Data Concerning Changes in Position. The inclusion in reports required under § 17.00(a) of data elements reflecting counts of transactions that resulted in day-to-day changes in positions would enable reporting firms to perform internal consistency checks on position reports before submitting those reports. Specifically, the day-to-day change in the size of a position for a particular special account should equal the net value of contracts bought and sold, EDRPs bought and sold, expirations and assignments of contracts, and transfers.

Request for Comment

The Commission requests comment on all aspects of proposed Appendix C, including the proposed data elements enumerated therein. The Commission requests specific comment on the following:

(4) Are there any data elements not included in proposed Appendix C that commenters believe are necessary to obtain a complete and accurate picture of positions held by large traders? If so, please identify such data elements.

(5) Are there any transactions that would effect changes in positions that are not accounted for by the Data Elements discussed in Section II.B.2.d above? If so, please identify such transactions.

(6) Are there any data elements proposed to be added in Appendix C that commenters believe are not necessary to obtain a complete and accurate picture of positions held by large traders? If so, please identify such data elements and explain why.

III. Compliance Date

The Commission understands that market participants would require sufficient time to revise or build infrastructure to submit data required under § 17.00 using the proposed new submission standard. In addition, given that proposed Appendix C would require the submission of additional data elements beyond the information required by the current § 17.00(g) record format, the Commission understands that reporting firms may need to make additional adjustments to reporting systems.

The Commission expects that the compliance date for the rules proposed herein would be 365 days following publication of a final rule in the **Federal Register**.

The Commission also expects to permit reporting firms to begin reporting under the proposed new regime for § 17.00(a) reports in advance of the compliance date, while continuing to permit reporting firms to report under the current § 17.00(g) record format. The Commission believes that this approach will allow early adopters to realize the advantages of reporting using a modern data submission standard while allowing slower adopters sufficient time to modify and test reporting systems.

Request for Comment

The Commission requests comment on all aspects of the proposed compliance date. The Commission requests specific comment on the following:

(7) Is the proposed compliance date of 365 days after publication of a final rule in the **Federal Register** an appropriate amount of time for compliance? If not, please propose an alternative timeline and provide reasons supporting that alternative timeline.

IV. Related Matters

A. Cost-Benefit Considerations

1. Introduction

Section 15(a) [98] of the CEA requires the Commission to consider the costs and benefits of its actions before issuing a new regulation or order under the CEA. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new rule or to determine whether the benefits of the adopted rule outweigh its costs. Rather, section 15(a) requires the Commission to ''consider the costs and benefits'' of a subject rule. Section 15(a) further specifies that the costs and benefits of proposed rules shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. In conducting its analysis, the Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

Although the Commission believes the proposed amendments would create meaningful benefits for market participants and the public, the Commission also recognizes that the proposed amendments would impose costs. The Commission has endeavored to enumerate these costs and, when possible, assign a quantitative value to the costs reporting entities might face given the proposed changes. Where it is not possible to reasonably quantify costs and benefits of the proposed amendments, those costs and benefits are discussed qualitatively.

2. Background

The data required to be reported under § 17.00(a) comprise core data used by many divisions within the Commission, including the Division of

[97] *Id.*

[98] 7 U.S.C. 19(a).

Market Oversight (''DMO''), the Office of the Chief Economist (''OCE''), and the Division of Enforcement (''DOE''). In addition, § 17.00(a) submissions are collated to produce the database from which public COT reports are created. COT reports are used by news media, researchers, academics, and industry professionals to describe current trends in futures trading, conduct analysis of past trading patterns, and inform current market strategies. The current § 17.00(g) record format, which instructs reporting firms to submit data in an 80-character, Cobol-based format, has been in effect since 1986 and was last revised in 2004.[99] This current format limits the amount of descriptive data that can be included in any given field. This limits the Commission's ability to capture the economic characteristics of certain products in § 17.00(a) position reports and, in some instances, prevents the Commission from distinguishing a position in one contract from a position in another contract. In addition, the current reporting fields do not allow for the granular reporting of EDRPs, of certain futures and options contracts, and for complete information reflecting day-to-day changes in position.

3. Baselines

The costs and benefits considered herein use as a baseline the reporting provided by reporting firms under current Part 17 regulations. In particular, entities are currently required to report positions for special accounts [100] by 9 a.m. on the business day following the trading day [101] and to correct errors as they are found by either the Commission or the reporting entity.[102] These elements of the rule would not change under the new reporting requirements.

The Commission notes that this cost-benefit consideration is based on its understanding that the derivatives market regulated by the Commission functions internationally with: (1) transactions that involve U.S. entities occurring across different international jurisdictions; (2) some entities organized outside of the United States that are registered with the Commission; and (3) some entities that typically operate both within and outside the United States and that follow substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits below refers to the effects of the proposed regulations on all relevant derivatives activity, whether based on their actual occurrence in the United States or on their connection with, or effect on U.S. commerce.[103]

4. Proposed Amendments to Part 17

The Commission proposes two categories of amendments to Part 17. First, the Commission proposes to remove current § 17.00(g)'s 80-character record format and amend § 17.03(d) to delegate authority to the Director of the Office of Data and Technology to designate a submission standard for reports required under § 17.00(a). That submission standard would be published in a Part 17 Guidebook, to be published on the Commission's website. The proposed Part 17 Guidebook designates a modern XML submission standard for submitting reports required under § 17.00(a). Second, the Commission proposes adding an Appendix C to Part 17 enumerating data elements to be included in § 17.00(a) reports. The proposed data elements consist of (1) certain data elements currently required to be reported under § 17.00(g), (2) certain data elements necessary for processing files submitted in XML, (3) certain data elements necessary to represent innovative contracts that cannot currently be represented using the § 17.00(g) format, and (4) data elements necessary to understand the transactions that resulted in day-to-day changes in positions of large traders. The form and manner for reporting these data elements in proposed Appendix C would be provided in the Part 17 Guidebook.

a. Change in Submission Standard From Current § 17.00(g) Record Format to a Modern Data Standard Designated in a Part 17 Guidebook

Currently, reporting firms submit § 17.00(a) position reports using § 17.00(g)'s 80-character record format. The proposed amendments would require such reports to be submitted using a submission standard, which would be designated in a Part 17 Guidebook published by the Office of Data and Technology on the Commission's website. The proposed Part 17 Guidebook would require such submissions to be made using an XML format similar to that used in other reporting required by the Commission, including Trade Capture Reports submitted pursuant to § 16.02 and swap data reports submitted to swap data repositories pursuant to Part 43 and Part 45.[104] In order to collect and transmit these reports to the Commission, reporting firms would have to modify the systems they currently use to report Part 17 data.

The Commission estimates there are currently over 300 reporting firms submitting 17.00(a) reports. Reporting firms are divided between DCMs, FCMs, clearing members, and foreign brokers, including some firms that are registered under multiple categories. Over a 30-day period in early 2023 there were 310 reporting firms submitting § 17.00(a) reports. The Commission estimates that approximately 74 of these reporting firms automate the creation of § 17.00(a) reports and 236 of these firms create and submit § 17.00(a) reports manually. The Commission believes that reporting firms that currently automate the creation of § 17.00(a) reports will continue to do so and will submit such reports by secure FTP, and that reporting firms that currently manually create § 17.00(a) reports will continue these practices rather than modifying their systems to facilitate reporting by secure FTP. Firms that currently manually create § 17.00(a) reports may need to update systems used to manually generate those reports.

1. Benefits

The proposed revisions concerning the data submission standard will facilitate more rapid data ingestion for the Commission and increased automation in ingesting data required to be reported under § 17.00(a), which will reduce staff time devoted to data ingestion.

The proposed revisions concerning the data submission standard should also enhance data quality. First, a modern data submission standard should be less error-prone than the current § 17.00(g) record format. Second, a modern data submission standard should facilitate automated, real-time error correction notifications, which will reduce the amount of manual staff intervention in the error correction process and should provide reporting firms with more efficient timelines for correcting errors. By improving data quality and enabling more rapid corrections of errors, the proposed revisions concerning the data submission standard should ensure the timeliness of COT reports.

The proposed revisions concerning the data submission standard should simplify the error correction process for

[99] *See* Final Rule, Reporting Levels and Recordkeeping, 69 FR 76392–01, 76394 (Dec. 21, 2004).

[100] *See* 17 CFR 17.00(a).

[101] *See* 17 CFR 17.02(a).

[102] 17 CFR 17.00(h).

[103] See, *e.g.,* 7 U.S.C. 2(i).

[104] *See, e.g.,* Advanced Notice of Proposed Rulemaking, Account Ownership and Control Information, 74 FR 31642, 31644 (July 2, 2009); 17 CFR 43.7(a)(1); 17 CFR 45.15(a)(2).

reporting firms by automating and accelerating feedback concerning errors.

The proposed revisions concerning the data submission standard should enhance DMO's ability to monitor the markets, support DOE's surveillance program, and facilitate OCE research projects.

2. Costs

The Commission believes that the changes proposed to Part 17 would cause reporting firms to modify their systems to collect and submit data using a new data submission standard. The cost of such modifications is likely to vary from entity to entity. Under the proposed Part 17 Guidebook, reporting firms would submit reports required under § 17.00(a) using an XML submission standard.

The Commission expects more sophisticated reporting firms that submit a substantial number of daily reports, such as FCMs, will build systems to report using the XML submission standard designated in the proposed Part 17 Guidebook, and will arrange to automate daily submissions using a secure FTP data feed. The Commission estimates that 74 entities will submit reports in in this manner. The Commission estimates those entities would incur a one-time initial cost of approximately $29,800 for each entity (200 hours × $149/hour) to modify and test their systems, or an estimated aggregate dollar cost of $2,205,200 (74 entities × $29,800).[105] The Commission understands that some reporting firms today submit reports required under § 17.00(a) manually through the CFTC Portal, and believes that many of those firms would continue to do so under the new submission standard. The Commission estimates that 236 entities would continue to manually report through the CFTC Portal and would incur a one-time initial cost of approximately $1,310 to update their systems (10 hours × $131/hour) for each entity, or an estimated aggregate dollar cost of $309,160 (236 entities × $1,310).[106]

On an ongoing basis, the Commission believes that the 310 estimated reporting firms would incur minimal additional costs above the baseline once setup is complete. However, the Commission estimates that approximately 74 entities filing using secure FTP may incur an ongoing operation and maintenance cost of $3,576 per year (2 hours per month × $149 per hour) per entity to maintain their systems, or an estimated aggregate annual cost of $264,624 (74 entities × $3,756). In addition, the Commission estimates that 236 entities filing manually would incur ongoing additional costs of $3,144 per year (2 hours per month × $131 per hour) per entity to maintain their systems, or an estimated aggregate annual cost of $741,984 (236 entities × $3,144). However, the Commission believes that costs associated with correcting errors would be reduced due to improved data validation at the time of ingest.

These cost estimates are based on a number of assumptions and cover a number of tasks required by reporting firms to design, test, and implement an updated data system based on an XML submission standard. These tasks include defining requirements, developing an extraction query, developing an interim extraction format (such as a CSV, or ''comma-separated values,'' file), developing validations, developing formatting conversions, developing a framework to execute tasks on a repeatable basis, and finally, integration and testing.

(C) Request for Comment

The Commission requests comment on the range of costs reporting markets, FCMs, clearing members, and foreign brokers would incur to implement an XML submission standard to comply with the proposed amendments. Are there additional costs or benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these benefits.

b. Changes in Data Elements Reported

As detailed above, the current 80-character § 17.00(g) format does not allow for flexibility in the reporting of certain types of futures, such as bounded futures, and options, such as capped or barrier options. The proposed amendments would enable these products to be identified in § 17.00(a) reports, and would capture additional information reflecting changes in position, including reporting concerning numbers of transfers, reporting of numbers of expirations of contracts, and more granular reporting of EDRPs, including specifying the type of related product (physical, swap, or option). Additionally, the expanded reporting regime instills flexibility such that the proposed Part 17 Guidebook can facilitate reporting of positions in products with innovative features.

(A) Benefits

The proposed additional fields necessary to identify certain contracts will facilitate collection of more robust market information for the Commission, including allowing the Commission to distinguish between positions in different contracts that may not currently be distinguishable. The proposed additional fields necessary to identify changes in positions, including more granular information concerning types of EDRPs, would also allow the Commission to collect better market information. Additionally, obtaining accurate, granular information concerning daily changes in position should improve data quality. These data elements will enable reporting firms to perform an internal consistency check to confirm the accuracy of data, which should reduce reporting errors.

Obtaining accurate, granular information concerning daily changes in position would also support the Commission's surveillance and monitoring programs. This data would provide the Commission with a more comprehensive understanding concerning the nature of changes in positions—as opposed to merely understanding the scope of positions—and should further facilitate linking position data reported under § 17.00(a)[107] with transaction data reporting under § 16.02.[108]

(B) Costs

The proposed amendments will require reporting firms to report certain additional data elements to the Commission beyond those elements required by the current § 17.00(g) record format.

CFTC staff experienced in designing data reporting, ingestion, and validation systems, estimate that for the 74 reporting firms that automate reporting through a secure file transfer protocol, the process of upgrading and testing systems to collect and report new fields will require them to incur on average 400 hours to update, test, and implement the proposed additional data elements required by proposed

[105] For costs associated with upgrading reporting systems for secure FTP filers, the Commission estimates that modifications and testing will be undertaken by computer and information research scientists, database architects, software developers, programmers, and testers. The associated costs are taken from the U.S. Bureau of Labor Statistics' Occupational Employment and Wage Statistics, *available at https://www.bls.gov/oes/2021/may/oes_nat,* and adjusted with a multiple of 2.5 to account for benefits and overhead costs.

[106] For costs associated with upgrading reporting systems for CFTC Portal filers, the Commission estimates that the necessary modifications will be undertaken by data scientists. The associated costs are taken from the U.S. Bureau of Labor Statistics' Occupational Employment and Wage Statistics, *available at https://www.bls.gov/oes/2021/may/oes_nat,* and adjusted with a multiple of 2.5 to account for benefits and overhead costs.

[107] 17 CFR 17.00(a).

[108] 17 CFR 16.02.

Appendix C, for a total of 29,600 hours across all FTP filers at an hourly wage rate of $149. This would amount to total capital and start-up costs of $4,410,400 across all FTP filers (400 hours × 74 FTP filers × $149 = $4,410,400). In addition, the Commission estimates that these firms may each incur one-time costs of up to $1,000 for equipment modifications associated with these changes.

The Commission estimates that the 236 reporting firms that manually input data required to be reported under § 17.00(a) into the CFTC Portal will incur on average 20 hours to implement additional data elements required by proposed Appendix C, or 4,720 total hours across all manual filers, at an hourly wage rate of $131 per hour. The Commission estimates that in the aggregate manual filers will incur total capital and start-up costs associated with updating, testing and implementing new data elements of $618,320 (4,720 hours × $131/hour).

On an ongoing basis, there would be minimal additional costs related to the addition of new data elements, since reporting entities would not be required to submit substantially more information than the baseline. For example, the Commission does not believe that the proposed amendments are likely to affect the overall number of reports submitted annually under § 17.00(a). However, given the additional data elements required by the proposed amendments, the Commission estimates that 74 entities who automate their reporting systems may each incur an ongoing operation and maintenance cost of $3,576 per year (2 hours per month × $149 per hour) per entity, or an estimated aggregate annual cost of $264,624 (74 entities × $3,576) related to implementation of the new data elements. In addition, the Commission estimates that 236 firms that manually file reports may incur ongoing operation and maintenance costs of $3,144 per year (2 hours per month × $131 per hour) per entity as a result of implementing the proposed amendments implementing new data elements, or an estimated aggregate annual cost of $741,984 (236 entities × $3,144).

These cost estimates are based on a number of assumptions and cover a number of tasks required by the reporting firms to design, test, and implement an updated data system based on an XML format. These tasks include defining requirements, developing an extraction query, developing an interim extraction format (such as a CSV, or ''comma-separated values,'' file), developing validations, developing formatting conversions, developing a framework to execute tasks on a repeatable basis, and finally, integration and testing.

Additionally, these costs may be mitigated because certain of the proposed data elements are conditional and will only be applicable to a small subset of the reporting firms. For example, if a particular FCM is not a participant on an exchange that lists ''bounded'' or ''barrier'' contracts, that FCM will not be required to report proposed data elements that are conditional and only applicable to positions in ''bounded'' or ''barrier'' contracts.

(C) Request for Comment

The Commission requests comment on the range of costs reporting markets, FCMs, clearing members, and foreign brokers would incur to report the data elements described in the proposed amendments. Are there additional costs or benefits that the Commission should consider? Are there any data elements proposed to be added in Appendix C that commenters believe would be unduly onerous or burdensome to report pursuant to part 17? If so, please identify such data elements and explain why. Commenters are encouraged to include both qualitative and quantitative assessments of these benefits. Specific areas of interest include the following: the necessity of collecting additional fields in order to obtain a complete view of futures and options positions across all markets; (ii) evaluations of the accuracy of the Commission's estimate of the burden of the proposed information reporting; (iii) determining whether there are ways to enhance the utility of reported information; and (iv) minimizing the burden of additional data collection to reporting entities.

5. Section 15(a) Considerations

CEA Section 15(a) [109] requires the Commission to consider the costs and benefits of the proposed amendments to Part 17 with respect to the following factors: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. A discussion of these proposed amendments in light of the CEA Section 15(a) factors is set out immediately below.

[109] 7 U.S.C. 19(a).

a. Protection of Market Participants and the Public

The Commission expects that the changes to Part 17 reporting will lead to improvements in the Commission's ability to collect data on large traders. The Commission expects better validation of data at ingest, leading to more efficient error corrections compared to the old reporting format. The Commission expects these enhancements would occur without sacrificing the Commission's ability to perform comprehensive oversight of the market.

Additionally, reducing the risk of errors and delays in the publication of the COT report would benefit the public by providing more accurate data on positions held by large traders.

Furthermore, higher-quality and more granular position data from large traders would improve the Commission's oversight and enforcement capabilities and, in turn, would aid the Commission in protecting markets, participants, and the public in general.

b. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

The Commission believes the proposed amendments would improve the accuracy and completeness of futures and options position data available to the Commission by improving data quality and providing Commission staff with a more complete understanding of the products comprising certain positions. In particular, the proposed rule would allow for more complete reporting of EDRPs and complex futures and options positions. Access to more accurate and complete data would in turn assist the Commission with, among other things, evaluating if certain traders are in violation of position limits, monitoring concentrations of risk exposures, and preventing fraud and market manipulation. In addition, as described above, the proposed amendments are expected to improve the efficiency of data reporting and analysis by reducing the number of reporting errors and automating data validity and error corrections processes.

c. Price Discovery

The Commission does not believe the proposed rules would have a significant impact on price discovery.

d. Sound Risk Management Practices

The Commission believes the proposed rule changes would improve the data quality associated with futures and options position reporting required under § 17.00(a). The proposed additional data elements would capture

more complete product information for certain positions and more complete information concerning changes in position would provide the Commission with an expanded view of the marketplace that would enable the Commission to more effectively identify disruptive or manipulative trading activity. These improvements in the reporting would allow the Commission to evaluate risk throughout the futures and related markets.

The Commission does not believe that the costs arising from the proposed rules would threaten the ability of market participants to manage risks.

e. Other Public Interest Considerations

The Commission believes that the increased reliability and detail resulting from improvements to data reporting would further other public interest considerations, including transparency in the futures market to the public and detection of fraud or manipulation. Additionally, the reporting structure would provide additional flexibility to collect information on new products developed by exchanges, thereby allowing for those exchanges to innovate and respond to the demands of the marketplace while still providing traders' positions to the Commission.

f. General Request for Comment

The Commission generally requests comment on all aspects of its cost-benefit considerations, including the identification and assessment of any costs and benefits not discussed herein; data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the costs and benefits of the proposed amendments; and substantiating data, statistics, and any other information to support positions posited by commenters with respect to the Commission's discussion. The Commission welcomes comment on such costs, particularly from existing reporting firms that can provide quantitative cost data based on their respective experiences. Commenters may also suggest other alternatives to the proposed approach.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act [110] (''RFA'') requires that agencies, in proposing rules, consider the impact of those rules on small business or, in the statute's parlance, ''small entities.'' [111] These amendments affect large traders, FCMs, and other similar entities. The Commission has defined ''small entities'' as used by the Commission in evaluating the impact of its rules in accordance with the RFA.[112] In that statement, the Commission concluded that large traders and FCMs are not considered small entities for purposes of the RFA. Thus, under section 3(a) of the RFA,[113] the Chairman, on behalf of the Commission, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comment from any firm which believes that these rules would have a significant economic impact on its operations.

C. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA'') [114] imposes certain requirements on federal agencies, including the Commission, in connection with agencies' conducting or sponsoring any collection of information, as defined by the PRA. This proposed rulemaking would result in the collection of information within the meaning of the PRA, as discussed below. The proposed rulemaking contains collections of information for which the Commission has previously received control number 3038–0009 from the Office of Management and Budget (''OMB'').[115]

The Commission is proposing to amend the above information collection to accommodate newly proposed and revised information collection requirements for participants in the futures and options markets that require approval from OMB under the PRA. The amendments are expected to modify the existing annual burden for complying with certain requirements of Part 17. Specifically, the Commission is proposing to amend §§ 17.00(a), 17.00(g), 17.00(h), and 17.03(d), which set out (1) the data submission standard and (2) the data elements for large trader reports required to be filed under § 17.00(a), among other things.[116] The Commission has previously estimated that the reporting requirements associated with § 17.00 of the Commission's regulations entail an estimated 17,160 burden hours for all reporting firms.[117] The Commission is revising its total burden estimates for this clearance to reflect updated estimates of the number of respondents to the collection. The Commission is also estimating the total capital and start-up costs and ongoing operation and maintenance costs associated with the proposed amendments to the Part 17 regulations described herein.

The Commission is therefore submitting this proposal to the OMB for its review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. Responses to this collection of information by reporting firms pursuant to the Part 17 regulations would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act [118] and 17 CFR 145, ''Commission Records and Information.'' In addition, CEA section 8(a)(1) strictly prohibits the Commission, unless specifically authorized by the CEA, from making public data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.[119] The Commission is also required to protect certain information contained in a government system of

[110] 5 U.S.C. 601 *et seq.*

[111] *See* 5 U.S.C. 603. The RFA applies to rules subject to notice and comment rulemakings issued pursuant to section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b), or any other law. *Id.*

[112] *See* Policy Statement and Final Establishment of Definitions, 47 FR 18618 (Apr. 30, 1982).

[113] 5 U.S.C. 605(b).

[114] 44 U.S.C. 3501 *et seq.*

[115] For the previously approved estimates, *see* ICR Reference No: 202303–3038–002, available at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202303-3038-002.*

[116] The Commission proposes two categories of amendments to Part 17. First, the Commission proposes to remove current regulation 17.00(g)'s 80-character record format and amend regulation 17.03(d) to delegate authority to the Director of the Office of Data and Technology to determine the form, manner, coding structure, and electronic data transmission procedures for reporting the data elements in Appendix C to Part 17 and to determine whether to permit or require one or more particular data standards for reports required under regulation 17.00(a). That submission standard would be published in a Part 17 Guidebook, to be published on the Commission's website. The proposed Part 17 Guidebook designates a modern XML submission standard for submitting reports required under regulation 17.00(a). Second, the Commission proposes adding an Appendix C to Part 17 enumerating data elements to be included in regulation 17.00(a) reports. The proposed data elements consist of (1) certain data elements currently required to be reported under regulation 17.00(g), (2) certain data elements necessary for processing files submitted in XML, (3) certain data elements necessary to represent innovative contracts that cannot currently be represented using the regulation 17.00(g) format, and (4) data elements necessary to understand the transactions that resulted in day-to-day changes in positions of large traders. The form and manner for reporting these data elements in proposed Appendix C would be provided in the Part 17 Guidebook. The burden estimates provided in this section take into account the burden associated with reporting using a modern XML submission standard and reporting the data elements as set out in proposed Appendix C, in compliance with the proposed Part 17 Guidebook.

[117] *See* ICR Reference No: 202303–3038–002, available at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202303-3038-002.*

[118] 5 U.S.C. 552.

[119] 7 U.S.C. 12(a)(1).

records according to the Privacy Act of 1974.[120]

The Commission expects that requiring reporting pursuant to a modern data standard will not require reporting firms to submit substantially more information than is currently required. Accordingly, the Commission is retaining its previous estimated numbers of reports, burden hours per report, and average burden hour cost. However, based on review of recent data from 2023, the Commission is reducing its estimate of the number of respondents from 330 to 310. Accordingly, the Commission is reducing its estimate from the previous 17,160 burden hours for all reporting firms[121] to 16,120 burden hours. In addition, the Commission anticipates that implementation of a modern submission standard as proposed in the rules should reduce or eliminate manual corrections and resubmissions that occur under the currently operative regulations.

The aggregate annual estimate for the reporting burden associated with Part 17, as amended by the proposal,[122] would be as follows:

Estimated number of respondents: 310.

Estimated Average Burden Hours per Respondent: 52 hours.

Estimated total annual burden on Respondents: 16,120 hours.

Frequency of collection: Periodically.

In addition, the Commission anticipates that the proposed rules will result in annual capital and start-up costs as well as operating and maintenance costs, consisting of (1) start-up costs to implement the proposed rule changes, (2) operating and maintenance costs to implement the proposed rule changes, and (3) costs to modify equipment as necessary to comply with the proposed rule changes. The Commission estimates that some respondents may report by secure FTP (''FTP filers'') and some firms may report manually (''manual filers''), and that the total capital and start-up costs will vary based on whether a respondent is an FTP Filer or a Manual Filer.

The Commission estimates that FTP filers would comprise 74 respondents. The Commission estimates that these respondents would incur one-time initial costs associated with (1) modifying systems to adopt a new data standard, (2) updating and testing systems to implement new data elements, and (3) modifying equipment to implement new data elements. First, the Commission estimates that such firms would incur a one-time initial burden of 200 hours per entity to modify their systems to adopt changes to the data submission standard described in this proposed rulemaking, for a total estimated 14,800 total hours. Second, the Commission estimates that FTP filers will incur total capital and start-up costs associated with updating, testing, and implementing new data elements of 400 hours, for a total estimated 29,600 hours. Third, the Commission also estimates that FTP filers would incur one-time costs of $1,000 to modify equipment to implement new data elements. This would amount to $6,689,600 (((200 + 400 hours) × 74 FTP filers × $149[123])) + (74 FTP filers × $1,000) = $6,689,600).

In addition, the Commission estimates that as a result of implementing that new data submission standard, these 74 FTP filers may incur additional operating and maintenance costs of 24 hours per year, for 1,776 total hours, resulting in costs of $264,624 (24 hours × 74 FTP filers × $149[124] = $264,624), and, as a result of implementing new data elements, these 74 FTP filers may incur additional operating and maintenance costs of 24 hours per year, for 1,776 total hours, resulting in costs of $264,624 (24 hours × 74 FTP filers × $149[125] = $264,624). This yields additional annual operating and maintenance costs of $529,248 for FTP filers.

The Commission estimates that manual filers would comprise 236 reporting firms. The Commission estimates that these respondents would incur one-time initial costs associated with (1) modifying systems to adopt a new data standard and (2) updating and testing systems to implement new data elements. First, the Commission estimates such respondents would incur a one-time initial burden of 10 hours to modify their systems to implement a new data standard, for a total estimated 2,360 total hours. Second, the Commission estimates that manual filers will incur an average one-time cost of 20 hours to implement additional data elements required by proposed Appendix C, for a total estimated 4,720 total hours. This would amount to aggregate one-time initial costs of $927,480 ((10 hours + 20 hours) × 236 manual filers × $131[126] = $927,480).

In addition, the Commission estimates that as a result of implementing that new data submission standard, these 236 manual filers may incur additional operating and maintenance costs of 24 hours per year, for 5,664 total hours, for an associated cost of $741,984 (24 hours × 236 manual filers × $131[127] = $741,984), and, as a result of implementing new data elements, these 236 manual filers may incur additional operating and maintenance costs of 24 hours per year, for 5,664 total hours, for an associated cost of $741,984 (24 hours × 236 manual filers × $131[128] = $741,984). This yields additional annual operating and maintenance costs of $1,483,968 for manual filers.

Accordingly, the total estimated capital and start-up costs across all 310 reporting entities is $7,617,080 ($6,689,600 + $927,480 = $7,617,080). Based on five-year, straight line depreciation, this amounts to annualized total capital and start-up costs for all covered entities of $1,523,416. The total estimated annual operating and maintenance costs across all entities is $2,013,216 ($529,248 for FTP filers + $1,483,968 for manual filers = $2,013,216). The Commission estimates that total annual capital and start-up costs and operation and maintenance costs for all covered entities would be $3,536,632 ($1,523,416 + $2,013,216 = $3,536,632).

Request for Comment

The Commission invites the public and other Federal agencies to comment

[120] 5 U.S.C. 552a.

[121] *See* ICR Reference No: 202303–3038–002, available at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202303-3038-002.*

[122] The previous burden estimates for 17 CFR 17.00 are available at Notice, Agency Information Collection Activities Under OMB Review, 88 FR 18127 (Mar. 27, 2023).

[123] For the cost calculations for FTP submitters, Commission staff used a composite (blended) wage rate by averaging the hour wages for (1) Computer Research Scientists, (2) Database Architects, (3) Software Developers, and (4) Developers, Programmers, and Testers. Per the U.S. Bureau of Labor Statistics, national industry-specific occupational employment and wage estimates from May 2021, the mean hourly wage for a computer research scientist is $68.58, database architect is $58.58, software developer is $58.17, and developers, programmers, and testers is $54.68. *See* U.S. Bureau of Labor Statistics' Occupational Employment and Wage Statistics, *available at https://www.bls.gov/oes/2021/may/oes_nat.* The average of those wages is $59.42. Commission staff has applied a multiplier of 2.5 times to account for benefits and overhead. The Commission is therefore using an hourly wage rate of $149 for FTP submitters.

[124] *See id.*

[125] *See id.*

[126] For the cost calculations for manual submitters, Commission staff used the wage rate for Data Scientists. Per the U.S. Bureau of Labor Statistics, national industry-specific occupational employment and wage estimates from May 2021, the mean hourly wage for a data scientist is $52.24. *See* U.S. Bureau of Labor Statistics' Occupational Employment and Wage Statistics, *available at https://www.bls.gov/oes/2021/may/oes_nat.* Commission staff has applied a multiplier of 2.5 times to account for benefits and overhead. The Commission is therefore using an hourly wage rate of $131 for manual submitters.

[127] *See id.*

[128] *See id.*

on any aspect of the proposed information collection requirements discussed above. The Commission will consider public comments on this proposed collection of information in:

(1) Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

(2) Evaluating the accuracy of the estimated burden of the proposed collection of information, including the degree to which the methodology and the assumptions that the Commission employed were valid;

(3) Enhancing the quality, utility, and clarity of the information proposed to be collected; and

(4) Minimizing the burden of the proposed information collection requirements on reporting firms, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques, *e.g.,* permitting electronic submission of responses.

Copies of the submission from the Commission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160 or from *https://RegInfo.gov.* Organizations and individuals desiring to submit comments on the proposed information collection requirements should send those comments to:

- The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Trading Commission;
- (202) 395–6566 (fax); or
- *OIRAsubmissions@omb.eop.gov* (email).

Please provide the Commission with a copy of submitted comments so that comments can be summarized and addressed in the final rulemaking, and please refer to the **ADDRESSES** section of this rulemaking for instructions on submitting comments to the Commission. OMB is required to make a decision concerning the proposed information collection requirements between 30 and 60 days after publication of this release in the **Federal Register**. Therefore, a comment to OMB is best assured of receiving full consideration if OMB receives it within 30 calendar days of publication of this release. Nothing in the foregoing affects the deadline enumerated above for public comment to the Commission on the proposed rules.

D. Antitrust Considerations

CEA section 15(b) requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the CEA in issuing any order or adopting any Commission rule or regulation.

The Commission does not anticipate that the proposed amendments to Part 17 would result in anti-competitive behavior. The Commission encourages comments from the public on any aspect of the proposal that may have the potential to be inconsistent with the antitrust laws or anticompetitive in nature.

List of Subjects in 17 CFR Part 17

Brokers, Commodity futures, Reporting and recordkeeping requirements, Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend part 17 of title 17 of the Code of Federal Regulations as follows:

PART 17—REPORTS BY REPORTING MARKETS, FUTURES COMMISSION MERCHANTS, CLEARING MEMBERS, AND FOREIGN BROKERS

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

Authority: 7 U.S.C. 2, 6a, 6c, 6d, 6f, 6g, 6i, 6t, 7, 7a, and 12a.

■ 2. In § 17.00, revise paragraphs (a)(1), (g), and (h) to read as follows:

§ 17.00 Information to be furnished by futures commission merchants, clearing members, and foreign brokers.

* * * * *

(a) * * *

(1) Each futures commission merchant, clearing member and foreign broker shall submit a report to the Commission for each business day with respect to all special accounts carried by the futures commission merchant, clearing member or foreign broker, except for accounts carried on the books of another futures commission merchant or clearing member on a fully-disclosed basis. Except as otherwise authorized by the Commission or its designee, such report shall be made pursuant to paragraph (g) of this section. The report shall show each futures position, separately for each reporting market and for each future, and each put and call options position separately for each reporting market, expiration and strike price en each special account as of the close of market on the day covered by the report and, in addition, the number of futures and options contracts bought and sold, the quantity of exchanges of futures or options for commodities or for derivatives positions, the number of delivery notices issued for each such account by the clearing organization of a reporting market and the number stopped by the account, the number of long and short options expired and exercised, the number of long and short futures assigned, and the number of long and short transfers sent and received. The report shall also show all positions in all contract months and option expirations of that same commodity on the same reporting market for which the special account is reportable.

* * * * *

(g) *Media and file characteristics.* Except as otherwise approved by the Commission or its designee, all of the applicable data elements set forth in appendix C to this Part shall be included in a report required by § 17.00(a), and shall be submitted together in a single file. The report shall be submitted in the form and manner published by the Commission or its designee pursuant to § 17.03.

(h) *Correction of errors and omissions.* Except as otherwise approved by the Commission or its designee, corrections to errors and omissions in data provided pursuant to § 17.00(a) shall be submitted in the form and manner published by the Commission or its designee pursuant to § 17.03.

* * * * *

■ 3. In § 17.03, revise paragraphs (a) and (d) to read as follows:

§ 17.03 Delegation of authority to the Director of the Office of Data and Technology or the Director of the Division of Market Oversight.

* * * * *

(a) Pursuant to § 17.00(a) and (h), the authority shall be designated to the Director of the Office of Data and Technology to determine whether futures commission merchants, clearing members, and foreign brokers may report the information required under § 17.00(a) and (h) using some format other than that required under § 17.00(g) upon a determination that such person is unable to report the information using the format, coding structure, or electronic data transmission procedures otherwise required.

* * * * *

(d) Pursuant to § 17.00(a), (g), and (h), the authority shall be designated to the Director of the Office of Data and Technology to determine the form, manner, coding structure, and electronic data transmission procedures for reporting the data elements in appendix

C to this part and to determine whether to permit or require one or more particular data standards.

* * * * *

■ 4. Add appendix C to part 17 to read as follows:

	Data element name	Definition for data element
1.	Total Message Count	The total number of reports included in the file.
2.	Message Type	Message report type.
3.	Sender ID	The CFTC-issued reporting firm identifier.
4.	To ID	Indicates the report was submitted to the CFTC.
5.	Message Transmit Datetime	The date and time the file was created.
6.	Report ID	A unique identifier assigned to each position report.
7.	Record Type (Action)	Indicates the action that triggered the Position Report.
8.	Report Date	The date of the information being reported.
9.	Reporting Firm ID	CFTC assigned identifier for the reporting firm.
10.	Special Account Controller LEI	The Legal Entity Identifier issued to the special account controller.
11.	Account ID	A unique account identifier, assigned by the reporting firm to each special account. Assignment of the account number is subject to the provisions of § 17.00(b) and Appendix A of this part (Form 102).
12.	Exchange Indicator	The exchange where the contract is traded.
13.	Commodity Clearing Code	The clearinghouse-assigned commodity code for the futures or options contract.
14.	Product Type	Type of Product.
15.	Ticker Symbol	Ticker symbol of the product traded.
16.	Maturity Month Year	Month and year of the delivery or maturity of the product, as applicable. Day must be provided when necessary to characterize a product.
17.	Maturity Time	The expiration time of an option or last trading time of a future.
18.	Listing Date	Product listing date.
19.	First Exercise Date	The earliest time at which notice of exercise can be given.
20.	Strike Level	Numeric option moneyness criterion.
21.	Alpha Strike	Non-Numeric option moneyness criterion.
22.	Cap Level	Ceiling value of a capped option or bounded future.
23.	Floor Level	Floor value of a capped option or bounded future.
24.	Bound or Barrier Type	Behavior of the product when it hits the bound or barrier.
25.	Bound or Barrier Level	Bound or barrier level of a contingent option.
26.	Put or Call Indicator	Nature of the option exercise.
27.	Exercise Style	Type of exercise of an option.
28.	Payout Amount	Cash amount indicating the payout associated with the product.
29.	Payout Type	The type of valuation method or payout trigger.
30.	Underlying Contract ID	The instrument that forms the basis of an option.
31.	Underlying Maturity Month Year	Underlying delivery year and month (and day where applicable).
32.	Long Position	The total of long open contracts carried at the end of the day.
33.	Short Position	The total of short open contracts carried at the end of the day.
34.	Contracts Bought	The total quantity of contracts bought (gross) during the day associated with a special account, including all block trades and trade allocations such as give-ups, even if the give-ups are processed beyond T+1. Do not include exchanges of derivatives for related positions EDRPs (EFP, EFS or EFR, EOO) or transfers.
35.	Contracts Sold	The total quantity of contracts sold (gross) during the day associated with a special account, including all block trades and trade allocations such as give-ups, even if the give-ups are processed beyond T+1. Do not include exchanges of derivatives for related positions EDRPs (EFP, EFS or EFR, EOO) or transfers.
36.	EDRPs Bought	The quantity of purchases of futures or options in connection with exchanges of futures or options for related positions (''EDRPs'') done pursuant to a DCM's rules, disaggregated into quantity of purchases of futures or options in connection with EDRPs by type of EDRP, including exchanges of futures for physical, exchanges of futures for risk, exchanges of options for options, and any other EDRP offered pursuant to a DCM's rules.
37.	EDRPs Sold	The quantity of sales of futures or options in connection with EDRPs done pursuant to a DCM's rules, disaggregated into quantity of sales of futures or options in connection with EDRPs by type of EDRP, including exchanges of futures for physical, exchanges of futures for risk, exchanges of options for options, and any other EDRP offered pursuant to a DCM's rules.
38.	Delivery Notices Stopped	The number of futures contracts for which delivery notices have been stopped during a day.
39.	Delivery Notices Issued	The number of futures contracts for which delivery notices have been issued during a day.
40.	Long Options Expired	Long options positions expired without being exercised.
41.	Short Options Expired	Short options positions expired without being exercised.
42.	Long Options Exercised	Long options positions exercised during the day.
43.	Short Options Exercised	Short options positions exercised during the day.
44.	Long Futures Assigned	Long futures assigned as the result of an option exercise.
45.	Short Futures Assigned	Short futures assigned as the result of an option exercise.
46.	Long Transfers Sent	Long positions sent through other transfers during the day. (Do not include give-ups.)
47.	Long Transfers Received	Long positions received through other transfers during the day. (Do not include give-ups.)
48.	Short Transfers Sent	Short positions sent through other transfers during the day. (Do not include give-ups.)

	Data element name	Definition for data element
49.	Short Transfers Received	Short positions received through other transfers during the day. (Do not include give-ups.)
50.	Product-Specific Terms	Terms of the contract that are economically material to the contract, maintained in the ordinary course of business by the reporting market listing the contract, and not otherwise required to be reported under the data elements in this Appendix.

Issued in Washington, DC, on June 20, 2023, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Large Trader Reporting Requirements—Voting Summary and Commissioners' Statements

Appendix 1—Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman Rostin Behnam in Support of the Notice of Proposed Rulemaking on Amendments to Part 17 Large Trader Reporting Requirements

I support today's proposed rule which would modernize and create a path for efficient future modernization of large trader data reporting under Part 17 of the Commission's regulations. The proposal also seeks to align Part 17 data and reporting with the reporting structure in Parts 16, 20, 39, 43, and 45.

Part 17 governs large trader reporting for futures and options, and requires certain registrants to report daily position information for the largest futures and options traders. The Commission uses the large trader reports for surveillance (detection and prevention of price manipulation) and enforcement of speculative limits. These reports also provide the basis for the Commission's weekly Commitments of Traders (''COT'') report, which is used by a wide range of commercial and speculative traders, and was itself recently modernized to include an updated interface that simplifies the downloading of COT data and an Application Program Interface (API), which enables an easier automated download process.[1]

Large trader data and the COT report alike are tools of the trade, and ensuring that they are usable internally and externally promotes transparency and efficiency as we carry out our regulatory and enforcement functions. Submission standards and data fields for the report (§ 17.00(g)) were promulgated in 1986 and last updated in 1997, and have become outdated and difficult for staff to use. The proposal seeks to modernize the format standards and data fields by: removing the 80-character format and delegating authority to the Director of the Division of Data (DOD) to designate a modern data submission standard; replacing the data fields enumerated in the regulation with a new Appendix C specifying data elements to be reported; and delegating to the DOD Director the authority to specify the form, manner, coding structure, and electronic data transmission procedures for reporting.

The Part 17 proposal is accompanied by the contemporaneous publication of a proposed Part 17 Guidebook on the Commission's website. The proposed Guidebook designates a modern FIXML submission standard for submitting reports required under § 17.00(a). The proposal includes a general description of the Guidebook and requests comments from the public.

At their core, rules like this support foundational compliance and unequivocally support our efforts in ensuring that end-users and individual and institutional investors alike can measure and understand risks. Further, this rule will allow a better understanding that those trading in our markets are being monitored, and their impacts and influence within such markets, constantly measured and evaluated.

Appendix 3—Statement of Commissioner Kristin N. Johnson In Support of Notice of Proposed Rulemaking on Large Trader Reporting Requirements

I strongly support issuing the proposal on Large Trader Reporting Requirements. Large trader reports ''effectuate the Commission's market and financial surveillance programs by providing information concerning the size and composition'' of Commission regulated markets and the accounts that hold the largest positional exposures.[1] The Commission's large trader reporting system serves as a foundational tool for protecting market integrity as well as price discovery and hedging utility of futures contracts for commercial end-users. Despite technology-based formatting limitations, the large trader reporting system has admirably supported the Commission's market surveillance and position limits enforcement programs for decades.

Among other uses, data reported under Part 17 enables the Commission to identify large positions in single markets or across markets, including by aggregating positions of a particular beneficial owner across multiple accounts held with multiple clearing members. This data also supports the Commission's surveillance programs and serves as the basis of the Commission's weekly Commitment of Traders (''COT'') reports. In addition, the data required to be reported under § 17.00(a) comprise core data used by many divisions within the Commission, including the Division of Market Oversight (''DMO''), the Office of the Chief Economist (''OCE''), and the Division of Enforcement.

Requiring reporting in an extensible markup language (''XML'') protocol as proposed is consistent with current regulatory practices and reconciles the format for transmitting large trader reports with the Commission's transactional reporting structures for designated contract markets, derivatives clearing organizations, physical commodity swaps, and swap data repositories.[2] This harmonization, if properly implemented, should unlock surveillance synergies and allow the Commission's Integrated Surveillance System, where large trader reports are housed, to interact with other reporting frameworks including Ownership and Control Reports, which are triggered when accounts exceed volume thresholds,[3] and Trade Capture Reports, which contain transaction level and related order book data.[4]

Although the proposal preserves the core data that large trader reports collect today, it also measuredly proposes to integrate complementary data that is not fully reflected in current reports. Access to more fulsome and reliable data will improve the Commission's understanding of how traders employ certain transactions and serve as a deterrent to potential abusive trading practices.

The proposal would also require reporting data elements that capture ''Contracts Bought'' and ''Contracts Sold'' instead of reporting aggregated positions that do not presently consider the amount of buying and selling associated with a particular special account from one trading day to the next.[5] I am heartened by the proposal's one-year compliance period,[6] and I encourage stakeholders to meaningfully engage with this proposal to enhance the Commission's regulatory mandate without placing undue burdens on the firms that potentially would have to comply with new requirements.

I commend staff—Owen Kopon and Paul Chaffin from DMO, James Fay from the

[1] *See* Press Release Number 8612–22, CFTC, CFTC Launches New Commitments of Traders Reports (Oct. 20, 2022), CFTC Launches New Commitments of Traders Reports, available at *https://www.cftc.gov/PressRoom/PressReleases/8612-22*.

[1] Notice of Proposed Rulemaking, Position Limits for Derivatives, 78 FR 75,680, 75,741 (Dec. 12, 2013).

[2] Notice of Proposed Rulemaking, Large Trader Reporting Requirements at 14 (Jun. 7, 2023), *https://www.cftc.gov/media/8716/votingdraft060723_17CFRPart17/download* (hereinafter ''Large Trader Proposal'').

[3] 17 CFR 17.01.

[4] 17 CFR 16.02.

[5] Large Trader Proposal at 29 to 30.

[6] Large Trader Proposal at 34.

Division of Data, and Daniel Prager from OCE—for bringing to the Commission a thoughtful proposal for modernizing large trader reports.

Appendix 4—Statement of Commissioner Christy Goldsmith Romero on Strengthening and Modernizing Large Trader Reporting Requirements for Transparency and Market Integrity

At my confirmation hearing for this role, I testified, ''If confirmed, my highest priority would be to work to ensure that the markets are working well—that they are open, fair, and competitive. . . . Whether focused on hard commodities like agriculture, energy, or metals, or on the financial sector, the Commission plays a critical role in ensuring that these markets work well. That starts with the Agricultural sector—the farmers, ranchers, and producers our nation depends on—to put food on our tables and contribute to our nation's economic activity. For our farmers and ranchers to help drive our economy and feed the world, they need U.S. derivatives markets for risk management and price discovery.'' [1]

Transparency is critical to fair and orderly markets. It provides the market confidence that pricing is appropriate, reflects market fundaments, and is free of manipulation and excessive speculation. This confidence is reflected in the fact that the Commission's Commitments of Traders report that reports position information for the largest traders in our markets is consistently the most downloaded item from our website. Market participants, news media, researchers, academics, and industry professionals, use these reports to determine current trends, conduct analysis of trading patterns, and inform market strategies. The importance of these reports was highlighted when the Commission had to postpone the reports temporarily after the cyber attack on Ion Markets.[2]

Fair and orderly markets also require confidence that the Commission is monitoring markets and taking strong action to promote market integrity. The Commitments of Traders report is a tool in the Commission's market surveillance program and enforcement program to deter and catch market manipulation and excessive speculation. As I have visited with our nation's farmers and producers, I have heard about their need for the Commission to protect the integrity of our markets, to ensure that prices are not artificially increased, thereby unfairly raising input costs.

The Commission has a critical mission to deter and combat excess speculation in our markets—which I discussed Monday in a recent enforcement action.[3] In September, I proposed that the CFTC use its expertise and data to study whether prices in key commodities markets are being determined by market fundamentals, and to root out any manipulation and excessive speculation so that families and businesses aren't forced to pay artificially increased prices.[4] These deep dive studies would need data on the activity of the largest traders in our markets—which is the sole focus of these reporting requirements.

The Commission will benefit from strengthening and modernizing this important surveillance tool, as will the public. I particularly appreciate the recognition of the need to determine positions across markets for more comprehensive data, and for data quality improvements. The proposed changes would enhance the Commission's ability to identify disruptive or manipulative trading activity. For these reasons, I support the proposed rule. I thank the staff and look forward to public comment.

Appendix 5—Statement of Commissioner Caroline D. Pham in Support of Notice of Proposed Rulemaking for Large Trader Reporting Requirements Under Part 17

Today, the Commodity Futures Trading Commission (Commission or CFTC) is considering whether to propose revisions that would update the outdated large trader reporting submission standards in Part 17 of the Commission's regulations. I am pleased to support this proposed rulemaking because the CFTC relies on its large trader reporting data to generate its weekly Commitment of Traders (COT) Report and to carry out our important market surveillance functions.

Part 17 is the CFTC's regulatory framework that outlines the reporting obligations for clearing members, including futures commission merchants (FCMs) and foreign brokers, collectively known as reporting firms. Part 17 requires these reporting firms to submit daily trade data to the CFTC, which includes data on open interest, positions held, and other relevant position information on futures and options on futures.

This framework allows the CFTC to maintain an up-to-date and accurate picture of the markets, ensuring that market participants and end-users have the necessary information for price discovery and risk management. By regularly collecting and publishing this market data through the CFTC's COT Report, Part 17 helps maintain market integrity and fosters transparency, providing valuable insights into market trends and dynamics.

The COT Report has been vital to our derivatives market since its inception in 1962. The report provides a weekly summary of the open interest positions held by various categories of market participants, including commercial traders, non-commercial traders, and nonreportable positions. By understanding the positions held by commercial and noncommercial traders, market participants and end-users can better manage their risk exposure, assess the supply and demand fundamentals that drive price movements, and gauge the overall sentiment in markets, enabling market participants to make informed decisions about their own positions and strategies.

Part 17 data is also used by the CFTC to monitor market activities and to detect potential fraud, market manipulation, and position limit violations. Collecting position data that accurately reflects the full picture of a market participant's position also enables the CFTC to assess the financial risks presented by large customer positions to registrants such as FCMs, and derivatives clearing organizations (DCOs).

As we deliberate today on the proposed rule to amend Part 17, it is crucial to remember that we should periodically update our reporting rules as needed to reflect developments in the derivatives markets, while ensuring such updates do not cause disruption to the CFTC's weekly COT Report or our market oversight. And in the rulemaking process, the Commission must give fair consideration to every alternative to ensure that our efforts to enhance market transparency do not unnecessarily increase the regulatory burden and costs for market participants, particularly end-users who are already dealing with inflation, rising interest rates, and increased costs for inputs. I often say that we are not regulating in a vacuum, and the Commission must take into account real-world considerations and the realities of implementing significant changes to systems, operations, and processes.

To that end, I'm pleased that the proposed implementation period is one year from publication of the final rule, and encourage commenters to note if this is not enough time.

The COT Report is an invaluable tool in the derivatives market, providing transparency and aiding in price discovery and risk management for market participants and end-users, and enabling the CFTC's market surveillance and oversight mission. I'd like to recognize and thank the following CFTC staff members: Owen Kopon and Paul Chaffin in the Division of Market Oversight, James Fay in the Division of Data, and Daniel Prager in the Office of Chief Economist, for their critical work on these important requirements.

[FR Doc. 2023–13459 Filed 6–26–23; 8:45 am]

BILLING CODE 6351–01–P

[1] *Statement of Christy Goldsmith Romero, Confirmation Hearing,* U.S. Senate Committee on Agriculture, Nutrition, and Forestry (Mar. 2, 2022) available at *https://www.agriculture.senate.gov/imo/media/doc/Testimony_Goldsmith%20Romero.pdf.*

[2] *See* CFTC, *CFTC Announces Postponement of Commitment of Traders Report,* (Feb. 16, 2023) available at *https://www.cftc.gov/PressRoom/PressReleases/8662-23.*

[3] *See* CFTC Commissioner Christy Goldsmith Romero, *The Importance of Protecting Commodity Markets Against Excess Speculation in the Ghost Cattle Fraud Case,* (June 5, 2023) Statement of Commissioner Goldsmith Romero on the Importance of Protecting Commodity Markets Against Excessive Speculation in the *Ghost Cattle Fraud Case CFTC* v. *Cody Easterday available at https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement060523.*

[4] *See* Opening Statement of Commissioner Christy Goldsmith Romero Before the Energy and Environmental Markets Advisory Committee, Opening Statement of Commissioner Christy Goldsmith Romero Before the Energy and Environmental Markets Advisory Committee (September 20, 2022) available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement092022.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2023–F–2415]

Kemin Industries, Inc.; Filing of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Kemin Industries, Inc., proposing that the food additive regulations be amended to provide for the safe use of formaldehyde as a viral mitigant for African Swine Fever virus (ASFv) in animal food and food ingredients.

DATES: The food additive petition was filed on June 5, 2023.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this document into the ''Search'' box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lauren Howell, Center for Veterinary Medicine (HFV–221), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 214–253–4949, *Lauren.Howell@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(b)(5)), we are giving notice that we have filed a food additive petition (FAP 2317), submitted by Kemin Industries, Inc., 1900 Scott Ave., Des Moines, IA 50317. The petition proposes to amend in 21 CFR part 573—Food Additives Permitted in Feed and Drinking Water of Animals to provide for the safe use of formaldehyde as a viral mitigant for ASFv in animal food and food ingredients.

The petitioner has claimed that this action is categorically excluded under 21 CFR 25.32(r) because it is of a type that does not individually or cumulatively have a significant effect on the human environment. In addition, the petitioner has stated that, to their knowledge, no extraordinary circumstances exist that may significantly affect the quality of the human environment. If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: June 21, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–13545 Filed 6–26–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 174, and 180

[Docket No. PHMSA–2016–0015 (HM–263)]

RIN 2137–AF21

Hazardous Materials: FAST Act Requirements for Real-Time Train Consist Information

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA proposes amendments to its Hazardous Materials Regulations to require all railroads to generate in electronic form, maintain, and provide to first responders, emergency response officials, and law enforcement personnel, certain information regarding hazardous materials in rail transportation to enhance emergency response and investigative efforts. The proposal responds to a safety recommendation of the National Transportation Safety Board and statutory mandates in The Fixing America's Surface Transportation Act, as amended, and complements existing regulatory requirements pertaining to the generation, maintenance, and provision of similar information in hard copy form, as well as other hazard communication requirements.

DATES: Comments must be received by August 28, 2023. To the extent possible, PHMSA will consider late-filed comments as a final rule is developed.

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

- *Federal Rulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, Docket Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.

Instructions: Include the agency name and docket number PHMSA–2016–0015 (HM–263) or RIN 2137–AF21 for this rulemaking at the beginning of your comment. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. If sent by mail, comments must be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard.

Docket: For access to the dockets to read background documents or comments received, go to *https://www.regulations.gov* or DOT Docket Operations Office (*see* **ADDRESSES**).

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.'' Submissions containing CBI should be sent to Dirk Der Kinderen, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary that PHMSA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Dirk Der Kinderen, 202–366–8553, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. What is the purpose of the proposed regulatory action?

The Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to amend the Hazardous Materials Regulations (HMR; 49 Code of Federal Regulations (CFR) parts 171 to 180) in response to congressional mandates and a safety recommendation of the National Transportation Safety Board (NTSB) by requiring *all* railroads transporting hazardous materials to generate in electronic form train consist information, maintain that information off-the-train, update that information in real-time, and provide that information to authorized ''emergency response personnel'' [1] in advance of their arrival to an accident or incident. As such, railroads operating a train carrying hazardous materials will be required to push that information to state-authorized local first responders needing that information promptly following either an accident involving that train, or an incident involving the release or suspected release of hazardous material from that train. Railroads must also ensure that, in updating that electronic train consist information, they also update hard (printed) copy versions of the same information provided to train crews such that both hard (printed) copy and electronic versions of that information are consistent, accurate, and available when needed most. PHMSA expects this enhanced, proactive approach will ensure that emergency response personnel have timely, accurate, actionable information regarding the hazardous materials being transported and the hazards they may encounter when they are en route to or reach the scene of a rail accident or incident, thereby reducing the risks to surrounding communities and the environment while expediting site remediation, restoration of rail service, and community engagement efforts as investigation activity proceeds. While PHMSA understands the availability of electronic real-time train consist information may not have changed the outcome of the recent Norfolk Southern train derailment in East Palestine, OH, that accident and similar events that have occurred in recent years highlight the importance of providing emergency response personnel with timely, complete, and accurate information regarding hazardous materials within a train—as any additional time for responders to prepare for what they will encounter may reduce risks and result in significant public safety, commercial, and environmental benefits.

The amendments proposed herein respond to a mandate in section 7302 of The Fixing America's Surface Transportation Act (FAST Act, Pub. L. 114–94), as amended by the Investment Infrastructure and Jobs Act (Pub. L. 117–58),[2] to require Class I railroads transporting hazardous materials to generate accurate, real-time, electronic train consist information that must be provided ''to State and local first responders, emergency response officials, and law enforcement personnel that are involved in the response to or investigation of an accident, incident, or public health or safety emergency involving the rail transportation of hazardous materials.'' However, consistent with the broader language within an NTSB safety recommendation following the 2005 collision of two freight trains near Anding, MS, PHMSA proposes extending the NPRM's proposed requirements to all railroads in light of the risks to public safety and the environment from delay in responding to releases from even smaller, Class II and III railroads on which hazardous materials are transported.

B. What are the key provisions?

1. *Definition of ''Train Consist Information'':* PHMSA proposes to amend the definition of ''train consist'' at § 171.8 to be recharacterized as ''train consist information,'' meaning a hard (printed) copy or electronic record of the position and contents of hazardous materials rail cars of a train where the record includes information required by § 174.26. Specifically, the information includes the contact information for a railroad-designated emergency point of contact; the point of origin and destination of the hazardous materials on the train subject to shipping paper information requirements; shipping paper information required by §§ 172.201 to 172.203; and emergency response information required by § 172.602(a). PHMSA also proposes a conforming revision to § 180.503 to delete a definition of ''train consist'' that is not used in that part.

2. *Notice to Train Crews:* PHMSA proposes to amend the provision to enhance existing requirements at § 174.26 to provide train consist information (as PHMSA proposes to define that term at § 171.8) in hard (printed) copy to train crews prior to movement of hazardous materials by rail. Specifically, PHMSA proposes to clarify responsibilities for railroads to provide a hard (printed) copy version of train consist information to train crews, for train crews to update that hard (printed) copy version of train consist information, and that the hard (printed) copy of the train consist information must be maintained in a conspicuous location of an occupied locomotive. Railroads must also ensure that train consist information is generated and updated in electronic form, maintained offsite of the train itself, and immediately accessible by the railroad's designated emergency response point of

[1] PHMSA understands ''emergency response personnel'' may include any personnel from any of Federal (*e.g.,* PHMSA, Federal Railroad Administration, National Transportation Safety Board, U.S. Environmental Protection Agency, or Federal Emergency Management personnel), or organizations that state or local governments authorize to perform emergency response activities.

[2] Codified at 49 U.S.C. 20103 note.

contact. Railroads must ensure the hard (printed) copy and electronic forms of the train consist information are at all times accurate and consistent.

3. *Emergency Response Information Sharing Requirements:* PHMSA proposes a new section at § 174.28 that will establish real-time, electronic train consist information-sharing requirements for hazardous materials transported by rail. All railroads will need to generate and provide train consist information by electronic means to authorized emergency response personnel that could be involved in the response to—or investigation of—an accident, incident, or public health or safety emergency involving the rail transportation of hazardous material. Information generated and shared in accordance with this section must be accurate, provided in a secure and confidential manner consistent with the intent of the FAST Act, and accessible at any time by authorized emergency response personnel. In the event of either an accident, or incident involving the release or suspected release of hazardous material, railroads operating trains carrying hazardous material will be required to promptly forward that train consist information in electronic form to state-authorized local first responders within a 10-mile radius of the incident or accident to assist in response and investigation efforts.

C. What is the economic impact?

PHMSA estimates that the proposed rule would impact seven Class I railroads, 11 Class II railroads, and 585 Class III railroads and estimates the undiscounted total financial impact of the rulemaking over a 10-year analysis period to be about $46.3 million in 2021 dollars, for an average annual cost of $4.6 million. The discounted total cost of the rulemaking over the analysis period is estimated to be $32.8 million in 2021 dollars at a 7 percent discount rate. The benefits of this proposed rule will depend greatly on the effectiveness of having timely access to real-time train consist information to improve emergency responders' ability to respond to rail accidents and incidents, which may be a high-consequence/low-probability event such as the Norfolk Southern train derailment at East Palestine, OH. PHMSA anticipates the proposed rule will improve emergency responders' ability to promptly identify all the hazardous materials cars involved in an accident and to timely assess the threat from a hazardous materials release. PHMSA estimated the annual damage cost of hazardous material incidents on rail to be $15.6 million in 2021 dollars. Therefore, the proposed rule would have to reduce damage costs by about 30 percent for the monetized benefits of the proposed rule to equal costs. The following table summarizes the annual costs and benefits of the major provisions of the proposed rule in constant 2021 dollars.

Proposed requirement	Average annual cost			Benefit	Breakeven
	Undiscounted	3%	7%		
Amending the definition of train consist information.	.....	.....	.....	*By aligning the definition of the FAST Act with the language in the existing regulation, this amendment improves regulatory clarity.*	*NA.*
Amending notice to train crew	$1,051,753	$897,167	$738,708	*By improving emergency responders' ability to promptly identify all the hazardous materials involved in an accident and assess the threat from a hazardous materials release, the proposed provisions will reduce injuries and fatalities, material loss and response costs, and delays caused by closures.*	*Cost-effective if this requirement reduces the consequences of hazardous material incidents by rail by about 27 percent.*
New information sharing requirement.	3,169,069	1,025,493	494,850		
Total	4,220,822	1,922,660	1,233,557		

As illustrated by the Norfolk Southern train derailment incident at East Palestine, OH, such accidents can have substantial impacts that are not captured by this preliminary regulatory impact analysis (PRIA)—including the long-term environmental concerns and health risks (both physiological and psychological) for local residents. Research also shows that such accidents can reduce property values which—in turn—can slow down economic activity in the area.[3] Additionally, of the 140,000 total route-miles of track in the U.S., 104,000 miles are in rural and tribal areas, suggesting that train-related hazardous material incidents mainly happen in areas populated by disadvantaged communities.[4] PHMSA acknowledges and considers these unquantified factors in selecting the provisions of the proposed rulemaking.

II. Electronic Hazard Communication for Rail Transportation Emergency Response

A. What action is being proposed?

PHMSA proposes to require *all* railroads to generate, maintain externally to the train itself, and update in real-time, accurate train consist information in electronic form, and to make this information available to authorized first responders, emergency response officials, and law enforcement personnel at all times upon request.

[3] For example, a study that examines the impact of 33 derailments involving hazardous material on property values in New York State between 2004 and 2013 found that, on average, a derailment depreciates housing values within a one-mile radius by 5%–8% (Chuan Tang et al. (2020). Rail accidents and property values in the era of unconventional energy production. Journal of Urban Economics, 120, *https://doi.org/10.1016/j.jue.2020.103295*

[4] *See* PHMSA, ''Improving Rail in Rural Communities,'' *https://railroads.dot.gov/rural* (last accessed May 3, 2023).

Further, PHMSA proposes that, in the event of either an accident, or an incident involving the release or suspected release of hazardous material, railroads operating trains carrying hazardous material must promptly forward that train consist information to state-authorized local first responders within a 10-mile radius of the incident or accident. PHMSA also proposes conforming and clarifying revisions to existing HMR requirements governing notification (via hard copy, specially printed, documentation) of train crews for trains carrying hazardous material.

PHMSA proposes a compliance period of one year from the date of publication of a final rule in this rulemaking to allow railroads sufficient time to implement (via conducting training, procurement and installation of pertinent equipment and software, and development of procedures and security protocols) measures for generating, organizing, and providing to Federal, state and local first responders, emergency response officials, and law enforcement personnel train consist information in electronic form. Detailed discussions of changes to sections of the HMR based on this proposed action are provided in Section IV. below.

B. What is PHMSA's authority for this proposed action?

PHMSA's statutory authority for this action is twofold. Section of 7302 of the FAST Act, as amended by the Investment Infrastructure and Jobs Act, directs the Secretary to issue regulations to require Class I railroads [5] transporting hazardous materials to generate accurate, real-time, electronic train consist information that must be provided ''to State and local first responders, emergency response officials, and law enforcement personnel that are involved in the response to or investigation of an accident, incident, or public health or safety emergency involving the rail transportation of hazardous materials.'' Specifically, section 7302(a)(1) directs the Secretary to require that Class I railroads include the following data in connection with such electronic, real-time train consist information:

(1) The identity, quantity, and location of hazardous materials on a train;

(2) The point of origin and destination of the train;

(3) Any emergency response information or resources required by the Secretary; and

(4) An emergency response point of contact designated by the Class I railroad.

Section 7302(a)(4) directs the Secretary to prohibit any Class I railroad, employee, or agent from withholding, or causing to be withheld, that information from authorized entities. Section 7302(a)(5) directs the Secretary to establish security and confidentiality protections, including protections from the public release of proprietary information or security-sensitive information, to prevent the release of real-time train consist information to unauthorized persons. Finally, section 7302(a)(6) directs the Secretary to allow each Class I railroad to enter into a memorandum of understanding with any Class II railroad or Class III railroad that operates trains over the Class I railroad's line to incorporate the Class II railroad's or Class III railroad's train consist information.

In addition to the FAST Act mandate, the Federal Hazardous Materials Transportation Act (HMTA; 49 U.S.C. 5101 *et seq.*) at 49 U.S.C. 5103 gives the Secretary general authority to issue regulations for the safe transportation of hazardous material in commerce.

The Secretary delegates the above statutory authorities to PHMSA at 49 CFR 1.97.

C. Does this proposed action apply to me?

PHMSA's proposed action applies to *all* railroads in commerce. Although the FAST Act contains an explicit requirement only for Class I railroads transporting hazardous materials to generate and provide accurate, real-time, electronic train consist information, PHMSA proposes—pursuant to its delegated general authority under the HMTA to make regulations for the safe transportation of hazardous materials including those materials transported by rail—to require Class II and Class III railroads (hereafter referred to as ''regional and short line railroads'') to also compile, update, and forward (as proposed herein) accurate, real-time train consist information in electronic form. PHMSA notes that this broader approach is consistent with the inclusive language within NTSB safety recommendation R–07–04 issued following the 2005 collision of two freight trains containing hazardous materials near Anding, MS; safety recommendation R–07–04 called on PHMSA to require that *all* railroads immediately provide real-time train consist information to emergency responders following an accident or incident involving rail transportation of hazardous material.[6] NTSB's safety recommendation is consistent with the common-sense proposition that rail transportation of hazardous material is not limited to Class I railroads, and thus the prospect of an accident or emergency is also not limited to those railroads. Regional and short line railroads also transport hazardous material and account for over a third of freight rail in the United States, covering about 50,000 miles of the 140,000-mile U.S. freight rail network. Further, regional and short line railroads are typically the first and last mile of service and often serve as the only connection of rural, small town, and tribal areas of the United States to the nationwide network of railroads—similarly, emergency response personnel within those areas are likely to be the only personnel close enough to the incident or accident to respond quickly. Thus, it is vital for emergency responders and law enforcement in areas served by these railroads to also have access to accurate and real-time train consist information.

III. Background

A. What is train consist information?

The train consist generally refers to the contents of a train including the position of locomotives and cars, as well as both non-hazardous and hazardous freight within those cars. The HMR currently defines at § 171.8 the ''train consist'' as a written record of the contents and location of each rail car [7] in a train.

B. What is currently required regarding train consist information?

The HMR at § 174.26(a) requires that railroad train crews must have a paper document that reflects the current position in the train of each rail car containing a hazardous material and must update it to indicate changes in the placement of a hazardous material rail car within the train.[8] The train crew

[5] The Surface Transportation Board categorizes rail carriers into Class I, Class II, and Class III based on carrier's annual revenues. The threshold for Class I is a carrier earning revenue greater than approximately $900 million/year (2022); the threshold for Class II rail carriers is approximately $40 million/year; and the threshold for Class III rail carriers is any value less than the threshold for Class II railroads.

[6] NTSB, NTSB/RAR–07/01, ''Collision of Two CN Freight Trains near Anding, Mississippi on July 10, 2005'' at 48 (Mar. 2007) (NTSB Report), *https://www.ntsb.gov/investigations/AccidentReports/Reports/RAR0701.pdf.*

[7] A rail car means a car designed to carry freight or non-passenger personnel by rail, and includes a box car, flat car, gondola car, hopper car, tank car, and occupied caboose.

[8] PHMSA notes that the train consist documentation requirements discussed throughout this NPRM complement other hazard communication requirements within part 172 pertaining to marking (subpart D), labelling (subpart

may update the document by handwriting on it or by appending or attaching another document to it. The train crew must also have a copy of a document showing the information required on shipping papers, including applicable emergency response information. *See* § 174.26(b).

A common practice for railroads in satisfying the above regulatory requirements is capturing all required information in a single hard copy (generally printed) document (sometimes referred to as the ''train consist'' or ''train list'') that is provided to train crews. Some railroads, primarily those designated as Class I, compile information in an electronic database (which could be maintained by the railroad itself, or a third party vendor utilizing the ''cloud'') and provide hard copies of some of the database information to the train crew. Those electronic databases may include more information than just the contents and location of a hazardous material rail car in the train: they may incorporate information linking the hazardous material at each location in the train with shipping papers (commonly referred to as bills of lading, required by part 172, subpart C) and emergency response information (required by part 172, subpart G).

C. Is there an alternative to the current train consist information requirements?

Starting in 2019, several railroads applied for and were granted special permits to allow train consist information documentation to be maintained and communicated using only electronic means in connection with specific service routes. To date, seven special permits (SPs) have been issued,[9] including for six Class I railroads: DOT–SP 20954 (issued to BNSF Railway Company); DOT–SP 21046 (issued to CSX Transportation and recently expired); DOT–SPs 21053 and 21323 (issued to Canadian National Railway Company); DOT–SP 21059 (issued to Union Pacific Railroad Company); and DOT–SP 21110 (issued to Norfolk Southern Railroad). A single special permit (DOT–SP 21266) has been issued to a short line railroad: Richmond Pacific Railroad. The special permits provide operational controls and reporting requirements including the following items of interest:

(1) Train consist information must be readily available by electronic means to government officials (*e.g.,* emergency response personnel);

(2) Updates of the train consist information must be done electronically and in real-time;

(3) More than one method of electronic information-sharing must be available to first responders should the primary method (*i.e.,* cellular network devices) not work, as well as a redundant communication option should electronic service be unavailable;

(4) Upon notification of an incident to response authorities, the train consist information must be provided;

(5) Training must be provided to first responders along portions of a route without cellular service on methods of communication during an incident; and

(6) Incidents where information was shared electronically with first responders must be documented and a consolidated report must be provided to PHMSA discussing successes and any corrective actions.

PHMSA is not aware of any negative impacts associated with railroads operating under these special permits authorizing electronic train consist information, and based on incident experience, has had positive outcomes from the practice. For example, BNSF Railway Company has reported four occasions where electronic train consist information was shared with first responders to assist in prompt emergency response.

D. How does train consist information affect rail transportation safety?

Train consist information aids Federal and state first responders, emergency response officials, and law enforcement personnel in ensuring coordinated action to assess an accident, incident, or public health or safety emergency involving hazardous materials in rail transportation, which in turn informs the appropriate response action (*e.g.,* fire suppression media) precisely when every second counts. Those officials typically rely heavily on this information—along with hazard communication required pursuant to part 172 requirements pertaining to marking (subpart D), labelling (subpart E), and placarding (subpart F)—for timely awareness about hazardous material on a train in emergency situations. Indeed, because placarding may be damaged or inaccessible (due to fire, hazardous material release or orientation of the rail car), train crews may be injured or unavailable, or wireless telecommunications service may be limited, the hard copy form of train consist information can often be the only accurate basis of knowledge on the hazardous material within a train. Further, because emergency response may involve personnel from different and distant jurisdictions converging on a single location at different times,[10] there is a premium on having a common understanding of the hazardous material on the train as coordinated response efforts commence. Timely, accurate train consist information also ensures investigation efforts by Federal and state personnel can promptly identify systemic safety issues meriting broader dissemination and address community concerns regarding the availability and reliability of information following an accident or incident.

An example taken from a 2007 NTSB investigation report [11] underscores the importance of the availability of timely, accurate train consist information documentation. In the early morning hours of July 10, 2005, two Canadian National Railway Company (CN) trains transporting mixed freight including hazardous material collided head-on in Anding, MS. The collision resulted in the derailment of six locomotives and 17 cars. About 15,000 gallons of diesel fuel were released from the locomotives and resulted in a fire that ended up burning for roughly 15 hours. There also was a limited release of hazardous materials from venting tank cars; however, that did not contribute to the severity of the accident. Two crewmembers from each train were killed in the accident and the train consist information aboard the locomotives was destroyed. Nearly 100 residents from the surrounding community were evacuated from the area as a precaution. The accident ultimately resulted in ca. $10 million (in 2005 dollars) of property damage and environmental clean-up costs.

When emergency responders arrived on the accident scene within a half-hour of the collision, it was dark; the fire was intense, and heavy black smoke prevented visual identification of all the hazardous material tank cars in the

E), and placarding (subpart F) of hazardous material packages and transport containers and vehicles.

[9] Special permits may be reviewed at *www.phmsa.dot.gov/approvals-and-permits/hazmat/special-permits-search.* DOT–SPs 20954, 21059, 21110, 21266, and 21323 are active while DOT–SP 21053 is active under pending renewal, along with several party-to applications, and DOT–SP 21046 expired by its terms. PHMSA also notes that although Norfolk Southern is a grantee of a special permit, the routes that they included in their application did not include the route along East Palestine, OH. PHMSA will consider in any final rule in this proceeding whether amendment or revocation of those previously-issued special permits would be (based on the content of that final rule) warranted. That said, the PHMSA seeks comment on how the special permits may be impacted by the proposed regulatory amendments in this NPRM.

[10] PHMSA notes that if an incident or accident occurs in a rural, small town, or Tribal areas, local emergency response personnel—may be the only personnel who can respond promptly to the incident or accident.

[11] NTSB Report at 2–10.

wreckage. The first CN official arrived at the scene an hour after the collision and told emergency responders that he did not have any train consist information documentation or knowledge about the hazardous materials on either train. The absence of train crews to pass along train consist information and the inability to access the information on the locomotive—*i.e.,* the lack of immediately available train consist information—severely restricted the ability of emergency responders to make a quick assessment of the potential for a hazardous materials release and thus to respond appropriately.

The CN official obtained accurate train consist information on the northbound train via cell phone from the CN dispatcher and provided it to emergency responders, but cell phone service was disrupted before any information about the southbound train could be obtained. Without a document for the southbound train, unsuccessful attempts were made by response personnel on-scene to identify potential hazardous material threats based on placarding and tank car stenciling—*i.e.,* visible hazard signage and markings on the rail cars. Over two-and-a-half hours after the collision, another CN employee that had traveled from Jackson, MS (roughly 45 minutes away from the accident) delivered copies of the train consist information for both trains—but the information he delivered for the southbound train did not accurately reflect the actual makeup of the southbound train at the time of the accident. It was nearly another hour (almost four hours since the collision) before CN officials and emergency responders were able to develop an accurate listing of the derailed cars from the southbound train involved in the fire by visually surveying the scene. Only after being able to determine which hazardous materials were being conveyed on the train was it safe for emergency responders to begin moving cars and applying aqueous film forming foam to suppress the fires at the site. It would be roughly fourteen hours after the collision before the fire was declared suppressed.

In reviewing the collision and emergency response efforts, the NTSB concluded that the lack of timely information on the contents of each train—between the loss of train crew personnel, the damaging of stenciling and hazard placarding, and CN's failure to provide timely and accurate train consist information for both trains (particularly the southbound train)—significantly hampered emergency response efforts. The NTSB consequently issued safety recommendation R–07–04 calling on PHMSA to require that *all* railroads immediately provide real-time train consist information to emergency responders following an accident or incident involving rail transportation of hazardous material.[12]

The importance of timely, accurate train consist information is also underscored by the recent Norfolk Southern train derailment in East Palestine, OH. Although NTSB's investigation of that derailment is ongoing, the NTSB noted during a press conference announcing their preliminary findings on February 23, 2023, that many of the hazardous materials placards displayed on the tank cars melted in the ensuing fire following the derailment.[13] Firefighters who responded to the incident from more than 30 minutes away also noted that they didn't gain access to information about the train consist until well after they arrived on scene. PHMSA notes that in such scenarios, emergency response personnel may have to rely on the train consist information provided by the train crew and the train operator as they were conducting their initial assessment of the incident and planning response actions. Notably, too, the East Palestine, OH accident exemplifies how investigation efforts by regulatory officials into potential systemic issues revealed by an incident (or to assuage community anxieties regarding the response effort) can often occur simultaneously with incident response efforts at the site.

E. How will requiring electronic train consist information affect rail transportation safety?

The HMR currently imposes some documentation requirements pertaining to hazardous material within a train. Specifically, each of §§ 171.8 (''written record'') and 174.26 (''copy of a document'') contemplate that a ''train consist'' consists only of a printed, hard copy relating only high-level information (the ''contents and location of each rail car in a train'') pertaining to any hazardous materials being transported. And although provisions elsewhere in the HMR governing emergency response (specifically, part 172, subpart G) contemplate that train crews will need to have, or have ''immediate'' access to, more fulsome information (regarding hazardous material technical name, emergency response information, emergency response telephone numbers, etc.), § 172.602(b) similarly contemplates that information will be in hard copy (''printed'') form rather than electronic form.

These limited documentation requirements can contribute to delays in emergency response actions and potentially inaccurate information being provided to emergency response personnel at precisely the same moment when accurate, timely information is critical to response efforts. The success of any response effort turns on the accuracy of information regarding the precise hazards confronting emergency response personnel and the surrounding community. But as illustrated by both the Anding, MS collision and the East Palestine, OH derailment, emergency response personnel may not be able to rely on hazard communication placarding or stenciling to know with confidence whether, and in which car, a train is transporting hazardous material as those hazard communication tools may have been obscured (*e.g.,* through burning) or been rendered inaccessible. Nor, moreover, can the emergency response personnel necessarily rely on the train crew or the hard copy of the train consist information they may have onboard; as in the Anding, MS collision, train crews can become incapacitated and hard copies of the train consist information may perish in the incident. Further, even if those resources are available, they may only be available in the form of a single document or a limited number of persons on the train crew, thereby creating the potential for conflicting information or bottlenecking of critical information within (potentially multi-disciplinary and multi-jurisdictional) response efforts.[14] Additionally, the fact that emergency response personnel converging on the site from multiple jurisdictions may not have access to that information until they arrive forfeits opportunities to begin reviewing pertinent immediate actions and coordinating response efforts while en route to the site—adding more delay in the critical moments immediately following an

[12] *See* NTSB Report at 48 (''With the assistance of the Federal Railroad Administration, require that railroads immediately provide to emergency responders accurate, real-time information regarding the identity and location of all hazardous materials on a train.'').

[13] NTSB, Preliminary Report No. RRD23MR005, ''Norfolk Southern Railway Train Derailment with Subsequent Hazardous Material Release and Fires—East Palestine, OH—Feb. 3, 2023 (Feb. 23, 2023), *https://www.ntsb.gov/investigations/Documents/RRD23MR005%20East%20Palestine%20OH%20Prelim.pdf.*

[14] PHMSA submits that some of the same limitations from reliance solely on hard-copy, locally-maintained train consist information could also arise in connection with reliance on electronic copies (*e.g.,* on an e-tablet) maintained by train crews.

accident or incident.[15] Lastly, because investigation efforts often proceed nearly simultaneously with emergency response, delays in obtaining accurate train consist information can hamper investigation efforts to identify systemic issues or even an imminent hazardous materials transportation safety hazard that could result in similar incidents elsewhere or to address community concerns regarding the adequacy of response efforts.

PHMSA expects that maintaining electronic train consist information away from the train, and which is updated in real-time as a train's hazardous contents change, address many of those shortcomings from reliance solely on hard copies of that information. Remote (*e.g.,* in the ''cloud'') compilation and maintenance of an electronic copy of train consist information that is synced in real-time with the hard (printed) copy of that information maintained by train crews per § 174.26 promotes the accuracy of both electronic and hard (printed) copy versions of that information, each of which can be checked against the other. And to the extent that the compilation and updating of that electronic record occurs automatically it can minimize the introduction of human error into either the hard or electronic versions of the train consist information. Additionally, as illustrated by the Anding, MS collision, hard copy documents may be destroyed or inaccessible, or train crews may become injured, rendering them ineffective for the exchange of information to emergency response personnel; similarly, reliance on a single hard copy document or a limited number of personnel risks bottlenecking or conflicting accountings of critical information. In contrast, compilation and maintenance remotely of an electronic version of train consist information will provide necessary redundancy for a railroad's ability to exchange critical information with emergency response personnel, promising distribution of critical information that is more uniform, fulsome, well-distributed, and timely than reliance on hard copies and train crew personnel alone. Additionally, remotely-maintained, electronic train consist information promises earlier coordination of emergency response efforts; emergency response personnel commuting to an incident site from various jurisdictions may be able to access electronic train consist information (as well as pertinent training and immediate actions) en route, saving precious time in identifying immediate actions and coordinating response efforts. Lastly, electronic train consist information can also facilitate investigation efforts in parallel with emergency response efforts, thereby allowing more timely identification and remediation of systemic issues across the industry, as well as helping to assure affected communities of the adequacy of response efforts.

PHMSA notes that the experience with the special permits authorizing limited use of electronic approaches to maintaining train consist information discussed in Section III.C above provides additional evidence of the potential safety-enhancing benefits of requiring use of such tools more broadly as proposed in this NPRM. PHMSA also notes that stakeholders within the emergency response community have also submitted comments in this rulemaking proceeding calling on PHMSA to codify a requirement for electronic, real-time train consist information to supplement existing hard copy documentation requirements.[16]

F. What does PHMSA mean by real-time?

A plain language meaning of real-time is simultaneous (or nearly simultaneous) with the time which something takes place. PHMSA interprets the references in the FAST Act instruction and NTSB safety recommendation R–07–04 to ''real-time'' train consist information to have a dual meaning: (1) that the update of train consist information during transportation should occur at the time changes to the hazardous material on the train are being made, thereby ensuring the accuracy of information; and (2) that the required train consist information is provided to authorized first responders at the time a response to or investigation of an accident, incident, or public health or safety emergency is occuring. This latter element in turn means that the required electronic train consist information should be provided to and is accessible to authorized personnel *prior* to an accident or incident—and pushed promptly following initiation of an accident or incident to emergency response personnel needing that information to identify potential hazardous material threats and take appropriate measures and commence investigation activities.

Although PHMSA understands that current HMR requirements require operators to update hard (printed) copy train consist information as there are changes to that information, in practice that hard copy-exclusive approach can introduce the potential for human error; often a member of the train crew (in most circumstances, the engineer) must update by hand the printed, hard copy of the train consist information in the crew's possession to provide an accurate listing of the position of hazardous material cars. Additionally, PHMSA understands that current HMR regulations do not contain specific requirements for railroads to either (1) make accurate, electronic, real-time train consist information available to authorized emergency response personnel at all times so they have it in advance of an accident or incident, or (2) take affirmative steps to promptly forward that same information to state-authorized local first responders following either an accident involving a train carrying hazardous material, or an incident involving a train carrying hazardous material where a release of that hazardous material has occurred or is suspected. As discussed in Section III.B. above, the HMR currently requires the use of hard copies that may not lend themselves to real-time updating or transfer to a person off the train. Existing HMR requirements also lack specificity regarding railroads' obligations to proactively and timely forwarding of that information to first responders, emergency response officials, or law enforcement personnel; rather, the HMR speaks in terms of making that information ''accessible'' to train crews (§ 172.602(c)); merely ''available'' to first responders, emergency response officials, or law enforcement personnel (§ 172.600(c)); in the possession of train crews (§ 174.26(a)); and submitted to the National Response Center ''as soon as practicable but no later than 12 hours after the occurrence of any incident . . .'' (§ 171.15).

PHMSA expects that implementation of equipment and procedures to enable real-time updating of electronic train consist information—as well as more explicit requirements for railroads to make that information available to emergency response personnel at all

[15] This risk can be particularly acute if the accident or incident occurs in a remote rural, small town, or Tribal area, as local first responders may be the only personnel who can quickly respond to the accident or incident.

[16] *See, e.g.,* Intl. Assn. of Fire Chiefs, Doc. No. PHMSA–2016–0015–0009, ''Comments on PHMSA's Advanced Notice of Proposed Rulemaking [under RIN 2137–AF21]'' at 3 & 6 (Apr. 19, 2017) (IAFC Comments). The IAFC comments urged a defense-in-depth approach utilizing both electronic and hard copy train consist information because exclusive reliance on electronic train consist information maintained remotely may be impractical in rural, small-town, or Tribal areas where internet connectivity is limited or unreliable.

times or pushed to them following an accident or incident—will be practicable for Class I, regional and short line railroads. As a general matter, PHMSA submits that those requirements proposed in this NPRM should not come as a surprise to any railroad transporting hazardous material as the Section 7302 FAST Act mandate (focused by its terms on Class I railroads) dates from 2015 and NTSB safety recommendation R–07–04 (which contains no such limitation to Class I railroads) dates from 2007.[17] Nor for that matter, are the requirements proposed herein on the cutting edge of technology—the sort of equipment and procedures likely needed for implementation are likely to be incremental adaptations of supply chain management software, equipment, and procedures employed in ordinary course by a variety of retail providers and logistics companies for tracking goods within national and global supply chains (of which the railroads themselves are a critical component). Indeed, PHMSA submits that the fact that commercial entities can implement cost-effective, real-time status tracking procedures and equipment for non-hazardous goods, suggests that reasonably prudent railroad operators would be incented to employ similar equipment and procedures when transporting materials known to be hazardous to public safety and the environment.[18]

Nor, for that matter, would railroads' implementation of the requirements proposed in this NPRM be against a blank canvas. As discussed above, much of the train consist information that PHMSA contemplates would be generated, maintained, and provided in electronic form is largely already maintained by the railroads pursuant to existing HMR requirements in printed, hard copy form; and PHMSA's proposed requirement that such information be readily accessible in advance of an accident or incident, and forwarded to state-authorized local first responders electronically promptly following an accident or certain incidents, is similar to existing HMR requirements to make certain information available to emergency response personnel and train crews. Additionally, as discussed in Section III.C above, a number of the Class I railroads (and at least one regional railroad) have already demonstrated the feasibility of compiling electronic real-time train consist information pursuant to special permits along specific routes; those special permits contain requirements for updating and prompt relay of that electronic train consist information to emergency response personnel in the event of an accident or incident.

PHMSA also submits that railroads may be able to leverage existing software platforms to satisfy this NPRM's proposed electronic train consist information maintenance, updating, and forwarding requirements. One such platform suggested by stakeholders in this rulemaking proceeding is the AskRail® system developed by the American Association of Railroads (AAR), the International Association of Fire Chiefs, the Operation Respond Institute, and others.[19] This platform—which is available for use in both desktop and mobile device applications—provides authorized emergency response personnel with accurate, continuous access in electronic format to most of the train consist information contemplated by PHMSA's proposed revisions, including the following: the proper shipping name and United Nations ID number of the hazardous material; packing group and placarding requirements and links to pertinent Emergency Response Guidebook (ERG) and safety data sheets; quantity and location of the material on the train; car type, DOT specification, and location within the consist (*i.e.,* the train); and the emergency response point of contact for the railroad. Changes in train consist information are uploaded to the AskRail® system from central processing centers operated by the railroads or vendors based on data delivered via any of the following: (1) voice reports from train crews, (2) digital communications with mobile devices operated by train crews, or (3) digital communications with automatic equipment identification (AEI) systems (discused further below). To the extent that the AskRail® system (or any alternative platform used in complying with the NPRM's proposed requirements) may lack certain information (*e.g.,* origin-destination information), functionalities (in particular, the ability for railroads to forward information to pertinent emergency response personnel in the event of an emergency) or liberal access requirements, PHMSA expects that such systems could be designed or modified and railroads could proactively engage the response community to address those concerns. Similarly, although PHMSA understands that current use of AskRail® system may be largely limited to Class I railroads,[20] it is unaware of any fundamental bar to modification of that system (or for that matter, the design or modification of alternative systems) to accommodate increased use by regional and short line railroads.[21] PHMSA itself commissioned a pilot program that in 2020 demonstrated the technical feasibility of integration of a leading proprietary commercial train consist information platform for Class II and III railroads (the Wabtec Train Management System) with the AskRail® system.[22]

Some railroads may also opt to reduce the risk of human error by employing automatic means of updating the electronic train consist information. Some railroads already employ such AEI systems consisting of identification tags mounted on each train car (locomotives, end-of-train units, rail cars, and intermodal containers) and installed, trackside AEI readers (*i.e.,* antennas) or portable, handheld AEI readers that record and relay switching of cars to the railroad's computer system. Installed, trackside AEI readers are placed at key locations such as the entrances and exits of rail yards and identify cars on a train by the tags on the cars as they pass and automatically relay information back to the railroad's computer system to update the electronic train consist information. Appropriate placement of installed, trackside AEI readers is imperative for ensuring accurate train consist information is relayed to the railroad computer systems; for example, in the

[17] Any requirements would, of course, not be binding on railroads until even later in the future—namely, after any final rule in this proceeding is published and subsequently becomes effective.

[18] PHMSA also submits that such incentives would have been underscored by the significant environmental consequences, increased regulatory oversight, legal liability, and loss of community goodwill as a result of the East Palestine, OH derailment.

[19] *See* IAFC Comments at 3, 6; AAR, Doc. No. PHMSA–2016–0015–0007, ''Comments Submitted by AAR re FAST Act Requirements for Real-Time Train Consist Information by Rail'' at 1, 3, 7 (Apr. 19, 2017) (AAR Comments) (recommending use of AskRail® with respect to Class I railroads only).

[20] *See* ASLRRA, Doc. No. PHMSA–2016–0015–0006, ''Docket No. PYHMSA–2016–0015 (HM–263): FAST Act Requirements for Real Time Train Consist Information by Rail'' 3–4 (Apr. 19, 2017) (ASLRRA Comments).

[21] *See* AAR Comments at 3 (''Currently, AskRail® has the ability to show single car information for all Class II and III railroads. If they choose to do so, Class II and III railroads can upload their train consist information so that it is available through the app. . . .''). The AAR echoed ASLRRA comments that extending AskRail® to Class II and III railroads would necessarily involve compliance costs.

[22] *See* PHMSA, Notice ID No. 693JK320P000014, ''Statement of Work and Sole Source Justification: Transportation Management Consist Information'' (Award Date May 14, 2020). PHMSA is in the process of completing the concluding documentation for that project and will post those materials to the rulemaking docket as soon as practicable.

2005 Anding, MS collision, a contributing factor in the confusion regarding the contents of the southbound train was that the last change in the train consist occurred between installed, trackside AEI readers.[23] PHMSA submits, though, that challenges associated with identifying proper placement of installed, trackside AEI readers could be mitigated somewhat by timely supplementation with one or more of portable, handheld AEI readers and voice reports by train crew personnel of changes to the hard (printed) copy train consist information.

G. How has PHMSA engaged stakeholders?

PHMSA and the Federal Railroad Administration (FRA) sought input from stakeholders on the topic of electronic train consist information as part of the Rail Safety Advisory Committee (RSAC) Hazardous Materials Issues Working Group. The RSAC is a Federal advisory committee established by FRA and is governed by the process and transparency requirements of the Federal Advisory Committee Act (Pub. L. 92–463). The RSAC develops recommendations for certain new regulatory standards, through a collaborative process, with all segments of the rail community working together to find solutions to safety issues. The RSAC in turn has assembled a Hazardous Materials Issues Working Group to develop recommendations for changes and updates to the regulations for rail transportation of hazardous material.

In 2016, the Hazardous Materials Issues Working Group (hereafter referred to as ''Working Group'') met several times to discuss updates to the HMR's rail transportation safety requirements.[24] On two occasions, the Working Group discussed the issue of accurate and real-time electronic train consist information and whether existing technology could achieve the accurate and real-time exchange of train consist information. Several stakeholders contended that the AskRail® system could provide the information required by the FAST Act. However, representatives from industry asserted that some information required by the FAST Act (specifically, origin and destination information) may not be relevant in an emergency response situation and did not see a need to include these data in AskRail® entries; similarly, industry representatives also asserted that there was limited safety value in emergency response personnel having real-time electronic train consist information unless there had actually been an accident or incident. Some stakeholders also expressed concern that the limited access rights currently authorized in the AskRail® system could limit its effectiveness, as the current version of the AskRail® system requires rigorous security vetting for would-be users. In the event of an accident or incident at a location where authorized local first responders, first responders, emergency response officials, and law enforcement had not been authorized access to the AskRail® system in advance, access to train consist information may be unavailable to them through AskRail®.

Additionally, the Working Group discussed the prevalence of installed, trackside AEI readers and whether those AEI readers can provide accurate, real-time updates to train consist information. That discussion highlighted that a challenge in increasing reliance on installed, trackside AEI readers to provide accurate, real-time updates to electronic train consist information is that their placement across the nation's railroad system is not uniform; all participants noted that more frequent and uniform placement of AEI readers throughout the nation's railroad system would be required before that equipment could be relied on to provide accurate, real-time updates to electronic train consist information. Although the Working Group discussed a variety of potential approaches to address this concern—including supplementation by train crew voice reports and a standardized requirement for placement of installed, trackside AEI readers within three miles of each train yard (*i.e.,* the location where rail car switching operations are likely to be completed)—no consensus was reached on any one solution or suite of solutions. Further, at least one stakeholder—American Short Line and Regional Railroad Association (ASLRRA), the industry trade group representing regional and short line railroads—strongly opposed any suggestion of a regulatory requirement for installed, trackside AEI readers in implementing FAST Act requirements.

Following those meetings, PHMSA in 2017 issued an Advance Notice of Proposed Rulemaking (ANPRM) soliciting comment on a number of questions on implementation of the FAST Act's then-effective mandate to employ ''fusion centers'' as clearinghouses for receiving from railroads, and forwarding to emergency response personnel, electronic real-time train consist information.[25] Although many of the questions posed by PHMSA and written comments received from stakeholders were focused on implementation mechanics specific to fusion centers, a number of entities submitted comments speaking to other implementation dimensions of the FAST Act mandate. Specifically, AAR and ASLRRA [26] repeated contentions made in the Working Group discussions regarding the limited value of origin-destination information, or 24/7 availability of electronic real-time train consist information for emergency response efforts. Their respective comments also highlighted potential implementation challenges (pertaining to cost, gaps in internet connectivity) associated with use of portable, handheld AEI readers, as well as the existing gaps in coverage for installed, trackside AEI readers. However, the AAR comments ultimately concluded that electronic train consist information could be a valuable option for improving emergency response efforts, and the AskRail® system could be extended beyond Class I railroads—even as they argued against mandating electronic real-time train consist information as a substitute or supplement for hard copy documentation and bemoaned the potential costs of ensuring regional and short line railroad participation in the AskRail® system. IAFC also submitted comments ''strongly'' arguing for forwarding of electronic train consist information in the event of an accident or incident, noting that the AskRail® system could—when supplemented by existing hard copy documentation requirements—serve that purpose.[27]

IV. Section-by-Section Review of Proposed Amendments

Parts 171 and 180

A. Sections 171.8 and 180.503

Section 171.8 defines key terms used in the HMR. A train consist is defined in this section as a ''written record of the contents and location of each rail car in a train'' [28]—which PHMSA and

[23] NTSB Report at 7.

[24] Meeting minutes from HMIWG meetings are available in the public docket for this rulemaking.

[25] PHMSA, ''Advance Notice of Proposed Rulemaking—Hazardous Materials: FAST Act Requirements for Real-Time Train Consist Information by Rail,'' 82 FR 6451 (Jan. 19, 2017). The fusion center framework was subsequently abandoned in amendments to the FAST Act by the Investment Infrastructure and Jobs Act.

[26] ASLRRA, ''Docket No. PHMSA–2016–0015 (HM–263): FAST Act Requirements for Real-Time Train Consist Information by Rail'' (Apr. 19, 2017). The ASLRRA comments explicitly endorsed the AAR Comments.

[27] IAFC Comments at 6.

[28] Mirror language appears in the definition of the same term at § 180.503.

industry have historically understood to refer to the hard (printed) copy documentation maintained and updated by train crews pursuant to § 174.26(a). Train crews are also obliged by § 174.26(b) to maintain a hard copy of certain ''emergency response information'' specified in part 172, subpart G, as well as other shipping paper information specified in part 172, subpart C.

As discussed in Section II.B above, section 7302 of the FAST Act directs (consistent with NTSB safety recommendation R–07–04), that PHMSA require railroads to (in real-time) generate, maintain, update, and share with emergency response personnel, certain real-time train consist information in electronic form. That list of information specified in the FAST Act is by-and-large consistent with the suite of safety-critical information in each of the current definitions of ''train consist'' at § 171.8 (which in turn is aligned with the information contained with the notice provided to train crews at § 174.26) and the ''emergency response information'' specified at § 172.602 (which information must also be immediately available to train crews pursuant to § 174.26(b)). PHMSA, therefore, proposes to replace the term ''train consist'' with the term ''train consist information'' at § 171.8, to mean a record of information (as required by § 174.26) of the position and content(s) of hazardous materials rail cars of a train. Specifically, the information includes contact information for a railroad-designated emergency point of contact; the point of origin and destination of hazardous materials that is subject to shipping paper requirements on the train; shipping paper information required by §§ 172.201 to 172.203; and emergency response information required by § 172.602(a).[29] The information must be maintained in both hard (printed) copy and electronic forms. PHMSA also proposes deletion of the mirror definition of ''train consist'' at § 180.503, as that section is the only place in which that term appears within part 180.

PHMSA notes that this proposed approach ensures that implementation of the FAST Act's requirements regarding the content and form of real-time train consist information will be performed in a manner that builds on—rather than disrupts—railroad compliance strategies with existing HMR requirements. With respect to the proposed new term ''train consist information'' the proposed required information largely consists of the information that railroads are already obliged by the HMR to provide in hard (printed) copy to their train crews and to make available to emergency response personnel in connection with hazardous materials that are subject to shipping paper requirements. Although the FAST Act contemplates the compilation, updating, and transfer to emergency personnel of an additional species of information—the origin and destination of hazardous material on the train, and the contact information for a railroad-designated emergency point of contact—PHMSA understands that information is accessible to the railroads. Origin and destination information is an important commercial term of service, in addition to being a critical piece of information to emergency response personnel should gaps (*e.g.,* from inaccuracies, loss, or inaccessibility) in other train consist information require quick reverse-engineering by emergency response personnel of the hazardous material carried by a train involved in an accident or incident. Similarly, the railroad itself would designate its emergency point of contact. And although PHMSA understands that one potential compliance tool (namely, the AskRail® system) may not currently contain information on the origin and destination of hazardous material on a train, it expects that (based on the widespread use of sophisticated, real-time tracking of goods generally discussed at Section III.F. above) that modification of that system (or design or modification of an alternative platform) to integrate that functionality is practicable. However, the positive experience associated with use of electronic train consist information pursuant to special permit (discussed at Section III.C. above) is also evidence of the proven safety value of electronic, real-time train consist information.

With respect to a railroad's identification of a designated emergency point of contact, PHMSA is less concerned with the specific title of that individual than it is in ensuring that (1) the contact information provided is complete—to include the name, title, phone number and email address, (2) that individual is accessible at all times (24/7) the train is in transportation in the event of an accident or incident involving rail transportation of hazardous material (and then following an incident or accident until emergency response efforts have completed), and (3) that individual has immediate access to the electronic version of the train consist information for the train involved and the contact information for state-authorized local first responders required under proposed § 174.28. PHMSA notes that its above expectations regarding availability of, and capacity/knowledge of the railroad's designated emergency response contact are largely consistent with existing HMR emergency response telephone number requirements at § 172.604. PHMSA does not expect that person must necessarily be an employee of the railroad—provided a third party designee is available as contemplated above, and has immediate access to the information specified above.[30] PHMSA notes that this proposed requirement (which implements a mandate in Fast Act Section 7302(a)(1)(A)(iv)) provides additional defense-in-depth should emergency response personnel encounter delays in accessing electronic, real-time train consist information (pursuant to proposed § 174.28(a)) themselves, or railroad personnel fail to ''push'' electronic, real-time train consist information to state-authorized local first responders in a 10-mile radius of the accident or incident (pursuant to proposed § 174.28(b)).

PHMSA notes that its proposed approach of defining ''train consist information'' to accommodate *both* hard (printed) copy and electronic forms is essential to providing defense in depth ensuring safety-critical information is generated, updated, and available to emergency response personnel during an accident or incident. As discussed in Sections III.E.–F. above, electronic train consist information updated in real-time offers significant safety benefits compared to exclusive reliance on other sources of information—train crew statements, hard copy documentation, placarding and other HMR-mandated hazard communication tools—that can perish, be inaccessible, or prove unreliable in the critical moments immediately after an accident or incident. But, as commenters on the ANPRM noted (see Section III.G above), reliance on electronic train consist information alone would entail its own safety risks. For that reason, PHMSA understands that the regulatory definition of real-time ''train consist information'' should envision that information will be maintained in *both*

[29] PHMSA notes that its proposed definition of ''train consist information'' would not encompass hazardous material excepted from shipping paper requirements pursuant to § 172.200 because of the low risk such transportation generally poses to public safety and the environment.

[30] PHMSA further notes that the person designated as the railroad's emergency response point of contact may also be responsible for ''pushing'' electronic train consist information to emergency personnel pursuant promptly during an incident or accident proposed § 174.28.

hard (printed) copy and electronic forms. PHMSA acknowledges that this approach could entail some version control risks (from conflicts between the electronic and hard copy forms of train consist information) whose reduction by way of synchronization of hard copy and electronic forms could increase administrative and compliance burdens on railroads. However, PHMSA expects that those risks (which in any event could be controlled by the railroads) would be justified when compared against the anticipated safety benefits obtained from (1) improved accuracy from being able to verify train consist information in hard copy form against electronic records (and vice-versa), and (2) enhanced confidence that emergency response personnel will have access to accurate, safety-critical train consist information in some form, regardless of the circumstances of the accident or incident.

Part 174

B. Section 174.26

Section 174.26 currently requires railroads to provide each train crew a printed, hard copy document (*i.e.,* a record of information) reflecting the current position in the train of each rail car containing a hazardous material. This provision also requires the train crew to update the document to indicate changes in the placement of a hazardous material rail car within the train. Additionally, § 174.26(b) requires that the train crew must have a hard copy of a document showing the information required by part 172 (*e.g.,* shipping paper information), and emergency response information specified in § 172.604. The HMR's emergency response information standards at part 172, subpart G also contain requirements that (1) pursuant to § 172.600(c), railroads and other carriers make that hard copy information immediately available for use at all times hazardous material is present—by, for example, making it immediately available to a representative of a Federal, state, or local government agency responding to an incident involving a hazardous material or conducting an investigation that involves a hazardous material; and (2) pursuant to § 172.602(c)(1), railroads must maintain hard copy emergency response information that is immediately accessible to train crews in the event of an accident or incident involving hazardous materials.

Consistent with the FAST Act section 7302 mandate, PHMSA now proposes to supplement those existing requirements by amending § 174.26 in several ways to ensure that train consist information held in hard (printed) copy by train crews for all railroads is itself updated in real-time for accuracy based on changes in the hazardous material within the train consist, and that train crews ensure that their locally-maintained hard copies are at all times synced in real-time with electronic versions of the train consist information maintained off the train. Those proposed revisions to § 174.26 are as follows: (1) replace existing references in § 174.26 to the hard copy ''document'' memorializing train car position in this provision with references to the hard copy versions of the ''train consist information'' proposed at § 171.8; (2) specify the information to be included as part of the ''train consist information;'' (3) specify that a hard (printed) copy version of train consist information must be provided to train crews before initial train movement and maintained in a conspicuous location of an occupied locomotive during transportation, *i.e.,* when the train crew is aboard the locomotive; (4) specify that train crews must update that local, hard (printed) copy version to reflect changes in the train consist information at intermediate stops before the train re-commences movement from those stops; and (5) specify that the train crews must also, as soon as practicable, update or notify the railroad to update the electronic form of train consist information maintained off the train to synchronize with the local hard (printed) copy of the train consist information employing (as appropriate) electronic devices compliant with the requirements of 49 CFR part 220. Train crews may use electronic or radio communications to notify the railroad to update the electronic train consist information.[31] This will ensure the accuracy of the train consist information.

PHMSA expects that its proposed regulatory amendments to § 174.26 are critical for supporting use of electronic, real-time train consist information as required by the FAST Act. As discussed at greater length in Section III.D. above, the locally maintained and updated, hard copy documents in the possession of train crews have been—for better or worse—the primary information relied on by emergency response personnel in identifying the hazards from historical rail accidents and incidents and executing immediate response actions. For this reason, PHMSA proposes that hard (printed) copy version of electronic train consist information is kept in an occupied locomotive such that train crews can immediately access that information and provide it to emergency response personnel. But electronic train consist information is not itself a cure-all; gapped or intermittent internet or phone connectivity in rural, small-town, and tribal areas can limit each of (1) the ability of AEIs to capture material changes in the train consist information, (2) the ability of train crews to report changes in the same by voice, or (3) access to electronic train consist information by emergency response personnel.[32] For these reasons, stakeholders in the emergency response community such as IAFC have called on retention of the train crew's hard copy requirement to backstop the accuracy of electronic train consist information. Similarly, the implementation costs and deployment delays associated with integration of more widespread use of AEIs to automatically update train consist information could be better managed by railroads if the HMR would continue to contemplate that train crews themselves could ''call in'' changes to train consist information as they occur and are memorialized on the hard copy version of train consist information. PHMSA also notes that its proposed multi-layered approach to ensuring train consist information is at all times accurate and consistent across hard copy and electronic media will ensure that train crews have situational awareness of changes in the train consist information that may be lost were all updates made automatically to off-train electronic train consist information.

PHMSA notes that its proposed revisions to § 174.26 would be applicable to *all* railroads—not just the Class I railroads explicitly addressed by the section 7302 Fast Act mandate. This approach is consistent with the current, broad scope of § 174.26, and as explained in Section II.C. above, this approach is also consistent with NTSB safety recommendation R–07–04, which was not limited to Class I railroads. PHMSA's proposed multi-layered

[31] PHMSA also notes that railroads may comply with this provision by installation of trackside AEI readers that update electronic train consist information automatically without train crew action. However, should a railroad opt for such a system train crews would still be responsible for updating the local, hard copy version of the train consist information.

[32] PHMSA submits that similar concerns caution against reliance on mobile devices (*e.g.,* tablets) with locally-saved versions of electronic train consist information as a substitute for hard (printed) copy versions maintained by train crews pursuant to the proposals in this NPRM. However, PHMSA solicits comment on whether permitting such substitution in a final rule in this proceeding would have both meaningful safety and compliance cost advantages compared to hard copy versions.

approach also reflects the common-sense proposition that hazardous material entails the same hazards to public safety and the environment whether transported on Class I railroads or regional and short line railroads.

C. Section 174.28

Current HMR requirements do not impose a crystal-clear requirement for railroads to ensure that safety-critical train consist information is available to emergency response personnel at all times, much less placed in the hands of emergency response personnel during an accident or incident involving rail transportation of hazardous material. Rather, the HMR speaks in terms of making such information ''accessible'' to train crews (§ 172.602(c)), ''available'' to first responders, emergency response officials, or law enforcement personnel (§ 172.600(c)), in the possession of train crews (§ 174.26(a)), and submitted to the National Response Center ''as soon as practicable but no later than 12 hours after the occurrence of any incident . . .'' (§ 171.15).

Section 7302 of the FAST Act requires PHMSA to issue regulations filling that gap by creating an explicit obligation for railroads to ''provide'' accurate, real-time train consist information in electronic form to first responders, emergency response officials, and law enforcement personnel involved in a rail accident or incident involving transportation of hazardous materials. As discussed in Section III.F. above, PHMSA understands that congressional mandate to ''provide'' real-time train consist information requires that railroads take concrete action both (1) by making that electronic train consist information available to emergency response personnel at all times, including before an accident or incident occurs; and (2) promptly after an accident or incident, ensuring that railroads take action to ''push'' that same electronic train consist information to state-authorized local first responders.

PHMSA consequently proposes a new § 174.28 implementing that FAST Act mandate. For the same reasons described in the above discussion of the proposed § 174.26, PHMSA proposes that this new provision's requirements would apply to *all* railroads, and not just those that were the subject of the FAST Act mandate. Consistent with PHMSA's understanding of congressional intent, paragraph (a) of this new provision would require all railroads to ensure that authorized first responders, emergency response officials, and law enforcement personnel along routes in which they transport hazardous material have access to up-to-date, electronic real-time train consist information at any time—including *before* an accident or incident occurs. PHMSA notes that this element of its new information-sharing requirements can help to address concerns regarding the effectiveness of any requirement for only post-accident/incident notification arising from (1) internet or phone connectivity gaps/intermittency, or (2) delayed or incomplete distribution of real-time electronic train consist by railroad personnel who may be juggling many tasks following reports of an accident or incident involving rail transportation of hazardous material. And, as discussed above in Sections III.F.–G., PHMSA understands that industry may already have tools (including the AskRail® system) that could be employed for this purpose without material modification—or could develop new platforms for this purpose.

Paragraph (b) within the new § 174.28 would establish an obligation for all railroads to supplement the above advance information sharing requirement with an explicit obligation for railroads to ''push'' electronic train consist information to state-authorized local first responders in a 10-mile radius of an accident or certain incidents promptly following notification to the railroad of the accident or incident. This proposed requirement would ensure that electronic, real-time train consist information would be forwarded in a timely manner to first responders that are either (1) in a community/jurisdiction that itself would be directly affected by release of hazardous materials during an accident or incident, or (2) in a neighboring community/jurisdiction that is closest, and therefore best-positioned to support response efforts in communities directly affected. PHMSA understands that this proposed requirement would be largely similar to the special permit conditions discussed in Section III.C. above. And at its core, this proposed requirement is performance-based: in scrutinizing compliance with this requirement, PHMSA will therefore focus on (1) before an accident or incident, ensuring that railroads have adopted protocols and resources providing a high degree of confidence that the ''push'' notifications will succeed in promptly placing train consist information in the hands of state-authorized local first responders needing it; and (2) after an accident or incident occurs, that those notifications did in fact reach those personnel in a timely manner.[33] Similarly, PHMSA will be less concerned with the particular tools (*e.g.,* instant message to mobile devices, email, fax notification functionalities within the AskRail® system) employed by railroads than on whether railroads have ensured that (1) their personnel have, in advance of rail transportation of hazardous material, a comprehensive, verified list of persons and pertinent contact information for authorized local first response personnel along a route, and (2) appropriate protocols and training for railroad personnel to ensure that such notifications can occur promptly following an accident or incident. As a backstop for that performance-based approach, PHMSA has within paragraph (b) included a straightforward, ''one-size-fits-all'' minimum 10-mile default radius that it believes strikes an appropriate balance between each of the safety benefits anticipated from a conservative advance notification requirement for the variety of hazardous materials moved across the nation's railroads,[34] and the need for an easily-executed baseline notification for railroad personnel amidst the confusion following an accident or incident.[35]

PHMSA also proposes a new paragraph (c) implementing the FAST Act mandate direction that the exchange of real-time electronic train consist information provided for by PHMSA's proposals must be performed in a secure and confidential manner so as to protect proprietary and security-sensitive information,[36] and that regional and short line railroads be permitted to enter into memoranda of understanding with Class I railroads whose track they use to

[33] PHMSA expects that railroads will not approach their ''push'' notification requirement as a check-the-box exercise whereby their regulatory obligation is discharged when they send an email or leave a voicemail with emergency response personnel. Rather, PHMSA expects that they will continue to attempt to contact emergency response personnel by a variety of means until they receive positive (non-automated) receipt of the notification by those personnel.

[34] PHMSA notes that the 10-mile notification radius in § 174.28(b) is a default, minimum value—as circumstances (*e.g.,* the physical characteristics of the hazardous material, the quantity and form of any release, the physical environment surrounding the accident or incident) of the potential hazards warrant, it expects that railroads will expand the notification radius accordingly.

[35] By way of example, PHMSA understands that the AskRail® system already has a functionality that identifies fire department jurisdictions along a rail route that would facilitate communication with these entities.

[36] PHMSA acknowledges that the precise statutory language employed in section 7302(a)(5) FAST Act (''security-sensitive information'') differs slightly from the language (''Sensitive Security Information'') employed in the Transportation Security Administration directive referenced below and in regulation at 49 CFR parts 15 and 1520.

facilitate such transfers of train consist information to emergency response personnel [37] and directed toward information-sharing and identification of best practices. Those industry initiatives are backstopped by recent guidance issued by the Transportation Security Administration (TSA) in October 2022 [38] directing (most) railroads to undertake a series of measures to reduce the risk of cybersecurity threats to their operations. PHMSA expects that railroads will be able to build on those existing resources to ensure that their execution of the requirements proposed in this NPRM are compliant with the new § 174.28(c). Further, PHMSA notes that nothing proposed in this NPRM would restrict railroads from collaborating on a platform (*e.g.,* the AskRail® system) for electronic sharing of accurate and real-time train consist information with authorized emergency response personnel, whether pursuant to a memorandum of understanding or other form of agreement.

PHMSA expects that given all the electronic options available, all railroads—even the smallest short line railroads—will be able to comply with the performance-based requirements of proposed § 174.28(a) through (c). By way of a hypothetical example, a short line that is only five miles in length and transports one or two hazardous materials rail car each month would not have to provide updates to the train consist information due to routine switching operations. Further, PHMSA envisions that railroad would be able to communicate with the local police and fire department(s) servicing its limited route to make arrangements for communication of the train consist information for the rail car using instant messaging, email, or even fax notification before movement of a train carrying hazardous material as well as following either an accident involving that train, or incident involving release (or suspected release) of hazardous material from that train. PHMSA believes that the railroad could satisfy each of § 174.28(a) through (c) by such arrangements to make its train consist information accessible at all times to emergency response personnel, and to ensure that state-authorized local first responders are ''pushed'' that information in the event of an accident or incident. Although PHMSA notes that the limited scope of the hazardous material transportation operations of this hypothetical short line railroad results in correspondingly lower compliance obligations under proposed § 174.28(a) through (c), not all railroads are similarly situated; larger Class I railroads, with more track and more extensive hazardous materials transportation operations, may need to adopt correspondingly more fulsome compliance protocols in satisfying the performance-based requirements at § 174.28(a) through (c).[39]

Lastly, PHMSA has also included proposed language at paragraph (d)—that in the event that railroads employ technology (*e.g.,* the AskRail® system) in complying with the information sharing requirements within § 174.28(b)—prohibiting railroads and their personnel (or their designees) from withholding or causing to withhold electronic train consist information from emergency response personnel responding to an incident or accident. PHMSA's proposed regulatory language elaborates that railroads employing technology for such notifications must ensure that any such emergency response personnel have access to that software and the train consist information therein throughout the accident or incident—from the initial notification pursuant to § 174.28(b) until the conclusion of response and investigation efforts. PHMSA submits that this proposed language is another essential measure for backstopping the accident/incident notification performance standard at paragraph (b).

V. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

Statutory authority for this rulemaking is provided by the Federal hazardous materials transportation law (HMTA; 49 U.S.C. 5101 *et seq.*). As discussed at greater length in Section II.B. above, section 5103(b) of the HMTA authorizes the Secretary of Transportation to ''prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.'' The Secretary has delegated this authority under the HMTA to the PHMSA Administrator at 49 CFR 1.97(b).

B. Executive Orders 12866 and 14094, and DOT Regulatory Policies and Procedures

Executive Order 12866 (''Regulatory Planning and Review''),[40] as amended by Executive Order 14094 (''Modernizing Regulatory Review''),[41] requires that agencies ''should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.'' Agencies should consider quantifiable measures and qualitative measures of costs and benefits that are difficult to quantify. Further, Executive Order 12866 requires that ''agencies should select those [regulatory] approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.'' Similarly, DOT Order 2100.6A (''Rulemaking and Guidance Procedures'') requires that regulations issued by PHMSA and other DOT Operating Administrations should consider an assessment of the potential benefits, costs, and other important impacts of the proposed action and should quantify (to the extent practicable) the benefits, costs, and any significant distributional impacts, including any environmental impacts.

Executive Order 12866 and DOT Order 2100.6A require that PHMSA submit ''significant regulatory actions'' to the Office of Management and Budget (OMB) for review. This rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 (as amended) and, therefore, was not formally reviewed by OMB. This rulemaking is also not considered a significant rule under DOT Order 2100.6A.

The following is a brief summary and table of costs, savings, and net benefits of some of the amendments proposed in this notice. PHMSA has developed a more detailed economic analysis in the PRIA, a copy of which has been placed in the docket. PHMSA seeks public comment on its proposed revisions to the HMR and the preliminary cost and benefit analyses in the PRIA.

PHMSA has preliminarily determined that the proposed action would impact seven Class I railroads, 11 Class II railroads, and 585 Class III railroads.

[37] Among the members of the Railroad Information Security Committee are the chief information security officers of several Class I railroads, Amtrak, Railinc. The Committee is supported by each of AAR and ASLRRA.

[38] TSA, Sec. Dir. No. 1580/82–2022–01, ''Rail Cybersecurity Mitigation Actions and Testing'' (Oct. 2022), sd–1580–82–2022–01.pdf (*tsa.gov*).

[39] PHMSA invites comment, for potential inclusion within a final rule in this proceeding, on the appropriateness of modification (by way of limitations or exceptions) of the scope of application of its proposed § 174.28 requirements. Commenters requesting such exceptions should consider providing detailed information speaking to material considerations—including the potential economic/cost benefits, the potential safety impact of such limitations or exceptions predicated in historical shipment and incident data, and implementation mechanics—for PHMSA's evaluation of any such proposed limitations or exceptions.

[40] 58 FR 51735 (Oct. 4, 1993).

[41] 88 FR 21879 (April 11, 2023).

PHMSA estimates the undiscounted total cost of the rulemaking over the 10-year analysis period to be about $46.3 million in 2021 dollars, for an average annual cost of $4.6 million. The discounted total cost of the rulemaking is estimated to be about $32.8 million at a 7 percent discount rate. Further, PHMSA notes that the benefits of the proposed action are difficult to quantify as it is reliant on the degree to which having real-time access to train consist information improves emergency responders' ability to respond to rail incidents. Based on lessons learned from major hazardous material incidents on rail, PHMSA anticipates the proposed action would improve emergency responders' ability to promptly identify all the hazardous materials cars and hazardous material contained therein that are involved in an accident or investigation and to timely assess the threat from a hazardous materials release. This would likely reduce injuries and fatalities, material loss and response costs, and delays caused by closures. PHMSA estimated the annual damage cost of hazardous material incidents on rail that could be impacted by the proposed action to be about $15.6 million in 2021 dollars. Therefore, the proposed rule would have to reduce damage costs by about 30 percent for the monetized benefits of the proposed rule to equal costs. The following table summarizes the quantified annual costs and qualified benefits of the major provisions of this rulemaking.

Proposed requirement	Average annual cost			Benefit	Breakeven
	Undiscounted	3%	7%		
Amending the definition of train consist information.	$3,406,052	$2,905,432	$2,392,269	By improving emergency responders' ability to promptly identify all the hazardous materials involved in an accident and assess the threat from a hazardous materials release, the proposed provisions will reduce injuries and fatalities, material loss and response costs, and delays caused by closures.	Cost-effective if the proposed requirements reduce the consequences of hazardous material incidents by rail by about 30 percent.
Amending notice to train crew	1,051,753	897,167	738,708		
New information sharing requirement	169,447	162,157	153,722		
Total	4,627,252	3,964,756	3,284,699		

As illustrated by the Norfolk Southern train derailment at East Palestine, OH, such incidents can have substantial consequences that are not captured by this regulatory impact analysis, including the long-term environmental concerns and health risks (both physiological and psychological) for residents. Research also shows that such incidents can have significant impacts on property values, which, in turn, can slow down economic activity in the area.[42] Additionally, of the 140,000 total route-miles of track in the United States, 104,000 miles are in rural and tribal areas, suggesting that train related hazardous material incidents mainly happen in areas populated by disadvantaged communities.[43] Time is of the essence during the initial stages of emergency response to a hazardous materials incident. Reducing the lag in provision of critical hazardous material identification and response information during rail hazardous materials incidents will provide environmental and safety benefits, although these benefits are difficult to quantify. PHMSA acknowledges and considers these unquantified benefits in selecting the provisions of the proposed rulemaking.

C. Executive Order 13132

PHMSA analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'')[44] and the presidential memorandum (''Preemption'').[45] 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 ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The Federal hazardous materials transportation law contains an express preemption provision at 49 U.S.C. 5125(a) in the event compliance with a state, local, or Indian tribe requirement is not possible or presents an obstacle to compliance. Additionally, the Federal hazardous materials transportation law contains an express preemption provision at 49 U.S.C.5125(b) that preempts state, local, and Indian tribal requirements on the following covered subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; and

(5) The design, manufacture, fabrication, inspection, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous materials in commerce.

This proposed rule addresses covered subject items (3) and (4) above and is expected to preempt state, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. In this instance, the preemptive effect of the proposed rule is necessary to achieve the objectives of the FAST Act and the hazardous materials transportation law under which the proposed rule is promulgated. The proposed rule is not expected to have substantial direct effects on states, the

[42] For example, a study that examines the impact of 33 derailments involving hazardous material on property values in New York State between 2004 and 2013 found that, on average, a derailment depreciates housing values within a one-mile radius by 5%–8% (Chuan Tang et al. (2020). Rail accidents and property values in the era of unconventional energy production. Journal of Urban Economics, 120, *https://doi.org/10.1016/j.jue.2020.103295.*

[43] Improving Rail in Rural Communities | FRA (*dot.gov*).

[44] 64 FR 43255 (Aug. 10, 1999).

[45] 74 FR 24693 (May 22, 2009).

relationship between the national government and states, or the distribution of power and responsibilities among the various levels of government. Therefore, PHMSA has preliminarily concluded that the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

PHMSA analyzed this propose rulemaking in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments'')[46] and DOT Order 5301.1 (''Department of Transportation Policies, Programs, and Procedures Affecting American Indians, Alaska Natives, and Tribes''). Executive Order 13175 and DOT Order 5301.1 require DOT agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that significantly or uniquely affect tribal communities by imposing ''substantial direct compliance costs'' or ''substantial direct effects'' on such communities or the relationship and distribution of power between the Federal Government and Native American tribes.

PHMSA assessed the impact of this proposed action and has preliminarily determined that it will not significantly or uniquely affect tribal communities or Native American tribal governments. The changes to the rail transportation requirements in the HMR as part of this proposed action have national scope, and also are limited to establishing baseline requirements for the compilation, updating, and electronic exchange of hazardous materials information between railroads and first responders, emergency response officials and law enforcement personnel; PHMSA, therefore, does not expect this action to significantly or uniquely affect tribal communities, nor impose substantial compliance costs on Native American tribal governments or mandate tribal action. This rulemaking would not adversely affect the safe transportation of hazardous materials therefore, it would not cause disproportionately high adverse risks for tribal communities. For these reasons, the funding and consultation requirements of Executive Order 13175 and DOT Order 5301.1 to apply. However, PHMSA solicits comment from Native American tribal governments and communities on potential impacts of the proposed rulemaking.

E. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires agencies to review regulations to assess their impact on small entities, unless the agency head certifies that a rulemaking will not have a significant economic impact on a substantial number of small entities including small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where possible to do so and still meet the objectives of applicable regulatory statutes. Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') requires agencies to establish procedures and policies to promote compliance with the Regulatory Flexibility Act and to ''thoroughly review draft rules to assess and take appropriate account of the potential impact'' of the rules on small businesses, governmental jurisdictions, and small organizations. The DOT posts its implementing guidance on a dedicated web page.[47]

This proposed rule has been developed in accordance with Executive Order 13272 and with DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered. This proposed action promotes the exchange of information about hazardous material on a train between railroads and emergency response personal and law enforcement for the benefit of response to or investigation of accidents or emergencies involving a train transporting hazardous material. The proposed action applies to railroads, some of which are small entities, such as regional and short line railroads. As discussed at length in the PRIA—posted in the rulemaking docket—the proposed action will not, if adopted as proposed, have a significant economic impact on a substantial number of small entities.

PHMSA determined that all 585 Class III railroads (100%) and 10 Class II railroads (91%) can be considered small entities. None of the Class I railroads can be considered small entities.

Railroad	Affected entities	>1500 employees		1,500 or fewer employees	
		Count	Percent	Count	Percent
Class I	7	7	100	0	0
Class II	11	1	9	10	91
Class III	585	0	0	585	100
Total	603	8		595	

According to ASLRRA's report, in 2017, the average annual revenues of a Class II and Class III railroads were approximately $79 million and $4.75 million, respectively. PHMSA converted these into 2021 dollars by using a deflation index of 1.1202, resulting in an average annual revenue of $88.5 million and $5.32 million for Class II and Class III, respectively.[31] Based on estimates, for Class II and III railroads, the per railroad undiscounted average annual cost of the proposed rule is $5,473 (2021$).

Class II & III railroads	Amending the definition of train consist information		Amending notice to train crew		New information sharing requirement		Proposed rule
	Annual cost	Annual cost per railroad	Annual cost	Annual cost per railroad	Annual cost	Annual cost per railroad	Annual cost per railroad
596	$3,104,452	$5,209	$98,042	$164	$109,903	$185	$5,558

[46] 65 FR 67249 (Nov. 9, 2000).

[47] DOT, ''Rulemaking Requirements Related to Small Entities,'' *https://www.transportation.gov/regulations/rulemaking-requirements-concerning-small-entities* (last accessed June 17, 2021).

PHMSA estimates the average annual cost of the proposed rule is less than 0.1% of the average annual revenue of Class II and Class III railroads. However, for the 41 Class III railroads with five or fewer employees, PHMSA acknowledges that the cost of the rulemaking could be substantially higher than the estimated per railroad average cost of $5,558. Based on estimates in the PRIA, for these railroads, the year one cost of the proposed action is estimated to be about $18,000 per railroad. Accordingly, PHMSA estimated that the annual revenue of a railroad has to be about $1.8 million or less for this proposed action to have an economic impact of greater than 1%. However, this estimated annual revenue threshold is significantly below the average annual revenue of Class III railroads ($5.32 million). PHMSA seeks comment on whether the average cost figures presented in this analysis represent an accurate accounting of the distribution of costs across Class III railroads.

Based on this analysis, PHMSA has preliminarily determined that the proposed action will not have a significant economic impact on a substantial number of small entities.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*), no person is required to respond to an information collection unless it has been approved by the Office of Management and Budget (OMB) and displays a valid OMB control number. Section 1320.8(d) of 5 CFR requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests. This proposed action may result in an increase in annual burden and costs for information collection due to additional railroad information requirements for hazardous materials transported by rail.

PHMSA has analyzed this NPRM in accordance with PRA which requires Federal agencies to minimize paperwork burden imposed on the American public by ensuring maximum utility and quality of Federal information, ensuring the use of information technology to improve government performance and improving the Federal Government's accountability for managing information collection activities. Under the PRA, no person is required to respond to any information collection unless it has been approved by OMB and displays a valid OMB control number.

In this NPRM, PHMSA is proposing to add two new information collections to OMB Control No. 2137–0559, ''Rail Carrier and Tank Car Tanks Requirements, Rail Tank Car Tanks—Transportation of Hazardous Materials by Rail.'' PHMSA estimates that this NPRM will result in an overall increase in burden attributed to the proposed requirement for additional emergency response information on hazardous materials by rail. The revisions proposed in this NPRM will require railroads to make certain train consist information available electronically—see the ''Section IV. Section-by-section Review of Proposed Amendments discussion of Section 174.28.'' Much of this required information is already required of and generally applied to shippers who must then provide the information to carriers (*e.g.,* rail). Shippers are also generally required to supply emergency response information with the hazardous material shipping paper information. For purposes of facilitating emergency response measures, the additional information collection proposed to be applied to railroads by this rule is expanded hazardous material train consist information that includes the origin and destination of hazardous materials on a train and the specific identification of hazardous material location in rail cars. Additionally, PHMSA is requiring railroads to provide advance notice to state-authorized local responders when an accident or incident involving hazardous material occurs.

Hazardous Materials Train Consist Information

As a result of the changes proposed in this NPRM, PHMSA estimates that 603 railroads (Class I, II, and III) will produce hazardous material train consist information 76,227 times annually. PHMSA estimates the additional burden for this information collection will take 4.8 minutes per response resulting in 6,098 additional burden hours for the railroads (Class I, II, and III) (76,227 responses × 4.8 minutes). It is estimated that a railroad employee making $51.73 per hour will perform this function resulting in an increased salary cost of $297,813 (6,098 burden hours × $51.35 per hour). Additionally, PHMSA estimates railroads will need to make an initial investment in building a system for electronic sharing of train consist information. PHMSA conservatively assumes that the initial cost of building out a system will result in $500,000 in burden cost associated with this information collection.

Notification of Hazardous Materials Accidents or Incidents

Additionally, PHMSA estimates that 603 railroads (Class I, II, and III) will need to notify local authorities of hazardous materials incidents 518.5 times annually. PHMSA understands that not all Class II and III railroads transport hazardous materials yet is estimating using a conservative assumption that all railroads may at some point transport hazardous material. PHMSA estimates the additional burden proposed in this NPRM will take 15 minutes resulting in 129 burden hours (518.5 hazardous materials incidents × 15 minutes per notification). It is estimated that a railroad employee making $50.66 per hour will perform this function resulting in an increased salary cost of $6,567 (129 burden hours × $50.66 per hour). There are no additional burden costs associated with this information collection.

A summary of the total increases for information collections proposed under this OMB control number are as follows:

Annual Increase in Number of Respondents: 603.

Annual Increase in Number of Responses: 76,846.

Annual Increase in Burden Hours: 6,228.

Annual Increase in Salary Cost: $319,689.

Annual Increase in Burden Costs: $500,000.

PHMSA requests comment on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining the proposed requirements in this NPRM. Address written comments to the DOT Docket Operations Office identified in the **ADDRESSES** section of this rulemaking. PHMSA must receive comments regarding information collection burdens prior to the close of the comment period identified in the **DATES** section of this rulemaking. Requests for a copy of this information collection should be directed to Steven Andrews, Standards and Rulemaking Division (PHH–10), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, Washington, DC, 20590–0001. If these proposed requirements are adopted in a final rule, PHMSA will submit the revised information collection and recordkeeping requirements to OMB for approval.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 *et seq.*)

requires agencies to assess the effects of Federal regulatory actions on state, local, and tribal governments, and the private sector. For any proposed or final rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, or by the private sector of $100 million or more in 1996 dollars in any given year, the agency must prepare, amongst other things, a written statement that qualitatively and quantitatively assesses the costs and benefits of the Federal mandate.

As explained in the PRIA, this rulemaking is not expected to impose unfunded mandates under the UMRA. Nor is it expected to result in costs of $100 million or more in 1996 dollars to either state, local, or tribal governments, or to the private sector, in any one year. A copy of the PRIA is available for review in the rulemaking docket.

H. Draft Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*),[48] requires Federal agencies to consider the environmental impacts of their actions in the decision-making process. NEPA requires Federal agencies to assess the environmental effects of proposed Federal actions prior to making decisions and involve the public in the decision-making process. Agencies must prepare an environmental assessment (EA) for a proposed action for which a categorical exclusion is not applicable and is either unlikely to have significant effects or when significance of the action is unknown. In accordance with these requirements, an EA must briefly discuss: (1) the need for the action; (2) the alternatives considered; (3) the environmental impacts of the proposed action and alternatives; and (4) a listing of the agencies and persons consulted. If, after reviewing public comments in response to the draft EA (DEA), an agency determines that a proposed rule will not have a significant impact on the human or natural environment, it can conclude the NEPA analysis with a finding of no significant impact (FONSI).

1. Need for the Action

The FAST Act at section 7302 instructs the Secretary to issue regulations that require a Class I railroad transporting hazardous material to create accurate, real-time, and electronic train consist information that must be provided ''to State and local first responders, emergency response officials, and law enforcement personnel that are involved in the response to or investigation of an accident, incident, or public health or safety emergency involving the rail transportation of hazardous materials.'' Further, the NTSB has issued safety recommendation R–07–04 recommending PHMSA and FRA collaborate to require all railroads to immediately provide to emergency response personnel accurate, real-time information regarding the identity and location of all hazardous materials on a train.

2. Alternatives Considered

No Action Alternative:

The no action alternative would not make any changes to the current regulatory requirements that railroads must provide train crews with hard copy train consist information about hazardous material and its location on the train. There would be no additional requirements for railroads to generate, maintain, and provide in electronic form, information regarding hazardous material to first responders, emergency response officials, and law enforcement personnel or to forward this information to emergency response personnel in accident or incident situations.

Proposed Action: All Railroads Alternative:

Under this alternative, all railroads that transport hazardous materials would be required to create accurate train consist information about the hazardous material and its location on a train in both a hard (printed) copy maintained by train crews and an electronic copy maintained by the railroad off-of-the-train and providing it in real-time through electronic communications to emergency response personnel. Railroads would also be required to provide a ''push'' notice of the train consist information to emergency response personnel in (at least) a 10-mile radius of an accident or incident promptly following notification to the railroad of the accident or incident. This alternative aims to enhance transportation safety by transitioning away from exclusive reliance on train crews and hard copy documents for the exchange of information about hazardous material and their location on a train.

Class I Railroads Alternative:

Under this alternative, only Class I railroads, as defined by the STB, that transport hazardous materials would be subject to generating accurate train consist information about the hazardous material and its location on a train (in both electronic and hard copy forms) and providing it in real-time through electronic communication, to emergency response personnel. Also, only Class I railroads would be required to provide a ''push'' notice of the train consist information to emergency response personnel in a 10-mile radius of an accident or incident promptly following notification to the railroad of the accident or incident. This alternative aims to enhance transportation safety by transitioning away from exclusive reliance on train crews and hard copy documents for the exchange of information about hazardous materials and their locations on a train by adhering more closely to the FAST Act mandate to implement measures for Class I railroads.

3. Environmental Impacts of Proposed Action and Alternatives

No Action Alternative:

The PHMSA HMR and the FRA rail regulations work in tandem to keep hazardous material in packages and rail cars on the tracks during transportation. In the unlikely event of an incident or accident, train crews carry and maintain documentation, in addition to hazard communication displayed on packages and rail cars, that emergency responders and law enforcement can use to assess the potential for, or threat from, a hazardous materials release and thus, appropriately respond. The intent of the FAST Act mandate and NTSB safety recommendation to provide real-time electronic means of train consist information exchange is to provide greater assurances that emergency responders and law enforcement have the right information about the hazardous material on a train without delay. The presumption being that supplementing the existing hard copy train consist information requirements by providing the information electronically, for instance, provides better assurance that such information is accurate and in real-time, especially in the aftermath of a derailment, and that real-time information will aid in response decision-making, leading to safer outcomes for the public and the environment. The no action alternative would not require any updates to the existing requirements or regulation of hazardous materials transportation and incident response time.

Proposed Action: All Railroads Alternative:

This proposed action would supplement existing requirements for hard copies of train consist information maintained by train crews by requiring railroads to also create and provide accurate and real-time train consist information to emergency response personnel. All railroads would be required to use electronic

[48] Also at 40 CFR parts 1501 through 1508.

communication to supplement their hard copy documentation and communications requirements. By implementing the proposed action to all railroads, the entirety of the nation's rail network would be covered. Efficiencies will be introduced by requiring accurate and real-time information exchange with the goal of improved safety and enhanced response to investigations of an accident or emergency involving hazardous material transported by rail. The intent of the proposed action is to foster and promote the general welfare of the human and natural environment by providing enhanced emergency response and investigative efforts for safer transport of hazardous materials. The proposed action builds on the current HMR requirements for hazardous material information sharing with the goal of improved rail transportation safety by enhancing emergency responder and law enforcement ability to assess, without delay, the potential for or extent of a hazardous material release and take appropriate response measures. These enhanced safety measures and requirements are geared toward addressing environmental effects including avoidance of human exposure and water contamination. Regulations that require the increased use of electronic systems for transmission of train consist information not only promote enhanced emergency response and investigative efforts for accidents or incidents but also respond to the FAST Act mandate and NTSB safety recommendation R–07–04.

Class I Railroads Only Alternative:

This alternative would require only Class I railroads to supplement existing hard copy train consist information documentation requirements by creating and providing accurate, real-time train, electronic train consist information to emergency response personnel and also providing a ''push'' notice of the train consist information to emergency response personnel in a 10-mile radius of an accident or incident promptly following notification to the railroad of the accident or incident. Although, the entirety of the nation's rail network would not be covered, applying this alternative would still affect about 68% of the nation's rail network and most of the hazardous materials freight traffic. Class I railroads operate on about 90,000 miles of the 140,000-mile U.S. freight rail network. This modified version of the proposal would still provide safety and environmental benefits by enhancing emergency responder and law enforcement ability to assess without delay the potential for a hazardous material release and take appropriate response measures. Similar to the proposed action to all railroads, this approach also builds on the HMR provisions for hazardous material information sharing, just to a narrower extent, applicable to only Class I railroads. The enhanced safety measures and requirements are geared toward addressing environmental effects including avoidance of human exposure and water contamination.

4. Environmental Justice

Executive Order 12898 (''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations''),[49] directs Federal agencies to take appropriate and necessary steps to identify and address disproportionately high and adverse effects of Federal actions on the health or environment of minority and low-income populations to the greatest extent practicable and permitted by law. DOT Order 5610.2C (''U.S. Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'') establishes departmental procedures for effectuating Executive Order 12898 promoting the principles of environmental justice through full consideration of environmental justice principles throughout planning and decision-making processes in the development of programs, policies, and activities—including PHMSA rulemaking.

Through the NEPA process, PHMSA has evaluated this NPRM under DOT Order 5610.2C and Executive Order 12898 and has preliminarily determined it will not cause disproportionately high and adverse human health and environmental effects on minority and low-income populations. The proposed rule will not result in any adverse environmental or health impact on minority populations and low-income populations. Rather, PHMSA anticipates the proposed action to have a positive impact on the safe transportation of hazardous materials by rail by requiring all trains transporting hazardous materials to have real-time information available to emergency responders in the event of an accident or incident—particularly rail lines in urban or rural areas posing higher risks due to their proximity to minority and low-income communities in the vicinity of those rail lines. To the extent that the nation's rail network passes through geographic locations of minority populations, low-income populations, or other underserved and other disadvantaged communities, and in the unfortunate circumstance of a rail accident or emergency involving hazardous materials, the proposed action will have a positive impact by aiding emergency response personnel and law enforcement in more quickly assessing potential threats from the hazardous materials and taking appropriate measures to protect public health and the environment. Lastly, as explained in this DEA above, the proposed action will likely reduce environmental risks posed by hazardous material rail incidents.

5. Agencies and Persons Consulted

PHMSA published this notice in consultation with FRA. In addition, PHMSA and FRA worked with stakeholders through several RSAC Hazardous Material Issues Working Group meetings. The U.S. Department of Homeland Security, NTSB, and a variety of rail industry stakeholders, such as the AAR and the IIAFC participated in these meetings. Ultimately, some participants in the Working Group concluded that electronic train consist information could be a valuable option for improving emergency response efforts, and the AskRail® system could be extended beyond Class I railroads. PHMSA also issued an ANPRM soliciting stakeholder input on the contents of this rulemaking. Please see Section III. G above for more details.

6. Draft Finding of No Significant Impact

As discussed in the DEA above and given that the purpose of the rule is to address safety and environmental impacts of potential future hazardous materials rail transportation incidents, PHMSA proposes to find that this proposed action will have no significant impact on the environment. This is based on the analysis presented in the ANPRM, NPRM, supporting documents, and this DEA. PHMSA welcomes public comments about the safety and environmental risks or benefits that could result from this proposed rule as well as possible alternatives and their environmental impacts.

I. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform any amendments to the HMR considered in this rulemaking. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS). DOT's complete Privacy Act Statement is available in the **Federal**

[49] 59 FR 7629 (Feb. 11, 1994).

Register,[50] or on DOT's website at *http://www.dot.gov/privacy.*

J. Executive Order 13609 and International Trade Analysis

Executive Order 13609 (''Promoting International Regulatory Cooperation'')[51] requires that agencies consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465) (as amended, the Trade Agreements Act), prohibits agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to the Trade Agreements Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards to protect the safety of the American public, and it has assessed the effects of the proposed action to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreements Act.

K. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 272 note) directs Federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards—*e.g.,* specification of materials, test methods, or performance requirements—that are developed or adopted by voluntary consensus standard bodies. This rulemaking does not propose use of voluntary consensus standards, and therefore the NTTAA does not apply.

L. Cybersecurity and Executive Order 14082

Executive Order 14082 (''Improving the Nation's Cybersecurity'')[52] expressed the Administration policy that ''the prevention, detection, assessment, and remediation of cyber incidents is a top priority and essential to national and economic security.'' Executive Order 14082 directed the Federal Government to improve its efforts to identify, deter, and respond to ''persistent and increasingly sophisticated malicious cyber campaigns.'' Consistent with Executive Order 14082, TSA in October 2022 issued a Security Directive to reduce the risk that cybersecurity threats pose to critical railroad operations and facilities through implementation of layered cybersecurity measures that provide defense in depth.[53]

PHMSA has considered the effects of the NPRM and has preliminarily determined that its proposed regulatory amendments would not materially affect the cybersecurity risk profile for rail transportation of hazardous materials. PHMSA acknowledges that the proposed requirements within this NPRM pertaining to the sharing of electronic train consist information (some of which may be proprietary or security-sensitive information) could have some effect on the cybersecurity risk profile of rail transportation of hazardous material. However, PHMSA notes that it has proposed in this NPRM (consistent with a mandate in section 7302(a)(5) of the FAST Act) explicit language at § 174.28(c) that would require such information sharing be performed in a manner that is protective of security and confidentiality interests. PHMSA also notes, that, as explained in the discussion of § 174.28 within Sections III.F–G. above, railroads that would be affected by this NPRM's proposals may be participants in existing industry cybersecurity risk-mitigation initiatives, or subject to recent TSA guidance for mitigation of cybersecurity risks associated with rail transportation of hazardous material. PHMSA understands these considerations address any potential alteration in cybersecurity risks profiles due to this NPRM's proposed information-sharing requirements.

PHMSA seeks comment on any other potential cybersecurity impacts of the proposed amendments beyond the considerations discussed here.

M. Severability

The purpose of this proposed rule is to operate holistically in addressing different issues related to safety and environmental hazards associated with the rail transportation of hazardous materials. However, PHMSA recognizes that certain provisions focus on unique topics. Therefore, PHMSA preliminarily finds that the various provisions of this proposed rule are severable and able to function independently if severed from each other; thus, in the event a court were to invalidate one or more of this proposed rule's unique provisions, the remaining provisions should stand and continue in effect. PHMSA seeks comment on which portions of this rulemaking should or should not be severable.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 174

Emergency preparedness, Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA proposes to amend 49 CFR chapter I as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4; Pub. L. 104–134, section 31001; Pub. L. 114–74 section 701 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97.

■ 2. In § 171.8, remove the definition for ''Train consist'' and add the definition for ''Train consist information'' in alphabetical order to read as follows:

[50] 65 FR 19477 (Apr. 11, 2000).

[51] 77 FR 26413 (May 4, 2012).

[52] 86 FR 26633 (May 17, 2021).

[53] TSA, Security Directive No. 1580/82–2022–01, ''Rail Cybersecurity Mitigation Actions and Testing'' (Oct. 24, 2022).

§ 171.8 Definitions.

* * * * *

Train consist information means a hard (printed) copy or electronic record of the position and contents of each hazardous material rail car where the record includes the information required by § 174.26 of this subchapter.

* * * * *

PART 174—CARRIAGE BY RAIL

■ 3. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 33 U.S.C. 1321; 49 CFR 1.81 and 1.97.

■ 4. Revise § 174.26 to read as follows:

§ 174.26 Notice to train crews.

(a) Prior to movement of a train, a railroad must provide the train crew with train consist information as defined in § 171.8 of this subchapter in hard copy (printed) form that has: a railroad-designated emergency point of contact (name, title, phone number and email address) in a conspicuous location; and the position in the train and contents of each hazardous material rail car by reporting mark and number, to include the:

(1) Point of origin and destination of hazardous materials subject to shipping paper requirements on the train;

(2) Shipping paper information required by §§ 172.201 to 172.203 of this subchapter; and

(3) Emergency response information required by § 172.602(a) of this subchapter.

(b) The train crew must update the train consist information to reflect any changes in the train consist information occurring at intermediate stops prior to continued movement of the train. Any update to the train consist information must also be reflected in the electronic train consist information required pursuant to § 174.28 prior to continued movement of the train. Train crews may use electronic or radio communications to notify the railroad to update the electronic train consist information.

(c) The train consist information must always be immediately available for use by the train crew while the train is in transportation. When the train crew is aboard the train locomotive, the train consist information shall be stowed in a conspicuous location of the occupied locomotive.

(d) Railroad operating rules for use of electronic devices by train crews and use of electronic devices by train crews in association with updates to train consist information requirements of this section and § 174.28 must comply with 49 CFR part 220, subpart C.

■ 5. Add § 174.28 to read as follows:

§ 174.28 Electronic Train Consist Information.

(a) *Retention and notification requirements.* Each railroad carrying hazardous materials must at all times maintain in electronic form, off the train, accurate train consist information as required in § 174.26. Each railroad must make such electronic train consist information immediately accessible at all times to its designated emergency point of contact such that they are able to communicate train consist information to Federal, state, and local first responders, emergency response officials, and law enforcement personnel seeking assistance. Each railroad must also provide, using electronic communication (*e.g.,* a software application or electronic data interchange), that electronic train consist information to authorized Federal, state, and local first responders, emergency response officials, and law enforcement personnel along the train route that could be or are involved in the response to, or investigation of, an accident, incident, or public health or safety emergency involving the rail transportation of hazardous materials such that the information is immediately available for use at the time it is needed.

(b) *Emergency notification.* When a train carrying hazardous material is involved in either an accident, or in an incident involving the release or suspected release of a hazardous material from a rail car in the train, the railroad must promptly notify State-authorized local first responders within at least a 10-mile radius of the accident or incident by forwarding train consist information in electronic form to those personnel. Notification may be accomplished through Public Safety Answering Points (*i.e.,* 911 call centers).

(c) *Security measures.* Each railroad must implement security and confidentiality protections in generating, updating, providing, and forwarding train consist information in electronic form pursuant to this section to ensure they provide access only to authorized persons. Nothing in this paragraph shall limit a railroad from entering into agreements with other railroads or persons to develop and implement a secure process for the generation, updating, providing, and forwarding of that information.

(d) *Provision of train consist information.* No railroad may withhold, or cause to be withheld, the train consist information described in paragraphs (a) and (b) of this section from Federal, state, or local first responders, emergency response officials, and law enforcement personnel in the event of an incident, accident, or public health or safety emergency involving the rail transportation of hazardous materials. If a railroad uses a software application to meet the requirements of this section, it must provide all first responders, emergency response officials, and law enforcement personnel responding to, or investigating, an accident, incident, or public health or safety emergency involving the rail transportation of hazardous materials access, in accordance with the security and confidentiality protections required in paragraph (c) of this section, to the train consist information contained within that application without delay for the duration of the response or investigation.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 7. In § 180.503, remove the definition ''Train consist''.

Issued in Washington, DC on June 21, 2023 under authority delegated in 49 CFR part 1.97.

William S. Schoonover,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2023–13467 Filed 6–26–23; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2022–0174; FF09E21000 FXES1111090FEDR234]

Endangered and Threatened Wildlife and Plants; Review of Species That Are Candidates for Listing as Endangered or Threatened; Annual Notification of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of review.

SUMMARY: In this candidate notice of review (CNOR), we, the U.S. Fish and Wildlife Service (Service), present an updated list of plant and animal species that we regard as candidates for or have proposed for addition to the Lists of Endangered and Threatened Wildlife

and Plants under the Endangered Species Act of 1973, as amended. This document also includes our findings on resubmitted petitions and describes our progress in revising the Lists of Endangered and Threatened Wildlife and Plants (Lists) during the period October 1, 2021, through September 30, 2022. Combined with other decisions for individual species that were published separately from this CNOR in the past year, the current number of species that are candidates for listing is 23 (as of September 30, 2022). Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, and by allowing landowners, resource managers, States, Tribes, range countries, and other stakeholders to take actions to alleviate threats and thereby possibly remove the need to list species as endangered or threatened. Even if we subsequently list a candidate species, the early notice provided here could result in more options for species management and recovery by prompting earlier candidate conservation measures to alleviate threats to the species.

DATES: We are publishing this document on June 27, 2023. We will accept information on any of the species in this document at any time.

ADDRESSES: This document is available on the internet at *https://www.regulations.gov.*

Species assessment forms with information and references on a particular candidate species' range, status, habitat needs, and listing priority assignment are available for review on our website (*https://ecos.fws.gov/tess_public/reports/candidate-species-report*). Please submit any new information, materials, comments, or questions of a general nature on this document to the address listed under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions pertaining to a particular species to the address of the Regional Director or Branch Chief in the appropriate office listed under Request for Information in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Caitlin Snyder, Chief, Branch of Domestic Listing, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (telephone: 703–358–2673). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973 (Act; 16 U.S.C. 1531 *et seq.*), as amended, requires that we identify species of wildlife and plants that are endangered or threatened based solely on the best scientific and commercial data available. As defined in section 3 of the Act, an endangered species is any species that is in danger of extinction throughout all or a significant portion of its range, and a threatened species is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Through the Federal rulemaking process, we add species that meet these definitions to the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations (CFR) at § 17.11 (50 CFR 17.11) or the List of Endangered and Threatened Plants at 50 CFR 17.12. As part of this process, we maintain a list of species that we regard as candidates for listing. A candidate species is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal for listing as endangered or threatened, but for which preparation and publication of a proposal is precluded by higher-priority listing actions. We may identify a species as a candidate for listing after we have conducted an evaluation of its status—either on our own initiative, or in response to a petition we have received. If we have made a finding on a petition to list a species, and have found that listing is warranted but precluded by other higher-priority listing actions, we will add the species to our list of candidates.

We maintain this list of candidates for a variety of reasons: (1) To notify the public that these species are facing threats to their survival; (2) to provide advance knowledge of potential listings that could affect decisions of environmental planners and developers; (3) to provide information that may stimulate and guide conservation efforts that will remove or reduce threats to these species and possibly make listing unnecessary; (4) to request input from interested parties to help us identify those candidate species that may not require protection under the Act, as well as additional species that may require the Act's protections; and (5) to request necessary information for setting priorities for preparing listing proposals. We encourage collaborative conservation efforts for candidate species and offer technical and financial assistance to facilitate such efforts. For additional information regarding such assistance, please contact the appropriate Office listed under Request for Information, below, or visit our website at: *https://www.fws.gov/program/endangered-species/what-we-do.*

Previous CNORs

We have been publishing CNORs since 1975. The most recent was published on May 3, 2022 (87 FR 26152).

On September 21, 1983, we published guidance for assigning a listing priority number (LPN) for each candidate species (48 FR 43098). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats, immediacy of threats, and taxonomic status; the lower the LPN, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). Section 4(h)(3) of the Act (16 U.S.C. 1533(h)(3)) requires the Secretary to establish guidelines for such a priority-ranking system. As explained below, in using this system, we first categorize based on the magnitude of the threat(s), then by the immediacy of the threat(s), and finally by taxonomic status.

Under this priority-ranking system, magnitude of threat can be either ''high'' or ''moderate to low.'' This criterion helps ensure that the species facing the greatest threats to their continued existence receive the highest listing priority. All candidate species face threats to their continued existence, so the magnitude of threats is in relative terms. For all candidate species, the threats are of sufficiently high magnitude to put them in danger of extinction or make them likely to become in danger of extinction in the foreseeable future. However, for species with higher magnitude threats, the threats have a greater likelihood of bringing about extinction or are expected to bring about extinction on a shorter timescale (once the threats are imminent) than for species with lower-magnitude threats. Because we do not routinely quantify how likely or how soon extinction would be expected to occur absent listing, we must evaluate factors that contribute to the likelihood and time scale for extinction. We, therefore, consider information such as: (1) The number of populations or extent of range of the species affected by the threat(s), or both; (2) the biological significance of the affected population(s), taking into consideration

the life-history characteristics of the species and its current abundance and distribution; (3) whether the threats affect the species in only a portion of its range, and, if so, the likelihood of persistence of the species in the unaffected portions; (4) the severity of the effects and the rapidity with which they have caused or are likely to cause mortality to individuals and accompanying declines in population levels; (5) whether the effects are likely to be permanent; and (6) the extent to which any ongoing conservation efforts reduce the severity of the threat(s).

As used in our priority-ranking system, immediacy of threat is categorized as either ''imminent'' or ''nonimminent,'' and is based on when the threats will begin. If a threat is currently occurring or likely to occur in the very near future, we classify the threat as imminent. Determining the immediacy of threats helps ensure that species facing actual, identifiable threats are given priority for listing proposals over species for which threats are only potential or species that are intrinsically vulnerable to certain types of threats but are not known to be presently facing such threats.

Our priority-ranking system has three categories for taxonomic status: Species that are the sole members of a genus; full species (in genera that have more than one species); and subspecies and distinct population segments of vertebrate species (DPSs).

The result of the ranking system is that we assign each candidate an LPN of 1 to 12. For example, if the threats are of high magnitude, with immediacy classified as imminent, the listable entity is assigned an LPN of 1, 2, or 3 based on its taxonomic status (*i.e.,* a species that is the only member of its genus would be assigned to the LPN 1 category, a full species to LPN 2, and a subspecies or DPS would be assigned to LPN 3). In summary, the LPN ranking system provides a basis for making decisions about the relative priority for preparing a proposed rule to list a given species. No matter which LPN we assign to a species, each species included in this document as a candidate is one for which we have concluded that we have sufficient information to prepare a proposed rule for listing because it is in danger of extinction or likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

For more information on the process and standards used in assigning LPNs, a copy of the 1983 guidance is available on our website at: *https://www.fws.gov/library/collections/listing-and-classification-policies-and-regulations.* The species assessment and listing priority assignment form for each candidate contains the LPN chart and a more-detailed explanation—including citations to, and more-detailed analyses of, the best scientific and commercial data available—for our determination of the magnitude and immediacy of threat(s) and assignment of the LPN; these forms are available for review on the website provided above in **ADDRESSES**.

Summary of This CNOR

Since publication of the previous CNOR on May 3, 2022 (87 FR 26152), we reviewed the available information on candidate species to ensure that a proposed listing is justified for each species, and reevaluated the relative LPN assigned to each species. We also evaluated the need to emergency list any of these species, particularly species with higher priorities (*i.e.,* species with LPNs of 1, 2, or 3). This review and reevaluation ensures that we focus conservation efforts on those species at greatest risk.

After a thorough review of the available scientific and commercial information, we have determined that the North Cascades Ecosystem of grizzly bear (*Ursus arctos horribilis*) is no longer warranted but precluded for uplisting as information indicates a population is no longer present. A summary of our updated assessment for this species is included under Petitions to Reclassify Species Already Listed. We are currently working on species status assessments for five species that are foreign species candidates: Sira curassow (*Pauxi koepckeae*), southern helmeted curassow (*Pauxi unicornis*), fluminense swallowtail butterfly (*Parides ascanius*), Hahnel's Amazonian swallowtail butterfly (*Parides hahneli*), and Harris' mimic swallowtail butterfly (*Mimoides* (syn. *Eurytides*) *lysithous harrisianus*). We intend to make determinations in fiscal year (FY) 2023 whether these five species are endangered, threatened, or not warranted for listing. Therefore, in this CNOR, summaries for these five candidate species are not included under Findings for Petitioned Candidate Species, but these species are included in table 5.

In addition to reviewing candidate species since publication of the last CNOR, we have worked on findings in response to petitions to list species, on proposed rules to list species under the Act, and on final listing determinations. Some of these findings and determinations have been completed and published in the **Federal Register**, while work on others is still under way (see Preclusion and Expeditious Progress, below, for details).

Combined with other findings and determinations published separately from this CNOR, 23 species are now candidates awaiting preparation of a proposed listing rule or ''not-warranted'' finding. Table 5 (below) identifies these 23 candidate species, along with the 54 species proposed for listing (including 6 species proposed for listing due to similarity of appearance) as of September 30, 2022.

Table 6 (below) lists the changes for species identified in the previous CNOR and includes 12 species identified in the previous CNOR as either proposed for listing or classified as candidates that are no longer in those categories. This includes nine species for which we published a final listing rule, one species for which we published a withdrawal of the proposed listing rule, and one species where we no longer find the population to be warranted but precluded for uplisting due to the population being extirpated.

Petition Findings

The Act provides two mechanisms for considering species for listing. One method allows the Secretary, on the Secretary's own initiative, to identify species for listing under the standards of section 4(a)(1). The second method provides a mechanism for the public to petition us to add a species to the Lists. As described further in the paragraphs that follow, the CNOR serves several purposes as part of the petition process: (1) In some instances (in particular, for petitions to list species that the Service has already identified as candidates on its own initiative), it serves as the initial petition finding; (2) for candidate species for which the Service has made a warranted-but-precluded petition finding, it serves as a ''resubmitted'' petition finding that the Act requires the Service to make each year; and (3) it documents the Service's compliance with the statutory requirement to monitor the status of species for which listing is warranted but precluded, and to ascertain if they need emergency listing.

First, the CNOR serves as an initial 12-month finding in some instances. Under section 4(b)(3)(A) of the Act, when we receive a petition to list a species, we must determine within 90 days, to the maximum extent practicable, whether the petition presents substantial information indicating that listing may be warranted (a ''90-day finding''). If we make a positive 90-day finding, we must promptly commence a status review of the species under section 4(b)(3)(A); we

must then make, within 12 months of the receipt of the petition, one of the following three possible findings (a ''12-month finding''):

(1) The petitioned action is not warranted, in which case we must promptly publish the finding in the **Federal Register***;*

(2) The petitioned action is warranted (in which case we must promptly publish a proposed regulation to implement the petitioned action; once we publish a proposed rule for a species, sections 4(b)(5) and 4(b)(6) of the Act govern further procedures, regardless of whether or not we issued the proposal in response to a petition); or

(3) The petitioned action is warranted, but (a) the immediate proposal of a regulation and final promulgation of a regulation implementing the petitioned action is precluded by pending proposals to determine whether any species is endangered or threatened, and (b) expeditious progress is being made to add qualified species to the Lists and to remove from the Lists species for which the protections of the Act are no longer necessary. We refer to this third option as a ''warranted-but-precluded finding,'' and after making such a finding, we must promptly publish it in the **Federal Register**.

We define ''candidate species'' to mean those species for which the Service has on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule to list, but for which issuance of the proposed rule is precluded (61 FR 64481; December 5, 1996). The standard for making a species a candidate through our own initiative is identical to the standard for making a warranted-but-precluded 12-month petition finding on a petition to list.

Therefore, all candidate species identified through our own initiative already have received the equivalent of substantial 90-day and warranted-but-precluded 12-month findings. Nevertheless, if we receive a petition to list a species that we have already identified as a candidate, we review the status of the newly petitioned candidate species and in a CNOR publish specific section 4(b)(3) findings (*i.e.,* substantial 90-day and warranted-but-precluded 12-month findings) in response to the petitions to list these candidate species. We publish these findings as part of the first CNOR following receipt of the petition.

Second, the CNOR serves as a ''resubmitted'' petition finding. Section 4(b)(3)(C)(i) of the Act requires that when we make a warranted-but-precluded finding on a petition, we treat the petition as one that is resubmitted on the date of the finding. Thus, we must make a 12-month petition finding for each such species at least once a year in compliance with section 4(b)(3)(B) of the Act, until we publish a proposal to list the species or make a final not-warranted finding. We make these annual resubmitted petition findings through the CNOR. To the extent these annual findings differ from the initial 12-month warranted-but-precluded finding or any of the resubmitted petition findings in previous CNORs, they supersede the earlier findings, although all previous findings are part of the administrative record for the new finding, and in the new finding, we may rely upon them or incorporate them by reference as appropriate, in addition to explaining why the finding has changed. We have identified the candidate species for which we received petitions and made a continued warranted-but-precluded finding on a resubmitted petition by the code ''C*'' in the category column on the left side of table 5, below.

Third, through undertaking the analysis required to complete the CNOR, the Service determines if any candidate species needs emergency listing. Section 4(b)(3)(C)(iii) of the Act requires us to implement a system to monitor effectively the status of all species for which we have made a warranted-but-precluded 12-month finding and to make prompt use of the emergency listing authority under section 4(b)(7) to prevent a significant risk to the well-being of any such species. The CNOR plays a crucial role in the monitoring system that we have implemented for all candidate species by providing notice that we are actively seeking information regarding the status of those species. We review all new information on candidate species as it becomes available, prepare an annual species assessment form that reflects monitoring results and other new information, and identify any species for which emergency listing may be appropriate. If we determine that emergency listing is appropriate for any candidate, we will make prompt use of the emergency listing authority under section 4(b)(7) of the Act.

A number of court decisions have elaborated on the nature and specificity of information that we must consider in making and describing the petition findings in the CNOR. The CNOR that published on November 9, 2009 (74 FR 57804), describes these court decisions in further detail. As with previous CNORs, we continue to incorporate information of the nature and specificity required by the courts. For example, we include a description of the reasons why the listing of every petitioned candidate species is both warranted and precluded at this time. We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. Our preclusion determinations are further based upon our budget for listing activities for non-listed species only, and we explain the priority system and why the work we have accomplished has precluded action on listing candidate species.

In preparing this CNOR, we reviewed the current status of, and threats to, 16 of the 23 current candidate species for which we have received a petition to list where we found the action warranted but precluded and 2 species for which we continue to find uplisting warranted but precluded. We find that the immediate issuance of a proposed rule and timely promulgation of a final rule for each of these species has been, for the preceding months, and continues to be, precluded by higher-priority listing actions. We also find that 1 listed domestic species is no longer warranted but precluded for uplisting due to the population being extirpated. We are currently working on species status assessments for five species that are foreign species candidates: Sira curassow, southern helmeted curassow, fluminense swallowtail butterfly, Hahnel's Amazonian swallowtail butterfly, and Harris' mimic swallowtail butterfly. We intend to make determinations in FY 2023 whether these species are endangered, threatened, or not warranted for listing. Therefore, in this CNOR, summaries for these five foreign candidate species are not included under Findings for Petitioned Candidate Species, but these species are included in table 5, below. A summary for the longfin smelt San Francisco Bay-Delta distinct population segment (DPS) is not included under Findings for Petitioned Candidate Species in this CNOR because subsequent to the end of FY 2022, but prior to the publication of this CNOR, our proposal to list the species was published in the **Federal Register** on October 7, 2022 (87 FR 60957). However, this DPS is included in table 5, below.

The immediate publication of proposed rules to list these species was precluded by our work on higher-priority listing actions, listed below, during the period from October 1, 2021, through September 30, 2022. Below, we describe the actions that continue to

preclude the immediate proposal and final promulgation of a regulation implementing each of the petitioned actions for which we have made a warranted-but-precluded finding, and we describe the expeditious progress we are making to add qualified species to, and remove species from, the Lists. We will continue to monitor the status of all candidate species, including petitioned species, as new information becomes available to determine if a change in status is warranted, including the need to emergency list a species under section 4(b)(7) of the Act. As described above, under section 4 of the Act, we identify and propose species for listing based on the factors identified in section 4(a)(1)—either on our own initiative or through the mechanism that section 4 provides for the public to petition us to add species to the Lists of Endangered or Threatened Wildlife and Plants.

Preclusion and Expeditious Progress

To make a finding that a particular action is warranted but precluded, the Service must make two determinations: (1) That the immediate proposal and timely promulgation of a final regulation is precluded by pending proposals to determine whether any species is endangered or threatened; and (2) that expeditious progress is being made to add qualified species to either of the Lists and to remove species from the Lists (16 U.S.C. 1533(b)(3)(B)(iii)).

Preclusion

A listing proposal is precluded if the Service does not have sufficient resources available to complete the proposal because there are competing demands for those resources and the relative priority of those competing demands is higher. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of a proposal is precluded by higher-priority listing actions—(1) the amount of resources available for completing the listing-related function; (2) the estimated cost of completing the proposed listing regulation; and (3) the Service's workload, along with the Service's prioritization of the proposed listing regulation, in relation to other actions in its workload.

Available Resources

The resources available for listing-related actions are determined through the annual Congressional appropriations process. In FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program (spending cap). This spending cap was designed to prevent the listing function from depleting funds needed for other functions under the Act (for example, recovery functions, such as removing species from the Lists), or for other Service programs (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997). The funds within the spending cap are available to support work involving the following listing actions: Proposed and final rules to add species to the Lists or to change the status of species from threatened to endangered; 90-day and 12-month findings on petitions to add species to the Lists or to change the status of a species from threatened to endangered; annual ''resubmitted'' petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed rules designating critical habitat or final critical habitat determinations; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat).

For more than two decades, the size and cost of the workload in these categories of actions have far exceeded the amount of funding available to the Service under the spending cap for completing listing and critical habitat actions under the Act. As we cannot exceed the spending cap without violating the Anti-Deficiency Act (31 U.S.C. 1341(a)(1)(A)), each year we have been compelled to determine that work on at least some actions was precluded by work on higher-priority actions. We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first, and because we allocate our listing budget on a nationwide basis. Through the listing cap and the amount of funds needed to complete court-mandated actions within the cap, Congress and the courts have in effect determined the amount of money remaining (after completing court-mandated actions) for listing activities nationwide. Therefore, the funds that remain within the listing cap—after paying for work needed to comply with court orders or court-approved settlement agreements—set the framework within which we make our determinations of preclusion and expeditious progress.

For FY 2022, through the Consolidated Appropriations Act, 2022 (Pub. L. 117–103, March 15, 2022), Congress appropriated $21,279,000 for all domestic and foreign listing work. For FY 2023, through the Consolidated Appropriations Act, 2023 (Pub. L. 117–328, December 29, 2022), Congress appropriated $23,398,000 for all domestic and foreign listing work. The amount of funding Congress will appropriate in future years is uncertain.

Costs of Listing Actions

The work involved in preparing various listing documents can be extensive, and may include, but is not limited to: gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; requesting peer and partner review on our analyses that support listing decisions and incorporating those comments, as appropriate; writing and publishing documents; and obtaining, reviewing, and evaluating public comments on proposed rules and incorporating relevant information from those comments into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. Our practice of proposing to designate critical habitat concurrently with listing domestic species requires additional coordination and an analysis of the economic impacts of the designation, and thus adds to the complexity and cost of our work. Completing all of the outstanding listing and critical habitat actions has for so long required more funding than is available within the spending cap that the Service has developed several ways to prioritize its workload actions and to identify the work it can complete with the available funding for listing and critical habitat actions each year.

Prioritizing Listing Actions

The Service's Listing Program workload is broadly composed of four types of actions, which the Service prioritizes as follows: (1) Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations or critical habitat designations be completed by a specific date; (2) essential litigation-related, administrative, and listing program-management functions; (3) section 4 (of the Act) listing and critical habitat actions with absolute statutory deadlines; and (4) section 4 listing actions that do not have absolute statutory deadlines.

In previous years, the Service received many new petitions, including multiple petitions to list numerous species—in one example, a single

petition sought to list 404 domestic species. The emphasis that petitioners placed on seeking listing for hundreds of species at a time through the petition process significantly increased the number of actions within the third category of our workload—actions that have absolute statutory deadlines for making findings on those petitions. In addition, the necessity of dedicating all of the Listing Program funding towards determining the status of 251 candidate species and complying with other court-ordered requirements between 2011 and 2016 added to the number of petition findings awaiting action. Because we are not able to work on all of these at once, the Service's most recent effort to prioritize its workload focuses on addressing the backlog in petition findings that has resulted from the influx of large multi-species petitions and the 5-year period in which the Service was compelled to suspend making 12-month findings for most of those petitions. The number of petitions awaiting status reviews and accompanying 12-month findings illustrates the considerable extent of this backlog. As a result of the outstanding petitions to list hundreds of species, and our efforts to make initial petition findings within 90 days of receiving the petition to the maximum extent practicable, at the beginning of FY 2023 we had 305 12-month petition findings yet to be completed.

To determine the relative priorities of the outstanding 12-month petition findings, the Service developed a prioritization methodology (methodology) (81 FR 49248; July 27, 2016), after providing the public with notice and an opportunity to comment on the draft methodology (81 FR 2229; January 15, 2016). Under the methodology, we assign each 12-month finding to one of five priority bins: (1) The species is critically imperiled; (2) strong data are already available about the status of the species; (3) new science is underway that would inform key uncertainties about the status of the species; (4) conservation efforts are in development or underway and likely to address the status of the species; or (5) the available data on the species are limited. As a general matter, 12-month findings with a lower bin number have a higher priority than, and are scheduled before, 12-month findings with a higher bin number. However, we make some limited exceptions—for example, we may schedule a lower-priority finding earlier if batching it with a higher-priority finding would generate efficiencies. We may also consider whether there are any special circumstances whereby an action should be moved up (or down) in scheduling. For example, one limitation that might result in divergence from priority order is when the current highest priorities are clustered in a geographic area, such that our scientific expertise at the field office level is fully occupied with their existing workload. We recognize that the geographic distribution of our scientific expertise will in some cases require us to balance workload across geographic areas. Since before Congress first established the spending cap for the Listing Program in 1998, the Listing Program workload has required considerably more resources than the amount of funds Congress has allowed for the Listing Program. Therefore, it is important that we be as efficient as possible in our listing process.

After finalizing the prioritization methodology, we then applied that methodology to develop multi-year workplans for domestic and foreign species for completing the outstanding status assessments and accompanying 12-month findings, along with other outstanding work such as designating critical habitat and acting on the status of candidate species.

Domestic Species Workplan

The purpose of the National Listing Workplan (Workplan) is to provide transparency and predictability to the public about when the Service anticipates completing specific 12-month findings for domestic species while allowing for flexibility to update the Workplan when new information changes the priorities. In March 2022, the Service released its updated Workplan for addressing the Act's domestic listing and critical habitat decisions for fiscal years 2022–2027. The updated Workplan identified the Service's schedule for addressing all domestic species on the candidate list and conducting 252 status reviews and accompanying 12-month findings by FY 2027 for domestic species that have been petitioned for Federal protections under the Act. The National Listing Workplan is available online at: *https://www.fws.gov/project/national-listing-workplan.*

Foreign Species Workplan

Similar to the National Listing Workplan, the Foreign Species Workplan provides the Service's multi-year schedule for addressing our foreign species listing workload. The Foreign Species Workplan provides transparency and predictability to the public about when the Service anticipates completing specific 12-month findings and candidate species while allowing for flexibility to update the Foreign Species Workplan when new information changes the priorities. In September 2021 the Service released its most recent Foreign Species Workplan for addressing the Act's foreign listing decisions for fiscal years 2021–2026. The Foreign Species Workplan identifies the Service's prioritization for addressing all foreign species on the candidate list and 46 status reviews and accompanying 12-month findings for petitioned species, and identifies which actions we plan to complete by FY 2026. As we implement our Foreign Species Workplan and work on 12-month findings and proposed rules for the highest-priority species, we increase efficiency by preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as one of the highest-priority species. The Foreign Species Workplan is available online at: *https://www.fws.gov/project/foreign-species-listing-workplan.*

For the 12-month findings, consistent with our prioritization methodology, within the five priority bins we determine the relative timing of foreign species actions using sub-ranking considerations, *i.e.,* as tie-breakers for determining relative timing within each of the five bins (see the August 9, 2021, CNOR (86 FR 43474–43476) for a detailed description of tie-breakers). We consider the extent to which the protections of the Act would be able to improve conditions for that species and its habitat relative to the other species within the same bin, and in doing so, we give weight to the following considerations, in order from greater weight to lesser weight.

1. FWS Office of Law Enforcement (OLE) enforcement capacity;
2. Species in trade to or from the United States;
3. Species in trade through U.S. ports (*i.e.,* in-transit or transshipment);
4. Within the United States, interstate trade;
5. Status under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); and
6. International Union for Conservation of Nature (IUCN) Red List status.

Prioritization of Domestic and Foreign Species

An additional way in which we determine relative priorities of outstanding actions for species in the section 4 program is application of the

listing priority guidelines (48 FR 43098; September 21, 1983; see Previous CNORs, above). Proposed rules for listing foreign species, including foreign candidate species, are generally lower in priority than domestic listings because we generally have more resources and authorities to achieve higher conservation outcomes when listing domestic species. The Service has a responsibility to conserve both domestic and foreign species; however, our choice to dedicate the bulk of our funding cap to domestic actions is a rational one given the likelihood of obtaining better conservation outcomes for domestic species versus foreign species under the Act. The Act makes no distinction between foreign species and domestic species in listing species as endangered or threatened. The protections of the Act generally apply to both listed foreign species and domestic species, and section 8 of the Act provides authorities for international cooperation on foreign species. However, some significant differences in the Service's authorities result in differences in our ability to affect conservation for foreign and domestic species under the Act. The major differences are that the Service has no regulatory jurisdiction over take of a listed species in a foreign country, or of trade in listed species outside the United States by persons not subject to the jurisdiction of the United States (see 50 CFR 17.21). The Service also does not designate critical habitat within foreign countries or in other areas outside of the jurisdiction of the United States (50 CFR 424.12(g)).

Additionally, section 7 of the Act in part requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat, and to enter into consultation with the Service if a Federal action may affect a listed species or its critical habitat. An ''action'' that is subject to the consultation provisions of section 7(a)(2) is defined in our implementing regulations at 50 CFR 402.02 as ''all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas.'' In view of this regulatory definition, foreign species are rarely subject to section 7 consultation, apart from consultations for permits issued under the Act. This differs from the considerable benefits section 7 affords to domestic species whose life cycle occurs in whole or in part in the United States, and for which we do designate critical habitat, which are routinely subject to section 7 consultations and the conservation benefits that result from those.

These differences in the Service's authorities for foreign and domestic species under the Act, including relating to take, critical habitat, and section 7 consultation, means that listing foreign species is likely to have relatively less conservation effect than for domestic species. The protections of the Act through listing are likely to have their greatest conservation effect for foreign species that are in trade to, from, through, or within the United States. The majority (likely 12 out of the 14) of current foreign candidate species are not known to be in trade. Therefore, we made a rational decision to dedicate more resources to listing domestic species.

Additionally, proposed rules for reclassification of threatened species status to endangered species status (uplisting) are generally lower in priority because, as listed species, they are already afforded the protections of the Act and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered species status if we can combine this with higher-priority work.

Listing Program Workload

The National Listing Workplan that the Service released in 2022 outlined work for domestic species over the period from FY 2022 to FY 2027. The Foreign Species Workplan that the Service released in 2021 outlined work for foreign species over the period from FY 2020 to FY 2026. Tables 1 and 2, below, identify the higher-priority listing actions that we completed through FY 2022 (September 30, 2022), as well as those we have been working on in FY 2022 but have not yet completed. For FY 2022, our workload includes 41 12-month findings or proposed listing actions that are at various stages of completion at the time of this finding. In addition to the actions scheduled in the National Listing Workplan and the Foreign Species Workplan (''Workplans''), the overall Listing Program workload also includes development and revision of regulations required by new court orders or settlement agreements to address the repercussions of any new court decisions, and proposed and final critical habitat designations or revisions for species that have already been listed. The Service's highest priorities for spending its funding in FY 2022 are actions included in the Workplans and actions required to address court decisions.

Expeditious Progress

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists. Please note that in the Code of Federal Regulations, the ''Lists'' are grouped as one list of endangered and threatened wildlife (see 50 CFR 17.11(h)) and one list of endangered and threatened plants (see 50 CFR 17.12(h)). However, the ''Lists'' referred to in the Act mean one list of endangered species (wildlife and plants) and one list of threatened species (wildlife and plants). For the purposes of evaluating our expeditious progress, when we refer to the ''Lists,'' we mean this latter grouping of one list of endangered species and one list of threatened species.

As with our ''precluded'' finding, the evaluation of whether expeditious progress is being made is a function of the resources available and the competing demands for those funds. As discussed earlier, the FY 2022 appropriations law appropriated $21,279,000 for all domestic and foreign listing activities.

As discussed below, given the limited resources available for listing, the competing demands for those funds, and the completed work catalogued in the tables below, we find that we are making expeditious progress to add qualified species to the Lists and to remove from the Lists species for which the protections of the Act are no longer necessary.

The work of the Service's domestic listing and foreign listing programs in FY 2022 (as of September 30, 2022) includes all three of the steps necessary for adding species to the Lists: (1) Identifying species that may warrant listing (including 90-day petition findings); (2) undertaking an evaluation of the best available scientific data about those species and the threats they face to determine whether or not listing is warranted (a status review and, for petitioned species, an accompanying 12-month finding); and (3) adding qualified species to the Lists (by publishing proposed and final listing rules). We explain in more detail how we are making expeditious progress in all three of the steps necessary for adding qualified species to the Lists (identifying, evaluating, and adding species). Subsequent to discussing our expeditious progress in adding qualified species to the Lists, we explain our expeditious progress in removing from

the Lists species that no longer require the protections of the Act.

First, we are making expeditious progress in identifying species that may warrant listing. In FY 2022 (as of September 30, 2022), we completed 90-day findings on petitions to list 8 domestic species.

Second, we are making expeditious progress in evaluating the best scientific and commercial data available about species and threats they face (status reviews) to determine whether or not listing is warranted. In FY 2022 (as of September 30, 2022), we completed 12-month findings for 23 domestic species and 5 foreign species. In addition, we funded and initiated 12-month findings for 27 domestic species and 8 foreign species. Although we did not complete those actions during FY 2022 (as of September 30, 2022), we made expeditious progress towards doing so by initiating and making progress on the status reviews to determine whether adding the species to the Lists is warranted.

Third, we are making expeditious progress in adding qualified species to the Lists. In FY 2022 (as of September 30, 2022), we published final listing rules for 8 domestic species and no foreign species, including final critical habitat designations for 7 of those domestic species and final protective regulations under the Act's section 4(d) for 4 of those domestic species. In addition, we published proposed rules to list an additional 18 domestic species and 5 foreign species (including concurrent proposed critical habitat designations for 5 domestic species and concurrent protective regulations under the Act's section 4(d) for 9 domestic species and 1 foreign species).

Fourth, we are also making expeditious progress in removing (delisting) species, as well as reclassifying endangered species to threatened species status (downlisting). Delisting and downlisting actions are funded through the recovery line item in the budget of the Endangered Species Program. Thus, delisting and downlisting actions do not factor into our assessment of preclusion; that is, work on recovery actions does not preclude the availability of resources for completing new listing work. However, work on recovery actions does count towards our assessment of making expeditious progress because the Act states that expeditious progress includes both adding qualified species to, and removing qualified species from, the Lists of Endangered and Threatened Wildlife and Plants. In FY 2022 (as of September 30, 2022), we finalized downlisting rules for 5 domestic species with concurrent final protective regulations under the Act's section 4(d), finalized delisting rules for 3 domestic species, proposed downlisting rules for 2 domestic species (including concurrent protective regulations under the Act's section 4(d) for 2 domestic species), and proposed delisting rules for 3 domestic species.

Preclusion and Expeditious Progress

The tables below catalog the Service's progress in FY 2022 (as of September 30, 2022) as it pertains to our evaluation of preclusion and expeditious progress. Table 1 includes completed and published domestic and foreign listing actions; table 2 includes domestic and foreign listing actions funded and initiated in previous fiscal years and in FY 2022 that were not yet complete as of September 30, 2022; and table 3 includes completed and published proposed and final downlisting and delisting actions for domestic and foreign species.

TABLE 1—PUBLISHED DOMESTIC AND FOREIGN LISTING ACTIONS (PROPOSED AND FINAL LISTING AND UPLISTING RULES) IN FY 2022

[as of September 30, 2022]

Publication date	Title	Action(s)	**Federal Register** citation
10/7/2021	Endangered Species Status for Tiehm's Buckwheat	Proposed Listing—Endangered	86 FR 55775–55789.
10/14/2021.	Endangered Species Status for Bog Buck Moth	Proposed Listing—Endangered	86 FR 57104–57122.
11/9/2021	Threatened Species Status With Section 4(d) Rule for Alligator Snapping Turtle.	Proposed Listing—Threatened with a Section 4(d) Rule.	86 FR 62434–62463.
11/9/2021	Threatened Species Status with Section 4(d) Rule for Egyptian Tortoise.	Proposed Listing—Threatened with a Section 4(d) Rule.	86 FR 62122–62137.
11/10/2021.	Threatened Species Status With a Section 4(d) Rule for Bracted Twistflower and Designation of Critical Habitat.	Proposed Listing—Threatened with a Section 4(d) Rule and Critical Habitat.	86 FR 62668–62705.
11/16/2021.	Threatened Species Status With Section 4(d) Rule for Atlantic Pigtoe and Designation of Critical Habitat.	Final Listing—Threatened with a Section 4(d) Rule and Critical Habitat.	86 FR 64000–64053.
11/23/2021.	12-Month Finding for Pascagoula Map Turtle; Threatened Species Status With Section 4(d) Rule for Pearl River Map Turtle; and Threatened Species Status for Alabama Map Turtle, Barbour's Map Turtle, Escambia Map Turtle, and Pascagoula Map Turtle Due to Similarity of Appearance With a Section 4(d) Rule.	Proposed Listing—Threatened with a Section 4(d) Rule and a Not-Warranted 12-month Finding.	86 FR 66624–66659.
12/21/2021.	Threatened Species Status With Section 4(d) Rule for Hermes Copper Butterfly and Designation of Critical Habitat.	Final Listing—Threatened with a Section 4(d) Rule and Critical Habitat.	86 FR 72394–72433.
12/22/2021.	Threatened Species Status With Section 4(d) Rule for Cactus Ferruginous Pygmy-Owl.	Proposed Listing—Threatened with a Section 4(d) Rule.	86 FR 72547–72573.
12/28/2021.	Foothill Yellow-Legged Frog; Threatened Status With Section 4(d) Rule for Two Distinct Population Segments and Endangered Status for Two Distinct Population Segments.	Proposed Listing—Threatened with Section 4(d) Rule; Endangered.	86 FR 73914–73945.
1/5/2022 ..	Threatened Species Status With Section 4(d) Rule for Panama City Crayfish and Designation of Critical Habitat.	Final Listing—Threatened with a Section 4(d) Rule and Critical Habitat.	87 FR 546–581.
1/25/2022	Endangered Species Status for Sacramento Mountains Checkerspot Butterfly.	Proposed Listing—Endangered	87 FR 3739–3753.
2/8/2022 ..	12-Month Finding for the Sonoran Desert Tortoise	12-month Petition Finding	87 FR 7077–7079.
2/8/2022 ..	90-Day Findings for Three Species	90-day Petition Findings	87 FR 7079–7083.
2/15/2022	Endangered Species for Prostrate Milkweed and Designation of Critical Habitat.	Proposed Listing—Endangered with Critical Habitat.	87 FR 8509–8543.

TABLE 1—PUBLISHED DOMESTIC AND FOREIGN LISTING ACTIONS (PROPOSED AND FINAL LISTING AND UPLISTING RULES) IN FY 2022—Continued

[as of September 30, 2022]

Publication date	Title	Action(s)	**Federal Register** citation
2/28/2022	Endangered Species Status for Peppered Chub and Designation of Critical Habitat.	Final Listing—Endangered with Critical Habitat.	87 FR 11188–11220.
3/3/2022 ..	Threatened Species Status With Section 4(d) Rule for Western Fanshell and ''Ouachita'' Fanshell and Designation of Critical Habitat.	Proposed Listing—Threatened with a Section 4(d) Rule and Critical Habitat.	87 FR 12338–12384.
3/14/2022	Three Species Not Warranted for Listing as Endangered or Threatened Species*.	12-month Petition Findings	87 FR 14227–14232.
3/22/2022	Threatened Species Status With Section 4(d) Rule for Sand Dune Phacelia and Designation of Critical Habitat.	Proposed Listing—Threatened with Section 4(d) Rule and Critical Habitat.	87 FR 16320–16363.
3/23/2022	Endangered Species Status for Northern Long-Eared Bat	Proposed Listing—Endangered	87 FR 16442–16452.
4/5/2022 ..	Lower Colorado River Distinct Population Segment of Roundtail Chub (*Gila robusta*).	12-month Petition Findings	87 FR 19657–19660.
4/7/2022 ..	Endangered Species Status for the Dixie Valley Toad	Proposed Listing—Endangered	87 FR 20374–20378.
4/13/2022	Threatened Species Status for Streaked Horned Lark With Section 4(d) Rule.	Final Listing—Threatened with a Section 4(d) Rule.	87 FR 21783–21812.
5/3/2022 ..	Review of Species That Are Candidates for Listing as Endangered or Threatened; Annual Notification of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions.	CNOR and 12-Month Petition Findings	87 FR 26152–26178.
5/4/2022 ..	Threatened Species Status With Section 4(d) Rule for the Silverspot Butterfly.	Proposed Listing—Threatened with a Section 4(d) Rule.	87 FR 26319–26337.
5/25/2022	Endangered Species Status for Russian, Ship, Persian, and Stellate Sturgeon.	Proposed Listing—Endangered	87 FR 31834–31854.
6/6/2022 ..	90-Day Finding for Three Petitions To List the Yellowstone Bison.	90-day Petition Finding	87 FR 34228–34231.
6/10/2022	Endangered Species Status for Arizona Eryngo and Designation of Critical Habitat.	Final Listing—Endangered with Critical Habitat.	87 FR 35431–35459.
6/16/2022	Endangered Species Status for Marron Bacora and Designation of Critical Habitat.	Final Listing—Endangered with Critical Habitat.	87 FR 36225–36248.
6/22/2022	Threatened Species Status With a Section 4(d) Rule for Ocmulgee Skullcap and Designation of Critical Habitat.	Proposed Listing—Threatened with a Section 4(d) Rule and Critical Habitat.	87 FR 37378–37428.
7/6/2022 ..	Endangered Species Status for the Canoe Creek Clubshell and Designation of Critical Habitat.	Final Listing—Endangered with Critical Habitat.	87 FR 40115–40138.
7/6/2022 ..	Three Species Not Warranted for Listing as Endangered or Threatened Species*.	12-month Petition Findings	87 FR 40172–40175.
8/18/2022	Endangered Species Status for Magnificent Ramshorn and Designation of Critical Habitat.	Proposed Listing—Endangered	87 FR 50804–50824.
8/23/2022	90-Day Findings for Four Species	90-day Petition Findings	87 FR 51635–51639.
9/14/2022	Endangered Species Status for Tricolored Bat	Proposed Listing—Endangered	87 FR 56381–56393.
9/27/2022	Threatened Species Status with Section 4(d) Rule for Florida Keys Mole Skink and Designation of Critical Habitat.	Proposed Listing—Threatened with a Section 4(d) Rule and Critical Habitat.	87 FR 58648–58703.

*Batched 12-month findings may include findings regarding listing and delisting petitions. The total number of 12-month findings reported in this assessment of preclusion and expeditious progress pertains to listing petitions only.

TABLE 2—DOMESTIC AND FOREIGN LISTING ACTIONS (PROPOSED AND FINAL LISTINGS AND UPLISTINGS) FUNDED AND INITIATED IN PREVIOUS FYS AND IN FY 2022 THAT ARE NOT YET PUBLISHED AS OF SEPTEMBER 30, 2022

Species	Action
Amur sturgeon	Final listing determination.
Brandegee's wild buckwheat*	12-month finding.
Brawleys Fork crayfish	12-month finding.
Bushy whitlow-wort	12-month finding.
Chowanoke crayfish*	12-month finding.
Cisco milk-vetch*	12-month finding.
Columbia oregonian snail*	12-month finding.
Cooper's cave amphipod	12-month finding.
Cumberland moccasinshell	12-month finding.
Dolphin & Union Caribou*	Final listing determination.
Emperor penguin*	Final listing determination.
Gopher tortoise*	Proposed listing determination or not-warranted finding.
Glowing indian-paintbrush	12-month finding.
Gray wolf (western populations)	12-month finding.
Great Basin silverspot	12-month finding.
Green floater	12-month finding.
Isely milk-vetch*	12-month finding.
Key ring-necked snake*	12-month finding.

TABLE 2—DOMESTIC AND FOREIGN LISTING ACTIONS (PROPOSED AND FINAL LISTINGS AND UPLISTINGS) FUNDED AND INITIATED IN PREVIOUS FYS AND IN FY 2022 THAT ARE NOT YET PUBLISHED AS OF SEPTEMBER 30, 2022—Continued

Species	Action
Lassics lupine *	12-month finding.
Longfin smelt (San Francisco Bay-Delta DPS) *	Proposed listing determination or not-warranted finding.
Louisiana pigtoe *	12-month finding.
Miami cave crayfish	12-month finding.
Minute cave amphipod	12-month finding.
Morrison's cave amphipod	12-month finding.
Navasota false foxglove	12-month finding.
Oblong rocksnail	12-month finding.
Pristine crayfish	12-month finding.
Rim rock crowned snake*	12-month finding.
Rye Cove cave isopod*	12-month finding.
Shasta salamander	12-month finding.
Southern elktoe	12-month finding.
Tennessee clubshell	12-month finding.
Tennessee pigtoe	12-month finding.
Texas heelsplitter *	12-month finding.
Texas kangaroo rat	12-month finding.
Tharp's blue-star	12-month finding.
Toothless blindcat	12-month finding.
Western spadefoot	12-month finding.
Widemouth blindcat	12-month finding.
Yazoo crayfish	12-month finding.

* Denotes species for which a 12-month finding or listing determination has published subsequent to the end of FY 2022 (after September 30, 2022).

TABLE 3—PUBLISHED DOMESTIC AND FOREIGN RECOVERY ACTIONS (PROPOSED AND FINAL DOWNLISTINGS AND DELISTINGS) IN FY 2022

[as of September 30, 2022]

Publication date	Title	Action(s)	**Federal Register** citation
10/18/2021.	Reclassification of the Humpback Chub From Endangered to Threatened With a Section 4(d) Rule.	Final Rule—Downlisting with Section 4(d) Rule.	86 FR 57588–57610.
11/17/2021.	Removal of the Okaloosa Darter From the Federal List of Endangered and Threated Wildlife.	Proposed Rule—Delisting	86 FR 64158–64176.
2/3/2022 ..	Removing San Benito Evening-Primrose (*Camissonia benitensis*) From the Federal List of Endangered and Threatened Plants.	Final Rule—Delisting	87 FR 6046–6063.
2/3/2022 ..	Reclassification of Morro Shoulderband Snail From Endangered to Threatened With Section 4(d) Rule.	Final Rule—Downlisting with Section 4(d) Rule.	87 FR 6063–6077.
2/17/2022	Reclassification of Stephens' Kangaroo Rat From Endangered To Threatened With a Section 4(d) Rule.	Final Rule—Downlisting with Section 4(d) Rule.	87 FR 8967–8981.
3/3/2022 ..	Reclassification of the Relict Darter From Endangered to Threatened With a Section 4(d) Rule.	Proposed Rule—Downlisting with Section 4(d) Rule.	87 FR 12056–12073.
3/31/2022	Reclassification of the Endangered *Layia carnosa* (Beach Layia) to Threatened With Section 4(d) Rule.	Final Rule—Downlisting with Section 4(d) Rule.	87 FR 18722–18739.
4/28/2022	Removing Nelson's Checker-Mallow From the Federal List of Endangered and Threatened Plants.	Proposed Rule—Delisting	87 FR 25197–25209.
6/23/2022	Reclassification of *Mitracarpus polycladus* From Endangered to Threatened With a Section 4(d) Rule.	Proposed Rule—Downlisting with Section 4(d) Rule.	87 FR 37476–37494.
7/6/2022 ..	Reclassification of Smooth Coneflower From Endangered To Threatened With a Section 4(d) Rule.	Final Rule—Downlisting with Section 4(d) Rule.	87 FR 40100–40115.
7/13/2022	Removal of the Puerto Rican Boa From the List of Endangered and Threatened Wildlife.	Proposed Rule—Delisting	87 FR 41641–41655.
8/24/2022	Removing *Adiantum vivesii* from the Federal List of Endangered and Threatened Plants.	Final Rule—Delisting	87 FR 51928–51932.
8/24/2022	Removing the Braken Bat Cave Meshweaver From the List of Endangered and Threatened Wildlife.	Final Rule—Delisting	87 FR 51925–51928.

Another way that we have been expeditious in making progress in adding and removing qualified species to and from the Lists is that we have made our actions as efficient and timely as possible, given the requirements of the Act and regulations and constraints relating to workload and personnel. We are continually seeking ways to streamline processes or achieve economies of scale, such as batching related actions together for publication. For example, in FY 2021, we published a single proposed delisting rule for 23 species due to extinction (86 FR 54298; September 30, 2021). Given our limited budget for implementing section 4 of the Act, these efforts also contribute toward

our expeditious progress in adding and removing qualified species to and from the Lists.

Findings for Petitioned Candidate Species

For 16 candidates, we continue to find that listing is warranted but precluded as of the date of publication of this document. However, we are working on thorough reviews of all available data regarding seven of these species and expect to publish either proposed listing rules or 12-month not-warranted findings prior to making the next annual CNOR. In the course of preparing proposed listing rules or not-warranted petition findings, we continue to monitor new information about these species' status so that we can make prompt use of our authority under section 4(b)(7) of the Act in the case of an emergency posing a significant risk to any of these species.

Below are updated summaries for the 16 petitioned candidates for which we published findings under section 4(b)(3)(B) of the Act and did not change the LPN. We note that species-specific discussions below are summaries. More detailed information is available in the associated species assessment forms, including information on relevant developments with respect to the species since publication of the last CNOR.

In accordance with section 4(b)(3)(C)(i), we treat any petitions for which we made warranted-but-precluded 12-month findings within the past year as having been resubmitted on the date of the warranted-but-precluded finding. We are making continued warranted-but-precluded 12-month findings on the petitions for these species.

Monarch Butterfly

The petition that the Service received in 2014 was for listing a subspecies of the monarch butterfly (*Danaus plexippus plexippus*). After careful examination of the literature and consultation with experts, there is no clearly agreed-upon definition of potential subspecies of *Danaus plexippus* or where the geographic borders between these subspecies might exist. In our 12-month finding published in the **Federal Register** on December 17, 2020 (85 FR 81813), we determined that the monarch butterfly (*Danaus plexippus*) warranted listing as an endangered or threatened species under the Act, but that listing was precluded by higher-priority listing actions.

Adults of the monarch butterfly are large and conspicuous, with bright orange wings surrounded by a black border and covered with black veins. Monarch butterflies in eastern and western North America represent the ancestral origin for the species worldwide. They exhibit long-distance migration and overwinter as adults at forested locations in Mexico and California. These overwintering sites provide protection from the elements and moderate temperatures, as well as nectar and clean water sources located nearby. Adult monarch butterflies feed on nectar from a wide variety of flowers. Reproduction is dependent on the presence of milkweed, the sole food source for larvae. Monarch butterflies are found in 90 countries, islands, or island groups. Monarch butterflies have become naturalized at most of these locations outside of North America since 1840. The populations outside of eastern and western North America (including southern Florida) do not exhibit long-distance migratory behavior.

The primary threats to the monarch's biological status include loss and degradation of habitat from conversion of grasslands to agriculture, widespread use of herbicides, logging/thinning at overwintering sites in Mexico, senescence and incompatible management of overwintering sites in California, urban development, drought, exposure to insecticides, and effects of climate change. Conservation efforts are addressing some of the threats from loss of milkweed and nectar resources across eastern and western North America and management at overwintering sites in California; however, these efforts and the existing regulatory mechanisms are not sufficient to protect the species from all of the threats.

The North American migratory populations are the largest relative to the other rangewide populations, accounting for more than 90 percent of the worldwide number of monarch butterflies. Based on the past annual censuses, the eastern and western North American migratory populations have been generally declining over the last 20 years. The western North American population has a much higher risk of extinction due to current threats than the eastern North American population. At the current and projected population numbers, both the eastern and western populations have become more vulnerable to catastrophic events (for example, extreme storms at the overwintering habitat). Also, under different climate change scenarios, the number of days and the area in which monarch butterflies will be exposed to unsuitably high temperatures will increase markedly. We know little about population sizes or trends of most of the populations outside of the eastern and western North American populations (except for Australia, which has an estimate of just over 1 million monarch butterflies). However, the potential loss of the North American migratory populations from these identified threats would substantially reduce the species' resiliency, representation, and redundancy. Because the magnitude of threats is moderate to low and those threats are imminent, we assigned an LPN of 8 for the monarch butterfly. The LPN also reflects that we are evaluating the monarch butterfly at the species level.

Rio Grande Cutthroat Trout

Rio Grande cutthroat trout (*Oncorhynchus clarkii virginalis*) is one of 14 subspecies of cutthroat trout found in the western United States. Populations of this subspecies are in New Mexico and Colorado in drainages of the Rio Grande, Pecos, and Canadian Rivers. Although once widely distributed in connected stream networks, Rio Grande cutthroat trout populations now occupy approximately 11 percent of historical habitat, and the populations are fragmented and isolated from one another. The majority of populations occur in high-elevation streams. We were petitioned to list Rio Grande cutthroat trout as an endangered or threatened species under the Act in 1998. On May 14, 2008, we published in the **Federal Register** (73 FR 27900) our finding that listing the species was warranted but precluded by higher-priority actions, and we added the entity to our list of candidate species. After completing a species status assessment, on October 1, 2014, we published in the **Federal Register** (79 FR 59140) a 12-month petition finding that the Rio Grande cutthroat trout was not warranted for listing as endangered or threatened under the Act.

On July 29, 2016, the Center for Biological Diversity (CBD) and Taylor McKinnon filed a complaint in the Colorado District Court challenging the merits of our 2014 ''not warranted'' finding on a petition to list the Rio Grande cutthroat trout (*CBD, et al.* v. *Bernhardt,* et al., No. 1:16–cv–01932–MSK–STV (D. Colo.)). On September 26, 2019, the court partially vacated and remanded the 2014 ''not warranted'' finding. We are currently updating the species status assessment and have added the Rio Grande cutthroat trout to our workplan for FY 2025. Because the magnitude of threats is moderate to low and those threats are imminent, we assigned an LPN of 9 to the Rio Grande cutthroat trout.

Jamaican Kite Swallowtail

The Jamaican kite swallowtail (*Protographium* (*Eurytides*) *marcellinus*) is a small blue-green and black butterfly endemic to Jamaica. This butterfly is regarded as Jamaica's most endangered butterfly. On January 10, 1994, we received a petition from Ms. Dee E. Warenycia to list seven foreign swallowtail butterflies, including the Jamaican kite swallowtail (*Protographium* (*Eurytides*) *marcellinus*), under the Act. On May 10, 1994, we published in the **Federal Register** (59 FR 24117) a 90-day finding in which we announced that the petition to add the seven species of foreign swallowtail butterflies contained substantial information indicating that listing may be warranted for all species. On December 7, 2004, we published in the **Federal Register** (69 FR 70580) our finding that listing the species was warranted but precluded by higher-priority actions, and we added the entity to our list of candidate species.

The Jamaican kite swallowtail is restricted to limestone forests; breeding populations only occur in rare, dense stands of its only known larval host plant, black lancewood (*Oxandra lanceolata*). Five known sites have supported colonies of the Jamaican kite swallowtail. Two of the sites may be extirpated, the status of one site is uncertain, and two sites are viable with strong numbers in some years. There is no known estimate of population size, and numbers of mature adults are low in most years; however, occasionally there are strong flight seasons in which adult densities are relatively higher.

The primary threat to the Jamaican kite swallowtail is habitat loss and fragmentation. Forests were cleared for agriculture and timber extraction, and more recently for sapling cutting for yam sticks, fish pots, or charcoal. Additional threats include mining for limestone that is used for roadbuilding and bauxite production that is an important economic activity, and charcoal-making also carries the risk of fire. Only around 8 percent of the total land area of Jamaica is natural forest with minimal human disturbance. Collection and trade of the species occurred in the past. Currently, however, this threat may be negligible because of heavy fines under the Jamaican Wildlife Protection Act. Predation from native predators, including spiders, the Jamaican tody (*Todus todus*), and praying mantis (*Mantis religiosa*), may be adversely affecting the Jamaican kite swallowtail, especially in the smaller subpopulations. In years with large populations of spiders, very few swallowtail larvae survive. Additionally, this species may be at greater risk of extinction due to natural events such as hurricanes and effects from climate change.

Since 2001, the Jamaican kite swallowtail has been protected under the Jamaican Wildlife Protection Act. The species is also included in their National Strategy and Action Plan on Biological Diversity. The two strongest subpopulations occur in protected areas, although habitat destruction within these areas continues. Since 1985, the Jamaican kite swallowtail has been categorized on IUCN's Red List as vulnerable, but the assessment is marked as ''needs updating.'' This species is not included in the Appendices to CITES or the European Union Wildlife Trade Regulations.

In the May 3, 2022, CNOR (87 FR 26152), the Jamaican kite swallowtail was assigned an LPN of 2. After reevaluating the factors affecting the Jamaican kite swallowtail, we have determined that no change in LPN is warranted. Only five small subpopulations of the species are known, and as few as two of these subpopulations may presently be viable. Therefore, an LPN of 2 remains valid to reflect imminent threats of high magnitude.

Kaiser-i-Hind Swallowtail

Kaiser-i-Hind swallowtail (*Teinopalpus imperialis*) is a large, ornate and colorful swallowtail butterfly that displays sexual dimorphism (sexes differ in size and coloration). The species is native to the Himalayan regions of Bhutan, China, India, Laos, Myanmar, Nepal, Thailand, and Vietnam. On January 10, 1994, we received a petition from Ms. Dee E. Warenycia to list seven different butterfly species, including the Kaiser-i-Hind swallowtail butterfly, under the Act. On May 10, 1994, we published in the **Federal Register** (59 FR 24117) a 90-day finding in which we announced that the petition to add the seven species of foreign butterflies contained substantial information indicating that listing may be warranted for all species. On December 7, 2004, we published in the **Federal Register** (69 FR 70580) our finding that listing the species was warranted but precluded by higher-priority actions, and we added the entity to our list of candidate species.

The Kaiser-i-Hind swallowtail has a large range and was likely more widespread historically; however, it is currently restricted to higher elevations, 1,500 to 3,050 meters (m) (4,921 to 10,000 feet (ft)) above sea level, in the foothills of the Himalayan Mountains and other mountainous regions further east. The species prefers undisturbed (primary) broad-leaved-evergreen forests or montane deciduous forests. Specific details on locations or population status are not readily available, and despite widespread distribution, populations are described as being local and never abundant.

Habitat destruction negatively affects this species. Comprehensive information on the rate of degradation of Himalayan forests containing the Kaiser-i-Hind swallowtail is not available, but ongoing habitat loss is consistently reported as one of the primary threats to the species. In China and India, the Kaiser-i-Hind swallowtail populations are affected by habitat modification and destruction due to commercial and illegal logging, as well as clearing for agriculture in India. In Nepal, the species is affected by habitat disturbance and destruction resulting from mining, wood collection for use as fuel, deforestation, collection of fodders and fiber plants, forest fires, invasion of bamboo species into the oak forests, agriculture, and grazing animals. In Vietnam, the forest habitat is reportedly declining. Additionally, collection for commercial trade is also regarded as a threat to the species. The Kaiser-i-Hind swallowtail is highly valued and has been collected and traded despite various prohibitions. Although it is difficult to assess the potential impacts from collection, the removal of individuals from the wild in combination with other stressors contributes to local extirpations.

In China, the species is protected by the Law of the People's Republic of China on the Protection of Wildlife. In India, the species is listed on Schedule II of the Indian Wildlife Protection Act. In Thailand, all butterflies in the genus *Teinopalpus,* including the Kaiser-i-Hind swallowtail, are listed under Thailand's Wild Animal Reservation and Protection Act. In Vietnam, the species is listed as ''vulnerable'' in the 2007 Vietnam Red Data Book and is reported to be the most valuable of all butterflies in Vietnam. In 2006, the species was listed on Vietnam's Schedule IIB of Decree No. 32 on management of endangered, precious, and rare forest plants and animals. Since 1996, the Kaiser-i-Hind swallowtail has been categorized on the IUCN Red List as lower risk/near threatened, but IUCN indicates that this assessment needs updating. The Kaiser-i-Hind swallowtail has been included in CITES Appendix II since 1987. Additionally, the Kaiser-i-Hind swallowtail is listed on Annex B of the

European Union Wildlife Trade Regulations; species listed on Annex B require an import permit.

In the May 3, 2022, CNOR (87 FR 26152), the Kaiser-i-Hind swallowtail was assigned an LPN of 8. After reevaluating the threats to this species, we have determined that no change in its LPN of 8 is warranted. The species has a wide distribution although populations are local and never abundant. Habitat loss and collection are expected to continue in the future. Therefore, an LPN of 8 remains valid to reflect imminent threats of moderate magnitude.

Black-Backed Tanager

The black-backed tanager (*Tangara peruviana*) is a vibrant and patterned bird endemic to the coastal Atlantic Forest region of southeastern Brazil. The species is known to historically occur in the coastal states of Rio de Janeiro, São Paulo, Paranà, and Santa Catarina, Brazil. On May 6, 1991, we received a petition from the International Council for Bird Preservation to list 53 different bird species, including the black-backed tanager, under the Act. On December 16, 1991, we published in the **Federal Register** (56 FR 65207) a 90-day finding in which we announced that the petition to add 53 species of foreign birds contained substantial information indicating that listing may be warranted for all species. On May 21, 2004, we published in the **Federal Register** (69 FR 29353) our resubmitted petition findings that listing the species was warranted but precluded by higher-priority actions, and we added the entity to our list of candidate species.

The black-backed tanager is generally restricted in range and is associated with sand forest ''restinga'' habitat, which is a coastal component habitat of the greater Atlantic Forest complex of Brazil. The black-backed tanager is generally considered not rare within suitable habitat, with periodic local fluctuations in numbers owing to seasonal movements. The species is described as a regional migrant and is one of just a few tanagers known to migrate seasonally within the coastal Atlantic Forest region of Brazil. The best available information indicates the range is severely fragmented, consisting of approximately 316,000 square kilometers (km^2) of breeding range with a slightly larger nonbreeding range of 377,000 km^2. The population size is estimated between 2,500 and 10,000 mature adults. Both the habitat and species population are decreasing.

The primary factor affecting this species is the rapid and widespread loss and fragmentation of habitat, mainly due to urban expansion and beachfront development. Much of the species' suitable habitat in Rio de Janeiro and Paraná has been destroyed. As much as 88 to 95 percent of the area historically covered by tropical forests within the Atlantic Forest biome has been lost or severely degraded as the result of human activities. Intact lowland forest, restinga, and mangrove habitat used by resident black-backed tanagers on the northern part of Santa Catarina Island (in the state of Santa Catarina) is unprotected, making the species vulnerable to extirpation on the island as development looms. Sea-level rise may alter the regional vegetation and structure and exacerbate the threat of habitat loss from ongoing coastal development.

The black-backed tanager is classified as vulnerable by the IUCN. The species is also listed as vulnerable in Brazil and protected by law. It is not included in the Appendices to CITES, although it has infrequently been illegally sold in the pet trade.

In the May 3, 2022, CNOR (87 FR 26152), we assigned the black-backed tanager an LPN of 8. After reevaluating the available information, we have determined that no change to an LPN is warranted. The magnitude of threats to the black-backed tanager is moderate, based on its likely decreasing population size and widespread and ongoing habitat loss, although a recent evaluation of its population size is lacking. Small portions of the species' range occur in six protected areas, but these areas are not effectively protected. Therefore, an LPN of 8 remains valid for this species to reflect imminent threats of moderate magnitude.

Bogotá Rail

The Bogotá rail (*Rallus semiplumbeus*) is a medium-sized, nonmigratory bird that occurs in the eastern Andean mountain range of Colombia at elevations from 2,500–4,000 m (8,202–13,123 ft) above sea level. On May 6, 1991, we received a petition from the International Council for Bird Preservation to list 53 foreign bird species, including the Bogotá rail, as endangered or threatened species under the Act. On December 16, 1991, we published in the **Federal Register** (56 FR 65207) a 90-day finding in which we announced that the petition to add 53 species of foreign birds that contained substantial information indicating that listing may be warranted for all species. On May 21, 2004, we published in the **Federal Register** (69 FR 29353) our resubmitted petition findings that listing the species was warranted but precluded by higher-priority actions, and we added the entity to our list of candidate species.

The rail is found in savanna and páramo (high-elevation habitats above tree line) marshes surrounding Bogotá, Colombia, on the Ubaté-Bogotá Plateau. The species relies on specific vegetation in wetland and lakeshore habitats at high elevations in the eastern flank of the eastern Andean mountain range of Colombia. The bird requires vegetation associated with these habitats for breeding and foraging. As of 2016, the population was estimated between 1,000 and 2,500 individuals, and the estimated extent of the resident/breeding habitat was 11,200 km^2 (4,324 square miles (mi^2)) and shrinking.

The primary threat to the rail is habitat loss and degradation of wetlands. Suitable habitat for the Bogotá rail occurs around the most populated area in Colombia with approximately 11 million people in the greater Bogotá metropolitan area. Wetlands in the area only cover approximately 3 percent of their historical extent. Although portions of the Bogotá rail's range occur in protected areas such as Chingaza National Park and Carpanta Biological Reserve, most savanna wetlands are virtually unprotected. Ongoing threats to remaining major wetlands include encroachment of human infrastructure and agriculture that causes loss of habitat and altered water levels, soil erosion, eutrophication caused by untreated effluent and agrochemicals, hunting, wildfire, and incidental spread of invasive species.

The Bogotá rail is listed as endangered by IUCN. The species is not known to be in international trade and is not included in the Appendices to CITES.

In the May 3, 2022, CNOR (87 FR 26152), the Bogotá rail was assigned an LPN of 2. After reevaluating the threats to this species, we have determined that no change in the LPN for the species is warranted. The species' range is very small, fragmented, and rapidly contracting because of ongoing widespread habitat loss and degradation of wetlands. Therefore, an LPN of 2 remains valid for this species to reflect imminent threats of high magnitude.

Brasília Tapaculo

The Brasília tapaculo (*Scytalopus novacapitalis*) is a small, gray, ground-dwelling bird with limited flight ability. It is endemic to the Cerrado in Brazil, the largest tropical savanna in the world with a mosaic of habitats composed mostly of savannas and patches of dry forests.

On May 6, 1991, we received a petition from the International Council

for Bird Preservation to list 53 different bird species, including the Brasília tapaculo, as endangered or threatened species under the Act. On December 16, 1991, we published in the **Federal Register** (56 FR 65207) a 90-day finding in which we announced that the petition to add 53 species of foreign birds contained substantial information indicating that listing may be warranted for all species. On May 21, 2004, we published in the **Federal Register** (69 FR 29353) our resubmitted petition findings that listing the species was warranted but precluded by higher-priority actions, and we added the entity to our list of candidate species.

The Brasília tapaculo's core habitat is dense, narrow strips of swampy gallery forests at elevations of approximately 800–1,000 m (2,625–3,281 ft). The species' range is located within six protected areas within the Cerrado and is not found outside protected areas. The Brasília tapaculo is described as rare, and the population size is unknown. However, the population is assumed to be declining because of the ongoing decline of the species' galley forest habitat.

The primary threat to the Brasília tapaculo is ongoing habitat loss and fragmentation from agricultural activities. The Cerrado is the largest, most diverse, and possibly most threatened tropical savanna in the world. Land is converted for intensive grazing and mechanized agriculture, mostly for soybean production. Agriculture causes direct effects to gallery forests from wetland drainage and diversion of water for irrigation, as well as burning to create space. The species' habitat has been less directly affected by clearing for agriculture than the surrounding Cerrado. However, it is unclear how much core gallery forest has been destroyed because of habitat conversion for agriculture. Additionally, effects from climate change may also be negatively altering the Cerrado and reducing the amount of specialized habitat for the species.

The IUCN lists the species as endangered, and the Brazilian Red List assessed the species as endangered, because the species' small, fragmented range is continuing to decline in area and quality. International trade is not a significant threat to the species, and the species is not included in the Appendices to CITES.

In the May 3, 2022, CNOR (87 FR 26152), we assigned the Brasília tapaculo an LPN of 2. After reevaluating the available information, we have determined that no change to an LPN is warranted. The species only occurs in a handful of small, protected areas, and is reported as rare. Habitat conversion is ongoing. Therefore, an LPN of 2 remains valid for this species to reflect imminent threats of high magnitude.

Chatham Oystercatcher

The Chatham oystercatcher (*Haematopus chathamensis*) is the rarest oystercatcher in the world, endemic to the four islands of the Chatham Island group 860 kilometers (km) (534 miles (mi)) east of mainland New Zealand. On November 28, 1980, we received a petition from the International Council for Bird Preservation to list 79 bird species, of which 19 were species on U.S. territory and 60 were foreign species, including Chatham oystercatcher, as endangered or threatened species under the Act. On May 12, 1981, we published in the **Federal Register** (46 FR 26464) a 90-day finding in which we announced that the petition contained substantial information indicating that listing may be warranted for 77 of the 79 bird species, including the Chatham oystercatcher. On May 21, 2004, we published in the **Federal Register** (69 FR 29353) our resubmitted petition findings that listing the species was warranted but precluded by higher-priority actions, and we added the entity to our list of candidate species.

Chatham oystercatchers are restricted to the coasts, mainly occurring along rocky shores, including wide volcanic rock platforms, and occasionally on sandy or gravelly beaches. Humans inhabit the two largest islands, Chatham and Pitt Islands, while South East and Mangere Islands are uninhabited nature reserves. Isolated pairs may also breed on other smaller islands in the archipelago. The population of the species is approximately 250 mature individuals. The Chatham oystercatcher uses its long, sturdy bill to hammer open mollusks from rocky shores and to probe and peck for worms and other small invertebrates in sand, gravel, or tidal debris. Pairs occupy their breeding and feeding territories all year, and females lay clutches of 1 to 3 eggs in scrape nests (shallow-rimmed depressions in soil or vegetation) on sandy beaches, or among rocks above the shoreline. Mean longevity has been estimated at 7.7 years, and the oldest banded bird lived more than 30 years.

Predation of eggs and chicks (and to a lesser extent, predation of adults) is likely the primary threat to Chatham oystercatcher. Mangere and South East Islands are free of all mammalian predators; nonnative mammalian predators inhabit Chatham and Pitt Islands. Feral cats are the most common predator of oystercatcher eggs. Trampling of nests by livestock (sheep and cattle) and humans has been noted on beaches. Additionally, nonnative Marram grass (*Ammophila arenaria*) has altered the sand dunes and leaves few open nesting sites. Consequently, the Chatham oystercatcher is forced to nest closer to shore where nests are vulnerable to high tides and storm surges. Up to 50 percent of eggs have been lost because of storms or high tides. Projected rise in sea level associated with climate change will likely increase storm frequency and severity, putting at risk most shorelines that the Chatham oystercatcher relies on for nesting habitat.

The species has experienced a three-fold increase in its population since the first reliable census was conducted in 1987. Most of this increase occurred during a period of intensive management, especially predator control, from 1998 through 2004. Some of these efforts continue at a reduced level because of a lack of resources but are still effective at reducing trampling, predation, and loss of nests/eggs. The Chatham Island Oystercatcher Recovery Plan guides conservation actions for the species. The New Zealand Department of Conservation lists the Chatham oystercatcher as nationally critical, and it is protected under New Zealand's Wildlife Act. It is classified as endangered on the IUCN Red List, and the species is not included in the Appendices to CITES and not known to be in international trade.

In the May 3, 2022, CNOR (87 FR 26152), the Chatham oystercatcher was assigned an LPN of 8. After reevaluating the available information, we have determined that no change in the LPN is warranted. Although the population appears to have stabilized, it remains very small (approximately 250 mature individuals), and occupied breeding habitat is also small (fewer than 800 hectares (1,977 acres)). Active management has been instrumental in maintaining stable population levels, but the species continues to face threats to its nests and habitat. Therefore, an LPN of 8 is valid for this species to reflect imminent threats of moderate magnitude.

Gizo White-Eye

The Gizo white-eye (*Zosterops luteirostris*) is a passerine (perching) bird described as ''warbler-like.'' It is endemic to the small island of Ghizo within the Solomon Islands in the South Pacific Ocean, east of Papua New Guinea. On November 28, 1980, we received a petition from the International Council for Bird Preservation to list 79 bird species, of

which 19 were species on U.S. territory and 60 were foreign species, including the Gizo white-eye, as endangered or threatened species under the Act. On May 12, 1981, we published in the **Federal Register** (46 FR 26464) a 90-day finding in which we announced that the petition contained substantial information indicating that listing may be warranted for 77 of the 79 bird species, including the Gizo white-eye. On May 21, 2004, we published in the **Federal Register** (69 FR 29353) our resubmitted petition findings that listing the species was warranted but precluded by higher-priority actions, and we added the entity to our list of candidate species.

The Gizo white-eye prefers old-growth forest patches that cover approximately 1 km^2 (0.4 mi^2) of Ghizo Island. The species has been observed in forest edge, regrowth and mature secondary forest. Limited information is available to determine whether sustainable populations can exist outside of forested habitats. The population size of the Gizo white-eye is approximately 250 to 999 mature individuals in an estimated area of 35 km^2 (14 mi^2).

Habitat loss is the primary threat to the species. Logging, conversion of forest for agricultural purposes, and local resource extraction for firewood are main the cause for loss of old-growth forested and secondary growth forests. Human population growth in the Solomon Islands has contributed to development on Ghizo Island, such as construction of temporary housing. Additionally, catastrophic events, such as the 2007 tsunami, degraded forested areas that were found less likely to support the species even 5 years later in 2012. Sea-level rise in the future and an increase in storms could result in coastal flooding and erosion, saltwater intrusion, and damage to inland habitats.

The IUCN Red List classifies this species as endangered. It is not included in the Appendices to CITES, and this species is not known to be in international trade.

In the May 3, 2022, CNOR (87 FR 26152), the Gizo white-eye was assigned an LPN of 2. After reevaluating the available information, we find that no change in the LPN is warranted. The species has a small population size and suitable habitat is declining. Therefore, an LPN of 2 remains valid for this species to reflect imminent threats of high magnitude.

Helmeted Woodpecker

The helmeted woodpecker (*Celeus galeatus*) is a small, nonmigratory woodpecker native to regions of southern Brazil, eastern Paraguay, and northeastern Argentina. It is one of the rarest woodpeckers in the Americas. On November 28, 1980, we received a petition from the International Council for Bird Preservation (ICBP) to list 79 bird species, of which 19 were species on U.S. territory and 60 were foreign species. Subsequently, we received another petition from ICBP requesting the addition of another 53 foreign bird species, including helmeted woodpecker, as endangered or threatened species under the Act. On December 16, 1991, we published in the **Federal Register** (56 FR 65207) a 90-day finding in which we announced that the petition contained substantial information indicating that listing may be warranted for the 53 bird species, including the helmeted woodpecker. On May 21, 2004, we published in the **Federal Register** (69 FR 29353) our resubmitted petition findings that listing the species was warranted but precluded by higher-priority actions, and we added the entity to our list of candidate species. At the time of the petition, the helmeted woodpecker (*Celeus galeatus*) was classified as *Drycopus galeatus*. We recognize the helmeted woodpecker in the genus *Celeus* in 2021, and recognize the species as *C. galeatus* and treat *D. galeatus* and *Hylatomus galeatus* as synonyms.

Helmeted woodpeckers prefer mature (old-growth) trees in tropical and subtropical semi-deciduous forests as well as in mixed deciduous coniferous forests in the southern Atlantic Forest up to elevations of 1,000 m (3,280 ft). The species typically forages in the mid-story of the tree canopy pecking at wet bark and rotten wood. Its diet is not well known, but it has been observed eating insect larvae, ants, berries, and small fruit. The species seems to favor nesting cavities in dead or decaying trees. A portion of the nest cavities used by helmeted woodpeckers have partly covered openings that may help to conceal the cavities from predators.

The primary threat to the species is habitat loss, degradation, and fragmentation, which includes loss of nesting cavities. The Atlantic Forest biome has lost 88 to 95 percent of the tropical forests because of human activities. Currently, less than 1 percent of the remaining Atlantic Forest is primary forest preferred by the helmeted woodpecker. The species occurs in 17 protected areas throughout its range, although selective logging and other activities continue to degrade the habitat.

The helmeted woodpecker is listed as endangered in Brazil and as vulnerable by the IUCN. The species is not included in the Appendices to CITES and not known to be in international trade.

In the May 3, 2022, CNOR (87 FR 26152), we assigned the helmeted woodpecker an LPN of 8. After reevaluating the available information, we find that no change in the LPN for the species is warranted. The species is rare, and although the species may have a wider distribution, loss of primary Atlantic Forest habitat is ongoing. Therefore, an LPN of 8 remains valid to reflect imminent threats of moderate magnitude.

Lord Howe Island Pied Currawong

The Lord Howe Island pied currawong (*Strepera graculina crissalis*) is a large, crow-like bird that is endemic to Lord Howe Island, off the coast of New South Wales, Australia. On November 28, 1980, we received a petition from the International Council for Bird Preservation to list 79 bird species, of which 19 were occurring on U.S. territory and 60 were foreign species, including Lord Howe Island pied currawong, as endangered or threatened species under the Act. On May 12, 1981, we published in the **Federal Register** (46 FR 26464) a 90-day finding in which we announced that the petition contained substantial information indicating that listing may be warranted for 77 of the 79 bird species, including the Lord Howe Island pied currawong. On May 21, 2004, we published in the **Federal Register** (69 FR 29353) our resubmitted petition findings that listing the species was warranted but precluded by higher-priority actions, and we added the entity to our list of candidate species.

The Lord Howe Island pied currawong is a subspecies of the pied currawong, and occurs throughout the island, although it is most numerous in mountainous regions. The subspecies breeds in rainforests and palm forests, particularly along streams, and descends to forage in lowlands. It is omnivorous, eating fruits, seeds, snails, insects, and small vertebrates such as rats and mice, small birds, and bird eggs and nestlings. Lord Howe Island pied currawongs are bold and inquisitive birds that readily adapt to the presence of humans and can occupy areas around human settlements, in addition to natural habitats. They are territorial during the breeding season, with some territories defended in the non-breeding seasons. The average territory size is between 4.4 to 7.3 hectares (11 to 18 acres).

The primary threats to the subspecies are the introduction of nonnative rodents to the island ecosystem and the effects of climate change. The Lord Howe Island pied currawong has persisted among invasive black rats (*Rattus rattus*). However, because the currawong often preys on small rodents and are naturally curious, it was subject to nontarget poisoning during an islandwide rat-baiting program. Around half the population was taken into captivity to protect them during the rodent eradication efforts, and they have subsequently been released back into the wild. Additionally, the effects of climate change may affect the cloud layer on the island's mountaintops, resulting in drying of the forest where the subspecies gets about half of its food, and creating a food shortage. The small, isolated population of currawongs on Lord Howe Island is at risk from loss of genetic diversity and stochastic (random) environmental events. However, this population may have always been small and may not have the capacity for additional growth.

The Australian Government owns Lord Howe Island. Approximately 75 percent of the island, plus all outlying islets and rocks within the Lord Howe Island group, is protected under the Permanent Park Preserve. The Lord Howe Island Biodiversity Management Plan is the formal recovery plan for threatened species and communities of the Lord Howe Island Group. Following the removal of poison bait traps in 2020, monitoring is underway across the island to see if it has become rodent-free. The New South Wales Threatened Species Conservation Act of 1995 lists the Lord Howe Island pied currawong as vulnerable, as does Australia's Environment Protection and Biodiversity Conservation Act List of Threatened Fauna. The subspecies is not listed on the IUCN Red List, is not included in the Appendices to CITES, and is not known to be in international trade.

In the May 3, 2022, CNOR (87 FR 26152), the Lord Howe Island pied currawong was assigned an LPN of 6. After reevaluating the threats to the Lord Howe Island pied currawong, we have determined that no change in the LPN for the subspecies is warranted. The small population faces risks from nontarget poisoning from rodent control, although significant conservation efforts have been implemented. Therefore, based on the best information available, an LPN of 6 remains valid to reflect nonimminent threats of high magnitude.

Okinawa Woodpecker

The Okinawa woodpecker (*Dendrocopos noguchii*) is a relatively large woodpecker endemic to Okinawa Island, Japan, and one of the world's rarest woodpecker species. Much of the mature forest that supports the species is located within the Jungle Warfare Training Center (formerly known as the Northern Training Area or Camp Gonsalves), part of the U.S. Marine Corps installation on Okinawa Island. On November 28, 1980, we received a petition from the International Council for Bird Preservation to list 79 bird species, of which 19 were occurring on U.S. territory and 60 were foreign species, including the Okinawa woodpecker, as endangered or threatened species under the Act. On May 12, 1981, we published in the **Federal Register** (46 FR 26464) a 90-day finding in which we announced that the petition contained substantial information indicating that listing may be warranted for 77 of the 79 bird species, including the Okinawa woodpecker. On May 21, 2004, we published in the **Federal Register** (69 FR 29353) our resubmitted petition findings that listing the species was warranted but precluded by higher-priority actions, and we added the entity to our list of candidate species. At the time of the petition, the Okinawa woodpecker (*Dendrocopos noguchii*) was classified as *Sapheopipo noguchii.* We recognized the Okinawa woodpecker in the genus *Dendrocopos* in 2009, and recognize the species as *D. noguchii* and treat *S. noguchii* as a synonym (74 FR 40540, August 12, 2009, p. 40548).

The Okinawa woodpecker's main breeding areas lie in the northern part of Okinawa Island, including well-forested areas of Yambaru, a region of approximately 300 km² (116 mi²). Population surveys have found that the number of Okinawa woodpeckers detected at Yambaru sites increases as the area of hardwood forest increases. The species feeds on large arthropods, notably beetle larvae, spiders, moths, and centipedes, as well as fruit, berries, seeds, acorns, and other nuts. Both males and females search dead and live tree trunks and bamboo in old-growth forests, but males also forage on the ground, sweeping away leaf-litter and probing for soil-dwelling prey. The Okinawa woodpecker nests in the decaying heartwood of large trees that are at least 25 centimeters (9.8 inches) in diameter and 3 to 10 m (9.8 to 33 ft) off the ground, which are typically found in mature forests that are at least 30 years old.

The primary threats to the Okinawa woodpecker are deforestation in the Yambaru region and introduced predators such as feral dogs and cats, small Indian mongoose (*Urva auropunctata*), and Japanese weasel (*Mustela itatsi*). As of the mid 1990s, only 40 km² (15 mi²) of suitable habitat was available for the Okinawa woodpecker, mostly in the Jungle Warfare Training Center, which is relatively undisturbed. Much of the remaining old-growth forest in Yambaru is protected by Japanese legislation, and forests have been regrowing following a reduction in logging in recent decades. While forest regrowth is reaching ages that meet minimum suitability requirements for Okinawa woodpeckers and protected areas have improved the habitat, suitable habitat for the species remains fragmented and old-growth forest is scarce within the species' range. Mongoose control fences were erected in 2005 and 2006, and efforts to eradicate mongoose from the Yambura forest are ongoing and appear to be effective. Complete eradication of mongooses from the Yambaru region is targeted for 2027. Efforts to control feral cats have been less successful.

The Japanese Government established Yambaru National Park in 2016. In July 2021, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) added Amami-Oshima Island; Tokunoshima Island; the northern part of the main Okinawa Island, which contains Yambaru National Park; and Iriomote Island to the list of natural World Heritage sites. The species is listed as critically endangered in the Red List of Threatened Birds in Japan and is protected from acquisition and transfer under Japan's wildlife protection system. The Okinawa woodpecker is not included in the Appendices to CITES and is not known to be in international trade.

In the May 3, 2022, CNOR (87 FR 26152), the Okinawa woodpecker was assigned an LPN of 2. After reevaluating the best available information, we have determined that no change in LPN for the species is warranted. The population is very small, and threats to its old-growth habitat and predation by nonnative mammals are ongoing. The Japanese government is actively taking steps to address the threats of habitat loss and predation, but the threats remain high in magnitude due to the species' restricted range, small population size, and historical habitat loss. Therefore, an LPN of 2 remains valid for this species to reflect imminent threats of high magnitude.

Orange-Fronted Parakeet

The orange-fronted parakeet (*Cyanoramphus malherbi*) is the rarest parakeet in New Zealand and the remaining naturally occurring colonies are restricted to three valleys on the South Island in the Canterbury Mountains. Captive-bred orange-fronted parakeets have been translocated to four predator-free islands, as well as Brook Waimārama Sanctuary on the South Island. On November 28, 1980, we received a petition from the International Council for Bird Preservation to list 79 bird species, of which 19 were occurring on U.S. territory and 60 were foreign species, including orange-fronted parakeet, as endangered or threatened species under the Act. On May 12, 1981, we published in the **Federal Register** (46 FR 26464) a 90-day finding in which we announced that the petition contained substantial information indicating that listing may be warranted for 77 of the 79 bird species, including the orange-fronted parakeet. On May 21, 2004, we published in the **Federal Register** (69 FR 29353) our resubmitted petition findings that listing the species was warranted but precluded by higher-priority actions, and we added the entity to our list of candidate species.

Orange-fronted parakeet populations on New Zealand's South Island inhabit subalpine mature beech forests (*Nothofagus* spp.), making their nests within natural cavities of these trees. Orange-fronted parakeets rely heavily on beech seeds as a major component of their diet, but also feed on a range of plant material including buds, sprouts, fruits, blossoms, leaves, ferns, and grasses; they also eat invertebrates such as aphids and caterpillars. Breeding is linked with the irregular seeding of beech trees. During mast years, in which seed production levels are high, parakeet numbers can increase substantially.

The primary threats affecting the species on the mainland are predation by nonnative mammals (rats and stoats (*Mustela erminea*)), as well as habitat destruction due to deforestation. Numbers of nonnative mammals spike during mast years, due to abundant food sources, and thus orange-fronted parakeets are particularly vulnerable to predation in those years. Habitat loss and degradation has historically affected large areas of native forest on the mainland. Removal of mature beech trees with nest cavities has increased competition with other native parakeets for nest sites. Trade of this species is not known to be a threat.

The New Zealand Department of Conservation (NZDOC) initiated a captive-breeding program and established small populations on four predator-free islands, one of which is self-sustaining. Another population has been introduced to a predator-free wildlife sanctuary with suitable beech forest habitat on the South Island. The species was uplisted from nationally endangered to nationally critical by the NZDOC in 2016; it is protected under New Zealand's Wildlife Act and is listed as critically endangered on the IUCN's Red List. The orange-fronted parakeet is included in Appendix II to CITES.

In the May 3, 2022, CNOR (87 FR 26152), the orange-fronted parakeet was assigned an LPN of 8. After reevaluating the threats to the orange-fronted parakeet, we have determined that no change in LPN for the species is warranted. The current population is small, and the species' distribution is limited. Nonnative predators and loss of suitable habitat continue to threaten the species. The NZDOC is actively aiding the recovery of the species. Therefore, an LPN of 8 remains valid to reflect imminent threats of moderate magnitude.

Takahē

The takahē (*Porphyrio hochstetteri*) is the largest extant rail in the world. The species is flightless, native to the South Island of New Zealand, and present on the North Island, other offshore islands, and Kahurangi National Park due to reintroduction and conservation efforts. On November 28, 1980, we received a petition from the International Council for Bird Preservation to list 79 bird species, of which 19 were occurring on U.S. territory and 60 were foreign species, including the takahē, as endangered or threatened species under the Act. On May 12, 1981, we published in the **Federal Register** (46 FR 26464) a 90-day finding in which we announced that the petition contained substantial information indicating that listing may be warranted for 77 of the 79 bird species, including the takahē. On May 21, 2004, we published in the **Federal Register** (69 FR 29353) our resubmitted petition findings that listing the species was warranted but precluded by higher-priority actions, and we added the entity to our list of candidate species.

The takahē was once widespread in the forest and grassland ecosystems of the South Island. Since the mid-1990s, the species was present in a relatively small area of the Murchison Mountains. In their relict range, takahē are largely herbivorous, feeding on tussocks (clumps of long grass that are thicker and longer than the grass growing around them). In the winter, the birds move into forested valleys, where their major food source is the rhizome of thousand leaved ferns (*Hypolepis millefolium*). In introduced populations at secure sites, takahē exhibit more generalist behavior, eating fallen fruits, small reptiles, and chicks of other bird species. The species is largely solitary and will not form dense colonies, even in optimal habitat, and will aggressively defend their territories, which can be up to 100 hectares (247 acres).

Primary threats to the takahē include hunting, competition from nonnative species, disease outbreaks in the captive population, and nonnative predators such as stoats and weasels. Stoats and weasels appear to be the most significant predator to takahē. The NZDOC is actively managing populations through conservation efforts that include captive-rearing and reintroductions, predator control, management of grassland habitats, and adaptive research. The conservation efforts have slowly increased the number of populations and the species' overall population size.

New Zealand considers the takahē a nationally vulnerable species, and it is protected under New Zealand's Wildlife Act. The takahē is listed as endangered on the IUCN Red List. The species is not known to be in international trade, and the species is not included in the Appendices to CITES.

In the May 3, 2022, CNOR (87 FR 26152), the takahē was assigned an LPN of 8. After reevaluating the threats to the takahē, we have determined that no change in LPN for the species is warranted. The takahē has a small population size and limited range. The NZDOC is actively managing threats to aid in the recovery of the species. Therefore, the LPN remains at 8 to reflect imminent threats of low to moderate magnitude.

Yellow-Browed Toucanet

The yellow-browed toucanet (*Aulacorhynchus huallagae*) is a rare bird of the toucan family that occurs in the Andes Mountains in Peru. On May 6, 1991, we received a petition from the International Council for Bird Preservation to list 53 different bird species, including the yellow-browed toucanet, under the Act. On December 16, 1991, we published in the **Federal Register** (56 FR 65207) a 90-day finding in which we announced that the petition to add 53 species of foreign birds contained substantial information indicating that listing may be warranted for all species. On May 21, 2004, we published in the **Federal Register** (69 FR 29353) our resubmitted petition

findings that listing the species was warranted but precluded by higher-priority actions, and we added the entity to our list of candidate species.

The yellow-browed toucanet relies on humid montane forests on the eastern slope of the Andes in north-central Peru, at elevations of 2,000–2,600 m (6,562–8,530 ft). The species currently occupies three small locations. Habitat is dominated by tall *Clusia* (*Clusia* spp.) trees, where the species forages in the canopy for fruit and seeds and uses cavities in the trees to nest. The species is most frequently seen in pairs but is occasionally found in small groups of three to four individuals.

Deforestation for livestock, agriculture, timber, and gold mining appears to be the primary threat to the viability of the yellow-browed toucanet. Habitat loss and destruction from deforestation for agriculture have been widespread in the region. Given the inherent threats to small populations (*e.g.,* loss of genetic diversity via genetic drift, stochastic environmental events), continued habitat loss and degradation will exacerbate the risk to the species.

The species is listed as endangered in the IUCN Red List. The species is not included in the Appendices of CITES and is not known to be in international trade.

In the May 3, 2022, CNOR (87 FR 26152), the yellow-browed toucanet was assigned an LPN of 2. After reevaluating the available information, we find that no change in the LPN is warranted. The estimated population is small within a restricted range. The magnitude of threats to the habitat remains high, and its population is likely declining. Therefore, an LPN of 2 remains valid for this species to reflect imminent threats of high magnitude.

Colorado Delta Clam

The Colorado Delta clam (*Mulinia modesta;* junior synonym = *M. coloradoensis*) is a relatively large, light-colored estuarine bivalve that was once very abundant at the head of the Gulf of California in the Colorado River estuary. The species currently occurs in the upper, northern, and central portions of the Gulf of California, and is capable of living in salinities ranging from brackish (mixture of salt and fresh water) to full seawater. In March 2012, the Colorado Delta clam became a candidate species through the Arizona Ecological Services field office (FWS 2012, entire). A 12-month finding published in the **Federal Register** on April 25, 2013, determined that the species warrants protection, but was precluded from listing at the time (78 FR 24604).

The species inhabits shallow, muddy waters of the coast and requires adequate substrate and water salinity to successfully breed and develop. The range of the species is relatively large, although densities are significantly lower than they were historically.

We are not aware of the total population covering the entire range of the species. The historical population of the Colorado Delta clam in the upper Gulf was estimated to be at least 5 billion individuals, accounting for 84–95 percent of all bivalve mollusks in the upper Gulf. However, after decades of dam building on the Colorado River and its tributaries, the Colorado Delta clam is estimated to be 6 percent as abundant in the upper Gulf as it was before dam construction began. Environmental changes to the estuary associated with reduced river flow include increased salinity, decreased sediment load, decreased input of naturally derived nutrients, and elimination of the spring/summer flood. From the 1990s until 2017, 0 percent of the Colorado River flowed into the Gulf. Since 2017, 2 percent of the river flow has reached the Gulf of California. Low flows are expected to continue and worsen as climate-change-induced drought reduces river flow.

A binational agreement with Mexico requires the United States to invest in water conservation, habitat restoration, and scientific monitoring projects in the delta and release approximately 2 percent of natural flow through 2026. The clam will likely benefit from ongoing efforts to conserve other species and their habitats within the greater Gulf of California, *e.g.,* the totoaba (*Totoaba macdonaldi*) and the vaquita porpoise (*Phocoena sinus*). Portions of the species' range occur within two protected areas that are part of the UNESCO Biosphere Reserve Program and are owned and managed by the Mexican Government.

In the May 3, 2022, CNOR (87 FR 26152), the Colorado Delta clam was assigned an LPN of 8. After reevaluating the threats to this species, we have determined that no change in its LPN of 8 is warranted. The threat of habitat loss and degradation in the Colorado Delta region is ongoing. However, this threat appears to be affecting the clam in upper Gulf of California and not throughout remainder of its range. Therefore, an LPN of 8 remains valid to reflect imminent threats of moderate magnitude.

Petitions To Reclassify Species Already Listed

We previously made warranted-but-precluded findings on petitions seeking to reclassify threatened species to endangered status for delta smelt (*Hypomesus transpacificus*), grizzly bear (*Ursus arctos horribilis*), and northern spotted owl (*Strix occidentalis caurina*). Because these species are already listed under the Act, they are not candidates for listing and are not included in table 5, below. Below, we provide updated summaries for these species previously found to be warranted but precluded for uplisting.

This document and associated species assessment forms constitute the findings for the resubmitted petitions to reclassify the delta smelt and northern spotted owl. Summaries of our updated assessments for these species are provided below. We find that reclassification to endangered status for the delta smelt and northern spotted owl are currently warranted but precluded by work identified above (see Findings for Petitioned Candidate Species, above). One of the primary reasons that the work identified above is considered to have higher priority is that these species are currently listed as threatened, and therefore already receive certain protections under the Act. We also find that reclassficiation to endangered status for the grizzly bear is no longer warranted. Therefore, the grizzly bear in the North Cascades ecosystem (NCE) will remain a threatened species. For the delta smelt, grizzly bear, and northern spotted owl, those protections are set forth in our regulations at 50 CFR 17.31 and, by reference, 50 CFR 17.21. It is therefore unlawful for any person, among other prohibited acts, to take (*i.e.,* to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such activity) a delta smelt or northern spotted owl, subject to applicable exceptions.

Other protections that currently apply to these threatened species include those under section 7(a)(2) of the Act, whereby Federal agencies must insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species.

Northern Spotted Owl

On June 26, 1990, we published in the **Federal Register** (55 FR 26114) a final rule listing the northern spotted owl (*Strix occidentalis caurina*) as a threatened species. On August 21, 2012, we received a petition dated August 15, 2012, from the Environmental Protection Information Center (EPIC) requesting that the northern spotted owl be listed as an endangered species pursuant to the Act. On April 10, 2015, we published a 90-day finding (80 FR

19259), in which we announced that the petition presented substantial information indicating that reclassification may be warranted for the northern spotted owl and that our status review would also constitute our 5-year status review for the species. On December 15, 2020, we published a 12-month finding in the **Federal Register** (85 FR 81144) in which we stated that reclassification of the northern spotted owl from threatened to endangered was warranted but precluded by higher-priority actions. On May 3, 2022, a warranted-but-precluded finding for this taxon was included in a CNOR in the **Federal Register** (87 FR 26152).

The northern spotted owl is the largest of three subspecies of spotted owls, and inhabits structurally complex forests from southwestern British Columbia through Washington and Oregon, and into northern California. The historical range of the northern spotted owl included most mature forests or stands throughout the Pacific Northwest, from southwestern British Columbia to as far south as Marin County, California. The current range of the northern spotted owl is smaller than the historical range, as the northern spotted owl is extirpated or very uncommon in certain areas such as southwestern Washington and British Columbia.

The northern spotted owl inhabits structurally complex forests, from southwestern British Columbia through Washington and Oregon and into northern California. Northern spotted owls rely on older forested habitats because such forests contain the structures and characteristics required for nesting, roosting, and foraging. The northern spotted owl is relatively long-lived, has a long reproductive life span (6–9 years, Loschl 2008, p. 107), invests significantly in parental care, and exhibits high adult survivorship relative to other North American owls (Forsman et al. 1984, entire; Gutiérrez et al. 1995, p. 5). Northern spotted owl diets vary across owl territories, years, seasons, geographical regions, and forest type (Forsman et al. 2001, pp. 146–148; 2004, pp. 217–220). Home-range sizes of the northern spotted owl vary geographically, generally increasing from south to north, which is likely a response to differences in habitat quality including structural complexity of forest conditions and availability of prey (55 FR 26114; June 26, 1990). Within the home range, there is typically a smaller area of concentrated activity (approximately 20 percent of the home range), often referred to as the core area (Bingham and Noon 1997, pp. 133–135). Successful juvenile dispersal may depend on locating unoccupied suitable habitat in close proximity to other occupied sites (LaHaye et al. 2001, pp. 697–698). Habitat requirements for nesting and roosting are nearly identical. However, nesting habitat is most often associated with a high incidence of large trees with various deformities or large snags suitable for nest placement. Foraging habitat is the most variable of all habitats used by territorial northern spotted owls, and is closely tied to the prey base. Foraging habitat generally has attributes similar to those of nesting/roosting habitat, but foraging habitat may not always support successful nesting pairs (Service 1992, pp. 22–25). Dispersal habitat is essential to maintaining stable populations by providing connectivity for owls filling territorial vacancies when resident northern spotted owls die or leave their territories, and by providing adequate gene flow across the range of the subspecies.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the northern spotted owl, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors affecting the northern spotted owl's biological status include lag effects of past habitat loss, continued timber harvest, wildfire, and incursion of the nonnative barred owl (which is currently the stressor with the largest negative impact on northern spotted owls). On non-Federal lands, State regulatory mechanisms have not prevented the continued decline of nesting/roosting and foraging habitat; the amount of northern spotted owl habitat on these lands has decreased considerably over the past three decades, including in geographic areas where Federal lands are lacking. On Federal lands, the Northwest Forest Plan has reduced habitat loss and allowed for the development of new northern spotted owl habitat, and the 2016 revised resource management plans for Bureau of Land Management lands in western Oregon are expected to do the same; however, the combined effects of climate change, high-severity wildfire, and past management practices are changing forest ecosystem processes and dynamics, and the expansion of barred owl populations is altering the capacity of intact habitat to support northern spotted owls.

Therefore, we continue to find reclassification of the northern spotted owl as an endangered species under the Act is warranted and retain an LPN of 3. This priority number indicates the magnitude of threat is high and those threats are imminent. The magnitude of threats is considered high because the barred owl has expanded throughout the entire range of the northern spotted owl, outcompeting northern spotted owl for resources and altering the capacity of intact habitat to support northern spotted owl. Furthermore, the combined effects of climate change, high-severity wildfire, and past management practices are changing forest ecosystem processes and dynamics (including patterns of wildfires and insect and forest disease outbreaks) to a degree greater than anticipated in the NWFP; these changes are likely to lead to greater stress on northern spotted owl populations. Threats are ongoing and therefore imminent because competition from the barred owl is already significantly impacting the northern spotted owl and there are no conservation measures currently in place that have demonstrated success at alleviating this threat at a regional scale. We note that an LPN of 3 does not connote that uplisting the species to endangered is a high priority for the Service. Proposed rules to reclassify threatened species to endangered are a lower priority than listing currently unprotected species (*i.e.,* candidate species), since species currently listed as threatened are already afforded the protection of the Act and implementing regulations.

A detailed discussion of the basis for this finding can be found in our northern spotted owl species assessment (see **ADDRESSES**, above), as well as in our 12-month finding published on December 15, 2020, in the **Federal Register** (85 FR 81144), in which we found that reclassification of the northern spotted owl from threatened to endangered was warranted but precluded by higher-priority actions.

Delta Smelt

The following summary is based on information contained in our files and the April 7, 2010, 12-month finding published in the **Federal Register** (75 FR 17667); see that 12-month finding for additional information on why reclassification to endangered is warranted but precluded. In our 12-month finding, we determined that a change in status of the delta smelt (*Hypomesus transpacificus*) from threatened to endangered was warranted, although precluded by other high-priority listings. The primary rationale for reclassifying delta smelt from threatened to endangered was the significant declines in species abundance that have occurred since 2001, and the continuing and unabated

downward trend in all delta smelt cohorts after 2011 supports that finding. The 2015–2020 results from all four of the surveys analyzed in the review have been the lowest ever recorded for the delta smelt. Delta smelt abundance, as indicated by the Fall Midwater Trawl (FMWT) survey, was exceptionally low between 2004 and 2010, increased during the wet year of 2011, and decreased again to very low levels at present. The last three FMWT surveys (2018–2020) did not detect a single delta smelt, resulting in an abundance index of 0. The latest 2021 Spring Kodiak Trawl (SKT) survey resulted in an abundance index of 0. Abundance estimates for this year's adult spawning stock based on the SKT and the enhanced delta smelt monitoring surveys were the lowest estimates on record with 0 and 267 fish, respectively.

The primary threats to the delta smelt are direct entrainments by State and Federal water export facilities, reduction of suitable habitat through summer and fall increases in salinity and water clarity resulting from decreases in freshwater flow into the estuary, and effects from introduced species. Ammonia in the form of ammonium may also be a significant threat to the survival of the delta smelt. Additional potential threats are predation by striped bass (*Morone saxatilis*), largemouth bass (*Micropterus salmoides*), and inland silversides (*Menidia beryllina*); contaminants; climate change; and small population size. We have identified a number of existing regulatory mechanisms that provide protective measures that affect the stressors acting on the delta smelt. Despite these existing regulatory mechanisms and other conservations efforts, the stressors continue to act on the species such that it is warranted for uplisting under the Act.

As a result of our analysis of the best scientific and commercial data available, we have retained the recommendation of uplisting the delta smelt to an endangered species. We have assigned an LPN of 2, based on the imminent, high magnitude threats faced by the species. The magnitude of the threats is high because the threats occur rangewide and result in mortality or significantly reduce the reproductive capacity of the species. The threats are imminent because they are ongoing and, in some cases (*e.g.,* nonnative species), considered irreversible. Thus, we are maintaining an LPN of 2 for this species.

We note that an LPN of 2 does not connote that uplisting the species to endangered is a high priority for the Service. Since the delta smelt's current classification as threatened and the blanket 4(d) rule that has prescribed protections for the species since it was listed already provide the species the protections afforded by the Act, uplisting the species to endangered status will not substantively increase protections for the delta smelt, but rather more accurately classifies the species given its current status.

Grizzly Bear, North Cascades Ecosystem

The grizzly bear (*Ursus arctos horribilis*) was listed as a threatened species in the conterminous 48 States in 1975 (40 FR 31734, July 28, 1975). Since 1990, we have received and reviewed five petitions requesting a change in status for the North Cascades grizzly bear population in Washington (55 FR 32103, August 7, 1990; 56 FR 33892, July 24, 1991; 57 FR 14372, April 20, 1992; 58 FR 43856, August 18, 1993; 63 FR 30453, June 4, 1998). In response to these petitions, we determined that the North Cascades Ecosystem (NCE) grizzly bear population warranted a change to endangered status. We have continued to find that these petitions are warranted but precluded through our annual CNOR process. However, we noted in our CNOR for FY 2021 (87 FR 26152; May 3, 2022) that based on a limited number of grizzly bear observations in the past few decades, the NCE may no longer contain a population. We now find that the NCE does not contain a grizzly bear population based on: (1) the amount of search effort without finding any evidence of grizzly bears or a confirmed population; (2) a limited number of grizzly bear detections in the NCE in the past few decades; and (3) the time since the last confirmed detection (1996).

The greater NCE constitutes a large area of contiguous grizzly bear habitat that spans the international border between the United States and Canada but is relatively isolated from grizzly bear populations in other parts of the two countries (Lyons et al. 2018, entire; Service 2022, p. 4). Natural recolonization by females is unlikely in the near future due to the low numbers of bears in nearby populations and the highly fragmented landscape (Proctor et al. 2004, pp. 1113–1114; NPS and Service 2017, p. 36; Service 2022, p. 55); however, there are at least three grizzly bear populations within the long-distance dispersal range of males (67–176 km; 42–109 mi) (Service 2022, p. 55). The U.S. portion of the ecosystem extends across the crest of the Cascade Range from the temperate rainforests of the west side to the dry ponderosa pine forests and sage-steppe on the east side, and comprises one of the most intact wildland areas in the contiguous United States. Historical records indicate that grizzly bears once occurred throughout the greater NCE (Rine et al. 2018, entire; Rine et al. 2020, entire). A grizzly bear habitat evaluation was conducted from 1986 to 1991 in response to recommendations made in our 1982 nationwide Grizzly Bear Recovery Plan. That habitat evaluation, along with a subsequent report by the Interagency Grizzly Bear Committee (IGBC) technical committee review team, concluded that the U.S. portion of the NCE contained sufficient habitat quality to maintain and recover a grizzly bear population (Servheen et al. 1991, entire; Almack et al. 1993, entire). A more recent model combining habitat and population dynamics indicated the U.S. portion of the NCE is capable of supporting a grizzly bear population of approximately 280 bears (Lyons et al. 2018, pp. 28–29).

Previous studies have compiled reports of grizzly bears in the NCE and provided estimates of grizzly bear abundance. Sullivan (1983, entire) summarized 233 contemporary and historical reports of grizzly bears. An additional 33 reports of grizzly bear were documented from 1859–1982 and 153 reports from 1983–1991, and 20 of these reports were classified as ''highly reliable'' (Almack et al. 1993, entire). From 1989–1991, remote cameras and traps were set in locations where there were recent and relatively reliable sightings but did not detect grizzly bears (Almack et al. 1993, p. 13). Nevertheless, based on their review of reliable reports, Almack et al. (1993, p. 21) concluded that a small number of grizzly bears likely persisted in the U.S. portion of the NCE in the early 1990s. In the British Columbia (B.C.), Canada, portion of the NCE, sightings and supplementation of grizzly bears from other areas led biologists to estimate the number of grizzly bears to be 17–23 individuals (Gyug 1998, p. 9).

Since the 1990s, there have been numerous surveys for bears and other carnivores in the NCE. Several of these surveys were designed specifically to attract and detect grizzly bears using scented lures and snares that collect hair for DNA extraction. Hair-snare surveys in the NCE that focused on black bears and grizzly bears were conducted from 1999–2000, covering approximately 10 percent of the U.S. portion of the NCE and distributed in prime bear habitat or areas with previous detections (Romain-Bondi et al. 2004, entire). Additional hair-snare surveys were conducted from 2008–2011 (Long et al. 2013, entire), and 2014–2019 (W.L. Gaines 2022, pers. comm.). These efforts were focused

largely on remote locations and the highest quality bear habitat (as indicated by a 70 percent success in detecting black bears with cameras and at hair snares) and covered about 25 percent of the U.S. portion of the NCE (Gaines et al. 2019, p. 3). Based on their success in detecting black bears and success others have experienced in detecting grizzly bears using similar methods (*e.g.,* Poole et al. 2001, entire; Romain-Bondi et al. 2004, entire; Sawaya et al. 2012, entire), their methods afforded a reasonably high probability of detecting a grizzly bear if it were present in the sampled area (Gaines et al. 2019, p. 3). No grizzly bears were detected in the U.S. portion of the NCE during any of these surveys from 1999–2019.

In addition to hair-snare studies, many trail-camera surveys for grizzly bears and various forest and montane carnivores have not detected grizzly bears in the U.S. portion of the NCE (*e.g.,* Christophersen 2006, pp. 5–8; Baum et al. 2018, p. 16; King et al. 2020, pp. 712–714; Whiles 2021, pp. 19–22; J. Ransom 2022, pers. comm.). For example, one study that included the NCE and the Kettle Mountains of northeastern Washington, reported 47,620 camera-nights of effort over two summers, using 650 cameras without any confirmed detections of a grizzly bear (King et al. 2020, p. 712). In addition to these formal camera surveys, recreationists and workers in the NCE backcountry represent a substantial amount of additional informal search effort that has not resulted in a confirmed observation of a single grizzly bear within the U.S. portion of the NCE for the last 26 years.

There have been only three confirmed detections of grizzly bears in the greater NCE, which includes Canada, in the past 10 years. All three detections occurred in B.C. but may comprise only two individuals (Rine et al. 2018, p. 41). The last confirmed grizzly bear sighting in the B.C. portion of the NCE was in 2015, near the East Gate of Manning Park, Canada, approximately 14.5 km (9 mi) from the U.S.–Canada border. There has been no confirmed evidence of grizzly bears within the U.S. portion of the NCE since 1996, when an individual grizzly bear was observed on the southeastern side of Glacier Peak within the Glacier Peak Wilderness Area. The most recent direct evidence of reproduction in the U.S. portion of the ecosystem was a confirmed observation of a female and cub on upper Lake Chelan in 1991 (Almack et al. 1993, p. 34). We cannot completely rule out the possibility of occasional transient grizzly bears or relictual individuals persisting in the more inaccessible areas of the NCE in the United States; however, the lack of evidence for reproduction or confirmed detections despite decades of search effort for one of the largest and most identifiable land mammals in North America leads us to conclude that the NCE grizzly bear population in the United States is extirpated (see Gaines et al. 2019, entire; Lewis 2019, p. 5). Therefore, it is no longer warranted for uplisting, and we are removing it from the candidate list. This finding specifically addresses the aforementioned petitions; it does not alter or modify the listing of grizzly bear as a threatened species in the conterminous United States.

The NCE is relatively isolated from other ecosystems with grizzly bear populations in Canada and the United States (Mowat et al. 2013, pp. 4–10; Morgan et al. 2019, p. 3). Natural recolonization is unlikely in the near future due to the highly fragmented landscape between these areas, as well as the distance between these ecosystems, which is beyond the average female dispersal distance. Therefore, it is unlikely that a grizzly bear population will become established in the ecosystem on its own (NPS and Service 2017, p. 36; Service 2022, p. 55). We continue to work with our partners and stakeholders to maintain grizzly bear habitat protections in the NCE as we consider restoration options in the United States.

Current Notice of Review

We gather data on plants and animals, both native and foreign to the United States, that appear to merit consideration for addition to the Lists of Endangered and Threatened Wildlife and Plants (Lists). This document identifies those species that we currently regard as candidates for addition to the Lists. These candidates include species and subspecies of fish, wildlife, or plants, and DPSs of vertebrate animals. This compilation relies on information from status surveys conducted for candidate assessment and on information from Tribes, State Natural Heritage Programs, other State and Federal agencies, foreign countries, knowledgeable scientists, public and private natural resource interests, and comments received in response to previous CNORs.

Tables 5 and 6, below, list animals arranged alphabetically by common names under the major group headings, and list plants alphabetically by names of genera, species, and relevant subspecies and varieties. Animals are grouped by class or order. Useful synonyms and subgeneric scientific names appear in parentheses with the synonyms preceded by an ''equals'' sign. We sort plants by scientific name due to the inconsistencies in common names, the inclusion of vernacular and composite subspecific names, and the fact that many plants still lack a standardized common name.

Table 5 lists all candidate species, plus species currently proposed for listing under the Act (as of September 30, 2022). We emphasize that in this document that we are not proposing to list any of the candidate species; rather, we will develop and publish proposed listing rules for these species in the future. We encourage Tribes, State agencies, other Federal agencies, foreign countries, and other parties to consider these species in environmental planning.

In table 5, the ''category'' column on the left side of the table identifies the status of each species according to the following codes:

PE—Species proposed for listing as endangered. This category, as well as PT and PSAT (below), does not include species for which we have withdrawn or finalized the proposed rule.

PT—Species proposed for listing as threatened.

PSAT—Species proposed for listing as threatened due to similarity of appearance.

C—Candidates: Species for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened. Issuance of proposed rules for these species is precluded at present by other higher-priority listing actions. This category includes species for which we made a 12-month warranted-but-precluded finding on a petition to list. Our analysis for this document included making new findings on all petitions for which we previously made ''warranted-but-precluded'' findings. We identify the species for which we made a continued warranted-but-precluded finding on a resubmitted petition by the code ''C*'' in the category column (see Findings for Petitioned Candidate Species, above, for additional information).

The ''Priority'' column indicates the LPN for each candidate species, which we use to determine the most appropriate use of our available resources. The lowest numbers have the highest priority. We assign LPNs based on the immediacy and magnitude of threats, as well as on taxonomic status. We published a complete description of our listing priority system in the **Federal Register** (48 FR 43098; September 21, 1983).

Following the scientific name (third column) and the family designation (fourth column) is the common name (fifth column). The sixth column provides the known historical range for the species or vertebrate population (for vertebrate populations, this is the

historical range for the entire species or subspecies and not just the historical range for the distinct population segment), indicated by postal code abbreviations for States and U.S. territories or by country for foreign species. Many species no longer occur in all of the areas listed.

Species in table 6 of this document are those species that we included either as proposed species or as candidates in the previous CNOR (87 FR 26152; May 3, 2022) that are no longer proposed species or candidates for listing (as of September 30, 2022). In FY 2022 (or after; please see note to table 6, below), we listed nine species and removed one species from the candidate list by withdrawing a proposed rule. We also find that uplisting is no longer warranted but precluded for a population of one species. The first column indicates the present status of each species, using the following codes:

E—Species we listed as endangered.

T—Species we listed as threatened.

Rc—Species we removed from the candidate list, because currently available information does not support a proposed listing.

Rp—Species we removed from the candidate list, because we have withdrawn the proposed listing.

The second column indicates why the species is no longer a candidate species or proposed for listing, using the following codes (not all of these codes may have been used in this CNOR):

L—Species we added to the Lists of Endangered and Threatened Wildlife and Plants.

N—Species that are not listable entities based on the Act's definition of ''species'' and current taxonomic understanding.

X—Species we believe to be extinct.

The columns describing scientific name, family, common name, and historical range include information as previously described for table 5.

Request for Information

We request additional status information that may be available for any of the candidate species identified in this CNOR. We will consider this information to monitor changes in the status or LPN of candidate species and to manage candidates as we prepare listing documents and future revisions to the CNOR. We also request information on additional species to consider including as candidates as we prepare future updates of this CNOR.

We request you submit any further information on the species named in this document as soon as possible or whenever it becomes available. We are particularly interested in any information:

(1) Indicating that we should add a species to the list of candidate species;

(2) Indicating that we should remove a species from candidate status;

(3) Recommending areas that we should designate as critical habitat, or indicating that designation of critical habitat would not be prudent;

(4) Documenting threats to any of the included species;

(5) Describing the immediacy or magnitude of threats facing candidate species;

(6) Pointing out taxonomic or nomenclature changes for any of the species;

(7) Suggesting appropriate common names; and

(8) Noting any mistakes, such as errors in the indicated historical ranges.

We will consider all information provided in response to this CNOR in deciding whether to propose species for listing and when to undertake necessary listing actions (including whether emergency listing under section 4(b)(7) of the Act is appropriate).

Submit information, materials, or comments regarding the species to the person identified as having the lead responsibility for the species in table 4 below.

TABLE 4—CONTACTS FOR CANDIDATE SPECIES AND SPECIES PROPOSED FOR LISTING

Species	Name and address	Telephone
''Ouachita'' fanshell, northern spotted owl, sand dune phacelia, red tree vole.	Hugh Morrison, Acting Regional Director, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, OR 97232–4181.	503–231–2176
Bracted twistflower, cactus ferruginous pygmy-owl, prostrate milkweed, Rio Grande cutthroat trout.	Amy Lueders, Regional Director, U.S. Fish and Wildlife Service, 500 Gold Avenue SW, Room 4012, Albuquerque, NM 87102.	505–248–6920
Northern long-eared bat, monarch butterfly, western fanshell ...	Charles W. Traxler, Acting Regional Director, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.	612–713–5334
Pascagoula map turtle, Pearl River map turtle, Alabama map turtle, Barbour's map turtle, Escambia map turtle, alligator snapping turtle, Ocmulgee skullcap, magnificent ramshorn.	Catherine Phillips, Acting Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345.	404–679–4156
Tricolored bat, bog buck moth	Kyla Hastie, Acting Regional Director, U.S. Fish and Wildlife Service, 300 Westgate Center Dr., Hadley, MA 01035.	413–253–8200
Grizzly bear, silverspot butterfly	Matt Hogan, Regional Director, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, CO 80228.	303–236–7920
Delta smelt, Dixie Valley toad, Tiehm's buckwheat, foothill yellow-legged frog, Sacramento Mountains checkerspot butterfly, longfin smelt.	Paul Souza, Regional Director, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W2606, Sacramento, CA 95825.	916–414–6464
Sturgeon (Russian, ship, Persian, stellate, and Amur), black-backed tanager, Bogotá rail, Brasília tapaculo, Chatham oystercatcher, Gizo white-eye, helmeted woodpecker, Lord Howe Island pied currawong, Okinawa woodpecker, orange-fronted parakeet, takahē, yellow-browed toucanet, Jamaican kite swallowtail, Kaiser-i-Hind swallowtail, Colorado Delta clam, Egyptian tortoise, fluminense swallowtail butterfly, Hahnel's Amazonian swallowtail butterfly, Harris's mimic swallowtail butterfly, Sira curassow, southern-helmeted curassow.	Gary Frazer, Assistant Director, Ecological Services, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: ES, Falls Church, VA 22041.	202–208–4646

We will provide information we receive to the office having lead responsibility for each candidate species mentioned in the submission, and information and comments we receive will become part of the administrative

record for the species, which we maintain at the appropriate office.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your submission, be advised that your entire submission—including your personal identifying information—may be made publicly available at any time. Although you can ask us in your submission to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

TABLE 5—CANDIDATE NOTICE OF REVIEW

[Animals and Plants]

Status		Scientific name	Family	Common name	Historical range
Category	Priority				
MAMMALS					
PE		*Perimyotis subflavus*	Vespertilionidae.	Bat, tricolored	U.S.A. (AL, AK, CO, CT, DE, DC, FL, GA, IL, IN, IA, KS, KN, LA, ME, MD, MA, MI, MN, MI, MO, NE, NH, NJ, NM, NC, ND, OH, OK, PA, RI, SC, TN, TX, VT, VI, WV, WI, WY), Mexico, Central America.
PT		*Rangifer tarandus groenlandicus x pearyi.*	Cervidae	Caribou, Dolphin-Union	Canada.
PE		*Tamias minimus atristriatus*	Sciuridae	Peñasco least chipmunk	U.S.A (NM).
PT		*Gulo gulo luscus*	Mustelidae	Wolverine, North American (Contiguous U.S. DPS).	U.S.A. (CA, CO, ID, MT, OR, UT, WA, WY).
BIRDS					
C*	2	*Pauxi koepckeae*	Cracidae	Curassow, Sira	Peru.
C*	2	*Pauxi unicornis*	Cracidae	Curassow, southern helmeted	Bolivia.
C*	6	*Strepera graculina crissalis*	Cracticidae	Currawong, Lord Howe Island pied.	Lord Howe Island, New South Wales.
C*	8	*Haematopus chathamensis*	Haematopodidae.	Oystercatcher, Chatham	Chatham Islands, New Zealand.
C*	8	*Cyanoramphus malherbi*	Psittacidae	Parakeet, orange-fronted	New Zealand.
PT		*Aptenodytes forsteri*	Spheniscidae	Penguin, emperor	Antarctica.
PT		*Pterodroma hasitata*	Procellariidae	Petrel, black-capped	Dominican Republic, Haiti, U.S.A. (GA, NC, SC).
PT		*Tympanuchus pallidicinctus*	Phasianidae	Prairie-chicken, lesser (northern DPS).	U.S.A. (CO, KS, NM, OK, TX).
PE		*Tympanuchus pallidicinctus*	Phasianidae	Prairie-chicken, lesser (southern DPS).	U.S.A. (CO, KS, NM, OK, TX).
PT		*Lagopus leucura rainierensis*	Phasianidae	Ptarmigan, Mt. Rainier white-tailed.	U.S.A. (WA), Canada (BC).
PT		*Glaucidium brasilianum cactorum.*	Strigidae	Pygmy-owl, cactus ferruginous	U.S.A. (AZ, TX), Mexico.
C*	2	*Rallus semiplumbeus*	Rallidae	Rail, Bogota	Colombia.
C*	8	*Porphyrio hochstetteri*	Rallidae	Takahē	New Zealand.
C*	8	*Tangara peruviana*	Thraupidae	Tanager, black-backed	Brazil.
C*	2	*Scytalopus novacapitalis*	Rhinocryptidae	Tapaculo, Brasilia	Brazil.
C*	2	*Aulacorhynchus huallagae*	Ramphastidae	Toucanet, yellow-browed	Peru.
C*	2	*Zosterops luteirostris*	Zosteropidae	White-eye, Gizo	Solomon Islands.
C*	8	*Celeus galeatus*	Picidae	Woodpecker, helmeted	Argentina, Brazil, Paraguay.
C*	2	*Dendrocopos noguchii*	Picidae	Woodpecker, Okinawa	Okinawa Island, Japan.
REPTILES					
PT		*Plestiodon egregius egregius*	Scincidae	Florida keys mole skink	U.S.A (FL).
PT		*Testudo kleinmanni*	Testudinidae	Tortoise, Egyptian	Libya, Egypt, Israel.
C	8	*Gopherus polyphemus*	Testudinidae	Tortoise, gopher (eastern population).	U.S.A. (AL, FL, GA, LA, MS, SC).
PSAT		*Graptemys pulchra*	Emydidae	Turtle, Alabama map	U.S.A. (MS, AL, GA, TN).
PT		*Macrochelys temminckii*	Chelydridae	Turtle, alligator snapping	U.S.A. (AL, AK, FL, GA, IL, IN, KS, KN, LA, MS, MO, OK, TN, TX).
PSAT		*Graptemys barbouri*	Emydidae	Turtle, Barbour's map	U.S.A. (FL, GA, AL).
PSAT		*Graptemys ernsti*	Emydidae	Turtle, Escambia map	U.S.A. (AL, FL).
PSAT		*Graptemys gibbonsi*	Emydidae	Turtle, Pascagoula map	U.S.A. (AL, MS).
PSAT		*Graptemys gibbonsi*	Emydidae	Turtle, Pascagoula map	U.S.A. (AL, MS).

TABLE 5—CANDIDATE NOTICE OF REVIEW—Continued

[Animals and Plants]

Status		Scientific name	Family	Common name	Historical range
Category	Priority				
PT		*Graptemys pearlensis*	Emydidae	Turtle, Pearl River map	U.S.A. (LA, MS).
PT		*Macrochelys suwanniensis*	Chelydridae	Turtle, Suwannee alligator snapping.	U.S.A. (GA, FL).
		FISHES			
PT		*Percina williamsi*	Percidae	Darter, sickle	U.S.A (TN & VA).
PT		*Noturus munitus*	Ictaluridae	Madtom, frecklebelly (Upper Coosa River DPS).	U.S.A. (AL, GA, LA, MS, TN).
C	3	*Spirinchus thaleichthys*	Osmeridae	Smelt, longfin (San Francisco Bay-Delta DPS).	U.S.A. (CA).
PE		*Acipenser schrenckii*	Acipenseridae	Sturgeon, Amur	China, Russia.
PE		*Acipenser persicus*	Acipenseridae	Sturgeon, Persian	Armenia, +5 countries.
PE		*Acipenser gueldenstaedtii*	Acipenseridae	Sturgeon, Russian	Armenia, +19 countries.
PE		*Acipenser nudiventris*	Acipenseridae	Sturgeon, ship	Armenia, +18 countries.
PE		*Acipenser stellatus*	Acipenseridae	Sturgeon, stellate	Armenia, +19 countries.
PSAT		*Salvelinus malma*	Salmonidae	Trout, Dolly Varden	U.S.A. (AK, WA), Canada, East Asia.
C*	9	*Oncorhynchus clarkii virginalis*	Salmonidae	Trout, Rio Grande cutthroat	U.S.A. (CO, NM, TX).
		CLAMS			
C*	8	*Mulinia modesta*	Mactridae	Clam, Colorado Delta	Mexico.
PT		*Cyprogenia sp. cf. aberti*	Unionidae	Fanshell, ''Ouachita''	U.S.A. (AK, LA).
PT		*Cyprogenia aberti*	Unionidae	Fanshell, western	U.S.A. (AK, KS, MO, OK).
PE		*Lampsilis bergmanni*	Unionidae	Fatmucket, Guadalupe	U.S.A. (TX).
PE		*Lampsilis bracteata*	Unionidae	Fatmucket, Texas	U.S.A. (TX).
PT		*Truncilla macrodon*	Unionidae	Fawnsfoot, Texas	U.S.A. (TX).
PT		*Obovaria subrotunda*	Unionidae	Hickorynut, round	U.S.A. (AL, GA, IL, IN, KY, MI, MS, NY, OH, PA, TN, WV), Canada.
PT		*Fusconaia subrotunda*	Unionidae	Longsolid	U.S.A. (AL, GA, IL, IN, KY, MS, MO, NY, NC, OH, PA, SC, TN, VA, WV).
PE		*Cyclonaias necki*	Unionidae	Orb, Guadalupe	U.S.A. (TX).
PT		*Pleurobema rubrum*	Unionidae	Pigtoe, pyramid	U.S.A. (AL, KY, TN).
PE		*Cyclonaias petrina*	Unionidae	Pimpleback, Texas	U.S.A. (TX).
PE		*Fusconaia mitchelli*	Unionidae	Spike, false	U.S.A. (TX).
		SNAILS			
PE		*Planorbella magnifica*	Planorbidae	Ramshorn, magnificent	U.S.A. (NC).
		INSECTS			
C*	2	*Parides ascanius*	Papilionidae	Butterfly, fluminense swallowtail.	Brazil.
C*	2	*Parides hahneli*	Papilionidae	Butterfly, Hahnel's Amazonian swallowtail.	Brazil.
C*	3	*Mimoides* (= *Eurytides*) *lysithous harrisianus.*	Papilionidae	Butterfly, Harris' mimic swallowtail.	Brazil.
C*	2	*(Protographium (= Eurytides) marcellinus).*	Papilionidae	Butterfly, Jamaican kite swallowtail.	Jamaica.
C*	8	*Teinopalpus imperialis*	Papilionidae	Butterfly, Kaiser-i-Hind swallowtail.	Bhutan, China, India, Laos, Myanmar, Nepal, Thailand, Vietnam.
C*	8	*Danaus plexippus*	Nymphalidae	Butterfly, monarch	U.S.A. + 90 Countries.
PE		*Euphydryas anicia cloudcrofti*	Nymphalidae	Butterfly, Sacramento Mountains checkerspot.	U.S.A. (NM).
PT		*Speyeria nokomis nokomis*	Nymphalidae	Butterfly, silverspot	U.S.A. (CO, UT).
PE		*Hemileuca maia menyanthevora.*	Saturniidae	Moth, bog buck	U.S.A. (NY), Canada.
		FLOWERING PLANTS			
PT		*Streptanthus bracteatus*	Brassicaceae	bracted twistflower	U.S.A. (TX).
PT		*Scutellaria ocmulgee*	Lamiaceae	Ocmulgee skullcap	U.S.A. (GA, SC).
PT		*Pinus albicaulis*	Pinaceae	Pine, whitebark	U.S.A. (CA, ID, MT, NV, OR, WA, WY), Canada (AB, BC).

TABLE 5—CANDIDATE NOTICE OF REVIEW—Continued

[Animals and Plants]

Status		Scientific name	Family	Common name	Historical range
Category	Priority				
PE		*Asclepias prostrata*	Apocynaceae	prostrate milkweed	U.S.A. (TX), Mexico.
PT		*Phacelia argentea*	Boraginaceae	sand dune phacelia	U.S.A. (CA, OR).
PT		*Cirsium wrightii*	Asteraceae	Thistle, Wright's marsh	U.S.A. (AZ, NM), Mexico.
			AMPHIBIANS		
PT		*Rana boylii*	Ranidae	Frog, foothill yellow-legged (Central Coast DPS).	U.S.A. (CA).
PT/PE		*Rana boylii*	Ranidae	Frog, foothill yellow-legged (South Coast DPS).	U.S.A. (CA).
PT/PE		*Rana boylii*	Ranidae	Frog, foothill yellow-legged (South Sierra DPS).	U.S.A. (CA).
PT		*Rana boylii*	Ranidae	Frog, foothill yellow-legged (North Feather DPS).	U.S.A. (CA).
			LICHENS		
PE		*Donrichardsia macroneuron*	Brachytheciaceae.	Moss, South Llano Springs	U.S.A. (TX).

Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.
C*: candidate species for which we received petitions and made a continued warranted-but-precluded finding on a resubmitted petition.

TABLE 6—ANIMALS AND PLANTS FORMERLY CANDIDATES OR FORMERLY PROPOSED FOR LISTING

Status		Scientific name	Family	Common name	Historical range
Category	Priority				
			BIRDS		
T*	L	*Aptenodytes forsteri*	Spheniscidae	Penguin, emperor	Antarctica.
			MAMMALS		
E*	L	*Myotis septentrionalis*	Vespertilionidae	Bat, northern long-eared	U.S.A. (AL, AK, CO, CT, DE, DC, FL, GA, IL, IN, IA, KS, KN, LA, ME, MD, MA, MI, MN, MI, MO, MT, NE, NH, NJ, NM, NC, NY, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VI, WV, WI, WY), Canada.
Rc	X	*Ursus arctos horribilis*	Ursidae	Bear, grizzly (North Cascades Ecosystem).	U.S.A. (WA), Canada.
			REPTILES		
Rc	5	*Gopherus morafkai*	Testudinidae	Tortoise, Sonoran desert	U.S.A. (AZ), Mexico.
			FISHES		
E	L	*Macrhybopsis tetranema*	Cyprinidae	Chub, peppered	U.S.A. (CO, KS, NM, OK, TX).
			CLAMS		
E	L	*Pleurobema athearni*	Unionidae	Clubshell, Canoe Creek	U.S.A. (AL).
			INSECTS		
T*	L	*Atlantea tulita*	Nymphalidae	Butterfly, Puerto Rico harlequin	U.S.A. (PR).
			AMPHIBIANS		
E*	L	*Anaxyrus williamsi*	Bufonidae	Toad, Dixie Valley	U.S.A. (NV).
			FLOWERING PLANTS		
Rp	N	*Astragalus schmolliae*	Fabaceae	Chapin Mesa milkvetch	U.S.A. (CO).
E	L	*Eryngium sparganophyllum*	Apiaceae	Arizona eryngo	U.S.A. (AZ).

TABLE 6—ANIMALS AND PLANTS FORMERLY CANDIDATES OR FORMERLY PROPOSED FOR LISTING—Continued

Status		Scientific name	Family	Common name	Historical range
Category	Priority				
E *	L	*Eriogonum tiehmii*	Polygonaceae ..	Tiehm's buckwheat	U.S.A. (NV).
E	L	*Solanum conocarpum*	Solanaceae	marron bacora	U.S.A. (PR).

Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.
* Denotes species for which a final listing determination has published subsequent to the end of FY 2022 (after September 30, 2022).

[FR Doc. 2023–13577 Filed 6–26–23; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 88, No. 122
Tuesday, June 27, 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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights will hold a public meeting via Zoom. The purpose of the meeting is for the Committee to discuss the current draft of its upcoming report on fair housing.

DATES: Thursday, July 20, 2023, from 2:00 p.m.–3:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held via Zoom:

Registration Link (Audio/Visual): https://us05web.zoom.us/j/6762704477?pwd=THlqSlV4clM3cHlucnc3azRQNHVSZz09

Join by Phone (Audio Only): 1–833–435–1820 USA Toll-Free; Meeting ID: 676 270 477

FOR FURTHER INFORMATION CONTACT: David Mussatt, Chief of RPCU, at *dmussatt@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *csanders@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Mussatt at *dmussatt@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 794–9856

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Pennsylvania Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *canders@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Discussion:
- Continue To Review Draft Report and Approve Final Vote if Necessary

III. Commissioner Glenn Magpantay
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: June 22, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–13663 Filed 6–26–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Colorado Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Colorado Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a business meeting on Wednesday, July 19, 2023; at 3:00 p.m. Mountain Time. The purpose of the meeting is to continue working on its project on public school attendance zones in Colorado.

DATES: Wednesday, July 19, 2023; 3:00 p.m. MT.

ADDRESSES: The meeting will be held via Zoom.

Meeting Link (Audio/Visual): https://tinyurl.com/279fjudv; password: USCCR–CO.

Join by Phone (Audio Only): 1–551–285–1373; Meeting ID: 160 614 2807#.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez, Designated Federal Official at *bdelaviez@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the meeting link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *ebohor@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Barbara Delaviez at *bdelaviez@usccr.gov.* Persons who

desire additional information may contact the Regional Programs Coordination Unit at 1–312–353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Colorado Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *ebohor@usccr.gov.*

Agenda

I. Welcome and Roll Call
II. Discussion of the Committee's Project on Public School Attendance Zones in Colorado
III. Discuss Next Steps
IV. Public Comment
V. Adjournment

Dated: June 22, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–13661 Filed 6–26–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New Mexico Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the New Mexico Advisory Committee (Committee) will hold a meeting via ZoomGov on Wednesday, July 19, 2023, from 12:00 p.m.–1:00 p.m. Mountain Time, for the purpose of reviewing the current draft of their report on education adequacy for Native American students.

DATES: The meeting will take place on:

- Wednesday, July 19th, from 12:00 p.m.–1:00 p.m.

Zoom Link to Join (Audio/Visual): https://www.zoomgov.com/meeting/register/vJIsdumorzstH5Mq2MWQsTPey0I9Ctx

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or (202) 701–1376.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *bpeery@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Brooke Peery at *bpeery@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 701–1376.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlGAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Dated: June 22, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–13666 Filed 6–26–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the North Carolina Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting,

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the North Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 12:00 p.m. ET on Thursday, June 29, 2023. The purpose of the meeting is to discuss revisions to the report on Legal Financial Obligations in North Carolina and consider a preliminary vote.

DATES: Thursday, June 29, 2023, from 12:00 p.m.–1:30 p.m. Eastern Time

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1607916008

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 160 791 6008

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, Designated Federal Officer, at *vmoreno@usccr.gov* or (434) 515–0204.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the

comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, North Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *lschiller@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Committee Discussion
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: June 22, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–13667 Filed 6–26–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New Mexico Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the New Mexico Advisory Committee (Committee) will hold a meeting via ZoomGov on Thursday, August 24, 2023, from 12:00 p.m.–1:00 p.m. Mountain Time, for the purpose of reviewing the current draft of their report on education adequacy for Native American students.

DATES: The meeting will take place on:

- Thursday, August 24th, from 12:00 p.m.–1:00 p.m. MT

ADDRESSES:

Zoom Link to Join (Audio/Visual): https://www.zoomgov.com/meeting/register/vJIsd-uorDsjHrsIStb8RB2Tyu_mkC6fbSU.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or (202) 701–1376.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *bpeery@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Brooke Peery at *bpeery@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 701–1376.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlGAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Dated: June 22, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–13665 Filed 6–26–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New Mexico Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the New Mexico Advisory Committee (Committee) will hold a meeting via ZoomGov on Wednesday, September 13, 2023, from 12:00 p.m.–1:00 p.m. Mountain Time, for the purpose of reviewing the current draft of their report on education adequacy for Native American students.

DATES: The meeting will take place on:

- Wednesday, September 13th from 12:00 p.m.–1:00 p.m. MT

ADDRESSES:

Zoom Link to Join (Audio/Visual): https://www.zoomgov.com/meeting/register/vJIsd-2rqzosHqnNTRviGERogWWLD-6QiwA

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or (202) 701–1376.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *bpeery@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Brooke Peery at *bpeery@usccr.gov.* Persons who desire additional information may contact the

Regional Programs Coordination Unit at (202) 701–1376.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlGAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Dated: June 22, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–13664 Filed 6–26–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–13–2023]

Foreign-Trade Zone (FTZ) 38; Authorization of Production Activity; BMW Manufacturing Company, LLC; (Passenger Motor Vehicles); Spartanburg, South Carolina

On February 22, 2023, BMW Manufacturing Company, LLC submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 38, in Spartanburg, South Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (88 FR 12911, March 1, 2023). On June 22, 2023, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: June 22, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023–13602 Filed 6–26–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–555–002, A–570–152, A–301–805, A–533–917, A–557–825, A–471–808, A–583–872, A–489–849, A–552–836]

Certain Paper Shopping Bags From Cambodia, the People's Republic of China, Colombia, India, Malaysia, Portugal, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations

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

DATES: Applicable June 20, 2023.

FOR FURTHER INFORMATION CONTACT: Charles Doss (Cambodia) at (202) 482–4474; Yang Jin Chun (the People's Republic of China (China)) at (202) 482–5760; Laurel LaCivita (Colombia) at (202) 482–4243; David Crespo (India) at (202) 482–3693; Dan Alexander (Malaysia) at (202) 482–4313; Whitley Herndon (Portugal) at (202) 482–6274; Brittany Bauer (Taiwan) at (202) 482–3860; Magd Zalok (the Republic of Turkey (Turkey)) at (202) 482–4162; and Myrna Lobo (the Socialist Republic of Vietnam (Vietnam)) at (202) 482–2371, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On May 31, 2023, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of certain paper shopping bags (paper bags) from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam filed in proper form on behalf of the Coalition for Fair Trade in Shopping Bags (the petitioner).[1] These AD petitions were accompanied by countervailing duty (CVD) petitions concerning imports of paper bags from China and India.[2]

On June 2, 5, and 13, 2023, Commerce requested supplemental information pertaining to certain aspects of the Petitions in a separate supplemental questionnaires.[3] The petitioner filed responses to the supplemental questionnaires on June 8, 9, 12, and 15, 2023.[4]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of paper bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the paper bag industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(F) of the Act.[5] Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested AD investigations.[6]

[1] *See* Petitioner's Letter, ''Petitions for The Imposition of Antidumping and Countervailing Duties on Certain Paper Shopping Bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam,'' dated May 31, 2023 (the Petitions) at 2–3. The members of the Coalition for Fair Trade in Shopping Bags include Novolex Holdings, LLC (Novolex) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) (collectively, the petitioner).

[2] *See* Petitioner's Letter, ''Petitions for The Imposition of Antidumping and Countervailing Duties on Certain Paper Shopping Bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam,'' dated May 31, 2023.

[3] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Paper Shopping Bags from Cambodia, the People's Republic of China, Colombia, India, Malaysia, Portugal, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam,'' dated June 2, 2023 (General Issues Questionnaire); and Country-Specific Supplemental Questionnaires: Cambodia Supplemental, China Supplemental, Colombia Supplemental, India Supplemental, Malaysia Supplemental, Portugal Supplemental, Taiwan Supplemental, Turkey Supplemental, and Vietnam Supplemental, dated June 5, 2023; *see also* Memorandum, ''Phone Call with Counsel to the Petitioner,'' dated June 13, 2023.

[4] *See* Petitioner's Letters, ''Certain Paper Shopping Bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam: Response of Petitioner to Volume I Supplemental Questionnaire,'' dated June 8, 2023 (First General Issues Supplement); Country-Specific Supplemental Responses, dated June 9 and 12, 2023; ''Certain Paper Shopping Bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam: Response of Petitioner to Commerce's Second Supplemental Questions Concerning Volumes I, VI, IX, and X,'' dated June 15, 2023 (Second General Issues Supplement); and Second Vietnam Supplement, dated June 15, 2023.

[5] *See* Petitions at Volume I (pages 2–3). The members of the Coalition for Fair Trade in Shopping Bags (Novolex and the USW) are interested parties, as defined in sections 771(9)(C) and (D) of the Act, respectively.

[6] *See, infra,* section on ''Determination of Industry Support for the Petitions.''

Periods of Investigation

Because the Petitions were filed on May 31, 2023, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for the Cambodia, Colombia, India, Malaysia, Portugal, Taiwan and Turkey AD investigations is April 1, 2022, through March 31, 2023. Because China and Vietnam are non-market economy (NME) countries, pursuant to 19 CFR 351.204(b)(1), the POI for the China and Vietnam AD investigations is October 1, 2022, through March 31, 2023.

Scope of the Investigations

The product covered by these investigations is paper bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On June 2 and 13, 2023, Commerce requested information from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[7] On June 8 and 15, 2023, the petitioner provided clarifications and revised the scope.[8] The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for parties to raise issues regarding product coverage (*i.e.,* scope).[9] Commerce will consider all scope comments received and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[10] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on July 10, 2023, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on July 20, 2023, which is ten calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of these investigations be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party must contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of each of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[11] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of paper bags to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOP) or costs of production (COP) accurately, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) general product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe paper bags, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on July 10, 2023, which is 20 calendar days from the signature date of this notice.[12] Any rebuttal comments must be filed by 5:00 p.m. ET on July 20, 2023, which is ten calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the AD investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also

[7] *See* General Issues Questionnaire; *see also* June 13, 2023, Memorandum.

[8] *See* General Issues Supplement at 2–7 and Exhibit I–S5; *see also* Second General Issues Supplement at 1 and Exhibit I–2S1.

[9] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); *see also* 19 CFR 351.312.

[10] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance: Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[12] *See* 19 CFR 351.303(b)(1).

determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[13] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[14]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.[15] Based on our analysis of the information submitted on the record, we have determined that paper bags, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[16]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioner provided the 2022 production of paper bags for the U.S. producers that support the Petitions and compared this to the estimated total 2022 production of paper bags by the U.S. industry.[17] We relied on data provided by the petitioner for purposes of measuring industry support.[18]

Our review of the data provided in the Petitions, the First General Issues Supplement, the Industry Support Supplement, the Second General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.[19] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[20] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[21] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[22] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[23]

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, with regard to China, India, Taiwan, and Vietnam, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[24] With regard to Cambodia, Colombia, Malaysia, Portugal, and Turkey, while the allegedly dumped imports from each of these countries do not individually exceed the statutory requirements for negligibility, the petitioner provided data demonstrating that the aggregate import share from these five countries is 10.19 percent, which exceeds the seven percent threshold established by the exception in section 771(24)(A)(ii) of the Act.[25]

The petitioner contends that the industry's injured condition is illustrated by a significant volume of subject imports; reduced market share; underselling and price depression and/or suppression; lost sales and revenues; decline in the domestic industry's production, capacity utilization, and U.S. commercial shipments; and adverse impact on the domestic industry's profitability and financial performance.[26] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[27]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate

[13] *See* section 771(10) of the Act.

[14] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[15] *See* Petitions at Volume I (pages 10–15 and Exhibits I–10 through I–12); *see also* First General Issues Supplement at 10.

[16] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Antidumping Duty Investigation Initiation Checklists: Certain Paper Shopping Bags from Cambodia, the People's Republic of China, Colombia, India, Malaysia, Portugal, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam, dated concurrently with this notice (Country-Specific AD Initiation Checklists) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Paper Shopping Bags from Cambodia, the People's Republic of China, Colombia, India, Malaysia, Portugal, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam (Attachment II). These Initiation Checklists are on file electronically via ACCESS.

[17] *See* Petitions at Volume I (pages 4–5 and Exhibits I–2 through I–4); *see also* First General Issues Supplement at 7–9 and Exhibits I–S6 through I–S8; Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Paper Shopping Bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam—Industry Support Calculation Revision,'' dated June 9, 2023 (Industry Support Supplement) at Attachments A and B; and Second General Issues Supplement at 2–3 and Exhibits I–2S2 through I–2S4.

[18] *See* Petitions at Volume I (pages 2–5 and Exhibits I–2 through I–4); *see also* First General Issues Supplement at 7–9 and Exhibits I–S6 through I–S8; Industry Support Supplement at 1–2 and Attachments A and B; and Second General Issues Supplement at 2–3 and Exhibits I–2S2 through I–2S4. For further discussion, *see* Attachment II of the Country-Specific AD Initiation Checklists.

[19] *See* Petitions at Volume I (pages 2–5 and Exhibits I–2 through I–4); *see also* First General Issues Supplement at 7–9 and Exhibits I–S6 through I–S8; Industry Support Supplement at 1–2 and Attachments A and B; and Second General Issues Supplement at 2–3 and Exhibits I–2S2 through I–2S4. For further discussion, *see* Attachment II of the Country-Specific AD Initiation Checklists.

[20] *See* Attachment II of the Country-Specific AD Initiation Checklists; *see also* section 732(c)(4)(D) of the Act.

[21] *See* Attachment II of the Country-Specific AD Initiation Checklists.

[22] *Id.*

[23] *Id.*

[24] *See* Petitions at Volume I (pages 18–19 and Exhibit I–15).

[25] *Id.* at Volume I (page 19 and Exhibit I–15).

[26] *See* Petitions at Volume I (pages 16–31 and Exhibits I–13 through I–18); *see also* First General Issues Supplement at 10–12 and Exhibit I–S9.

[27] *See* Country-Specific AD Initiation Checklists at Attachment III, ''Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Paper Shopping Bags from Cambodia, the People's Republic of China, Colombia, India, Malaysia, Portugal, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam.''

AD investigations of imports of paper bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the Country-Specific AD Initiation Checklists.

U.S. Price

For China, Colombia, India, Malaysia, Portugal, Taiwan, and Turkey, the petitioner based export price (EP) on pricing information for sales of, or offers for sale of, paper bags produced in and exported from each country. The petitioner made certain adjustments to U.S. price to calculate a net ex-factory U.S. price, where applicable.[28]

Normal Value [29]

For Cambodia, Colombia, India, Malaysia, Portugal, Taiwan, and Turkey, the petitioner stated that it was unable to obtain home-market or third-country prices for paper bags to use as a basis for NV.[30] Therefore, for these countries, the petitioner calculated NV based on CV.[31] For further discussion of CV, *see* the section ''Normal Value Based on Constructed Value.''

Commerce considers China and Vietnam to be NME countries.[32] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China and Vietnam as NME countries for purposes of the initiation of these investigations. Accordingly, we base NV on factors of production (FOPs) valued in a surrogate market economy country in accordance with section 773(c) of the Act.

The petitioner claims that Malaysia is an appropriate surrogate country for China because it is a market economy that is at a level of economic development comparable to that of China and is a significant producer of comparable merchandise.[33] The petitioner provided publicly available information from Malaysia to value all FOPs (except labor and overhead).[34] To value labor and overhead, the petitioner provided labor statistics and financial statements from another surrogate country, Turkey.[35] Based on the information provided by the petitioner, we believe it is appropriate to use Malaysia as a surrogate country to value all FOPs (except labor and overhead) and Turkey to value labor and overhead for initiation purposes.

The petitioner claims that Indonesia is an appropriate surrogate country for Vietnam because it is a market economy that is at a level of economic development comparable to that of Vietnam and is a significant producer of comparable merchandise.[36] The petitioner provided publicly available information from Indonesia to value all FOPs.[37] Based on the information provided by the petitioner, we believe it is appropriate to use Indonesia as a surrogate country for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determinations.

Factors of Production

Because information regarding the volume of inputs consumed by Chinese and Vietnamese producers/exporters was not reasonably available, the petitioner used product-specific consumption rates from a U.S. producer of paper bags as a surrogate to value Chinese and Vietnamese manufacturers' FOPs.[38] Additionally, the petitioner calculated factory overhead; selling, general and administrative (SG&A) expenses; and profit based on the experience of a Malaysian and Indonesian producer of identical merchandise for China and Vietnam, respectively.[39]

Normal Value Based on Constructed Value

As noted above for Cambodia, Colombia, India, Malaysia, Portugal, Taiwan, and Turkey, the petitioner stated it was unable to obtain home-market or third-country prices for paper bags to use as a basis for NV. Therefore, for these countries, the petitioner calculated NV based on CV.[40]

Pursuant to section 773(e) of the Act, the petitioner calculated CV as the sum of the cost of manufacturing, SG&A expenses, financial expenses, and profit.[41] For each of these countries, in calculating the cost of manufacturing, the petitioner relied on the production experience and input consumption rates of a U.S. producer of paper bags, valued using publicly available information applicable to the respective countries.[42] In calculating SG&A expenses, financial expenses, and profit ratios (where applicable), the petitioner relied on the most recently available fiscal year financial statements of a producer of identical or comparable merchandise domiciled in the subject country or a third country, where applicable.[43]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of paper bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam, are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for paper bags for each of the countries covered by this initiation are as follows: (1) Cambodia—18.21 to 248.81 percent; China—93.10 to 237.02 percent; Colombia—56.14 percent; India—26.45 to 96.15 percent; Malaysia—148.19 percent; Portugal—31.12 to 188.78 percent; Taiwan—60.26 to 65.81 percent; Turkey—13.65 to 47.56 percent; and Vietnam—27.64 to 92.34 percent.[44]

Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses,

[28] *See* Country-Specific AD Initiation Checklists.

[29] In accordance with section 773(b)(2) of the Act, for the Cambodia, Colombia, India, Malaysia, Portugal, Taiwan, and Turkey investigations, Commerce will request information necessary to calculate the constructed value (CV) and COP to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

[30] *See* Country-Specific AD Initiation Checklists.

[31] *Id.*

[32] *See, e.g., Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances,* 88 FR 15372 (March 13, 2023), and accompanying Preliminary Decision Memorandum at 5, unchanged in *Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Final Affirmative Determination of Sales at Less-Than-Fair Value and Final Affirmative Determination of Critical Circumstances,* 88 FR 34485 (May 30, 2023); *see also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results, and Final Results of No Shipments of the Antidumping Duty Administrative Review; 2016–2017,* 84 FR 18007 (April 29, 2019).

[33] *See* China AD Initiation Checklist.

[34] *Id.*

[35] *See* China AD Initiation Checklist.

[36] *See* Vietnam AD Initiation Checklist.

[37] *Id.*

[38] *See* China AD Initiation Checklist and Vietnam AD Initiation Checklist.

[39] *See* China AD Initiation Checklist and Vietnam AD Initiation Checklist. As noted above, the petitioner calculated labor and overhead using information specific to Turkey. *See* China AD Initiation Checklist.

[40] *See* Country-Specific AD Initiation Checklists.

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of paper bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of these initiations.

Respondent Selection

Cambodia, Colombia, India, Malaysia, Portugal, Taiwan, and Turkey

In the Petitions, the petitioner identified three companies in Cambodia, three companies in Colombia, 18 companies in India, three companies in Malaysia, one company in Portugal, three companies in Taiwan, and 21 companies in Turkey as producers/exporters of paper bags.[45] For Cambodia, Colombia, India, Malaysia, Taiwan and Turkey, in the event Commerce determines that the number of companies is large, and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on quantity and value (Q&V) questionnaires issued to potential respondents. Following standard practice in AD investigations involving market economy countries, Commerce would normally select respondents based on U.S. Customs and Border Protection (CBP) entry data for imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigations. However, for these investigations, the main HTSUS subheadings under which the subject merchandise would enter (4819.30.0040 and 4819.40.0040) are basket categories under which non-subject merchandise may also enter. Therefore, we cannot rely on CBP entry data in selecting respondents. We, instead, intend to issue Q&V questionnaires to each potential respondent for which the petitioner has provided a complete address for Cambodia, Colombia, India, Malaysia, Taiwan and Turkey. For Portugal, the petitioner identified only one company as an exporter or producer of paper bags. Therefore, unless we receive voluntary responses to the Q&V questionnaire from companies not identified, as described below, we intend to examine this one exporter or producer of paper bags from Portugal.

Exporters/producers of paper bags from Cambodia, Colombia, India, Malaysia, Portugal, Taiwan, and Turkey that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Enforcement and Compliance's website, at *https://www.trade.gov/ec-adcvd-case-announcements.* Responses to the Q&V questionnaire must be submitted by the relevant exporters/producers no later than 5:00 p.m. ET on July 5, 2023, which is the next business day after two weeks from the signature date of this notice.[46] All Q&V responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Interested parties must submit applications for disclosure under administrative protective order (APO) in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *https://www.trade.gov/administrative-protective-orders.* Commerce intends to make its decisions regarding respondent selection for Cambodia, Colombia, India, Malaysia, Portugal, Taiwan, and Turkey within 20 days of publication of this notice.

China and Vietnam

In the Petitions, the petitioner named 26 companies in China and 14 companies in Vietnam as producers and/or exporters of paper bags.[47] In accordance with our standard practice for respondent selection in AD investigations involving NME countries, Commerce selects respondents based on Q&V questionnaires in cases where it has determined that the number of companies is large and it cannot individually examine each company based upon its resources. Therefore, considering the number of producers and/or exporters identified in the Petition, Commerce will solicit Q&V information that can serve as a basis for selecting exporters for individual examination in the event that Commerce decides to limit the number of respondents individually examined pursuant to section 777A(c)(2) of the Act. Because there are 26 Chinese and 14 Vietnamese producers and/or exporters identified in the Petitions, Commerce has determined that it will issue Q&V questionnaires to each potential respondent for which the petitioner has provided a complete address.

In addition, Commerce will post the Q&V questionnaires along with filing instructions on Commerce's website at *https://www.trade.gov/ec-adcvd-case-announcements.* Producers/exporters of paper bags from China and Vietnam that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Commerce's website. In accordance with the standard practice for respondent selection in AD cases involving NME countries, in the event Commerce decides to limit the number of respondents individually investigated, Commerce intends to base respondent selection on the responses to the Q&V questionnaire that it receives.

Responses to the Q&V questionnaire must be submitted by the relevant Chinese and Vietnamese producers/exporters no later than 5:00 p.m. ET on July 5, 2023, which is the next business day after two weeks from the signature date of this notice.[48] All Q&V questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). As stated above, instructions for filing such applications may be found on Commerce's website at *https://www.trade.gov/administrative-protective-orders.* Commerce intends to make its decisions regarding respondent selection for China and Vietnam within 20 days of publication of this notice.

Separate Rates

In order to obtain separate rate status in an NME investigation, exporters and producers must submit a separate rate application. The specific requirements for submitting a separate rate application in an NME investigation are outlined in detail in the application itself, which is available on Commerce's website at *https://access.trade.gov/*

[45] *See* First General Issues Supplement at 1–2 and Exhibit I–S2.

[46] *See* 19 CFR 351.303(b)(1) (''For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.''). Two weeks from the initiation of these investigation is July 4, 2023, which is a Federal holiday.

[47] *See* First General Issues Supplement at 1–2 and Exhibit I–S2.

[48] *See* 19 CFR 351.303(b)(1) (''For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.''). Two weeks from the initiation of these investigation is July 4, 2023, which is a Federal holiday.

Resources/nme/nme-sep-rate.html. The separate rate application will be due 30 days after publication of this initiation notice. Exporters and producers who submit a separate rate application and have been selected as mandatory respondents will be eligible for consideration for separate rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China and Vietnam submit a response both to the Q&V questionnaire and to the separate rate application by the respective deadlines in order to receive consideration for separate rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}while continuing the practice of assigning separate rates only to exporters, all separate rates that {Commerce} will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the {weighted average} of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[49]

Distribution of Copies of the AD Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the AD Petitions have been provided to the governments of Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the AD Petitions to each exporter named in the AD Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the AD Petitions were filed, whether there is a reasonable indication that imports of paper bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and/or Vietnam are materially injuring, or threatening material injury to, a U.S. industry.[50] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[51] Otherwise, these AD investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [52] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[53] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial section D questionnaire response.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301.[54] For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19

[49] *See* Enforcement and Compliance's Policy Bulletin 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving NME Countries,'' (April 5, 2005) at 6 (emphasis added), available on Commerce's website at *https://access.trade.gov/Resources/policy/bull05-1.pdf.*

[50] *See* section 733(a) of the Act.

[51] *Id.*

[52] *See* 19 CFR 351.301(b).

[53] *See* 19 CFR 351.301(b)(2).

[54] *See* 19 CFR 351.301; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.[55]

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[56] Parties must use the certification formats provided in 19 CFR 351.303(g).[57] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[58]

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing the required letter of appearance). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[59]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: June 20, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

Scope of the Investigations

The products within the scope of these investigations are paper shopping bags with handles of any type, regardless of whether there is any printing, regardless of how the top edges are finished (*e.g.,* folded, serrated, or otherwise finished), regardless of color, and regardless of whether the top edges contain adhesive or other material for sealing closed. Subject paper shopping bags have a width of at least 4.5 inches and depth of at least 2.5 inches.

Paper shopping bags typically are made of kraft paper but can be made from any type of cellulose fiber, paperboard, or pressboard with a basis weight less than 300 grams per square meter (GSM).

A non-exhaustive illustrative list of the types of handles on shopping bags covered by the scope include handles made from any materials such as twisted paper, flat paper, yarn, ribbon, rope, string, or plastic, as well as die-cut handles (whether the punchout is fully removed or partially attached as a flap).

Excluded from the scope are:

- Paper sacks or bags that are of a 1/6 or 1/7 barrel size (*i.e.,* 11.5–12.5 inches in width, 6.5–7.5 inches in depth, and 13.5–17.5 inches in height) with flat paper handles or die-cut handles;
- Paper sacks or bags with die-cut handles, a grams per square meter paper weight of less than 86 GSM, and a height of less than 11.5 inches; and
- Shopping bags (i) with non-paper handles made wholly of woven ribbon or other similar woven fabric and (ii) that are finished with folded tops or for which tied knots or t-bar aglets (made of wood, metal, or plastic) are used to secure the handles to the bags.

The above-referenced dimensions are provided for paper bags in the opened position. The height of the bag is the distance from the bottom fold edge to the top edge (*i.e.,* excluding the height of handles that extend above the top edge). The depth of the bag is the distance from the front of the bag edge to the back of the bag edge (typically measured at the bottom of the bag). The width of the bag is measured from the left to the right edges of the front and back panels (upon which the handles typically are located).

This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 4819.30.0040 and 4819.40.0040. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive.

[FR Doc. 2023–13576 Filed 6–26–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–053, C–570–054]

Certain Aluminum Foil From the People's Republic of China: Extension of Deadline To Certify Certain Entries

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

SUMMARY: On March 22, 2023, the U.S. Department of Commerce (Commerce) published in the **Federal Register** a notice of preliminary affirmative circumvention determinations with respect to the Republic of Korea (Korea) and Kingdom of Thailand (Thailand), concerning the antidumping duty (AD) and countervailing duty (CVD) orders on certain aluminum foil from the People's Republic of China (China) (*Preliminary Determinations*). On March 28, 2023, Commerce published a correction to the *Preliminary Determinations.* This notice informs parties that Commerce has extended the deadline for certain exporters and importers to certify entries of certain aluminum foil exported from Korea and Thailand that were entered, or withdrawn from warehouse, for consumption on or after July 18, 2022, through March 22, 2023.

DATES: Applicable May 3, 2023.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Mark Flessner, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4475 and (202) 482–6312, respectively.

SUPPLEMENTARY INFORMATION:

Background

In the *Preliminary Determinations,* Commerce established a certification program and a deadline for certain exporters and importers to certify that entries of certain aluminum foil exported from Korea or Thailand that were entered, or withdrawn from warehouse, for consumption on or after July 18, 2022 (the date of initiation of these circumvention inquiries), through the date of publication of the *Preliminary Determinations* (*i.e.,* March 22, 2023), are not subject to the suspension of liquidation or the collection of cash deposits based on the inputs used to manufacture such merchandise.[1] The original deadline for exporters and importers to complete these certifications was 45 days after the publication of the *Preliminary Determinations, i.e.,* May 6, 2023. On March 28, 2023, Commerce published the *Preliminary Correction* in the **Federal Register**.[2] On May 3, 2023,

[55] *See* 19 CFR 351.302; *see also, e.g., Time Limits Final Rule.*

[56] *See* section 782(b) of the Act.

[57] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (Final Rule). Additional information regarding the Final Rule is available at *https://access.trade.gov/Resources/filing/index.html.*

[58] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[59] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[1] *See Antidumping and Countervailing Duty Orders on Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Determinations of Circumvention with Respect to the Republic of Korea and the Kingdom of Thailand,* 88 FR 17177 (March 22, 2023) (*Preliminary Determinations*).

[2] *See Antidumping and Countervailing Duty Orders on Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Determinations of Circumvention With Respect to the Republic of Korea and the Kingdom of Thailand; Correction,* 88 FR 18297 (March 28, 2023) (*Preliminary Correction*). The *Preliminary*

Continued

Commerce issued a memorandum via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (*i.e.,* ACCESS) notifying interested parties that Commerce was extending the deadline to submit certifications for entries of certain aluminum foil exported from Korea or Thailand that was entered, or withdrawn from warehouse, for consumption on or after July 18, 2022, through March 22, 2023, by 75 days, for a total of 120 days after the date of publication of the *Preliminary Determinations.*[3]

Extension

With this notice, we notify the public that, for all aluminum foil from Korea and Thailand that was entered, or withdrawn from warehouse, for consumption during the period July 18, 2022 (the date of initiation of these circumvention inquiries), through March 22, 2023 (the date of publication of the *Preliminary Determinations* in the **Federal Register**), where the entry has not been liquidated (and entries for which liquidation has not become final), the relevant certification should be completed and signed as soon as practicable, but not later than 120 days after the date of publication of the *Preliminary Determinations* in the **Federal Register**, *i.e.,* no later than July 20, 2023. For such entries, importers, and exporters each have the option to complete a blanket certification covering multiple entries, individual certifications for each entry, or a combination thereof. The exporter must provide the importer with a copy of the exporter certification within 120 days of the date of publication of the *Preliminary Determinations* in the **Federal Register**.

On June 15, 2023, Commerce posted instructions to U.S. Customs and Border Protection (CBP) notifying CBP of the extended deadline.[4] We note that Sankyu Thai Co., Ltd., the single company which Commerce precluded from participating in this certification program in the *Preliminary Determinations,* is still precluded from participating in the certification program we established for applicable exports of aluminum foil from Thailand.[5]

Notification to Interested Parties

This notice is issued and published in accordance with sections 781(b) of the Tariff Act of 1930, as amended and 19 CFR 351.225(f) and (h).

Dated: June 21, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Operations.

[FR Doc. 2023–13575 Filed 6–26–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Form NIST–366A: Request for Personal Radiation Monitoring Services

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on April 4, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Institute of Standards and Technology (NIST), Commerce.

Title: Form NIST–366A: Request for Personal Radiation Monitoring Services.

OMB Control Number 0693–0086.

Form Number(s): NIST–366A.

Type of Request: Regular.

Number of Respondents: 600.

Average Hours per Response: 15 minutes.

Burden Hours: 150 hours.

Needs and Uses: This request is to extend clearance for the collection of routine information requested of individuals (including but not limited to federal employees, visitors, contractors, associates) who work with or around sources of ionizing radiation on the NIST campus.

The information is collected for the following purposes:

(1) NIST is required by 10 CFR 20.1502 to monitor individuals who may be exposed to ionizing radiation above specific levels. This form will be used to collect information associated with this monitoring and to determine the type of monitoring required.

(2) NIST is required by 10 CFR 20.2106 to maintain records of radiation exposure monitoring. This form will be used to ensure the exposure information collected is properly associated with the individual using unique identifiers. In addition, NIST must provide reports to the monitored individuals when requested and to the NRC annually. This form will be used to ensure the correct information is provided to the individual.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

Legal Authority: 10 CFR 20.1502 and 10 CFR 20.2106.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *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 and entering either the title of the collection or the OMB Control Number 0693–0086.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–13646 Filed 6–26–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD079]

New England Fishery Management Council; Public Meeting

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

Correction identified the proper AD and CVD cash deposit rates, which the *Preliminary Determinations* had misstated.

[3] *See* Memorandum, ''Circumvention Inquiries on Aluminum Foil from the People's Republic of China—Republic of Korea and Kingdom of Thailand: Extension of Deadline to Certify Certain Entries of Aluminum Foil,'' dated May 3, 2023. This memorandum inadvertently stated the relevant entry date as July 17, 2022; however, July 18, 2022 is the correct date.

[4] *See* Message 3166406 dated June 15, 2023 (barcode 4389519) (Korea), and Message 3166405 dated June 15, 2023 (barcode 4389521) (Thailand).

[5] *See Preliminary Determinations,* 88 FR at 17177–78.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its On-Demand Gear Conflict Working Group via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Tuesday, July 18, 2023, at 9 a.m.

ADDRESSES: Webinar registration URL information: *https://attendee.gotowebinar.com/register/6667813875842822745.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The On-Demand Fishing Gear Conflict Working Group will meet to discuss the working group's goals, timeline and deliverables. They will also review and approve Terms of Reference as well as receive updates from Greater Atlantic Regional Fisheries Office on Atlantic Large Whale Take Reduction Team efforts and ongoing on-demand experimental fisheries. They will also receive an update from the Northeast Fisheries Science Center gear research team. Other business may be discussed, as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: June 22, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–13638 Filed 6–26–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; National Sea Turtle Stranding and Salvage Network Stranding and Gear Interaction Data Collection

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on July 5, 2022 (87 FR 39806) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: National Sea Turtle Stranding and Salvage Network Stranding and Gear Interaction Data Collection.

OMB Control Number: 0648–0496.

Form Number(s): None.

Type of Request: Regular submission, revision and extension of approved collection.

Number of Respondents: 750.

Average Hours per Response: STSSN Stranding Report form: 15 minutes; Gross Necropsy form (2 page version): 10 minutes; Gross Necropsy form (4 page version): 15 minutes; Cold Stun form and Cold Stun batch form: 10 minutes; Fishing Gear Identification form: 10 minutes; Incidental Capture Intake form: 5 minutes; Entanglement form: 15 minutes.

Total Annual Burden Hours: 1,682 annually.

Needs and Uses: This is a request for revision and extension of collection 0648–0496 entitled ''Reporting of Sea Turtle Entanglement in Fishing Gear or Marine Debris''. We request to revise the name of the collection from ''Reporting of Sea Turtle Entanglement in Fishing Gear or Marine Debris'' to ''National Sea Turtle Stranding and Salvage Network Stranding and Gear Interaction Data Collection'' and to add new forms to the collection to be inclusive of all forms used by Sea Turtle Stranding and Salvage Network (STSSN).

NOAA's National Marine Fisheries Service (NOAA Fisheries) and the U.S. Fish and Wildlife Service (USFWS) share federal jurisdiction for the conservation and recovery of sea turtles. In accordance with the 1977 Memorandum of Understanding between NOAA Fisheries and USFWS, which was reaffirmed in 2015, NOAA Fisheries serves as the lead for and coordinator of the STSSN. The STSSN currently responds to, and documents, sick, injured and dead (*i.e.,* 'stranded') sea turtles that are found in coastal areas under U.S. jurisdiction along the Atlantic Ocean and Gulf of Mexico. NOAA Fisheries Office of Protected Resources coordinates the STSSN. The Sea Turtle Disentanglement Network (STDN) is a part of the STSSN. The STSSN is a cooperative effort of authorized Federal, State, and private partners working to inform causes of morbidity and mortality in sea turtles by responding to and documenting stranded sea turtles. Information is collected in a manner sufficient to inform sea turtle conservation management and recovery. The STSSN accomplishes this through (1) collection of data in accordance with STSSN protocols; (2) improved understanding of causes of death and threats to sea turtles; (3) monitoring of stranding trends; (4) provision of initial aid to live stranded sea turtles; (5) provision of sea turtle samples/parts for conservation-relevant research; and (6) availability of timely data for conservation management purposes. To facilitate this data collection, the STSSN uses several standardized data collection forms. To ensure all data collected by the STSSN are in the same collection, we propose adding the following forms to 0648–0496: STSSN Stranding Report form, Gross Necropsy forms (2 page and 4 page versions), Cold Stun Event individual and batch forms, Fishing Gear Identification form, and Incidental Capture Intake form (currently approved in collection 0648–0774, expiring December 31, 2024).

All species of sea turtle found in U.S. waters are listed as endangered or threatened under the Endangered Species Act (ESA). NOAA Fisheries and the USFWS share federal jurisdiction for the conservation and recovery of sea

turtles. Section 4(f) of the ESA (16 U.S.C. 1531–1544) provides for the creation of Recovery Plans for endangered and threatened species and provides NOAA Fisheries and USFWS with authority ''to procure the services of appropriate public and private agencies and institutions and other qualified persons'' in order to implement those plans. To advance the conservation and recovery of listed sea turtles, each sea turtle recovery plan developed jointly by NOAA Fisheries and USFWS identifies and highlights the need to maintain an active stranding network. Both NOAA Fisheries and USFWS have promulgated regulations that provide an exception to the prohibitions on take and allow for coordinated response to stranded sea turtles in water and on land, based on their specific jurisdictional responsibility.

Affected Public: Individuals or households; Not-for-profit institutions; State, local, or Tribal government; Federal Government.

Frequency: As needed as sea turtle strandings occur and are reported.

Respondent's Obligation: Voluntary.

Legal Authority: Collection of these data to inform causes of morbidity and mortality in sea turtles is necessary to fulfill statutory requirements of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *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 and entering either the title of the collection or the OMB Control Number 0648–0496.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–13651 Filed 6–26–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD098]

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 (Council) Scientific and Statistical Committee (SSC) will hold a meeting.

DATES: The meeting will be held on Wednesday, July 12, 2023, from 1 p.m. through 4 p.m. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will take place over webinar using the Webex platform with a telephone-only connection option. Details on how to connect to the webinar will be available at: *www.mafmc.org/ssc.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *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: During this meeting, the SSC will review the draft Fisheries Climate Governance Policy developed by NMFS. The draft policy is intended to provide guidance on the process and evaluation criteria to determine if a designation change in Council authority is necessary due to geographic changes in stock distribution pursuant to section 304(f) under Magnuson Stevens Act. The SSC will provide feedback and advice on the policy's scientific, socioeconomic, and management implications. The Council will review SSC feedback at their August 2023 meeting as part of its process to help develop comments on the draft policy for NMFS consideration. A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid 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: June 22, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–13642 Filed 6–26–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD087]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 82 South Atlantic Gray Triggerfish Assessment Webinar 4.

SUMMARY: The SEDAR 82 assessment of the South Atlantic stock of gray triggerfish will consist of a data workshop, a series of assessment webinars, and a review workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 82 South Atlantic Gray Triggerfish Assessment Webinar 4 is scheduled for July 19, 2023, from 9 a.m. until 1 p.m., Eastern. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Registration for the webinar is available by contacting the SEDAR coordinator via email at *Kathleen.Howington@safmc.net* or online at: *https://attendee.gotowebinar.com/register/5188891571800377946.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4371; email: *Kathleen.Howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and

Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion for the meeting are as follows: discuss any leftover data issues that were not cleared up during the data process; answer any questions that the analysts have; introduce/discuss model development and model setup; and determine if the model is ready to move onto review.

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 intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business 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: June 22, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–13643 Filed 6–26–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; American Fisheries Act Permits

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before August 28, 2023.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0393 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Gabrielle Aberle, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668, or 907–586–7356.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS), Alaska Regional Office, is requesting extension of a currently approved information collection that contains applications for permits and transfers necessary for NMFS to manage the Bering Sea and Aleutian Islands (BSAI) pollock fishery under the American Fisheries Act (AFA).

NMFS manages the BSAI pollock fishery under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and AFA (16 U.S.C. 1851). The regulations implementing the AFA Program are at 50 CFR part 679, subpart F. The reporting requirements at 50 CFR part 679 form the basis for this collection of information.

The AFA was signed into law in October 1998. The purpose of the AFA was to tighten U.S. ownership standards that had been exploited under the Anti-reflagging Act, and to provide the BSAI pollock fleet the opportunity to conduct their fishery in a more rational manner while protecting non-AFA participants in the other fisheries. The AFA established sector allocations in the BSAI pollock fishery, determined eligible vessels and processors, allowed the formation of cooperatives, set limits on the participation of AFA vessels in other fisheries, and imposed special catch weighing and monitoring requirements on AFA vessels.

Any vessel used to engage in directed fishing for a non-western Alaska community development quota (non-CDQ) allocation of pollock in the Bering Sea and any shoreside processor, stationary floating processor, or mothership that receives pollock harvested in a non-CDQ directed pollock fishery in the Bering Sea must have a valid AFA permit on board the vessel or at the facility location at all times while non-CDQ pollock is being harvested or processed.

Permanent AFA permits (AFA catcher vessel, AFA catcher/processor, AFA mothership, and AFA inshore processor) for the BSAI pollock fishery had a one-time application deadline of December 1, 2000, and were issued with an indefinite expiration date. Therefore, except for participants that require annual or replacement permits, all AFA entities required to have a permit are already permitted.

The type of information collected in this collection includes information on the applicants, transferors, transferees, permits, vessels, and Chinook salmon PSC transfer data. This information collection contains the following AFA permitting and transfer requirements:

- *The AFA Permit:* Rebuilt, Replacement, or Removed Vessel Application is submitted by an owner of an AFA vessel to notify NMFS the vessel has been rebuilt; to request an AFA permit for a replacement catcher vessel, catcher/processor, or mothership; or to request removal of an AFA catcher vessel that is a member of an inshore cooperative and assign its catch history to another vessel or vessels in the same cooperative.
- The Application for AFA Inshore Catcher Vessel Cooperative Permit is submitted annually by each AFA inshore catcher vessel cooperative to obtain an AFA Inshore Catcher Vessel Cooperative Permit and identify the vessels and processors that will be participating in the BSAI pollock fishery prior to the start of each fishing year.
- The AFA Inshore Vessel Contract Fishing Notification is submitted by an AFA inshore cooperative that intends to contract with a non-member vessel to harvest a portion of the cooperative's annual pollock allocation to notify NMFS of vessels that might be reporting with an alternative cooperative ID.
- The Application for Approval as an Entity to Receive Transferable Chinook Salmon Prohibited Species Catch (PSC) Allocation is submitted by an entity representing the catcher/processor sector or the mothership sector to request approval to receive transferable Chinook salmon PSC allocations on behalf of members of the sector. Once approved, an entity is not required to reapply for or renew its status. Entities sometimes submit amendments to update contact and other information related to the entity and its members.
- The Application for Transfer of Bering Sea Chinook Salmon PSC Allocations is submitted by an authorized representative of the catcher/processor sector, the mothership sector, an inshore cooperative, or a CDQ group to transfer Chinook salmon PSC allocations to another entity's account.

II. Method of Collection

The information is collected primarily by mail, fax, and delivery. The Application for Transfer of Bering Sea Chinook Salmon PSC Allocations and the Application for Approval as an Entity to Receive Transferable Chinook Salmon PSC Allocation may be submitted online through eFISH on the NMFS Alaska Region website at *https://alaskafisheries.noaa.gov/webapps/efish/login.* The applications are available as fillable PDFs on the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/permit/american-fisheries-act-pollock-applications-and-forms.*

III. Data

OMB Control Number: 0648–0393.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; Business or other for-profit organizations; Not-for-profit institutions.

Estimated Number of Respondents: 27.

Estimated Time per Response: AFA Permit: Rebuilt, Replacement, or Removed Vessel Application, 1 hour; Application for Transfer of Bering Sea Chinook Salmon PSC Allocations, 1 hour; Application for AFA Inshore Catcher Vessel Cooperative Permit, 2 hours; AFA Inshore Vessel Contract Fishing Notification, 4 hours; Application for Approval as an Entity to Receive Transferable Chinook Salmon PSC Allocation, 8 hours.

Estimated Total Annual Burden Hours: 251 hours.

Estimated Total Annual Cost to Public: $420 in recordkeeping and reporting costs.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: Magnuson-Stevens Fishery and Conservation Act; American Fisheries Act.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–13652 Filed 6–26–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0112]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Private School Universe Survey (PSS) 2023–24 Data Collection Revision

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before July 27, 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 Carrie Clarady, 202–245–6347.

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: Private School Universe Survey (PSS) 2023–24 Data Collection Revision.

OMB Control Number: 1850–0641.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 27,553.

Total Estimated Number of Annual Burden Hours: 3,897.

Abstract: The National Center for Education Statistics (NCES), within the U.S. Department of Education, conducts the Private School Universe Survey (PSS), a national survey of private elementary and secondary schools. The PSS is designed to collect biennial data on the total number of private schools, teachers, and students; and to create an NCES universe frame of private schools that serve as a sampling frame for NCES surveys. This survey is an ongoing project to improve NCES universe and sample data on private schools.

The request to conduct the 2023–24 data collection and the 2025–26 PSS list frame building operations was approved in April 2022 (1850–0641 v.14). This revision addresses changes to communication materials and modifications to the questionnaire. Changes to the communications reflect a shift towards focusing on the benefits of participating in the PSS, including a school's listing on NCES Private School Search website and having an active NCES ID. Modifications to the questionnaire include the addition of an item assessing the use of virtual learning in private schools and modifying item wording to better align item with item wording on the National Teacher and Principal Survey (NTPS), which will be in the field for a sample of private schools during the 2023–24 school year as well.

Dated: June 21, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–13556 Filed 6–26–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0067]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; RSA–227, Annual Client Assistance Program Performance Report

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before July 27, 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 April Trice, 202–245–6074.

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: RSA–227, Annual Client Assistance Program Performance Report.

OMB Control Number: 1820–0528.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 57.

Total Estimated Number of Annual Burden Hours: 912.

Abstract: The Annual Client Assistance Program (CAP) Performance Report (RSA–227) is used to analyze and evaluate the CAP Program administered by eligible grantees throughout the States. The Rehabilitation Act of 1973 (Rehabilitation Act), as amended by title IV of the Workforce Innovation and Opportunity Act (WIOA), requires each State to have a CAP in effect to receive payments under the Rehabilitation Act. Section 112 of the Rehabilitation Act authorizes CAP grantees to provide information to individuals with disabilities regarding the services and benefits available under the Rehabilitation Act and the rights afforded them under title I of the Americans with Disabilities Act. In addition, CAP grantees are authorized to provide advocacy and legal representation to individuals seeking or receiving services under the Rehabilitation Act to resolve disputes with programs providing such services, including vocational rehabilitation services.

Dated: June 21, 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. 2023–13558 Filed 6–26–23; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Sunshine Act notice; notice of public meeting agenda.

SUMMARY: The EAC Data Summit: How the U.S. Voted in the 2022 Midterms.

DATES: Wednesday, July 19, 12 p.m. eastern.

ADDRESSES: The U.S. Election Assistance Commission hearing room at 633 3rd St. NW, Washington, DC 20001. The meeting is open to the public and will be livestreamed on the U.S. Election Assistance Commission's YouTube Channel: *https://www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw.*

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct an open meeting to review significant 2022 Election Administration and Voting Survey (EAVS) findings, and how the EAVS can be utilized by election officials, academics, and other stakeholders to improve elections.

Agenda: The U.S. Election Assistance Commission (EAC) will host panels featuring election administrators, EAC staff, and election subject matter experts. They will discuss the findings of the 2022 EAVS, how voting and election administration have changed since the last midterm election in 2018, and how this information can be used to prepare for the 2024 presidential election.

Background: In 2002, Congress charged the U.S. Election Assistance Commission (EAC) with the task of collecting information on the state of American elections and making it widely available to policymakers, advocates, scholars, journalists, and the general public. Since 2004, the EAC has sponsored the biennially administered Election Administration and Voting Survey (EAVS), which surveys all 50 U.S. states, the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. It is the most comprehensive source of state and local jurisdiction-level data about election administration in the United States.

Topics covered through EAVS data collection include voter registration and list maintenance, voting practices for overseas citizens and members of the armed forces serving away from home, voter participation, election technology, and other important issues related to voting and election administration. These data are vital in helping election officials, policymakers, and other election stakeholders identify trends, anticipate and respond to changing voter needs, invest resources to improve election administration and the voter experience, and better secure U.S. elections infrastructure.

The 2022 EAVS Comprehensive Report and previous EAVS reports are available on the EAC's studies and report web page: *https://www.eac.gov/research-and-data/studies-and-reports.*

Prior to 2014, this data was reported in three different reports—the National Voter Registration Act (NVRA) report, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) report, and the Election Day Survey. Since 2008, this project has included a separate survey, the Election Administration Policy Survey (Policy Survey), that gathers information about state election laws, policies, and practices. The Policy Survey was known as the Statutory Overview survey prior to 2018.

The full agenda will be posted in advance on the EAC website: *https://www.eac.gov.*

Status: This meeting will be open to the public.

Camden Kelliher,

Senior Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2023–13708 Filed 6–23–23; 11:15 am]

BILLING CODE 4810–71–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Sunshine Act notice; notice of public meeting agenda.

SUMMARY: Public meeting: U.S. Election Assistance Commission Local Leadership Council meeting.

DATES: Thursday, July 20, 8 a.m.–5 p.m. eastern and Friday, July 21, 8 a.m.–12 p.m. eastern.

ADDRESSES: Fairmont Washington, DC Georgetown, 2401 M Street NW, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct an annual meeting of the EAC Local Leadership Council to conduct regular business and discuss EAC updates and upcoming programs.

Agenda: The U.S. Election Assistance Commission (EAC) Local Leadership Council will hold its 2023 Annual Meeting primarily to conduct regular business, and discuss EAC updates and upcoming programs, such as election technology. The meeting will include moderated discussion on topics such as training and workforce development, looking ahead to 2024, and making the Local Leadership Council an effective Advisory Board. Throughout the meeting, there will be opportunities for members to ask questions. Additionally, the Board will vote to elect members to executive officer positions, who will be sworn in at the meeting.

Background: The Local Leadership Council was established in June 2021 under agency authority pursuant to and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2). The Advisory Committee is governed by the Federal Advisory Committee Act, which sets forth standards for the formation and use of advisory committees. The Advisory Committee advises the EAC on how best to fulfill the EAC's statutory duties set forth in 52 U.S.C. 20922 as well as such other matters as the EAC determines. It shall provide a relevant and comprehensive source of expert, unbiased analysis and recommendations to the EAC on local election administration topics.

The Local Leadership Council consists of 100 members. The Election Assistance Commission appoints two members from each state after soliciting nominations from each state's election official professional association. At the time of submission, the Local Leadership Council has 90 appointed members. Upon appointment, Advisory Committee members must be serving or have previously served in a leadership role in a state election official professional association.

The full agenda will be posted in advance on the EAC website: *https://www.eac.gov.*

Status: This meeting will be open to the public.

Camden Kelliher,

Senior Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2023–13710 Filed 6–23–23; 11:15 am]

BILLING CODE 4810–71–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–497]

Application for Authorization to Export Electric Energy; Direct Energy Business Marketing, LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Direct Energy Business Marketing, LLC (the Applicant or DEBM) has applied for authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before July 27, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *Electricity.Exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) by Delegation Order No. S1–DEL–S3–2023 and Redelegation Order No. S3–DEL–GD1–2023.

On March 31, 2023, DEBM filed an application with DOE (Application or App.) for authorization to transmit electric energy to Mexico for a five-year term. App. at 1.

In its Application, DEBM states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area. DEBM operates as a marketer[ ] and broker of electric power at wholesale and arranges services in related areas such as fuel supplies and transmission services.'' *Id.* at 2. DEBM represents that it ''will purchase the energy to be exported from wholesale generators, electric utilities, and federal power marketing agencies.'' *Id.* DEBM notes they are ''affiliated with entities that own wholesale generating facilities.'' *Id.* at n.3. DEBM also states that, ''[b]y definition, such energy is surplus to the system of the generator and thus, exportation of said energy will not impair the adequacy of electric power supply within the United States.'' *Id.* at 3.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See Id.* at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at *Electricity.Exports@hq.doe.gov.* Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC's) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at *Electricity.Exports@hq.doe.gov* in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning DEBM's Application should be clearly marked with GDO Docket No. EA–497. Additional copies are to be provided directly to Michael A. Yuffee and Ryan C. Norfolk, Baker Botts LLP, 700 K Street NW, Washington, DC 20001, *michael.yuffee@bakerbotts.com, ryan.norfolk@bakerbotts.com,* and Alan Johnson NRG Energy, Inc., 804 Carnegie Center, Princeton, NJ 08540, *Alan.Johnson@nrg.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at *https://www.energy.gov/gdo/pending-applications* or by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on June 21, 2023, by Maria Robinson, Director, Grid Deployment Office, 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 June 21, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–13541 Filed 6–26–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–499]

Application for Authorization To Export Electric Energy; Elektron Power LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Elektron Power LLC (the Applicant or Elektron) has applied for authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before July 27, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *Electricity.Exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was

delegated to the DOE's Grid Deployment Office (GDO) by Delegation Order No. S1–DEL–S3–2023 and Redelegation Order No. S3–DEL–GD1–2023.

On May 2, 2023, Elektron filed an application with DOE (Application or App.) for export authority for a five-year term. App. at 1.

In its Application, Elektron states that it ''does not own or control any electric generating or transmission facilities, nor does the Applicant have a franchised service area. Upon obtaining authorization to export power, Applicant will operate as a power marketer[ ] and broker and buy electric power at wholesale in the United States.'' *Id.* at 2. Elektron also states it ''contemplates making wholesale sales within the United States, and will seek all appropriate regulatory authorizations, including but not limited to authorization from the Federal Energy Regulatory Commission (''FERC'') to make sales of electric power at wholesale in interstate commerce at market-based rates.'' *Id.* Elektron represents that it ''may purchase the power to be exported from wholesale generators, electric utilities, power marketers, and power marketing agencies; or may return to Mexico energy transmitted to but not sold in the United States (*e.g.,* from battery storage in the U.S.). Applicant will have title to any electricity transmitted to Mexico under the authorization sought in this Application.'' *Id.* Elektron also states ''the proposed exports will not impair or tend to impede the sufficiency of electricity supplies in the United States or the regional coordination of electric utility planning or operations.'' *Id.* at 3.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See Id.* at Exhibit G.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at *Electricity.Exports@hq.doe.gov.* Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at *Electricity.Exports@hq.doe.gov* in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning Elektron's Application should be clearly marked with GDO Docket No. EA–499. Additional copies are to be provided directly to Roberto Gomez, Elektron Power LLC, 939 Coast Blvd., 6F, La Jolla, CA 92037, *roberto.gomez@me.com* and Mark F. Sundback, Sheppard, Mullin, Richter & Hampton LLP, 2099 Pennsylvania Avenue NW, Suite 100, Washington, DC 20006, *msundback@sheppardmullin.com.* A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at *https://www.energy.gov/gdo/pending-applications* or by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on June 21, 2023, by Maria Robinson, Director, Grid Deployment Office, 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 June 21, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–13543 Filed 6–26–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–196–F]

Application for Renewal of Authorization To Export Electric Energy; ALLETE, Inc., d/b/a Minnesota Power

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: ALLETE, Inc. d/b/a Minnesota Power (the Applicant or Minnesota Power) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before July 27, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *Electricity.Exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) by Delegation Order No. S1–DEL–S3–2023 and Redelegation Order No. S3–DEL–GD1–2023.

On February 11, 1999, DOE issued Order No. EA–196, authorizing Minnesota Power to transmit electric energy from the United States to Canada as a power marketer. Such authority was renewed in 2001 (EA–196–A), 2003 (EA–196–B), 2008 (EA–196–C), 2013 (EA–196–D), and 2018 (EA–196–E). On May 2, 2023, Minnesota Power filed an application with DOE (Application or App.) for renewal of their export authority for an additional five-year term. App. at 1.

In its Application, Minnesota Power represents that the electric power it intends to export, ''on either a firm or interruptible basis, will generally be purchased from others voluntarily and will, therefore, be surplus to the needs of the selling entities.'' *Id.* at 2. Minnesota Power also notes that it ''does have an obligation to serve native load in northeastern Minnesota. However, the exports proposed by Minnesota Power will not impair its ability to meet any current and prospective retail or wholesale power supply obligations in the United States.'' *Id.* Therefore, Minnesota Power contends that its ''proposed exports will

not impair or tend to impede the sufficiency of electric supplies in the United States or the regional coordination of electric utility planning or operations.'' *Id.* at 3.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See Id.* at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at *Electricity.Exports@hq.doe.gov.* Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC's) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at *Electricity.Exports@hq.doe.gov* in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning Minnesota Power's Application should be clearly marked with GDO Docket No. EA–196–F. Additional copies are to be provided directly to David R. Moeller, ALLETE, Inc., 30 West Superior Street, Duluth, MN 55802, *dmoeller@allete.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at *https://www.energy.gov/gdo/pending-applications* or by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on June 21, 2023, by Maria Robinson, Director, Grid Deployment Office, 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 June 21, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–13539 Filed 6–26–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–498]

Application for Authorization To Export Electric Energy; Direct Energy Business Marketing, LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Direct Energy Business Marketing, LLC (the Applicant or DEBM) has applied for authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before July 27, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *Electricity.Exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) by Delegation Order No. S1–DEL–S3–2023 and Redelegation Order No. S3–DEL–GD1–2023.

On March 31, 2023, DEBM filed an application with DOE (Application or App.) for authorization to transmit electric energy to Canada for a five-year term. App. at 1.

In its Application, DEBM states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area. DEBM operates as a marketer[ ] and broker of electric power at wholesale and arranges services in related areas such as fuel supplies and transmission services.'' *Id.* at 2. DEBM represents that it ''will purchase the energy to be exported from wholesale generators, electric utilities, and federal power marketing agencies.'' *Id.* DEBM notes they are ''affiliated with entities that own wholesale generating facilities.'' *Id.* at n.3. DEBM also states that, ''[b]y definition, such energy is surplus to the system of the generator and thus, exportation of said energy will not impair the adequacy of electric power supply within the United States.'' *Id.* at 3.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See Id.* at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at *Electricity.Exports@hq.doe.gov.* Protests should be filed in accordance with Rule 211 of Federal Energy Regulatory Commission's (FERC's) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at *Electricity.Exports@hq.doe.gov* in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning DEBM's Application should be clearly marked with GDO Docket No. EA–498. Additional copies are to be provided directly to Michael A. Yuffee and Ryan C. Norfolk, Baker Botts LLP, 700 K Street NW, Washington, DC 20001, *michael.yuffee@bakerbotts.com, ryan.norfolk@bakerbotts.com,* and Alan Johnson, NRG Energy, Inc., 804 Carnegie Center, Princeton, NJ 08540, *Alan.Johnson@nrg.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by

accessing the program website at *https://www.energy.gov/gdo/pending-applications* or by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on June 21, 2023, by Maria Robinson, Director, Grid Deployment Office, 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 June 21, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–13542 Filed 6–26–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
NONE.		
Exempt:		
1. CP22–2–000	6/12/2023	U.S. Senator James E. Risch.
2. ER21–2818–000	6/16/2023	U.S. Congress.[1]
3. CP22–2–000	6/16/2023	Oregon Governor Tina Kotek.

[1] Representatives Harriet Hageman, Adrian Smith, Doug Lamborn, and Senators Cynthia M. Lummis and John Barrasso, M.D.

Dated: June 21, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–13610 Filed 6–26–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2188–000]

SR DeSoto III Lessee, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of SR DeSoto III Lessee, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 11, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human

Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

Dated: June 21, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–13614 Filed 6–26–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2192–000]

NN8, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of NN8, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 11, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: June 21, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–13611 Filed 6–26–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–497–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on June 15, 2023, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, filed in the above referenced docket, a prior notice request for authorization, in accordance with section 7 of the Natural Gas Act, and part 157 sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act and Columbia's blanket certificate issued in Docket No. CP83–76–000 for authorization to abandon one injection/withdrawal well, connecting pipeline, and appurtenances located in the Coco C Storage Field in Kanawha County, West Virginia, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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 TYY, (202) 502–8659.

Any questions regarding this prior notice request should be directed to David A Alonzo, Manager, Project Authorizations, Columbia Gas

Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, at (832) 320–5477 or david.alonzo@tcenergy.com.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on August 21, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is August 21, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is August 21, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before August 21, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–497–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–497–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To send via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.* Protests and motions to intervene must be served on the applicant either by mail at: David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, at david *alonzo@tcenergy.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *FERC.gov* using the ''eLibrary'' link as described above. The eLibrary link also

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: June 21, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–13606 Filed 6–26–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1889–085; Project No. 2485–071]

Firstlight MA Hydro LLC; Northfield Mountain LLC; Notice of Settlement Agreement and Soliciting Comments

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project Nos.:* 1889–085 and 2485–071.

c. *Date Filed:* June 12, 2023.

d. *Applicant:* FirstLight MA Hydro LLC and Northfield Mountain LLC (collectively FirstLight).

e. *Name of Projects:* Turners Falls Hydroelectric Project and Northfield Mountain Pumped Storage Project (collectively, projects).

f. *Location:* The existing projects are located on the Connecticut River in the counties of Windham, Vermont; Cheshire, New Hampshire; and Franklin, Massachusetts. The current project boundary for the Turners Falls Project includes the approximately 20-acre Silvio Conte Anadromous Fish Laboratory, which is administered by the U.S. Geological Survey.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Alan Douglass, Regulatory Compliance Manager, FirstLight MA Hydro LLC and Northfield Mountain LLC, 99 Millers Falls Road, Northfield, MA 01360; (413) 659–4416 or *alan.douglass@firstlightpower.com.*

i. *FERC Contact:* Steve Kartalia, (202) 502–6131, *stephen.kartalia@ferc.gov.*

j. *Deadline for filing comments:* July 10, 2023. Reply comments due July 25, 2023.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions 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, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket numbers P–1889–085 and P–2485–071.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person 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. FirstLight filed the Settlement Agreement on behalf of itself; National Park Service; Massachusetts Department of Conservation and Recreation; Franklin Regional Council of Governments; Towns of Erving, Gill, Montague, and Northfield, Massachusetts; American Whitewater; Appalachian Mountain Club; Crabapple Whitewater, Inc.; New England FLOW; Zoar Outdoor; Access Fund; and Western Massachusetts Climbers Coalition. The purpose of the Settlement Agreement is to resolve, among the signatories, relicensing issues related to protecting and enhancing public recreation at the projects. The Settlement Agreement includes proposed license articles requiring a Recreation Management Plan (RMP), included as part of the Settlement Agreement, and reflects agreement among the parties concerning the recreation-related recommendations, terms, and conditions to be submitted to the Commission pursuant to sections 10(a) of the Federal Power Act. FirstLight requests that the Commission approve the RMP and accept and incorporate the license articles into any new licenses issued for the projects.

l. A copy of the Settlement Agreement may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document (*i.e.,* P–1889 and P–2485). For assistance, contact FERC Online Support.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

Dated: June 20, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–13553 Filed 6–26–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–204–000.

Applicants: TRS Fuel Cell, LLC.

Description: TRS Fuel Cell, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 6/21/23.

Accession Number: 20230621–5105.

Comment Date: 5 p.m. ET 7/12/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–77–000.

Applicants: Parkway Generation Operating LLC and Parkway Generation Sewaren Urban Renewal Entity LLC v. PJM Interconnection, L.L.C.

Description: Complaint of Parkway Generation Operating LLC and Parkway Generation Sewaren Urban Renewal Entity LLC v. PJM Interconnection, L.L.C.

Filed Date: 6/16/23.

Accession Number: 20230616–5227.

Comment Date: 5 p.m. ET 7/17/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–1910–003; ER16–1018–002; ER20–2771–001.

Applicants: Guzman Western Slope LLC, Guzman Renewable Energy Partners LLC, Guzman Power Markets.

Description: Triennial Market Power Analysis for Northeast Region of Guzman Energy LLC et al.

Filed Date: 6/20/23.

Accession Number: 20230620–5300.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2001–001.

Applicants: Sagebrush ESS II, LLC

Description: Tariff Amendment: Amendment to Petition Requesting Market-Based Rate Authorization to be effective 7/30/2023.

Filed Date: 6/21/23.

Accession Number: 20230621–5077.

Comment Date: 5 p.m. ET 7/12/23.

Docket Numbers: ER23–2185–000.

Applicants: CE-Shady Farm LLC.

Description: Petition of CE-Shady Farm LLC for Limited Waiver, or in the Alternative for Remedial Relief, Shortened Comment Period, and Expedited Action.

Filed Date: 6/16/23.

Accession Number: 20230616–5231.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–2199–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1978R12 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2023.

Filed Date: 6/21/23.

Accession Number: 20230621–5026.

Comment Date: 5 p.m. ET 7/12/23.

Docket Numbers: ER23–2200–000.

Applicants: Electra Sparks, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Tariff Application to be effective 6/22/2023.

Filed Date: 6/21/23.

Accession Number: 20230621–5037.

Comment Date: 5 p.m. ET 7/12/23.

Docket Numbers: ER23–2201–000.

Applicants: Star Light and Power LLC.

Description: Baseline eTariff Filing: Market-Based Rate Tariff Application to be effective 6/22/2023.

Filed Date: 6/21/23.

Accession Number: 20230621–5038.

Comment Date: 5 p.m. ET 7/12/23.

Docket Numbers: ER23–2202–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6958; Queue No. AE2–256 to be effective 5/23/2023.

Filed Date: 6/21/23.

Accession Number: 20230621–5040.

Comment Date: 5 p.m. ET 7/12/23.

Docket Numbers: ER23–2203–000.

Applicants: Wildflower Solar, LLC.

Description: Baseline eTariff Filing: Wildflower Solar LLC—MBR Application to be effective 8/21/2023.

Filed Date: 6/21/23.

Accession Number: 20230621–5041.

Comment Date: 5 p.m. ET 7/12/23.

Docket Numbers: ER23–2204–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2066R12 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2023.

Filed Date: 6/21/23.

Accession Number: 20230621–5080.

Comment Date: 5 p.m. ET 7/12/23.

Docket Numbers: ER23–2205–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 6955; Queue No. AF1–136 to be effective 5/22/2023.

Filed Date: 6/21/23.

Accession Number: 20230621–5088.

Comment Date: 5 p.m. ET 7/12/23.

Docket Numbers: ER23–2206–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of WMPA, SA No. 4794; Queue No. AC1–116 re: breach to be effective 8/21/2023.

Filed Date: 6/21/23.

Accession Number: 20230621–5104.

Comment Date: 5 p.m. ET 7/12/23.

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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

Dated: June 21, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–13609 Filed 6–26–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2190–000]

SR DeSoto III, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of SR DeSoto III, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 11, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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Dated: June 21, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–13613 Filed 6–26–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2186–000]

SR DeSoto II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of SR DeSoto II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 11, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: June 21, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–13615 Filed 6–26–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2191–000]

Apollo Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Apollo Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket

authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 11, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: June 21, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–13612 Filed 6–26–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15058–001]

BOST2 Hydroelectric LLC; Notice of Surrender of Preliminary Permit

Take notice that BOST2 Hydroelectric LLC, permittee for the proposed Shawno County Pumped Storage Project No. 15058, has requested that its preliminary permit be terminated. The permit was issued on May 5, 2021, and would have expired on April 30, 2025.[1] The project would have been located near the Embarrass River and the Village of Tigerton, Shawano County, Wisconsin.

The preliminary permit for Project No. 15058 will remain in effect until the close of business, thirty days from the date of this notice. But, if the Commission is closed on this day, then the permit remains in effect until the close of business on the next day in which the Commission is open.[2] New applications for this site may not be submitted until after the permit surrender is effective.

Dated: June 21, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–13604 Filed 6–26–23; 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: RP23–843–000.

Applicants: Stagecoach Pipeline & Storage Company LLC.

Description: § 4(d) Rate Filing: Stagecoach Pipeline & Storage Company LLC—Equinor Natural SP386894 to be effective 7/1/2023.

Filed Date: 6/21/23.

Accession Number: 20230621–5025.

Comment Date: 5 p.m. ET 7/3/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: PR23–44–001.

Applicants: Moss Bluff Hub, LLC.

Description: § 284.123 Rate Filing: Moss Bluff—TPGS Market Power Study Notification to be effective N/A.

Filed Date: 6/20/23.

Accession Number: 20230620–5227.

Comment Date: 5 p.m. ET 7/11/23.

Docket Numbers: RP23–683–001.

Applicants: Egan Hub Storage, LLC.

Description: Compliance filing: Egan—TPGS Market Power Study Notification to be effective N/A.

Filed Date: 6/20/23.

Accession Number: 20230620–5223.

Comment Date: 5 p.m. ET 7/3/23.

Docket Numbers: RP23–685–001.

Applicants: Bobcat Gas Storage.

Description: Compliance filing: Bobcat—TPGS Market Power Study Notification to be effective N/A.

Filed Date: 6/20/23.

Accession Number: 20230620–5222.

Comment Date: 5 p.m. ET 7/3/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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[1] 175 FERC ¶ 62,051 (2021).

[2] 18 CFR 385.2007(a)(2) (2022).

rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: June 21, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–13608 Filed 6–26–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2489–049]

Green Mountain Power Corporation; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor.

b. *Project No.:* P–2489–049.

c. *Date Filed:* October 31, 2022.

d. *Applicant:* Green Mountain Power Corporation (GMP).

e. *Name of Project:* Cavendish Hydroelectric Project (Cavendish Project or project).

f. *Location:* On the Black River, in the town of Cavendish, in Windsor County, Vermont.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John Tedesco, Green Mountain Power Corporation, 2152 Post Road, Rutland, VT 05701; (802) 655–8753; or *john.tedesco@greenmountainpower.com.*

i. *FERC Contact:* Adam Peer at (202) 502–8449; or *adam.peer@ferc.gov.*

j. *Deadline for filing scoping comments:* July 21, 2023.

The Commission strongly encourages electronic filing. Please file scoping comments 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, 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. All filings must clearly identify the following on the first page: Cavendish Hydroelectric Project (P–2489–049).

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener 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. The application is not ready for environmental analysis at this time.

l. *The existing Cavendish Project consists of:* (1) a 3,000 foot-long, 10-acre impoundment with a gross storage capacity of 18.4-acre-feet at a normal water surface elevation of 884.13 feet National Geodetic Vertical Datum of 1929; (2) a 111-foot-long concrete gravity dam that consists of: (a) a 90-foot-long by 25-foot-high north spillway section topped with a 6-foot-high inflatable flashboard system; and (b) a 21-foot-long by 6-foot-high south spillway section topped with 2.5-foot-high steel flashboards; (3) an 18-inch wide downstream fish passage chute located on the north side of the spillway; (4) a concrete intake structure equipped with a mechanically operated headgate, and a trash rack with 2-inch clear bar spacing; (5) a 178-foot-long concrete and rock tunnel that carries water from the intake to a penstock; (6) a 6-foot-diameter, 1,090-foot-long steel penstock; (7) a 64-foot-long by 34-foot-wide powerhouse containing three turbine-generator units with a combined capacity of 1.44 megawatts; (8) a 100-foot-long transmission line that runs from the powerhouse to a substation within the project boundary; and (9) appurtenant facilities. The project creates a 1,570-foot-long bypassed reach of the Black River.

The current license requires GMP to: (1) operate the project in run-of-river mode; (2) maintain the impoundment water level no lower than 6 inches below the crest of the flashboards; (3) release a continuous minimum flow of 10 cubic feet per second (cfs) to the bypassed reach; and (4) release overall downstream flows of at least 42 cfs from June 1 to September 30, at least 83 cfs from October 1 to March 31, and at least 332 cfs from April 1 to May 31 when refilling the impoundment after project maintenance or flashboard installation. If inflows are insufficient to meet the downstream flows during impoundment refill, GMP is required to release 90 percent of instantaneous inflow through the turbines. The project generates about 4,864 megawatt-hours annually.

GMP proposes to: (1) continue operating the project in run-of-river mode; (2) maintain a stable impoundment water level at the top of the flashboard crest; (3) continue releasing a continuous minimum flow of 10 cfs to the bypassed reach; and (4) release 90 percent of instantaneous inflow through the turbines at all times when refilling the impoundment.

m. At this time, the Commission has suspended access to the Commission's Public Reference Room. Copies of the application can be viewed on the Commission's website at *https://www.ferc.gov* using the ''eLibrary'' link. Enter the project's docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov.*

You may also register 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov.*

n. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

o. Scoping Process

Pursuant to the National Environmental Policy Act (NEPA), Commission staff intends to prepare either an environmental assessment (EA) or an environmental impact statement (EIS) (collectively referred to as the ''NEPA document'') that describes and evaluates the probable effects, including an assessment of the site-specific and cumulative effects, if any, of the proposed action and alternatives. The Commission's scoping process will help determine the required level of analysis and satisfy the NEPA scoping requirements, irrespective of whether the Commission issues an EA or an EIS. At this time, we do not anticipate holding an on-site scoping meeting.

Instead, we are soliciting written comments and suggestions on the preliminary list of issues and alternatives to be addressed in the NEPA document, as described in scoping document 1 (SD1), issued June 21, 2023.

Copies of the SD1 outlining the subject areas to be addressed in the NEPA document were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of SD1 may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Dated: June 21, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–13603 Filed 6–26–23; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0127]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collection described below (OMB Control No. 3064–0127).

DATES: Comments must be submitted on or before July 27, 2023.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

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: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

1. *Title:* Fast-Track Generic Qualitative Surveys.

OMB Number: 3064–0127.

Forms: None.

Affected Public: Private Sector; Insured state nonmember banks and state savings associations and members of the public interacting with the FDIC.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0127]

Information collection (obligation to respond)	Type of burden (frequency of response)	Average number of respondents	Frequency	Average time per response (hours)	Estimated annual burden (hours)
Generic Quality of Service Qualitative Surveys (Voluntary).	Reporting (Occasional)	850	20	1	17,000
Total Estimated Annual Burden (Hours)	.....	.....	.....	.....	17,000

Source: FDIC.

General Description of Collection: This information collection establishes ongoing authority for FDIC to conduct yet-to-be-determined occasional quality-of service surveys under OMB's generic survey program. Once this information collection extension request is approved by OMB, FDIC will be able to obtain expedited approval of individual surveys by following a special submission process that does not require the publication of **Federal Register** notices for each individual survey. Generic clearance requests should be approved by OMB within five business days of submission. FDIC estimates that the generic surveys to be deployed under this information collection each will involve an average of 850 respondents, generally should not require more than one hour per respondent to complete, and are always voluntary in nature. FDIC estimates that it will deploy approximately 20 such surveys annually. The purpose of the surveys is, in general terms, to obtain anecdotal information on a voluntary basis about quality of service, regulatory burden, problems or successes in the bank supervisory process (including exams related to both safety and soundness, and compliance with consumer protection laws and regulations), the perceived need for regulatory or statutory change, and similar concerns. There is no change in the substance or methodology of this information collection and the estimated annual burden remains unchanged.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on June 22, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–13649 Filed 6–26–23; 8:45 am]

BILLING CODE P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION NOTICE OF PREVIOUS ANNOUNCEMENT: 88 FR 39254.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, June 21, 2023 at 10:30 a.m. and its continuation at the conclusion of the open meeting on June 22, 2023.

CHANGES IN THE MEETING: The meeting also discussed:

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b.)

Vicktoria J. Allen,

Deputy Secretary of the Commission.

[FR Doc. 2023–13776 Filed 6–23–23; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS23–09]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Collection and Transmission of Annual AMC Registry Fees

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the ASC invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection request entitled ''Collection and Transmission of Annual AMC Registry Fees.''

DATES: Written comments must be received on or before August 28, 2023 to be assured of consideration.

ADDRESSES: Commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. You may submit comments, identified by Docket Number AS23–09, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *Email: webmaster@asc.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 289–4101. Include docket number on fax cover sheet.
- *Mail or Hand Delivery/Courier:* Address to Appraisal Subcommittee, Attn: Lori Schuster, Management and Program Analyst, 1325 G Street NW, Suite 500, Washington, DC 20005.

In general, the ASC will enter all comments received into the docket and publish those comments on the *Regulations.gov* website without change, including any business or personal information that you provide, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. The ASC will summarize and/or include your comments in the request for OMB's clearance of this information collection.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *https://www.regulations.gov.* Enter ''Docket ID AS20–06'' in the Search box and click ''Search.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Viewing Comments Personally:* You may personally inspect comments at the ASC office, 1325 G Street NW, Suite 500, Washington, DC 20005. To make an appointment, please call Lori Schuster at (202) 595–7578.

FOR FURTHER INFORMATION CONTACT: Juan Burgos, Attorney Advisor, at (202) 792–1170, or Lori Schuster, Management and Program Analyst, at (202) 595–7578, Appraisal Subcommittee, 1325 G Street NW, Suite 500, Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

Title: Collection and Transmission of Annual AMC Registry Fees.

OMB Number: 3139–0008.

Abstract: States that register and supervise appraisal management companies (AMCs) are required to collect and transmit annual AMC registry fees to the ASC. 12 CFR part 1102, and in particular section 1102.402, established the annual AMC registry fee for States that register and supervise AMCs as follows: (1) in the case of an AMC that has been in existence for more than a year, $25 multiplied by the number of appraisers who have performed an appraisal for the AMC on a covered transaction in such State during the previous year; and (2) in the case of an AMC that has not been in existence for more than a year, $25 multiplied by the number of appraisers who have performed an appraisal for the AMC on a covered transaction in such State since the AMC commenced doing business. Performance of an appraisal means the appraisal service requested of an appraiser by the AMC was provided to the AMC. Section 1102.403 requires AMC registry fees to be collected and transmitted to the ASC on an annual basis by States that register and supervise AMCs. Only those AMCs whose registry fees have been transmitted to the ASC are eligible to be on the AMC Registry for the 12-month period following the payment of the fee. Section 1102.403 clarified that States may align a one-year period with any 12-month period, which may, or may not, be based on the calendar year. The registration cycle is left to the individual States to determine.

Current Action: There are no changes being made to this regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: States; businesses or other for-profit and not-for-profit organizations.

Estimated Number of Respondents: 400 AMCs, 55 States.

Estimated Total Annual Burden Hours: 400 hours.

Frequency of Response: Event generated.

By the Appraisal Subcommittee.

James R. Park,

Executive Director.

[FR Doc. 2023–13626 Filed 6–26–23; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than July 12, 2023.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Carmen De Abreu 2023 Family Exempt Trust, Jackson, Wyoming; and Carmen Elena De Abreu, Miami, Florida, Investa Group Corp., Wilmington, Delaware, and Teton Trust Company LLC, Jackson, Wyoming, as co-trustees;* to join the Abreu Family Control Group, a group acting in concert, to acquire voting shares of Ocean Bankshares, Inc., and thereby indirectly acquire voting shares of Ocean Bank, both of Miami, Florida.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–13662 Filed 6–26–23; 8:45 am]

BILLING CODE P

FINANCIAL STABILITY OVERSIGHT COUNCIL

[Docket No. FSOC–2023–0001]

Analytic Framework for Financial Stability Risk Identification, Assessment, and Response

AGENCY: Financial Stability Oversight Council.

ACTION: Proposed analytic framework; extension of comment period.

SUMMARY: The Financial Stability Oversight Council (Council) is extending by 30 days the comment period on its proposed Analytic Framework for Financial Stability Risk Identification, Assessment, and Response. The comment period will now close on July 27, 2023.

DATES: *Comment due date:* July 27, 2023

ADDRESSES: You may submit comments by either of the following methods. All submissions must refer to the document title and docket number FSOC–2023–0001.

Electronic Submission of Comments: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Council to make them available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Mail: Send comments to Financial Stability Oversight Council, Attn: Eric Froman, 1500 Pennsylvania Avenue NW, Room 2308, Washington, DC 20220.

All properly submitted comments will be available for inspection and downloading at *http://www.regulations.gov.*

In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Eric Froman, Office of the General Counsel, Treasury, at (202) 622–1942; Devin Mauney, Office of the General Counsel, Treasury, at (202) 622–2537; or Carol Rodrigues, Office of the General Counsel, Treasury, at (202) 622–6127.

SUPPLEMENTARY INFORMATION: On April 28, 2023, the Council published in the **Federal Register** a proposed Analytic Framework for Financial Stability Risk Identification, Assessment, and Response (Proposed Analytic Framework), which describes the approach the Council expects to take in identifying, assessing, and responding to certain potential risks to U.S. financial stability.[1] Comments on the Proposed Analytic Framework were originally due on June 27, 2023.

The Council has received a request to extend the comment period to allow interested parties additional time to review and comment on the Proposed Analytic Framework. The Council is therefore extending the comment period on the Proposed Analytic Framework by 30 days to July 27, 2023.

Dated: June 21, 2023.

Sandra Lee,

Deputy Assistant Secretary, Financial Stability Oversight Council.

[FR Doc. 2023–13548 Filed 6–26–23; 8:45 am]

BILLING CODE 4810–AK–P–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Nonpharmacologic Treatment for Maternal Mental Health Conditions

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for Supplemental Evidence and Data Submissions

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Nonpharmacologic Treatment for Maternal Mental Health Conditions,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before July 27, 2023.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for

[1] 88 FR 26305 (April 28, 2023).

Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kelly Carper, Telephone: 301–427–1656 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Nonpharmacologic Treatment for Maternal Mental Health Conditions.* AHRQ is conducting this systematic review pursuant to Section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on Nonpharmacologic Treatment for Maternal Mental Health Conditions, including those that describe adverse events. The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/mental-health-pregnant/protocol.*

This is to notify the public that the EPC Program would find the following information on Nonpharmacologic Treatment for Maternal Mental Health Conditions helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Questions (KQ)

KQ 1: What are the effectiveness and comparative effectiveness and harms of nonpharmacologic treatments for mental health conditions in perinatal individuals?
(a) Depressive disorders
(b) Bipolar disorder
(c) Anxiety disorders
(d) Post-traumatic stress disorder
(e) Obsessive-compulsive disorder

KQ 2: What are the comparative effectiveness and harms of nonpharmacologic treatments compared with pharmacologic treatment alone for mental health conditions in perinatal individuals?
(a) Depressive disorders
(b) Bipolar disorder
(c) Anxiety disorders
(d) Post-traumatic stress disorder
(e) Obsessive-compulsive disorder

Population(s)

- Perinatal individuals
  - Individuals who are pregnant or postpartum (up to 12 months after delivery) with new or preexisting diagnosis of depression disorder, bipolar disorder, anxiety disorders, post-traumatic stress disorder (PTSD), obsessive-compulsive disorder (OCD)
  - Diagnoses must be confirmed via clinical interview or validated screening tool (*e.g.,* Edinburgh Postnatal Depression Scale [EPDS]; Patient Health Questionnaire-9 [PHQ–9) with a commonly accepted threshold
  - EXCLUDE: studies that evaluate patients with depressive or anxiety symptoms in contrast with diagnoses of depression or anxiety, including studies that include patients with screening tool values below a threshold consistent with diagnosis
  - EXCLUDE: populations in which the primary condition is phobia of pregnancy (*i.e.,* tokophobia)
  - EXCLUDE: studies with mixed populations (*e.g.,* perinatal and non-perinatal, mental health condition and non-mental health condition), unless ≥90% of the studied population represent an eligible population for the review. This exclusion criterion does not apply to populations with multiple eligible mental health conditions; studies of perinatal individuals with two or more conditions (*e.g.,* studies targeting individuals with both depression and anxiety) will be included.
  - EXCLUDE: Studies of patients with substance use disorders, exclusively.

Intervention

- Nonpharmacologic modalities

To be included, studies must evaluate one or more nonpharmacological modalities such as those listed below. Although the list sought to be comprehensive, it is not intended to be restrictive to modalities not appearing on the list. If a study otherwise meets eligibility criteria and describes a nonpharmacological intervention involving a form of psychotherapy or complementary/alternative therapy (aside from those specified for exclusion) it will be considered for inclusion.

Note that the list of modalities includes treatments for any of the mental health conditions under consideration, recognizing that not all therapies are appropriate for all conditions.

Psychotherapies

- Cognitive behavior therapy (CBT)
  - Examples: trauma-focused CBT, mindfulness-based, cognitive processing therapy, cognitive restructuring, cognitive remediation therapy, stress inoculation training
- Acceptance and commitment therapy (ACT)
- Psychodynamic therapy

- Interpersonal psychotherapy (IPT)
- Supportive therapy
- Dialectical behavioral therapy (DBT)
- Exposure therapy
  - Example: Narrative Exposure Therapy (NET), prolonged exposure therapy
- Eye movement desensitization and reprocessing therapy
- Imagery rehearsal therapy
- Social rhythm therapy

Psychoeducation

- Trauma affect regulation
- Problem solving

Other

- Electroconvulsive therapy (ECT)

Complementary/alternative therapies

- Mindfulness
- Exercise
- Relaxation
- Yoga
- Tai Chi
- Self-hypnosis and relaxation
- Acupuncture
- Bright light therapy
- Sleep therapy
- Writing, art, music therapy

- EXCLUDE: studies with interventions that are poorly specified or not structured programs (*i.e.,* cannot be reasonably replicated in practice or future research)
- EXCLUDE: unsupervised peer-to-peer or social media interventions
- EXCLUDE: interventions delivered through ingestion or parenterally, and surgical or invasive interventions (with the exception of acupuncture or ECT) (*e.g.,* omega-3 fatty acid, St. John's wort, kava, valerian, theanine)
- EXCLUDE: interventions designed to address issues other than the mental health conditions of interest (*e.g.,* diet changes, weight loss, lactation training, reintroduction of sexual activity)
- EXCLUDE: interventions focused on the processes of delivering of care (*e.g.,* collaborative care model)

Mechanisms of Delivery

The above intervention modalities may be delivered in diverse ways in different settings, by different personnel, with different intensities. We will include studies of the above that directly compare different mechanisms of delivery below. We have purposefully separated the content of modalities of interest from means by which they may be delivered since mechanisms of delivery (*e.g.,* telehealth) are not interventions in their own right.

Number of participants

- Individuals
- Group

Type of participants

- Individual
- Couple
- Family

Type of provider

- Professional (*e.g.,* psychotherapist, exercise instructor)
- Community based non-professional or peer
- Not applicable (*i.e.,* self-administered)

Type of modality

- In-person
- Online via computer
- Online via mobile app

Duration

- 'Brief', 'short-term'
- 'Prolonged'
- *N.B. many studies use diverse labels to signify the duration of the intervention delivered. The meaning of these labels will be extracted as part of our intervention extraction process. We will not exclude studies based on their duration.*

Outcomes

Outcomes in bold font, with footnote ''a'' will be prioritized (i.e., will be included in Evidence Profiles).

- **Scores on psychological assessments** [1] (for each evaluated condition)
  - Including self-assessed symptoms of mental health condition [b]
- **Cure/resolution of symptoms or condition** [a]
- **Parent-infant bonding** [a 2]
- **Suicide** [a b]
  - **Suicidal thoughts** [a]
  - **Attempted suicide** [a]
  - **Death by suicide** [a]
- **Thoughts of harming the baby, including thoughts of extended suicide** [a b]
- **Adherence to mental health treatment** [a b]
- Satisfaction with intervention [b]
- Perceived self-efficacy for parenthood
- Perceived self-efficacy for management of mental health
- Harms of treatment
- Quality of life
- Return to work
- Maternal clinical outcomes (*e.g.,* preeclampsia, preterm delivery)
- Safe family environment
- Fetal/neonatal/pediatric clinical outcomes
  - Live birth
  - Infant feeding success
  - Infant growth
  - Pediatric death
  - Pediatric development (*e.g.,* neurodevelopmental milestones)
  - Pediatric cognitive and academic achievement
  - Pediatric social/emotional wellbeing
- Prenatal care utilization. *E.g.,* completion of prenatal visits, completion of recommended prenatal services, unexpected health care utilization (*e.g.,* emergency department/triage visits), postpartum care follow-up

Potential Modifiers

- Pregnancy status (pregnant, postpartum after live birth, postpartum after fetal loss or infant death or needing intensive care, breastfeeding; change of status within study period)
- Severity of mental health conditions (*e.g.,* mild, moderate or severe depression; depression with or without anxiety, psychosis)
- Comorbidities, including other mental health conditions
- Age
- Race/ethnicity
- Religion/faith
- Birthplace (*e.g.,* immigrant from Latin America vs. U.S.-born)
- Gender identification
- Sexual orientation
- Socioeconomic factors
- Geographic region, urbanicity
- Patient-provider congruence (*e.g.,* with respect to racial, ethnic, language, and other socioeconomic factors)
- Use of social media
- Partner support
- Interpersonal violence (including partner violence)
- Availability of family leave, paid or unpaid
- Drug use
- History of abortion
- History of pregnancy loss
- Intended pregnancy
- Parity
- Insurance status
- Accessibility issues (*e.g.,* internet access, in particular for telehealth interventions)
- COVID–19 pandemic (as defined by study authors)

Setting

- Ambulatory with exception of individuals in hospital due to non-mental health pregnancy or postpartum complications (*i.e.,* exclude patients in acute inpatient psychiatric setting)
- Treatment delivery method (all including in-person, telehealth, digital)
- High-income countries (as defined by World Bank as of May 11, 2023)

Design

- Randomized controlled trials
- EXCLUDE: Nonrandomized comparative studies

[a] Prioritized outcome.

[b] From perinatal depression core outcome set (recommended 9 core outcomes) Helberg et al. 2021. PMID 34047454.

- EXCLUDE: Single group (noncomparative) studies, including case reports or series
- EXCLUDE: Studies with N<10 per arm
- EXCLUDE: Studies published only in dissertation or conference abstract format

We will collect SRs to identify potentially eligible primary studies (within date restrictions) and possibly to narratively summarize older studies of earlier foundational nonpharmacological interventions.

For topics with robust existing SRs (*e.g.,* non-pharmacological interventions for perinatal depression), we will consider (with partners and our task order officer [TOO]) updating these SRs (relying on the published SRs for all data pertaining to the older primary studies).

Eligibility criteria specific to Key Question 1 (nonpharmacologic vs. nothing/treatment as usual/usual care or vs. other nonpharmacologic)

Intervention

- May include same pharmacologic co-intervention as comparator group

Comparators

- No nonpharmacologic treatment
- Other nonpharmacologic modality
- May include same pharmacologic co-intervention as intervention group

Eligibility criteria specific to Key Question 2 (nonpharmacologic vs pharmacologic)

Intervention

- Nonpharmacologic intervention alone (no use of pharmacologic therapy)

Comparators

- Pharmacologic treatment alone

Dated: June 21, 2023.

Marquita Cullom,

Associate Director.

[FR Doc. 2023–13581 Filed 6–26–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project ''Use of Open-Ended Responses to Explore Disparities in Patient Experience.'' The purpose of this notice is to allow 60 days for public comment.

DATES: Comments on this notice must be received by August 28, 2023.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Use of Open-Ended Responses To Explore Disparities in Patient Experience

The Consumer Assessment of Healthcare Providers and Systems (CAHPS) program, which is sponsored by AHRQ, has the purpose of advancing the scientific understanding of the patient experience of care, including the development and testing of new surveys and/or approaches to data collection to promote or improve the collection of consumer reports and evaluations of their experiences with health care.

This Project has the following goals:

(1) Use open-ended (narrative) responses to provide context, detail, and understanding regarding observed differences in patient experience based on race, ethnicity, gender, and preferred language.

(2) Use Clinician and Group -CAHPS Narrative Item Set (NIS)-generated narrative data to examine potential algorithmic bias in natural language programs (NLP) that could potentially be used to code large quantities of narrative data.

(3) Where algorithmic bias is uncovered, use this analysis to identify adjustments that can be applied to both the input for these programs or the outputs.

This project is being conducted by AHRQ through its contractor, the RAND Corporation, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness, and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C 299a(a)(1) and (2).

Method of Collection

To achieve the goals of this project the following data collections will be implemented:

Online survey: Data will be collected from a sample of 4,998 survey respondents drawn from the Ipsos KnowledgePanel, a large nationwide online panel of American adults (over 50,000 panelists) with demographic characteristics consistent with the adult U.S. population. Equal-sized subsamples will be drawn for each of the following groups: non-Hispanic Asian American, Native Hawaiian or Other Pacific Islander; non-Hispanic Black; Spanish-speaking Hispanic; English-speaking Hispanic; non-Hispanic Multiracial; and non-Hispanic White. Within these six subsamples, we will strive to recruit a roughly equal split of men and women. The survey will be fielded in English and Spanish based on respondent-preferred language.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for survey respondents' time to participate in this data collection. All participants will complete the Online Survey, which is estimated to take 17 minutes per response. The total annual burden hours are estimated to be 1,416 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this data collection. The cost burden is estimated to be $39,662.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Online Survey	4,998	1	.28	1,416
Total	4,998	na	na	1,416

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Online Survey	4,998	1,416	[a] $28.01	$39,662
Total	4,998	1,416	Na	$39,662

* The May 2017 National Employment and Wage Estimates reported by the Bureau of Labor statistics indicate an average hourly wage of $28.01 across the 50 U.S. states and the District of Columbia. The national average has been used to estimate the wages of survey respondents. The Knowledge Panel consists of a broad cross-section of the U.S. adult population, and thus a national average should be a reasonable estimate of the wages of survey respondents. National Compensation Survey: Occupational wages in the United States May 2021, ''U.S. Department of Labor, Bureau of Labor Statistics.''

[a] Based on the mean wages for all occupations, code 00–0000.

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: June 21, 2023.

Marquita Cullom,

Associate Director.

[FR Doc. 2023–13579 Filed 6–26–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[60Day–23–0057; Docket No. ATSDR–2023–0002]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled APPLETREE Performance Measures. ATSDR will use this data collection to manage the next five-year cooperative agreement program under Notice of Funding Opportunity (NOFO) No. CDC–RFA–TS–23–0001.

DATES: ATSDR must receive written comments on or before August 28, 2023.

ADDRESSES: You may submit comments, identified by Docket No. ATSDR–2023–0002 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. ATSDR will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are

publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 submissions of responses; and

5. Assess information collection costs.

Proposed Project

APPLETREE Performance Measures (OMB Control No. 0923–0057, Exp. 09/30/2023)—Revision—Agency for Toxic Substances and Disease Registry (ATSDR).

Background and Brief Description

The Agency for Toxic Substances and Disease Registry (ATSDR) seeks to build and sustain the capacity to evaluate exposures to hazardous waste across the country. Releases from hazardous waste sites are a major source of harmful exposures in homes, schools, workplaces, and communities. These exposures are often complex and may be difficult to identify and control. Hazardous waste sites may involve various toxic substances, exposure pathways, and health impacts. ATSDR's primary goal is to keep communities safe from harmful exposures and related diseases. To accomplish this goal, the agency works closely with partnering agencies to evaluate exposures at hazardous waste sites, educate communities, and seek new ways to better protect public health.

ATSDR's Partnership to Promote Local Efforts to Reduce Environmental Exposure (APPLETREE) Program is critical to ATSDR's success in accomplishing its mission in communities nationwide. ATSDR's recipients will use APPLETREE funding to advance ATSDR's primary goal of keeping communities safe from harmful environmental exposures and related diseases. APPLETREE gives recipients the resources to build their capacity to assess and respond to site-specific issues involving human exposure to hazardous substances in the environment. APPLETREE helps recipients identify exposure pathways at specific sites; educate affected communities about site contamination and potential health effects; make recommendations to prevent exposure; review health outcome data to evaluate potential links between site contaminants and community health outcomes. APPLETREE facilitates the implementation of state-level programs to ensure that potential early care and education facilities are in areas free from harmful environmental exposures. Additionally, it motivates the recipients to innovate and implement progressive public health interventions that can prevent exposure to environmental contamination. Due to the local connections and partnerships of APPLETREE recipients, there is an enhancement in community engagement and implementation of recommendations. This program is authorized under Sections 104(i)(15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 [42 U.S.C. 9604(i)(15)].

Under the next five-year APPLETREE cooperative agreement NOFO No. CDC–RFA–TS–23–0001), eligible applicants include federally recognized American Indian/Alaska Native tribal governments; American Indian/Alaska native tribally designated organizations; political subdivisions of states (in consultation with states); and state and local governments or their bona fide agents. ATSDR technical project officers (TPOs) will assist approximately 30 APPLETREE recipients to address site-specific issues involving human exposure to hazardous substances. Key capacities include identification of human exposure pathways at ATSDR sites, education of affected communities and local health professionals about site contamination and potential health effects; making appropriate recommendations to prevent exposure; reviewing health outcome data to evaluate potential links between site contaminants and community health; and documenting the effects of environmental remediation on health.

This is a Revision Information Collection Request (ICR) titled ''APPLETREE Performance Measures,'' previously approved under OMB Control No. 0923–0057 (Expiration Date 9/30/2023). ATSDR will continue to collect information related to recipient activities, and the process and outcome performance measures outlined by the cooperative agreement program. Information will be used to monitor progress toward program goals and objectives, and for program quality improvement. Nine forms have been previously approved by OMB under APPLETREE Performance Measures under OMB Control No. 0923–0057. The first three forms were migrated to the new information technology (IT) system called ATSDR's Request Management Service System (ARMSS).

1. ATSDR Health Education Activity (HE) Form: For each environmental health assessment and health education activity conducted at ATSDR sites, APPLETREE Recipients shall quantitatively assess and report efforts to educate community members about site recommendations and health risks using indicators to assess community understanding of site findings about health risks and community understanding of agency recommendations to reduce health risks. This information will be entered into ARMSS for each health education activity at ATSDR sites.

2. ATSDR Technical Assistance Activity (TA) Form: Throughout the budget year, this form will be used to record the routine requests made by the recipients and their program responses. These responses do not evaluate environmental data and do not make health calls but are monitored by ATSDR as part of the recipients' performance.

3. ATSDR Site Impact Assessment (SIA) Form: For each environmental health assessment and health education activity conducted at ATSDR sites, recipients shall estimate and report the number of people protected from exposure to toxic substances at each site where implementation of agency recommendations has taken place and at each childcare center where safe siting guidelines have been implemented. To the extent possible, recipients shall estimate and report the disease burden prevented due to the implementation of site recommendations and safe siting guidelines.

The fourth form is currently being migrated from SharePoint to ARMSS. This transition is currently taking place.

4. ATSDR Success Story Form: Recipients will provide one success story per quarter (four success stories total per year) that highlights the impact of any of their programs. Recipients will report a summary, background, intervention/action taken, and accomplishment/impact for each story. Optionally, they may include a photo or quote.

Recipients will continue to submit the following five forms to ATSDR via email. In the future, these forms will be moved to an electronic system (*e.g.,* ARMSS or REDCap) to simplify data collection.

5. APPLETREE Annual Performance Report (APR) Template: Recipients will continue to provide an APR each year and at the end of the funding cycle, which summarizes their annual and funding cycle performances, respectively. APRs will be due in December of each year to coincide with the CDC Grants Management annual reports to reduce the overall reporting burden, and the final report will be due at the end of the funding cycle. The purpose of the performance reports will be to assess Partners based on performance measures and evaluation projects. The reports should include a summary of performance measures, results of any evaluation projects, an accompanying narrative of progress and interpretation of results, optional successes, challenges, and an updated work plan. These reports will be entered into a Microsoft Word form.

6. Choose Safe Places for Early Care and Education (CSPECE) Qualitative Narrative Form: Recipients will continue to provide a narrative report of their CSPECE Programs to document descriptive details of their state's landscape, program plan, program implementation, and results that cannot be captured through numbers. Recipients will complete and submit the narrative once a year as a supplement with their APRs in a Microsoft Word form.

7. CSPECE Quantitative Form: Recipients will continue to provide data on their CSPECE Programs to quantify aspects of their program such as children reached, target audiences educated, early care and education programs referred and screened, and recommendations implemented. To supplement their APRs, recipients will complete and submit a Microsoft Excel form once a year as a supplement with their APRs.

In addition to the required annual reporting, at the end of the five-year program, each recipient will report cumulative five-year performance measures for three forms: the APR, the CSPECE Qualitative Narrative Form, and the CSPECE Quantitative Form. This will result in six total responses in a five-year period for each form. The estimated annualized number of required responses is thus rounded to once per year for these three forms, as 6 hours divided by three years equals 1.2 hours per year.

8. ATSDR SoilSHOP Form: SoilSHOPs are not a required activity; however, if conducted, a recipient will need to complete the ATSDR SoilSHOP Form. This form gathers data on the inputs, activities, outputs, and outcomes of the event, such as the number of soil samples screened, the number of elevated soil samples, the number of individuals receiving health consultations, and the number of individuals receiving referrals. The form will be submitted to ATSDR via email within three weeks of the SoilSHOP completion.

9. ATSDR Recommendation Follow-up Form: For each environmental health assessment, recipients will provide an update on the status of acceptance and implementation of all recommendations to understand whether and how recommendations have been implemented, and the subsequent impact on communities. Recipients will complete a Microsoft Excel reporting form annually on the anniversary date of the release of each health assessment.

As part of the Revision request, the last form is new.

10. ATSDR Requests for Certified and Non-certified Public Health Assessments and Health Consultations Form: For each environmental health assessment, recipients will provide the request, dates, and triage information and can associate the request with a hazardous waste site. Site scoping and clearance information are completed for about 15% of environmental health assessments that complete ATSDR's clearance process (*i.e.,* certified). This information will be entered into ARMSS.

ATSDR is seeking a three-year Paperwork Reduction Act (PRA) clearance for this Revision ICR. ATSDR will fund 30 recipients. Recipient reporting is required to receive funding under the APPLETREE cooperative agreement. The total annual time burden requested is 269 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hours)
APPLETREE Recipients	ATSDR Health Education (HE) Activity Form.	30	17	4/60	34
	ATSDR Technical Assistance (TA) Activity Form.	30	17	4/60	34
	ATSDR Site Impact Assessment (SIA) Form.	30	3	7/60	11
	ATSDR Success Story Form	30	4	30/60	60
	APPLETREE Annual Performance Report (APR) Template.	30	1	2	60
	Choose Safe Places for Early Care and Education (CSPECE) Qualitative Narrative Form.	30	1	1	30
	CSPECE Quantitative Form	30	1	15/60	8
	ATSDR SoilSHOP Form	10	1	7/60	1
	ATSDR Recommendation Follow-up	30	4	10/60	20
	ATSDR Requests	30	3	7/60	11
Total					269

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–13571 Filed 6–26–23; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–22GA; Docket No. CDC–2023–0053]

Proposed Data Collection Submitted for Public Comment and Recommendations

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), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Expanding PrEP in Communities of Color (EPICC). The purpose of this study is to implement and evaluate the effectiveness of a clinic-based intervention that utilizes evidence-based education and support tools increase provider knowledge and improve PrEP adherence.

DATES: CDC must receive written comments on or before August 28, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0053 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7118; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 submissions of responses; and

5. Assess information collection costs.

Proposed Project

Expanding PrEP in Communities of Color (EPICC)—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention (NCHHSTP) is requesting approval for 36 months of data collection titled Expanding PrEP in Communities of Color (EPICC). The purpose of this study is to implement and evaluate the effectiveness of a clinic-based intervention that utilizes evidence-based education and support tools to: (1) increase provider knowledge of and comfort with preexposure prophylaxis (PrEP) modalities in clinical practice; and (2) improve PrEP adherence among young men who have sex with men (YMSM).

This study has two aims: In Aim 1 the study team will deliver training to health providers that will focus on implementation of evidence-based tools to enhance the providers' ability to engage in PrEP screening, counseling, initiation and to provide support for adherence and persistence. For Aim 2a, the study will initiate an effectiveness-implementation trial with 400 YMSM to test the effectiveness of the EPICC+ intervention package in increasing PrEP adherence and persistence among YMSM. The intervention will also utilize a mobile app-based platform, HealthMPowerment (HMP) to support ongoing participant engagement and monitoring, as well as to provide additional adherence support. In Aim 2b, the study team will conduct focus groups with providers to gather feedback on overall perceptions of the barriers and facilitators to implementation of evidence-based tools (EBT) within their clinical site.

The information collected in this study will be used to: (1) describe real-world PrEP use including factors influencing selection and change of PrEP regimens; (2) understand and describe barriers and facilitators impacting the implementation of new PrEP modalities in clinical practice; (3) evaluate the feasibility and acceptability of the EPICC+ mobile app among YMSM on PrEP; and (4) evaluate the feasibility and acceptability of implementing a provider training.

This study will be carried out in 10 clinics located in Chicago, IL; New York City, NY; Philadelphia, PA; Charlotte, NC; Raleigh, NC; Tuscaloosa, AL; Montgomery, AL; Tampa, FL; Orlando, FL; and Houston, TX. Aim 1 will include 30 health care providers from the 10 clinic sites, all involved in the direct delivery of PrEP services. Providers may include but are not limited to medical doctors, nurses, adherence counselors, pharmacists, and social workers. Health providers will be recruited via staff emails.

Aim 2a participants will include 400 YMSM ages 18–39, inclusive. Participants will identify as a cisgender male; report sex with a man in the past 12 month; have an active prescription for PrEP; receive care at one of the ten

participating study sites; provide a mailing address within the 50 states where packages can be received; have daily smartphone access; and be fluent in written/spoken English or Spanish. We will use purposive sampling to ensure at least 60% patient sample is African American or Black or Hispanic/Latino/Latinx. Patient participants will be recruited to the study using a combination of approaches including social media, referral and in-person outreach.

Quantitative and qualitative assessments will be used to collect information from providers and YMSM participants. For the Aim 1 provider training, assessments will include pre, post, 3-month, and 6-month surveys to evaluate provider information retention. Providers will also be asked to complete a brief survey at baseline, 3- and 6-months to assess their new patient interaction skills. For Aim 2a, YMSM participants will be asked to complete a baseline assessment and quarterly assessments at 3, 6, 9, 12, 15, and 18 months to assess PrEP adherence; PrEP knowledge, usage and choice; sexual risk behaviors; HIV status of partners); and substance use assessment. A subset of YMSM participants from Aim 2a will be asked to complete an exit interview that will focus on understanding factors that influenced participants' selection of PrEP regimens, changes and/or discontinuations, as well as perceptions of the counseling they received by providers at PrEP initiation and follow-up, receipt of tools or materials that influenced choice and feasibility/acceptability of the HMP app. We will also conduct focus groups with providers in Aim 2b to gather feedback on overall perceptions of the barriers and facilitators to EBT implementation within their clinical site. The study will also collect data through from electronic health records; biological specimens collected at quarterly intervals; and a clinic assessment tool delivered every six months.

For the Aim 1 provider training, we estimate the collection of contact information will take five minutes. Pre-training, baseline and follow up surveys at three and six months will take approximately 15 minutes each to complete. Patient interaction assessments delivered at baseline, three and six months will take approximately 15 minutes each to complete. For Aim 2a, the effectiveness-implementation trail, it is expected that 50% of YMSM screened will meet study eligibility. The initial screening will take five minutes to complete and the collection of contact information to take five minutes. The baseline assessment will take approximately 45 minutes to complete. The follow up assessments will take 45 minutes to complete and will be administered quarterly for a total of six times during the 18-month follow up period. Study staff will assist participants to setup the HMP app, a process that will take 30 minutes.. The patient exit interview takes approximately 60 minutes to complete and will be delivered one time to a subset of 48 YMSM participants. For the Aim 2b provider focus groups, we estimate it will take approximately five minutes to collect contact information and another five minutes to conduct the pre-focus group survey. Providers will attend one focus group that is expected to take 120 minutes to complete.

Total study enrollment for Aim 1 is 30, over the three-year study period the estimated annual enrollment is 10. Total enrollment for Aim 2a is 400, over the three-year study period the estimated annual enrollment is 134. For the Aim 2a exit interview, 45 will participate for an annual enrollment of 15. For Aim 2b, total study enrollment is 48 and the estimated annual enrollment is 16. Additionally, a clinic staff member at each of the ten participating clinic sites will complete a clinic assessment form every six months throughout the study period. The total estimated annualized burden hours are 685. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
General Public—Adults	Aim 1 Provider Contact Information	10	1	5/60	1
General Public—Adults	Aim 1 Provider Training Survey	10	4	15/60	10
General Public—Adults	Aim 1 Patient Interaction Assessment.	10	3	15/60	8
General Public—Adults	Aim 2a Participant Eligibility Screener.	268	1	5/60	23
General Public—Adults	Aim 2a Participant Contact Information.	134	1	5/60	12
General Public—Adults	Aim 2a Baseline Assessment	134	1	45/60	101
General Public—Adults	Aim 2a Quarterly Assessments	134	4	45/60	402
General Public—Adults	Aim 2a HMP App Setup	134	1	30/60	67
General Public—Adults	Aim 2a Exit Interview	15	1	1	15
General Public—Adults	Aim 2b Provider Focus Group Contact Information.	16	1	5/60	2
General Public—Adults	Aim 2b Provider Focus Group Survey.	16	1	5/60	2
General Public—Adults	Aim 2b Provider Focus Group Guide	16	1	2.0	32
General Public—Adults	Clinic Assessment	10	2	30/60	10
Total					886

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–13570 Filed 6–26–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–0881; Docket No. CDC–2023–0052]

Proposed Data Collection Submitted for Public Comment and Recommendations

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), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Data Calls for the Laboratory Response Network (LRN). These Data Calls are needed to address issues concerning the response capabilities of member facilities for priority threat agents or to assess the network's ability to respond to new emerging threats.

DATES: CDC must receive written comments on or before August 28, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0052 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 submissions of responses; and

5. Assess information collection costs.

Proposed Project

Data Calls for the Laboratory Response Network (LRN) (OMB Control No. 0920–0881)—Reinstatement Without Change—National Center for Emerging and Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Laboratory Response Network (LRN) was established by the Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC) in accordance with Presidential Decision Directive 39 which outlined national anti-terrorism policies and assigned specific missions to federal departments and agencies. The Administration has stated that it is the policy of the United States to use all appropriate means, to deter, defeat, and respond to all terrorist attacks on our territory and resources, both with people and facilities. The LRN's mission is to maintain an integrated national and international network of laboratories that can respond quickly to suspected acts of biological, chemical, or radiological terrorism, emerging infectious diseases, and other public health threats and emergencies.

Federal, state and local public health laboratories join the LRN voluntarily. When laboratories join, they assume specific responsibilities and are required to provide facility information to the LRN Program Office at CDC as well as test results for real samples or proficiency tests. LRN laboratories participate in Proficiency Testing Challenges, Exercises and Validation Studies each year. LRN information collection is covered by OMB Control No. 0920–0850. On occasion, CDC may conduct a Special Data Call to obtain additional information from LRN laboratories regarding biological or chemical terrorism, or emerging infectious disease preparedness. Although the LRN Program Office at CDC has an extensive database of information regarding all network members, LRN Special Data Calls are sometimes needed to address issues concerning the response capabilities of member facilities for priority threat agents or to assess the network's ability to respond to new emerging threats. Special Data Calls may be conducted via broadcast email that asks respondents to send information via email to the LRN Help Desk or through online survey tools (*i.e.,* Survey Monkey) which require respondents to go to a web link and answer a series of questions.

This request is for a Reinstatement of a Generic collection instrument that is necessary for any impromptu data calls that are needed. CDC requests OMB approval for an estimated 94 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Public Health Laboratories	Special Data Call	187	1	0.5	94
Total					94

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–13572 Filed 6–26–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–0879]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Information Collections to Advance State, Tribal, Local, and Territorial (STLT) Governmental Agency and System Performance, Capacity, and Program Delivery'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on January 23, 2023 to obtain comments from the public and affected agencies. CDC received one non-substantive comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) 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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Information Collections to Advance State, Tribal, Local, and Territorial (STLT) Governmental Agency and System Performance, Capacity, and Program Delivery (OMB Control Number 0920–0879, Expiration Date 1/31/2024)—Extension—National Center for STLT Public Health Infrastructure and Workforce (NCSTLTPHIW), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the Department of Health and Human Services is to enhance the health and well-being of all Americans. As part of HHS, CDC conducts critical science and provides health information to people and communities to save lives and protect people from health threats. To this end, CDC and HHS seek to accomplish their mission by collaborating with partners throughout the nation and the world to monitor health, detect and investigate health problems, conduct research to enhance prevention, develop and advocate sound public health policies, implement prevention strategies, promote healthy behaviors, foster safe and healthful environments, and provide leadership and training.

CDC is requesting a three-year approval for an Extension of a Generic Clearance to collect information related to domestic public health issues and services that affect and/or involve State, Tribal, Local, and Territorial (STLT) government entities. The respondent universe is comprised of STLT governmental staff or delegates acting on behalf of an STLT agency involved in the provision of essential public health services in the United States. Delegate is defined as a governmental or non-governmental agent (agency, function, office or individual) acting for a principal or submitted by another to represent or act on their behalf. The STLT agency is represented by an STLT entity or delegate with a task to protect and/or improve the public's health.

Information will be used to: (1) assess situational awareness of current public health emergencies; (2) make decisions that affect planning, response and recovery activities of subsequent emergencies; and (3) fill CDC and HHS gaps in knowledge of programs and/or STLT governments that will strengthen surveillance, epidemiology, and laboratory science; and/or improve CDC's support and technical assistance to states and communities. CDC and HHS will conduct brief data collections across a range of public health topics related to essential public health services.

CDC estimates up to 30 data collections with STLT governmental staff or delegates, and 10 data collections with local/county/city governmental staff or delegates, will be conducted on an annual basis. Approximately 95% of these data collections will be web-based and 5% by telephone, in-person, and focus groups. CDC will submit a description of each data collection project to OMB

for final review and approval. The description will include a discussion of the project's purpose, information collection methods and instrument(s), and estimated burden.

CDC requests OMB approval for a total estimated annualized burden of 54,000 hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per respondent (in hrs.)
State, Territorial, or Tribal government staff or delegate.	Web, telephone, in-person, focus group	800	30	1
Local/County/City government staff or delegate.	Web, telephone, in-person, focus group	3,000	10	1

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–13567 Filed 6–26–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–0997]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Standardized National Hypothesis Generating Questionnaire'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on March 10, 2023 to obtain comments from the public and affected agencies. CDC received two non-substantive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) 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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Standard National Hypothesis Generating Questionnaire (OMB Control No. 0920–0997)—Reinstatement—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

It is estimated that each year roughly one in six Americans get sick, 128,000 are hospitalized, and 3,000 die of foodborne diseases. CDC and partners ensure rapid and coordinated surveillance, detection, and response to multistate outbreaks, to limit the number of these illnesses, and to learn how to prevent similar outbreaks from happening in the future.

Conducting interviews during the initial hypothesis-generating phase of multistate foodborne disease outbreaks presents numerous challenges. In the United States there is not a standard, national form or data collection system for illnesses caused by many enteric pathogens. Data elements for hypothesis generation must be developed and agreed upon for each investigation. This process can take several days to weeks and may cause interviews to occur long after a person becomes ill.

CDC requests a Reinstatement of this project, called the Standardized National Hypothesis-Generating Questionnaire, to collect standardized information from individuals who have become ill during a multistate foodborne disease event. Since the questionnaire is designed to be administered by public health officials as part of multistate hypothesis-generating interview activities, this questionnaire is not expected to entail significant burden to respondents.

The Standardized National Hypothesis-Generating Core Elements Project was established with the goal to define a core set of data elements to be used for hypothesis generation during multistate foodborne investigations. These elements represent information that should be available for all outbreak-associated cases identified during hypothesis generation. The core elements would ensure that similar exposures would be ascertained across many jurisdictions, allowing for rapid pooling of data to improve the timeliness of hypothesis-generating analyses and to shorten the time to pinpoint how and where contamination events occur.

The Standardized National Hypothesis Generating Questionnaire

(SNHGQ) was designed as a data collection tool for the core elements, to be used when a multistate cluster of enteric disease infections is identified. The questionnaire is designed to be administered over the phone by public health officials to collect core elements data from case-patients or their proxies. Both the content of the questionnaire (the core elements) and the format were developed through a series of working groups comprised of local, state, and federal public health partners.

Since the last revision of the SNHGQ in 2019, CDC has investigated over 470 possible multistate foodborne and enteric clusters of infection involving over 26,000 ill people. Of which, an outbreak vehicle has been identified in 199 of these investigations. These outbreaks have led to many recalls and countless regulatory actions that have removed millions of pounds of contaminated vehicles out of commerce. In almost all instances, the SNHGQ or iterations of the SNHGQ have been instrumental in the successful investigation of these outbreaks. The questionnaire has allowed investigators to more efficiently and effectively interview ill persons as they are identified. Because these exposures are captured in a common, standard format, we have been able to share and analyze data rapidly across jurisdictional lines. Faster interview response and analysis times have allowed for more rapid epidemiologic investigation and quicker regulatory action, thus helping to prevent thousands of additional illnesses from occurring and spurring industry to adopt and implement new food safety measures in an effort to prevent future outbreaks.

The total estimated annualized burden requested is 3,000 hours (approximately 4,000 individuals identified during the hypothesis-generating phase of outbreak investigations with 45 minutes/response). There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Ill individuals identified as part of an outbreak investigation.	Standardized National Hypothesis Generating Questionnaire.	4,000	1	45/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–13568 Filed 6–26–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2023–0035]

Advisory Committee on Immunization Practices; Amended Notice of Meeting

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces an amendment to the following meeting of the Advisory Committee on Immunization Practices (ACIP). This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Stephanie Thomas, Committee Management Specialist, Advisory Committee on Immunization Practices, National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H24–8, Atlanta, Georgia 30329–4027. Telephone: (404) 639–8836; Email: *ACIP@cdc.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given of a change in the meeting of the Advisory Committee on Immunization Practices (ACIP); June 21, 2023, 8 a.m. to 5:15 p.m., EDT, June 22, 2023, 8 a.m. to 5 p.m., EDT, and June 23, 2023, 8 a.m. to 1 p.m., EDT (times subject to change, see the ACIP website for updates: *http://www.cdc.gov/vaccines/acip/index.html*), in the original **Federal Register** notice.

Notice of the virtual meeting was published in the **Federal Register** on Friday, May 5, 2023, Volume 88, Number 87, pages 29132–29133.

Notice of the virtual meeting is being amended to update the times in the dates section, the matters to be considered, and the procedure for oral public comment, which should read as follows:

Dates: The meeting will be held on June 21, 2023, 8 a.m. to 5:30 p.m., EDT, June 22, 2023, 8 a.m. to 5:30 p.m., EDT, and June 23, 2023, 8 a.m. to 2:40 p.m., EDT (times subject to change, see the ACIP website for updates: *https://www.cdc.gov/vaccines/acip/index.html*).

Written comments must be received between June 5–16, 2023.

Matters To Be Considered: The agenda will include discussions on mpox vaccines, influenza vaccines, pneumococcal vaccines, meningococcal vaccines, polio vaccine, respiratory syncytial virus vaccine pediatric/maternal, respiratory syncytial virus vaccine in adults, dengue vaccines, chikungunya vaccine, informational session by CDC Immunization Safety Office, and COVID–19 vaccines. Recommendation votes on influenza vaccines, pneumococcal vaccines, polio vaccines, and respiratory syncytial virus vaccine in adults are scheduled. Vaccines for Children votes on influenza and pneumococcal vaccines are scheduled. Agenda items are subject to change as priorities dictate. For more information on the meeting agenda, visit *https://www.cdc.gov/vaccines/acip/meetings/index.html.*

Procedure for Oral Public Comment: All persons interested in making an oral public comment on June 21 or June 22, 2023, at the ACIP meeting must submit a request at *http://www.cdc.gov/vaccines/acip/meetings/index.html* no later than 11:59 p.m., EDT, June 16, 2023, according to the instructions provided.

If the number of persons requesting to speak is greater than can be reasonably accommodated during the scheduled time, CDC will conduct a lottery to determine the speakers for the scheduled public comment session. CDC staff will notify individuals regarding their request to speak by email by June 20, 2023. To accommodate the significant interest in participation in the oral public comment session of ACIP meetings, each speaker will be limited to three minutes, and each

speaker may only speak once per meeting.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

(Authority: 5 U.S.C. 1001 *et seq.*)

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–13547 Filed 6–26–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–1305; Docket No. CDC–2023–0054]

Proposed Data Collection Submitted for Public Comment and Recommendations

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), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Chronic Q fever in the United States: Enhanced Clinical Surveillance''. This enhanced medical surveillance for chronic Q fever will collect specific clinical data not otherwise collected during routine public health surveillance to allow for better characterization of the clinical presentation and risk factors of chronic Q fever in the United States.

DATES: CDC must receive written comments on or before August 28, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0054 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 submissions of responses; and

5. Assess information collection costs.

Proposed Project

Chronic Q fever in the United States: Enhanced Clinical Surveillance (OMB Control No. 0920–1305, Exp. 9/30/2023)—Revision—National Center for Emerging Zoonotic and Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Q fever is a worldwide zoonosis caused by *Coxiella burnetii* with acute and chronic disease presentations. Chronic Q fever can manifest months to years after the primary infection and is rare, occurring in <5% of persons with an acute infection. Chronic Q fever can take on several clinical forms, including endocarditis, chronic hepatitis, chronic vascular infections, osteomyelitis, and osteoarthritis.

In the United States, Q Fever cases are reported via the National Notifiable Disease Surveillance System (NNDSS, OMB Control No. 0920–0728); however, limited information is collected on the various clinical manifestations of chronic Q fever or patients pre-existing risk factors. Data on outcomes other than death or hospitalizations are not collected by the current surveillance. Because of this lack of data, the true burden and proportion of cases exhibiting endocarditis and other forms of chronic Q fever in the United States is unknown. We plan to establish an enhanced medical surveillance for chronic Q fever by working with consulting clinicians to gather additional and more specific clinical data not otherwise collected during the course of routine public health surveillance for chronic Q fever. This information will allow for better characterization of the clinical presentation and risk factors of chronic Q fever in the United States. The results will help characterize an under-recognized disease and provide valuable data to educate physicians on identifying and diagnosing these cases.

Recently, there has been an increased volume of clinical consultation requests. To reflect this, we are proposing an increase in the number of respondents to 50 each year. Additionally, the clinical course for these patients is often complex, and clinical relapse or prolonged infection has been reported. To capture these important clinical details, we propose increasing the number of total instruments to two, with a follow-up survey that will take five minutes each at six, 12, 18, and 24

months from the date of the initial consult. CDC requests OMB approval for an estimated 26 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Physician	Chronic Q Fever Enhanced Surveillance Report Form—Initial Consult.	50	1	20/60	17
Physician	Chronic Q Fever Enhanced Surveillance Report Form—Follow-Up.	50	2	5/60	9
Total					26

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–13573 Filed 6–26–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–1175]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Environmental Public Health Tracking Network (Tracking Network)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on December 20, 2022 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) 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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Environmental Public Health Tracking Network (Tracking Network) (OMB Control No. 0920–1175, Exp. 7/31/2023)—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC is submitting a three-year Paperwork Reduction Act (PRA) Revision Information Collection Request (ICR) for ''Environmental Public Health Tracking Network (Tracking Network)'' (OMB Control No. 0920–1175, Expiration Date 7/31/2023). This ICR is sponsored by the Environmental Public Health Tracking Section (Tracking Section), Division of Environmental Health Science and Practice (DEHSP), National Center for Environmental Health (NCEH) at CDC.

In September 2000, the Pew Environmental Health Commission issued a report entitled America's Environmental Health Gap: Why the Country Needs a Nationwide Health Tracking Network. The Commission documented a critical gap in ''knowledge that hinders our national efforts to reduce or eliminate diseases that might be prevented by better managing environmental factors'' due largely to the fact that existing environmental health systems were inadequate and fragmented. They described a lack of data for the leading causes of mortality and morbidity, a lack of data on exposure to hazards, a lack of environmental data with applicability to public health, and barriers to integrating and linking existing data. To address this critical gap, the Commission recommended a ''Nationwide Health Tracking Network'' for disease and exposures. In response to the report and this critical gap, Congress appropriated funds in the fiscal year 2002 budget for the CDC to establish the National Environmental Public Health Tracking Program (Tracking Program) and Network and has appropriated funds each year thereafter to continue this effort.

The Tracking Program includes State and Local Health Departments (SLHD) which collaborate to: (1) build and maintain the Tracking Network; (2) advance the practice and science of environmental public health tracking; (3) communicate information to guide environmental health policies and actions; (4) enhance tracking workforce and infrastructure; and (5) foster collaborations between health and environmental programs.

In spring of 2022, under Notice of Funding Opportunity CDC–RFA–EH22–2202, the CDC's Tracking Program

funded 33 state and local public health programs (funded SLHD). These recipients were selected through a competitive objective review process and are managed as CDC cooperative agreements. Awards are for five years and are renewed through an Annual Performance Report (APR)/Continuation Application. The Tracking Program collects data from recipients about their activities and progress for the purposes of program evaluation and monitoring (hereafter referenced as program data).

Environmental public health tracking is the ongoing collection, integration, analysis, and dissemination of health, exposure, and hazard data (hereinafter referenced as Tracking Network data) to inform public health actions that protect the population from harm resulting from exposure to environmental contaminants. The Tracking Network provides data from existing health, exposure, and hazard surveillance systems and supports ongoing efforts within the public health and environmental sectors to improve data collection, accessibility, and dissemination as well as analytic and response capacity. Data that were previously collected for different purposes and stored in separate state and local systems are now available in a nationally standardized format allowing programs to begin bridging the gap between health and the environment.

CDC is requesting approval for an increase of seven additional annual respondents from the 30 approved under the previous ICR and five-year NOFO (No. CDC–RFA–EH17–1702). In spring of 2022, under the new five-year NOFO (No. CDC–RFA–EH22–2202), the CDC's Tracking Program funded 33 state and local public health programs (funded SLHD). CDC is now requesting approval for up to 37 annual respondents. This number reflects the current 33 SLHD respondents plus four to allow for future funding of new SLHD or to collect voluntary responses from unfunded SLHD.

Data from recipients or other SLHD are submitted annually following standardized procedures. Tracking network data submitted annually by recipients and other SLHD to the Tracking Program include seven datasets and the metadata form, specifically (1) birth defects prevalence, (2) childhood blood lead levels, (3) drinking water monitoring, (4) emergency department visits, (5) hospitalizations, (6) radon testing, (7) biomonitoring, and (8) metadata. The Tracking Program will begin using Research Electronic Data Capture (REDCap) for its Electronic Data Capture System (EDCS) needs, which is an easy-to-use, free software tool that is useful for programmatic deliverable management and data capture. Using an EDCS significantly reduces the burden by optimizing the data capture method to eliminate the need for personnel to complete manual data cleaning and organization before using data for analysis and evaluation upon submission.

Based on the above changes, CDC requests OMB approval for an estimated 14,384 annualized burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
State and Local Health Department	Birth defects prevalence	30	1	40
	Childhood blood lead levels	37	1	40
	Drinking water monitoring	37	1	50
	Emergency department visits	37	1	40
	Hospitalizations	37	1	40
	Radon testing	25	1	50
	Biomonitoring	25	1	40
	Metadata records	37	2	20
	Work Plan Template	37	1	21
	Program Accomplishments and Public Health Actions Report.	37	2	20
	Performance Measures Report	37	1	20
	PHA Impact Follow Up Form	37	2	0.25
	Communications plan	37	1	2
	Web Stats Template	37	2	1

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–13569 Filed 6–26–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10302]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any

other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by July 27, 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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Collection Requirements for Compendia for Determination of Medically-accepted Indications for Off-label Uses of Drugs and Biologicals in an Anti-cancer Chemotherapeutic Regimen; *Use:* Section 182(b) of the Medicare Improvement of Patients and Providers Act (MIPPA) amended section 1861(t)(2)(B) of the Social Security Act (42 U.S.C. 1395x(t)(2)(B)) by adding at the end the following new sentence: 'On and after January 1, 2010, no compendia may be included on the list of compendia under this subparagraph unless the compendia has a publicly transparent process for evaluating therapies and for identifying potential conflicts of interest.' We believe that the implementation of this statutory provision that compendia have a ''publicly transparent process for evaluating therapies and for identifying potential conflicts of interests'' is best accomplished by amending 42 CFR 414.930 to include the MIPPA requirements and by defining the key components of publicly transparent processes for evaluating therapies and for identifying potential conflicts of interests.

All currently listed compendia will be required to comply with these provisions, as of January 1, 2010, to remain on the list of recognized compendia. In addition, any compendium that is the subject of a future request for inclusion on the list of recognized compendia will be required to comply with these provisions. No compendium can be on the list if it does not fully meet the standard described in section 1861(t)(2)(B) of the Act, as revised by section 182(b) of the MIPPA. *Form Number:* CMS–10302 (OMB control number: 0938–1078); *Frequency:* Annually; *Affected Public:* Business and other for-profits and Not-for-profit institutions; *Number of Respondents:* 845; *Total Annual Responses:* 900; *Total Annual Hours:* 5,135. (For policy questions regarding this collection contact Sarah Fulton at 410–786–2749.)

Dated: June 22, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–13656 Filed 6–26–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10638]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by August 28, 2023.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10638 Add-On Payments for New Medical Services and Technologies Paid Under the Inpatient Prospective Payment System (IPPS)

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Add-On Payments for New Medical Services and Technologies Paid Under the Inpatient Prospective Payment System (IPPS); *Use:* Sections 1886(d)(5)(K) and (L) of the Act establish a process of identifying and ensuring adequate payment for new medical services and technologies (sometimes collectively referred to in this section as ''new technologies'') under the Inpatient Prospective Payment System (IPPS). Section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered new if it meets criteria established by the Secretary after notice and opportunity for public comment. Section 1886(d)(5)(K)(ii)(I) of the Act specifies that a new medical service or technology may be considered for NTAP if, ''based on the estimated costs incurred with respect to discharges involving such service or technology, the DRG prospective payment rate otherwise applicable to such discharges under this subsection is inadequate.''

In order to qualify for NTAP under the traditional pathway, a specific technology must be ''new'' and demonstrate that they are not substantially similar to existing technologies under the requirements of § 412.87(b)(2) of our regulations. The statutory provision contemplated the special payment treatment for new technologies until such time as data are available to reflect the cost of the technology in the DRG weights through recalibration (no less than 2 years and no more than 3 years). Alternative pathway technologies must also be ''new'' but are considered not substantially similar to existing technologies. Responses to the questions in the application help CMS determine if and how the applicant meets the established. *Form Number:* CMS–10638 (OMB control number: 0938–1347); *Frequency:* Yearly; *Affected Public:* Private Sector, Business or other for-profits and Not-for-profits institutions; *Number of Respondents:* 62; *Number of Responses:* 62; *Total Annual Hours:* 1,655. (For policy questions regarding this collection contact Sophia Chan at 410–786–8348.)

Dated: June 22, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–13659 Filed 6–26–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3421–NC]

Medicare Program; Transitional Coverage for Emerging Technologies

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: This notice with comment period provides information to the public on the process we will use to provide transitional coverage for emerging technologies (TCET) through the national coverage determination (NCD) process under the Social Security Act (the Act). It also solicits public comment on the proposed TCET pathway.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, by 5 p.m. on August 28, 2023.

ADDRESSES: In commenting, refer to file code CMS–3421–NC.

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 regulatory document 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–3421–NC, P.O. Box 8013, Baltimore, MD 21244–8013.

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–3421–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Lori Ashby, (410) 786–6322.

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

This notice describes the process we will use to provide transitional coverage for emerging technologies (TCET) through the national coverage determination (NCD) process. The TCET pathway is designed to deliver transparent, predictable, and expedited national coverage for certain eligible Breakthrough Devices that are Food and Drug Administration (FDA) market authorized. It builds upon the Centers for Medicare & Medicaid Services' (CMS') experience with the Parallel Review program and the Coverage with Evidence Development (CED) pathway. Additionally, the TCET pathway reflects the feedback received from multiple stakeholder groups, including beneficiaries, patient groups, medical professionals and societies, medical device manufacturers, other Federal partners, and others involved in developing innovative medical devices. This feedback was obtained from informal and formal meetings, the comments we received as we conducted rulemaking for the Medicare Coverage of Innovative Technologies (MCIT) pathway (referenced later in this section) as well as during the listening sessions that were held following the repeal of the MCIT/Reasonable and Necessary (R&N) final rule (86 FR 62944, November 15, 2021). The TCET pathway described in this notice is intended to balance multiple considerations when making coverage determinations: (1) facilitating early, predictable and safe beneficiary access to new technologies; (2) reducing uncertainty about coverage by evaluating early the potential benefits and harms of technologies with innovators; and (3) encouraging evidence development if notable evidence gaps exist for coverage purposes. Further, the TCET pathway aims to coordinate benefit category determination, coding, and payment reviews and to allow any evidence gaps to be addressed through fit-for-purpose studies.

The Medicare program serves over 62 million beneficiaries and is the largest single health care purchaser in the U.S. Currently, approximately 60 percent of the total Medicare beneficiary population, or 36 million Medicare beneficiaries, receive coverage through Medicare fee-for-service (FFS). More than 1.1 billion Medicare FFS claims were processed in fiscal year (FY) 2021, comprised of approximately 221 million Part A claims (such as inpatient care in hospitals, skilled nursing facility care, hospice care, and home health care) and 956 million Part B claims (such as doctor and other health care services and outpatient care, durable medical equipment, and some preventive services), providing approximately $424 billion in Medicare FFS benefits.[1]

Medicare covers a wide range of items and services. In general, in order for an item or service to be covered under Medicare, it must meet the standard described in section 1862(a)(1)(A) of the Social Security Act (the Act)—that is, it must be reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. CMS makes reasonable and necessary coverage decisions through various pathways in order to facilitate expeditious beneficiary access to items and services that meet the statutory standard for coverage. We recognize that new approaches are needed to make decisions on certain new items and services, such as medical devices, more quickly to provide expedited access to new and innovative medical technologies. On November 15, 2021 (86 FR 62944), CMS published a final rule that repealed an earlier rule that never became legally effective and thus was not implemented.[2] As promised in the repeal, CMS has conducted additional opportunities to engage with the public and stakeholders. We have incorporated that input, along with input gathered in MCIT rulemaking, into our plans to improve the Medicare coverage process when making decisions on certain emerging technologies at the national level.

One of the issues identified in the prior rulemaking was that the agency did not adequately address how certain steps, which are necessary to implement national coverage determinations for a new item or service, would be accomplished in a timely manner. Specifically, under the Medicare program an item or service must fall within the parameters of a benefit category that is within the scope of Part A or Part B. Commenters have requested that CMS explain how benefit category determinations (BCDs) will be made in connection with emerging technology. CMS was also encouraged to align coding and payment processes to facilitate coverage and payment for new or emerging technologies.

Over the last several years, stakeholders have expressed support for coverage process improvements and a new pathway that is more flexible, transparent, predictable, and collaborative. Additionally, stakeholders expressed that that they would like for CMS to develop a more agile, iterative evidence review process that considers real world evidence and fit-for-purpose evidence study designs. Further, we have heard concerns from stakeholders that device coverage lags further behind that of drugs and biologics and, devices are more in need of a program like TCET. In light of the unique FDA criteria for Breakthrough designation status (described later in this document), we are limiting the TCET pathway to certain eligible FDA-designated Breakthrough Devices, since we believe that this is the area with the most immediate need.

We are committed to establishing an alternative coverage pathway that better balances the needs of beneficiaries, patient groups, medical professionals and societies, medical device manufacturers, and others involved in developing innovative medical devices.

A. Current Medicare Coverage Mechanisms

Items and services, including medical devices, are currently covered in Medicare in one of three ways, presented here for context. The TCET pathway described in this notice will leverage the existing NCD pathway, and CED in particular, to provide a streamlined coverage pathway for emerging technologies. We note that the TCET pathway will not alter the existing standards for these coverage mechanisms.

1. Claim-by-Claim Adjudication

In the absence of an NCD or a local coverage determination (LCD), Medicare Administrative Contractors (MACs) make coverage decisions under section 1862(a)(1)(A) of the Act and may cover items and services on a claim-by-claim basis if the MAC determines them to be reasonable and necessary for individual patients. Though claims may be denied if they are not determined to be reasonable and necessary, the claim-by-claim adjudication pathway remains the fastest path to potential coverage. The majority of all Medicare Parts A and B claims have coverage determined through the claim-by-claim adjudication process.

2. Local Coverage Determinations (LCDs)

MACs develop LCDs under section 1862(a)(1)(A) that apply only within their geographic jurisdictions (see sections 1862(l)(6)(B) and 1869(f)(2)(B) of the Act). LCDs govern only the issuing MAC's claims adjudication and

[1] *https://www.cms.gov/Medicare/Medicare-Contracting/Medicare-Administrative-Contractors/What-is-a-MAC.*

[2] *https://www.govinfo.gov/content/pkg/FR-2021-11-15/pdf/2021-24916.pdf.*

are not controlling authorities for qualified independent contractors or administrative law judges in the claims adjudication process.

The MACs follow specific guidance for developing LCDs for Medicare coverage as outlined in the CMS Program Integrity Manual (PIM), Chapter 13. LCDs generally take 9 to 12 months to develop. MACs usually finalize proposed LCDs within 365 days from opening, per Chapter 13.5.1—Local Coverage of the PIM.[3] That chapter will continue to be used in making determinations under section 1862(a)(1)(A) of the Act for items and services at the local level.

3. National Coverage Determinations (NCDs)

The term ''national coverage determination'' is defined in section 1862(l)(6)(A) of the Act and means a determination by the Secretary of the Department of Health and Human Services (the Secretary) with respect to whether or not a particular item or service is covered nationally under Title XVIII of the Act. In general, NCDs are national policy statements published to identify the circumstances under which a particular item or service will be considered covered (or not covered) by Medicare. NCDs serve as generally applicable rules to ensure that similar claims for items or services are covered in the same manner. Often an NCD is written in terms of defined clinical characteristics that identify a population that may or may not receive Medicare coverage for a particular item or service. Traditionally, CMS relies heavily on health outcomes data to make NCDs.

Most NCDs have involved determinations under section 1862(a)(1)(A) of the Act, but NCDs can be made based on other provisions of the Act, such as section 1862(a)(1)(E) of the Act. Under section 1862(a)(1)(E) of the Act, Medicare has provided coverage for certain promising technologies with a limited evidence base on the condition that they are furnished in the context of approved clinical studies or with the collection of additional clinical data. CMS has used section 1862(a)(1)(E) of the Act to support the ''Coverage with Evidence Development'' or ''CED'' policy since July 12, 2006, and the most recent CED policy is described in our November 20, 2014 guidance document.[4] In general, CED enables providers and suppliers to perform high quality studies that we expect will produce evidence that may lead to positive national coverage determinations under section 1862(a)(1)(A) of the Act.

The Agency for Healthcare Research and Quality (AHRQ) reviews all CED NCDs established under section 1862(a)(1)(E) of the Act. Consistent with section 1142 of the Act, AHRQ collaborates with CMS to define standards for the clinical research studies to address the CED questions and meet the general standards for CED studies (*https://www.cms.gov/Medicare/Coverage/Coverage-with-Evidence-Development*).

NCDs also include a determination on whether the item or service under consideration has a Medicare benefit category under Part A or Part B,[5] such as inpatient hospital services, physicians' services, durable medical equipment, or others. All items and services coverable by Medicare must fall within the scope of a statutory benefit category and many of these specific terms are defined under section 1861 of the Act and in implementing regulations. BCDs are made outside the Coverage and Analysis Group. While they may often be completed within 3 months, in some cases BCDs may take considerably longer. While CMS is working to better align the coverage and BCD review processes, manufacturers should be aware that in some cases benefit category reviews may not be completed within the accelerated timeframes needed for the TCET pathway. Moreover, in order to be covered, the item or service must not be excluded from coverage by statute or our regulations at 42 CFR part 411, subpart A. The NCD pathway, which has statutorily prescribed timeframes, generally takes 9 to 12 months to complete.[6]

In addition to these coverage pathways, CMS has established a Clinical Trial Policy (CTP) NCD 310.1. The CTP policy is applied when Medicare covers routine care items and services (but generally not the technology under investigation) in a clinical study that is supported by certain Federal agencies. The CTP coverage policy was developed in 2000.[7] We note that coverage under CED and the CTP may not occur at the same time. Additionally, this coverage policy has not generally been utilized by device manufacturers because they usually seek coverage of the device under investigation, which is not always available under the CTP.

Lastly, CMS has established the Parallel Review program. In the September 17, 2010 **Federal Register** (75 FR 57045), FDA and CMS announced their intention to initiate a Parallel Review pilot program in an effort to increase quality of patient health care by facilitating earlier access to innovative medical technologies for Medicare beneficiaries. In the October 24, 2016 **Federal Register** (81 FR 73113), FDA and CMS published a joint notice that announced and described the processes for the fully implemented Program for Parallel Review of Medical Devices.

Parallel Review is a mechanism for FDA and CMS to simultaneously review the clinical data submitted by a manufacturer about a medical device in order to help decrease the time between FDA's approval of an original or supplemental premarket approval (PMA) application or granting of a de novo classification request (De Novo request) and the subsequent CMS proposed NCD. Parallel Review has two stages: (1) FDA and CMS meet with the manufacturer to provide feedback on the proposed pivotal clinical trial; and (2) FDA and CMS concurrently review (''in parallel'') the clinical trial results submitted in the PMA application, or De Novo request. FDA and CMS independently review the data to determine whether it meets their respective Agency's standards and communicate with the manufacturer during their respective reviews. This program relies upon a technology having a quality evidence base to support the clinical analysis for the NCD.

B. Differences Between FDA and CMS Review

While FDA and CMS have a well-established history of collaboration in review of evidence for emerging medical technologies, FDA and CMS must consider different legal authorities and apply different statutory standards when making marketing authorization and coverage decisions, respectively, for medical devices. Generally, FDA makes marketing authorization decisions based on whether the relevant statutory standard for safety and effectiveness is met, while CMS generally makes NCDs based on whether an item or service is reasonable and necessary for the diagnosis or treatment of an illness or

[3] CMS Program Integrity Manual, Chapter 13 Local Coverage Determinations, available at *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/pim83c13.pdf.*

[4] The 2014 guidance document is available at *https://www.cms.gov/medicare-coverage-database/view/medicare-coverage-document.aspx?MCDId=27.*

[5] Note: Medicare does not develop NCDs for Part D.

[6] Section 1869(f)(4) of the Act.

[7] CMS, National Coverage Determination for Routine Costs in Clinical Trials available at *https://www.cms.gov/medicare-coverage-database/details/ncd-details.aspx?NCDId=1&fromdb=true.*

injury for individuals in the Medicare population.

These two reviews are separate and are conducted independently by the two agencies. At CMS, we respect the findings of our FDA colleagues and appreciate the expertise they bring to the premarket review process under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The FDA review of devices does not focus specifically on the Medicare population.

Among other objectives, FDA conducts premarket review of certain devices to evaluate their safety and effectiveness and determine if they meet the applicable standard to be marketed in the United States. An FDA-regulated product must receive marketing authorization [8] (unless exempt from FDA premarket review) for at least one indication to be eligible for consideration of Medicare coverage (except in specific circumstances). However, FDA approval or clearance alone does not entitle that technology to Medicare coverage, given Medicare statutory coverage requirements. While FDA reviews devices to ensure they meet applicable safety and effectiveness standards, there is often limited evidence regarding whether the device is clinically beneficial for Medicare patients specifically because of the lack of evidence concerning individuals in the Medicare population. This is an important consideration for manufacturers and other interested parties who are seeking the most appropriate coverage pathway under Medicare. Where there is limited evidence on the health outcomes for individuals in the Medicare population, there may be insufficient evidence to support a fully favorable Medicare national coverage determination under section 1862(a)(1)(A) of the Act. In these instances, it is difficult to make a prospective national reasonable and necessary determination as to whether Medicare should cover the device with evidence development or should limit the NCD to coverage for only individuals with certain conditions or procedures performed by certain practitioners or health care facilities with expertise necessary to safely treat the individual with the new technology.

In general, as discussed, under the Medicare statute (section 1862(a)(1)(A) of the Act), Congress required CMS to determine whether items and services are reasonable and necessary to diagnose or treat an illness or injury or to improve the functioning of a malformed body member for an individual with Medicare. For CMS, the evidence base underlying FDA's decision to approve or clear a device for particular indications for use has often been crucial for determining Medicare coverage through the NCD process. CMS looks to the evidence supporting FDA market authorization and the device's approved or cleared indications for use for evidence generalizable to the Medicare population, data on improvement in health outcomes, and durability of those outcomes. If there are no data on those elements in the Medicare population, it is difficult for CMS to make an evidence-based decision whether the device is reasonable and necessary for the Medicare population.

Because Medicare beneficiaries are often older, with multiple comorbidities, and are often underrepresented or not represented in many clinical studies, CMS considers whether the evidence shows that the item or service will improve the health of Medicare patients.[9] According to a recent study,[10] [11] approximately 50 percent of Medicare patients have two or more diseases. Clinical studies that are conducted in order to gain FDA market authorization are not necessarily required to include participants with similar demographics and characteristics of the Medicare population. A potential reason there may not be a strong evidence base specific to the Medicare population could include the desire by device manufacturers to demonstrate the safety and effectiveness of a device as clearly as possible. To achieve this aim, many studies impose stringent exclusion criteria that disqualify individuals with certain characteristics, such as comorbidities and concomitant treatment, that might make the effect of the investigational device more difficult to determine. Consequently, the potential benefits and harms of a device for older patients with more comorbidities may not be well understood at the time of FDA market authorization.

C. FDA Breakthrough Devices Program

Under the TCET coverage pathway, CMS will coordinate with FDA and manufacturers of Breakthrough Devices as those devices move through the FDA premarket review processes to ensure timely Medicare coverage decisions following any FDA market authorization, as described in detail later in this section. The Breakthrough Devices Program is an evolution of the Expedited Access Pathway Program and the Priority Review Program. See section 515B of the FD&C Act, 21 U.S.C. 360e–3; see also final guidance for industry entitled, ''Breakthrough Devices Program.'' [12]

FDA's Breakthrough Devices Program is not for all new medical devices; rather, it is only for those that FDA determines meet the standards for Breakthrough Device designation. In accordance with section 515B of the FD&C Act (21 U.S.C. 360e–3), the Breakthrough Devices Program is for medical devices and device-led combination products [13] that meet two criteria. The first criterion is that the device provides for more effective treatment or diagnosis of life-threatening or irreversibly debilitating human disease or conditions. The second criterion is that the device must satisfy one of the following elements: It represents a breakthrough technology; no approved or cleared alternatives exist; it offers significant advantages over existing approved or cleared alternatives, including the potential, compared to existing approved alternatives, to reduce or eliminate the need for hospitalization, improve patient quality of life, facilitate patients' ability to manage their own care (such as through self-directed personal assistance), or establish long-term clinical efficiencies; or device availability is in the best interest of patients (for more information see 21 U.S.C. 360e–3(b)(2)). These criteria make Breakthrough designated devices unique. Devices meeting these criteria

[8] Additional information on FDA marketing authorization, specifically device approvals, denials and clearances can be accessed here: *https://www.fda.gov/medical-devices/products-and-medical-procedures/device-approvals-denials-and-clearances.*

[9] Davide L Vetrano, MD, Katie Palmer, Ph.D., Alessandra Marengoni, MD, Ph.D., Emanuele Marzetti, MD, Ph.D., Fabrizia Lattanzio, MD, Ph.D., Regina Roller-Wirnsberger, MD, MME, Luz Lopez Samaniego, Ph.D., Leocadio Rodríguez-Mañas, MD, Ph.D., Roberto Bernabei, MD, Graziano Onder, MD, Ph.D., Frailty and Multimorbidity: A Systematic Review and Meta-analysis, The Journals of Gerontology: Series A, Volume 74, Issue 5, May 2019, Pages 659–666, *https://doi.org/10.1093/gerona/gly110.*

[10] Tan, Y.Y., Papez, V., Chang, W.H., Mueller, S.H., Denaxas, S., & Lai, A.G. (2022). Comparing clinical trial population representativeness to real-world populations: an external validity analysis encompassing 43 895 trials and 5 685 738 individuals across 989 unique drugs and 286 conditions in England. The Lancet Healthy Longevity, 3(10), e674–e689.

[11] Varma T, Mello M, Ross JS, et al Metrics, baseline scores, and a tool to improve sponsor performance on clinical trial diversity: retrospective cross sectional study BMJ Medicine 2023;2:e000395. doi: 10.1136/bmjmed–2022–000395.

[12] *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/breakthrough-devices-program.*

[13] Information on device-led combination products can be accessed here: *https://www.fda.gov/media/119958/download.*

are also likely to be highly relevant to the needs of the Medicare population, if the item or service falls within a Medicare benefit category.

II. Provisions of the Notice With Comment Period

This notice proposes to create the TCET pathway. Since the TCET pathway relies on our existing authorities, we believe that establishing TCET through a procedural notice rather than rulemaking has the advantages that it is faster to implement and can be more easily modified as we gain experience with the approach. We also describe the procedures for how stakeholders and the public at large may engage with CMS to facilitate the TCET pathway. The topics addressed in the notice include the following: (1) TCET general principles; (2) appropriate candidates for the TCET pathway; (3) procedures for the TCET pathway; and (4) general roles.

We continue to pursue our efforts to work with various sectors of the scientific and medical community to develop and publish guidance documents on our website that describe our approach when analyzing scientific and clinical evidence to develop an NCD. In response to stakeholder feedback, our proposed CED and Evidence Review guidance documents propose to incorporate robust fit-for-purpose evidence development where manufacturers may use fit-for-purpose studies to close any evidence gaps. Fit-for-purpose studies are those where the study design, analysis plan, and study data can credibly answer the research question. Additionally, CMS intends to publish a series of guidance documents that review health outcomes and their clinically meaningful differences within priority therapeutic areas. The public will have an opportunity to provide comments on these guidance documents which will be available on the CMS coverage website which can be accessed at *https://www.cms.gov/Medicare/Coverage/CoverageGenInfo/index.html.*

A. TCET Pathway—An Opportunity To Accelerate Patient Access to Beneficial Medical Products While Generating Evidence

Since CMS started covering technology in the context of clinical studies almost two decades ago, the timing of evidence development and the stages of the technology development lifecycle have evolved. Over the past few years, innovative technologies have come on the market earlier in the technology development lifecycle and reached the market with limited or developing evidence for coverage purposes. CMS has received inquiries for coverage of new technologies that are early in the product lifecycle, which means the clinical evidence is just starting to accumulate. For new technologies, it is rare that there is sufficient clinical evidence to support broad national coverage at this point.

In general, CMS relies heavily on health outcomes data, including but not limited to health outcomes data as it relates to the Medicare population, before proposing an NCD. Early in the product lifecycle, there is usually evidence about whether the product is safe and may produce the intended result: for example, a laboratory measurement, radiographic image, physical sign or other measure that is believed to predict clinical benefit, but is not itself a measure of clinical benefit. However, there is often little evidence in the early stages of the product lifestyle regarding health outcomes (for example, mortality, disease progression, quality of life). When premarket, pivotal clinical study data is collected to support an application to FDA for market authorization, it provides clinical evidence for a defined population enrolled in the study.

If there is health outcome evidence for a new technology, it may not be generalizable to the Medicare population if Medicare beneficiaries are insufficiently represented in pivotal clinical studies. Medicare beneficiaries have been historically underrepresented in pivotal studies due to age, access, multiple comorbidities, and concurrent treatments. When there is little or limited evidence, CMS may not have enough information to make a favorable NCD due to gaps in research about health outcomes, including potential safety risks to the Medicare population.

While CMS has attempted to streamline the NCD process with the Parallel Review program, we recognize that most emerging technologies are likely to have limited or developing bodies of clinical evidence that may not have included the Medicare population (that is, individuals over age 65, people with disabilities, and those with end stage renal disease). Many Medicare beneficiaries have comorbid medical conditions, and those factors may have limited their participation in certain clinical trials. Additionally, we recognize the importance that applicable clinical trials reflect the demographic and clinical diversity among the Medicare beneficiaries who are the intended users of the intervention. At a minimum, this includes attention to the intended users' racial and ethnic backgrounds, sex and gender, age, disabilities, important comorbidities, and depends on data being available on these characteristics and relevant social determinants of health. We believe that the TCET pathway can support manufacturers that are interested in working with CMS to generate additional evidence that is appropriate for Medicare beneficiaries and that may demonstrate improved health outcomes in the Medicare population to support more expeditious national Medicare coverage. While we believe that leveraging the statutorily established NCD process will allow us to responsibly cover new, innovative technologies with limited or developing evidence, it is important that we provide an evidence generation framework that, when appropriate, not only develops reliable evidence for patients and their physicians but also provides safeguards to ensure that Medicare beneficiaries are protected and continue to receive high quality care.

Specifically, CED has been used to support evidence development for certain innovative technologies that are likely to show benefit for the Medicare population when the available evidence is not sufficient to demonstrate that the technologies are reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member under section 1862(a)(1)(A) of the Act. In instances where there is limited evidence, CED may be an option for Medicare beneficiaries seeking earlier access to promising technologies. CED has been a pathway whereby, after a CMS and AHRQ review, Medicare covers items and services on the condition that they are furnished in the context of approved clinical studies or with the collection of additional clinical data. Participation in a CED trial is voluntary, but beneficiaries are protected by separate regulations including those at 45 CFR part 46 related to the protection of human research subjects.

CMS has issued a total of 26 NCDs requiring CEDs over the last two decades to provide Medicare beneficiary access to promising items and services that could not otherwise be covered under section 1862(a)(1)(A) of the Act. CMS has approved 109 CED studies and five national registries to facilitate evidence development for these CED NCDs. Forty-two of these studies have generated evidence across 14 topics covered under CED. Three CED NCD topics have had the CED requirement removed following an NCD reconsideration and have received national coverage.

With respect to evidence generation, the TCET pathway would build upon

CMS and AHRQ's ongoing collaboration on the CED NCD process. We anticipate that many of the NCDs conducted under the TCET pathway will result in CED decisions, and AHRQ will continue to review all CED NCDs consistent with current practice. Additionally, AHRQ will collaborate with CMS as resources allow on evidence development activities conducted to support Medicare coverage under the TCET pathway and will have opportunities to offer feedback throughout the process that will be shared with manufacturers. Approvals related to evidence development will be a joint CMS–AHRQ decision. CMS and AHRQ have made iterative refinements to the CED coverage pathway over time, and while we believe CED has reduced barriers to innovation and expanded beneficiary access to new technologies and therapies, our experience over the last several years indicates that further improvements can be made to the CED process. We believe that certain coverage decisions—in particular, those involving innovative devices—would benefit from a more systematic framework for CED that establishes a more predictable and transparent approach for the public when facilitating evidence development.

Working in conjunction with AHRQ, our goal is to improve CED so that it fulfills its potential as a mechanism that simultaneously reduces barriers for innovation and enables CMS to make better informed decisions on coverage for medical devices that improve health outcomes for Medicare beneficiaries. CMS believes that public input should inform this effort, and we will continue to provide numerous opportunities for stakeholders to engage with us as we convene future Medicare Evidence Development & Coverage Advisory Committee (MEDCAC) meetings and update specific aspects of the CED paradigm.

For example, CMS has been actively collaborating with AHRQ on potential revisions to the general criteria for CED studies, originally described in 2014, to ensure the criteria are up to date and continue to maintain rigorous evidentiary standards. In November 2022, in order to better inform the CED process, AHRQ released a final report on ''The Analysis of Requirements for Coverage with Evidence Development (CED).'' [14] The AHRQ report was first released in draft form in September 2022 and the public had an opportunity to provide comment on the draft report. The AHRQ report served as the basis for discussion at the February 13–14, 2023 MEDCAC meeting. CMS convened the MEDCAC to examine the general requirements for clinical studies submitted for CMS coverage under CED. The MEDCAC panel consisted of a variety of experts on the topic and included an industry representative and patient advocate. MEDCAC guest panel members included representatives from FDA, AHRQ, and National Institutes of Health (NIH). Specifically, the MEDCAC evaluated the CED criteria to assure that studies informing CED are assessed using consistent, feasible, transparent and methodologically rigorous criteria. The MEDCAC advised CMS on whether the criteria are appropriate to ensure that studies approved to inform CED decisions will produce informative evidence that CMS can rely on when making future reasonable and necessary determinations.[15] AHRQ and CMS collaboratively evaluated the information discussed at the MEDCAC meeting as well as the MEDCAC panel scores and are considering corresponding refinements to the proposed new criteria. CMS is proposing updated criteria in a proposed CED guidance document and the public will have an opportunity to provide comment on that document. With respect to beneficiary safeguards, the NCD process allows for coverage with appropriate safeguards for Medicare beneficiaries including coverage criteria based on evidence regarding eligibility, frequency, provider experience, site of service or availability of supporting services. Specifically, CMS develops clinician and institutional requirements after careful review of expert physicians' specialty society guidelines and clinical study results. These guidelines and recommendations are often part of NCDs. Unless these coverage criteria are established within coverage determinations, devices could be provided by unqualified individuals, offered at inappropriate facilities, and utilized by patients who may be unlikely to benefit.

More specifically, coverage under a CED NCD can expedite earlier beneficiary access for individuals who volunteer to participate in the clinical studies of innovative technology while ensuring that systematic patient safeguards, including assurance that the technology is provided to clinically appropriate patients, are in place to reduce the potential risks of new technologies, or to new applications of older technologies. CMS' current CED guidance document contains specific criteria that details patient protections under CED. As we note earlier, we are proposing updated criteria that reflects the feedback received on the November 2022 AHRQ report and February 2023 MEDCAC in a proposed CED guidance document. Because the TCET pathway described in this document would utilize the existing CED NCD process, all of these safeguards would apply if finalized.

Stakeholder input is important to CMS and we are particularly interested in engagement with patient advocacy organizations and medical specialty societies as they have valuable expertise and first-hand experience in the field that will help CMS develop Medicare coverage policies. Because the TCET pathway would utilize the current NCD process, these opportunities for stakeholder engagement would also be available in TCET.

B. TCET General Principles

CMS is committed to ensuring Medicare beneficiaries have access to emerging technologies. CMS' goal is to finalize an NCD for technologies accepted into and continuing in the TCET pathway, within 6 months after FDA market authorization. The TCET pathway builds off of prior initiatives, including CED. The TCET pathway will meet the following principles:

- Medicare coverage under the TCET pathway is limited to certain Breakthrough Devices that receive market authorization for one or more indications for use covered by the Breakthrough Device designation when used according to those indications for use. Manufacturers of FDA-designated Breakthrough Devices that fall within a Medicare benefit category may self-nominate to participate in the TCET pathway on a voluntary basis. We note that many Breakthrough Devices are currently coverable without the TCET pathway because they are not separately payable (that is, the device may be furnished under a bundled payment, such as payment for a hospital stay) or they are addressed by an existing NCD. Others are not indicated for use in a population that includes Medicare beneficiaries (for example, those devices that are targeted toward a pediatric population).
- CMS may conduct an early evidence review (Evidence Preview, more details in section II.D.1.g. of this notice with comment period) before FDA decides on marketing authorization for the device and discuss with the manufacturer the best available coverage

[14] *https://effectivehealthcare.ahrq.gov/products/coverage-evidence-development/research-report.*

[15] Additional information on the MEDCAC can be found at *https://www.cms.gov/medicare-coverage-database/view/medcac-meeting.aspx?medcacid=79&year=all&sortBy=meetingdate&bc=15.*

pathways depending on the strength of the evidence.

- Prior to FDA marketing authorization, CMS may initiate discussions with manufacturers to discuss any evidence gaps for coverage purposes and the types of studies that may need to be completed to address the gaps, which could include the manufacturer developing an evidence development plan and confirming that there are appropriate safeguards for Medicare beneficiaries.
- If CMS determines that further evidence development (that is, CED) is the best coverage pathway, CMS will work with the manufacturers to reduce the burden on manufacturers, clinicians and patients while maintaining rigorous evidence requirements. CMS will work to ensure we are not requiring duplicative or conflicting evidence development with any FDA post-market requirements for the device.
- CMS does not believe that an NCD that requires CED as a condition of coverage should last indefinitely, including under the TCET pathway. If the evidence supports a favorable coverage decision under CED, coverage will be time-limited to facilitate the timely generation of sufficient evidence to inform patient and clinician decision making and to support a Medicare coverage determination under section 1862(a)(1)(A) of the Act.
- Manufacturers and CMS have the option to withdraw from the pathway up until CMS opens the NCD by posting a tracking sheet. CMS will not publicly disclose participation of a manufacturer in the TCET pathway prior to CMS' posting of an NCD tracking sheet, unless the manufacturer consents or has already made this information public or disclosure is required by law. If a manufacturer does not wish the information that would be revealed by the posting of the NCD tracking sheet to become public, it should withdraw from the TCET pathway prior to this point. CMS requests that a manufacturer who wishes to withdraw from the TCET pathway notify CMS by email at *TCET@cms.hhs.gov.*

C. Appropriate Candidates

Appropriate candidates for the TCET pathway would include those devices that are—

- FDA-designated Breakthrough Devices;
- Determined to be within a Medicare benefit category; [16]
- Not already the subject of an existing Medicare NCD; and
- Not otherwise excluded from coverage through law or regulation.[17]

In section 201(h)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)(1), the definition of device includes diagnostic laboratory tests. Diagnostic lab tests are a highly specific area of coverage policy development, and CMS has historically delegated review of many of these tests to specialized MACs. We believe that the majority of coverage determinations for diagnostic tests granted Breakthrough Designation should continue to be determined by the MAC through existing pathways.

D. Procedures for the TCET Pathway

The TCET pathway has three stages: (1) premarket; (2) coverage under the TCET pathway; and (3) transition to post-TCET coverage.

1. Premarket

a. Nominations for the TCET Pathway

The appropriate timeframe for manufacturers to submit TCET pathway nominations to CMS is approximately 12 months prior to anticipated FDA decision on a submission as determined by the manufacturer. Manufacturers are generally aware of when they intend to submit their application, and the FDA has agreed to review time goals as part of its device user fee program.[18] CMS encourages manufacturers not to delay submitting nominations to facilitate alignment among CMS benefit category determination, and coverage, coding and payment considerations.

The manufacturer may submit a nomination for the TCET pathway by sending an email to *TCET@cms.hhs.gov,* which indicates their interest in the pathway. CMS will acknowledge receipt of nominations by email. The following information will assist CMS in processing and responding to nominations:

- Name of the manufacturer and relevant contact information.
- Name of the product.
- Succinct description of the technology and disease or condition the device is intended to diagnose or treat.
- State of development of the technology (that is, in pre-clinical testing, in clinical trials, currently undergoing premarket review by FDA). The submission of a copy of FDA's letter granting Breakthrough Designation and the PMA application, De Novo request or premarket notification (510(k)) submission, if available, is preferred.
- A comprehensive list of peer-reviewed, English-language publications that support the nominated Breakthrough Device as applicable/available.
- A statement that the medical device is not excluded by statute from Part A or Part B Medicare coverage or both, and a list of Part A or Part B or both Medicare benefit categories, as applicable, into which the manufacturer believes the medical device falls. Additionally, manufacturers are encouraged to provide additional specific information to help to facilitate benefit category and coding determinations.

Two good sources of information to facilitate the development of nomination submissions are the CMS Coverage website at *https://www.cms.gov/Center/Special-Topic/Medicare-Coverage-Center* and the CMS Innovators' Guide to Navigating Medicare at *https://www.cms.gov/medicare/coverage/councilontechinnov/downloads/innovators-guide-master-7-23-15.pdf,* which provides information that may facilitate durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) BCDs, along with coverage, coding and payment processes, and considerations. We note that an updated version of the Innovators' Guide is forthcoming. The updated guide will reflect a new name, the CMS Guide for Medical Technology Companies and Other Interested Parties, which can be found at the URL we have requested for this upon release: *https://www.cms.gov/cms-guide-medical-tech-companies-other-parties.*

- A statement describing how the medical device addresses the health needs of the Medicare population.
- A brief statement explaining why the device is an appropriate candidate for the TCET pathway as described under the section II.C. of this document (''B. Appropriate Candidates'').

CMS will contact the manufacturer by email to confirm that a submitted nomination appears to be complete and is under review by CMS. This email will include the date that CMS initiated the review of the complete nomination. If

[16] For more information on benefit category determinations see the CMS Innovator's Guide to Navigating Medicare (*https://www.cms.gov/medicare/coverage/councilontechinnov/downloads/innovators-guide-master-7-23-15.pdf*). Please note that an updated version of the Innovators' Guide is forthcoming. The updated guide will reflect a new name, the CMS Guide for Medical Technology Companies and Other Interested Parties, which can be found here upon release (the URL we have requested for this is: *https://www.cms.gov/cms-guide-medical-tech-companies-other-parties*).

[17] Information on coverage exclusions can be accessed here: *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c16.pdf.*

[18] For more information on the specific review time goals that apply to different types of device premarket submissions, see MDUFA Performance Goals and Procedures, Fiscal Years 2023 Through 2027 (*https://www.fda.gov/media/158308/download*).

the nomination is not complete, CMS will contact the manufacturer for more information.

b. CMS Consideration

CMS may contact the manufacturer to request supplemental information to ensure a timely review of the nomination. CMS commits to making at least a preliminary decision to provisionally accept or decline a nomination within 30 business days following the date noted in CMS' email to manufacturer as described previously and will communicate this information to the manufacturer by email. The process for determining whether or not the technology falls within a benefit category may take longer and, in those instances, CMS will send a subsequent email to the manufacturer communicating a final decision on the nomination when the benefit category review is completed.

c. Intake Meeting

Following the submission of a complete TCET nomination, CMS will offer an initial meeting with the manufacturer to review the nomination within 20 business days of receipt of a complete nomination. In this initial meeting, the manufacturer is expected to describe the device, its intended application, place of service, a high-level summary of the evidence supporting its use, and the anticipated timeframe for FDA review. CMS will answer any questions about the TCET process. CMS intends for these meetings to be held remotely to reduce travel burden on manufacturers and expeditiously meet these timeframes. These meetings will have a duration of 30 minutes. If a manufacturer declines to meet or if there is difficulty finding a mutually convenient time for the meeting, then CMS action on the nomination may be delayed.

d. Coordination With FDA

After CMS initiates review of a complete, formal nomination, representatives from CMS will meet with their counterparts at FDA to learn more information about the technology in the nomination to the extent the Agencies have not already done so. These discussions may help CMS gain a better understanding of the device and potential FDA review timing.

As noted in the Memorandum of Understanding [19] between FDA and CMS, FDA and CMS recognize that the following types of information transmitted between them in any medium and from any source must be protected from unauthorized disclosure: (1) trade secret and other confidential commercial information that would be protected from public disclosure pursuant to Exemption 4 of the Freedom of Information Act (FOIA); (2) personal privacy information, such as the information that would be protected from public disclosure pursuant to Exemption 6 or 7(c) of the FOIA; or (3) information that is otherwise protected from public disclosure by Federal statutes and their implementing regulations (for example, the Trade Secrets Act (18 U.S.C. 1905), the Privacy Act (5 U.S.C. 552a), the Freedom of Information Act (5 U.S.C. 552), the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), and the Health Insurance Portability and Accountability Act (HIPAA), Public Law 104–191).

e. Benefit Category Review

Following discussions with FDA, CMS may initiate a benefit category review if all other pathway criteria have been met. Emerging devices may fit within a Medicare benefit category but that does not mean that all medical devices will fall within a benefit category. If CMS believes that the device, prior to a decision on its approval or clearance by FDA, is likely to be coverable through one or more benefit categories, the device may be accepted into the TCET pathway. This is an interim step that is subject to change upon FDA's decision regarding approval or clearance of the device by FDA. Acceptance into TCET should not be viewed as a final determination that a device fits within a benefit category. However, if it appears that a device, prior to a decision on its approval or clearance by FDA, will not fall under an existing benefit category, the TCET nomination will be denied and this rationale will be discussed in the denial letter. CMS will likely not assess every submitted application for a benefit category review, as the TCET pathway is limited in its size per the discussion that follows in section II.G. of this document.

f. Manufacturer Notification

As noted previously, upon completion of CMS' review of the nomination, including the initial meeting with the manufacturer, discussions with FDA, and benefit category determination, CMS will notify the manufacturer by email whether the product is an appropriate candidate for the TCET pathway at this time. In instances where CMS does not accept a nomination, CMS will offer a virtual meeting with the manufacturer to answer any questions and discuss other potential coverage pathways.

g. Evidence Preview

Following CMS' determination that the product is an appropriate candidate, CMS will initiate an Evidence Preview, which is a systematic literature review that would provide early feedback on the strengths and weaknesses of the publicly available evidence for a specific item or service. The Evidence Preview will be a focused, but not necessarily exhaustive, review that will help CMS to identify any material evidence shortfalls. We believe the review conducted for the Evidence Preview will offer greater efficiency, predictability and transparency to manufacturers and CMS on the state of the evidence and any notable evidence gaps for coverage purposes. It is intended to inform judgments by CMS and manufacturers about the best available existing coverage options for an item or service. CMS intends for the Evidence Preview to be conducted by a contractor using standardized evidence grading, risk of bias assessment, and applicability assessment according to a protocol initially developed in collaboration with AHRQ in 2020. In order to initiate an Evidence, Preview, CMS will request written permission from the manufacturer to share any confidential commercial information (CCI) included in the nomination submission with the contractor. CMS anticipates that the Evidence Preview will take approximately 12 weeks to complete once the review is initiated, following acknowledgement of an accepted nomination in the TCET pathway. More time may be needed to complete the review in the event the product is novel, has conflicting evidence or other unanticipated issues arise.

h. Evidence Preview Meeting

CMS will share the Evidence Preview with the manufacturer via email and will offer a meeting to discuss it. The Evidence Preview will have been previously shared with AHRQ and may also be shared with FDA to obtain their feedback, as relevant. Representatives from those Agencies may participate in the Evidence Preview meeting. Manufacturers will have an opportunity to propose corrections to any errors and raise any important concerns with the Evidence Preview.

CMS will review the manufacturer feedback on the Evidence Preview and work with our contractor to revise the draft, as appropriate, prior to finalization. Upon finalizing the

[19] *https://www.fda.gov/about-fda/domestic-mous/mou-225-10-0010.*

Evidence Preview, manufacturers may request a meeting to discuss the strengths and weaknesses of the evidence and discuss the available coverage pathways (examples include an NCD, which could include CED, or seeking coverage decisions made by a MAC). These meetings to discuss the Evidence Preview may be conducted virtually or in person and will be scheduled for 60 minutes.

For those manufacturers who withdraw from the TCET pathway following the completion of an Evidence Preview, there will be no publicly posted tracking sheet and no public notification that an Evidence Preview was completed. However, we believe it is in the best interests of patients and the Medicare program to share the Evidence Preview with the MACs to aid them in their decision making since the development of an Evidence Preview represents a substantial investment of public resources in a thorough evidence review for pre-market devices. We solicit public comment on this approach.

i. Manufacturer's Decision to Continue or Discontinue With the TCET Pathway

Upon finalization of the Evidence Preview, the manufacturer may decide to pursue national coverage under the TCET pathway or to discontinue with the pathway. If the manufacturer decides to continue, the next step would include a manufacturer's submission of a formal NCD letter expressing the manufacturer's desire for CMS to open a TCET NCD analysis. Most, if not all, of the information needed to begin the TCET NCD would be included in the initial TCET pathway nomination, however, CMS invites the manufacturer to submit any additional materials the manufacturer believes would support the TCET NCD request.

j. Evidence Development Plan (EDP)

If evidence gaps are identified by CMS and/or AHRQ during the Evidence Preview, the manufacturer should also submit an evidence development plan (EDP) to CMS that sufficiently addresses the evidence gaps identified in the Evidence Preview. The EDP should be submitted to CMS at the same time as the formal NCD request cover letter. The EDP may include traditional clinical study designs or fit-for-purpose study designs or both, including those that rely on secondary use of real-world data, provided that those study designs follow all applicable CMS guidance documents. Additional information can be found here: *https://www.cms.gov/Medicare/Coverage/DeterminationProcess/Medicare-Coverage-Guidance-Documents-*.

Over the last several years, and most recently during the two stakeholder listening sessions we held on February 17, and March 31, 2022, we heard from stakeholders that they would like for CMS to utilize a more agile, iterative evidence review process that considers fit-for-purpose (FFP) study designs, including those that make secondary use of real-world data. An FFP study is one where the study design, analysis plan, and study data are appropriate for the question the study aims to answer. FFP study designs scale sample size, duration, and study type, etc., based off of the utilization and risk profile of the item or service. We are partnering with AHRQ to consider how to incorporate greater flexibility into the CED paradigm by allowing FFP evidence study designs that meet rigorous CMS evidence requirements. Any updates will be communicated in guidance documents and potential rulemaking as applicable and will include an opportunity for public comment. We believe that FFP study designs will be less burdensome for manufacturers. We also believe that by incorporating FFP study designs, we will address one of the public's concerns that CED should be time-limited to facilitate the timely generation of evidence that can inform patient and clinician decision making and lead to predictable Medicare coverage.

Postmarket FFP study proposals, particularly those that rely on real world data, have the potential to generate evidence that complements tightly controlled premarket traditional clinical trials by demonstrating external validity. Nonetheless, manufacturers should be aware that these studies require considerable planning in data validation, linkage, and transformation; specification of the study protocol; data analysis; and reporting. The study design, patient inclusion criteria, primary and secondary endpoints, treatment setting, analytic approaches, timing of outcome assessment, and data sources should be fully pre-specified in the submitted protocol. When writing EDPs, manufacturers should propose clinically meaningful benchmarks for each study outcome and provide supporting evidence.

Manufacturers should conceive a continued access study that maintains market access between the period when the primary EDP is complete, the evidence review is refreshed, and a decision regarding post-TCET coverage is finalized. The continued access study may rely on a claims analysis, with a focus on device utilization, geographic variations in care, and access disparities for traditionally underserved populations.

k. EDP Submission Timing

Because of the tight timeframes that are needed to effectuate CMS' goal of finalizing a TCET NCD within 6 months after FDA market authorization, manufacturers are strongly encouraged to begin developing a rigorous proposed EDP as soon as possible after receiving the finalized Evidence Preview. To meet the goal of having a finalized EDP approximately 90 business days after FDA market authorization, the manufacturer is encouraged to submit an EDP to CMS as soon as possible after FDA market authorization.

l. EDP Meeting and Finalization of the EDP

Once CMS receives the EDP from the manufacturer, it will share the document with AHRQ. CMS will have 30 business days to review the proposed EDP and provide written feedback to the manufacturer. During this time, CMS will collaborate with AHRQ to evaluate the EDP to ensure that it meets established standards of scientific integrity and relevance to the Medicare population. CMS will incorporate AHRQ's feedback on the EDP and will share the consolidated feedback with the manufacturer by email. Soon after providing written feedback, CMS will schedule a meeting with the manufacturer, which may also include AHRQ, to discuss any recommended refinements and address any questions.

In the EDP meetings, the manufacturer should be prepared to demonstrate: (1) a compelling rationale for its evidence development plan; (2) the study design, analysis plan, and data are all fit for purpose; and (3) the study sufficiently addresses threats to internal validity. The EDP should include clear enrollment, follow-up, study completion dates, and the timing and content of scheduled updates to CMS on study progress. Manufacturers should present and justify their study outcomes and performance benchmarks.

Following the EDP meeting, the manufacturer and CMS will have another 60 business days from the date of the EDP meeting to make any adjustments to the EDP. We recognize that, in some instances, manufacturers may require additional time to develop and refine their EDP. In these instances, CMS may provide additional time to manufacturers but we note that delays in submitting and revising an EDP may substantially impact the overall timeline for providing coverage under the TCET pathway. Elements of the CMS and

AHRQ approved EDPs, specifically the non-proprietary information, will be made publicly available on the CMS website upon posting of the proposed TCET NCD. In instances where the manufacturer's EDP is insufficient to meet CMS' and AHRQ's established standards and is therefore not able to be approved, CMS may exercise its option to withdraw participation from the TCET pathway as noted in II.B. of this document. We anticipate this will be a rare occurrence as CMS will make every effort to provide flexibility and information to manufacturers to facilitate the development of EDPs.

2. Coverage Under the TCET Pathway

CMS follows the statutory requirements, which includes an open and transparent process, when developing coverage policy at the national level. Though some elements of coverage review can be accelerated, gathering and reviewing meaningful public comment takes time. When CMS undertakes an NCD, we draw upon our analysis of the available evidence to identify the specific beneficiaries and conditions of coverage that are appropriate for the item or service. CMS also strongly considers information from patient advocacy organizations, specialty society guidance, expert consensus and recommendations for beneficiary selection, provider training and certification requirements, and facility requirements.

a. CMS NCD Review and Timing

If a device that is accepted into the TCET pathway receives FDA marketing authorization, CMS will initiate the NCD process by posting a tracking sheet following FDA market authorization (that is, the date the device receives PMA approval; 510(k) clearance; or the granting of a De Novo request) pending a CMS and AHRQ-approved Evidence Development Plan (in cases where there are evidence gaps as identified in the Evidence Preview). The manufacturer may also request that their device be withdrawn from the TCET pathway at this stage in the process, in which case CMS would not proceed with the NCD review described in this section. As previously noted, the goal is to have a finalized EDP no later than 90 business days after FDA market authorization.

The process for Medicare coverage under the TCET pathway would follow the NCD statutory timeframes in section 1862(l) of the Act. CMS would start the process by posting a tracking sheet and elements of the finalized Evidence Preview, specifically the non-proprietary information, which would initiate the start of a 30-day public comment period. Following further CMS review and analysis of public comments, CMS would issue a proposed TCET NCD and EDP within 6 months of opening the NCD. There would be a 30-day public comment period on the proposed TCET NCD and EDP and a final TCET NCD would be due within 90 days of the release of the proposed TCET NCD. Our goal is to release the proposed and final NCD in advance of the statutory deadline that applies to all NCDs. More information on the NCD process is set forth in the August 7, 2013 **Federal Register** notice (78 FR 48164).

b. Request for Specific Stakeholder Input on the Evidence Base and Conditions of Coverage

Since the evidence base for these emerging technologies will likely be incomplete and practice standards not yet established, we believe that feedback from the relevant specialty societies and patient advocacy organizations, in particular their expert input and recommended conditions of coverage (with special attention to appropriate beneficiary safeguards), is especially important for technologies covered through the TCET pathway.

Upon the opening of an NCD analysis, CMS strongly encourages these organizations to provide specific feedback on the state of the evidence and their suggested approaches to best practices for the emerging technologies under review. While CMS prefers to have this information during the initial public comment period upon opening the NCD, we realize that in many cases it may take longer for these organizations to provide their collective perspectives to CMS since these technologies will have only recently received FDA market authorization. Since CMS may consider any information provided that is in the public domain while undertaking an NCD, CMS encourages these organizations to publicly post on their website any additional feedback, including relevant practice guidelines, within 90 days of CMS' opening of the NCD. These organizations are encouraged to notify CMS when recommendations have been posted. All information considered by CMS to develop the proposed TCET NCD will become part of the NCD record and will be reflected in the bibliography as is typical for NCDs.

c. Coverage of Similar Devices

FDA market-authorized Breakthrough Devices are often followed by similar devices that other manufacturers develop. We believe that it is important to let physicians and their patients make decisions about the best available treatment depending upon the patient's individual situation. Rather than extending privileged coverage status only to the first device that achieves FDA market authorization, we are seeking comments on whether coverage of similar devices using CED would establish a level playing field and avoid delays in access that would occur if a separate NCD were required to ensure coverage. To be eligible for coverage under a TCET NCD, similar devices will be subject to the same coverage conditions, including a requirement to propose an EDP. Elements of the approved EDPs for similar devices, specifically the non-proprietary information, will be posted on the CMS website. In some cases, studies under the EDP may continue beyond the pre-specified NCD reconsideration date. In this case, CMS strongly encourages manufacturers to complete these studies even if further evidence development is voluntary. CMS seeks public comments on its approach for providing coverage for similar devices under the TCET pathway.

d. Duration of Coverage Under the TCET Pathway

The duration of transitional coverage through the TCET pathway will be tied to the CMS and AHRQ approved EDP. The review date specified in the EDP will provide one additional year after study completion to allow manufacturers to complete their analysis, draft one or more reports, and submit them for peer-reviewed publication. Given the short timeframes in the TCET pathway, an unpublished publication draft that a journal has accepted may also be acceptable. In general, we anticipate this transitional coverage period would last for a period of 3 to 5 years as evidence is generated to address evidence gaps identified in the Evidence Preview. However, CMS retains the right to reconsider an NCD at any point in time.

3. Transition to Post-TCET Coverage

TCET provides time-limited coverage for devices with the potential to deliver improved outcomes to the Medicare population but do not yet meet the reasonable and necessary standard for coverage under section 1862(a)(1)(A) of the Act. Consequently, TCET coverage is conditioned on further evidence development as agreed in a CMS and AHRQ approved EDP.

a. Updated Evidence Review

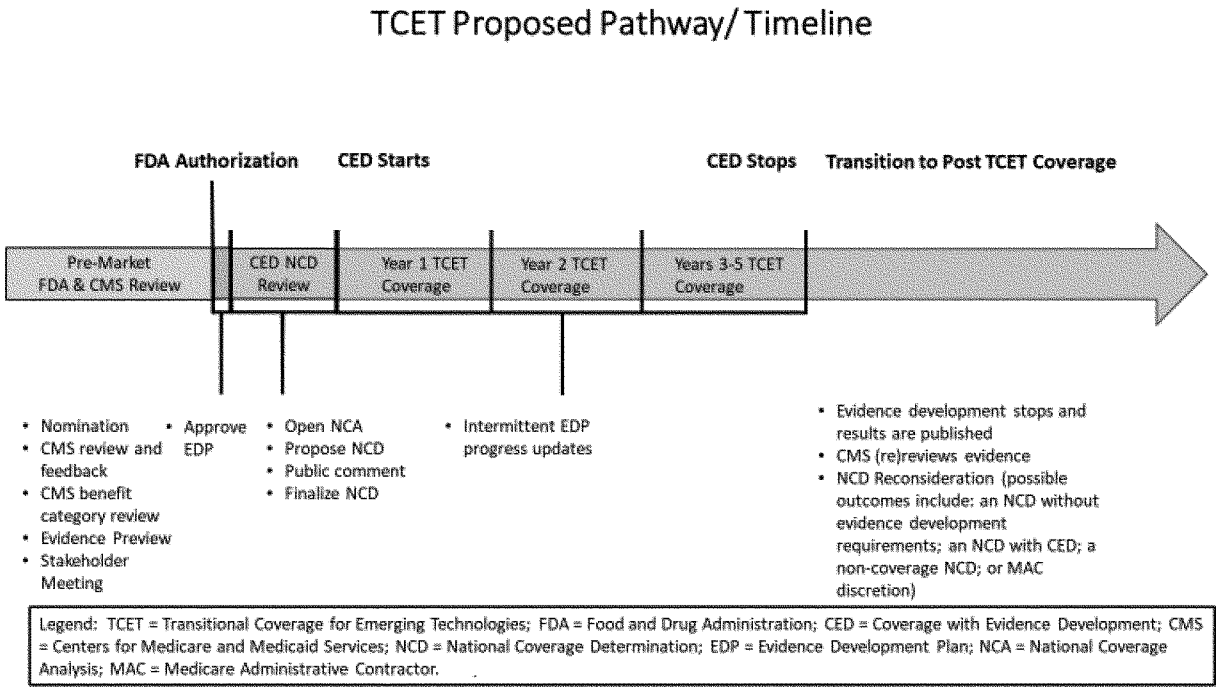
CMS intends to conduct an updated evidence review within 6 calendar months of the review date specified in

the EDP. To conduct the review, CMS intends to engage a third-party contractor to conduct a systematic literature review using detailed requirements that CMS developed in collaboration with AHRQ. The contractor will then perform a qualitative evidence synthesis and compare those findings against the benchmarks for each outcome specified in the original NCD. After conducting quality assurance on the contractor review, CMS will assess whether the evidence is sufficient to reach the reasonable and necessary standard. CMS will also review applicable practice guidelines and consensus statements and consider whether the conditions of coverage remain appropriate. CMS will collaborate with AHRQ and FDA as appropriate as the updated Evidence Review is conducted and will share the updated review with them.

b. NCD Reconsideration

Based upon the updated evidence review and consideration of any applicable practice guidelines, CMS, when appropriate, will open an NCD reconsideration by posting a proposed decision which proposes one of the following outcomes: (1) an NCD without evidence development requirements; (2) an NCD with continued evidence development requirements; (3) a non-coverage NCD; or (4) permitting local MAC discretion to make a decision under section 1862(a)(1)(A) of the Act. Neither an FDA market authorization nor a CMS approval of an Evidence Development Plan guarantees a favorable coverage decision. Standard NCD processes and timelines will continue to apply, and following a 30-day public comment period, CMS will have 60 days to finalize the NCD reconsideration.

The steps previously described for the TCET process follows with the applicable estimated timelines for obtaining a CMS coverage determination are illustrated in the diagram:



E. Roles

CMS has outlined the general roles of each participant in the TCET pathway.

1. Manufacturer

The manufacturer initiates consideration for TCET by voluntarily submitting a complete nomination as outlined previously under ''1. Nomination,'' of section II.D of this document entitled ''Procedures for the TCET Pathway.'' In the interest of expediting CMS decision making, the manufacturer should be prepared to quickly and completely respond to all issues and requests for information raised by the CMS reviewers. If CMS does not receive information from manufacturers in a timely fashion, CMS review timelines will be lengthened, potentially significantly. Manufacturers are encouraged to submit any materials they plan to present during meetings with CMS at least 7 days in advance of the scheduled meeting. Manufacturers should be prepared with the resources and skills to successfully develop, conduct, and complete the studies included in the EDP.

2. CMS

CMS will provide a secure and confidential nomination and review process as outlined previously in section II.C. of this document. CMS will initiate review of nominations for the TCET pathway by retrieving applications from the secure mailbox, and communicating with FDA regarding Breakthrough Devices seeking coverage under the TCET pathway. Throughout all stages of the TCET pathway, CMS intends to maintain open communication channels with FDA, AHRQ and the relevant manufacturer and fulfill its statutory obligations concerning the NCD process.

3. FDA

FDA will keep open lines of communication with CMS on Breakthrough Devices seeking coverage under the TCET pathway as resources permit. Participation in the TCET pathway does not change the review standards for FDA market authorization of a device, which are separate and distinct from the standards governing a CMS NCD.

4. AHRQ

Currently, AHRQ reviews all CED NCDs established under section

1862(a)(1)(E) of the Act. Consistent with section 1142 of the Act, AHRQ collaborates with CMS to define standards for clinical research studies to address the CED questions and meet the general standards for CED studies (*https://www.cms.gov/Medicare/Coverage/Coverage-with-Evidence-Development*). Since we anticipate that many of the NCDs conducted under the TCET pathway will result in CED decisions, AHRQ will continue to review all CED NCDs consistent with current practice. Additionally, AHRQ will collaborate with CMS as resources allow to evaluate the Evidence Preview and EDP and will have opportunities to offer feedback throughout the process that will be shared with manufacturers. AHRQ will be a partner with CMS as the Evidence Preview and EDP are being developed and approvals for these documents will be a joint CMS–AHRQ decision.

F. TCET and Parallel Review

While the TCET pathway will be limited to Breakthrough Devices, other potential expedited coverage mechanisms, such as Parallel Review, remain available. Eligibility for the Parallel Review program is broader than for the TCET pathway and could facilitate expedited CMS review of non-Breakthrough Devices. To achieve greater efficiency and to simplify the coverage process generally, CMS intends to work with FDA to consider updates to the Parallel Review program and other initiatives to align procedures, as appropriate.

G. Prioritizing Requests

CMS intends to review TCET pathway nominations and respond within 30 days after receipt of the email. At present, CMS anticipates accepting up to five TCET candidates annually due to CMS resource constraints. CMS intends to prioritize innovative medical devices that, as determined by CMS, have the potential to benefit the greatest number of individuals with Medicare.

III. Collection of Information Requirements

Based on our initial assessment of Breakthrough Devices applying the characteristics we list in II.C. of this notice with comment period regarding appropriate candidates for the TCET pathway, we anticipate that we will receive approximately eight nominations for the TCET pathway per year. Due to current CMS resource constraints, we do not anticipate the TCET pathway will accept more than five candidates per year. Since we estimate fewer than 10 respondents, the information collection requirements are exempt in accordance with the implementing regulations of the Paperwork Reduction Act (PRA) at 5 CFR 1320.3(c). As we gain experience with the TCET pathway, if we receive a higher number of respondents than anticipated, we will provide an updated analysis.

IV. 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 notice, and, when we proceed with a subsequent document, we will respond to the comments in that document.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on June 20, 2023.

Dated: June 21, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–13544 Filed 6–22–23; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Proposed Information Collection Activity, Temporary Assistance for Needy Families (TANF) Data Reporting for Work Participation (Office of Management and Budget #0970–0338)

AGENCY: Office of Family Assistance, Administration for Children and Families, United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is requesting to extend approval of the Temporary Assistance for Needy Families (TANF) Data Reporting for Work Participation, with proposed revisions. Revisions are intended to improve the clarity of the instructions, streamline reporting, and ensure all instructions are up-to-date.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: This request includes the following information collections: work verification procedures, the Caseload Reduction Documentation Process, the TANF Data Report, the Separate State Program (SSP)-Maintenance of Effort (MOE) Data Report, and TANF sampling instructions. The data and information from these reports and processes are used—and will continue to be used—for program analysis and oversight, including the calculation and administration of the work participation rate and associated penalties. Congress provides federal funds to operate TANF programs in the states, the District of Columbia, Guam, Puerto Rico, the U.S. Virgin Islands, and for approved federally recognized tribes and Alaskan Native Villages. We are proposing to continue the same information collections with only changes to instructions to improve clarity and eliminate data elements and guidance that are no longer relevant. The Work Verification Plan Guidance has been updated to incorporate further guidance that was published in 2006. The TANF and SSP–MOE Data Report instructions were revised to streamline the data collection, reduce the burden on respondents by eliminating unnecessary data elements, and clarify confusing data elements. The TANF and SSP–MOE Data Report layouts were also updated to reflect the streamlined instructions. The TANF Sample Manual was revised to eliminate outdated and unused sections.

Respondents: The 50 states of the U.S., the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Total annual burden hours
Work Verification Plan §§ 261.60–261.63	54	1	640	34,560
Caseload Reduction Documentation Process, ACF–202 §§ 261.41 & 261.44	54	1	120	6,480
Reasonable Cause/Corrective Compliance Documentation Process §§ 262.4, 262.6, & 262.7; § 261.51	54	2	240	25,920
TANF Data Report—Part 265	54	4	2,100	453,600
SSP–MOE Data Report—Part 265	29	4	714	82,824
TANF Sampling and Statistical Methods Manual Part 265.5	30	4	48	5,760

Estimated Total Annual Burden Hours: 609,144.

Comments: The Department specifically requests comments 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; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 601, 607, 609, 611, 613, and 1302.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–13639 Filed 6–26–23; 8:45 am]

BILLING CODE 4184–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Infant-Toddler Court Program State Awards

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Announcing fiscal year 2023 supplemental awards to the Infant Toddler Court Program-State Awards (ITCP) cooperative agreements.

SUMMARY: HRSA is providing additional award funds to the current ITCP State awards recipients in fiscal year 2023 to build state and local capacity and implement the infant-toddler court approach in additional sites.

FOR FURTHER INFORMATION CONTACT: Kateryna Zoubak, Early Childhood Systems Analyst, Division of Home Visiting and Early Childhood Systems, Maternal and Child Health Bureau, Health Resources and Services Administration, at *ezoubak@hrsa.gov* or 240–475–8014.

SUPPLEMENTARY INFORMATION:

Intended Recipient(s) of the Award: 12 recipients of the ITCP—State awards, as listed in Table 1.

Amount of Non-Competitive Award(s): 12 awards for approximately $2.7 million total (up to $225,000 each).

Project Period: September 30, 2023, to September 29, 2024.

Assistance Listing (CFDA) Number: 93.110.

Award Instrument: Cooperative Agreement.

Authority: Social Security Act, title V, section 501(a)(2) (42 U.S.C. 701(a)(2)), as amended.

TABLE 1—RECIPIENTS AND AWARD AMOUNTS

Grant No.	Award recipient name	State	Award amount
U2ZMC46643 ...	Prevent Child Abuse Arizona	AZ	Up to $225,000.
U2ZMC46645 ...	Rocky Mountain Children's Law Center	CO	Up to $225,000.
U2ZMC46638 ...	Georgia State University Research Foundation, Inc	GA	Up to $225,000.
U2ZMC46644 ...	Iowa Department of Public Health	IA	Up to $225,000.
U2ZMC46639 ...	Michigan Department of Health and Human Services	MI	Up to $225,000.
U2ZMC46636 ...	Nevada Division of Child & Family Services	NV	Up to $225,000.
U2ZMC46642 ...	Passaic County Court Appointed Special Advocates, A New Jersey Nonprofit Corporation	NJ	Up to $225,000.
U2ZMC46640 ...	Justice Innovation Inc. d/b/a Center for Court Innovation	NY	Up to $225,000.
U2ZMC46637 ...	Educational Service Center of Cuyahoga County	OH	Up to $225,000.
U2ZMC46641 ...	Oklahoma Department of Mental Health and Substance Abuse Services	OK	Up to $225,000
U2ZMC46635 ...	Children's Center	UT	Up to $225,000.
U2ZMC46634 ...	Children and Youth Justice Center	WA	Up to $225,000.

Justification: The Consolidated Appropriations Act, 2023, included additional funds to support Infant Toddler Courts. Guidance provided in House Report 117–403 specified a ''funding increase of $5,000,000 above the fiscal year 2022 enacted level to existing court team grantees,'' which HRSA understands is intended to include support for teams currently funded by ITCP State awards (HRSA–22–073). The supplemental awards align with the current ITCP—State awards funding opportunity (HRSA–22–073) and program purpose to continue and expand research-based infant-toddler court teams to improve child welfare practices and enhance the early developmental health and well-being of infants, toddlers, and their families. HRSA is awarding a total of approximately $2.7 million to the 12

current ITCP—State award recipients noted in Table 1.

Carole Johnson,

Administrator.

[FR Doc. 2023–13645 Filed 6–26–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Function, and Delegations of Authority; Correction

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: HRSA published a document in the **Federal Register** of August 31, 2021, amending the Statement of Organization, Functions, and Delegations of Authority. The document contained an incorrect administrative code under RE; Office of Intergovernmental and External Affairs. Delete administrative code RE10 and replace with REX for the Seattle Regional Office.

FOR FURTHER INFORMATION CONTACT: Georgia Lyons, Director, Division of HR Policy and Technology, Office of Human Resources, Office of Operations, HRSA, 5600 Fishers Lane, Room 12N42, Rockville, MD 20853, 301–443–5895, *askhr@hrsa.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of August 31, 2021, FR Doc. 2021–18075, page 48740, column 3, section RE.10, paragraph 2, correct Seattle Regional Office (RE10) to read Seattle Regional Office (REX).

Amy P. McNulty,

Deputy Director, Executive Secretariat.

[FR Doc. 2023–13587 Filed 6–26–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 materials, 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: Board of Regents of the National Library of Medicine.

Date: September 12–13, 2023.

Open: September 12, 2023, 9:00 a.m. to 3:30 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38A, 1st Floor, Visitors Center, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: September 12, 2023, 3:30 p.m. to 4:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38A, 1st Floor, Visitors Center, 8600 Rockville Pike, Bethesda, MD 20892.

Open: September 13, 2023, 9:00 a.m. to 12:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38A, 1st Floor, Visitors Center, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Christine Ireland, Committee Management Officer, Division of Extramural Programs, National Library of Medicine, Bethesda, MD 20892, 301–594–4929, *irelanc@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has stringent procedures for entrance into NIH federal property. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nlm.nih.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available. This meeting will be broadcast to the public, and available for at viewing at *http://videocast.nih.gov* on September 12–13, 2023.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: June 22, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–13653 Filed 6–26–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trial Readiness for Rare Neurological and Neuromuscular Diseases/Functional Neurological Disorders.

Date: July 12, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Room 3208, MSC 9529, Rockville, MD 20852, 301–496–9223, *Ana.Olariu@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: June 21, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–13599 Filed 6–26–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Tools and Resources to Understand Vascular Pathophysiology in TBI-related Dementia and/or VCID.

Date: July 14, 2023.

Time: 10:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Mir Ahamed Hossain, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Rockville, MD 20852, 301–496–9223, *mirahamed.hossain@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: June 22, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–13654 Filed 6–26–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Neurological Sciences and Disorders (NSD) A/B, Member Conflict.

Date: July 12, 2023.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Mirela Milescu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Rockville, MD 20852, 301–496–9223, *mirela.milescu@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel URGenT: Translational Efforts to Advance Gene-Based Therapies for Ultra-Rare Neurological and Neuromuscular Disorders.

Date: July 13, 2023.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Mirela Milescu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Rockville, MD 20852, 301–496–9223, *mirela.milescu@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: June 21, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–13601 Filed 6–26–23; 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 1009 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 Research Education Program Advancing the Careers of a Diverse Research Workforce (R25 Clinical Trial Not Allowed).

Date: July 17, 2023.

Time: 1:00 p.m. to 4:00 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 3G51, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Thomas F. Conway, 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 3G51, Rockville, MD 20852, 240–507–9685, *thomas.conway@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: June 21, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–13600 Filed 6–26–23; 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 administrative supplements in scope of the parent award for the 102 eligible grant recipients funded in FY 2022 under the Tribal Opioid Response Grant, Notice of Funding Opportunity (NOFO) TI–22–006. Recipients may receive up to $876,267 each for a total of $6.6 million. These recipients have a project end date of September 29, 2024. The supplemental funding will be used to further support opioid and stimulant use disorder treatment, prevention, recovery, and harm reduction activities, including traditional cultural activities.

FOR FURTHER INFORMATION CONTACT: William Longinetti, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857, telephone 240–276–1190; email: *william.longinetti@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Funding Opportunity Title: FY 2022 Tribal Opioid Response Grant Program TI–22–006.

Assistance Listing Number: 93.788.

Authority: Section 509 of the Public Health Service Act, as amended.

Justification: This is not a formal request for application. Assistance will only be provided to the 102 Tribal Opioid Response Grant recipients funded in FY 2022 under the Tribal Opioid Response Cooperative Agreements TI–22–006 based on the receipt of a satisfactory application and associated budget that is approved by a review group. The purpose of the supplement is to further expand and enhance current TOR grantee activities so only current recipients are eligible.

Dated: June 22, 2023.

Ann Ferrero,

Public Health Analyst.

[FR Doc. 2023–13619 Filed 6–26–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. USCBP–2023–0013]

Privacy Act of 1974; System of Records

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to modify and reissue a current DHS system of records titled, ''DHS/U.S. Customs and Border Protection (CBP)–022 Electronic Visa Update System (EVUS) System of Records.'' EVUS is an online enrollment system that enables DHS/CBP to collect updated information from certain nonimmigrant visa holders over the length of the visa period that would otherwise not be obtained prior to travel to the United States. DHS/CBP collects this information to determine whether applicants pose a security risk to the United States over the duration of the visa. DHS/CBP is updating this system of records to expand the category of records included in the system. The exemptions for the existing system of records notice will continue to be applicable for this updated system of records notice. This modified system of records notice will be included in the DHS inventory of record systems.

DATES: Submit comments on or before July 27, 2023. This modified system will be effective upon publication. Although this system is effective upon publication, DHS will accept and consider comments from the public and evaluate the need for any revisions to this notice.

ADDRESSES: You may submit comments, identified by docket number USCBP–2023–0013 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Mason C. Clutter, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number USCBP–2023–0013. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Debra L. Danisek, (202) 344–1610, *Privacy.CBP@cbp.dhs.gov,* CBP Privacy Officer, Privacy and Diversity Office, 1300 Pennsylvania Avenue NW, Washington, DC 20229. For privacy questions, please contact: Mason C. Cutter, (202) 343–1717, *Privacy@hq.dhs.gov,* Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to update and reissue a current Department of Homeland Security system of records titled, ''DHS/U.S. Customs and Border Protection (CBP)–022 Electronic Visa Update System (EVUS) System of Records. Upon arrival at a United States port of entry (POE), nonimmigrants [1] are typically required to present a valid passport, a travel and identity document issued by the traveler's country of citizenship, and valid visa, a document in which an individual applies for that is within the passport signifying that the United States has given the individual permission to enter the country for a specific period. Visa validity periods can vary considerably, and some visas are valid for extended periods of up to ten years, and often for multiple entries.

Frequent travelers to the United States who hold visas with short validity periods must reapply more frequently than those who hold visas with longer validity periods. While visas with a longer validity period provide an opportunity for individuals to travel to the United States with greater ease, it does not allow the U.S. Government to receive regularly updated biographic and other information from repeat visitors who travel to the United States multiple times over the span of the visa.[2] As such, individuals traveling on these visas with longer validity periods are screened using information that is not as recent as for individuals who must obtain visas more frequently. This

[1] The term nonimmigrant refers to foreign nationals who are admitted to the United States temporarily for a specific purpose. By contrast, the term immigrant refers to foreign nationals who wish to come to the United States permanently. For additional information about EVUS eligibility, please *see* 81 FR 72491, October 20, 2016.

[2] The information updates provided through the visa re-application process include basic biographical and eligibility elements that can change over time (*e.g.,* address, name, employment, criminal history).

raises security concerns due to the infrequency in which visa holders may be screened or vetted for threats or inadmissibility.

To alleviate this issue, the DHS/CBP developed EVUS, an online enrollment system that enables DHS/CBP to collect updated information from certain nonimmigrant visa holders prior to travel to the United States without requiring the visa holder to apply for a visa on a more frequent basis.[3] Nonimmigrants enroll in EVUS using an online application. The online application may be completed by either an applicant intending to travel to the United States, or representative on behalf of the traveler (*e.g.,* friend, relative, travel industry professional). The applicant or representative is asked to provide information such as name, date of birth, phone number, email address, passport and visa information, information about current or previous employer, destination address and point of contact in the United States, and emergency point of contact information. The applicant or representative also provides responses to eligibility questions regarding communicable diseases, arrests and convictions for certain crimes, history of visa revocation or deportation, and other questions. After the applicant or representative completes all required information, the enrollment may be submitted to DHS/CBP.

Upon receipt, DHS/CBP vets information from the EVUS application against select security and law enforcement databases maintained by DHS, including TECS and the Automated Targeting System (ATS), and other Federal systems. This vetting seeks to identify nonimmigrants who may be inadmissible before they depart for the United States, thereby increasing national security and public safety and reducing traveler delays upon arrival at U.S. ports of entry.

DHS/CBP processes a vast majority of EVUS enrollments within minutes; however, DHS/CBP may take up to 72 hours to approve or deny an enrollment. In addition to providing an approval or denial to the applicant, DHS/CBP also sends a notification to carriers that the individual is enrolled in EVUS and is authorized to board the carrier. A successful EVUS enrollment is generally valid for multiple trips over a period of two years (starting the date that the individual enrolled) or until the individual's passport or visa expires, whichever comes first. This means that if an individual's EVUS enrollment is successful for travel, they do not have to enroll again during the validity period. DHS/CBP continuously vets EVUS enrollment information against new derogatory information received from law enforcement and other national security databases during the course of the individual's enrollment. Therefore, an individual's EVUS status can change at any time.

If an applicant's EVUS enrollment is unsuccessful, DHS/CBP sends a notification that the individual intending to travel should not board the carrier. Alternatively, if an individual does not enroll in EVUS but is required to, DHS/CBP sends a notification to the carrier notifying them that no EVUS enrollment was found on file and that the carrier is responsible for checking for other valid travel documents that an individual may have.

If a traveler fails to enroll in EVUS when required, their visa will automatically be provisionally revoked. With a provisionally revoked visa, the traveler is not authorized to travel to the United States unless or until they enroll in EVUS and obtains a notification of compliance. If a visa is provisionally revoked due to failure to enroll in EVUS, the individual may attempt to enroll in EVUS. If successful, the provisional revocation will be reversed. In addition, non-compliance with EVUS is a basis for commercial carriers to deny boarding to an individual seeking to travel to the United States. Because non-compliance with EVUS results in automatic provisional revocation of the individual's visa, the individual would not have valid travel documents upon attempting to board.

DHS/CBP is publishing this modified system of records notice to make changes to the underlying system of records and to enhance transparency.

DHS/CBP is expanding the category of records to include social media identifier(s) (*e.g.,* username(s)/handle(s), platform(s) used). This change is consistent with the information collected in Department of State visa application forms.[4] Applicants and representatives have the option, but are not required, to provide social media information and are therefore able to submit the application without including any social media information. A decision to forgo responding to the optional social media question will not result in denial or an ''unsuccessful'' or ''revoked visa'' response from EVUS. This collection of information assists DHS/CBP in assessing an individual's eligibility to travel to or be admitted to the United States. DHS/CBP uses the information to search publicly available information on social media platforms. The collection of applicants' social media identifiers and associated platforms assists DHS/CBP with more timely visibility of the publicly available information on the platforms provided by the applicant. For example, social media information can provide positive, confirmatory information or support a traveler's EVUS application. Information found on social media may help distinguish individuals of concern from applicants whose information substantiates their eligibility for travel. It can also be used to identify potential deception, fraud, or previously unidentified national security or law enforcement concerns. While DHS/CBP is collecting publicly available information about the applicant and their associates, any information found as part of the vetting process will not be stored in EVUS. DHS/CBP retains information collected from publicly available sources, which may include social media information, as well as other information obtained through the vetting process in other systems of record, including TECS and the Automated Targeting System.

Consistent with DHS's information sharing mission, information stored in the DHS/CBP–022 EVUS system of records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/CBP may share information with appropriate Federal, State, local, Tribal, Territorial, foreign, or international government agencies consistent with the routine uses set forth in this System of Records notice.

This modified system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records''. A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some

[3] *See* Establishment of the Electronic Visa Update System (EVUS) Final Rule, 81 FR 72481 (October 20, 2016).

[4] In 2019, the Department of State obtained approval from the Office of Management and Budget (OMB) through the Paperwork Reduction Act (PRA) to collect social media information. The collection of social media information was approved under OMB Control Number 1405–0182 on April 11, 2019.

identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the Judicial Redress Act, along with judicial review for denials of such requests. In addition, the Judicial Redress Act prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act of 1974.

Below is the description of the DHS/CBP–022 Electronic Visa Update System (EVUS) System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)-022 Electronic Visa Update System (EVUS).

SECURITY CLASSIFICATION:

Unclassified and classified. The unclassified data may be retained on classified networks, but this does not change the nature and character of the data until it is combined with classified information.

SYSTEM LOCATION:

Records are maintained at DHS/CBP Headquarters in Washington, DC, and in field offices. Records are replicated from the operational system and maintained on the DHS unclassified and classified networks to allow for analysis and vetting consistent with the stated uses, purposes, and routine uses published in this notice.

SYSTEM MANAGER(S):

Director, EVUS Program Management Office, *evus@cbp.dhs.gov,* U.S. Customs and Border Protection Headquarters, 1300 Pennsylvania Avenue NW, Washington, DC 20229.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title IV of the Homeland Security Act of 2002, 6 U.S.C. 201 *et seq.,* the Immigration and Naturalization Act, as amended, including secs. 103 (8 U.S.C. 1103), 214 (8 U.S.C. 1184), 215 (8 U.S.C. 1185), and 221 (8 U.S.C. 1201) of the Immigration and Nationality Act (INA), and 8 CFR part 2 and 8 CFR part 215; and the Travel Promotion Act of 2009, Pub. L. 111–145, 22 U.S.C. 2131.

PURPOSE(S) OF THE SYSTEM:

EVUS provides a mechanism through which DHS/CBP may obtain information updates from nonimmigrants who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category. EVUS provides for greater efficiencies in the vetting of certain nonimmigrants by allowing DHS/CBP to identify subjects of potential interest before they depart for the United States, thereby increasing security and reducing traveler delays upon arrival at U.S. ports of entry. EVUS aids DHS/CBP in facilitating legitimate travel while also ensuring public safety and national security.

When DHS/CBP imposes a fee for EVUS enrollment, the tracking number associated with the payment information provided to *Pay.gov* will be stored in the Credit/Debit Card Data System (CDCDS). CDCDS is covered by DHS/CBP–003 Credit/Debit Card Data System (CDCDS), 76 FR 67755, November 2, 2011, and is used to process EVUS and third-party administrator fees and to reconcile issues regarding payment between EVUS, CDCDS, and *Pay.gov*. Payment information will not be used for vetting purposes and is stored separately from the EVUS enrollment data.

DHS maintains a replica of some or all of the data in EVUS on the unclassified and classified DHS networks to allow for analysis and vetting consistent with the above stated uses, purposes, and this published notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include: (1) nonimmigrants who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category; and (2) persons, including U.S. citizens and lawful permanent residents, whose information is provided by the applicant in response to EVUS enrollment questions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individuals who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category to obtain the required travel authorization by electronically submitting an enrollment consisting of biographic and other data elements via the EVUS website. The categories of records in EVUS include:

- Full name (first, middle, and last);
- Other names or aliases, if available;
- Date of birth;
- City and country of birth;
- Gender;
- Email address;
- Social media identifiers, such as usernames(s) and platform(s) used, if voluntarily provided;
- Telephone number (home, mobile, work, other);
- Home address (address, apartment number, city, State/region);
- o internet protocol (IP) address from which the EVUS application was submitted; [5]
- EVUS enrollment number;
- Global Entry Program Number;
- Country of residence;
- Passport number;
- Passport issuing country;
- Passport issuance date;
- Passport expiration date;
- Department of Treasury *Pay.gov* payment tracking number (*i.e.,* confirmation of payment; absence of payment confirmation will result in a ''not cleared'' determination);
- Country of citizenship;
- Other citizenship (country, passport number);
- National identification number, if available;
- Address while visiting the United States (number, street, city, State);
- Emergency point of contact information (name, telephone number, email address);
- U.S. point of contact (name, address, telephone number);
- Parents' names;
- Current job title;
- Current or previous employer name;
- Current or previous employer street address; and
- Current or previous employer telephone number.

The categories of records in EVUS also include responses to the following questions:

- History of mental or physical disorders, drug abuse or addiction,[6] and

[5] EVUS collects the IP address to assist CBP in determining which applicants are eligible to enroll in EVUS. The IP address will be used with the other EVUS application information for vetting, targeting, and law enforcement purposes in ATS. CBP uses the same security and control measures to protect the IP address as it uses for the rest of the application data.

[6] Immigration and Nationality Act (INA) 212(a)(1)(A). Pursuant to INA 212(a), individuals may be inadmissible to the United States if they have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the individual or others, or have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the individual or others and which behavior is likely to recur or to lead to other harmful behavior, or are determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict.

current communicable diseases, fevers, and respiratory illnesses;

○ Past arrests, criminal convictions, or illegal drug violations;

○ Previous engagement in terrorist activities, espionage, sabotage, or genocide;

○ History of fraud or misrepresentation;

○ Previous unauthorized employment in the United States;

○ Past denial of visa, or refusal or withdrawal of application for admission at a U.S. port of entry;

○ Previous overstay of authorized admission period in the United States;

○ Travel history and information relating to prior travel to or presence in Iraq or Syria, a country designated as a state sponsor of terrorism, or another country or area of concern to determine whether travel to the United States poses a law enforcement or security risk; and,

○ Citizenship and nationality information, with additional detail required for nationals of certain identified countries of concern.

RECORD SOURCE CATEGORIES:

Records are obtained from applicants and representatives (*e.g.,* friend, relative, travel industry professional) through the online EVUS enrollment at *https://www.cbp.gov/EVUS.* The passport and visa information provided by the applicant and/or representative is originally derived from the U.S. Department of State.

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 outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including the U.S. Attorneys Offices, or other Federal agency conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in their official capacity;

3. Any employee or former employee of DHS in their individual capacity, only when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (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 DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another Federal agency or Federal entity, when DHS 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.

G. To an appropriate Federal, State, Tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where CBP believes the information would assist enforcement of applicable civil or criminal laws and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To appropriate Federal, State, local, Tribal, or foreign governmental agencies or multilateral governmental organizations, with the approval of the Chief Privacy Officer, when DHS is aware of a need to use relevant data, that relate to the purpose(s) stated in this System of Records notice, for purposes of testing new technology.

J. To appropriate Federal, State, local, Tribal, or foreign governmental agencies or multilateral governmental organizations for the purpose of protecting the vital health interests of a data subject or other persons (*e.g.,* to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats; appropriate notice will be provided of any identified health threat or risk).

K. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate in the proper performance of the official duties of the officer making the disclosure.

L. To a Federal, State, Tribal, local, international, or foreign government agency or entity for the purpose of consulting with that agency or entity: (1) to assist in making a determination regarding redress for an individual in connection to a program; (2) for the purpose of verifying the identity of an individual seeking redress in connection with the operations of a DHS Component or program; or (3) for the purpose of verifying the accuracy of information submitted by an individual who has requested such redress on behalf of another individual.

M. To a Federal, State, Tribal, local, international, or foreign government agency or entity in order to provide relevant information related to intelligence or counterterrorism activities authorized by U.S. law, Executive Order, or other applicable national security directives.

N. To the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Act, and all other immigration and nationality laws including treaties and reciprocal agreements.

O. To an organization or individual in either the public or private sector, either foreign or domestic, when there is a reason to believe that the recipient is or

could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life or property.

P. To the carrier transporting an individual to the United States, prior to travel, in response to a request from the carrier, to verify an individual's travel authorization status.

Q. To the Department of Treasury's *Pay.gov,* for payment processing and payment reconciliation purposes.

R. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings.

S. To a Federal, State, local agency, Tribal, Territorial, or other appropriate entity or individual, through established liaison channels to selected foreign governments, in order to provide intelligence, counterintelligence, or other information for the purposes of intelligence, counterintelligence, or antiterrorism activities authorized by U.S. law, Executive Order, or other applicable national security directive.

T. To a Federal, State, local, Tribal, Territorial, or other foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence information, whether civil or criminal, or charged with investigating, prosecuting, enforcing or implementing civil or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

U. To the Department of Treasury's Office of Foreign Assets Control (OFAC) for inclusion on the publicly issued List of Specially Designated Nationals and Blocked Persons (SDN List) of individuals and entities whose property and interests in property are blocked or otherwise affected by one or more OFAC economic sanctions programs, as well as information identifying certain property of individuals and entities subject to OFAC economic sanctions programs.

V. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS/CBP stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are safeguarded with passwords and encryption and may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

DHS/CBP may retrieve records by any of the data elements supplied by the applicant/representative.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Enrollment information submitted to EVUS is retained for 15 years. DHS/CBP ingests EVUS enrollment data into other DHS/CBP systems for vetting purposes and is stored in accordance with the other systems' respective retention periods. For example, EVUS is ingested into the Automated Targeting System and is retained for 15 years and is also ingested into TECS where it is retained for 75 years, consistent with those systems' retention schedules. These retention periods are based on DHS/CBP's historical encounters with suspected terrorists and other criminals, as well as the broader expertise of the law enforcement and intelligence communities. Travel records, including historical records, are essential in assisting DHS/CBP officers with their risk-based assessment of travel indicators and identifying potential links between known and previously unidentified terrorist facilitators. Analyzing these records for these purposes allows DHS/CBP to continue to effectively identify suspect travel patterns and irregularities. If the record is linked to active law enforcement lookout records, DHS/CBP matches to enforcement activities, and/or investigations or cases (*i.e.,* specific and credible threats; flights, travelers, and routes of concern; or other defined sets of circumstances), the record will remain accessible for the life of the law enforcement matter to support that activity and other enforcement activities that may become related.

Records replicated on the unclassified and classified networks will follow the same retention schedule.

Payment information will not be stored in EVUS but will be forwarded to *Pay.gov* and stored in CBP's financial processing system, pursuant to the DHS/CBP–003 Credit/Debit Card Data System of Records notice, 76 FR 67755, November 2, 2011. When a traveler's EVUS data is used for purposes of processing their application for admission to the United States, the EVUS data will be used to create a corresponding admission record that is covered in the DHS/CBP–016 Non-Immigrant Information System (NIIS) System of Records notice, 80 FR 13398, March 13, 2015. This corresponding admission record will be retained in accordance with the NIIS retention schedule, which is 75 years.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS/CBP safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS/CBP has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Applicants may access their EVUS information to view and amend their enrollment by providing their EVUS enrollment number and/or name, date of birth, and visa/passport number through the EVUS website. EVUS applicants have the ability to view their EVUS status (successful enrollment, unsuccessful enrollment, pending) and submit limited updates to their travel itinerary information.

In addition, EVUS applicants and other individuals whose information is included on EVUS enrollment may submit requests and receive information maintained in this system as it relates to data submitted by or on behalf of a person who travels to the United States and crosses the border, as well as, for EVUS applicants, the resulting determination (successful enrollment, pending, unsuccessful enrollment). However, the Secretary of Homeland Security has exempted portions of this system from certain provisions of the Privacy Act of 1974 related to providing the accounting of disclosures to individuals because it is a law enforcement system. DHS/CBP will consider individual requests to determine whether information may be released. In processing requests for access to information in this system, DHS/CBP will review not only the records in the operational system but

also the records that were replicated on the unclassified and classified networks and based on this notice provide appropriate access to the information.

Individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and Headquarters Freedom of Information Act (FOIA) Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contact Information.'' If an individual believes more than one component maintains Privacy Act records concerning them, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, Washington, DC 20528–0655, or electronically at *https://www.dhs.gov/freedom-information-act-foia.* Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about you may be available under the Freedom of Information Act.

When an individual is seeking records about themself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify their identity, meaning that the individual must provide their full name, current address, and date and place of birth. The individual must sign the request, and the individual's signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. An individual may obtain more information about this process at *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, the individual should:

- Explain why they believe the Department would have information being requested;
- Identify which component(s) of the Department they believe may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records.

If an individual's request is seeking records pertaining to another living individual, the first individual must include a statement from that individual certifying their agreement for the first individual to access their records.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

See ''Record Access Procedures'' above.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 6 CFR part 5, appendix C, law enforcement and other derogatory information covered in this system is exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (e)(5), and (8); (f); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, pursuant to 5 U.S.C. 552a (k)(1) and (k)(2): 5 U.S.C. 552a(c)(3); (d)(1), (d)(2), (d)(3), and (d)(4); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f).

Despite the exemptions taken on this system of records, DHS/CBP is not taking any exemption from subsection (d) with respect to information maintained in the system as it relates to data submitted by or on behalf of a person who travels to visit the United States and crosses the border, nor shall an exemption be asserted with respect to the resulting determination (authorized to travel, pending, or not authorized to travel). However, pursuant to 5 U.S.C. 552a(j)(2), DHS/CBP plans to exempt such information in this system from sections (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as is necessary and appropriate to protect this information. Further, DHS will claim exemption from sec. (c)(3) of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(k)(2) as is necessary and appropriate to protect this information. CBP will not disclose the fact that a law enforcement or intelligence agency has sought particular records because it may affect ongoing law enforcement activities.

When this system receives a record from another system exempted in that source system under 5 U.S.C. 552a(j) or (k), DHS/CBP will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claim any additional exemptions set forth here. For instance, as part of the vetting process, this system may incorporate records from DHS/CBP's Automated Targeting System, and all exemptions for DHS/CBP's Automated Targeting System of Records notice, described and referenced herein, carry forward and will be claimed by DHS/CBP.

HISTORY:

84 FR 30751 (June 27, 2019); 81 FR 60371 (September 1, 2016).

* * * * *

Mason C. Clutter,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2023–13540 Filed 6–26–23; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Notice of the Renewal of the CISA Cybersecurity Advisory Committee Charter

AGENCY: Cybersecurity and Infrastructure Security Agency, Department of Homeland Security (DHS).

ACTION: Notice of availability; renewal of the Cybersecurity and Infrastructure Security Agency Cybersecurity Advisory Committee Charter.

SUMMARY: The Secretary, Department of Homeland Security has determined that the renewal of the Cybersecurity and Infrastructure Security Agency (CISA) Cybersecurity Advisory Committee (CSAC) is necessary and in the public interest in connection with DHS's performance of its duties. Through this notice, the Department is announcing the charter renewal of the CSAC, a Federal Advisory Committee, for public awareness.

FOR FURTHER INFORMATION CONTACT: Megan Tsuyi, 202–594–7374, *CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The CSAC was officially established on June 25, 2021 under the National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283 (NDAA). Pursuant to section 871(a) of the Homeland Security Act of 2002, 6 United States Code (U.S.C.) 451(a), this statutory committee is established in accordance with and operates under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., chapter 10).

The primary purpose of the CSAC is to develop, at the request of the CISA Director, recommendations on matters related to the development, refinement, and implementation of policies, programs, planning, and training pertaining to the cybersecurity mission of the Agency. The CSAC operates in an

advisory capacity only and is in the public interest. Please visit *https://www.cisa.gov/resources-tools/groups/cisa-cybersecurity-advisory-committee* for more information on CSAC, and the CSAC Membership Roster.

Membership: The Committee is composed of up to 35 members. Members are appointed by the Director. Members consist of subject matter experts and shall be geographically balanced, and include representatives of State, local, Tribal, and Territorial governments and of a broad range of industries, which may include defense, education, financial services and insurance, healthcare, manufacturing, media and entertainment, chemicals, retail, transportation, energy, information technology, communications, and other relevant fields identified by the Director. For DHS to fully leverage broad-ranging experience and education, the Committee must be diverse with regard to professional and technical expertise. DHS is committed to pursuing opportunities, consistent with applicable law, to compose a committee that reflects the diversity of the nation's people.

Duration: The CSAC charter was filed with Congress on May 23, 2023 and will terminate on May 23, 2025, unless renewed by the Secretary.

Megan M. Tsuyi,

Designated Federal Officer, CISA Cybersecurity Advisory Committee, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2023–13596 Filed 6–26–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR–6398–D–01]

Delegation of Concurrent Authority to the Deputy Secretary

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of concurrent authority.

SUMMARY: Through this Notice, the Secretary of the Department of Housing and Urban Development delegates to the Deputy Secretary all authority vested in or delegated or assigned to the Secretary of Housing and Urban Development, with certain exceptions as described herein in Section B. This Delegation supersedes all prior Delegations of Authority to the Deputy Secretary, including the Delegation of Concurrent Authority to the Deputy Secretary published in the **Federal Register** on November 7, 2012.

DATES: This delegation of authority is effective June 20, 2023.

FOR FURTHER INFORMATION CONTACT: John B. Shumway, Assistant General Counsel for Administrative Law, Office of General Counsel, Department of Housing and Urban Development, Room 9244, 451 7th Street SW, Washington, DC 20410, telephone (202) 402–5190 (This is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: Under section 7(d) of the Department of Housing and Urban Development Act, the Secretary may delegate any of the Secretary's functions, powers and duties to such officers and employees of HUD as the Secretary may designate, and may authorize successive redelegations of such functions, powers and duties as determined to be necessary or appropriate. In this Delegation of Concurrent Authority issued today, the Secretary is delegating to the Deputy Secretary of Housing and Urban Development all the power and authority vested in or delegated or assigned to the Secretary of Housing and Urban Development to be exercised concurrently with the Secretary, with the exception of the power to sue and be sued and the authority to appoint Inferior Officers of the Department covered by the Appointments Clause of the United States Constitution, Art. II, section 2, cl. 2.

Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated

The Deputy Secretary of Housing and Urban Development is hereby authorized, concurrently with the Secretary, to exercise all the power and authority vested in or delegated or assigned to the Secretary of Housing and Urban Development, including the authority to redelegate to the employees of HUD any of the authority delegated under this section.

Section B. Authority Excepted

The authority delegated in Section A of this Notice does not include the authority to sue and be sued or the authority to appoint Inferior Officers of the Department of Housing and Urban Development covered by the Appointments Clause of the United States Constitution, Art. II, section 2, cl. 2.

Section C. Authority Superseded

This delegation supersedes all previous Delegations of Authority to the Deputy Secretary of the Department of Housing and Urban Development, including the Delegation of Concurrent Authority to the Deputy Secretary published in the **Federal Register** on November 7, 2012 (77 FR 66864).

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 21, 2023.

Marcia L. Fudge,

Secretary of Housing and Urban Development.

[FR Doc. 2023–13584 Filed 6–26–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR–6399–D–01]

Revocation of Delegation of Concurrent Authority to the Associate Deputy Secretary

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of revocation of delegation of concurrent authority.

SUMMARY: Through this notice, the Secretary of Housing and Urban Development hereby revokes all authority previously delegated to the Associate Deputy Secretary, including the delegation of concurrent authority published in the **Federal Register** on September 9, 2019.

DATES: This revocation of delegation of authority is effective June 20, 2023.

FOR FURTHER INFORMATION CONTACT: John B. Shumway, Assistant General Counsel for Administrative Law, Office of General Counsel, Department of Housing and Urban Development, Room 9244, 451 7th Street SW, Washington, DC 20410, telephone (202) 402–5190 (This is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

Section A. Authority Revoked

The Secretary of Housing and Urban Development hereby revokes all authority previously delegated to the Associate Deputy Secretary.

Section B. Authority Superseded

This revocation supersedes all previous delegations of authority to the Associate Deputy Secretary, including the Delegation of Concurrent Authority published in the **Federal Register** on September 9, 2019 (84 FR 47316).

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 21, 2023.

Marcia L. Fudge,

Secretary of Housing and Urban Development.

[FR Doc. 2023–13583 Filed 6–26–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R3–ES–2023–0080; FXES11140300000–234]

Draft Environmental Assessment and Proposed Habitat Conservation Plan; Receipt of an Application for an Incidental Take Permit, Cardinal Point Wind Project, McDonough and Warren Counties, IL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Cardinal Point Wind Farm, LLC for an incidental take permit under the Endangered Species Act, for its Cardinal Point Wind Project (project). If approved, the permit would authorize the incidental take of two endangered species, the Indiana bat and the northern long-eared bat, and two species under federal review, the tricolored bat and little brown bat. The applicant has prepared a habitat conservation plan in support of their application. We also announce the availability of a draft environmental assessment, which has been prepared in response to the permit application in accordance with the requirements of the National Environmental Policy Act. We invite comments from the public and Federal, Tribal, State, and local governments.

DATES: We will accept comments on or before July 27, 2023.

ADDRESSES:

Document availability: Electronic copies of the documents this notice announces, along with public comments received, will be available online in Docket No. FWS–R3–ES–2023–0080 at *https://www.regulations.gov.*

Comment submission: In your comment, please specify whether your comment addresses the proposed HCP, draft EA, or any combination of the aforementioned documents, or other supporting documents. You may submit written comments by one of the following methods:

- *Online: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–R3–ES–2023–0080.
- *By hard copy:* Submit comments by U.S. mail to Public Comments Processing, Attn: Docket No. FWS–R3–ES–2023–0080; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB/3W; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Kraig McPeek, Field Supervisor, Illinois-Iowa Ecological Services Field Office, by email at *kraig_mcpeek@fws.gov,* or telephone at 309–757–5800, extension 202; or Andrew Horton, Regional HCP Coordinator, Midwest Region, by email at *andrew_horton@fws.gov,* or telephone at 612–713–5337. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations prohibit the ''take'' of animal species listed as endangered or threatened. ''Take'' is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [listed animal species], or to attempt to engage in such conduct'' (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits (ITP) for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Applicant's Proposed Project

The applicant requests a 6-year ITP for take of four bat species, including the federally protected Indiana bat (*Myotis sodalis*) and northern long-eared bat (*Myotis septentrionalis*), the tricolored bat (*Perimyotis subflavus*), which is proposed for listing, and the little brown bat (*Myotis lucifugus*), which is being considered for listing. These species are hereafter referred to as ''covered species.'' The applicant determined that wind farm activities on this land are reasonably certain to result in incidental take of these species. The activity that could result in incidental take of the covered species is the operation of 60 wind turbines occurring in McDonough and Warrant Counties, Illinois, on private land. The estimated level of take from the project is up to 240 Indiana bats, 6 northern long-eared bats, 18 tricolored bats, and 18 little brown bats over the 6-year project duration.

The proposed conservation strategy in the applicant's proposed HCP is designed to avoid, minimize, and mitigate the impacts of the covered activity on the covered species. The biological goals and objectives are to minimize potential take of the covered species through on-site minimization measures and to provide habitat conservation measures to offset any impacts from operations of the project. On-site minimization measures include feathering turbine blades under specific conditions that are associated with high bat use of the project area, as measured with acoustic bat detectors at the project. To offset the impacts of the taking of the covered species, the applicant proposes to conserve bat habitat by purchasing credits from a bat conservation bank in Illinois or through individually sponsored habitat projects. The Service requests public comments on the permit application, which includes a proposed HCP, and an EA prepared in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*).

The applicant's HCP describes the activities that will be undertaken to implement the project, as well as the mitigation and minimization measures proposed to address the impacts to the covered species. Pursuant to NEPA, the EA analyzes the impacts the ITP issuance would have on the covered species and the environment.

National Environmental Policy Act

Issuance of an ITP is a Federal action that triggers the need for compliance with NEPA. We prepared a draft EA that analyzes the environmental impacts on

the human environment resulting from three alternatives: A no-action alternative, the proposed action, and a more restrictive alternative consisting of feathering below higher wind speeds that results in lower impacts to bats.

Next Steps

The Service will evaluate the permit application and the comments received to determine whether the application meets the requirements of section 10(a) of the ESA. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(l)(B) of the ESA have been met. If met, the Service will issue the requested ITP to the applicant.

Request for Public Comments

The Service invites comments and suggestions from all interested parties during a 30-day public comment period (see **DATES**). Information and comments regarding the following topics are requested:

1. The environmental effects that implementation of any alternative could have on the human environment;
2. Whether or not the significance of the impact on various aspects of the human environment has been adequately analyzed;
3. Any threats to the covered species that may influence their populations over the life of the ITP that are not addressed in the proposed HCP or environmental assessment; and
4. Any other information pertinent to evaluating the effects of the proposed action on the human environment.

Availability of Public Comments

You may submit comments by one of the methods shown under **ADDRESSES**. We will post on *https://www.regulations.gov* all public comments and information received electronically or via hardcopy. All comments received, including names and addresses, will become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the National Environmental Policy Act (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR part 46).

Lori Nordstrom,

Assistant Regional Director, Ecological Services.

[FR Doc. 2023–13554 Filed 6–26–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036074; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: California State University, Chico, Chico, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California State University Chico (CSU Chico) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Tehama County, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after July 27, 2023.

ADDRESSES: Dawn Rewolinski, California State University, Chico, 400 W 1st Street, Chico, CA 95929, telephone (530) 898–3090, email *drewolinski@csuchico.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 CSU Chico. 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 inventory or related records held by CSU Chico.

Description

Accession 51

Human remains representing, at minimum, one individual were removed from site CA–TEH–750 in Tehama County, CA. In 1971, this site was recorded by M. Boyton after it was unknowingly trenched while testing farm equipment. Upon the discovery, the landowner collected cultural items and human remains from the site and donated them to CSU Chico. Around the same time, Chico State surveyed the site once again, during which no additional individuals were identified. The 79 associated funerary objects are one debitage, eight modified stones, eight modified shells, 61 glass beads, and one copper bell.

Accession 77

Human remains representing, at minimum, two individuals were removed from the Bambauer site (CA–TEH–247) in Tehama County, CA. In 1965, Keith Johnson recorded the site, and in 1965 and 1966, the University of California, Los Angeles conducted excavations there. In 1974, excavation at the site was resumed by a CSU Chico field class under the direction of Keith Johnson. Currently, CSU Chico houses the records from the 1965–66 excavations and the human remains and artifacts from the 1974 excavation. The 1,949 associated funerary objects are one modified shell, one soil sample, one float sample, 12 charcoal samples, 14 projectile points, 15 organics, 25 unmodified shells, 30 modified faunal elements, 91 modified stones, 94 faunal remains, 303 lots consisting of debitage, and 1,362 unmodified faunal elements.

Accession 83

Human remains representing, at minimum, 12 individuals were removed from the Rumiano Ranch site (CA–TEH–676) in Tehama County, CA. In 1974, the Tehama County Sherriff's Department collected human remains and associated funerary objects that had been exposed by farm equipment. Collections records state that the University of California, Davis donated this collection to CSU Chico in November of 1974, suggesting that the Sherriff's Department transferred control of the human remains and associated funerary objects to the University of California, Davis shortly after they were collected. The 10 associated funerary objects are three lots consisting of debitage, four modified

stone tools, one projectile point, and two modified shells.

Cultural Affiliation

The human remains and associated funerary objects 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: anthropological, archeological, historical, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, CSU Chico has determined that:

- The human remains described in this notice represent the physical remains of 15 individuals of Native American ancestry.
- The 2,038 objects described in this notice 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.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Paskenta Band of Nomlaki Indians of California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations 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.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after July 27, 2023. If competing requests for repatriation are received, CSU Chico must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. CSU Chico 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 10.9, 10.10, and 10.14.

Dated: June 14, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–13641 Filed 6–26–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036073; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: California State University, Chico, Chico, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California State University Chico (CSU Chico) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Butte County, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after July 27, 2023.

ADDRESSES: Dawn Rewolinski, California State University, Chico, 400 W 1st Street, Chico, CA 95929, telephone (530) 898–3090, email *drewolinski@csuchico.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 CSU Chico. 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 inventory or related records held by CSU Chico.

Description

Accession 1

Human remains representing, at minimum, one individual were removed from five sites in the city of Chico, in Butte County, CA (CA–BUT–0168, CA–BUT–0186, CA–BUT–0226, CA–BUT–0284, and CA–BUT–0286). In 1940, these sites were visited by Meigs (who was affiliated with Chico State), and in 1955, they were visited by Burchard. Both men collected cultural items from the sites. The sites were formally recorded in the spring of 1964 by Dorothy Hill and Professor Keith Johnson, who led a Chico State Anthropology Department Archaeological Survey class. During this survey, additional items were collected. Items removed during the three collection events were accessioned by the Chico State Department of Anthropology in March of 1964. The 33 associated funerary objects are one cordage sample, one lot consisting of debitage, five modified faunal elements, nine modified stones, 14 projectile points, and three modified shells.

Accession 80

Human remains representing, at minimum, six individuals were removed by workers at Butte Farms, in Butte County, CA. In 1974, the property donated the burial collection to CSU Chico. The one associated funerary object is an edge modified flake.

Accession 253

Accession 253 consists of humans remains representing, at minimum, four individuals. These human remains derive from archeological recoveries, public donations, and forensic cases. No associated funerary objects are present.

Cultural Affiliation

The human remains and associated funerary objects 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: anthropological, archeological, historical, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian

organizations, CSU Chico has determined that:

- The human remains described in this notice represent the physical remains of 11 individuals of Native American ancestry.
- The 34 objects described in this notice 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.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Berry Creek Rancheria of Maidu Indians of California; Enterprise Rancheria of Maidu Indians of California; Mechoopda Indian Tribe of Chico Rancheria, California; Mooretown Rancheria of Maidu Indians of California; and the Paskenta Band of Nomlaki Indians of California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice and, if joined to a request from one or more of the Indian Tribes, the Konkow Valley Band of Maidu, a non-federally recognized Indian group.

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.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after July 27, 2023. If competing requests for repatriation are received, CSU Chico must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. CSU Chico 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, 10.10, and 10.14.

Dated: June 14, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–13640 Filed 6–26–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036072; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: California State University, Chico, Chico, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California State University Chico (CSU Chico) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Butte County, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after July 27, 2023.

ADDRESSES: Dawn Rewolinski, California State University, Chico, 400 W 1st Street, Chico, CA 95929, telephone (530) 898–3090, email *drewolinski@csuchico.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 CSU Chico. 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 inventory or related records held by CSU Chico.

Description

Accession 58

In 1972, human remains representing, at minimum, one individual were removed from site CA–BUT–478, in Butte County, CA. This site was uncovered by Makato Kowta of California State University, Chico during an orchard-leveling operation. The 127 associated funerary objects are one modified stone, one modified flake, one grinding stone, two hammerstones, one pestle, one projectile point, and 120 soil samples.

Cultural Affiliation

The human remains and associated funerary objects 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: anthropological, archeological, historical, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, CSU Chico has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The 127 objects described in this notice 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.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Berry Creek Rancheria of Maidu Indians of California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations 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.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after July 27, 2023. If competing requests for repatriation are received, CSU Chico must determine the most appropriate requestor prior to repatriation. Requests for joint

repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. CSU Chico 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 10.9, 10.10, and 10.14.

Dated: June 14, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–13637 Filed 6–26–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Electronic Devices and Semiconductor Devices Having Wireless Communication Capabilities and Components Thereof, DN 3684;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Bell Northern Research, LLC on June 21, 2023. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices and semiconductor devices having wireless communication capabilities and components thereof. The complaint names as respondents: NXP Semiconductors, N.V. of the Netherlands; NXP USA, Inc. of Austin, TX; Laird Connectivity, LLC of Akron, OH; Qualcomm Technologies, Inc. of San Diego, CA; MediaTek Inc. of Taiwan; MediaTek USA Inc. of San Jose, CA; ASUSTek Computer Inc. of Taiwan; and ASUS Computer International of Fremont, CA. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3684'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: June 22, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–13627 Filed 6–26–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1123–0NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection; Title of Collection—Petition for Commutation of Sentence

AGENCY: Office of the Pardon Attorney, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of the Pardon Attorney, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until August 28, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kira Gillespie, Deputy Pardon Attorney, Office of the Pardon Attorney, 950 Pennsylvania Avenue NW, Main Justice—RFK Building, Washington, DC 20530; *kira.gillespie@usdoj.gov;* (202) 616–6073.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: Applicants seeking commutation of sentence by the President will be asked to respond to this collection. The principal purpose for collecting this information is to enable the Office of the Pardon Attorney to process applicants' requests for commutation. The information is necessary to verify applicants' identities, conduct investigation of the applicants' backgrounds and criminal records, and ensure proper notification to the Bureau of Prisons, Federal Bureau of Investigation, U.S. Attorneys' Offices, U.S. Probation Offices, and federal courts in the event of grants of executive clemency.

Overview of This Information Collection

1. *Type of Information Collection:* New collection.

2. *The Title of the Form/Collection:* Petition for Commutation of Sentence.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is the Office of the Pardon Attorney.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Individuals or households. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Available information suggests that potentially 5,000 applicants will complete petitions annually. We estimate an average of three hours for each applicant to respond to the collection.

6. *An estimate of the total annual burden (in hours) associated with the collection:* Considering the above projected figures, we estimate 15,000 hours of annual burden hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
Petition for Commutation of Sentence	5,000	1/annually	5,000	3	15,000
Unduplicated Totals	5,000		5,000		15,000

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: June 21, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–13620 Filed 6–26–23; 8:45 am]

BILLING CODE 4410–29–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Job Corps Placement Record

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 July 27, 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: Form ETA–678 is used to obtain information about student training for placement of students in jobs, further education or military service. It is used to evaluate overall program effectiveness and is the only form which documents a student's post-center status. The form is prepared by Job Corps centers and placement specialists for each student separating from Job Corps centers. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 7, 2023 (88 FR 7998).

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 Placement Record.

OMB Control Number: 1205–0035.

Affected Public: Private Sector—Individuals or Households.

Total Estimated Number of Respondents: 34,000.

Total Estimated Number of Responses: 34,000.

Total Estimated Annual Time Burden: 4,210 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–13535 Filed 6–26–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Securing Financial Obligations Under the Longshore and Harbor Workers' Compensation Act and Its Extensions

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-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 July 27, 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: OWCP Forms LS–275–IC, LS–275–SI, and LS–276 cover the submission of information by insurance carriers and self-insured employers regarding their ability to meet their financial obligations under the Longshore Act and its extensions. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 8, 2023 (88 FR 8321).

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–OWCP.

Title of Collection: Securing Financial Obligations Under the Longshore and Harbor Workers' Compensation Act and its Extensions.

OMB Control Number: 1240–0005.

Affected Public: Private sector—businesses or other for-profits; not-for-profit institutions.

Total Estimated Number of Respondents: 705.

Total Estimated Number of Responses: 705.

Total Estimated Annual Time Burden: 881 hours.

Total Estimated Annual Other Costs Burden: $409.

(Authority: 44 U.S.C. 3507(a)(1)(D).)

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–13537 Filed 6–26–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; PSM On-Site Consultation Agreements

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before July 27, 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: OSHA provides guidance to State On-Site Consultation programs to meet the requirements of the On-Site Consultation regulations, 29 CFR part 1908, through the OSHA Consultation Policies and Procedures Manual (CPPM), CSP 02–00–004, March 19, 2021. The CPPM complies with the requirements of 29 CFR 1908 to specify the framework for administering and managing the OSHA On-Site Consultation Program, and to establish policies and procedures. The On-Site Consultation Program is administered by OSHA's Directorate of Cooperative and State Programs (DCSP), Office of Small Business Assistance (OSBA). The ''On-Site Consultation Program'' is the Program administered by OSHA for the implementation of Consultation programs by U.S. States and territories. ''On-Site Consultation program'' refers to a State/U.S. territory operated program that provides no-cost consultative services to small- and medium-sized businesses. OSHA is seeking approval of the Process Safety Management (PSM) policy and procedures for the On-Site Consultation Program to apply when they assess PSM processes at small- or medium-sized business workplaces. This establishes the framework for a consistent and thorough evaluation of PSM processes to enhance the quality of Consultation services provided to employers who request such services. OSHA is also requesting a clearance for 4 information collections in the CPPM that have been in use without an OMB number to assure compliance with the Paperwork Reduction Act. The CPPM prescribes the policies and procedures for the application of the following worksheets: Interim Year SHARP Site Self-Evaluation Template, Action Plan Template for SHARP or Pre-SHARP Participation, Optional Safety and Health Program Action Plan Tool for Implementation at Workplaces, and Incident Investigation Reporting Templates. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 22, 2023 (88 FR 10938).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: PSM On-Site Consultation Agreements.

OMB Control Number: 1218–0NEW.

Affected Public: State, Local and Tribal Governments; Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 4,241.

Total Estimated Number of Responses: 6,841.

Total Estimated Annual Time Burden: 26,766 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–13536 Filed 6–26–23; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 23–068]

Request for Information: Freedom of Information Act (FOIA) Disclosures: Proposed NASA Grant Application Marking for FOIA Disclosure-Exempt Material

AGENCY: National Aeronautics and Space Administration.

ACTION: Request for information.

SUMMARY: National Aeronautics and Space Administration's (NASA) Grants Policy and Compliance (GPC) in the Office of Procurement is soliciting public comment on the Agency's proposed change to the marking of grant application materials, requiring marking of proprietary or trade secrets in NASA grant and cooperative agreement applications.

DATES: Comments must be received by July 20, 2023.

ADDRESSES: Comments should be addressed to National Aeronautics and Space Administration Headquarters, 300 E Street SW, Rm. 6087, Washington, DC 20546 or sent by email to *laila.ouhamou@nasa.gov;* Phone Number: 202–358–2180, FAX Number: 202–358–3336. We encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Please include ''NASA Grants FOIA RFI'' in the subject line of the email message. Please also include the full body of your comments in the text of the message and as an attachment. Include your name, title, organization, postal address, telephone number, and email address in your message.

FOR FURTHER INFORMATION CONTACT: Laila Ouhamou, 300 E Street SW, Rm. 6087, Washington, DC 20546, (202) 993–5942, email: *laila.ouhamou@nasa.gov.*

SUPPLEMENTARY INFORMATION: The Freedom of Information Act (FOIA) provides that any person has a right, enforceable in court, to obtain access to Federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. Grant applicants to NASA should be aware that award information may be subject to disclosure through a FOIA request. FOIA rules contain exemptions for certain categories of information that may be restricted from release, including proprietary information which includes trade secrets or commercial or financial information that is confidential or privileged. NASA is considering a requirement that applicants indicate areas in their grant applications that they believe fall under this exemption to FOIA release. In order for NASA to determine how this proposed change may impact NASA grant and cooperative agreement applicants and recipients, please consider including answers to these questions in your response:

(1) What impacts would this grant application requirement have on your organization?

(2) Should NASA keep the same page limits if applicants must mark FOIA-exempt portions of applications?

(3) If page limits should be increased, how many pages would enable your organization need to mark the FOIA-release exempt portions?

(4) What else should NASA consider in its development of guidance surrounding FOIA for NASA grants and cooperative agreements?

NASA's expectation is that this proposed marking of application information will enable NASA to promptly respond to FOIA requests for grant information, as required by law.

Cheryl Parker,

Federal Register Liaison Officer.

[FR Doc. 2023–13580 Filed 6–26–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 23–067]

NASA Advisory Council; STEM Engagement Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration announces a meeting of the Science, Technology, Engineering and Mathematics (STEM) Engagement Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Thursday, July 20, 2023, 11 a.m.–4 p.m., eastern time.

ADDRESSES: Virtual meeting by dial-in teleconference and WebEx only.

FOR FURTHER INFORMATION CONTACT: Dr. Tara Strang, Designated Federal Officer, Office of STEM Engagement, NASA Headquarters, Washington, DC 20546, (216) 410–4335, or *tara.m.strang@nasa.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be held virtually and will be available telephonically and by WebEx only. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the toll free access number 415–527–5035, and then the access code: 276 229 10362 followed by the # sign. To join via WebEx, use link: *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=m64e32000c9422b0e003b26c5f9c0ea42.*

The meeting number and access code is 276 229 10362 and the password is USaq299Amk@((Password is case sensitive.)

Note: If dialing in, please ''mute'' your telephone. The agenda for the meeting will include the following:

—Opening Remarks by Chair
—Review NASA STEM Engagement Priorities
—NASA STEM Engagement Partnerships
—Presentation Topics:
  ○ Broadening Participation
  ○ Partnerships
—Formulation of New Findings and Recommendations
—Other Related Topics

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2023–13585 Filed 6–26–23; 8:45 am]

BILLING CODE 7510–13–P

PENSION BENEFIT GUARANTY CORPORATION

Privacy Act of 1974; Systems of Records

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Pension Benefit Guaranty Corporation (PBGC) is proposing to establish a new system of records, ''PBGC–29: Freedom of Information Act and Privacy Act Request Records—PBGC'' to reflect PBGC's current practice of processing requests for records made under the provisions of the Freedom of Information Act (FOIA)/Privacy Act (PA), and to assist PBGC in carrying out other responsibilities relating to FOIA and PA including operational, management, and reporting purposes.

DATES: The new systems of records described herein will become effective July 27, 2023, without further notice, unless comments result in a contrary determination and a notice is published to that effect. Comments must be received on or before July 27, 2023 to be assured of consideration.

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

- *Federal eRulemaking Portal:* Follow the website instructions for submitting

comments at *https://www.regulations.gov.*

• *Email: reg.comments@pbgc.gov.* Refer to SORN in the subject line.

• *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101.

Commenters are strongly encouraged to submit public comments electronically. PBGC expects to have limited personnel available to process public comments that are submitted on paper through U.S. mail. Until further notice, any comments submitted on paper will be considered to the extent practicable.

All submissions must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and reference this notice. Comments received will be posted without change to PBGC's website, *https://www.pbgc.gov,* including any personal information provided. Do not submit comments that include any personally identifiable information or confidential business information. Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, or calling 202–326–4040 during normal business hours. (If you are deaf or hard of hearing, or have a speech disability, please dial 7 1 1 to access telecommunications relay services.)

FOR FURTHER INFORMATION CONTACT: Shawn Hartley, Chief Privacy Officer, Pension Benefit Guaranty Corporation, Office of the General Counsel, 445 12th Street SW, Washington, DC 20024–2101, 202–229–6321. For access to any of PBGC's systems of records, contact D. Camilla Perry, Disclosure Officer, Office of the General Counsel, Disclosure Division, 445 12th Street SW, Washington, DC 20024–2101, or by calling 202–229–4040, or go to *https://www.pbgc.gov/about/policies/pg/privacy-at-pbgc/system-of-records-notices.*

SUPPLEMENTARY INFORMATION:

PBGC Is Establishing a New SORN PBGC–29: Freedom of Information Act and Privacy Act Request Records

PBGC is establishing a new SORN ''PBGC–29: Freedom of Information Act and Privacy Act Request Records—PBGC'' to reflect PBGC's current practice of processing requests for records made under the provisions of the Freedom of Information Act (FOIA) and Privacy Act (PA) of 1974, and to assist PBGC in carrying out other responsibilities relating to FOIA and PA including operational, management, and reporting purposes.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written comments on the proposed changes described in this notice. A report has been sent to Congress and the Office of Management and Budget for their evaluation.

For the convenience of the public, PBGC's new system of records is published in full below.

Issued in Washington, DC, by

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

SYSTEM NAME AND NUMBER:

PBGC—29: Freedom of Information Act and Privacy Act Request Records—PBGC

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 445 12th Street SW, Washington, DC 20024–2101. (Records may be kept at an additional location as backup for continuity of operations at AINS LLC, DBA OPEXUS, 1101 17th St. NW #1200, Washington, DC 20036.)

SYSTEM MANAGER(S):

Deputy General Counsel, Office of the General Counsel (OGC), PBGC, 445 12th Street SW, Washington, DC 20024–2101.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, The Freedom of Information Act (FOIA), and 5 U.S.C. 552a, The Privacy Act of 1974 (PA).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to process requests for records made under the provisions of the FOIA and PA, and to assist PBGC in carrying out other responsibilities relating to FOIA and PA including operational, management, and reporting purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or their representatives who have submitted FOIA requests, PA requests, or combined FOIA and PA requests for records or information and administrative appeals or have litigation pending with a federal agency; individuals whose requests, appeals or records have been referred to PBGC by other agencies and/or the PBGC personnel assigned to handle such requests, appeals and litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may contain names, mailing addresses, email addresses and telephone numbers of individuals making requests for records or information pursuant to the FOIA/PA; online identity verification information (User name and password), and any other information voluntarily submitted, such as an individual's social security number; tracking numbers, correspondence with the requester or the requester's representatives, internal PBGC correspondence and memoranda to or from other agencies or entities having a substantial interest in the determination of the request; responses to the request and appeals, and copies of responsive records. These records may contain personal information retrieved in response to a request. FOIA and PA case records may contain inquiries and requests regarding any of PBGC's other systems of records subject to the FOIA and PA, and information about individuals from any of these other systems may become part of this system of records.

RECORD SOURCE CATEGORIES:

Requesters and persons acting on behalf of requesters, PBGC and other Federal agencies having a substantial interest in the determination of the request, and employees processing the requests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. To law enforcement in the event the record is connected to a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, regulation, rule, or order issued pursuant thereto. Such disclosure may be made to the appropriate agency, whether Federal, state, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if PBGC determines that the records are both relevant and necessary to any enforcement, regulatory, investigative or prospective responsibility of the receiving entity.

2. To a Federal, state, tribal or local agency or to another public or private source maintaining civil, criminal, or other relevant enforcement information or other pertinent information if, and to the extent necessary, to obtain information relevant to a PBGC decision concerning the hiring or retention of an

employee, the retention of a security clearance, or the letting of a contract.

3. With the approval of the Director, Human Resources Department (or his or her designee), the fact that this system of records includes information relevant to a Federal agency's decision in connection with the hiring or retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit may be disclosed to that Federal agency.

4. A record from this system of records may be disclosed in a proceeding before a court or other adjudicative body in which PBGC, an employee of PBGC in his or her official capacity, an employee of PBGC in his or her individual capacity whom PBGC (or the Department of Justice (DOJ)) has agreed to represent is a party, or the United States or any other Federal agency is a party and PBGC determines that it has an interest in the proceeding, and if PBGC determines that the record is relevant and necessary to the litigation and that the disclosure of the records to use is compatible with the purpose for which PBGC collected the information.

5. When PBGC, an employee of PBGC in his or her official capacity, or an employee of PBGC in his or her individual capacity whom PBGC (or DOJ) has agreed to represent is a party to a proceeding before a court or other adjudicative body, or the United States or any other Federal agency is a party and PBGC determines that it has an interest in the proceeding, a record from this system of records may be disclosed to DOJ if PBGC is consulting with DOJ regarding the proceeding or has decided that DOJ will represent PBGC, or its interest, in the proceeding and PBGC determines that the record is relevant and necessary to the litigation and that the use is compatible with the purpose for which PBGC collected the information.

6. A record from this system of records may be disclosed to a congressional office in response to an inquiry from the congressional office made at the request of the individual.

7. A record from this system of records may be disclosed to appropriate agencies, entities, and persons when (1) PBGC suspects or has confirmed that there has been a breach of the system of records; (2) PBGC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, PBGC (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 PBGC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

8. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

9. To another Federal agency or Federal entity, when PBGC 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.

10. To the extent needed to perform duties under the contract, to third party contractors who are performing or working on a contract in connection with the performance of an IT service or in support of PBGC's Disclosure Division related to this system of records. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

11. To respond to FOIA requests and appeals made through the agencies electronic FOIA and PA request system, including the names of FOIA requesters, dates related to the processing of the request, and a description of the records sought by the requester (excluding any personally identifiable information in the description of the records, such as telephone or cell phone numbers, home or email addresses, social security numbers), unless the requester asks for the redaction of any personally identifiable information (PII). This information may also be used to create a publicly available log of requests;

12. To assist PBGC in making an access determination, a record from this system may be shared with (a) the person or entity that originally submitted the record to the agency or is the subject of the record or information; or (b) another Federal entity;

13. To the National Archives and Record Administration's (NARA), Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with the FOIA, and to facilitate OGIS's offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies;

14. To the Department of Justice (DOJ), to the Department of the Treasury, or to a consumer reporting agency for collection action for unpaid FOIA fees when circumstances warrant; and,

15. To the Office of Management and Budget (OMB) or the DOJ to obtain advice regarding statutory and other requirements under the FOIA or Privacy Act.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in electronic databases. Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by any one or more of the following: Name, subject, request file/tracking number, or other data element as may be permitted by an automated system.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA. Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media practice for participant systems and will be maintained in accordance with PBGC Records Schedule. See General Records Schedule (GRS) Items 4.2 Items 001, 010, 020, 040, 050, 090. See also PBGC Records Schedule Item 1.2: Administrative Records—Privacy Act.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized

individuals. Paper records are kept in file folders in areas of restricted access that are locked after office hours.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically. Further, for certain systems covered by this notice, heightened security access is required. Such access is granted by the specific permissions group assigned to monitor that particular system and only authorized employees of the agency may retrieve, review or modify those records. All employees are annually required to agree to and comply with PBGC's Rules of Behavior with respect to PBGC's IT systems and PII.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4, should submit a written request to the Disclosure Officer, PBGC, 445 12th Street SW, Washington, DC 20024–2101, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c), or via PBGC's online FOIA/PA system the link to which is located at *https://www.pbgc.gov/about/pg/footer/foia.* Individuals or third parties will be required to provide information to verify their identity when making a request.

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request, in accordance with 29 CFR 4902.5, identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 445 12th Street SW, Washington, DC 20024–2101, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c), or via PBGC's online FOIA/PA system the link to which is located at *https://www.pbgc.gov/about/pg/footer/foia.* Individuals or third parties will be required to provide information to verify their identity when making a request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

To the extent that copies of exempt records from other systems of records are entered into this system, PBGC claims the same exemptions for those records that are claimed for the original primary systems of records from which they originated.

HISTORY:

None.

[FR Doc. 2023–13531 Filed 6–26–23; 8:45 am]

BILLING CODE 7709–02–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; September 2022

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from September 1, 2022 to September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–936–3085.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No Schedule A Authorities to report during September 2022.

Schedule B

14. Department of Commerce (Sch B, 213.3214)

(d) National Telecommunication and Information Administration—

(1) Not to exceed 37 positions of GS–0850 Electrical Engineer, GS–0855 Electronics Engineer, or GS–0854 Computer Engineer in grades GS–11 through GS–15, or positions that require subject-matter expertise with telecommunications policy, 911 communication programs, broadband program specialists, environmental specialists, and spectrum policy and related programs. Employment under this authority may not exceed 2 years.

Schedule C

The following Schedule C appointing authorities were approved during September 2022.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Office of the Secretary	Deputy White House Liaison	DA220162	09/13/2022
	Farm Service Agency	Chief of Staff	DA220156	09/15/2022
		State Executive Director—Arizona	DA220158	09/28/2022
DEPARTMENT OF COMMERCE	Office of International Trade Administration.	Senior Advisor	DC220175	09/09/2022
	Office of the Assistant Secretary for Industry and Analysis.	Senior Advisor	DC220176	09/09/2022
	National Telecommunications and Information Administration.	Special Assistant for Public Engagement.	DC220179	09/23/2022
	Bureau of Industry and Security	Deputy Director of Public Affairs	DC220180	09/23/2022
FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL.	Federal Permitting Improvement Steering Council.	Director of Public Engagement	FF220002	09/12/2022
CONSUMER FINANCIAL PROTECTION BUREAU.	Office of the Director	Chief Technologist and Senior Advisor to the Director.	FP220007	09/09/2022

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF DEFENSE	Office of the Assistant Secretary of Defense (Indo-Pacific Security Affairs).	Special Assistant	DD220182	09/20/2022
	Office of the Assistant Secretary of Defense (Space Policy).	Special Assistant	DD220183	09/20/2022
DEPARTMENT OF THE AIR FORCE.	Office of Assistant Secretary Air Force, Installations, Environment, and Energy.	Senior Advisor	DF220016	09/02/2022
DEPARTMENT OF THE ARMY	Office of the Deputy Under Secretary of Army.	Special Assistant	DW220040	09/25/2022
DEPARTMENT OF EDUCATION	Office for Civil Rights	Senior Counsel	DB220090	09/10/2022
	Office of Legislation and Congressional Affairs.	Senior Advisor, Oversight	DB220097	09/09/2022
	Office of Planning, Evaluation and Policy Development.	Confidential Assistant	DB220102	09/29/2022
	Office of the Deputy Secretary	Senior Advisor, Innovation	DB220100	09/30/2022
	Office of the Secretary	Confidential Assistant	DB220096	09/09/2022
DEPARTMENT OF ENERGY	Office of Public Affairs	Deputy Press Secretary	DE220115	09/01/2022
	Office of the Assistant Secretary for Fossil Energy.	Special Assistant	DE220117	09/02/2022
	Office of Science	Special Assistant	DE220122	09/02/2022
	Office of the Secretary	Special Assistant to the Deputy Chief of Staff.	DE220131	09/22/2022
	Office of Policy	Special Assistant	DE220139	09/27/2022
ENVIRONMENTAL PROTECTION AGENCY.	Office of the General Counsel	Attorney-Advisor (General)	EP220076	09/01/2022
	Office of the Administrator	Senior Advisor to the Administrator	EP220078	09/08/2022
	Office of Public Engagement and Environmental Education.	Public Engagement Specialist	EP220079	09/09/2022
	Office of Public Affairs	Senior Strategic Communications Advisor.	EP220080	09/13/2022
		Public Affairs Specialist	EP220082	09/15/2022
		Digital Media Advisor	EP220085	09/22/2022
GENERAL SERVICES ADMINISTRATION.	Office of Congressional and Intergovernmental Affairs.	Policy Advisor	GS220025	09/21/2022
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Intergovernmental and External Affairs.	Regional Director, San Francisco, CA, Region IX.	DH220160	09/29/2022
	Office of the Assistant Secretary for Health.	Senior Advisor (2)	DH220143	09/10/2022
			DH220158	09/30/2022
	Office of the Assistant Secretary for Preparedness and Response.	Senior Advisor	DH220159	09/23/2022
DEPARTMENT OF HOMELAND SECURITY.	Office of Strategy, Policy, and Plans.	Policy Advisor	DM220253	09/08/2022
	Cybersecurity and Infrastructure Security Agency.	External Affairs Specialist	DM220217	09/19/2022
	Federal Emergency Management Agency.	Senior Tribal National Advisor	DM220275	09/19/2022
	Office of the Secretary	Special Assistant to the Secretary	DM220291	09/19/2022
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Congressional and Intergovernmental Relations.	Congressional Relations Specialist	DU220063	09/02/2022
		Deputy Assistant Secretary	DU220068	09/28/2022
	Office of Public Affairs	Press Secretary	DU220064	09/02/2022
	Office of Public and Indian Housing	Senior Advisor	DU220070	09/28/2022
DEPARTMENT OF THE INTERIOR	Office of the Assistant Secretary—Policy, Management and Budget.	Advisor	DI220084	09/02/2022
	Office of Surface Mining	Advisor	DI220089	09/21/2022
	Bureau of Reclamation	Senior Advisor	DI220091	09/21/2022
DEPARTMENT OF JUSTICE	Office of the Environment and Natural Resources Division.	Senior Counsel	DJ220134	09/10/2022
	Office of Public Affairs	Special Assistant to the Director	DJ220136	09/22/2022
DEPARTMENT OF LABOR	Office of Congressional and Intergovernmental Affairs.	Deputy Director, Intergovernmental Affairs.	DL220075	09/09/2022
	Office of Employment and Training Administration.	Deputy Advisor	DL220083	09/08/2022
		Senior Policy Advisor	DL220082	09/15/2022
	Office of the Assistant Secretary for Policy.	Chief of Staff	DL220084	09/15/2022
NATIONAL ENDOWMENT FOR THE ARTS.	National Endowment for the Arts	Administrative Assistant to the Chief of Staff.	NA220004	09/08/2022
OFFICE OF MANAGEMENT AND BUDGET.	Office of the Director	Tribal Advisor	BO220029	09/10/2022
	Office of Education, Income Maintenance and Labor Programs.	Confidential Assistant	BO220030	09/21/2022
	Office of Legislative Affairs	Legislative Analyst	BO220031	09/21/2022
OFFICE OF PERSONNEL MANAGEMENT.	Office of the Director	Executive Assistant to the Chief of Staff.	PM220048	09/09/2022

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Communications	Deputy Director, Office of Communications.	PM220051	09/30/2022
OFFICE OF SCIENCE AND TECHNOLOGY POLICY.	Office of Science and Technology Policy.	Communication Planning and Outreach Lead.	TS220005	09/09/2022
UNITED STATES INTERNATIONAL DEVELOPMENT FINANCE CORPORATION.	Overseas Private Investment Corporation.	Advisor, Office the Chief Executive	PQ220008	09/25/2022
SECURITIES AND EXCHANGE COMMISSION.	Office of the Chairman	Program Specialist	SE220014	09/21/2022
	Office of Commissioner Uyeda	Confidential Assistant	SE220015	09/21/2022
SMALL BUSINESS ADMINISTRATION.	Office of Congressional and Legislative Affairs.	Deputy Associate Administrator, Congressional Legislative Affairs (Senate).	SB220044	09/07/2022
SOCIAL SECURITY ADMINISTRATION.	Office of the Commissioner	Senior Advisor	SZ220019	09/30/2022
DEPARTMENT OF STATE	Office of Global Criminal Justice	Senior Advisor	DS220071	09/09/2022
	Office of Global Women's Issues	Special Assistant	DS220079	09/29/2022
	Office of the Secretary	Staff Assistant	DS220074	09/21/2022
	Office of the Under Secretary for Economic Growth, Energy, and the Environment.	Deputy Chief Economist	DS220072	09/09/2022
DEPARTMENT OF TRANSPORTATION.	Office of the Secretary	White House Liaison	DT220109	09/30/2022
	Office of the Executive Secretariat	Director, Executive Secretariat	DT220110	09/30/2022
DEPARTMENT OF THE TREASURY.	Office of the Assistant Secretary (Tax Policy).	Senior Advisor	DY220146	09/30/2022
	Office of the Assistant Secretary (Legislative Affairs).	Special Assistant	DY220147	09/30/2022
	Secretary of the Treasury	Special Advisor	DY220148	09/30/2022
	Office of the Assistant Secretary (Public Affairs).	Press Assistant	DY220149	09/30/2022

The following Schedule C appointing authorities were revoked during September 2022.

Agency name	Organization name	Position title	Request No.	Vacate date
CONSUMER FINANCIAL PROTECTION BUREAU.	Office of the Director	Chief Technologist and Senior Advisor to the Director.	FP220002	09/25/2022
DEPARTMENT OF AGRICULTURE	Office Rural Development	State Director—Kentucky	DA220119	09/08/2022
		State Director—Wyoming	DA220075	09/08/2022
DEPARTMENT OF EDUCATION	Office of Planning, Evaluation and Policy Development.	Chief of Staff	DB210058	09/24/2022
	Office of Postsecondary Education	Confidential Assistant	DB210118	09/24/2022
		Special Assistant (2)	DB210127	09/24/2022
			DB220031	09/10/2022
	Office of the Secretary	Confidential Assistant	DB210121	09/10/2022
		Chief of Staff	DB210134	09/10/2022
		Special Assistant	DB220042	09/10/2022
DEPARTMENT OF ENERGY	Grid Deployment Office	Special Assistant	DE220069	09/20/2022
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Indian Health Service	Senior Advisor to the Director	DH210073	09/24/2022
	Office of the Assistant Secretary for Legislation.	Senior Advisor, Oversight	DH220094	09/24/2022
DEPARTMENT OF THE AIR FORCE.	Office of the Under Secretary	Special Assistant	DF220010	09/02/2022
DEPARTMENT OF THE ARMY	Office of the General Counsel	Attorney Advisor to the Army General Counsel.	DW210009	09/10/2022
DEPARTMENT OF THE INTERIOR	Office of the Assistant Secretary—Fish and Wildlife and Parks.	Special Assistant	DI210098	09/03/2022
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Associate Administrator for Congressional and Intergovernmental Relations.	Special Assistant	EP210097	09/09/2022
EXPORT-IMPORT BANK	Office of Congressional and Intergovernmental Affairs.	Senior Vice President Congressional and Intergovernmental Affairs.	EB210011	09/15/2022

Agency name	Organization name	Position title	Request No.	Vacate date
OFFICE OF PERSONNEL MANAGEMENT.	Office of Congressional, Legislative, and Intergovernmental Affairs.	Deputy Director	PM220024	09/24/2022
	Office of the Director	Confidential Assistant	PM220011	09/10/2022

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2023–13630 Filed 6–26–23; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; October 2022

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established, modified, or revoked from October 1, 2022 to October 31, 2022.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–936–3085.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

06. Department of Defense (Schedule A, 213.3106)

(m) Defense Security Cooperation Agency

(1) Defense Security Cooperation University—Not to exceed 250 positions of President, Deputy Assistant Director, Supervisory Lecturer, Senior Lecturer, Faculty Senior Associate, Faculty Associate. Initial appointments may not exceed 3 years, and but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

Schedule B

06. Department of Defense (Schedule B, 213.3206)

(g) Defense Security Cooperation Agency

All faculty members with instructor and research duties at the Defense Institute of Security Assistance Management, Wright Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration. No new appointments may be made after October 31, 2022.

Schedule C

The following Schedule C appointing authorities were approved during October 2022.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Office of Communications	Assistant Press Secretary (2)	DA230001	10/06/2022
			DA230002	10/06/2022
	Office of the Assistant Secretary for Administration.	Confidential Assistant	DA220168	10/07/2022
	Office of the Secretary	Advance Associate	DA230006	10/24/2022
DEPARTMENT OF COMMERCE	Office of the Chief of Staff	Director of Native American Business Development.	DC230006	10/21/2022
COUNCIL ON ENVIRONMENTAL QUALITY.	Council on Environmental Quality	Public Affairs Specialist	EQ220002	10/04/2022
DEPARTMENT OF DEFENSE	Office of the Under Secretary of Defense (Research and Engineering).	Director, Strategic Communications	DD230003	10/12/2022
	Office of the Secretary of Defense	Special Assistant	DD230009	10/21/2022
	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant to the Assistant Secretary of Defense for Legislative Affairs.	DD230011	10/27/2022
DEPARTMENT OF EDUCATION	Office of the Under Secretary	Confidential Assistant	DB220103	10/07/2022
	Office of the General Counsel	Senior Counsel	DB230001	10/07/2022
	Office of the Secretary	Confidential Assistant, White House Initiatives.	DB230002	10/07/2022
		Senior Advisor	DB230003	10/07/2022
DEPARTMENT OF ENERGY	Office of Management	International Trip Lead	DE220140	10/14/2022
	Office of the Secretary	Deputy White House Liaison	DE220142	10/14/2022
	Office of Manufacturing and Energy Supply Chains.	Special Assistant	DE230007	10/26/2022
ENVIRONMENTAL PROTECTION AGENCY.	Office of Public Affairs	Writer-Editor (Speechwriter)	EP230003	10/24/2022
	Office of the Associate Administrator for Congressional and Intergovernmental Relations.	Special Assistant	EP230005	10/26/2022
FEDERAL TRADE COMMISSION	Office of the Chair	Writer-Editor (Speechwriter)	FT230001	10/19/2022

Agency name	Organization name	Position title	Authorization No.	Effective date
GENERAL SERVICES ADMINISTRATION.	Office of the Administrator	Senior Advisor to the Administrator (Delivery).	GS220026	10/07/2022
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the General Counsel	Senior Counsel, Oversight	DH230008	10/24/2022
DEPARTMENT OF HOMELAND SECURITY.	United States Immigration and Customs Enforcement.	Deputy Chief of Staff	DM220295	10/06/2022
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Public Affairs	Assistant Press Secretary	DU230001	10/17/2022
DEPARTMENT OF THE INTERIOR	Secretary's Immediate Office	Speechwriter	DI220092	10/17/2022
	Office of the Assistant Secretary—Land and Minerals Management.	Special Assistant	DI220093	10/17/2022
DEPARTMENT OF JUSTICE	Office of the Deputy Attorney General.	Senior Counsel	DJ230013	10/26/2022
DEPARTMENT OF LABOR	Occupational Safety and Health Administration.	Policy Advisor	DL220086	10/07/2022
	Office of Wage and Hour Division	Policy Advisor	DL220091	10/12/2022
	Office of Congressional and Intergovernmental Affairs.	Senior Legislative Assistant	DL220092	10/12/2022
	Office of the Solicitor	Counsel	DL230002	10/31/2022
OFFICE OF MANAGEMENT AND BUDGET.	Office of Legislative Affairs	Deputy Associate Director for Legislative Affairs.	BO220034	10/07/2022
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.	Office of Public and Media Affairs	Writer-Editor (Speech)	TN230004	10/26/2022
SMALL BUSINESS ADMINISTRATION.	Office of the Administrator	Special Assistant for Public Engagement.	SB220045	10/19/2022
DEPARTMENT OF STATE	Bureau of Global Public Affairs	Special Advisor	DS220082	10/06/2022
	Office of the Secretary	Senior Advisor	DS230002	10/21/2022
	Office of the Chief of Protocol	Protocol Officer (Gifts)	DS230004	10/21/2022
DEPARTMENT OF TRANSPORTATION.	Office of the Secretary	Director of Scheduling and Advance.	DT230002	10/17/2022
	Office of Public Affairs	Deputy Press Secretary	DT230003	10/17/2022
	Office of the Assistant Secretary for Governmental Affairs.	Special Assistant for Governmental Affairs.	DT230006	10/19/2022
	Office of the Assistant Secretary for Administration.	Deputy Assistant Secretary for Administration.	DT230005	10/24/2022
	Office of Public Affairs	Digital Director	DT230007	10/26/2022
DEPARTMENT OF THE TREASURY.	Office of the Under Secretary for Domestic Finance.	Special Assistant for the Financial Stability Oversight Council.	DY220150	10/06/2022
	Office of the Assistant Secretary (Public Affairs).	Senior Spokesperson	DY230003	10/07/2022
	Office of the Assistant Secretary (Tax Policy).	Senior Advisor for Climate Implementation.	DY230007	10/17/2022

The following Schedule C appointing authorities were revoked during October 2022.

Agency name	Organization name	Position title	Request No.	Vacate date
DEPARTMENT OF COMMERCE	Minority Business Development Agency.	Senior Advisor	DC220052	10/22/2022
	Office of the Assistant Secretary for Economic Development.	Senior Advisor	DC210163	10/01/2022
DEPARTMENT OF ENERGY	National Nuclear Security Administration.	Director of Public Affairs	DE210175	10/16/2022
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Secretary	Policy Advisor	DH210239	10/22/2022
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Congressional and Intergovernmental Relations.	Deputy Assistant Secretary for Intergovernmental Relations.	DU220005	10/08/2022
	Office of Housing	Senior Advisor	DU210089	10/08/2022
	Office of Public and Indian Housing.	Special Assistant	DU210040	10/08/2022
DEPARTMENT OF TRANSPORTATION.	Office of the Secretary	Director of Scheduling and Advance.	DT210044	10/22/2022
		White House Liaison	DT210031	10/09/2022
GENERAL SERVICES ADMINISTRATION.	Office of Strategic Communication	Director of Public Engagement	GS220010	10/07/2022
OFFICE OF PERSONNEL MANAGEMENT.	Office of the Director	Deputy Chief of Staff	PM210055	10/01/2022

Agency name	Organization name	Position title	Request No.	Vacate date
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Under Secretary of Defense (Acquisition and Sustainment).	Special Assistant	DD220042	10/01/2022
	Office of the Under Secretary of Defense (Research and Engineering).	Director, Strategic Communications.	DD220012	10/08/2022
	Washington Headquarters Services.	Special Assistant	DD220126	10/15/2022

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2023–13631 Filed 6–26–23; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; August 2022

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from August 1, 2022 to August 31, 2022.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–936–3085.

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Schedule A

No Schedule A Authorities to report during August 2022.

Schedule B

No Schedule B Authorities to report during August 2022.

Schedule C

The following Schedule C appointing authorities were approved during August 2022.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Office of the Assistant Secretary for Congressional Relations.	Senior Advisor	DA220155	08/12/2022
	Office of the Secretary	White House Liaison	DA220154	08/17/2022
	Farm Service Agency	State Executive Director—Wyoming.	DA220159	08/26/2022
UNITED STATES AGENCY FOR GLOBAL MEDIA.	United States Agency for Global Media.	Senior Communications Advisor	IB220001	08/16/2022
DEPARTMENT OF COMMERCE	Immediate Office	Special Assistant to the Senior Advisors.	DC220167	08/26/2022
	Office of International Trade Administration.	Senior Advisor to the Under Secretary.	DC220168	08/26/2022
	National Telecommunications and Information Administration.	Press Assistant	DC220166	08/26/2022
	Office of Advance, Scheduling and Protocol.	Special Assistant	DC220170	08/26/2022
	Patent and Trademark Office	Chief Communications Officer	DC220164	08/12/2022
COUNCIL ON ENVIRONMENTAL QUALITY.	Council on Environmental Quality	Scheduler and Communications Assistant.	EQ220001	08/10/2022
DEPARTMENT OF DEFENSE	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant	DD220173	08/23/2022
	Office of the Assistant to the Secretary of Defense (Public Affairs).	Speech Writer	DD220174	08/23/2022
	Washington Headquarters Services	Special Assistant	DD220175	08/26/2022
DEPARTMENT OF THE ARMY	Office of the Under Secretary	Special Assistant to the Under Secretary of the Army.	DW220035	08/16/2022
DEPARTMENT OF THE NAVY	Office of the Secretary of the Navy	Special Assistant	DN220030	08/16/2022
DEPARTMENT OF EDUCATION	Office for Civil Rights	Confidential Assistant	DB220080	08/10/2022
	Office of Legislation and Congressional Affairs.	Deputy Assistant Secretary for Higher Education.	DB220083	08/19/2022
	Office of the Deputy Secretary	Confidential Assistant	DB220087	08/26/2022
	Office of the Secretary	Deputy Director, White House Initiative on Advancing Educational Equity, Excellence, and Economic Operations.	DB220088	08/26/2022
DEPARTMENT OF ENERGY	Office of the Secretary	White House Liaison	DE220114	08/05/2022

Agency name	Organization name	Position title	Authorization No.	Effective date
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Assistant Administrator for Land and Emergency Management.	Public Engagement Advisor	EP220070	08/08/2022
		Senior Advisor for Implementation	EP220073	08/11/2022
EXPORT-IMPORT BANK	Office of the Chairman	Executive Secretary	EB220006	08/19/2022
	Office of the Chief of Staff	Senior Advisor, National Security	EB220007	08/22/2022
FEDERAL TRADE COMMISSION	Office of the Chair	Compliance and Risk Strategist	FT220006	08/17/2022
GENERAL SERVICES ADMINISTRATION.	Office of the Administrator	Deputy Chief of Staff for Operations.	GS220020	08/24/2022
	Office of Strategic Communication	Deputy Associate Administrator for Public Affairs.	GS220021	08/24/2022
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Administration for Children and Families.	Senior Advisor	DH220137	08/25/2022
	Office of Intergovernmental and External Affairs.	Confidential Assistant	DH220151	08/26/2022
	Office of the Assistant Secretary for Health.	Senior Advisor, Environmental Justice.	DH220139	08/25/2022
	Office of the Assistant Secretary for Public Affairs.	National Press Secretary	DH220134	08/12/2022
DEPARTMENT OF HOMELAND SECURITY.	Office of the Secretary	Briefing Book Coordinator	DM220228	08/04/2022
		Special Assistant to the Chief of Staff.	DM220255	08/04/2022
	Office of Management Directorate	Senior Advisor	DM220271	08/19/2022
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Secretary	Special Assistant and Briefing Book Coordinator.	DU220057	08/12/2022
	Office of Housing	Special Policy Advisor (2)	DU220059	08/22/2022
			DU220060	08/22/2022
	Office of Public Affairs	Digital Strategist	DU220061	08/22/2022
		Deputy Press Secretary	DU220058	08/26/2022
DEPARTMENT OF THE INTERIOR	Secretary's Immediate Office	Briefing Book Coordinator	DI220079	08/12/2022
	Bureau of Safety and Environmental Enforcement.	Advisor	DI220076	08/15/2022
	Secretary's Immediate Office	Deputy Director for Advance	DI220082	08/24/2022
	Office of the Assistant Secretary—Land and Minerals Management.	Advisor to the Assistant Secretary	DI220081	08/25/2022
DEPARTMENT OF JUSTICE	Office of Public Affairs	Deputy Director for Public Engagement.	DJ220092	08/25/2022
DEPARTMENT OF LABOR	Office of Public Affairs	Press Secretary	DL220072	08/05/2022
NATIONAL MEDIATION BOARD	National Mediation Board	Confidential Assistant	NM220003	08/08/2022
OFFICE OF PERSONNEL MANAGEMENT.	Office of the Director	Executive Assistant	PM220045	08/19/2022
	Office of Communications	Press Secretary	PM220046	08/25/2022
SECURITIES AND EXCHANGE COMMISSION.	Office of the Chairman	Confidential Assistant	SE220013	08/05/2022
SMALL BUSINESS ADMINISTRATION.	Office of Communications and Public Liaison.	Speech Writer	SB220038	08/03/2022
	Office of the Administrator	Director of Public Engagement	SB220041	08/11/2022
		Deputy Chief of Staff	SB220039	08/12/2022
		Director of Scheduling and Advance.	SB220043	08/26/2022
DEPARTMENT OF STATE	Bureau of South and Central Asian Affairs.	Deputy Assistant Secretary	DS220064	08/10/2022
	Bureau of Conflict and Stabilization Operations.	Senior Advisor	DS220067	08/22/2022
	Office of the Under Secretary for Civilian Security, Democracy, and Human Rights.	Deputy Special Representative	DS220068	08/22/2022
	Bureau of Global Public Affairs	Supervisory Public Affairs Specialist.	DS220069	08/24/2022
	Office of the Under Secretary for Political Affairs.	Senior Advisor	DS220070	08/24/2022
	Office of the United States Global Aids Coordinator.	Senior Advisor	DS220066	08/26/2022
DEPARTMENT OF TRANSPORTATION.	Office of the Executive Secretariat	Associate Director	DT220100	08/12/2022
	Office of the Under Secretary of Transportation for Policy.	Special Advisor for Bipartisan Infrastructure Law Implementation Operations.	DT220101	08/17/2022
	Office of Civil Rights	Senior Advisor	DT220095	08/24/2022
DEPARTMENT OF THE TREASURY.	Secretary of the Treasury	Speech Writer	DY220138	08/15/2022
		Special Assistant	DY220139	08/15/2022
UNITED STATES INTERNATIONAL TRADE COMMISSION.	Office of Commissioner Johanson	Confidential Assistant	TC220003	08/09/2022

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF VETERANS AFFAIRS.	Office of the Assistant Secretary for Enterprise Integration.	Strategic Advisor	DV220072	08/31/2022

The following Schedule C appointing authorities were revoked during August 2022.

Agency name	Organization name	Position title	Request No.	Vacate date
DEPARTMENT OF AGRICULTURE	Office of the Secretary	Deputy White House Liaison	DA210065	08/27/2022
DEPARTMENT OF COMMERCE	Minority Business Development Agency.	Special Assistant	DC210198	08/06/2022
	Office of Advance, Scheduling and Protocol.	Special Assistant	DC210168	08/27/2022
	Office of the Under Secretary for Economic Affairs.	Special Advisor	DC220132	08/27/2022
DEPARTMENT OF ENERGY	Office of the Assistant Secretary for Energy Efficiency and Renewable Energy.	Senior Advisor	DE210113	08/25/2022
	Office of the Secretary	White House Liaison	DE210101	08/13/2022
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Intergovernmental and External Affairs.	Confidential Assistant	DH210106	08/27/2022
	Office of the Assistant Secretary for Public Affairs.	Press Secretary	DH220036	08/13/2022
	Office of the National Coordinator for Health Information Technology.	Special Assistant	DH210074	08/01/2022
	Office of the Secretary	Scheduler	DH210222	08/05/2022
DEPARTMENT OF JUSTICE	Office of Civil Rights Division	Special Assistant	DJ210096	08/26/2022
DEPARTMENT OF STATE	Office of the Under Secretary for Economic Growth, Energy, and the Environment.	Special Representative	DS220020	08/12/2022
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Assistant Administrator for Land and Emergency Management.	Special Assistant	EP210075	08/13/2022
	Office of the Assistant Administrator for Mission Support.	Deputy Assistant Administrator for Mission Support.	EP210104	08/13/2022
FEDERAL TRADE COMMISSION	Office of the Chair	Confidential Assistant	FT220002	08/27/2022
OFFICE OF PERSONNEL MANAGEMENT.	Office of Communications	Press Secretary	PM210040	08/13/2022
		Special Assistant	PM220022	08/06/2022
SMALL BUSINESS ADMINISTRATION.	Office of Entrepreneurial Development.	Senior Advisor	SB210047	08/13/2022
	Office of Government Contracting and Business Development.	Senior Advisor	SB210039	08/03/2022
	Office of the Administrator	Special Assistant	SB210032	08/27/2022

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2023–13629 Filed 6–26–23; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; November 2022

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from November 1, 2022 to November 30, 2022.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–936–3085.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No Schedule A Authorities to report during November 2022.

Schedule B

No Schedule B Authorities to report during November 2022.

Schedule C

The following Schedule C appointing authorities were approved during November 2022.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Office of Communications	Communications Advisor for Speech Writing.	DA230009	11/07/2022
	Office of the Secretary	Director of Scheduling and Advance.	DA230012	11/09/2022
		Deputy Director of Scheduling	DA230013	11/09/2022
	Office of the Under Secretary for Research, Education, and Economics.	Confidential Assistant	DA230016	11/18/2022
	Rural Business Service	Chief of Staff	DA230015	11/09/2022
	Office of Rural Development	Senior Advisor	DA230017	11/18/2022
		State Director—Puerto Rico	DA230018	11/18/2022
DEPARTMENT OF COMMERCE	Office of Public Affairs	Director of Digital Strategy	DC230010	11/04/2022
	Office of the Chief Financial Officer and Assistant Secretary for Administration.	Special Assistant	DC230011	11/04/2022
	National Telecommunications and Information Administration.	Senior Advisor for Public Affairs	DC230013	11/04/2022
		Chief of Staff for National Telecommunications and Information Administration.	DC230014	11/04/2022
		Special Assistant for External Affairs.	DC230021	11/25/2022
FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL.	Federal Permitting Improvement Steering Council.	Associate Director for Public Engagement.	FF220003	11/23/2022
COUNCIL ON ENVIRONMENTAL QUALITY.	Council on Environmental Quality	Press Secretary	EQ230001	11/01/2022
DEPARTMENT OF DEFENSE	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant to the Assistant Secretary of Defense for Legislative Affairs.	DD230022	11/14/2022
DEPARTMENT OF THE AIR FORCE.	Office of the Secretary	Deputy Chief of Staff to the Secretary of the Air Force.	DF230002	11/18/2022
DEPARTMENT OF THE NAVY	Office of the Secretary of the Navy	Special Assistant	DN230003	11/08/2022
DEPARTMENT OF EDUCATION	Office of Communications and Outreach.	Special Assistant, Family Outreach	DB230016	11/28/2022
		Press Secretary, Oversight	DB230013	11/29/2022
	Office of Planning, Evaluation and Policy Development.	Senior Advisor	DB230014	11/22/2022
	Office of the General Counsel	Senior Counsel, Oversight	DB230006	11/08/2022
	Office of the Secretary	Deputy Director, White House Initiative on Advancing Educational Equity, Excellence, and Economic Operations.	DB230011	11/09/2022
DEPARTMENT OF ENERGY	Office of the Assistant Secretary for Congressional and Intergovernmental Affairs.	Deputy Assistant Secretary for House Affairs.	DE230010	11/02/2022
	Office of the State and Community Energy Programs.	Special Assistant	DE230013	11/15/2022
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Assistant Administrator for Air and Radiation.	Special Advisor for Implementation	EP230004	11/01/2022
	Office of the Assistant Administrator for Enforcement and Compliance Assurance.	Senior Advisor	EP230008	11/02/2022
	Office of the Administrator	Special Assistant to the White House Liaison.	EP230011	11/16/2022
EXPORT-IMPORT BANK	Office of the Chairman	Confidential Assistant to the Chairman.	EB230001	11/09/2022
GENERAL SERVICES ADMINISTRATION.	Office of the Administrator	Scheduler	GS230004	11/10/2022
	Office of Strategic Communication	Speechwriter	GS230005	11/14/2022
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Health Resources and Services Administration.	Director of Strategic Communications.	DH230021	11/14/2022
	Office of Intergovernmental and External Affairs.	Director of External Affairs	DH230010	11/04/2022
		Special Assistant	DH230025	11/30/2022
	Office of the Assistant Secretary for Legislation.	Special Assistant	DH230017	11/22/2022
	Office of the General Counsel	Senior Counsel, Oversight	DH230009	11/04/2022
	Office of the Secretary	Special Advisor	DH230019	11/04/2022
		Policy Advisor	DH230039	11/30/2022
DEPARTMENT OF HOMELAND SECURITY.	Office of Strategy, Policy, and Plans.	Special Advisor	DM230016	11/22/2022
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Congressional and Intergovernmental Relations.	Special Advisor	DU230009	11/18/2022
	Office of Fair Housing and Equal Opportunity.	Policy Advisor	DU230003	11/04/2022

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Public Affairs	Director, Strategic Communications	DU230008	11/14/2022
	Office of the Administration	Advance Coordinator	DU230007	11/11/2022
DEPARTMENT OF THE INTERIOR	Secretary's Immediate Office	Special Assistant to the Chief of Staff.	DI230004	11/14/2022
		Press Assistant	DI230003	11/15/2022
	Bureau of Reclamation	Policy Associate	DI230005	11/30/2022
DEPARTMENT OF JUSTICE	Executive Office for United States Attorneys.	Confidential Assistant (2)	DJ230009	11/21/2022
			DJ230011	11/28/2022
	Office of Legislative Affairs	Senior Counsel	DJ230005	11/16/2022
		Chief of Staff and Senior Counsel	DJ230018	11/16/2022
		Attorney Advisor	DJ230014	11/18/2022
	Office of the Deputy Attorney General.	Senior Counsel	DJ230022	11/17/2022
DEPARTMENT OF LABOR	Office of Congressional and Intergovernmental Affairs.	Senior Legislative Assistant	DL230003	11/18/2022
	Office of Occupational Safety and Health Administration.	Special Assistant	DL230005	11/18/2022
	Office of the Secretary	Director of Advance	DL230006	11/30/2022
		Executive Director of Scheduling and Advance.	DL230007	11/30/2022
		Event Director	DL230008	11/30/2022
OFFICE OF MANAGEMENT AND BUDGET.	Office of Transportation, Homeland, Justice and Services Division.	Confidential Assistant	BO230002	11/18/2022
OFFICE OF PERSONNEL MANAGEMENT.	Office of Congressional, Legislative, and Intergovernmental Affairs.	Deputy Director, Congressional, Legislative and Intergovernmental Affairs.	PM230007	11/29/2022
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.	Office of Intergovernmental Affairs and Public Liaison.	Assistant United States Trade Representative for Intergovernmental Affairs and Public Engagement.	TN230003	11/02/2022
SECURITIES AND EXCHANGE COMMISSION.	Office of Legislative and Intergovernmental Affairs.	Legislative Affairs Specialist	SE230001	11/17/2022
SMALL BUSINESS ADMINISTRATION.	Office of the Administrator	Special Advisor for Public Engagement.	SB230003	11/22/2022
	Office of Field Operations	Senior Advisor	SB230004	11/29/2022
DEPARTMENT OF STATE	Office of Policy Planning	Senior Advisor (Speechwriter)	DS230006	11/01/2022
	Bureau of Educational and Cultural Affairs.	Special Assistant	DS230007	11/01/2022
	Office of the Deputy Secretary	Senior Advisor (Speechwriter)	DS230010	11/04/2022
	Office of the Under Secretary for Economic Growth, Energy, and the Environment.	Senior Advisor	DS230011	11/17/2022
DEPARTMENT OF TRANSPORTATION.	Office of the Secretary	Special Assistant for Scheduling	DT230009	11/02/2022
	Immediate Office of the Administrator.	Director of Governmental, International and Public Affairs.	DT230011	11/03/2022
	Office of Public Affairs	Press Secretary	DT230014	11/16/2022
	Office of Pipeline and Hazardous Materials Safety Administration.	Strategic Advisor to the Administrator.	DT230015	11/16/2022
	Office of Maritime Administration	Advisor to the Administrator	DT230016	11/16/2022
DEPARTMENT OF THE TREASURY.	Office of the Under Secretary for International Affairs.	Special Assistant	DY230013	11/02/2022
	Office of the Assistant Secretary (Economic Policy).	Special Assistant Russia/Ukraine	DY230015	11/04/2022
	Office of the Assistant Secretary (Public Affairs).	Spokesperson	DY230018	11/10/2022
	Office of the Under Secretary for Domestic Finance.	Special Assistant	DY230027	11/22/2022
UNITED STATES ELECTION ASSISTANCE COMMISSION.	Office of the United States Election Assistance Commission.	Confidential Assistant	EA230001	11/08/2022

The following Schedule C appointing authorities were revoked during November 2022.

Agency name	Organization name	Position title	Request No.	Vacate date
DEPARTMENT OF COMMERCE	Office of the Assistant Secretary Legislative and Intergovernmental Affairs.	Legislative Affairs Specialist	DC220068	11/19/2022

Agency name	Organization name	Position title	Request No.	Vacate date
DEPARTMENT OF EDUCATION	Office of Communications and Outreach.	Press Secretary	DB210061	11/19/2022
	Office of the Secretary	Director, Scheduling and Advance	DB210110	11/04/2022
DEPARTMENT OF ENERGY	Office of General Counsel	Legal Advisor	DE210104	11/05/2022
	Office of Management	Special Assistant	DE220072	11/19/2022
	Office of Public Affairs	Deputy Press Secretary	DE210170	11/06/2022
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Administration for Children and Families.	Senior Advisor	DH210250	11/12/2022
		Director of Communications	DH210243	11/19/2022
	Office of Intergovernmental and External Affairs.	Regional Director, Chicago, IL—Region V.	DH220058	11/12/2022
	Office of the Secretary	Special Assistant	DH210244	11/05/2022
DEPARTMENT OF HOMELAND SECURITY.	Cybersecurity and Infrastructure Security Agency.	Advisor	DM220178	11/10/2022
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Congressional and Intergovernmental Relations.	Special Assistant	DU210105	11/19/2022
	Office of Public Affairs	Deputy Assistant Secretary for Public Affairs.	DU210028	11/18/2022
ENVIRONMENTAL PROTECTION AGENCY.	Office of Public Affairs	Writer-Editor (Speechwriter)	EP220025	11/05/2022
OFFICE OF PERSONNEL MANAGEMENT.	Office of the Director	Senior Advisor for Operations	PM220040	11/19/2022
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Under Secretary of Defense (Personnel and Readiness).	Staff Director	DD220086	11/30/2022
SMALL BUSINESS ADMINISTRATION.	Office of Capital Access	Deputy Associate Administrator for Capital Access.	SB210051	11/05/2022

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2023–13632 Filed 6–26–23; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; July 2022

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from July 1, 2022, to July 31, 2022.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–936–3085.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

14. Department of Commerce (Sch A, 213.3114)

(l) National Telecommunication and Information Administration—

(1) Not to exceed 129 professional positions in grades GS–13 through GS–15.

Schedule B

14. Department of Commerce (Sch B, 213.3214)

(d) National Telecommunication and Information Administration—

(1) Not to exceed 37 positions of GS–0850 Electrical Engineer, GS–0855 Electronics Engineer, or GS–0854 Computer Engineer in grades GS–11 through GS–15, or positions that require subject-matter expertise with telecommunications policy, 911 communication programs, environmental specialists, and spectrum policy and related programs. Employment under this authority may not exceed 2 years.

Schedule C

The following Schedule C appointing authorities were approved during July 2022.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Agricultural Marketing Service	Chief of Staff	DA220143	07/15/2022
	Farm Service Agency	State Executive Director—Utah	DA220139	07/05/2022
		State Executive Director—Louisiana.	DA220140	07/05/2022
		State Executive Director	DA220142	07/15/2022
	Foreign Agricultural Service	Minister Counselor of Agriculture	DA220150	07/29/2022
	Office of Communications	Press Secretary	DA220149	07/21/2022
	Office of Rural Business Service	Policy Advisor	DA220141	07/15/2022
	Office of Rural Development	State Director—Texas	DA220135	07/05/2022
		State Director—Kansas	DA220138	07/05/2022

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF COMMERCE ...	Office of Economic Development Administration.	Senior Advisor	DC220160	07/29/2022
	Office of International Trade Administration.	Director of Outreach	DC220156	07/22/2022
		Senior Advisor	DC220158	07/29/2022
	Minority Business Development Agency.	Director of Legislative Affairs	DC220129	07/01/2022
	Office of National Telecommunications and Information Administration.	Deputy Director of Public Engagement Advisor for Intergovernmental Affairs.	DC220147	07/15/2022
			DC220148	07/15/2022
	Office of Legislative and Intergovernmental Affairs.	Director of Legislative Affairs	DC220141	07/01/2022
	Office of Public Affairs	Deputy Press Secretary	DC220149	07/15/2022
	Office of the Chief of Staff	Special Assistant to the Deputy Chief of Staff.	DC220159	07/29/2022
	Patent and Trademark Office	Senior Advisor	DC220161	07/29/2022
COMMISSION ON CIVIL RIGHTS	Office of Commissioners	Special Assistant to the Commissioner.	CC220002	07/14/2022
DEPARTMENT OF DEFENSE	Office of the Assistant to the Secretary of Defense (Public Affairs).	Speechwriter	DD220162	07/14/2022
	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant	DD220160	07/15/2022
	Office of the Secretary of Defense	Staff Assistant to the Deputy Secretary of Defense.	DD220161	07/15/2022
DEPARTMENT OF EDUCATION ...	Office of the Secretary	Deputy White House Liaison	DB220066	07/01/2022
	Office of Communications and Outreach.	Chief Speechwriter	DB220070	07/15/2022
DEPARTMENT OF ENERGY	Office of Manufacturing and Energy Supply Chains.	Chief of Staff	DE220100	07/05/2022
	Office of Public Affairs	Deputy Director	DE220103	07/08/2022
	Office of Scheduling and Advance	Deputy Director for Scheduling and Advance.	DE220099	07/05/2022
	Office of Science	Chief of Staff	DE220019	07/21/2022
ENIVIRONMENTAL PROTECTION AGENCY.	Office of the Associate Administrator for Congressional and Intergovernmental Relations.	Special Advisor for Intergovernmental Affairs.	EP220065	07/11/2022
	Office of Public Engagement and Environmental Education.	Public Engagement Specialist	EP220067	07/13/2022
	Office of the Administrator	Advance Specialist	EP220068	07/21/2022
GENERAL SERVICES ADMINISTRATION.	Office of Strategic Communication	Press Secretary	GS220018	07/26/2022
	Office of Congressional and Intergovernmental Affairs.	Policy Advisor	GS220019	07/29/2022
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Secretary	Deputy Director of Advance	DH220125	07/17/2022
		Senior Advisor	DH220081	07/28/2022
DEPARTMENT OF HOMELAND SECURITY.	Office of Public Affairs	Social Media Director	DM220240	07/28/2022
	Office of the Secretary	Writer–Editor	DM220213	07/28/2022
		White House Liaison	DM220248	07/28/2022
	Office of United States Citizenship and Immigration Services.	Senior Advisor for Customer Experience.	DM220249	07/28/2022
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Secretary	Deputy White House Liaison	DU220053	07/13/2022
DEPARTMENT OF THE INTERIOR	Office of United States Fish and Wildlife Service.	Special Assistant to Director, Fish and Wildlife Service.	DI220069	07/14/2022
	Secretary's Immediate Office	Special Assistant to the Senior Advisor and Infrastructure Coordinator.	DI220074	07/14/2022
DEPARTMENT OF JUSTICE	Office of the Associate Attorney General.	Senior Counsel	DJ220108	07/08/2022
	Office of Civil Rights Division	Senior Counsel	DJ220125	07/28/2022
DEPARTMENT OF LABOR	Office of the Secretary	Advance Associate	DL220067	07/01/2022
		Advisor for Infrastructure and Climate Engagement.	DL220064	07/21/2022
OFFICE OF MANAGEMENT AND BUDGET.	Office of Communications	Deputy Associate Director for Communications.	BO220021	07/25/2022
UNITED STATES INTERNATIONAL DEVELOPMENT FINANCE CORPORATION.	Overseas Private Investment Corporation.	Confidential Assistant	PQ220006	07/29/2022
SECURITIES AND EXCHANGE COMMISSION.	Office of the Chairman	Confidential Assistant	SE220011	07/15/2022
	Office of Public Affairs	Digital Media Communication Specialist.	SE220012	07/15/2022
SMALL BUSINESS ADMINISTRATION.	Office of the Administrator	Senior Advisor	SB220032	07/26/2022
DEPARTMENT OF STATE	Bureau of International Narcotics and Law Enforcement Affairs.	Supervisory Foreign Affairs Officer	DS220053	07/01/2022

Agency name	Organization name	Position title	Authorization No.	Effective date
	Bureau of Legislative Affairs	Senior Advisor (Congressional)	DS220059	07/25/2022
	Office of the Chief of Protocol	Protocol Officer (Visits)	DS220054	07/11/2022
	Office of the Under Secretary for Arms Control and International Security Affairs.	Senior Advisor	DS220057	07/14/2022
DEPARTMENT OF TRANSPORTATION.	Office of National Highway Traffic Safety Administration.	Director of Communications	DT220093	07/14/2022
	Office of the Assistant Secretary for Governmental Affairs.	Deputy Assistant Secretary for Congressional Affairs (House).	DT220096	07/14/2022
	Office of the Secretary	Deputy Director of Advance	DT220097	07/15/2022
	Office of Public Affairs	Digital Communications Manager	DT220098	07/28/2022
DEPARTMENT OF THE TREASURY.	Office of the Under Secretary for Domestic Finance.	Senior Advisor for Financial Institutions.	DY220125	07/05/2022
	Office of the Assistant Secretary (Legislative Affairs).	Special Advisor	DY220126	07/25/2022
		Special Assistant	DY220127	07/25/2022
	Office of the Assistant Secretary (Economic Policy).	Senior Advisor for Russia/Ukraine	DY220133	07/25/2022

The following Schedule C appointing authorities were revoked during July 2022.

Agency name	Organization name	Position title	Request No.	Vacate date
COUNCIL ON ENVIRONMENTAL QUALITY.	Council on Environmental Quality	Scheduler and Staff Assistant	EQ210003	07/23/2022
DEPARTMENT OF AGRICULTURE	Office of the Secretary	White House Liaison	DA210041	07/02/2022
		Advance Associate	DA220068	07/16/2022
DEPARTMENT OF COMMERCE	Office of Public Affairs	Deputy Speechwriter	DC220024	07/16/2022
	Office of the Chief Financial Officer and Assistant Secretary for Administration.	Special Assistant	DC220084	07/16/2022
	Office of the Secretary	Special Assistant to the Secretary	DC220087	07/02/2022
DEPARTMENT OF EDUCATION	Office of Legislation and Congressional Affairs.	Deputy Assistant Secretary	DB210138	07/01/2022
DEPARTMENT OF ENERGY	Office of Policy	Special Assistant	DE220061	07/30/2022
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Refugee Resettlement/Office of the Director.	Special Assistant	DH220043	07/02/2022
	Office of the Assistant Secretary for Legislation.	Special Assistant	DH210251	07/02/2022
	Office of the Assistant Secretary for Preparedness and Response.	Senior Advisor	DH210212	07/30/2022
DEPARTMENT OF THE TREASURY.	Office of the Assistant Secretary (Legislative Affairs).	Special Assistant	DY210086	07/24/2022
		Special Advisor	DY220126	07/29/2022
	Office of the Assistant Secretary (Public Affairs).	Spokesperson	DY210112	07/22/2022
	Secretary of the Treasury	Senior Advisor	DY210091	07/30/2022
DEPARTMENT OF TRANSPORTATION.	Office of the Secretary	Special Assistant for Advance	DT210088	07/16/2022
GENERAL SERVICES ADMINISTRATION.	Office of the Administrator	Director of Advance	GS210045	07/05/2022
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Under Secretary of Defense (Research and Engineering).	Special Assistant	DD210253	07/02/2022
SECURITIES AND EXCHANGE COMMISSION.	Office of Public Affairs	Communications Specialist	SE210024	07/16/2022
SMALL BUSINESS ADMINISTRATION.	Office of Communications and Public Liaison.	Director of Digital Communications	SB220028	07/01/2022
	Office of Congressional and Legislative Affairs.	Legislative Policy Advisor	SB210006	07/30/2022
		Deputy Associate Administrator	SB210035	07/30/2022
	Office of the Administrator	Policy Advisor	SB210033	07/30/2022
		Special Advisor (2)	SB210024	07/30/2022
			SB210009	07/30/2022

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2023–13628 Filed 6–26–23; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; March 2023

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established, modified or revoked from March 1, 2023 to March 31, 2023.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–936–3085.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established, modified, or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

09. Department of the Air Force (Schedule A, 213.3109)

(d) U.S. Air Force Academy, Colorado—

(2) Positions of Professor, Associate Professor, Assistant Professor, and Instructor, in the Dean of Faculty, Commandant of Cadets, Director of Athletics, and Preparatory School of the United States Air Force Academy. Permanent or time limited appointments may be made using this authority.

11. Department of Commerce (Schedule A, 213.3114)

(m) National Institute of Standards and Technology

(1) Not to exceed 50 positions in support of implementation of the CHIPS Act. Positions will be in the following occupations of Management and Program Analyst (ZA–343 Pay Bands III, IV), Program Manager (ZA–340 Pay Bands IV, V), Public Affairs Specialist (ZA–1035 Pay Bands III, IV, V). Permanent, temporary or time limited appointments may be made when using this authority.

68. U.S. Agency for International Development (Schedule A, 213.3168)

(a) Up to 350 positions for Crisis Operations Staffing needed to respond to urgent humanitarian, political, health and/or other crises of significant U.S. foreign policy interest. The authority may be used for temporary or time limited positions at the GS–9 through 15 grade levels for positions in the GS–0130 Foreign Affairs series, GS–089 Emergency Management series, and GS–301 Miscellaneous and Program series or other positions directly related to responding to urgent humanitarian political, health and/or other crises of significant U.S. foreign policy interest.

Schedule B

No Schedule B Authorities to report during March 2023.

Schedule C

The following Schedule C appointing authorities were approved during March 2023.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Office of Communications	Special Advisor	DA230054	03/03/2023
	Farm Service Agency	Policy Advisor	DA230064	03/13/2023
	Natural Resources Conservation Service.	Special Assistant	DA230066	03/09/2023
		Assistant Chief	DA230063	03/20/2023
		Special Advisor	DA230067	03/20/2023
	Office of the Assistant Secretary for Congressional Relations.	Director of Oversight	DA230065	03/20/2023
	Office of the General Counsel	Senior Counselor	DA230055	03/09/2023
		Senior Oversight Counselor	DA230061	03/10/2023
	Office of the Secretary	Deputy Director of Scheduling	DA230068	03/09/2023
	Office of the Under Secretary for Farm Production and Conservation.	Confidential Assistant	DA230062	03/23/2023
	Office of the Under Secretary for Marketing and Regulatory Programs.	Chief of Staff	DA230051	03/09/2023
	Rural Utilities Service	Senior Advisor	DA230073	03/28/2023
DEPARTMENT OF COMMERCE	Bureau of Industry and Security	Deputy Director of Congressional Affairs.	DC230102	03/23/2023
	National Institute of Standards and Technology.	Public Engagement Specialist	DC230107	03/23/2023
	Office of Legislative and Intergovernmental Affairs.	Special Assistant	DC230100	03/23/2023
	Office of Policy and Strategic Planning.	Special Assistant	DC230104	03/23/2023
	Office of the Deputy Secretary	Special Assistant to the Deputy Secretary.	DC230087	03/03/2023
	Office of the General Counsel	Counsel	DC230086	03/03/2023
	Office of White House Liaison	Deputy White House Liaison	DC230085	03/02/2023
COMMISSION ON CIVIL RIGHTS	Office of the Commissioners	Special Assistant to the Commissioner.	CC230001	03/31/2023

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF DEFENSE	Office of the Under Secretary of Defense (Comptroller).	Special Assistant	DD230123	03/14/2023
	Office of the Assistant to the Secretary of Defense (Public Affairs).	Director of Digital Media	DD230127	03/20/2023
	Office of the Under Secretary of Defense (Acquisition and Sustainment).	Special Assistant	DD230130	03/31/2023
DEPARTMENT OF THE AIR FORCE.	Office of the Secretary	Special Assistant to the Secretary of the Air Force.	DF230009	03/14/2023
DEPARTMENT OF THE ARMY	Office of the Under Secretary	Speechwriter to the Under Secretary of the Army.	DW230021	03/20/2023
	Office of the General Counsel	Attorney Advisor to the Army General Counsel.	DW230022	03/20/2023
DEPARTMENT OF EDUCATION ...	Office of Communications and Outreach.	Director, Rural Engagement	DB230050	03/08/2023
DEPARTMENT OF ENERGY	Office of the Assistant Secretary for Electricity.	Special Assistant	DE230072	03/03/2023
	Office of Public Affairs	Deputy Press Secretary	DE230074	03/06/2023
		Digital Content Manager (2)	DE230075	03/09/2023
			DE230088	03/22/2023
	Office of Management	Director, Office of Executive Secretariat.	DE230091	03/29/2023
EXPORT-IMPORT BANK	Office of External Engagement	Senior Vice President for External Engagement.	EB230008	03/02/2023
FEDERAL TRADE COMMISSION ..	Office of the Chair	Special Advisor to the Chair	FT230009	03/07/2023
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Administration for Community Living.	Advisor	DH230174	03/17/2023
	Agency for Healthcare Research and Quality.	Senior Advisor	DH230157	03/09/2023
	Center for Medicaid and Chip Services.	Senior Advisor	DH230173	03/08/2023
	Office of Indian Health Service	Senior Advisor to the Director	DH230175	03/17/2023
	Office of Intergovernmental and External Affairs.	Senior Advisor	DH230169	03/09/2023
	Office of the Assistant Secretary for Financial Resources.	Senior Advisor	DH230158	03/09/2023
		Special Assistant	DH230171	03/10/2023
	Office of the Assistant Secretary for Public Affairs.	Online Communications Director ...	DH230178	03/22/2023
	Office of the Deputy Secretary	Advisor (2)	DH230166	03/02/2023
			DH230168	03/02/2023
	Office of the Secretary	Special Assistant (2)	DH230164	03/01/2023
			DH230159	03/02/2023
		Deputy White House Liaison	DH230161	03/08/2023
		Scheduler	DH230179	03/23/2023
DEPARTMENT OF HOMELAND SECURITY.	Cybersecurity and Infrastructure Security Agency.	Senior Advisor	DM230188	03/20/2023
	Office of Public Affairs	Press Assistant	DM230156	03/03/2023
		Social Media Specialist	DM230178	03/20/2023
	Office of the General Counsel	Special Assistant	DM230180	03/31/2023
	Office of the Secretary	Briefing Book Coordinator (Deputy Secretary).	DM230183	03/24/2023
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Administration	Senior Advisor	DU230041	03/02/2023
	Government National Mortgage Association.	Special Advisor	DU230043	03/08/2023
DEPARTMENT OF THE INTERIOR	Office of the Assistant Secretary—Policy, Management and Budget.	Advisor	DI230054	03/01/2023
	Secretary's Immediate Office	Senior Advisor for Infrastructure Equity.	DI230055	03/01/2023
	Office of the Assistant Secretary—Fish and Wildlife and Parks.	Senior Advisor	DI230064	03/20/2023
DEPARTMENT OF JUSTICE	Office of Public Affairs	Senior Communications Advisor	DJ230063	03/10/2023
	Office of the Associate Attorney General.	Confidential Assistant	DJ230065	03/01/2023
	Office of the Deputy Attorney General.	Counsel	DJ230068	03/22/2023
		Senior Counsel	DJ230072	03/23/2023
DEPARTMENT OF LABOR	Office of Employee Benefits Security Administration.	Special Assistant	DL230059	03/13/2023
	Office of Employment and Training Administration.	Policy Advisor	DL230054	03/01/2023
	Office of Public Affairs	Digital Content Manager	DL230055	03/10/2023
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of the Administrator	Counselor for Interagency and International Operations.	NN230028	03/13/2023

Agency name	Organization name	Position title	Authorization No.	Effective date
OFFICE OF MANAGEMENT AND BUDGET.	Office of the Director	Confidential Assistant	BO230018	03/10/2023
	Office of Information and Regulatory Affairs.	Senior Counselor	BO230019	03/22/2023
	Staff Offices	Confidential Assistant	BO230020	03/23/2023
OFFICE OF NATIONAL DRUG CONTROL POLICY.	Office of National Drug Control Policy.	Legislative Analyst	QQ230007	03/22/2023
OFFICE OF PERSONNEL MANAGEMENT.	Office of the Director	Senior Advisor for Special Projects	PM230037	03/29/2023
SECURITIES AND EXCHANGE COMMISSION.	Office of Public Affairs	Senior Advisor to the Chair (Director of Speechwriting).	SE230004	03/15/2023
	Office of Commissioner Peirce	Confidential Assistant	SE230005	03/23/2023
	Office of Commissioner Uyeda	Confidential Assistant	SE230006	03/23/2023
SMALL BUSINESS ADMINISTRATION.	Office of the Administrator	Senior Advisor for Public Engagement.	SB230016	03/03/2023
		Public Engagement Coordinator	SB230020	03/15/2023
	Office of Communications and Public Liaison.	Press Assistant	SB230022	03/21/2023
		Speechwriter	SB230023	03/21/2023
	Office of Field Operations	Regional Administrator, Region 7	SB230019	03/22/2023
	Office of Congressional and Legislative Affairs.	Legislative Policy Advisor	SB230021	03/23/2023
DEPARTMENT OF STATE	Bureau of European and Eurasian Affairs.	Senior Advisor	DS230104	03/06/2023
	Bureau of Global Public Affairs	Deputy Assistant Secretary	DS230090	03/03/2023
	Bureau of Intelligence and Research.	Senior Advisor (Speechwriter)	DS230116	03/29/2023
	Office of the Chief of Protocol	Protocol Officer (Visits)	DS230098	03/06/2023
		Protocol Officer	DS230107	03/09/2023
	Office of the Deputy Secretary for Management and Resources.	Staff Assistant	DS230112	03/24/2023
	Office of the Secretary	Senior Advisor	DS230115	03/24/2023
	Office of the Under Secretary for Public Diplomacy and Public Affairs.	Special Assistant	DS230108	03/09/2023
DEPARTMENT OF TRANSPORTATION.	Office of the Secretary	Special Assistant to the Secretary of Transportation.	DT230061	03/08/2023
		Deputy White House Liaison	DT230072	03/08/2023
DEPARTMENT OF THE TREASURY.	Department of the Treasury	Special Assistant	DY230060	03/09/2023
		Senior Spokesperson	DY230061	03/09/2023
		Senior Scheduling and Advance Associate.	DY230065	03/09/2023

The following Schedule C appointing authorities were revoked during March 2023.

Agency name	Organization name	Position title	Request No.	Vacate date
DEPARTMENT OF AGRICULTURE	Office of the Secretary	White House Liaison	DA220154	03/12/2023
DEPARTMENT OF COMMERCE	Immediate Office	Special Assistant to the Senior Advisors.	DC220167	03/25/2023
	Minority Business Development Agency.	Senior Advisor	DC220017	03/24/2023
	Office of National Telecommunications and Information Administration.	Deputy Director of Congressional Affairs.	DC220134	03/08/2023
	Office of Legislative and Intergovernmental Affairs.	Special Assistant	DC220013	03/25/2023
	Office of Policy and Strategic Planning.	Special Assistant	DC220152	03/25/2023
	Office of Public Affairs	Deputy Director of Public Affairs and Press Secretary.	DC220032	03/24/2023
	Office of the Assistant Secretary for Economic Development.	Special Policy Advisor to the Assistant Secretary.	DC220088	03/12/2023
	Office of the Chief of Staff	Senior Advisor	DC220046	03/11/2023
	Office of the Deputy Secretary	Special Assistant	DC220096	03/25/2023
DEPARTMENT OF EDUCATION	Office of Communications and Outreach.	Special Assistant	DB210046	03/12/2023
		Deputy Press Secretary	DB220032	03/11/2023
	Office of Elementary and Secondary Education.	Confidential Assistant	DB210115	03/25/2023

Agency name	Organization name	Position title	Request No.	Vacate date
	Office of Planning, Evaluation and Policy Development.	Special Assistant	DB220004	03/11/2023
	Office of the Deputy Secretary	Chief of Staff	DB220074	03/25/2023
DEPARTMENT OF ENERGY	Office of Public Affairs	Speechwriter	DE220088	03/03/2023
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Center for Medicaid and Chip Services.	Policy Advisor	DH210228	03/11/2023
	Office for Civil Rights	Senior Advisor	DH220067	03/12/2023
		Special Advisor	DH230057	03/25/2023
	Office of Intergovernmental and External Affairs.	Confidential Assistant	DH220151	03/25/2023
		External Affairs Specialist	DH220041	03/11/2023
	Office of the Assistant Secretary for Public Affairs.	Online Communications Director	DH220044	03/25/2023
	Office of the Deputy Secretary	Special Assistant (2)	DH220030	03/11/2023
			DH230040	03/11/2023
	Office of the Secretary	Scheduler	DH230130	03/10/2023
		Senior Advisor to the Executive Secretary.	DH210109	03/03/2023
		Senior Advisor, Boards and Commissions.	DH220068	03/11/2023
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Government National Mortgage Association.	Senior Advisor	DU220026	03/25/2023
DEPARTMENT OF JUSTICE	Office of Civil Rights Division	Chief of Staff and Senior Counsel	DJ210170	03/05/2023
ENVIRONMENTAL PROTECTION AGENCY.	Office of Public Affairs	Communications Advisor	EP220051	03/29/2023
	Office of the Administrator	Advance Specialist	EP210076	03/25/2023
		Director of Scheduling and Advance.	EP220042	03/11/2023
		Senior Advisor to the Administrator	EP220078	03/11/2023
	Office of the Assistant Administrator for Land and Emergency Management.	Senior Advisor for Implementation	EP220073	03/25/2023
	Office of the Assistant Administrator for Water.	Senior Advisor for Implementation	EP220038	03/10/2023
EXPORT-IMPORT BANK	Office of Congressional and Intergovernmental Affairs.	Senior Vice President Congressional and Intergovernmental Affairs.	EB220004	03/11/2023
GENERAL SERVICES ADMINISTRATION.	Office of the Administrator	White House Liaison and Director of National Outreach.	GS230006	03/26/2023
NATIONAL ENDOWMENT FOR THE HUMANITIES.	National Endowment for the Humanities.	Supervisory Public Affairs Specialist.	NH210004	03/17/2023
		White House Liaison and Senior Advisor to the Chief of Staff.	NH210008	03/25/2023
OFFICE OF MANAGEMENT AND BUDGET.	Office of General Government Programs.	Confidential Assistant	BO210025	03/31/2023
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Under Secretary of Defense (Personnel and Readiness).	Special Assistant	DD220036	03/25/2023
	Washington Headquarters Services	Defense Fellow (5)	DD220016	03/11/2023
			DD220025	03/11/2023
			DD220033	03/11/2023
			DD220170	03/11/2023
			DD220171	03/11/2023
SECURITIES AND EXCHANGE COMMISSION.	Office of Commissioner Uyeda	Confidential Assistant	SE220015	03/09/2023
SMALL BUSINESS ADMINISTRATION.	Office of Communications and Public Liaison.	Director of Communications	SB210031	03/31/2023

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2023–13636 Filed 6–26–23; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; January 2023

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from January 1, 2023 to January 31, 2023.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–936–3085.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of

Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No Schedule A Authorities to report during January 2023.

Schedule B

No Schedule B Authorities to report during January 2023.

Schedule C

The following Schedule C appointing authorities were approved during January 2023.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Office of the Secretary	Special Assistant	DA230035	01/06/2023
		Senior Advisor (2)	DA230038	01/13/2023
			DA230046	01/27/2023
	Farm Service Agency	Senior Policy Advisor	DA230039	01/13/2023
		Special Assistant	DA230040	01/16/2023
	Office of Communications	Press Assistant	DA230036	01/06/2023
	Office of the Assistant Secretary for Civil Rights.	Confidential Assistant	DA230048	01/29/2023
	Office of the Assistant Secretary for Congressional Relations.	Legislative Advisor	DA230047	01/29/2023
	Office of the Under Secretary for Food, Nutrition and Consumer Services.	Senior Advisor	DA230045	01/29/2023
	Rural Business Service	Special Assistant	DA230041	01/20/2023
	Rural Utilities Service	Special Assistant	DA230042	01/16/2023
		Chief of Staff	DA230043	01/29/2023
DEPARTMENT OF COMMERCE	Office of International Trade Administration.	Senior Policy Advisor	DC230045	01/12/2023
	Minority Business Development Agency.	Senior Advisor	DC230061	01/27/2023
	National Institute of Standards and Technology.	Senior Advisor for Opportunity and Inclusion.	DC230048	01/12/2023
	National Oceanic and Atmospheric Administration.	Special Advisor	DC230060	01/27/2023
	Office of Advance, Scheduling and Protocol.	Scheduler	DC230056	01/27/2023
	Office of Executive Secretariat	Confidential Assistant	DC230057	01/27/2023
	Office of the General Counsel	Senior Counsel	DC230047	01/12/2023
COUNCIL ON ENVIRONMENTAL QUALITY.	Council on Environmental Quality	Special Assistant for Environmental Justice.	EQ230002	01/24/2023
DEPARTMENT OF DEFENSE	Office of the Secretary of Defense	Special Assistant to the Secretary of Defense (Strategy).	DD230042	01/12/2023
		Protocol Officer	DD230039	01/13/2023
	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant	DD230106	01/26/2023
DEPARTMENT OF THE ARMY	Office Assistant Secretary Army (Financial Management and Comptroller).	Special Assistant to the Assistant Secretary of the Army (Financial Management and Comptroller).	DW230006	01/23/2023
DEPARTMENT OF EDUCATION	Office of the Secretary	Deputy Director, White House Initiative on Advancing Educational Equity, Excellence, and Economic Operation.	DB230026	01/04/2023
		Executive Assistant/Executive Office Manager.	DB230042	01/20/2023
DEPARTMENT OF ENERGY	Office of the Assistant Secretary for Congressional and Intergovernmental Affairs.	Advisor, Congressional Affairs	DE230040	01/18/2023
		Regional Intergovernmental and External Affairs Specialist.	DE230034	01/19/2023
		Regional Intergovernmental and External Affairs Specialist—Appalachia (2).	DE230042	01/27/2023
			DE230043	01/27/2023
			DE230048	01/27/2023
	Office of the Assistant Secretary for Nuclear Energy.	Special Assistant	DE230031	01/12/2023
	Office of Management	Special Assistant	DE230032	01/04/2023
	Office of Public Affairs	Editor-Writer (Deputy Speechwriter).	DE230047	01/27/2023
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Administrator	Senior Advisor for the Greenhouse Gas Reduction Fund.	EP230022	01/19/2023
GENERAL SERVICES ADMINISTRATION.	National Capital Region	Special Assistant to the Regional Administrator.	GS230012	01/04/2023
	Office of General Counsel	Chief of Staff	GS230024	01/19/2023
	Office of Congressional and Intergovernmental Affairs.	Deputy Associate Administrator for Policy.	GS230025	01/19/2023

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Administration for Children and Families.	Special Advisor (2)	DH230134	01/27/2023
			DH230134	01/27/2023
	Centers for Medicare and Medicaid Services.	Senior Advisor and Press Secretary.	DH230132	01/27/2023
	Office of Health Resources and Services Administration.	Senior Advisor	DH230055	01/13/2023
		Chief of Staff	DH230136	01/27/2023
	National Cancer Institute	Assistant Director, Cancer Moonshot Engagement.	DH230056	01/12/2023
	Office for Civil Rights	Special Advisor	DH230057	01/13/2023
	Office of Intergovernmental and External Affairs.	Regional Director, Chicago, Illinois-Region V.	DH230135	01/27/2023
	Office of the Assistant Secretary for Public Affairs.	Assistant Speechwriter	DH230061	01/12/2023
		Senior Advisor	DH230131	01/24/2023
	Office of the Secretary	Special Assistant (2)	DH230060	01/12/2023
			DH230062	01/12/2023
		Policy Advisor	DH230063	01/12/2023
		Special Assistant for Scheduling and Advance.	DH230129	01/20/2023
		Scheduler	DH230130	01/20/2023
DEPARTMENT OF HOMELAND SECURITY.	Office of Public Affairs	Press Secretary for Oversight	DM230033	01/05/2023
	Office of the Secretary	Senior Advance Officer	DM230054	01/23/2023
	Federal Emergency Management Agency.	Director of Legislative Affairs	DM230075	01/25/2023
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Congressional and Intergovernmental Relations.	Senior Advisor	DU230016	01/11/2023
	Office of Community Planning and Development.	Special Assistant	DU230030	01/20/2023
	Office of the Secretary	Special Assistant and Policy Coordinator.	DU230033	01/27/2023
		White House Liaison	DU230034	01/27/2023
DEPARTMENT OF THE INTERIOR	Bureau of Land Management	Advisor	DI230048	01/25/2023
DEPARTMENT OF JUSTICE	Office of Civil Division	Senior Counsel	DJ230037	01/06/2023
	Office of Public Affairs	Press Secretary	DJ230043	01/09/2023
	Office of Deputy Assistant Attorney General I.	Counsel	DJ230041	01/10/2023
	Department of Justice	Confidential Assistant	DJ230026	01/27/2023
DEPARTMENT OF LABOR	Office of Mine Safety and Health Administration.	Senior Policy Advisor	DL230019	01/20/2023
	Office of Occupational Safety and Health Administration.	Special Assistant	DL230017	01/12/2023
	Office of Congressional and Intergovernmental Affairs.	Oversight Counsel	DL230018	01/31/2023
	Office of the Assistant Secretary for Policy.	Policy Advisor	DL230014	01/19/2023
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of Communications	Communications Manager	NN230015	01/11/2023
		Press Secretary and Advisor	NN230013	01/13/2023
		Senior Advisor for Strategic Communications and Guest Operations.	NN230014	01/13/2023
		Digital Content Strategist	NN230017	01/18/2023
	Office of Legislative and Intergovernmental Affairs.	Legislative Assistant and Strategic Outreach Advisor.	NN230016	01/11/2023
	Office of the Administrator	Special Assistant to the Chief of Staff.	NN230018	01/18/2023
		Administrative Director and Advisor	NN230019	01/31/2023
NATIONAL ENDOWMENT FOR THE ARTS.	National Endowment for the Arts	Senior Advisor and Envoy for Cultural Exchange.	NA230002	01/18/2023
OFFICE OF PERSONNEL MANAGEMENT.	Office of the Director	Confidential Assistant	PM230021	01/12/2023
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.	Office of the Ambassador	Congressional Affairs Specialist	TN230008	01/20/2023
UNITED STATES INTERNATIONAL DEVELOPMENT FINANCE CORPORATION.	Overseas Private Investment Corporation.	Special Assistant	PQ230002	01/10/2023
		Policy Assistant	PQ230005	01/10/2023
SECURITIES AND EXCHANGE COMMISSION.	Office of the Chairman	Senior Advisor	SE230003	01/27/2023
DEPARTMENT OF STATE	Bureau of Legislative Affairs	Deputy Assistant Secretary (House).	DS230076	01/19/2023
	Bureau of Global Public Affairs	Senior Advisor	DS230078	01/27/2023
DEPARTMENT OF TRANSPORTATION.	Office of Public Affairs	Senior Speechwriter (2)	DT230020	01/25/2023
			DT230021	01/25/2023
DEPARTMENT OF THE TREASURY.		Senior Spokesperson	DY230046	01/13/2023

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Assistant Secretary (Public Affairs).	Senior Digital Strategy Specialist ...	DY230049	01/27/2023
	Secretary of the Treasury	Special Assistant	DY230047	01/26/2023
		Deputy Director for Scheduling and Advance.	DY230050	01/27/2023
	Office of the Under Secretary for Domestic Finance.	Policy Advisor	DY230051	01/27/2023
UNITED STATES ELECTION ASSISTANCE COMMISSION.	United States Election Assistance Commission.	Confidential Assistant	EA230002	01/05/2023

The following Schedule C appointing authorities were revoked during January 2023.

Agency name	Organization name	Position title	Request No.	Vacate date
CONSUMER FINANCIAL PROTECTION BUREAU.	Office of the Director	Senior Advisor to the Director	FP220004	01/14/2023
DEPARTMENT OF AGRICULTURE	Office of the Under Secretary for Rural Development.	Confidential Assistant	DA220157	01/28/2023
DEPARTMENT OF COMMERCE ...	Office of Advance, Scheduling and Protocol.	Scheduler	DC220130	01/28/2023
	Office of Business Liaison	Deputy Director, Office of Public Engagement.	DC220116	01/12/2023
	Office of the Assistant Secretary for Economic Development.	Special Assistant	DC220066	01/28/2023
DEPARTMENT OF EDUCATION ...	Office of Planning, Evaluation and Policy Development.	Special Assistant	DB210047	01/14/2023
		Confidential Assistant	DB220016	01/28/2023
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Assistant Secretary for Public Affairs.	Special Assistant	DH220007	01/14/2023
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Community Planning and Development.	Senior Advisor	DU220004	01/14/2023
	Office of the Secretary	White House Liaison	DU210020	01/28/2023
		Deputy White House Liaison	DU220053	01/28/2023
DEPARTMENT OF LABOR	Veterans Employment and Training Service.	Special Assistant	DL210125	01/14/2023
DEPARTMENT OF STATE	Bureau of Legislative Affairs	Staff Assistant	DS210276	01/28/2023
	Office of the Under Secretary for Public Diplomacy and Public Affairs.	Senior Advisor	DS220002	01/29/2023
DEPARTMENT OF THE INTERIOR	Secretary's Immediate Office	Special Assistant to the Secretary's Chief of Staff.	DI210097	01/14/2023
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Associate Administrator for Congressional and Intergovernmental Relations.	Deputy Associate Administrator for Congressional Affairs (House Relations).	EP210099	01/14/2023
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.	Office of the Chair	Executive Staff Assistant	EE210011	01/05/2023
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of Communications	Press Secretary	NN210042	01/14/2023
		Special Assistant	NN210066	01/14/2023
		Senior Advisor for Strategic Communications.	NN210073	01/14/2023
OFFICE OF PERSONNEL MANAGEMENT.	Human Resource Solutions	Chief of Staff	PM220008	01/14/2023
	Office of the General Counsel	Senior Counsel for Oversight	PM230002	01/14/2023
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Secretary of Defense	Protocol Officer	DD210267	01/14/2023
	Office of the Under Secretary of Defense (Research and Engineering).	Special Assistant	DD210245	01/28/2023
	Office of General Counsel	General Counsel	SE220002	01/31/2023
SECURITIES AND EXCHANGE COMMISSION.	Office of Public Affairs	Writer-Editor	SE220007	01/26/2023
TRADE AND DEVELOPMENT AGENCY.	Office of the Director	Director of Public Engagement	TD210003	01/20/2023

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2023–13634 Filed 6–26–23; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; December 2022

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from December 1, 2022 to December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–936–3085.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No Schedule A Authorities to report during December 2022.

Schedule B

No Schedule B Authorities to report during December 2022.

Schedule C

The following Schedule C appointing authorities were approved during December 2022.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Office of Communications	Deputy Director of Advance	DA230031	12/22/2022
	Office of the Assistant Secretary for Congressional Relations.	Legislative Advisor	DA230023	12/09/2022
	Office of the Chief Financial Officer	Chief of Staff	DA230024	12/17/2022
	Office of the Secretary	Scheduler	DA230011	12/01/2022
		Confidential Assistant	DA230034	12/30/2022
	Office of the Under Secretary for Rural Development.	Senior Counselor for Rural Energy	DA230025	12/09/2022
	Office of the Under Secretary for Natural Resources and Environment.	Special Assistant	DA230033	12/30/2022
DEPARTMENT OF COMMERCE	Office of Economic Development Administration.	Chief of Staff	DC230041	12/29/2022
	Office of International Trade Administration.	Director of Public Affairs	DC230044	12/29/2022
	Minority Business Development Agency.	Special Assistant	DC230039	12/29/2022
	National Institute of Standards and Technology.	Communications Director	DC230040	12/29/2022
	Office of Business Liaison	Special Assistant	DC230024	12/01/2022
		Public Engagement Advisor	DC230043	12/29/2022
	Office of Policy and Strategic Planning.	Special Assistant	DC230025	12/01/2022
	Office of Public Affairs	Press Secretary	DC230035	12/15/2022
	Patent and Trademark Office	Senior Advisor	DC230026	12/01/2022
		Special Advisor	DC230027	12/01/2022
		Deputy Chief Communications Officer.	DC230038	12/29/2022
FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL.	Federal Permitting Improvement Steering Council.	Director of Tribal Affairs	FF230001	12/15/2022
CONSUMER FINANCIAL PROTECTION BUREAU.	Office of the Director	Management and Program Analyst	FP230002	12/16/2022
	Consumer Financial Protection Bureau.	Associate Director, Research, Monitoring, and Regulations.	FP230001	12/23/2022
DEPARTMENT OF DEFENSE	Office of the Assistant to the Secretary of Defense (Public Affairs).	Special Assistant	DD230033	12/21/2022
	Office of the Under Secretary of Defense (Personnel and Readiness).	Special Assistant (2)	DD230035	12/21/2022
			DD230036	12/21/2022
	Office of the Assistant Secretary of Defense (Special Operations/Low Intensity Conflict).	Senior Advisor	DD230034	12/23/2022
DEPARTMENT OF EDUCATION	Office of the Secretary	Confidential Assistant	DB230005	12/13/2022
	Office for Civil Rights	Chief of Staff	DB230019	12/13/2022
	Office of the Under Secretary	Special Assistant	DB230020	12/13/2022
	Office of Communications and Outreach.	Senior Advisor	DB230021	12/14/2022
DEPARTMENT OF ENERGY	Office of Indian Energy Policy and Programs.	Special Assistant	DE230020	12/05/2022

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Secretary	Special Advisor to the Chief of Staff of the Secretary.	DE230021	12/12/2022
	Office of the Assistant Secretary for Fossil Energy.	Chief of Staff	DE230024	12/13/2022
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Assistant Administrator for Water.	Special Advisor	EP230013	12/05/2022
	Office of the Administrator	Advance Specialist	EP230012	12/06/2022
		Special Assistant to the Chief of Staff.	EP230015	12/11/2022
		Special Assistant to the Executive Secretariat.	EP230018	12/29/2022
EXPORT-IMPORT BANK	Office of Communications	Speechwriter	EB230002	12/01/2022
		Press Secretary	EB230003	12/01/2022
GENERAL SERVICES ADMINISTRATION.	Office of the Administrator	White House Liaison and Director of National Outreach.	GS230006	12/08/2022
		Special Assistant (2)	GS230007	12/14/2022
			GS230013	12/21/2022
		Director of Scheduling and Advance.	GS230008	12/16/2022
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Administration for Children and Families.	Senior Advisor, Oversight	DH230036	12/08/2022
		Senior Advisor	DH230051	12/29/2022
	Centers for Medicare and Medicaid Services.	Advisor for External Affairs	DH230043	12/29/2022
	Office of Administration for Community Living.	Special Advisor	DH230046	12/16/2022
	Office of Global Affairs	Special Assistant	DH230035	12/01/2022
	Office of Intergovernmental and External Affairs.	Special Assistant	DH230037	12/13/2022
	Office of the Assistant Secretary for Public Affairs.	Press Secretary (Human Services)	DH230032	12/01/2022
		Senior Advisor for Broadcast and Specialty Media.	DH230033	12/01/2022
		Principal Deputy Speechwriter	DH230034	12/01/2022
		Director of Speechwriting	DH230038	12/08/2022
	Office of the Deputy Secretary	Special Assistant	DH230040	12/15/2022
	Office of the Secretary	Senior Policy Advisor	DH230041	12/13/2022
DEPARTMENT OF HOMELAND SECURITY.	Office of Legislative Affairs	Director of Legislative Affairs, Oversight.	DM230008	12/01/2022
	Office of United States Immigration and Customs Enforcement.	Deputy Assistant Director of Public Affairs.	DM230009	12/07/2022
	Cybersecurity and Infrastructure Security Agency.	Senior Advisor for Public Affairs	DM230010	12/23/2022
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the General Counsel	Senior Counsel for Oversight	DU230011	12/15/2022
	Office of the Administration	Advance Coordinator	DU230012	12/15/2022
DEPARTMENT OF JUSTICE	Office of Civil Division	Counsel (2)	DJ230036	12/23/2022
			DJ230035	12/28/2022
	Office of Legal Policy	Senior Counsel	DJ230039	12/27/2022
		Counsel	DJ230042	12/27/2022
DEPARTMENT OF LABOR	Office of the Secretary	Senior Counselor to the Secretary	DL230010	12/29/2022
	Office of Federal Contract Compliance Programs.	Senior Advisor	DL230011	12/29/2022
		Chief of Staff	DL230013	12/29/2022
OFFICE OF MANAGEMENT AND BUDGET.	Office of E-Government and Information Technology.	Confidential Assistant	BO230003	12/01/2022
	Staff Offices	Confidential Assistant	BO230005	12/13/2022
OFFICE OF PERSONNEL MANAGEMENT.	Presidents Commission on White House Fellowships.	Associate Director	PM230008	12/15/2022
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.	Office of the Ambassador	Director of Scheduling and Advance Coordinator.	TN230007	12/08/2022
SECURITIES AND EXCHANGE COMMISSION.	Office of the Chairman	Chief of Staff	SE230002	12/07/2022
DEPARTMENT OF STATE	Bureau of Near Eastern Affairs	Deputy Assistant Secretary	DS230018	12/02/2022
	Office of the Secretary	Speechwriter	DS230026	12/23/2022
		Global Health Coordinator	DS230024	12/29/2022
	Office of the Under Secretary for Economic Growth, Energy, and the Environment.	Senior Advisor	DS230017	12/02/2022
		Deputy Special Representative	DS230028	12/23/2022
	Office of the Under Secretary for Political Affairs.	Foreign Affairs Officer	DS230019	12/02/2022
DEPARTMENT OF THE TREASURY.	Office of the Assistant Secretary (Legislative Affairs).	Special Advisor	DY230044	12/30/2022

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Assistant Secretary (Public Affairs).	Press Assistant	DY230016	12/09/2022
		Senior Spokesperson	DY230041	12/30/2022
	Secretary of the Treasury	Counselor	DY230029	12/02/2022
		Deputy White House Liaison	DY230037	12/21/2022
		Senior Advisor for the Inflation Reduction Act Implementation.	DY230036	12/30/2022
		Policy Advisor (Inflation Reduction Act Implementation).	DY230038	12/30/2022
		Special Assistant	DY230043	12/30/2022
	Office of the Under Secretary for Terrorism and Financial Intelligence.	Special Advisor	DY230039	12/30/2022
DEPARTMENT OF VETERANS AFFAIRS.	Office of the Secretary and Deputy	Chief Speechwriter	DV230004	12/08/2022
		Policy Advisor	DV230011	12/21/2022

The following Schedule C appointing authorities were revoked during December 2022.

Agency name	Organization name	Position title	Request No.	Vacate date
DEPARTMENT OF COMMERCE	Office of the Chief of Staff	Special Assistant (2)	DC220114	12/17/2022
			DC220109	12/12/2022
	Office of the General Counsel	Special Assistant	DC220002	12/17/2022
DEPARTMENT OF EDUCATION	Office of the Secretary	Deputy Director of Scheduling	DB220079	12/17/2022
DEPARTMENT OF ENERGY	Grid Deployment Office	Special Assistant	DE220134	12/04/2022
	Office of Clean Energy Demonstrations.	Special Assistant	DE220063	12/17/2022
	Office of the Chief Financial Officer	Special Advisor	DE210173	12/17/2022
	Office of the Under Secretary of Energy.	Special Assistant	DE220075	12/17/2022
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Administration for Community Living.	Special Assistant	DH220005	12/17/2022
	Office of the Assistant Secretary for Administration.	Senior Advisor for Strategic Initiatives.	DH220017	12/31/2022
	Office of the Assistant Secretary for Public Affairs.	Press Secretary (Human Services)	DH210252	12/03/2022
		Press Assistant	DH220006	12/03/2022
		Deputy Speechwriter	DH210139	12/03/2022
	Office of the Deputy Secretary	Special Assistant	DH210226	12/17/2022
DEPARTMENT OF HOMELAND SECURITY.	United States Immigration and Customs Enforcement.	Assistant Director of Congressional Relations.	DM210351	12/09/2022
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Government National Mortgage Association.	Special Assistant	DU220043	12/21/2022
	Office of Public Affairs	Deputy Assistant Secretary for Intergovernmental Relations.	DU210041	12/15/2022
DEPARTMENT OF LABOR	Office of Federal Contract Compliance Programs.	Chief of Staff	DL220066	12/03/2022
DEPARTMENT OF STATE	Office of Policy Planning	Special Advisor	DS210280	12/03/2022
	Office of the Under Secretary for Management.	Staff Assistant	DS220044	12/17/2022
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.	Office of the Chair	Writer-Editor (Speeches)	EE220001	12/31/2022
FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL.	Federal Permitting Improvement Steering Council.	Associate Director for Public Engagement.	FF220003	12/15/2022
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Secretary of Defense	Advance Officer	DD220155	12/03/2022
	Office of the Under Secretary of Defense (Personnel and Readiness).	Special Assistant	DD220118	12/17/2022

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2023–13633 Filed 6–26–23; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; February 2023

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established, modified or revoked from February 1, 2023 to February 28, 2023.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–936–3085.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established, modified or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

09. Department of the Air Force (Schedule A, 213.3109)

(m) Joint Special Operations University

(1) Not to exceed 15 positions of Dean of the College Special Operations Low Intensity Conflict and Professor of Interdisciplinary Studies. Initial appointments may not exceed 3 years, but may be extended thereafter in 1 to 5-year increments, indefinitely.

11. Department of Commerce (Schedule A, 213.3114)

(m) National Institute of Standards and Technology

(1) Not to exceed 50 positions in support of implementation of the CHIPS Act. Positions will be in the following occupations of Management and Program Analyst (‘ZA–343 Pay Bands III, IV), Program Manager (ZA–340 Pay Bands IV, V), Public Affairs Specialist (ZA–1035 Pay Bands III, IV, V). Permanent, temporary or time limited appointments may be made when using this authority.

14. Department of Commerce (Sch A, 213.3114)

(l) National Telecommunication and Information Administration—

(1) Not to exceed 139 professional positions in grades GS–13 through GS–15.

Schedule B

14. Department of Commerce (Sch B, 213.3214)

(d) National Telecommunication and Information Administration—

(1) Not to exceed 42 positions of GS–0850 Electrical Engineer, GS–0855 Electronics Engineer, or GS–0854 Computer Engineer in grades GS–11 through GS–15, or positions that require subject-matter expertise with telecommunications policy, 911 communication programs, broadband program specialists, environmental specialists, and spectrum policy and related programs. Employment under this authority may not exceed 2 years.

Schedule C

The following Schedule C appointing authorities were approved during February 2023.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Office of the Under Secretary for Food, Nutrition and Consumer Services.	Special Assistant	DA230052	02/10/2023
	Natural Resources Conservation Service.	Senior Advisor	DA230056	02/16/2023
	Office of the Assistant Secretary for Congressional Relations.	Lead Legislative Analyst	DA230058	02/10/2023
		Legislative Advisor	DA230059	02/27/2023
	Office of the Secretary	Special Assistant	DA230053	02/10/2023
DEPARTMENT OF COMMERCE	Office of Economic Development Administration.	Director of Public Affairs	DC230077	02/09/2023
	Minority Business Development Agency.	Senior Advisor for Diversity, Equity, Inclusion and Accessibility.	DC230081	02/24/2023
	National Institute of Standards and Technology.	Chief of Staff for External and Government Affairs.	DC230070	02/09/2023
		Director of Public Engagement	DC230071	02/09/2023
		Director of Legislative Affairs	DC230074	02/09/2023
	National Oceanic and Atmospheric Administration.	Special Advisor	DC230073	02/09/2023
	Office of Executive Secretariat	Special Assistant	DC230075	02/09/2023
	Office of Policy and Strategic Planning.	Counselor for Equity	DC230072	02/09/2023
	Office of the Chief of Staff	Advance and Protocol Officer	DC230078	02/09/2023
	Office of the Secretary	Special Assistant	DC230084	02/24/2023
	Office of the Under Secretary	Senior Advisor	DC230080	02/24/2023
CONSUMER FINANCIAL PROTECTION BUREAU.	Office of the Director	Senior Advisor for Congressional Affairs.	FP230003	02/17/2023
COUNCIL ON ENVIRONMENTAL QUALITY.	Council on Environmental Quality	Director of Legislative Affairs	EQ230003	02/21/2023
DEPARTMENT OF DEFENSE	Office of the Secretary of Defense	Advance Officer	DD230114	02/14/2023
DEPARTMENT OF THE NAVY	Office of the Secretary of the Navy	Special Assistant to the Secretary of the Navy.	DN230015	02/03/2023
DEPARTMENT OF EDUCATION	Office of Planning, Evaluation and Policy Development.	Special Assistant	DB230048	02/09/2023
	Office of Postsecondary Education	Senior Advisor	DB230043	02/17/2023
	Office of the Secretary	Special Assistant	DB230046	02/09/2023

Agency name	Organization name	Position title	Authorization No.	Effective date
		Special Advisor to the Chief of Staff.	DB230047	02/09/2023
		Director of Scheduling	DB230053	02/09/2023
		Deputy Director, Center for Faith-Based and Neighborhood Partnerships.	DB230051	02/23/2023
		Executive Director, White House Initiative on Advancing Educational Equity, Excellence, and Economic.	DB230055	02/23/2023
DEPARTMENT OF ENERGY	Office of the Assistant Secretary for Congressional and Intergovernmental Affairs.	Regional Intergovernmental and External Affairs Specialist for the Southwest.	DE230035	02/16/2023
	Office of the Assistant Secretary for Energy Efficiency and Renewable Energy.	Advisor	DE230070	02/24/2023
	Office of Management	Director, Scheduling and Advance	DE230029	02/16/2023
	Office of Policy	Special Assistant	DE230071	02/24/2023
	Office of the Secretary	Special Assistant to the Chief of Staff.	DE230067	02/16/2023
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Administrator	Special Assistant for the Greenhouse Gas Reduction Fund.	EP230051	02/03/2023
	Office of Public Affairs	Writer-Editor (Speechwriter)	EP230052	02/03/2023
		Senior Advisor for Communications	EP230053	02/03/2023
	Office of the Assistant Administrator for Land and Emergency Management.	Special Advisor for Implementation	EP230058	02/16/2023
EXPORT-IMPORT BANK	Office of the Chairman	Senior Advisor to the President and Chair.	EB230007	02/16/2023
		Director of Scheduling	EB230005	02/23/2023
		Special Assistant and Deputy Scheduler.	EB230006	02/23/2023
GENERAL SERVICES ADMINISTRATION.	Office of the Administrator	Chief of Staff	GS230027	02/24/2023
DEPARTMENTS OF HEALTH AND HUMAN SERVICES.	Office of the Assistant Secretary for Public Affairs.	Press Assistant	DH230143	02/09/2023
	Office of Intergovernmental and External Affairs.	Special Assistant	DH230144	02/23/2023
	Office of the Administration for Children and Families.	Advisor	DH230156	02/23/2023
DEPARTMENT OF HOMELAND SECURITY.	Office of Public Affairs	Assistant Press Secretary	DM230145	02/21/2023
		Assistant Press Secretary	DM230144	02/24/2023
	Office of the General Counsel	Oversight Counsel	DM230147	02/21/2023
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Secretary	Policy Advisor (2)	DU230035	02/10/2023
			DU230036	02/10/2023
	Office of Congressional and Intergovernmental Relations.	Special Advisor	DU230037	02/10/2023
	Office of Public Affairs	Deputy Assistant Secretary, Public Engagement.	DU230039	02/16/2023
DEPARTMENT OF THE INTERIOR	National Park Service	Policy Associate	DI230038	02/02/2023
	Secretary's Immediate Office	Senior Advance Representative	DI230051	02/02/2023
	Office of the Assistant Secretary—Water and Science.	Advisor	DI230052	02/02/2023
DEPARTMENT OF JUSTICE	Community Relations Service	Chief of Staff and Senior Advisor	DJ230055	02/03/2023
		Policy Advisor	DJ230058	02/09/2023
DEPARTMENT OF LABOR	Office of Congressional and Intergovernmental Affairs.	Senior Legislative Officer	DL230041	02/09/2023
		Legislative Officer	DL230050	02/10/2023
	Office of the Solicitor	Senior Counsel	DL230049	02/17/2023
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of Communications	Director of Speechwriting	NN230020	02/24/2023
	Office of the Administrator	Projects and Initiatives Manager	NN230021	02/24/2023
		Special Assistant for Engagement	NN230022	02/24/2023
NATIONAL ENDOWMENT FOR THE HUMANITIES.	National Endowment for the Humanities.	Special Assistant to the Office of the Chair.	NH230001	02/03/2023
OFFICE OF NATIONAL DRUG CONTROL POLICY.	Office of National Drug Control Policy.	Confidential Assistant	QQ230006	02/09/2023
SMALL BUSINESS ADMINISTRATION.	Office of Capital Access	Senior Advisor	SB230015	02/21/2023
SOCIAL SECURITY ADMINISTRATION.	Office of Legislative Development and Operations.	Senior Technical Advisor	SZ230008	02/24/2023
DEPARTMENT OF STATE	Bureau of African Affairs	Special Advisor	DS230087	02/09/2023

Agency name	Organization name	Position title	Authorization No.	Effective date
	Bureau of Cyberspace and Digital Policy.	Senior Advisor	DS230099	02/24/2023
	Bureau of Democracy, Human Rights and Labor.	Senior Advisor	DS230097	02/24/2023
	Office of Global Women's Issues	Staff Assistant	DS230088	02/09/2023
	Office of Policy Planning	Special Assistant	DS230089	02/09/2023
	Office of the Secretary	Staff Assistant	DS230092	02/09/2023
		Senior Advisor	DS230100	02/24/2023
	Office of the Under Secretary for Management.	Senior Advisor	DS230086	02/09/2023
	Office of the Under Secretary for Public Diplomacy and Public Affairs.	Senior Advisor	DS230101	02/24/2023
DEPARTMENT OF TRANSPORTATION.	Immediate Office of the Administrator.	Senior Advisor to the Administrator	DT230059	02/13/2023
	Office of the Assistant Secretary for Transportation Policy.	Special Advisor for Environmental Justice.	DT230058	02/21/2023
	Office of the Secretary	Deputy Director for Operations	DT230062	02/23/2023
DEPARTMENT OF THE TREASURY.	Office of the Assistant Secretary (Tax Policy).	Special Assistant	DY230058	02/12/2023
	Department of the Treasury	Special Assistant	DY230057	02/10/2023
		Deputy Executive Secretary	DY230056	02/24/2023

The following Schedule C appointing authorities were revoked during February 2023.

Agency name	Organization name	Position title	Request No.	Vacate date
DEPARTMENT OF COMMERCE	Office of Executive Secretariat	Special Assistant	DC220048	02/11/2023
	Office of the Chief of Staff	Special Advisor	DC230034	02/11/2023
		Director of Scheduling and Advance.	DC220038	02/11/2023
	Office of the Secretary	Special Assistant	DC220169	02/25/2023
	Office of White House Liaison	Deputy White House Liaison	DC220136	02/25/2023
DEPARTMENT OF ENERGY	Office of the Assistant Secretary for Congressional and Intergovernmental Affairs.	Regional Intergovernmental and External Affairs for the Southwest.	DE210182	02/25/2023
		Regional Intergovernmental and External Affairs Specialist.	DE210186	02/03/2023
	Office of Management	Director of Scheduling	DE210181	02/25/2023
		Special Assistant	DE230001	02/20/2023
	Office of the Secretary	Special Assistant to the Chief of Staff.	DE220058	02/25/2023
	Office of the Under Secretary for Science.	Special Assistant	DE220067	02/18/2023
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Administration for Children and Families.	Special Assistant	DH220101	02/25/2023
	Office of Intergovernmental and External Affairs.	Regional Director, Seattle, Washington, Region X.	DH220011	02/10/2023
		Special Assistant	DH230037	02/25/2023
	Office of the Secretary	Senior Advisor	DH220081	02/11/2023
		Special Advisor	DH230019	02/11/2023
DEPARTMENT OF HOMELAND SECURITY.	Federal Emergency Management Agency.	Director of Legislative Affairs	DM230075	02/10/2023
	Office of Partnership and Engagement.	Partnership and Engagement Specialist.	DM220084	02/12/2023
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Government National Mortgage Association.	Senior Advisor	DU220026	02/08/2023
	Office of Congressional and Intergovernmental Relations.	Special Advisor	DU230009	02/08/2023
	Office of Policy Development and Research.	Special Policy Advisor	DU210099	02/11/2023
	Office of Public Affairs	Senior Advisor for Public Engagement.	DU220031	02/25/2023
	Office of the Administration	Advance Coordinator	DU210094	02/01/2023
DEPARTMENT OF JUSTICE	Office of the Environment and Natural Resources Division.	Chief of Staff and Senior Counsel	DJ220019	02/28/2023
DEPARTMENT OF STATE	Bureau of Global Public Affairs	Senior Advisor	DS220056	02/11/2023
	Office of the Secretary	Special Assistant	DS220038	02/26/2023

Agency name	Organization name	Position title	Request No.	Vacate date
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of Communications	Speechwriter	NN210050	02/24/2023
	Office of the Administrator	Special Assistant for Projects and Initiatives.	NN210043	02/24/2023
		Executive Assistant and Advisor	NN220027	02/24/2023
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant	DD220021	02/11/2023
UNITED STATES AGENCY FOR GLOBAL MEDIA.	United States Agency for Global Media.	Senior Advisor	IB220002	02/17/2023

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2023–13635 Filed 6–26–23; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–087, OMB Control No. 3235–0078]

Proposed Collection; Comment Request; Extension: Rule 15c3–3

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15c3–3 (17 CFR 240.15c3–3), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval. Furthermore, notice is given regarding new collections of information that were previously proposed in Rule 18a-4 (OMB No. 3235–0700) and that were moved to this Rule 15c3–3 (OMB No. 3235–0078) based on comments received during the rulemaking process.

With respect to the extension of the previously approved collection of information, Rule 15c3–3 requires that a broker-dealer that holds customer securities obtain and maintain possession and control of fully paid and excess margin securities they hold for customers. In addition, the Rule requires that a broker-dealer that holds customer funds make either a weekly or monthly computation to determine whether certain customer funds need to be segregated in a special reserve bank account for the exclusive benefit of the firm's customers. It also requires that a broker-dealer maintain a written notification from each bank where a Special Reserve Bank Account is held acknowledging that all assets in the account are for the exclusive benefit of the broker-dealer's customers, and to provide written notification to the Commission (and its designated examining authority) under certain, specified circumstances. Finally, broker-dealers that sell securities futures products (''SFP'') to customers must provide certain notifications to customers and make a record of any changes of account type.

A broker-dealer required to maintain the Special Reserve Bank Account prescribed by Rule 15c3–3 must obtain and retain a written notification from each bank in which it has a Special Reserve Bank Account to evidence the bank's acknowledgement that assets deposited in the Account are being held by the bank for the exclusive benefit of the broker-dealer's customers. In addition, a broker-dealer must immediately notify the Commission and its designated examining authority if it fails to make a required deposit to its Special Reserve Bank Account. Finally, a broker-dealer that effects transactions in SFPs for customers also will have paperwork burdens to make a record of each change in account type.

The Commission staff estimates a total annual time burden of approximately 1,109,518 hours and a total annual cost burden of approximately $3,516,241 to comply with the existing information collection requirements of the rule.

In 2019, the Commission adopted amendments to establish segregation and notice requirements for broker-dealers with respect to their security-based swap activity. The Commission staff estimates a total annual time burden of approximately 19,487 hours and a total annual cost burden of approximately $13,860 to comply with the information collection requirements of the 2019 amendments to the rule.

The Commission staff thus estimates that the aggregate annual information collection burden associated with Rule 15c3–3 is approximately 1,129,005 hours and $3,530,101.

Written 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by August 28, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 22, 2023.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2023–13588 Filed 6–26–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97786; File No. SR–LCH SA–2023–003]

Self-Regulatory Organizations; LCH SA; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Liquidity Risk Modelling Framework

June 21, 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 June 8, 2023, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been primarily prepared by LCH SA. LCH SA filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) [4] thereunder, such that the proposed rule change was immediately effective upon filing with the Commission. On June 15, 2023, LCH SA filed Amendment No. 1 to the proposed rule change to make certain changes to the Exhibit 1A.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 (the ''Proposed Rule Change''), from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

LCH SA is proposing to amend its Liquidity Risk Modelling Framework (the ''Framework''), which describes the Liquidity Stress Testing framework by which the Collateral and Liquidity Risk Management department service (''CaLRM'') of LCH SA assures that LCH SA has enough cash available to meet any financial obligations, both expected and unexpected, that may arise over the liquidation period for each of the clearing services that LCH SA offers.[6]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, LCH SA 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. LCH SA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Proposed Rule Change is being adopted solely to reorganize the structure of the Framework to conform the Framework to the common template adopted by LSEG for use by each of its affiliates. The content of the current Framework has been fully transferred to the new LSEG template structure without any substantial changes in the wording of the existing paragraphs of the current Framework, other than the changes necessary to improve the clarity of the document or to increase consistency between the different sections and the appendix. To the extent that some general parts of the standardized LSEG template were not fully covered in the current Framework, these sections were either: (a) completed using the information taken from other LCH SA internal documents; or (b) drafted by CaLRM to increase the level of detail of the Framework.[7]

In this regard:

- An executive summary has been added to the Framework to provide an overview of the Framework and highlight its main principles along with the methodology for the assessment of the liquidity risk, in particular noting that the Framework details various ongoing monitoring activities related to the liquidity risk model such as the daily assessment of the liquidity resources available to meet the liquidity requirements that can arise either due to operational activities or due to default of any of the CCP members, periodic reverse stress testing and validation of stress testing framework along with the model governance activities for making any changes to LCH SA's liquidity risk model;
- Section 1.4 of the amended Framework, Model Governance, was taken from paragraph 87 of the LCH Risk Policy, Liquidity Risk, and provides an overview of the governance process to be followed depending on the different risk model actions (*e.g.* major change, non-material change, model monitoring, model validation);
- Section 1.5 of the amended Framework, Model Exposure, was taken from paragraph 86 of the LCH Risk Policy, Liquidity Risk, and classifies the importance of the model as high as an incorrect model could lead to a liquidity shortfall and have a significant impact on the CCP's liquidity resources;
- Section 1.6.1.3 Synthesis, appendix 6.3 Reminder of SA's sources of liquidity and related risk drivers and appendix 6.5 Liquidity risk monitoring reports of the amended Framework: It has been specified that the intraday credit line provided by Norges Bank can be used by LCH SA to cover the non-Euro Variation margin payments related to the activity of Euronext Oslo;
- *Section 1.6.2:* A spelling error have been corrected from ''Transfer to the 3G pool tested on Feb 15th 2019. For Spain, Germany, and Belgium the liquidity impact is currenctly equal to the auto-collateralization amount (successful transfer tested in September 2019)'' to ''Transfer to the 3G pool tested on Feb 15th 2019. For Spain, Germany, and Belgium the liquidity impact is currently equal to the auto-collateralization amount (successful transfer tested in September 2019)'';
- Section 2 of the amended Framework, Limitations and Compensating Controls, prepared by CaLRM, describes the features of the amended Framework;
- Sections 3.1 and 3.2 of the amended Framework, Model Choice and Industry Standard, respectively, prepared by CaLRM, explain that LCH SA calculates its daily liquidity resources requirements using the industry-standard cover 2 approach, which is also required by Article 53 of Regulation (EU) No. 153/2013;
- Section 4.1.2 of the amended Framework, Model Inputs and Variable Selection, prepared by CaLRM, summarizes the factors that are taken into account in calculating liquidity resources and liquidity requirements, which are set out in greater detail in Section 4.1.5, Model assumptions, of the amended Framework.
- Section 4.1.4 of the amended Framework, Mathematical formula, derivation and algorithm, and numerical approximation, prepared by CaLRM, summarizes the formula for calculating the operational target, *i.e.,* the amount of liquidity required to be held to satisfy the liquidity needs related to the operational management of LCH SA in a stressed environment that does not lead to a member's default, as explained in Section 4.1.5, Model assumptions, of the amended Framework. In particular, the content of sections 4.1.4 and 4.1.5 of the amended Framework have been transposed from the section 5.2.1.1 of the current Framework Assumption. The separation of information has the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Amendment No. 1 amends the Exhibit 1A in order to correct language provided in the Exhibit 1A's Section III.

[6] LCH SA, a subsidiary of LCH Group and an indirect subsidiary of the London Stock Exchange Group plc (''LSEG''), manages its liquidity risk pursuant to, among other policies and procedures, the Group Liquidity Risk Policy and the Group Liquidity Plan applicable to each entity within LCH Group.

In addition to its CDSClear service, LCH SA provides clearing services in connection with cash equities and derivatives listed for trading on Euronext (EquityClear), commodity derivatives listed for trading on Euronext (CommodityClear), and tri-party Repo transactions (RepoClear).

[7] Exhibit 3.1 [sic] is a chart that maps the table of contents of the current Framework to the table of contents of the amended Framework following the LSEG template.

purpose of providing more clarity to the document and comply with the LSEG template format; the operational risk'';

• Section 4.1.5 Model Assumptions of the amended Framework reflects two rewording that increase the clarity of the document. In particular, the sentence ''The difference min(computed − actual,0) is reported in the OP from the 1st of the month till the day that computed DF = actual DF'' has been updated to ''The difference min(computed − actual,0) is reported in the OP from the 1st of the month *until* the day that computed DF = actual DF and the sentence '' To have a 100% alignment with actual validation and settlement flow a manual intervention would be necessary to be performed every beginning of the month in order to manually input the date in the program but this is not recommendable since it would increase significantly the operational risk'' is proposed to be modified as ''To have a 100% alignment with actual validation and settlement flow, a manual intervention *would need to be performed* every beginning of the month in order to manually input the date in the program but this is not *recommended* since it would increase significantly the operational risk'';

• Sections 4.2.2 and 4.3.2, Model inputs and Variable selection of the amended Framework, prepared by CaLRM to complete the LSEG template, summarizes the variables used to calculate the liquidity coverage ratio (''LCR'') for LCH SA and CC&G, which are set out in detail in Sections 4.2.4 and 4.3.4, respectively, of the amended Framework;

• Sections 4.1.3, 4.2.3 and 4.3.3, Model outputs of the amended Framework, prepared by CaLRM to complete the LSEG template, states that, based on the liquidity profile for that day, CaLRM generates daily reports on LCH SA's operational liquidity resource requirements, and the LCR for LCH SA and CC&G, respectively;

• Section 5.1 of the amended Framework, Ongoing Monitoring reflects the fact after the transposition to the new LSEG template the sections detailing the calculation of Operation target (4.1), LCR and liquidity buffer (4.2) now precede the presentation of the ongoing monitoring and therefore the following sentence have been removed ''The next section provides with the operational target, LCR, the liquidity buffer calculation.'';

• Section 5.4 of the amended Framework, Model Change as Applicable, is drawn from paragraph 88 of the LCH Risk Policy, Liquidity Risk; and details the criteria considered to assess the materiality of a risk model change;

• Section 5.5 of the amended Framework, Testing Summary and Model Limitations, was prepared by CaLRM and summarizes the information set out in paragraphs 95–97 of the LCH Risk Policy, Liquidity Risk, to give an overview of the risk model performance assessment that includes daily monitoring, periodic reverse stress testing and annual model validation.

• Appendix 6.3 Reminder of SA's sources of liquidity and related risk drivers in the amended framework: A footnote number have been updated to clarify if the specific risk drivers identified in the table are driven by a change in behavior of our membership, a Credit Risk consideration, a Market Risk consideration or an Operational Risk consideration.

• Appendix 6.4 Liquidity risk drivers synthesis by reports in the amended Framework: The format of the table that summarizes the different risk drivers has been adjusted to better reflect the mapping of the single risk drivers under the appropriate three macro categories to which they may belong Defaulter, Closure of Italian Debt Activities, BAU. In Particular,

—the Defaulter category includes the following risk drivers: Non default of EU Sovereign, Settlement, VM, ECB Haircut, Investment losses

—The Closure of Italian debt Activities category includes the following risk drivers: IM+AM Italy and CC&G Default Fund Italy

—The BAU category includes the following risk drivers: Excess, Substitutions, Avoiding fails, Margin reductions, VM to pay to CC&G, Default Fund Reduction. These changes are considered not substantive because they relate only to a format adjustment of a table described in the annex and not to a change in the calculation or reporting of indicators for liquidity monitoring as described in sections 4.1, 4.2 and 4.3. The changes improve the coherence between the core sections of the document and the appendix.

2. Statutory Basis

LCH SA has determined that the Proposed Rule Change is consistent with the requirements of Section 17A of the Act [8] and regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act requires, *inter alia,* that the rules of a clearing agency should be designed to ''assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible.[9] In addition, Regulation 17Ad–22(e)(7)(i) [10] requires a covered clearing agency's policies and procedures to be reasonably designed to assure that it maintains sufficient liquid resources in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that includes the default of the participant family that would generate the largest aggregate payment obligation for it in extreme but plausible market conditions. Further, Regulation 17Ad–22(e)(7)(ii) [11] requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to assure that it holds qualifying liquid resources sufficient to meet the minimum liquidity resource requirement in each relevant currency for which the covered clearing agency has payment obligations owed to clearing members.

As discussed above, the sole purpose of the amended Framework is to reorganize the structure of the Framework to conform the Framework to the common template adopted by LSEG for use by each of its affiliates. The content of the current Framework has been fully transferred to the new LSEG template structure without any substantial changes in the wording of the existing paragraphs of the current Framework. To the extent that some general parts of the LSEG standardized template were not fully covered in the current Framework, these sections were either: (a) completed using the information taken from other LCH SA internal documents; or (b) drafted by CaLRM to increase the level of detail of the Framework.

The policies and procedures set out in the amended Framework,[12] therefore, continue to be consistent with the requirements of Section 17A(b)(3)(F) of the Act [13] and Regulation 17Ad–22(e)(7)(i) [14] and Regulation 17Ad–22(e)(7)(ii).[15]

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 240.17Ad–22(e)(7)(i).

[11] 17 CFR 240.17Ad–22(e)(7)(ii).

[12] The Commission has previously determined that the Framework is consistent with the requirements of Section 17A(b)(3)(F) of the Act and Regulation 17Ad–22(e)(7)(i) and Regulation 17Ad–22(e)(7)(ii). See, Order Approving Proposed Rule Change Relating to the Amendments to LCH SA's Liquidity Risk Modelling Framework, Release No. 34–90541 (Dec. 1, 2020).

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 17 CFR 240.17Ad–22(e)(7)(i).

[15] 17 CFR 240.17Ad–22(e)(7)(ii).

B. Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[16] LCH SA does not believe the Proposed Rule Change would have any impact, or impose any burden, on competition. The Proposed Rule Change does not address any competitive issue or have any impact on the competition among central counterparties. LCH SA operates an open access model, and the Proposed Rule Change will have no effect on this model.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the Proposed Rule Change have not been solicited or received. LCH SA will notify the Commission of any written comments received by LCH SA.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) [18] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Proposed Rule Change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–LCH SA–2023–003 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–LCH SA–2023–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of LCH SA and on LCH SA's website at *http://www.lch.com/resources/rules-and-regulations/proposed-rule-changes.*

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–LCH SA–2023–003 and should be submitted on or before July 18, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–13562 Filed 6–26–23; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78q–1(b)(3)(I).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97785; File No. SR–OCC–2023–005]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing of Proposed Rule Change by the Options Clearing Corporation Concerning Amendment of Its Recovery and Orderly Wind-Down Plan

June 21, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 7, 2023, the Options Clearing Corporation (''OCC'' or ''Corporation) filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule changes described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change would amend OCC's Recovery and Orderly Wind-Down Plan. The RWD Plan is included as confidential Exhibit 5 to SR–OCC–2023–005. Material proposed to be added is marked by underlining, and material proposed to be deleted is marked by strikethrough text.[3] The proposed rule change does not require any changes to the text of OCC's By-Laws or Rules. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the RWD Plan or OCC By-Laws and Rules, as applicable.[4]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B),

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] OCC has also filed an advance notice with the Commission in connection with this proposal. *See* SR–OCC–2020–806.

[4] OCC's current By-Laws and Rules can be found on OCC's public website: *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The RWD Plan was adopted on August 23, 2018 [5] and is maintained by OCC in accordance with the requirements of Rule 17Ad–22(e)(3)(ii).[6] The Commission approved updates to the RWD Plan on December 17, 2020.[7] The RWD Plan describes OCC's ability to provide critical services in the event of severe financial or operational stress. The Plan also describes OCC's approach to a wind-down in the unlikely event that it experiences a severe stress that causes it to exhaust its available tools and resources. OCC posts a Recovery and Orderly Wind-Down Plan Participant Guide on its public website that is available to Clearing Members, Participant Exchanges, and the public.[8]

Proposed Changes

The proposed rule change would amend the RWD Plan by: (i) removing certain supporting information; (ii) incorporating references to certain documents and materials; (iii) implementing updates and amendments to all six chapters of the proposed Plan; and (iv) updating and revising the hypothetical stress scenarios set forth in Appendix A of the proposed RWD Plan. A summary description of the proposed changes to the RWD Plan and the purpose of those changes is provided below.

Removal of Supporting Information

The current version of OCC's RWD Plan includes information related to OCC's operations, management structure, personnel, support functions, banking relationships, vendors and key agreements. This supporting information provides background and context for parties that are reviewing the RWD Plan or utilizing it as part of an actual recovery or wind-down event. This information does not constitute a stated policy, practice, or interpretation of OCC and is, by its nature, prone to change. OCC proposes to remove certain supporting information from the RWD Plan and maintain it in a separate document (the ''RWD Plan Supporting Information'').[9] The purpose of this change is to allow OCC to update the supporting information so that it is current, accurate and most helpful to potential users of the RWD Plan. OCC will review and update the RWD Plan Supporting Information twice a year, or more frequently as needed.

Incorporate References to Certain Documents and Materials

The current version of OCC's RWD Plan restates certain information that is publicly available or separately maintained by OCC. Maintaining this information in multiple documents with distinct regulatory requirements creates a risk that the RWD Plan may not contain current information. To eliminate this risk, OCC proposes to incorporate references to certain materials rather than restating the information set forth in those materials in the RWD Plan. OCC proposes to move all of the RWD Plan Appendices to the RWD Plan Supporting Information document, with the exception of the current Appendix B (''Detailed Stress Scenarios''), which will become the new Appendix A. For example, references to current Appendix A and Appendix C of the RWD Plan, which currently include a list of Clearing Members and Members of OCC's Board of Directors as of a specific date, would be replaced by incorporating a link to the sections of OCC's website that maintain current information about OCC's Clearing Members and Board of Directors. Similarly, OCC proposes to replace certain financial information set forth in the RWD Plan, including the excerpts from OCC's audited financial statements provided in Appendix D and references to the amount of OCC's Target Capital Requirement, with a link to the section of OCC's website that displays OCC's Annual Reports, which include OCC's audited financial statements, and a link to OCC's fee schedule, which depicts the Target Capital Requirement. Finally, OCC proposes to delete the excerpted portions of its rule-filed Risk Management Framework Policy from Section 2.9 of the RWD Plan and Appendix I. OCC believes that incorporating these materials by reference would allow the RWD Plan to better reflect current and accurate information. OCC intends to introduce the RWD Plan Supporting Information document to provide additional background and context on the RWD Plan in order to assist in reviewing or utilizing the Plan. Additionally, the RWD Plan Supporting Information document will allow OCC to more easily maintain and update information about the RWD Plan as quickly as possible.

Updates and Amendments to Each Chapter of the RWD Plan

In addition to the changes described above, the proposed rule change includes updates and amendments to each of the six chapters of the proposed RWD Plan that were identified during the annual review of the Plan as required by OCC's internal governance. A summary description of the types of changes proposed to each chapter of the RWD Plan is provided below.

Chapter 1: Executive Summary. Chapter 1 of the RWD Plan contains an executive summary that provides a broader overview of the contents and purpose for the RWD Plan. Chapter 1 includes higher level background information about OCC, its designation as a systemically important financial market utility, relevant regulations, and descriptions of topics covered in more detail later in the RWD Plan, *e.g.,* recovery trigger events, stress scenarios, and wind-down plan trigger events. The proposed changes to Chapter 1 of the Plan include a change reflecting that the Committee on Payment and Settlement Systems was renamed the Committee on Payments and Market Infrastructures,[10] the inclusion of additional sources that OCC considered in updating the RWD Plan, and other conforming changes related to remainder of the RWD Plan. The proposed changes also incorporate a reference to the RWD Plan Supporting Information document described above, along with a brief description of its contents. The proposed changes also replace the language related to expense assumptions during a resolution process from ''stay at historical normal levels during the wind-down period'' to ''generally follow the annual budget with timing and staffing considerations'' to better reflect the intended meaning of this assumption by relating it to OCC's budget. Finally, the proposal would incorporate several grammatical and non-substantive technical amendments to Chapter 1, including, but not limited to, modifying the use and location of certain defined terms for improved readability, using initial capitalization for the term ''Clearing Member'' consistently throughout the document, deleting unnecessary words, and modifying tense for clarity and readability.

[5] Securities Exchange Act Release No. 83918 (Aug. 23, 2018), 83 FR 44091 (Aug. 29, 2018) (SR–OCC–2017–021).

[6] 17 CFR 240.17Ad–22(e)(3)(ii).

[7] Securities Exchange Act Release No. 90712 (Dec. 17, 2020), 85 FR 84050 (Dec. 23, 2020) (SR–OCC–2020–013).

[8] *See* Recovery and Orderly Wind-Down Plan Participant Guide, available at *https://www.theocc.com/getmedia/a2fdfeaa-9526-4f16-a4c3-c81b3c905f6a/OCC_PartGuide_Sept_2020.pdf.*

[9] OCC has included a draft of the RWD Plan Supporting Information as confidential Exhibit 3 to SR–OCC–2023–005.

[10] *See https://www.bis.org/cpmi/history.htm.*

Chapter 2: OCC Overview. Chapter 2 of the RWD Plan provides a detailed description of OCC's business and provides the necessary context for the discussion and analysis of OCC's Critical Services and OCC's resolution process in the RWD Plan. Chapter 2 also provides information about OCC's regulatory oversight, legal entity and governance structure, the services that OCC provides, and OCC's financial and operational interconnections. The proposal would update any outdated information or practices set forth in Chapter 2, including the description of OCC's services and facilities (*i.e.,* OCC's physical facilities as well as its credit and repurchase agreement liquidity facilities), and would add new references/links for users to access up-to-date information. Specifically, OCC has included a link to OCC's Annual Report in lieu of including OCC's Income Statement or other extracts from the Annual Report to ensure that a user of the RWD Plan would have access to the most recent financial information. The proposal would also incorporate several grammatical and non-substantive technical amendments to Chapter 2, including, but not limited to, modifying the use and location of certain defined terms for improved readability, using initial capitalization for the term ''Clearing Member'' consistently throughout the document, and deleting references to the dollar size of OCC's credit and repo facilities that are subject to change. The proposal would move a significant portion of existing section 2.1 ''Business Overview'' and existing section 2.5 ''Management Structure'' into the RWD Plan Supporting Information document, which will supplement the RWD Plan by providing additional foundational information about the organization and operation of OCC to users of the RWD Plan. The RWD Plan Supporting Information would be available to users of the RWD Plan and includes background information about the RWD Plan, an overview of OCC's business, management structure, support functions, banking information, vendors, and key agreements related to supporting recovery and wind-down. This information is more readily subject to change and would be more easily maintained outside of the RWD Plan.

Finally, OCC is removing the section related to the Risk Appetite Framework and Tolerance. The Commission recently approved OCC's adoption of a Risk Management Framework and Corporate Risk Management Policy.[11] These risk-related policies are available to the public and also maintained internally at OCC, where they are available for reference as needed. Accordingly, OCC determined this section is no longer needed in the RWD Plan.

Chapter 3: Critical Services and Critical Support Functions. Chapter 3 of the RWD Plan identifies OCC's (i) ''Critical Services,'' which, if interrupted or discontinued, could have a systemic impact on the financial system, and (ii) ''Critical Support Functions,'' which are functions within OCC that must continue in some capacity in order for OCC to be able to continue providing its Critical Services. As described above, the proposal would eliminate from the description of OCC's clearing services specific information and data that is subject to change regularly (*e.g.,* volume information, number of Clearing Members, etc.).[12] The RWD Plan Supporting Information document would replace Chapter 3 ''Support Functions'' of the existing RWD Plan, and provide additional context on the Business Operations, Corporate Risk Management and Security Services Departments at OCC. The proposal would also update OCC's Critical Support Functions and Department Ratings. The purpose of this change is to conform the RWD Plan to reflect changes to OCC's internal employee reporting structure and to provide a more granular view into the departments that make up each support function. The proposal would update the information and data set forth in Chapter 3, including the descriptions of OCC's pricing and valuation services by adding detail on the processes and eliminating specific data subject to frequent change that has a potential to become outdated quickly. The proposal would remove the reference to letter of credit banks from Section 3.5 because letter of credit banks are used for less than 0.1% of margin requirements and could readily be substituted. Finally, the proposal would incorporate several grammatical and non-substantive technical amendments to Chapter 3, including but not limited to modifying the use and location of certain defined terms for improved readability, using initial capitalization for the term ''Clearing Member'' consistently throughout the document, updating the names of internal support functions and departments and the related numbers of personnel.

Chapter 4: Recovery Plan. Chapter 4 of the RWD Plan constitutes OCC's Recovery Plan. The purpose of the Recovery Plan is to provide succinct information about OCC's Enhanced Risk Management and Recovery Tools, as defined in the RWD Plan, and to demonstrate the ways in which OCC's risk management tools, Enhanced Risk Management and Recovery Tools, as well as other available resources, can be applied in stylized hypothetical scenarios considering extreme stress events that could be sufficient to threaten OCC's viability as a going concern. The proposed changes to Chapter 4 include replacing a discussion of how OCC developed its original stress scenarios with a description of OCC's current approach for developing and refining stress scenarios. The RWD Plan currently describes five enhanced risk management tools that are designed to be deployed in response to heightened or extreme stress scenarios. Under the proposal, OCC would provide additional description of these five tools and also add five additional enhanced risk management tools to the inventory of tools set forth in Chapter 4 of the RWD Plan, including: assessment powers, insurance coverage, OCC's working capital line of credit, increased clearing fees, and OCC's ability to extend the settlement window. In addition to the descriptions of the enhanced risk management tools outlined in Chapter 4, Section 4.2.1 of the proposed RWD Plan also introduces the ability for OCC to utilize the Executive Deferred Compensation Plan (''EDCP'') Unvested Balance to pay for a loss to the Clearing Fund pursuant to Rule 1006(e)(i). This is clarified under the first enhanced risk management tool—OCC's ability to make a form of ''skin in the game'' contribution in the event of a loss or deficiency to the Clearing Fund. The use of EDCP Unvested Balance would be deployed after utilizing OCC's Minimum Corporate Contribution and after use of Liquid Net Assets Funded by Equity (''LNAFBE'') greater than 110% of the Target Capital Requirement. The purpose of these changes is to refine and expand the list of available enhanced risk management tools so that it reflects a more complete list of potential tools that OCC could deploy in response to extreme stress scenarios. A detailed description of each additional Enhanced Risk Management Tool will be reflected in Chapter 4 of the RWD Plan.

In addition, OCC proposes to make several changes to the Recovery Trigger

[11] Securities Exchange Act Release No. 96566 (Dec. 22, 2022), 87 FR 80207 (Dec. 29, 2022) (SR–OCC–2022–010).

[12] This information is located at OCC's public website at *https://www.theocc.com/.*

Events currently set forth in the RWD Plan. OCC proposes amendments to various Recovery Trigger Events. OCC is proposing that a credit loss Recovery Trigger would occur upon a 100% depletion of the pre-funded Clearing Fund resources, as opposed to the current standard of a significant depletion of Clearing Fund resources. The proposal would also amend the liquidity loss Recovery Trigger Event to more closely align with OCC's Liquidity Risk Management Framework by indicating that, instead of a recovery being triggered by a significant liquidity shortfall that requires OCC to utilize a majority of the capacity in its liquid resources with no apparent ability to complete settlement obligations within the required timeframe, a recovery would be triggered by a significant depletion of liquidity resources such that OCC may not be able to address foreseeable liquidity shortfalls to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations. OCC believes that this proposed standard is more accurate, because OCC could exhaust a majority of its liquidity resources without triggering a recovery in certain circumstances. The proposed revisions would also separate the existing operational loss and disruption Recovery Trigger Event into two separate trigger events relating to either (i) an extended operational disruption to OCC's critical services (''operational disruption Recovery Trigger Event''), or (ii) an event arising from general business losses (''general business loss Recovery Trigger Event''). The current operational loss and disruption Recovery Trigger Event requires an operational loss, extended operational disruption of critical services (*e.g.* human capital, data center loss, cyber-attack), or decrease in OCC's profitability and cash flow (without a commensurate adjustment of expenses) that results in a breach of the minimum SEC capital requirements with no reasonable expectation that OCC will be able to timely return to satisfying the minimum SEC capital requirements or resume providing critical services. By contrast, the proposed operational disruption Recovery Trigger Event would include an extended operational disruption of critical services with no reasonable expectation that OCC will be able to timely resume providing critical services. The proposed general business loss Recovery Trigger Event would include a decrease in OCC's profitability and cash flow (without a commensurate adjustment of expenses) that results in a breach of the minimum SEC capital requirements with no reasonable expectation that OCC will be able to timely return to satisfying the minimum SEC capital requirements. OCC believes that separating these events is appropriate, because an operational disruption or general business losses could independently trigger a recovery.

OCC proposes to remove the paragraph titled ''Expected Impact and Incentives'' from Section 4.2.1.2 to maintain consistency with the rest of the RWD Plan, *i.e.,* the RWD Plan does not include a similar section for the remaining Enhanced Risk Management Tools in the RWD Plan.

The proposal would also update the information and data set forth in Chapter 4, including several changes to conform the RWD Plan to the requirements of OCC Rules. OCC is proposing to clarify certain key risks identified in Section 4.2.2.1 of the RWD Plan. OCC amended this section to conform the language to Rule 1006(h)(B) and to clarify that the risk of Clearing Members terminating their memberships during the cooling-off period may reduce the amount of mandatory assessments that OCC may leverage during the cooling-off period. However, any subsequent increase in the Clearing Fund requirement would be allocated among the remaining Clearing Members. In addition, the proposed RWD Plan would update section 4.2.4.3 of the current Plan to include clarification on timing for when certain Enhanced Risk Management and Recovery Tools must be implemented. The proposed Plan states that this information is clearly defined in Rule 1006(h)(A), which requires that Clearing Members replenish any deficiencies in the Clearing Fund by the first Settlement Time following notification to the Clearing Member of such deficiency or such later time as provided by the Corporation.

Finally, the proposal would incorporate several non-substantive technical amendments to Chapter 4, including, but not limited to, modifying the use and location of certain defined terms for improved readability and using initial capitalization for the term ''Clearing Member'' consistently throughout the document.

Chapter 5: Wind-Down Plan. Chapter 5 of the proposed RWD Plan constitutes OCC's wind-down plan. The purpose of the Wind-Down Plan (''WDP'') is to establish the objectives for a resolution process whereby OCC seeks to continuously deliver its Critical Services, even though its viability as a going concern is threatened and to provide a menu of actions that OCC's Management, Board and Stockholder Exchanges can consider to effectuate the resolution process. OCC's current RWD Plan identifies several WDP Trigger Events, including the inability to comply with financial resource requirements, loss of Clearing Member confidence in OCC's continued viability, a sustained disruption in services and a substantial modification or rescission of an emergency action made by OCC pursuant to Section 806(e)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Rather than rely on a few of many possible events that could trigger a wind-down, the proposed revisions to the RWD Plan would move to a single WDP Trigger Event based on a determination by OCC's Board of Directors that recovery efforts have not been or are unlikely to be successful in returning OCC to viability as a going concern. OCC is proposing this revised approach to avoid triggering a wind-down where OCC's recovery would still be viable, even if OCC were in technical breach of any of the current WDP Trigger Events. OCC believes that the proposed trigger is appropriate because it is broad and flexible enough to cover a variety of scenarios, and it would allow the Board of Directors to account for OCC's Recovery Tools and consider the facts and circumstances that would allow for a successful or unsuccessful recovery.

The proposed revisions to Chapter 5 also include updates to OCC's timing, cost, and employee retention assumptions. These updates reflect the results of a review conducted by OCC's Recovery and Wind-Down Working Group. Consistent with the existing authority set forth in OCC's current Rules, OCC proposes to replace discussion of the potential for heightened capital requirements with a description of financial reporting requirements that OCC could impose on its Clearing Members to continually verify the financial position of Clearing Members. Under OCC Rule 306B, OCC may require any Clearing Member at any time to make more frequent net capital computations, filed reports, or financial statements for purposes of assessing whether the Clearing Member is meeting the financial requirements for Clearing Membership on an ongoing basis. The proposal would also provide further description of potential wind-down plan transaction structures and update the information and data set forth in Chapter 5. Furthermore, Chapter 5 of the proposed RWD Plan would eliminate reference to the ''Material Agreements Policy'' and replace it with the ''Agreement Review Policy.'' This

change solely reflects the updated title of the document and does not impact the contents of the policy. Finally, the proposal would incorporate several non-substantive technical amendments to Chapter 5, including, but not limited to, updating targeted reductions in force, modifying the use and location of certain defined terms for improved readability and using initial capitalization for the term ''Clearing Member'' consistently throughout the document.

Chapter 6: RWD Plan Governance. Chapter 6 details the governance of OCC's RWD Plan. OCC developed the governance structure for approval of the RWD Plan as well as maintenance of the Plan on an on-going basis. The proposal would make non-substantive edits to the numbering set forth in Chapter 6.

Hypothetical Stress Scenarios

OCC is proposing to move the Detailed Stress Scenarios in Appendix B into Appendix A. The RWD Plan currently identifies four hypothetical stress scenarios and describes how OCC would respond to each scenario. As described in more detail below, the proposed RWD Plan would generally retain the same hypothetical stress scenarios with several updates and amendments that were identified during OCC's annual review of the Plan. An overview of the updates and amendments to each scenario is included below. To remind potential users of the Plan of OCC's escalation procedures, each scenario has been revised to include a description of the escalation to OCC's business continuity team. The changes to the hypothetical stress scenarios would also incorporate certain grammatical and non-substantive technical amendments, including renumbering of the relevant sections and using initial capitalization for the term ''Clearing Member'' consistently throughout the document.

Hypothetical Scenario 1. The proposed updates to the first hypothetical scenario would incorporate recent data for several areas, including: (i) the highest and second highest stressed Clearing Member liquidity demands; (ii) the size and cash component of the Clearing Fund; and (iii) the two largest Clearing Fund contributions made by Clearing Members. The proposed revisions to Hypothetical Scenario 1 would also remove references to energy futures and options and eliminate a related note indicating that the products reflected in this scenario may not be reflective of products cleared by OCC. OCC believes that these changes would better reflect its current operations. The proposal would also incorporate several grammatical and technical amendments, including adjusting the timing of several events so that the scenario more accurately reflects OCC's current processes and procedures and aligning the descriptions of the trigger events and enhanced risk management tools with the changes described above.

Hypothetical Scenario 2. The proposed revisions to the second hypothetical scenario would clarify several roles and responsibilities to ensure that the descriptions set forth in this scenario align with OCC's current practices and procedures. These changes would clarify that OCC's Head of Default Management or a delegate makes a recommendation to the OCEO, which authorizes the enactment of alternative settlement procedures and an extension of settlement. The proposal would also note that OCC's Legal Department is responsible for drafting an information memo notifying Clearing Members of alternate settlement procedures. The proposed revisions to the second hypothetical scenario would also revise the assumptions in the scenario to contemplate further communications between OCC and the hypothetical settling bank involved in the scenario and to contemplate the potential stock loan activity of Clearing Members. In addition, the proposed RWD Plan would update the settlement time in hypothetical scenario 1 and 2 of the existing Plan from 9:00 a.m. Central Time to 8:00 a.m. Central Time (9:00 a.m. Eastern Time) to comply with OCC's existing Rule 101 definition of ''Settlement Time.'' Finally, the proposal would incorporate several grammatical and technical amendments, including aligning the descriptions of the trigger events and enhanced risk management tools with the changes described above.

Hypothetical Scenario 3. The proposed amendments to the third scenario would amend the assumptions to clarify that the scenario includes stock loan activity and add assumptions specifying that OCC's ability to communicate with its Clearing Members would not be impacted and that OCC would engage in any necessary regulatory communications and required regulatory reporting. The proposed revisions would also clarify several roles and responsibilities to help ensure that the descriptions set forth in this scenario align with OCC's current practices and procedures. These changes would include clarifying that OCC's Collateral Services Department would be responsible for identifying and escalating issues with the normal processing of pledged collateral and stock loan activity. The description of Scenario 3 would also be expanded to describe several additional notifications and communications that OCC would expect to make in connection with this scenario (*e.g.,* notices to Clearing Members, Depository and Correspondent Clearing Corporation). Finally, the proposal would also incorporate several grammatical and technical amendments, including aligning the description of the trigger events with the changes described above.

Hypothetical Scenarios 4A and 4B Consolidated Into Scenario 4. Presently, the RWD Plan contemplates a hypothetical Scenario 4A and a separate hypothetical scenario 4B. Each Scenario contemplates general business and operational risks presented to OCC but with different assumptions. Namely, Scenario 4A involves assumptions related to a cyberattack, and Scenario 4B involves assumptions related to a Clearing Member default and decreased OCC clearing volumes. The proposed revisions would streamline this structure by consolidating Scenarios 4A and 4B into a single Scenario 4 and would create greater efficiencies. Like current Scenarios 4A and 4B, Scenario 4 would continue to contemplate default and general business risks to OCC. Specifically, it would merge aspects of the current scenarios to contemplate a Clearing Member default coupled with a cyberattack that occurs while OCC is carrying out its default management processes.

In addition, the proposal would also make certain changes to the assumptions that are currently part of Scenarios 4A and 4B. For example, regarding certain of the assumptions in both Scenario 4A and 4B, the changes to create Scenario 4 would make the assumptions less specific by deleting unnecessary details about the hypothetical event and the proposal would incorporate several grammatical and technical amendments, including aligning the description of the trigger events with the changes described above. Regarding what is currently Scenario 4A, the proposal would modify the current assumptions to increase the amount of the hypothetical loss and to reference OCC's current Early Warning Threshold and Target Capital Requirements without using specific amounts that are subject to change. Regarding what is currently Scenario 4B, the proposed revisions would modify the assumptions in the scenario to contemplate the default of a mid-sized Clearing Member, assume that the collateral available to OCC from the Clearing Member would be less than the

settlement amount that gives rise to the Clearing Member default, and remove current assumptions related to substantial declines in OCC clearing volume and to cost-reducing measures taken by OCC. The changes would also update the accounting values described in the scenario to reflect current requirements and the effects of the Clearing Member default on those values and OCC's capital.

(2) Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A of the Act [13] and the rules thereunder applicable to OCC. Section 17A(b)(3)(F) of the Act [14] requires, in part, that the rules of a clearing agency be designed, in general, to protect investors and the public interest. The RWD Plan is designed to enhance OCC's ability to address extreme stresses or crises by establishing a framework that OCC could use to navigate its Enhanced Risk Management Tools and Recovery Tools, with the aim of maintaining OCC's viability as a going concern. In the event that OCC's recovery efforts are not successful, the RWD Plan would seek to improve the possibility that a resolution of OCC's operations can be conducted in an orderly manner, thereby minimizing the disruption to Clearing Members and market participants and improving the likelihood of minimizing the risk of contagion to the broader financial system. OCC seeks to add a safeguard against a premature wind-down by replacing the current WDP Trigger Events with one new WDP Trigger Event, *i.e.,* a determination by the OCC Board of Directors that recovery efforts have not been, or are unlikely to be, successful in returning OCC to viability as a going concern. OCC believes this proposed change would eliminate the possibility of triggering a wind-down by meeting the technical requirements of an existing WDP Trigger Event, even in cases where recovery may still be possible. The RWD Plan also contains information that changes frequently, *e.g.,* information related to OCC's internal departments, personnel, and operations that is intended to provide background and context for parties that are reviewing the RWD Plan, but that is not essential to the RWD Plan guidelines or technical functioning of the RWD Plan. Accordingly, OCC is proposing to remove this information from the RWD Plan and maintain a separate RWD Plan Supporting Information document outside of the RWD Plan. Lastly, OCC is seeking to streamline its detailed stress scenarios by consolidating Scenarios 4A and 4B into a single Scenario 4. The new proposed Scenario 4 would continue to contemplate default and general business risks to OCC, but offer efficiencies and streamline the process. OCC believes the updates to the RWD Plan would improve the possibility of OCC's ability to effectively address a variety of potential risks, thereby improving OCC's ability to ultimately maintain market and public confidence during a time of unprecedented stress. In this regard, OCC believes the proposed rule change ultimately would protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.[15]

OCC also believes that the proposed rule change is consistent with Exchange Act Rule 17Ad–22(e)(3)(ii), which requires each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to include plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[16] As stated above, the RWD Plan would describe OCC's plans to recover from, or wind-down its operations as a result of, severe stress brought about by credit losses, liquidity shortfalls, losses from general business risk or other losses.[17] The proposed updates would improve the accuracy of the inventory of Enhanced Risk Management Tools set forth in the RWD Plan. Further, the proposed changes to the RWD Plan would update and improve the information that a resolution authority may reasonably anticipate as necessary for purposes of recovery and orderly wind-down planning.[18] In this regard, OCC believes its proposed rule change is consistent with Rule 17Ad–22(e)(3)(ii).[19]

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act [20] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would impact or impose any burden on competition.[21] The proposed updates to the RWD Plan are the result of OCC's annual review and update process. None of the proposed updates to the RWD Plan would affect Clearing Members' access to OCC's services or impose any new, direct, or indirect burdens on Clearing Members. Accordingly, the proposed rule change would not unfairly inhibit access to OCC's services or disadvantage or favor any particular existing or new user in relationship to another existing or new user.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[13] 15 U.S.C. 78q–1.

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 240.17Ad–22(e)(3)(ii).

[17] 17 CFR 240.17Ad–22(e)(3)(ii).

[18] *See* 81 FR at 70810.

[19] 17 CFR 240.17Ad–22(e)(3)(ii).

[20] 15 U.S.C. 78q–1(b)(3)(I).

[21] 15 U.S.C. 78q–1(b)(3)(I).

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–OCC–2023–005 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–OCC–2023–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules48T.*

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–OCC–2023–005 and should be submitted on or before July 18, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–13560 Filed 6–26–23; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97783; File No. SR–CboeEDGX–2023–041]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Automated Price Improvement Auction Rules

June 21, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 13, 2023, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend its automated price improvement auction rules. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 21.19 (Automated Price Improvement Mechanism (''AIM'' or ''AIM Auction'')) and Rule 21.22 (Complex Automated Improvement Mechanism (''C–AIM'' or ''C–AIM Auction'')) to modify the stop price requirements for auto-match orders submitted to AIM and C–AIM, respectively.

By way of background, Rules 21.19 and 21.22 contain the requirements applicable to the execution of orders using AIM and C–AIM, respectively. The AIM and C–AIM auctions are electronic auctions intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer (''NBBO'') in AIM, or the synthetic best bid or offer (''SBBO'') on the Exchange in C–AIM. Upon submitting an Agency Order into an AIM or C–AIM auction, the initiating Member (''Initiating Member'') must also submit a contra-side second order (''Initiating Order'') for the same size as the Agency Order. The Initiating Order guarantees that the Agency Order will receive an execution at no worse than the auction price (*i.e.,* acts as a stop). During an AIM or C–AIM Auction, market participants submit responses to trade against the Agency Order. At the end of an auction, depending on the contra-side interest available, the contra order may be allocated a certain percentage of the Agency Order.[5]

An Initiating Member may initiate an AIM or C–AIM auction provided that the Agency Order is in a class and of sufficient size as determined by the Exchange. Further, there are requirements regarding the price at which the Initiating Order must stop the entire Agency Order, set forth in Rule 21.19(b) for AIM Auctions and Rule 21.22(b) for C–AIM Auctions. Requirements for the stop price depend on the order submitted, but in general, the stop price must be either better than the then-current NBBO (SBBO) or, in some cases, at or better than the NBBO (SBBO).[6]

Further, under Rules 21.19(b)(4) and 21.22(b)(4), an Initiating Member, in entering the contra-side order, must either (1) specify a single price at which

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See generally* Rules 21.19(e) and 21.22(e).

[6] *See generally* Rules 21.19(b) and 21.22(b).

it seeks to execute the Agency Order against the Initiating Order, or (2) specify an initial stop price and instruction to automatically match the price and size of all AIM or C–AIM responses and other contra-side trading interest (''auto-match'') at each price up to a designated limit price or at all prices that improve the stop price. Currently, the System will reject or cancel both an Agency Order and Initiating Order submitted to an AIM or C–AIM Auction that does meet the eligibility requirements set forth in Rules 21.19(a) and 21.22(a), and the stop price requirements set forth in Rules 21.19(b) and 21.22(b).

The Exchange now proposes to amend Rule 21.19(b)(4) to state that, notwithstanding Rule 21.19(b)(1) through (3), if the initial stop price is worse than the then-current NBO (NBB) and auto-match was selected, the System changes the initial stop price for the Agency Order to be the then-current NBO (NBB) (or one minimum increment better than the then-current NBO (NBB) if the Agency Order is subject to the requirements set forth in Rules 21.19(b)(1)(A) or (b)(2). Similarly, the Exchange proposes to amend Rule 21.22(b)(4) to state that, notwithstanding Rule 21.22(b)(1) through (3), if the initial stop price is worse than the then-current SBO (SBB) and auto-match was selected, the System changes the initial stop price for the Agency Order to be the then-current SBO (SBB) (or one minimum increment better than the then-current SBO (SBB) if the Agency Order is subject to the requirements set forth in Rules 21.22(b)(1)(A), (b)(2), or (b)(3)(A). Under the proposed changes, the starting price (*i.e.,* stop price) of the auction would match the NBBO (for AIM Auctions) or SBBO (for C–AIM Auctions) at the time of auction commencement. The proposed changes would apply to all AIM and C–AIM users that select auto-match.

This change is designed to address situations where the NBBO or SBBO changes within the time that the User sends the order to the Exchange and the Exchange receives it, which may cause AIM and C–AIM orders to be cancelled. For example, assume a Member submits to AIM Auction an Agency Order to buy and an Initiating Order with a starting price of 1.25 and an auto-match limit of 1.10, and the then-current NBBO is 1.00–1.25. While in transit, the NBBO changes to 0.90–1.10. Under the current rules, the orders would be rejected, as the starting price (initial stop price) of 1.25 is now outside the current NBBO (even though the firm has designated an auto-match limit of 1.10, which is equal to the NBBO at the time the Exchange receives the order). Under the proposed rule, the orders would be accepted, and the auction starting price will be 1.10 (due to the NBBO change), and the auction would proceed pursuant to the remainder of the Rule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change will promote just and equitable principles of trade and protect investors. In particular, the Exchange believes that its proposal to allow an order with an initial stop price inferior to the then-current NBBO or SBBO to be submitted to AIM or C–AIM Auction if auto-match is selected will provide Agency Orders with additional opportunities for price improvement and execution. Specifically, the changes are designed to stop orders from being rejected from AIM and C–AIM Auctions in situations where an order may have an initial stop price that is inferior to the then-current NBBO or SBBO, despite the fact that the Initiating Member has, through its auto-match selection, demonstrated a willingness to execute against the Agency Order at a price that matches or improves upon the then-current NBBO or SBBO, as applicable. The Exchange believes the changes are consistent with the intended result of the stop price requirement, as the Initiating Member is effectively guaranteeing that the Agency Order will receive an execution at no worse than the auction price, which is at or better than the NBBO at the time the auction begins, via the auto-match mechanism.[10] As such, the Exchange believes the changes will preserve the quality of the auctions, while providing increased execution and price improvement opportunities for Agency Orders, which helps to perfect the mechanism of a free and open market and, in general, helps to protect investors and the public interest.[11]

The Exchange notes that the AIM and C–AIM Auctions generally deliver meaningful opportunities for price improvement to orders and provide an efficient manner of access to liquidity for customers. The Exchange believes that the proposed changes to these auctions will permit more Agency Orders to receive such meaningful opportunities, as intended, and ensure they are not inadvertently penalized by being rejected rather than auctioned if markets move during the order submission process, which ultimately benefits investors.

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 the proposed rule change will impose any burden on intramarket competition because it will apply uniformly to all Agency Orders submitted into AIM and C–AIM Auctions and to all Members. Additionally, the Exchange notes that participation in the AIM and C–AIM auctions is completely voluntary. The Exchange believes all market participants may benefit from any additional liquidity, execution opportunities, and price improvement in the AIM and C–AIM Auctions that may result from the proposed rule change.

The Exchange does not believe 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, as the proposed rule change relates to price requirements for an Exchange-specific auction mechanism and will continue to require auctions to start at

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

[10] Note, the proposed rule change continues to provide price improvement assurances for those for buy (sell) Agency Orders submitted for AIM Auction processing with less than 50 standard option contracts (or 500 mini-option contracts) and NBBO width of $0.01, pursuant to Rule 21.19(b)(1)(A), which remains unchanged.

[11] *See* supra note 10.

prices at or better than the NBBO at the start of the auction.[12]

Finally, the Exchange notes that it operates in a highly competitive market, and members have numerous alternative venues they may participate on and direct their order flow, including other options exchanges that have implemented similar electronic price improvement mechanisms with auto-match pricing. Participants can readily choose to send their orders to other exchanges if they deem those other venues to be more favorable.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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 Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)[14] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGX–2023–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeEDGX–2023–041. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office 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–CboeEDGX–2023–041 and should be submitted on or before July 18, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–13559 Filed 6–26–23; 8:45 am]

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[12] *See* supra note 10.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97769; File No. SR–PEARL–2023–26]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Remove Additional Separate Maker Rebates in Non-Penny Classes From the MIAX Pearl Options Fee Schedule

June 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 June 9, 2023, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Pearl Options Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to remove the additional separate rebates from Section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

1)a) of the Fee Schedule denoted by footnotes ''■'' and ''□.'' The Exchange originally filed this proposal on May 31, 2023, (SR–PEARL–2023–24). On June 9, 2023, the Exchange withdrew SR–PEARL–2023–24 and resubmitted this proposal.

Background

The Exchange currently assesses transaction rebates and fees to all market participants which are based upon the total monthly volume executed by the Member [3] on MIAX Pearl in the relevant, respective origin type (not including Excluded Contracts) [4] (as the numerator) expressed as a percentage of (divided by) TCV [5] (as the denominator). In addition, the per contract transaction rebates and fees are applied retroactively to all eligible volume for that origin type once the respective threshold tier (''Tier'') has been reached by the Member. The Exchange aggregates the volume of Members and their Affiliates.[6] Members that place resting liquidity, *i.e.,* orders resting on the book of the MIAX Pearl System,[7] are paid the specified ''maker'' rebate (each a ''Maker''), and Members that execute against resting liquidity are assessed the specified ''taker'' fee (each a ''Taker''). For opening transactions and ABBO [8] uncrossing transactions, per contract transaction rebates and fees are waived for all market participants. Finally, Members are assessed lower transaction fees and receive lower rebates for order executions in standard option classes in the Penny Interval Program [9] (''Penny Classes'') than for order executions in standard option classes which are not in the Penny Interval Program (''Non-Penny Classes''), where Members are assessed higher transaction fees and receive higher rebates.

Proposal

Currently, the Exchange provides a per contract Maker rebate in Non-Penny classes for MIAX Pearl Market Maker origins in Tier 1 and Tier 2 of ($0.30); ($0.60) in Tier 3; ($0.65) in Tier 4; ($0.70) in Tier 5; and ($0.85) in Tier 6) as shown in the Fee Schedule section for the origin type, ''All MIAX Pearl Market Makers.'' Under footnote ''■'' of section 1)a) of the Fee schedule Market Makers may qualify for additional separate rebates for transactions in Non-Penny classes in Tiers 1 through 4 if the Market Maker increases their Non-Penny Class Maker TCV by 100% or more as compared to that Market Maker's TCV for the month of July 2022, which is the Market Maker's baseline Non-Penny Class Maker TCV. Marker Makers that qualify will receive the following additional rebates (in addition to the relevant rebates described in the Fee Schedule): ($0.40) in Tier 1; ($0.40) in Tier 2; ($0.10) in Tier 3; and ($0.05) in Tier 4. Market Makers with no volume in the Non-Penny Class Maker segment for the month of July 2022 will have any new volume considered as added volume.

Additionally, the Exchange provides a per contract Maker rebate in Non-Penny classes for Non-Priority Customer, Firm, BD, and Non-MIAX Pearl Market Maker origins in Tier 1 and Tier 2 of ($0.30); ($0.60) in Tier 3; ($0.65) in Tier 4; ($0.70) in Tier 5; ($0.85) in Tier 6 as shown in the Fee Schedule for the following origin types, ''Non-Priority Customer, Firm, BD, and Non-MIAX Pearl Market Makers.'' Under footnote ''□'' of section 1)a) of the Fee schedule EEMs may qualify for additional separate rebates for transactions in Non-Penny classes in Tiers 1 through 4 if the EEM Professional Origins, which include Non-Priority Customer, Firm, BD, and Non-MIAX Pearl Market Makers collectively, increases their Non-Penny Class Maker TCV by 100% or more as compared to that EEM's TCV for the month of July 2022, which is the EEM's Professional Origins baseline Non-Penny Class Maker TCV. EEMs Professional Origins who qualify will receive the following additional rebates (in addition to the relevant rebates described in the Fee Schedule): ($0.40) in Tier 1; ($0.40) in Tier 2; ($0.10) in Tier 3; and ($0.05) in Tier 4. EEMs with no Professional Origins volume in the Non-Penny Class Maker segment for the month of July 2022 will have any new volume considered as added volume. These rebates were adopted to attract additional Non-Penny Class volume to the Exchange.[10]

The Exchange has observed that the incremental credit has not had the

[3] ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[4] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[5] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX PEARL for the month for which the fees apply, excluding consolidated volume executed during the period time in which the Exchange experiences an ''Exchange System Disruption'' (solely in the option classes of the affected Matching Engine (as defined below)). The term Exchange System Disruption, which is defined in the Definitions section of the Fee Schedule, means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours. The term Matching Engine, which is also defined in the Definitions section of the Fee Schedule, is a part of the MIAX PEARL electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. The Exchange believes that it is reasonable and appropriate to select two consecutive hours as the amount of time necessary to constitute an Exchange System Disruption, as two hours equates to approximately 1.4% of available trading time per month. The Exchange notes that the term ''Exchange System Disruption'' and its meaning have no applicability outside of the Fee Schedule, as it is used solely for purposes of calculating volume for the threshold tiers in the Fee Schedule. *See* the Definitions Section of the Fee Schedule.

[6] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX PEARL Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX PEARL Market Maker) that has been appointed by a MIAX PEARL Market Maker, pursuant to the following process. A MIAX PEARL Market Maker appoints an EEM and an EEM appoints a MIAX PEARL Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to *membership@miaxoptions.com* no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. *See* the Definitions Section of the Fee Schedule.

[7] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[8] ''ABBO'' means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from OPRA. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[9] *See* Securities Exchange Act Release No. 88992 (June 2, 2020), 85 FR 35142 (June 8, 2020) (SR–PEARL–2020–06).

[10] *See* Securities Exchange Act Release No. 95886 (September 22, 2022), 87 FR 58843 (September 28, 2022) (SR–PEARL–2022–40).

intended result in the last six months. Since the incremental credit has not incentivized MIAX Pearl Market Makers and EEM Professional origins to significantly increase their Non-Penny Class volume on the Exchange, the Exchange has determined to eliminate the incremental credit and remove it from the Exchange's Fee Schedule.

The Exchange now proposes to remove these additional separate rebates from the Exchange's Fee Schedule denoted by the ''■'' and ''□'' footnotes. Accordingly, the Exchange proposes to remove the footnotes from the table in Section 1)a) and also the explanatory note below the table for each footnote.

Implementation

The proposed changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(4) of the Act,[12] in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,[13] 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, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, as of May 26, 2023, no single exchange had more than approximately 12–13% equity options market share for the month of May 2023.[15] Therefore, no exchange possesses significant pricing power. More specifically, as of May 26, 2023, the Exchange had a market share of approximately 6.87% of executed volume of multiply-listed equity options for the month of May 2023.[16]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products and services, terminate an existing membership or determine to not become a new member, and/or shift order flow, in response to transaction fee changes. For example, on February 28, 2019, the Exchange filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).[17] The Exchange experienced a decrease in total market share for the month of March 2019, after the proposal went into effect. Accordingly, the Exchange believes that its March 1, 2019, fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIAX Pearl's market share and, as such, the Exchange believes competitive forces constrain the Exchange's, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes its proposal to eliminate additional separate Maker rebates for options transactions in Non-Penny Classes in Tiers 1 through 4 for MIAX Pearl Market Makers and EEM Professional origins is reasonable because the incentive that is the subject of this proposal did not have the intended results. The rebates were intended to attract additional Non-Penny Class volume to the Exchange.[18] The Exchange notes that the incremental credit has been underutilized in the last six months and has not incentivized Members to increase Non-Penny Class volume on the Exchange as anticipated. The Exchange also does not anticipate that any Member will qualify for the pricing incentive that is the subject of this proposal in the near future. The Exchange believes that it is reasonable to eliminate incentives when such incentives are underutilized. The Exchange believes that eliminating incentive programs from the Fee Schedule when such incentives become ineffective is equitable and not unfairly discriminatory because the incentive would be eliminated in its entirety and would no longer be available to any Member.

The Exchange notes that all Members would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and non-discriminatory terms. The Exchange also believes that the proposed change would protect investors and the public interest because the removal of an underutilized pricing incentive would simplify the Fee Schedule and facilitate market participants' understanding of the fees charged and rebates offered by the Exchange.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposal will impose any burden on intra-market competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the elimination of the enhanced rebates will not impose any burden on intra-market competition as the incentive has been underutilized in the last six months. The Exchange believes that it is reasonable to eliminate incentives when such incentives are underutilized. The Exchange believes that eliminating incentive programs from the Fee Schedule when such incentives become ineffective is equitable and not unfairly discriminatory because the incentive would be eliminated in its entirety and would no longer be available to any Member. Therefore the Exchange does not believe that its proposal will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78f(b)(1) and (b)(5).

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[15] *See* MIAX's ''The market at a glance/MTD AVERAGE,'' available at *https://www.miaxglobal.com/* (Data as of 5\1\2023–5\25\2023).

[16] *See id.*

[17] *See* Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR–PEARL–2019–07).

[18] *See supra* note 10.

Inter-Market Competition

The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges if they deem fee levels and incentives at those other exchanges to be more favorable. As noted above, the Exchange's market share is currently 6.87%.[19] In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their own order routing practices, the Exchange does not believe its proposed fee change can impose any burden on inter-market competition.

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[20] and Rule 19b–4(f)(2)[21] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–PEARL–2023–26 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–PEARL–2023–26. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office 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–PEARL–2023–26 and should be submitted on or before July 18, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–13455 Filed 6–26–23; 8:45 am]

BILLING CODE 8011–01–P

[19] *See supra* note 15.

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 240.19b–4(f)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97781; File No. SR–CboeBZX–2023–026]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Amend Its Fee Schedule

June 21, 2023.

On April 17, 2023, Cboe BZX Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its fee schedule. The proposed rule change was published for comment in the **Federal Register** on May 3, 2023.[3] The Commission did not receive any comment letters. On June 1, 2023, the Exchange withdrew the proposed rule change (CboeBZX–2023–026).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–13563 Filed 6–26–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97771; File No. SR–MIAX–2023–24]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule for the Priority Customer Rebate Program and the Professional Rebate Program

June 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 June 9, 2023, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97392 (April 27, 2023), 88 FR 27937.

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Fee Schedule (''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (i) amend Section 1)a)iii) of the Fee Schedule to modify the Priority Customer Rebate Program (''PCRP'') [3] to remove a certain incremental rebate; and (ii) amend Section 1)a)iv) of the Fee Schedule to modify the Professional Rebate Program to simplify the calculation and application of the rebate. The Exchange originally filed this proposal on May 31, 2023, (SR–MIAX–2023–21). On June 9, 2023, the Exchange withdrew SR–MIAX–2023–21 and resubmitted this proposal.

Background

Priority Customer Rebate Program

The Exchange's Fee Schedule provides for a Priority Customer Rebate Program, under which a Priority Customer [4] rebate payment is calculated from the first executed contract at the applicable threshold per contract credit with rebate payments made at the highest achieved volume tier for each contract traded in that month. The percentage thresholds are calculated based on the percentage of national customer volume in multiply-listed option classes listed on MIAX entered and executed over the course of the month (excluding QCC [5] and cQCC Orders,[6] Priority Customer-to-Priority Customer Orders, C2C,[7] and cC2C Orders,[8] PRIME [9] and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, and PRIME and cPRIME Orders [10] for which both the Agency and Contra-side Order are Priority Customers). Volume for transactions in both simple and complex orders are aggregated to determine the appropriate volume tier threshold applicable to each transaction. Volume is recorded for, and credits are delivered to, the Member [11] that submits the order to MIAX. MIAX aggregates the contracts resulting from Priority Customer Orders [12] transmitted and executed electronically on MIAX from Members and Affiliates [13] for purposes of the thresholds described in the PCRP table.

Currently, MIAX will credit each ''Qualifying Member'' $0.03 per contract (excluding QCC and cQCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, PRIME and cPRIME Agency Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced

[3] Under the PCRP, MIAX credits each Member the per contract amount resulting from each Priority Customer order transmitted by that Member which is executed electronically on the Exchange in all multiply-listed option classes (excluding, in simple or complex as applicable, QCC and cQCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Exchange Rule 1400), provided the Member meets certain percentage thresholds in a month as described in the Priority Customer Rebate Program table. *See* Fee Schedule, Section 1)a)iii. The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Exchange Rule 100.

[5] A Qualified Contingent Cross Order is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 mini-option contracts, that is identified as being part of a qualified contingent trade, as that term is defined in Interpretations and Policies .01 below, coupled with a contra-side order or orders totaling an equal number of contracts. *See* Exchange Rule 516(j).

[6] A Complex Qualified Contingent Cross or ''cQCC'' Order is comprised of an originating complex order to buy or sell where each component is at least 1,000 contracts that is identified as being part of a qualified contingent trade, as defined in Rule 516, Interpretations and Policies .01, coupled with a contra-side complex order or orders totaling an equal number of contracts. Trading of cQCC Orders is governed by Rule 515(h)(4). *See* Exchange Rule 518(b)(6).

[7] A Customer Cross Order is comprised of a Priority Customer Order to buy and a Priority Customer Order to sell at the same price and for the same quantity. *See* Exchange Rule 516(i).

[8] A Complex Customer Cross or ''cC2C'' Order is comprised of one Priority Customer complex order to buy and one Priority Customer complex order to sell at the same price and for the same quantity. Trading of cC2C Orders is governed by Rule 515(h)(3). *See* Exchange Rule 518(b)(5).

[9] PRIME is a process by which a Member may electronically submit for execution (''Auction'') an order it represents as agent (''Agency Order'') against principal interest, and/or an Agency Order against solicited interest. *See* Exchange Rule 515A(a).

[10] A Complex Prime or ''cPRIME'' Order is a complex order (as defined in Rule 518(a)(5)) that is submitted for participation in a cPRIME Auction. *See* Exchange Rule 518(b)(7).

[11] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[12] The term ''Priority Customer Order'' means an order for the account of a Priority Customer. *See* Exchange Rule 100.

[13] For purposes of the MIAX Options Fee Schedule, the term ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, (''Affiliate''), or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Market Maker) that has been appointed by a MIAX Market Maker, pursuant to the following process. A MIAX Market Maker appoints an EEM and an EEM appoints a MIAX Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to *membership@miaxoptions.com* no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. *See* Fee Schedule, note 1.

in MIAX Rule 1400) resulting from each Priority Customer order in simple or complex order executions which falls within the Priority Customer Rebate Program volume tier 1. ''Qualifying Member'' shall mean a Member or its Affiliate that qualifies for the Professional Rebate Program as described below and achieves a volume increase in excess of 0.065% for Professional orders transmitted by that Member which are executed electronically on the Exchange in all multiply-listed option classes for the account(s) of a Professional and which qualify for the Professional Rebate Program during a particular month relative to the applicable Baseline Percentage (as defined under the Professional Rebate Program).

The Exchange initially adopted this rebate in 2016 in order to provide an incentive for order flow providers to increase the volume of Professional orders and Priority Customer Orders submitted to the Exchange.[14] The Exchange has observed that not a single Member has qualified for the incremental credit in the last six months. Since the incremental credit has not been utilized in recent months, the Exchange has determined to eliminate the incremental credit and now proposes to remove this incentive from the Exchange's Fee Schedule.

Professional Rebate Program

Under the Professional Rebate Program, which is set forth in Section 1)a)iv) of the Fee Schedule, the Exchange credits each Member a per contract amount resulting from any contracts executed from an order submitted by that Member for the account of a: (i) Public Customer[15] that is not a Priority Customer; [16] (ii) non-MIAX Options Market Maker; [17] (iii) non-Member Broker-Dealer; or (iv) Firm [18] (each, a ''Professional''), which is executed electronically on the Exchange in all multiply-listed option classes (excluding, in simple or complex as applicable, mini-options, non-Priority Customer-to-non-Priority Customer orders, QCC orders, PRIME orders, PRIME AOC responses, PRIME contra-side orders, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Options Rule 1400 (collectively, ''Excluded Contracts'')), provided the Member achieves certain Professional volume increase percentage thresholds in the month relative to a baseline period.

Currently, the percentage thresholds in each tier are based upon the increase in the total volume submitted by a Member and executed for the account(s) of a Professional on MIAX (not including Excluded Contracts) during a particular month as a percentage of the total volume reported by the Options Clearing Corporation (OCC) in MIAX classes during the same month (the ''Current Percentage''), less the greater of (x) total volume submitted by that Member and executed for the account(s) of a Professional on MIAX (not including Excluded Contracts) during the fourth quarter of 2015 as a percentage of the total volume reported by OCC in MIAX classes during the fourth quarter of 2015, and (y) 0.065% (the ''Baseline Percentage''). Volume for transactions in both simple and complex orders will be aggregated to determine the appropriate volume tier threshold applicable to each transaction. For purposes of determining the Baseline Percentage for any Member that did not execute any contracts for the account(s) of a Professional on MIAX in the fourth quarter of 2015, the Baseline Percentage shall be 0.065%.

The Exchange now proposes to adjust the method of calculating the Baseline Percentage for the rebate by removing the provision relating to the fourth quarter of 2015 from the calculation. As proposed, the percentage thresholds in each tier will be based upon the increase in the total volume submitted by a Member and executed for the account(s) of a Professional on MIAX Options (not including Excluded Contracts) during a particular month as a percentage of the total volume reported by the Options Clearing Corporation (OCC) in MIAX classes during the same month (the ''Current Percentage''), less 0.065% (the Baseline Percentage). Volume for transactions in both simple and complex orders will be aggregated to determine the appropriate volume tier threshold applicable to each transaction.

Given that the Baseline Percentage is standardized under the Exchange's proposal, the Exchange also proposes to remove the last sentence from the paragraph that describes the calculation, which states, ''for purposes of determining the Baseline Percentage for any Member that did not execute any contracts for the account(s) of a Professional on MIAX in the fourth quarter of 2015, the Baseline Percentage shall be 0.065%,'' as this sentence is unnecessary given the proposed change to the calculation methodology.

The Exchange also proposes to amend the column heading on the Professional Rebate Program table to reflect the proposed change. Currently the column heading is titled, ''Percentage Thresholds of Volume Increase in Multiply-Listed Options (except Excluded Contracts) for the Current Month Compared to Fourth Quarter 2015.'' The Exchange now proposes to re-title this column heading as, ''Percentage Thresholds of Volume Increase in Multiply-Listed Options (except Excluded Contracts) for the Current Month Compared to the Baseline Percentage,'' to accurately reflect the methodology being used to determine the applicable tier.

The purpose for making these adjustments is to standardize and simplify the application of the Exchange's incentive program.

Implementation

The proposed changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [19] in general, and furthers the objectives of Section 6(b)(4) of the Act [20] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [21] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the

[14] *See* Securities Exchange Act Release No. 77777 (May 6, 2016), 81 FR 29603 (May 12, 2016) (SR–MIAX–2016–09).

[15] The term ''Public Customer'' means a person that is not a broker or dealer in securities. *See* Exchange Rule 100.

[16] ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). *See* Exchange Rule 100, including Interpretations and Policies .01.

[17] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* Exchange Rule 100. A Directed Order Lead Market Maker (''DLMM'') and Directed Primary Lead Market Maker (''DPLMM'') is a party to a transaction being allocated to the LMM or PLMM and is the result of an order that has been directed to the LMM or PLMM. *See* Fee Schedule note 2.

[18] A ''Firm'' fee is assessed on a MIAX Electronic Exchange Member ''EEM'' that enters an order that is executed for an account identified by the EEM for clearing in the Options Clearing Corporation (''OCC'') ''Firm'' range. *See* Fee Schedule, Section 1)a)ii.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4).

[21] 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes its proposal provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is one of 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 12–13% of the market share of executed volume of multiply-listed equity and exchange-traded fund (''ETF'') options trades as of May 25, 2023, for the month of May 2023.[22] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of May 25, 2023, the Exchange has a total market share of 6.58% of all equity options volume, for the month of May 2023.[23]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue use of certain categories of products, in response to fee changes. For example, on March 1, 2019, the Exchange filed with the Commission an immediately effective filing to decrease certain credits assessable to Members pursuant to the PCRP.[24] The Exchange experienced a decrease in total market share between the months of February and March of 2019. Accordingly, the Exchange believes that the March 1, 2019, fee change may have contributed to the decrease in the Exchange's market share and, as such, the Exchange believes competitive forces constrain options exchange transaction and non-transaction fees.

Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange offers specific rates and credits in its fees schedule, like those of other options exchanges' fees schedules, which the Exchange believes provides incentives to Members to increase order flow of certain qualifying orders.

The Exchange believes that its proposal to eliminate an incremental credit in the Priority Customer Rebate Program is reasonable because the pricing incentive has been underutilized and has not incentivized Members to increase the volume of Professional orders and Priority Customer Orders submitted to the Exchange as anticipated. The Exchange notes that no Member has availed itself of the incremental credit in the last six months. The Exchange also does not anticipate that any Member will qualify for the pricing incentive that is the subject of this proposal in the near future. The Exchange believes that it is reasonable to eliminate incentives when such incentives are underutilized. The Exchange believes that eliminating incentive programs from the Fee Schedule when such incentives become ineffective is equitable and not unfairly discriminatory because the incentive would be eliminated in its entirety and would no longer be available to any Member.

Similarly, the Exchange believes that its proposal to simplify the application of a rebate under the Professional Rebate Program is reasonable because it standardizes the application of the rebate for all eligible Members. The Exchange believes it is reasonable to amend the requirements of a rebate when the amendment simplifies and standardizes the application of the rebate.

The Exchange notes that all Members would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and non-discriminatory terms. The Exchange also believes that the proposed changes would protect investors and the public interest because the removal of an underutilized pricing incentive in the PCRP and the simplification of the calculation of a rebate in the Professional Rebate Program would simplify the Fee Schedule and facilitate market participants' understanding of the fees charged and rebates offered by the Exchange.

As noted above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and self-regulatory organization (''SRO'') revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [25]

The Exchange believes that the ever-shifting market shares among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to transaction and non-transaction fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act [26] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposal will impose any burden on intra-market competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the elimination of an underutilized rebate from the PCRP will not place any undue burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act given that not a single Member has qualified for the credit proposed for removal in the last six months. Additionally, the Exchange believes that the simplification of a rebate calculation in the Professional Rebate Program will not impose any burden on intra-market competition as

[22] *See* ''The market at a glance/MTD AVERAGE'', *available at https://www.miaxglobal.com/* (data as of 5/1/2023–5/25/2023).

[23] *See id.*

[24] *See* Securities Exchange Act Release No. 85301 (March 13, 2019), 84 FR 10166 (March 19, 2019) (SR–MIAX–2019–09).

[25] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[26] 15 U.S.C. 78f(b)(4) and (5).

the simplification and standardization of a rebate calculation applies uniformly to all Members and all Members are still eligible to earn the rebate.

Therefore the Exchange does not believe that its proposal will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Inter-Market Competition

The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges if they deem fee levels and incentives at those other exchanges to be more favorable. As noted above, the Exchange's market share is currently 6.58%.[27] In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their own order routing practices, the Exchange does not believe its proposed fee change can impose any burden on inter-market competition.

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[28] and Rule 19b–4(f)(2)[29] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MIAX–2023–24 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–MIAX–2023–24. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office 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–MIAX–2023–24 and should be submitted on or before July 18, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Deputy Secretary.

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[27] *See supra* note 22.

[28] 15 U.S.C. 78s(b)(3)(A)(ii).

[29] 17 CFR 240.19b–4(f)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97782; File No. SR–CboeBZX–2023–020]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Amend Its Fee Schedule

June 21, 2023.

On March 6, 2023, Cboe BZX Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its fee schedule. The proposed rule change was published for comment in the **Federal Register** on March 16, 2023.[3] On May 4, 2023, the Commission temporarily suspended the proposed rule change and instituted proceedings to determine whether to approve or disapprove the proposed rule change.[4] On June 14, 2023, the Exchange withdrew the proposed rule change (CboeBZX–2023–020).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–13565 Filed 6–26–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97784; File No. SR–FINRA–2022–032]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Relating to Alternative Display Facility New Entrant

June 21, 2023.

On December 16, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''),

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97108 (March 10, 2023), 88 FR 16285. The comment letters received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboebzx-2023-020/srcboebzx2023020.htm.*

[4] *See* Securities Exchange Act Release No. 97437, 88 FR 30181 (May 10, 2023).

[5] 17 CFR 200.30–3(a)(12).

pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to add IntelligentCross ATS as a new entrant to the Alternative Display Facility. The proposed rule change was published for comment in the **Federal Register** on December 27, 2022.[3] On February 9, 2023, the Commission extended the time period within which to approve, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to March 27, 2023.[4] On March 24, 2023, the Commission initiated proceedings under Section 19(b)(2)(B) of the Act [5] to determine whether to approve or disapprove the proposed rule change.[6] The Commission has received comments on the proposed rule change.[7]

Section 19(b)(2) of the Act [8] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change.[9] The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.[10] The proposed rule change was published for comment in the **Federal Register** on December 27, 2022. June 25, 2023 is 180 days from that date, and August 24, 2023 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the comment letters and take action on the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[11] designates August 24, 2023, as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR–FINRA–2022–032).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–13561 Filed 6–26–23; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 96550 (December 20, 2022), 86 FR 79401.

[4] *See* Securities Exchange Act Release No. 96864, 88 FR 9945 (February 15, 2023).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 75599 (August 4, 2015), 80 FR 47978 (August 10, 2015).

[7] Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-finra-2022-032/srfinra2022032.htm.*

[8] 15 U.S.C. 78s(b)(2).

[9] 15 U.S.C. 78s(b)(2)(B)(ii)(I).

[10] 15 U.S.C. 78s(b)(2)(B)(ii)(II).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97780; File No. SR–ICEEU–2023–010]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Clearing Rules

June 21, 2023.

On April 21, 2023, ICE Clear Europe Limited filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICEEU–2023–010 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder a proposed rule change regarding the treatment of non-default losses.[3] The Proposed Rule Change was published for public comment in the **Federal Register** on May 10, 2023.[4] The Commission has not received comments regarding the proposal described in the Proposed Rule Change.

Section 19(b)(2) of the Exchange Act [5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the Notice of Filing is June 24, 2023. The Commission is extending this 45-day time period.

In order to provide the Commission with sufficient time to consider the Proposed Rule Change, the Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,[6] designates August 8, 2023 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–ICEEU–2023–010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–13564 Filed 6–26–23; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, 88 FR 30187.

[4] Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Clearing Rules, Exchange Act Release No. 34–97429 (May 4, 2023); 88 FR 30187 (May 10, 2023) (SR–ICEEU–2023–010) (''Notice'').

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

DEPARTMENT OF STATE

[Public Notice: 12105]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Picasso in Fontainebleau'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Picasso in Fontainebleau'' at The Museum of Modern Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of

March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–13552 Filed 6–26–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12104]

Notice of Determinations; Culturally Significant Objects Being Imported for Conservation and Exhibition—Determinations: ''Reckoning with Millet's Man with a Hoe'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary conservation and display in the exhibition ''Reckoning with Millet's *Man with a Hoe*'' at the J. Paul Getty Museum at the Getty Center, Los Angeles, California, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary conservation and exhibition or display within the United States as aforementioned are in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–13551 Filed 6–26–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0051]

Caltrain'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 June 14, 2023, Caltrain (PCMZ) submitted a request to field test its Stadler KISS Electric Multiple Units (EMUs) that have been equipped with PCMZ's Interoperable Electronic Train Management System (I–ETMS) technology. FRA is publishing this notice and inviting public comment on PCMZ's request to test its positive train control (PTC) system.

DATES: FRA will consider comments received by July 19, 2023. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES:

Comments: Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0051. 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 December 17, 2020, FRA certified PCMZ's I–ETMS 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). PCMZ's test request, including a complete description of PCMZ'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–2010–0051.

Interested parties are invited to comment on PCMZ's Test Request by submitting written comments or data. During its review of the test 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. FRA, however, may elect not to respond to any particular comment, and, under 49 CFR 236.1035, FRA maintains the authority to approve, approve with conditions, or deny the test request at its 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. 2023–13644 Filed 6–26–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2010–0036]

Southeastern Pennsylvania Transportation Authority's Request To Amend Its Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on June 2 and 7, 2023, the Southeastern Pennsylvania Transportation Authority (SEPTA) submitted a request for amendment (RFA) to its FRA-certified positive train control (PTC) system. FRA is publishing this notice and inviting public comment on the railroad's RFA to its PTC system.

DATES: FRA will consider comments received by July 17, 2023. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES:

Comments: Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0036. 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. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTC Safety Plan (PTCSP), a host railroad must submit, and obtain FRA's approval of, an RFA to its PTC system or PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal and train control system. Accordingly, this notice informs the public that, on June 2 and 7, 2023, SEPTA submitted an RFA to its Advanced Civil Speed Enforcement System II, which seeks FRA's approval of a temporary outage for construction of two new interlockings, New Arsenal and Civic, along with the associated adjacent signal system changes on the West Chester Line, and that RFA is available in Docket No. FRA–2010–0036.

Interested parties are invited to comment on SEPTA 's RFA by submitting written comments or data. During FRA's review of this railroad's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2023–13647 Filed 6–26–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2023–0119]

Deepwater Port License Application: Grand Isle LNG Operating Company, LLC; Notice of Application

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) and the U.S. Coast Guard (USCG) announce that they have received an application from Grand Isle LNG Operating Company, LLC (Applicant) for the licensing of a deepwater port and that the application for the Grand Isle LNG Export Deepwater Port Development Project contains information sufficient to commence processing. This notice summarizes the Applicant's project plans and the procedures that will be considered during the application review process.

DATES: The Deepwater Port Act of 1974, as amended, (the Act) requires at least one public hearing on this application to be held in the designated Adjacent Coastal State(s) (ACS) not later than 240 days after publication of this notice and a decision on the application not later than 90 days after the final public hearing(s).

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0119 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2023–0119 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* The Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, Docket Number MARAD–2023–0119. Call 202–493–0402 to determine facility hours prior to hand delivery.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email

address, and/or a telephone number on a cover page, so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided.

For assistance please contact either the Maritime Administration via email at *Deepwater.Ports@dot.gov,* or the U.S. Coast Guard via email at *DeepwaterPorts@uscg.mil.* Include ''MARAD–2023–0119'' in the subject line of the message. This email will not be relied on for the intake of comments for this deepwater port license application. To submit written comments and other material submissions, please follow the directions above. Please do not submit written comments or other materials to the email addresses in this section. Improperly submitted comments interfere with MARAD and USCG's ability to help others seeking assistance with comment submission or public meeting attendance.

SUPPLEMENTARY INFORMATION:

Receipt of Application

On June 1, 2023, MARAD and USCG received an application from the Applicant for all Federal authorizations required for a license to own, construct, and operate a deepwater port for the export of liquefied natural gas (LNG) as authorized by the Act and implemented under 33 Code of Federal Regulations (CFR) Parts 148, 149, and 150. After a coordinated completeness review by MARAD, USCG, and other cooperating Federal agencies, the application is deemed complete and contains information sufficient to initiate processing.

Background

The Act defines a deepwater port as any fixed or floating manmade structure other than a vessel, or any group of such structures, that are located beyond State seaward boundaries and used or intended for use as a port or terminal for the transportation, storage, and further handling of oil or natural gas for transportation to, or from, any State. A deepwater port includes all components and equipment, including pipelines, pumping or compressor stations, service platforms, buoys, mooring lines, and similar facilities that are proposed as part of a deepwater port to the extent they are located seaward of the high-water mark.

The Secretary of Transportation delegated to the Maritime Administrator authorities related to licensing deepwater ports (49 CFR 1.93(h)). Statutory and regulatory requirements for processing applications and licensing appear in 33 U.S.C. 1501 *et seq.* and 33 CFR part 148. Under delegations from and agreements between the Secretary of Transportation and the Secretary of Homeland Security, applications are jointly processed by MARAD and USCG. Each application is considered on its merits.

In accordance with 33 U.S.C. 1504(f) for all applications, MARAD and the USCG, working in cooperation with other involved Federal agencies and departments, shall comply with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). The U.S. Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (USACE), the National Oceanic and Atmospheric Administration (NOAA), the Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE), and the Pipeline and Hazardous Materials Safety Administration (PHMSA), among others, participate in the processing of deepwater port applications and assist in the NEPA process as described in 40 CFR 1501.8. Each agency may participate in scoping and/or other public meeting(s) and may incorporate the MARAD/USCG environmental impact review for purposes of their jurisdictional permitting processes, to the extent applicable. Comments related to this deepwater port application addressed to the EPA, USACE, or other federal agencies should note the federal docket number, MARAD–2023–0119. Each comment will be incorporated into the U.S. Department of Transportation docket and substantive comments will be considered as the environmental impact analysis is developed to ensure consistency with the NEPA process. All connected actions, permits, approvals, and authorizations will be considered during the processing of the Grand Isle LNG Export Deepwater Port Development Project deepwater port license application.

MARAD, in issuing this Notice of Application pursuant to 33 U.S.C. 1504(c), must designate as an ACS any coastal state which (A) would be directly connected by pipeline to a deepwater port as proposed in an application, or (B) would be located within 15 nautical miles of any such proposed deepwater port (see 33 U.S.C. 1508(a)(1)). Pursuant to the criteria provided in the Act, Louisiana is the designated ACS for this application. Other states may request from the Maritime Administrator designation as an ACS in accordance with 33 U.S.C. 1508(a)(2).

The Act directs that at least one public hearing take place in each ACS, in this case, Louisiana. Additional public meetings may be conducted to solicit comments for the environmental analysis to include public scoping meetings, or meetings to discuss the Draft and Final Environmental Impact Statement documents prepared in accordance with NEPA.

MARAD, in coordination with the USCG, will publish additional **Federal Register** notices with information regarding these public meeting(s) and hearing(s) and other procedural milestones, including the NEPA environmental impact review. The Maritime Administrator's decision, and other key documents, will be filed in the public docket for the application at docket number MARAD–2023–0119.

The Act imposes a strict timeline for processing an application. When MARAD and USCG determine that an application is complete (*i.e.,* contains information sufficient to commence processing), the Act directs that all public hearings on the application be concluded within 240 days from the date the Notice of Application is published.

Within 45 days after the final hearing, the Governor of the ACS, in this case, the Governor of Louisiana, may notify MARAD of approval, approval with conditions, or disapproval of the application. If such approval, approval with conditions, or disapproval is not provided to the Maritime Administrator by that time, approval shall be conclusively presumed. MARAD may not issue a license without the explicit or presumptive approval of the Governor of the ACS. During this 45-day period, the Governor may also notify MARAD of inconsistencies between the application and State programs relating to environmental protection, land and water use, and coastal zone management. In this case, MARAD may condition the license to make it consistent with such state programs (33 U.S.C. 1508(b)(1)). MARAD will not consider written approvals or disapprovals of the application from the Governor of the ACS until commencement of the 45-day period after the final public hearing for the Final Environmental Impact Statement is completed. The Maritime Administrator must render a decision on the application within 90 days after the final hearing.

Should a favorable record of decision be rendered and a license be issued, MARAD may include specific

conditions related to design, construction, operations, environmental permitting, monitoring and mitigations, and financial responsibilities. If a license is issued, USCG, in coordination with other agencies as appropriate, would review and approve the deepwater port's engineering, design, and construction; operations and security procedures; waterways management and regulated navigation areas; maritime safety and security requirements; risk assessment; and compliance with domestic and international laws and regulations for vessels that may call on the port. The deepwater port would be designed, constructed, and operated in accordance with applicable codes and standards.

In addition, the installation of pipelines and other structures may require permits under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, which are administered by the USACE.

Permits from the EPA may also be required pursuant to the provisions of the Clean Air Act, as amended, and the Clean Water Act, as amended.

Summary of the Application

The application proposes the ownership, construction, operation, and eventual decommissioning of the Grand Isle LNG Export Deepwater Port Development Project deepwater port (''DWP'') to be located approximately 11.3 nautical miles (13 statute miles, or 20.9 kilometers) offshore Plaquemines Parish, Louisiana. The project would involve the installation of two nominal 2.1 MTPA liquefaction systems installed in the West Delta Outer Continental Shelf Lease Block 35 (WD–35), in approximately 68 to 72 feet of water. The proposed Grand Isle LNG Export Deepwater Port Development Project DWP would export liquefied natural gas (LNG) up to 4.2 million metric tons per annum (MMTPA).

The proposed Grand Isle LNG Export Deepwater Port Development Project DWP would consist of fixed and floating components. These components would include eight (8) platforms, two (2) floating storage units (FSUs), and three (3) interconnecting lateral pipelines for feed gas supply. The eight platforms would include two (2) gas treatment platforms; two (2) LNG liquefaction platforms; two (2) LNG loading platforms; one (1) accommodations platform; and one (1) thermal oxidizer platform. Each platform would be connected via a series of eight (8) linking bridges; the two FSUs would be connected using two (2) telescopic gangways.

The LNG would be loaded onto standard LNG carriers with nominal cargo capacities between 125,000 and 180,000 cubic meters (m3) (average expected size is 155,000 m3) for the export of LNG, including to Free Trade Agreement (FTA) and non-FTA nations.

The project would be completed in two phases. Phase 1 construction would include five (5) platforms (a gas treatment platform, an LNG liquefaction platform, an LNG loading platform, the accommodations platform, and the thermal oxidizer platform), one (1) FSU, and interconnect lateral pipelines. Phase 1 would produce 2.1 MMTPA of LNG. Phase 2 construction would be expected to begin one year after the beginning of Phase 1 construction. Phase 2 would include the remaining three (3) platforms (a gas treatment platform, an LNG liquefaction platform, and an LNG loading platform) and an additional FSU. Phase 2 would increase the production of the project to 4.2 MMTPA of LNG.

The feed gas supply to the project would be transported via three (3) new pipeline laterals. A new 24-inch-diameter lateral, 1.11 statute miles (1.79 kilometers) in length, would tie-in to the existing Kinetica Partners existing 24-inch (61-centimeter) pipeline. A new 20-inch lateral, 0.43 statute mile (0.69 kilometer) in length, would tie-in to the existing 20-inch (51-centimeter) Kinetica Partners pipeline. Finally, a new 20-inch-diameter lateral, 4.75 statute miles (7.64 kilometers) in length, would tie-in to the existing 18-inch (46-centimeter) High Point Gas Transmission pipeline.

The fabrication and assembly yards for the DWP's fixed components would be located in south Louisiana. One (1) purpose-built transport barge and three (3) project-specific tugs would also be built in south Louisiana. The two (2) FSUs proposed for the project would be repurposed LNG carriers. These would be converted to FSUs in a shipyard located in Europe or Asia.

The onshore components would consist of leasing an existing receiving area/warehouse with an onsite office. These components would be located at one of the existing fabrication yards in Louisiana.

For Phases 1 and 2, platform and pile fabrication and assembly would be contracted to various existing fabrication yards in south Louisiana with the capacity to build and load out up to a 10,000-short-ton deck. Most of the major equipment (*e.g.,* generators, cranes, gas compressors, and gas treating equipment) would be purchased, fabricated, and assembled at vendor suppliers and then shipped pre-commissioned and ready to install on each of the platform topsides.

The living quarters and helideck that are part of the accommodations platform would be prefabricated and shipped separately. The selected contractor would install the prefabricated quarters onto the accommodations platform deck at the onshore fabrication yard. The piles and risers would be fabricated at a fabrication yard in the south Louisiana region. Subsea assemblies would be fabricated and tested at a fabrication yard.

The purpose-built transport barge and the three project-specific tugs would be built in a south Louisiana shipyard. The tugs and barge would be used during both installation phases of the DWP.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 33 U.S.C. 1501, *et seq.;* 49 CFR 1.93(h))

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–13310 Filed 6–26–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2023–0079]

Request for Information on Advanced Air Mobility; Extension of Comment Period

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for information; extension of comment period.

SUMMARY: On May 17, 2023, the Department of Transportation (DOT) published a request for information (RFI) seeking public input on the development of a national strategy on Advanced Air Mobility as required by the Advanced Air Mobility Coordination and Leadership Act. The comment period for the RFI was scheduled to end on July 17, 2023. DOT received several requests to extend the comment period. DOT is extending the comment period for the RFI by 30 days.

DATES: The comment period to the RFI published on May 17, 2023 at 88 FR

31593, is extended from July 17, 2023, to August 16, 2023.

ADDRESSES: You may submit responses and other comments identified by ''RFI Response: Advanced Air Mobility'' and Docket No. DOT–OST–2023–0079, by any of the following methods:

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

• *Email: AdvAirMobility_IWG@dot.gov.* Include ''RFI Response: Advanced Air Mobility'' and Docket No. DOT–OST–2023–0079 in the subject line of the email.

• *Mail/Hand Delivery/Courier:* Docket Operations Office, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday, except on Federal holidays. Include ''RFI Response: Advanced Air Mobility'' and Docket No. DOT–OST–2023–0079 on the cover page of the submission. Because paper mail in the Washington, DC, area is subject to delay, commenters are strongly encouraged to submit comments electronically.

Instructions: All submissions should include the docket number for this request for information. All comments received will be posted without change to *https://www.regulations.gov.* All comments, including attachments and other supporting material, will become part of the public record and subject to public disclosure. Comments generally will not be edited to remove any identifying or contact information. Any submissions received after the deadline may not be accepted or considered.

Confidential Business Information (CBI): CBI is commercial or financial information that is 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 in response to this RFI 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 RFI, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN'' to indicate that it contains proprietary information. DOT will treat such marked submissions as confidential under FOIA and not place them in the public docket of this RFI. Submissions containing CBI should be sent to the name and physical or email address listed below.

FOR FURTHER INFORMATION CONTACT: Lauralyn Jean Remo Temprosa, Associate Director, Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Room W86–310, Washington, DC 20590. *AdvAirMobility_IWG@dot.gov,* (202) 366–5903.

SUPPLEMENTARY INFORMATION: On May 17, 2023, DOT published a RFI in the **Federal Register** seeking public comment on critical issues of importance in drafting a national advanced air mobility (AAM) strategy. (88 FR 31593) The RFI stated that the comment period would close on July 17, 2023. DOT received several requests to extend the comment period. The requestors state that comments to the RFI are due within two weeks of the Federal Aviation Administration's request for comments on the agency's review of the Civil Aviation Noise Policy, that having two complicated and technical **Federal Register** notices due nearly at the same time, during the middle of summer vacation, creates an undue hardship on the public, and that a more robust response would require an additional 60 days. DOT is granting commenters' request for an extension of the comment period to the RFI through August 16, 2023.

Issued in Washington, DC, on June 21, 2023.

Carlos Monje,

Under Secretary for Policy, Department of Transportation.

[FR Doc. 2023–13532 Filed 6–26–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket Number: DOT–OST–2023–0097]

Rural and Tribal Assistance Pilot Program; Correction

ACTION: Notice of funding opportunity, correction.

SUMMARY: The Department of Transportation is correcting a notice published on June 15, 2023 issue of the **Federal Register** entitled ''Notice of Funding Opportunity to Establish Cooperative Agreements with Technical Assistance Providers for the Fiscal Year 2022 Thriving Communities Program''. This notice corrects several web links and updates the close date of the application period.

SUPPLEMENTARY INFORMATION:

Corrections

In the **Federal Register** notice of June 15, 2023, on page 39328, in the second column of B. Federal Award Information, ''*Transportation.gov/BuildAmerica/RuralandTribalGrants*'' is corrected to read ''*https://www.transportation.gov/buildamerica/RuralandTribalGrants*''

In the **Federal Register** notice of June 15, 2023, on page 39329, in the second column under RAISE Grant Program ''*www.transportation.gov/RAISEgrants*'' is corrected to read ''*http://www.transportation.gov/RAISEgrants*''

In the **Federal Register** notice of June 15, 2023, on page 39329, in the third column of D. Application and Submission Information, ''*Transportation.gov/BuildAmerica/RuralandTribalGrants*'' is corrected to read ''*https://www.transportation.gov/buildamerica/RuralandTribalGrants*''

In the **Federal Register** notice of June 15, 2023, on page 39330, in the first column, first paragraph ''*Transportation.gov/BuildAmerica/RuralandTribalGrants*'' is corrected to read ''*https://www.transportation.gov/buildamerica/RuralandTribalGrants*''

In the **Federal Register** notice of June 15, 2023, on page 39330, in the first column, third paragraph of 2. Content of Form of Application Information, ''*Transportation.gov/BuildAmerica/RuralandTribalGrants*'' is corrected to read ''*https://www.transportation.gov/buildamerica/RuralandTribalGrants*''

In the **Federal Register** notice of June 15, 2023, on page 39330, in the third column, first paragraph, lines 10–11 of 4. Submission Dates and Timelines, ''*Transportation.gov/BuildAmerica/RuralandTribalGrants*'' is corrected to read ''*https://www.transportation.gov/buildamerica/RuralandTribalGrants*''

In the **Federal Register** notice of June 15, 2023, on page 39330, in the third column, first paragraph, line 13 of 4. Submission Dates and Timelines, ''July 31, 2023'' is corrected to read ''September 28, 2023.''

In the **Federal Register** notice of June 15, 2023, on page 39330, in the third column, first paragraph, lines 19–20 of 4. Submission Dates and Timelines, ''*Transportation.gov/BuildAmerica/RuralandTribalGrants*'' is corrected to read ''*https://www.transportation.gov/buildamerica/RuralandTribalGrants*''

In the **Federal Register** notice of June 15, 2023, on page 39330, in the third column, first paragraph, lines 29–30 of 4. Submission Dates and Timelines, ''*Transportation.gov/BuildAmerica/RuralandTribalGrants*'' is corrected to read ''*https://www.transportation.gov/buildamerica/RuralandTribalGrants*''

In the **Federal Register** notice of June 15, 2023, on page 39331, in the second column, third paragraph of 8. Consideration of Application,

''*Transportation.gov/BuildAmerica/RuralandTribalGrants*'' is corrected to read ''*https://www.transportation.gov/buildamerica/RuralandTribalGrants*''

In the **Federal Register** notice of June 15, 2023, on page 39333, in the third column, third of G. Federal Awarding Agency Contacts, ''*Transportation.gov/BuildAmerica/RuralandTribalGrants*'' is corrected to read ''*https://www.transportation.gov/buildamerica/RuralandTribalGrants*''

Issued in Washington, DC, on June 20, 2023.

Morteza Farajian,

Executive Director, Build America Bureau.

[FR Doc. 2023–13538 Filed 6–26–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Annual Financial Statement of Surety Companies—Schedule F

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Annual Financial Statement of Surety Companies—Schedule F.

DATES: Written comments should be received on or before August 28, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Annual Financial Statement of Surety Companies—Schedule F.

OMB Number: 1530–0008.

Form Number: FS Form 6314.

Abstract: The form provides information used to determine the amount of unauthorized reinsurance of Treasury approved Admitted Reinsurers. This computation is necessary to ensure the solvency of companies recognized by the Treasury to write Federal surety bonds, and their ability to carry out contractual requirements.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 337.

Estimated Time per Respondent: Varies from 1 hour to 40 hours.

Estimated Total Annual Burden Hours: 6,909.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. 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; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. 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 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 21, 2023.

Bruce A. Sharp,

Bureau PRA Clearance Officer.

[FR Doc. 2023–13533 Filed 6–26–23; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Authorization Agreement for Preauthorized Payment (SF 5510)

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Standard Form 5510, ''Authorization Agreement for Preauthorized Payment''.

DATES: Written comments should be received on or before August 28, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Authorization Agreement for Preauthorized Payment.

OMB Number: 1530–0015.

Form Number: SF 5510.

Abstract: The form is used to collect information from remitters (individuals and corporations) to authorize electronic fund transfers from accounts maintained at financial institutions to collect monies for government agencies.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit, individuals or households, Federal Government.

Estimated Number of Respondents: 100,000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 25,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. 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; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. 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 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 21, 2023.

Bruce A. Sharp,

Bureau PRA Clearance Officer.

[FR Doc. 2023–13534 Filed 6–26–23; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Concerning Information Reporting for Notice 2009–83

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Notice 2009–83, *Credit for Carbon Dioxide Sequestration under Section 45Q*.

DATES: Written comments should be received on or before August 28, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov*. Please include, ''OMB Number: 1545–2153—Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Credit for Carbon Dioxide Sequestration under Section 45Q.

OMB Number: 1545–2153.

Form Project Number: Notice 2009–83.

Abstract: The notice sets forth interim guidance, pending the issuance of regulations, relating to the credit for carbon dioxide sequestration (CO2 sequestration credit) under § 45Q of the Internal Revenue Code.

Current Actions: There is no change in the burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 30.

Estimated Time per Respondent: 6 hours.

Estimated Total Annual Burden Hours: 180.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: June 20, 2023.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2023–13623 Filed 6–26–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Concerning Information Reporting for Form 1041–ES

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 1041–ES, *Estimated Income Tax for Estates and Trusts*.

DATES: Written comments should be received on or before August 28, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov*. Please include, ''OMB Number: 1545–0971—Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Estimated Income Tax for Estates and Trusts.

OMB Number: 1545–0971.

Form Project Number: Form 1041–ES.

Abstract: Internal Revenue Code section 6654(1) imposes a penalty on trusts, and in certain circumstances, a decedent's estate, for underpayment of estimated tax. Form 1041–ES is used by the fiduciary to make the estimated tax payments. The form provides the IRS with information to give estates and trusts proper credit for estimated tax payments. For first-time filers, the form is available in an Over the Counter (OTC) version at IRS offices. For previous filers, the form is sent to them by the IRS with preprinted vouchers in the Optical Character Resolution (OCR) version.

Current Actions: The estimated annual responses have increased by 211,239. This creates an increase in the total estimated annual burden by 1,647,946 hours. Changes in the burden estimates previously approved by OMB, are due to corrections of filing data. This form is being submitted for renewal purposes only.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Responses: 791,141.

Estimated Time per Respondent: 4 hrs., 29 min.

Estimated Total Annual Burden Hours: 3,565,694.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: June 20, 2023.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2023–13624 Filed 6–26–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Concerning Information Reporting for Form 8802

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8802, *Application for United States Residency Certification.*

DATES: Written comments should be received on or before August 28, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Please include, ''OMB Number: 1545–1817—Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for United States Residency Certification.

OMB Number: 1545–1817.

Form Project Number: Form 8802.

Abstract: An entity must use Form 8802 to apply for United States Residency Certification. All requests for U.S. residency certification must be received on Form 8802, Application for United States Residency Certification. As proof of residency in the United States and of entitlement to the benefits of a tax treaty, U.S. Government certification that you are a U.S. citizen, U.S. corporation, U.S. partnership, or resident of the United States for purposes of taxation.

Current Actions: There are no changes being made to the form at this time. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organization, and not-for-profit institution.

Estimated Number of Responses: 130,132.

Estimated Time per Respondent: 3 hrs., 38 min.

Estimated Total Annual Burden Hours: 472,380.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: June 20, 2023.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2023–13625 Filed 6–26–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Alcohol and Tobacco Tax and Trade Bureau Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before July 27, 2023 to be assured of consideration.

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: Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202)–622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Alcohol and Tobacco Tax and Trade Bureau (TTB)

1. OMB Control Number: 1513–0059.

Title: Usual and Customary Business Records Relating to Tax-Free Alcohol.

TTB Recordkeeping Number: TTB REC 51503.

Abstract: In general, the IRC at 26 U.S.C. 5001 imposes Federal excise tax on distilled spirits produced in or imported into the United States. However, under the IRC at 26 U.S.C. 5214(a)(2) and (a)(3), distilled spirits may be withdrawn free of tax for nonbeverage purposes for use by Federal, State, and local governments, and for use by certain educational organizations and institutions, research laboratories, hospitals, blood banks, sanitariums, and nonprofit clinics, subject to regulations prescribed by the Secretary. In addition, the IRC at 26 U.S.C. 5275 requires persons that procure or use distilled spirits withdrawn free of tax under sections 5214(a)(2) and (a)(3) to keep records and make reports regarding the receipt and use of such spirits as the Secretary requires by regulation. Under that IRC authority, in order to account for tax-free spirits and prevent their diversion to taxable beverage use, the TTB regulations in 27 CFR part 22 require tax-free alcohol users to maintain certain usual and customary business records regarding the receipt, loss, shipment, destruction, return, consignment, and inventories of such alcohol. Such accountability is necessary to protect the revenue.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Number of Respondents: 5,600.

Average Responses per Respondent: 1 (one) per year.

Number of Responses: 5,600.

Average per-response and Total Burden: This information collection consists of usual and customary records kept by respondents during the normal course of business, regardless of any regulatory requirement to do so. As such, under 5 CFR 1320.3(b)(2), this information collection imposes no additional burden on respondents.

2. OMB Control No: 1513–0119.

Title: Certification of Proper Cellar Treatment for Imported Natural Wine.

Abstract: Under the IRC at 26 U.S.C. 5382, importers of natural wine produced after December 31, 2004, must provide the Secretary with a certification, accompanied by an affirmed laboratory analysis, that the practices and procedures used to produce the wine constitute proper cellar treatment. That IRC section also contains alternative certification requirements or exemptions for natural wine produced and imported under certain international agreements, as well as for such wine imported by an owner or affiliate of a domestic winery. In addition, the Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205 vests the Secretary with authority to prescribe regulations regarding the identity and quality of alcohol beverages. Under those authorities, the TTB wine labeling regulations in 27 CFR part 4 and its alcohol beverage import regulations in 27 CFR part 27 implement the proper cellar treatment certification requirement for imported natural wine.

Current Actions: There are no program changes associated with this information collection at this time, and TTB is submitting it for extension purposes only. As for adjustments, due to a change in agency estimates, TTB is decreasing the number of annual responses, responses, and burden hours associated with this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Number of Respondents: 20.

Average Responses per Respondent: 1 (one) per year.

Number of Responses: 20.

Average per-response Burden: 20 minutes.

Total Burden: 7 hours.

3. OMB Control Number: 1513–0138.

Title: Tax Class Statement Required on Hard Cider Labels.

Abstract: In general, the IRC at 26 U.S.C. 5041 imposes six Federal excise tax rates on wine based on a wine's alcohol and carbon dioxide content, and the lowest of those rates is the hard cider tax rate, as listed in section 5041(b)(6). The IRC at 26 U.S.C. 5368(b) also provides that wine can only be removed in containers bearing the marks and labels showing compliance with chapter 51 of the IRC as the Secretary may by regulation prescribe. Beginning January 1, 2017, section 335(a) of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act, Public Law 144–113) modified the definition of hard cider in IRC section 5041(g) to broaden the range of products eligible for the hard cider tax rate. However, under the authority of the Federal Alcohol Administration (FAA) Act, TTB's wine labeling regulations in 27 CFR part 4 allow the term ''hard cider'' to appear on the labels of products that do not meet the IRC's definition of ''hard cider'' for tax purposes. In light of that difference, in order to adequately identify products eligible for the hard cider tax rate, the TTB regulations in 27 CFR parts 24 and 27 provide that the tax class statement, ''Tax class 5041(b)(6),'' appear on containers of domestic and imported wines, respectively, which are eligible for that tax rate. The placement of such a statement on such labels evidences compliance with the IRC's statutory

requirements and identifies the Federal excise tax rate the taxpayer is applying to the product.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is decreasing the estimated number of annual respondents, responses, and burden hours associated with this collection, but is increasing the estimated number of responses per respondent.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Number of Respondents: 20.

Average Responses per Respondent: 2 per year.

Number of Responses: 40.

Average per-response Burden: 1 hour.

Total Burden: 40 hours.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2023–13530 Filed 6–26–23; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0020]

Agency Information Collection Activity: Designation of Beneficiary Government Life Insurance and Supplemental Designation of Beneficiary Government Life Insurance

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 28, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0020'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0020'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Designation of Beneficiary Government Life Insurance VA Form 29–336 and Supplemental Designation of Beneficiary Government Life Insurance VA Form 29–336a.

OMB Control Number: 2900–0020.

Type of Review: Revision of a currently approved collection.

Abstract: These forms are used by the insured to designate beneficiaries and select an optional settlement to be used when the insurance matures by death. The information is required to determine the claimant's eligibility to receive the proceeds. The information on the form is required by law, 38 U.S.C. 1917, 1949 and 1952.

Affected Public: Individuals and households.

Estimated Annual Burden: 13,917 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 83,500.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–13529 Filed 6–26–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Tuesday,
No. 122 June 27, 2023

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Western Fanshell and ''Ouachita'' Fanshell and Designation of Critical Habitat; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2021–0061; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BE79

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Western Fanshell and ''Ouachita'' Fanshell and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act of 1973 (Act), as amended, for the western fanshell (*Cyprogenia aberti*), a freshwater mussel species from Arkansas, Kansas, Missouri, and Oklahoma, and the ''Ouachita'' fanshell (*Cyprogenia* cf. *aberti*), a freshwater mussel species from Arkansas and Louisiana. We also designate critical habitat for both species. In total, approximately 261.4 river miles (420.7 kilometers) in Arkansas and Missouri fall within the boundaries of the critical habitat designation for western fanshell. In total, approximately 227.7 river miles (366.5 kilometers) in Arkansas fall within the boundaries of the critical habitat designation for ''Ouachita'' fanshell. In addition, we finalize a rule under the authority of section 4(d) of the Act that provides measures that are necessary and advisable to provide for the conservation of these species. This rule extends the Act's protections to these species and their designated critical habitats.

DATES: This rule is effective July 27, 2023.

ADDRESSES: This final rule is available on the internet at *https://www.regulations.gov, https://www.fws.gov/species/western-fanshell-cyprogenia-aberti,* and *https://www.fws.gov/species/ouachita-fanshell-cyprogenia-sp-cf-aberti.* Comments and materials we received are available for public inspection at *https://www.regulations.gov* under Docket No. FWS–R3–ES–2021–0061.

Supporting materials we used in preparing this rule, such as the species status assessment report, are available at *https://www.fws.gov/species/western-fanshell-cyprogenia-aberti, https://www.fws.gov/species/ouachita-fanshell-cyprogenia-sp-cf-aberti,* and *https://www.regulations.gov* under Docket No. FWS–R3–ES–2021–0061. For the critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file for this critical habitat designation and are available at *https://www.regulations.gov* at Docket No. FWS–R3–ES–2021–0061, and on the Service's websites at *https://www.fws.gov/species/western-fanshell-cyprogenia-aberti* for western fanshell and *https://www.fws.gov/species/ouachita-fanshell-cyprogenia-sp-cf-aberti* for ''Ouachita'' fanshell.

FOR FURTHER INFORMATION CONTACT: For information about the western fanshell, contact John Weber, Field Supervisor, U.S. Fish and Wildlife Service, Missouri Ecological Services Field Office, 101 Park DeVille Drive, Suite A, Columbia, MO 65203–0057; telephone 573–234–2132. For information about the ''Ouachita'' fanshell, contact Melvin Tobin, Field Supervisor, U.S. Fish and Wildlife Service, Arkansas Ecological Services Field Office, 110 South Amity Road, Suite 300, Conway, AR 72032–8975; telephone 501–513–4473. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the western fanshell and ''Ouachita'' fanshell meet the definition of threatened species; therefore, we are listing them as such and finalizing a designation of their critical habitat. Both listing a species as an endangered or threatened species and designating critical habitat can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This rule lists the western fanshell and ''Ouachita'' fanshell as threatened species and issues regulations under section 4(d) of the Act (a ''4(d) rule'') for the conservation of both species. This rule designates critical habitat for the western fanshell in 6 units totaling approximately 261.4 river miles (river mi) (420.7 kilometers (km)) within portions of 6 counties in Arkansas and 4 counties in Missouri. Additionally, this rule designates critical habitat for the ''Ouachita'' fanshell in 3 units totaling approximately 227.7 river mi (366.5 km) within portions of 12 counties in Arkansas.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that western fanshell and ''Ouachita'' fanshell are threatened due to the following threats: water quality degradation, altered flow, landscape changes, and habitat fragmentation (Factor A). These threats are reasonably expected to be exacerbated by continued urbanization, and threats of water quality (temperature) and flow are especially exacerbated by climate change (Factor E).

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary), to the maximum extent prudent and determinable, to designate critical habitat concurrent with listing. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat. Also,

although this critical habitat designation was proposed when the regulatory definition of ''habitat'' (85 FR 81411; December 16, 2020) and the regulations at 50 CFR 17.90 concerning exclusions from critical habitat designation (85 FR 82376; December 18, 2020) were in place and in effect, those two regulations have been rescinded (87 FR 37757, June 24, 2022; 87 FR 43433, July 21, 2022) and no longer apply to any designations of critical habitat. Therefore, for this final rule designating critical habitat for the western fanshell and ''Ouachita'' fanshell, we apply the regulations at 50 CFR 424.19 and the 2016 joint (with the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration) Policy Regarding Implementation of Section 4(b)(2) of the Act (81 FR 7226; February 11, 2016).

Previous Federal Actions

Please refer to our March 3, 2022, proposed rule (87 FR 12338) for detailed descriptions of previous Federal actions concerning the western fanshell and ''Ouachita'' fanshell.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the western fanshell and ''Ouachita'' fanshell. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the western fanshell and ''Ouachita'' fanshell, including the impacts of past, present, and future factors (both negative and beneficial) affecting each species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited independent scientific review of the information contained in the SSA report. As discussed in our March 3, 2022, proposed rule (87 FR 12338), we sent the SSA report to five independent peer reviewers and received two responses. The peer reviews can be found at *https://www.regulations.gov* under Docket No. FWS–R3–ES–2021–0061. In preparing the March 3, 2022, proposed rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which was the foundation for the proposed rule and this final rule. A summary of the peer review comments and our responses can be found in the Summary of Comments and Recommendations below.

Summary of Changes From the Proposed Rule

This final rule incorporates changes from our March 3, 2022, proposed rule (87 FR 12338) based on the comments that we received and respond to in this document, and this rule considers efforts in Arkansas and Kansas to conserve the western fanshell and ''Ouachita'' fanshell. We made minor, nonsubstantive changes to the SSA report in response to comments we received (*e.g.,* we added information on and citations for forestry best management practices in the discussion of threats in the SSA report). The information we received during the comment period did not change our determination that the western fanshell and ''Ouachita'' fanshell are threatened species.

Substantive comments we received during the public comment period for the March 3, 2022, proposed rule (see Summary of Comments and Recommendations, below) include a request to exclude critical habitat from the State of Kansas because of overlap with existing State critical habitat designations. Subsequently, the Service approved an amendment, submitted by the State of Kansas, to include the western fanshell as a covered species under The Kansas Aquatic Species Conservation Agreement: A Programmatic Safe Harbor Agreement and Candidate Conservation Agreement with Assurances for Fourteen Aquatic Species in Kansas (hereafter, the ''Kansas Agreement'') on December 13, 2022.

Based on our analysis, which incorporates the value of the Kansas Agreement plus two additional agreements in Arkansas, in this final rule, we are excluding proposed Unit WF 4 in Arkansas, and all proposed critical habitat in Kansas (including proposed Units WF 3 and WF 9, as well as a portion of proposed Unit WF 8) for the western fanshell, a net decrease of 98.5 river mi (158.4 km) from the proposed designation (see table 2, below). We are also excluding proposed Unit OF 2 and a portion of proposed Unit OF 4 in Arkansas for ''Ouachita'' fanshell, a net decrease of 66.8 river mi (107.4 km) from the proposed designation (see table 3, below). More information can be found below under Consideration of Impacts under Section 4(b)(2) of the Act, *Exclusions Based on Other Relevant Impacts.*

To minimize disruptions to surveys and research, we added to the 4(d) rule a temporary exception for purposeful take that results from capture, handling, and release of western fanshell and ''Ouachita'' fanshell related to presence/absence surveys, studies to document habitat use, and population monitoring by individuals permitted to conduct these same activities for other species of mussels for a period of 6 months from this final rule's effective date (see **DATES**, above). After the 6-month period, a permit pursuant to section 10(a)(1)(A) of the Act is required for the capture and handling of western fanshell and ''Ouachita'' fanshell.

Summary of Comments and Recommendations

In our March 3, 2022, proposed rule (87 FR 12338), we requested that all interested parties submit written comments on or before May 2, 2022. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposed rule. Newspaper notices inviting general public comment were published in the following newspapers: Daily Journal (March 5, 2022), Joplin Globe (March 4, 2022), Wayne County Journal Banner (March 7, 2022), Daily American Republic (March 5, 2022), Arkansas Democratic Gazette (March 6, 2022), Examiner-Enterprise (March 8, 2022), Tulsa World (March 6, 2022), Independence Daily Reporter (March 5, 2022), The Morning Sun (March 8, 2022), The Eureka Herald (March 9, 2022), and The Galena Sentinel Times (March 9, 2022). We did not receive any requests for a public hearing. All substantive information received during the comment period has either been incorporated directly into this final rule or is addressed below.

Peer Reviewer Comments

As discussed in Peer Review above, we received comments from two peer reviewers on the draft SSA report. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the information contained in the SSA report. The peer reviewers generally concurred with our methods and conclusions and provided support for thorough and descriptive narratives of assessed issues, additional information and citations, clarifications, and suggestions to improve the final SSA report. A theme from one reviewer indicated that the SSA under-represents available science, specifically related to the water quality, flow, and landscape conditions described in the SSA. We incorporated available species-specific and river-specific data into the SSA, including existing high stream

temperatures and expected rises in the future, the percent of forest along an occupied stream, and the density of road crossings. Otherwise, no substantive changes to our analyses and conclusions within the SSA report were deemed necessary, and peer reviewer comments are addressed in version 1.0 of the SSA report.

State Agency Comments

We received comments from agencies in two States: Kansas and Oklahoma.

(1) Comment: The Kansas Department of Wildlife and Parks (KDWP) suggested that overlapping Federal critical habitat with State-designated critical habitat would not provide additional net benefits to the species and requested that we exclude all areas of proposed critical habitat in Kansas that are currently designated as State critical habitat.

Our Response: The Service is not relieved of its statutory obligation to designate critical habitat based on the contention that it will not provide additional conservation benefit (see *Ctr. for Biological Diversity* v. *Norton,* 240 F. Supp. 2d 1090 (D. Ariz. 2003)). However, subsequent to their comment on the proposed rule, the KDWP submitted an application to amend the Kansas Agreement to include the western fanshell as a covered species. We approved the amendment on December 13, 2022. We have determined that the benefits of exclusion outweigh the benefits of inclusion of proposed critical habitat in the State of Kansas (including proposed Units WF 3 and WF 9, as well as a portion of proposed Unit WF 8) for western fanshell, and we are, therefore, excluding proposed critical habitat in Kansas from this final designation. See Consideration of Impacts under Section 4(b)(2) of the Act, below, for more information.

(2) Comment: The KDWP requested that the 4(d) rule include a requirement for consultation with KDWP for channel and bank restoration projects, if mussels are found during surveys, to obtain proper State permits.

Our Response: For channel and bank restoration projects, the 4(d) rule excepts take incidental to otherwise lawful activities. This means that to qualify under this exception, project proponents must satisfy all Federal, State, and local permitting requirements. Therefore, we have not made any changes to the 4(d) rule in response to this comment.

(3) Comment: The KDWP recommended that the 4(d) rule include a requirement to conduct surveys for species prior to commencing transportation project activities and to relocate species in consultation with the Service and KDWP.

Our Response: The exception for incidental take for transportation projects in the 4(d) rule covers only those activities that avoid or do not include instream disturbance; transportation projects with instream disturbance are not covered by this exception. Therefore, requirements for surveys are not necessary in this exception, and we have made no changes to the 4(d) rule in response to this comment.

(4) Comment: The KDWP suggested that we add an exception to the 4(d) rule that all activities associated with conducting scientific presence/absence surveys, studies to document habitat use, population monitoring, evaluation of potential impacts to the species, and relocation efforts be exempt from Service permitting requirements, provided that the individual holds a valid scientific collecting permit for mussels from the appropriate State wildlife agency.

Our Response: During the public comment period, we specifically sought comments on inclusion of the suggested exception in the 4(d) rule. However, we have determined that permitting requirements and regulations vary by State and that including this exception in the 4(d) rule would not provide for the conservation of the species. Therefore, we are not including the suggested exception in this final 4(d) rule.

To allow time for us to process applications for amendments to existing permit holders, the final 4(d) rule does temporarily except purposeful take that results from capture, handling, and release of western fanshell and ''Ouachita'' fanshell related to presence/absence surveys, studies to document habitat use, and population monitoring by individuals permitted to conduct these same activities for other species of mussels for a period of 6 months from this final rule's effective date (see **DATES**, above).

(5) Comment: The KDWP suggested that we include an exception in the 4(d) rule for the temporary collection of females for propagation when used in conjunction with approved species recovery efforts by State and Federal hatcheries, as well as an exception for holding offspring during these efforts, and the Oklahoma Department of Wildlife Conservation (ODWC) requested that we include an exception in the 4(d) rule for mussel community surveys that are conducted or sponsored by a State wildlife agency.

Our Response: This final 4(d) rule includes an exception for take, as set forth at 50 CFR 17.31(b). This provision allows any employee or agent of the Service, National Marine Fisheries Service, or State conservation agency that is operating a conservation program pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes when acting in the course of official duties, to take those threatened species of wildlife that are covered by an approved cooperative agreement to carry out conservation programs. The temporary collection of females for propagation by State hatcheries, holding females and offspring for propagation for recovery purposes at State hatcheries, and surveys conducted by a State agency or an agent of the State are covered under this exception if the activity is included in the State's cooperative agreement with the Service. Therefore, an additional exception in the 4(d) rule is not necessary, and we made no changes to the final rule in response to this comment.

(6) Comment: The ODWC stated that surveys for western fanshell in Oklahoma from 1989 onward have shown the species to be rare and lacking a self-sustaining population within the State of Oklahoma. The ODWC also indicated that a future mussel community project is planned for the Oklahoma portions of the Caney and Verdigris rivers, which will provide updated status information for western fanshell in those portions.

Our Response: The most recently documented occurrences of western fanshell in Oklahoma from 2006 are likely part of a population inhabiting Middle Verdigris River, including both sides of the Kansas-Oklahoma State line. Available data indicate that population is increasing in abundance and is successfully recruiting new juveniles. We look forward to updated information from Oklahoma.

Public Comments

(7) Comment: One commenter stated the scientific literature does not justify recognition of ''Ouachita'' fanshell as a distinct species, specifically referencing Kim and Roe (2021) findings that more work is necessary before the ''genetically distinct clusters'' are formally recognized, and the commenter expressed concern with the Service listing ''Ouachita'' fanshell as an undescribed species.

Our Response: We acknowledge that ''Ouachita'' fanshell has not been formally recognized by the scientific

community. However, there is compelling scientific evidence supporting its eventual recognition. Kim and Roe (2021, p. 10) found that *Cyprogenia* west of the Mississippi River, within the range of *C. aberti,* form two distinct lineages (Ozark and Ouachita regions) and both entities are distinct enough to warrant recognition as separate species. We acknowledge that more samples are needed from the Arkansas River drainage in Kansas because these samples formed a sister clade to the Ozark region *C. aberti* populations and were also a distinct group in the Bayesian clustering analysis (Kim and Roe 2021, p. 10). Because Fall and Verdigris rivers in the Arkansas River basin are the type localities for the names *Unio aberti* (Conrad 1850) and *Unio popenoi* (Call 1855), determining the affinities of the Fall and Verdigris River populations is essential to the correct name assignment for *C. aberti.* This is the primary reason cited by Kim and Roe (2021, p. 10) for waiting on taxonomic changes until additional geographic sampling occurs in the Arkansas River basin, specifically pertaining to *C. aberti* from the Ozark region and Arkansas River basin.

The process for naming a newly recognized species may sometimes take longer even though the science has been accepted. We acknowledge that questions remain surrounding the application of a specific name to ''Ouachita'' fanshell, as discussed above; however, this does not invalidate the scientific validity of ''Ouachita'' fanshell as a separate species. The Act requires us to use the best scientific and commercial data available, which indicate that the ''Ouachita'' fanshell is a separate species from western fanshell. Therefore, we are listing the ''Ouachita'' fanshell as it is currently described. We will update this mussel's entry on the List of Endangered and Threatened Wildlife once a name has been formally established in the future.

(8) Comment: One commenter stated that the western fanshell is already listed and receives protections under State law in Kansas, including State critical habitat; therefore, listing the western fanshell as threatened is unnecessary for the conservation of the species.

Our Response: Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered within the foreseeable future throughout all or a significant portion of its range). In determining whether a species meets the Act's definition of an endangered or threatened species, under section 4(b)(1)(A) of the Act, we are required to make that determination based solely on the best scientific and commercial data available. Based on the best available scientific and commercial data, we have determined that western fanshell and ''Ouachita'' fanshell are threatened species due to the following threats: water quality degradation, altered flow, landscape changes, and habitat fragmentation (Factor A). These threats are reasonably expected to be exacerbated by continued urbanization, and threats of water quality (temperature) and flow are especially exacerbated by climate change (Factor E). Based on our analysis, we have determined that the western fanshell and ''Ouachita'' fanshell meet the Act's definition of threatened species; therefore, we are listing them as such and finalizing a designation of their critical habitat. Under 16 U.S.C. 1531(b), the purposes of listing and designation of critical habitat under the Act for these mussel species and other listed species are to provide, in part, a means whereby the ecosystems upon which they depend may be conserved and to provide a program for the species' conservation.

(9) Comment: One commenter suggested expanding the 4(d) rule to expressly include all conservation efforts beneficial to the species, such as scientific studies and monitoring, as well as an exception from take for conservation efforts (including propagation and holding of offspring until they can be stocked). The commenter suggested that without this expansion, conservation efforts would be complicated and neighboring landowners would be less willing to participate in conservation programs or to allow conservation efforts on their lands because of the risk of liability under the Act.

Our Response: Existing agreements between the Service and State wildlife agencies under section 6 of the Act already provide authorization for the States to perform surveys and conduct other conservation work on listed species. As noted above (see our response to *(4) Comment*), we have concluded that an exception to requirements for obtaining a permit for surveys under section 10(a)(1)(A) of the Act would not provide for the conservation of the species due to varying permitting requirements and regulations among States. Programs are available to private landowners for managing habitat for listed species; permits can also be obtained to protect private landowners from the take prohibition when such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Private landowners may contact their local Service field office to obtain information about these programs and permits.

However, this final 4(d) rule does temporarily except purposeful take that results from capture, handling, and release of western fanshell and ''Ouachita'' fanshell related to presence/absence surveys, studies to document habitat use, and population monitoring by individuals permitted to conduct these same activities for other species of mussels for a period of 6 months from this final rule's effective date (see **DATES**, above).

(10) Comment: One commenter expressed concern that listing could frustrate the KDWP and private landowners and complicate conservation measures taken by them for the conservation of the western fanshell and other aquatic species.

Our Response: We understand that listing the western fanshell may generate concern about the effect on conservation efforts. The KDWP applied for an amendment to include the western fanshell as a covered species under the Kansas Agreement, which we approved on December 13, 2022. Inclusion of the species in the Kansas Agreement will enhance engagement with private landowners to implement conservation actions for the species by providing assurances to landowners and removing regulatory uncertainty.

(11) Comment: One commenter stated that the areas proposed as critical habitat for western fanshell in Kansas overlap with critical habitat for State-listed species and, therefore, are redundant and unnecessary.

Our Response: The Service is not relieved of its statutory obligation to designate critical habitat based on the contention that it will not provide additional conservation benefit. In *Ctr. for Biological Diversity* v. *Norton,* 240 F. Supp. 2d 1090 (D. Ariz. 2003), the court held that the Act does not direct us to designate critical habitat only in those areas where ''additional'' special management considerations or protection are needed. See also *Cape Hatteras Access Preservation Alliance* v. *U.S. Dept. of Interior,* 731 F.Supp.2d (D.D.C. 2010). If any area provides the PBFs essential to the conservation of the species, even if that area is already well managed or protected, that area may still qualify as critical habitat under the statutory definition.

(12) Comment: One commenter stated that the proposed rule's description of water quality threats is generic and fails

to point out which specific contaminants have led to mussel population declines in the proposed critical habitat units.

Our Response: The water quality parameters we considered are discussed in the *Species Needs,* ''Water Quality,'' and Physical or Biological Features Essential to the Conservation of the Species discussions in the proposed rule (see 87 FR 12338, March 3, 2022, pp. 12344, 12354) and in the same discussions (below) in this final rule. Specific contaminants and their toxicity levels are discussed in the SSA report (Service 2022, pp. 53–58). These contaminants include total ammonia nitrogen (TAN), nitrates and nitrites, cadmium, copper, zinc, and lead. Table 4.4 of the SSA report lists the toxicity levels of each contaminant, and table 4.6 shows the data by river (Service 2022, pp. 35, 41). Water quality data indicate the two fanshell mussels have been exposed to nitrates, nitrites, zinc, and copper at concentrations that cause acute toxicity and may be exposed to toxic levels of lead in the future (Service 2022, p. 55). However, our results indicated that TAN and cadmium were not stressors to either species now or in future scenarios (Service 2022, p. 36). Water quality data are available for each river within the species' ranges but not for each critical habitat unit specifically.

(13) Comment: One commenter noted that ammonia nitrogen levels and low dissolved oxygen were not found to be threats and suggested the 4(d) rule should include an exception for take resulting from standard agricultural practices to allow neighboring landowners to continue their routine agricultural practices and incentivize partnerships between the landowner, State, and Service.

Our Response: Under section 4(d) of the Act, when we list a species as a threatened species, we issue such regulations as deemed necessary and advisable to provide for the conservation of the species. In species-specific 4(d) rules, we focus our efforts on incentivizing known beneficial actions for the species, as well as removing the regulatory burden on forms of take that are considered inconsequential to the conservation of the species. While the SSA report did not find TAN or low dissolved oxygen were threats to either species (Service 2022, p. 36), our analysis found nitrates, nitrites, and sedimentation with agricultural activities as partial sources are threats to both species (Service 2022, pp. 40, 55–57). While we carefully considered this request, excepting incidental take from agricultural activities would not provide a clear conservation benefit to the western fanshell or ''Ouachita'' fanshell, and we did not include this exception in the final 4(d) rule.

We acknowledge that building partnerships and promoting cooperation of landowners are essential to understanding the status of species on non-Federal lands and may be necessary to implement recovery actions such as habitat restoration. For private landowners, we offer voluntary SHAs that can contribute to the recovery of species, habitat conservation plans (HCPs) that allow activities to proceed while minimizing effects to species, and funding through the Partners for Fish and Wildlife Program to help promote conservation actions.

(14) Comment: One commenter expressed concern that not many channel and bank restoration and transportation projects would qualify as projects that do not involve disturbing the water as stipulated in the proposed 4(d) rule.

Our Response: The purpose of the 4(d) rule is to incentivize positive conservation actions and streamline the regulatory process for minor impacts. To clarify, the exception in the 4(d) rule for channel and bank restoration does not require that projects do not disturb instream waters. The exception for transportation projects is for those projects that avoid instream disturbance in waters occupied by the western fanshell or ''Ouachita'' fanshell. We are not excepting take from transportation projects with instream disturbance because these project types may require incorporation of site-specific measures to avoid and minimize effects to the western fanshell or ''Ouachita'' fanshell.

(15) Comment: One commenter expressed concern that critical habitat may lead to severe restrictions to private property and restricting bank stabilization and channel maintenance activities in the critical habitat units will limit stream restoration activities benefiting the species.

Our Response: The designation of critical habitat will not impose any restrictions on non-Federal actions for private landowners, provided there is no Federal nexus. If there is a Federal nexus and the action of the Federal agency may affect the species or its designated critical habitat, then the Federal agency will need to consult with the Service. However, the 4(d) rule provides, among others, an exception for take related to channel and bank restoration projects. Although the 4(d) rule does not alleviate a Federal agency's obligation to consult under section 7 of the Act, this exception for channel and bank restoration projects will help to streamline future consultations.

I. Final Listing Determination

Background

The western fanshell (*Cyprogenia aberti*) is a freshwater mussel in the Unionidae family. Adults are a dull tan with a distinctive ray pattern from bands of tiny pigment flecks. The shell is thick, compressed to moderately inflated, and round to triangular (up to 3 inches (76 millimeters)), with a wrinkled or rough appearance (Conrad 1850, p. 10; McMurray et al. 2012, p. 30; Oesch 1995, pp. 143–144; Roe 2004, pp. 4–5).

Recent molecular analysis of *Cyprogenia* identified the fanshell from the Ouachita River basin in Arkansas and Louisiana as an independent evolutionary lineage (Kim and Roe 2021, p. 10; Chong et al. 2016, pp. 2445–2449). There is uncertainty regarding what name is available for the Ouachita River drainage fanshell. Further taxonomic changes are pending additional geographic sampling to understand the correct name assignment (Kim and Roe 2021, p. 10), but this does not invalidate the distinctiveness of the Ouachita River basin *Cyprogenia* as a separate species.

The Arkansas Wildlife Action Plan refers to the species as the ''Ouachita'' fanshell (*C.* cf. *aberti*) (Arkansas Game and Fish Commission 2015, p. 974). Based on this information, we find the ''Ouachita'' fanshell is a listable entity under the Act, and we follow this naming convention until a specific epithet can be designated.

The western fanshell is currently found in the Lower Mississippi-St. Francis, Neosho-Verdigris, and Upper White River basins, within the States of Arkansas, Kansas, Missouri, and Oklahoma (Service 2022, pp. 22–29; see figure 1, below). It is considered extirpated from the Lower Arkansas basin. The ''Ouachita'' fanshell currently occurs in the Lower Red-Ouachita basin in Arkansas and historically in Louisiana (Service 2022, pp. 29–32; see figure 2, below).

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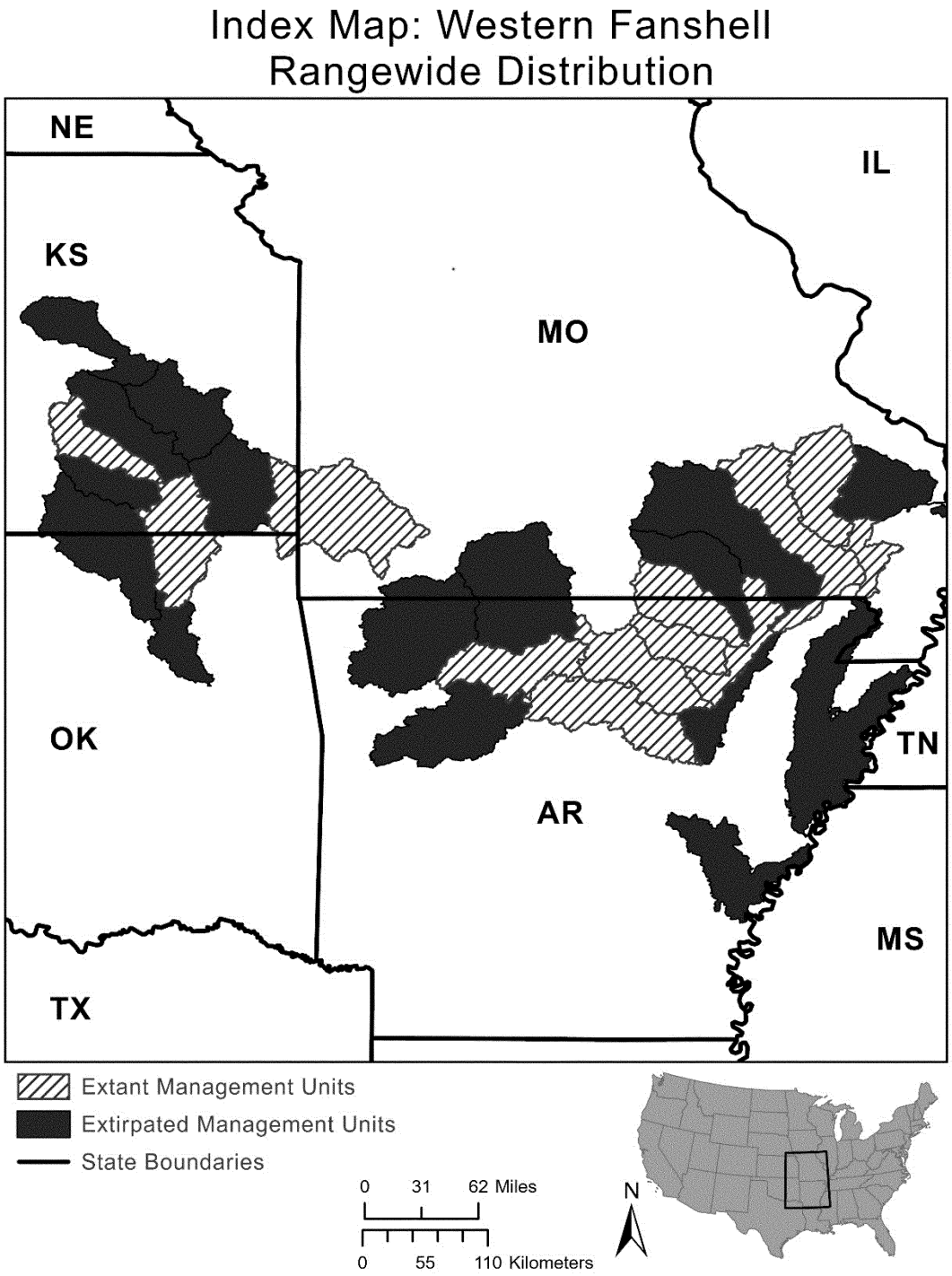

Figure 1. Distribution of the extant and extirpated management units of western fanshell in Arkansas, Kansas, Missouri, and Oklahoma.

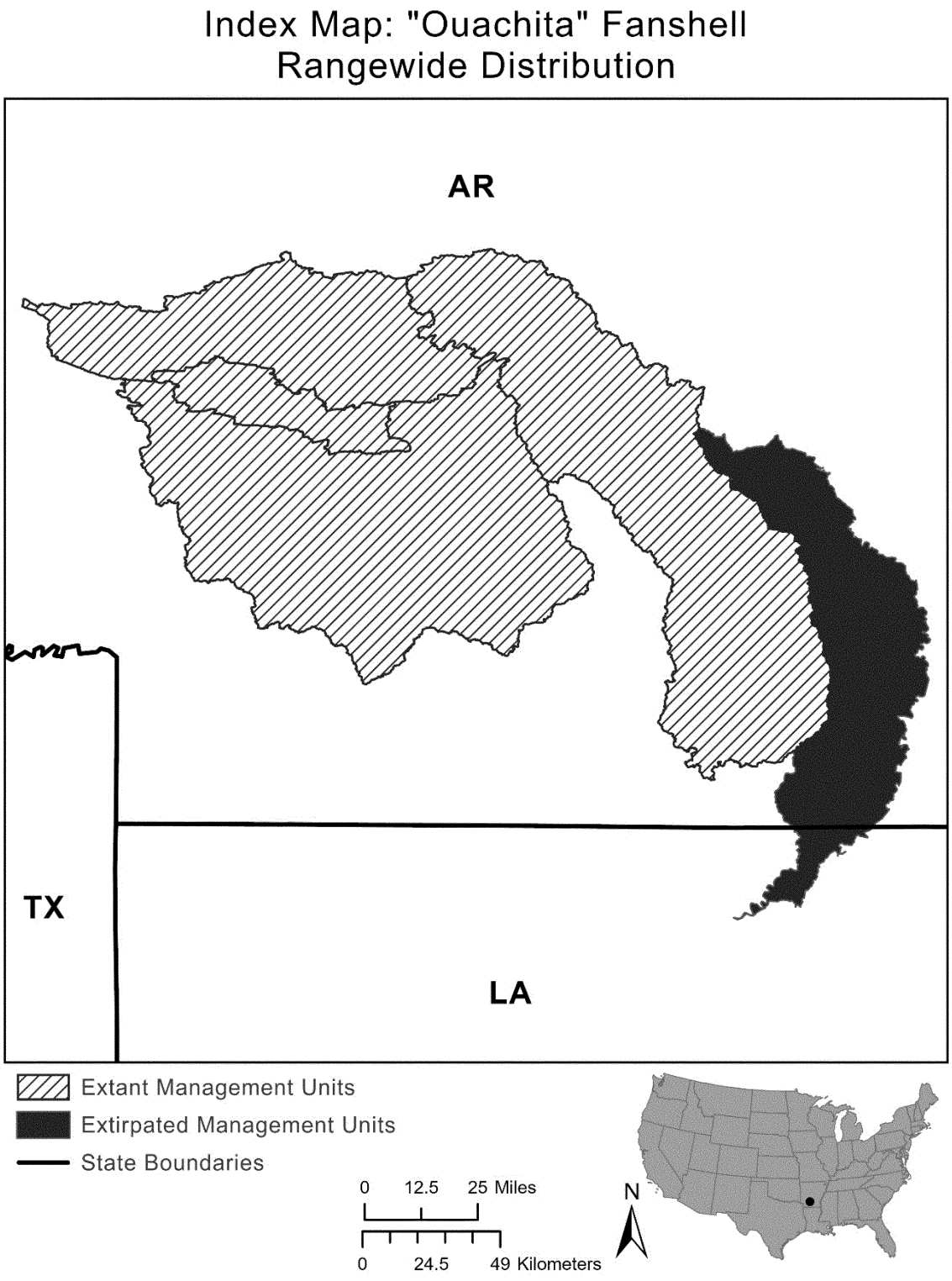

Figure 2. Distribution of the extant and extirpated management units of "Ouachita" fanshell in Arkansas and Louisiana.

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Both species are typically found in large creeks and rivers with good water quality, moderate to swift current, and gravel-sand substrates, but specific information on microhabitat requirements is lacking. Like all mussels, these two species of fanshell are omnivores that primarily filter-feed on a wide variety of microscopic particulate matter suspended in the water column, including phytoplankton, zooplankton, bacteria, detritus, and dissolved organic matter (Haag 2012, p. 26). As with most freshwater mussels,

the fanshell mussels have a unique life cycle that relies on fish hosts for successful reproduction (Barnhart et al. 2008, pp. 371–373; Vaughn and Taylor 1999, p. 913; Barnhart 1997, p. 12).

Thorough reviews of the taxonomy, life history, and ecology of the western fanshell and ''Ouachita'' fanshell are presented in detail in the SSA report (Service 2022, pp. 9–16).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of both species, including an assessment of potential threats to the species. The SSA report does not represent our decision on whether either species should be listed as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess the western fanshell's and ''Ouachita'' fanshell's viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the

species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report for the western fanshell and ''Ouachita'' fanshell; the full SSA report can be found in Docket No. FWS–R3–ES–2021–0061 at *https://www.regulations.gov.*

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the western fanshell and ''Ouachita'' fanshell, their resources, and the threats that influence both species' current and future condition, to assess each species' overall viability and the risks to that viability.

Species Needs

Fanshell mussels feed primarily on a wide variety of microscopic particulate matter, including phytoplankton, zooplankton, bacteria, detritus, and dissolved organic matter (Haag 2012, p. 26). Juveniles likely pedal feed in the sediment, whereas adults filter-feed from the water column.

As with most freshwater mussels, both fanshell mussels rely on a host fish for reproduction. The female mussel holds the fertilized eggs internally as they develop into larvae. Once mature, the larvae are released as glochidia, which attach on the gills, head, or fins of fishes (Barnhart et al. 2008, pp. 371–373; Vaughn and Taylor 1999, p. 913). Glochidia encyst (enclose in a cyst-like structure) on the host's tissue and draw nutrients from the fish. The glochidia for the fanshell mussels remain encysted for about a month until transformation to the juvenile stage, at which point they release from the fish and drop to the substrate (Barnhart 1997, p. 12). Glochidia die if they fail to find a host fish, attach to the wrong species of host fish, attach to a fish that has developed immunity from prior infestations, or attach to the wrong location on a host fish (Bogan 1993, p. 599; Neves 1991, p. 254).

Logperch (*Percina caprodes*) is a suitable fish host for both fanshell species in all river basins (Eckert 2003, pp. 18–19). Slenderhead darter (*Percina phoxocephala*) and orangebelly darter (*Etheostoma radiosum*) are suitable hosts for ''Ouachita'' fanshell (Eckert 2003, p. 46), while slenderhead darter, fantail darter (*Etheostoma flabellare*), rainbow darter (*Etheostoma caeruleum*), and orangebelly darter are suitable hosts for western fanshell, but only for their respective sympatric fanshell mussel population (Eckert 2003, p. 33). In other words, glochidia had greater success transforming on darters from the same stream as the mussel. For example, a higher percentage of glochidia from Ouachita River transformed on orangebelly darters from Ouachita River than on orangebelly darters from Verdigris River (Eckert 2003, p. 11).

We assessed the best available information to identify the physical and biological needs to support individual fitness at all life stages for the western fanshell and ''Ouachita'' fanshell. Full descriptions of all needs are available in chapter 2 of the SSA report (Service 2022, pp. 9–16). Based upon the best available scientific and commercial information, the resource needs for both species are characterized as:

- Stable river channels and banks (for example, stable riffles, sometimes with runs, and mid-channel island habitats that provide flow refuges), consisting of mixed sand, gravel, and cobble substrates with low to moderate amounts of fine sediment and attached filamentous algae;
- A hydrologic flow regime (the severity, frequency, duration, and seasonality of discharge over time) that maintains the benthic habitats where the species are found and the river connectivity with the floodplain;
- Habitat connectivity (that is, a lack of barriers for passage of host fish, which are necessary for dispersal of mussels);
- Water and sediment quality, such as (but not limited to) dissolved oxygen above 3 parts per million (ppm), ammonia generally below 1.0 ppm total ammonia-nitrogen, temperatures generally below 80 degrees Fahrenheit (°F) (27 degrees Celsius (°C)), low concentrations of metals, and an absence of excessive total suspended solids and other pollutants;
- The presence and abundance of fish hosts (logperch, slenderhead darter, fantail darter, rainbow darter, and orangebelly darter) necessary for recruitment of the fanshell mussels; and
- Appropriate food sources (phytoplankton, zooplankton, protozoans, detritus, and dissolved organic matter) in adequate supply.

Threats Analysis

We identified water quality degradation, altered flow, landscape changes, and habitat fragmentation, all of which are exacerbated by the effects of climate change, as the primary threats affecting the western fanshell and ''Ouachita'' fanshell (Service 2022, p. 53). We acknowledge that invasive species can have individual and, in some circumstances, population-level effects to mussels. However, the best available data do not support that invasive species are a driving force affecting the current or future conditions of these two fanshell mussels (Service 2022, pp. 64–65). The primary threats are discussed below.

Given that both of the fanshells' ranges include medium to large rivers with some populations fragmented by dams and creation of navigation channels, we delineated separate populations for each watershed through which these streams flow (if there was an occurrence record for the stream in that watershed), based on the hydrologic unit code (HUC) (Seaber et al. 1987, entire; U.S. Geological Survey 2018, entire) at the fourth of six levels (that is, the HUC–8 watershed), and termed these ''management units'' (MUs). MUs represent areas with one or more populations capable of dispersal and interaction. As a result, some watersheds have been combined into one management unit because of a lack of dispersal barriers and some divided into multiple management units. MUs were identified as most appropriate for assessing population-level resiliency because the stream level was determined to be too coarse of a scale to estimate the condition factors influencing resiliency (Service 2022, p. 17). We defined a MU as currently extant if it contains live or recent dead individuals observed in surveys from 2000 to the present (Service 2022, p. 22).

Water Quality

Chemical contaminants are a major threat in the decline of mussel species (Cope et al. 2008, p. 451; Richter et al. 1997, p. 1081; Strayer et al. 2004, p. 436; Wang et al. 2007a, p. 2029). Chemicals enter rivers through point and nonpoint discharges, including spills, industrial and municipal effluents, and residential and agricultural runoff. These sources contribute organic compounds, heavy metals, nutrients, pesticides, and a wide variety of newly emerging contaminants, such as pharmaceuticals, to the aquatic environment.

The western fanshell has been exposed to zinc and copper at

concentrations that cause acute toxicity (Service 2022, p. 41) and may be exposed to toxic levels of lead in the future (Service 2022, appendix I–D–I–E). Metals from mine water runoff (for example, the Tri-State Mining District in southwest Missouri and southeast Kansas) contributed to mussel declines in Shoal Creek and Spring River in the Arkansas River basin (Angelo et al. 2007, p. 467; EcoAnalysts, Inc. 2018, p. 59).

Nutrients, such as nitrogen and phosphorus, primarily occur in runoff from livestock farms, feedlots, heavily fertilized row crops and pastures (Peterjohn and Correll 1984, p. 1471), post timber management activities, and urban and suburban runoff (including residential lawns and leaking septic tanks). Sources of ammonia include agricultural wastes (animal feedlots and nitrogenous fertilizers), municipal wastewater treatment plants, and industrial waste (Augspurger et al. 2007, p. 2569), as well as precipitation and natural processes (decomposition of organic nitrogen) (Augspurger et al. 2003, p. 2569; Goudreau et al. 1993, p. 212; Hickey and Martin 1999, p. 44; Newton et al. 2003, p. 1243). As discussed above under *Species Needs,* both fanshell species require dissolved oxygen above 3 ppm and ammonia generally below 1.0 ppm total ammonia-nitrogen. We analyzed total ammonia nitrogen data in rivers occupied by the two fanshell mussel species but did not find concentrations at levels expected to result in acute or chronic toxicity to mussels (Service 2022, p. 41, appendix I–D–I–E). In addition, nutrient enrichment increases primary productivity, and the associated algae respiration depletes dissolved oxygen levels. However, available water quality data indicate that hypoxia (low dissolved oxygen) is not occurring in occupied streams and is not currently a threat to the fanshell mussels.

Flow

Reductions in the diversity and abundance of mussels are principally attributed to habitat alteration caused by inundation of free-flowing rivers and streams (Neves et al. 1997, p. 60), which has occurred in portions of the fanshell mussels' ranges (for example, White, Ouachita, Caddo, and Neosho rivers). The construction of reservoirs and other impoundments permanently alters the hydrology, with deleterious effects to fish host movement and mussel dispersal.

The water released from the hypolimnion (lower layers of the lake) in large reservoirs is cold and often devoid of oxygen and necessary nutrients, which adversely affects mussel survival. Cold water can stunt mussel growth and delay or hinder spawning (Vaughn and Taylor 1999, p. 917). Reservoirs, like Bull Shoals on the White River in north-central Arkansas, that release cold water from the bottom of the reservoir (in part to support nonnative rainbow trout and brown trout recreational fisheries) can affect water temperatures for many kilometers downstream. These cold releases create an extinction gradient, where freshwater mussels are absent or present in low numbers near the dam, and abundance does not rebound until some distance downstream where ambient conditions raise the water temperature to within the tolerance limits of mussels (Vaughn and Taylor 1999, pp. 915–916).

In addition to low water temperature limits, freshwater mussels also have an upper water temperature threshold. As described above under *Species Needs,* both fanshell species require water temperatures generally below 80 °F (27 °C).

In ''Ouachita'' fanshell occupied streams from 1990 to 2018, the percent of water temperature samples exceeding 27 °C ranged from 6.9 to 15.4 percent, with maximum water temperature ranging from 30.3 °C to 36.6 °C. In western fanshell MUs from 1990 to 2018, the percent of water temperature samples exceeding 27 °C ranged from 0 to 12.6 percent, with maximum water temperature ranging from 22.0 °C to 35.8 °C.

Recruitment in some species of mussels is significantly related to components of spring and summer flow (Ries et al. 2016, p. 711). High velocity flows during spawning can decrease fertilization success (Ries et al. 2016, p. 712) and affect juvenile settling (Daraio et al. 2010, p. 838; Hardison and Layzer 2001, p. 77). Mussel beds may be constrained by threshold limits at both flow extremes. Under low flow conditions, mussels may require a minimum flow to transport nutrients, oxygen, and waste products. Under high flow conditions, areas with relatively low flow may provide a refuge for mussels (Steuer et al. 2008, p. 67). Fanshell mussels undoubtedly evolved in the presence of extreme hydrological conditions to some degree, including severe droughts leading to dewatering, and heavy rains leading to damaging scour events and movement of mussels and substrate, although the frequency, duration, and intensity of these events may be different from today. Streamflow and overall discharge for rivers inhabited by western and ''Ouachita'' fanshell mussels will likely decline due to climate change and projected increases in temperatures and evaporation rates, resulting in more frequent and intense droughts (LaFontaine et al. 2019, entire).

Excessive sediments adversely affect riverine mussel populations requiring clean, stable streams (Brim Box and Mossa 1999, p. 99; Ellis 1936, pp. 39–40). Specific biological effects include reduced feeding and respiratory efficiency from clogged gills, disrupted metabolic processes, reduced growth rates, limited burrowing activity, physical smothering, and disrupted host fish attraction mechanisms (Ellis 1936, pp. 39–40; Hartfield and Hartfield 1996, p. 373; Marking and Bills 1979, p. 210; Vannote and Minshall 1982, pp. 4105–4106; Waters 1995, pp. 173–175). The physical effects of sediment on mussel habitat include changes in suspended and bed material load; changes in bed sediment composition associated with increased sediment production and runoff in the watershed; channel changes in form, position, and degree of stability; changes in depth or the width and depth ratio that affects light penetration and flow regime, actively aggrading (filling) or degrading (scouring) channels; and changes in channel position. These effects to habitat may dislodge, transport downstream, or leave mussels stranded (Brim Box and Mossa 1999, pp. 109–112; Kanehl and Lyons 1992, pp. 4–5; Vannote and Minshall 1982, p. 4106).

Most sediment transport occurs during floods (Clark and Mangham 2019, pp. 6–7; Kondolf 1997, p. 533). An increase in flooding severity results in greater sediment transport, with important effects to substrate stability and benthic habitats for freshwater mussels, as well as other organisms that are dependent on stable benthic habitats (Kondolf 1997, p. 535). High base flows can incise channels, erode riverbanks, scour mussel beds, and remove substrate preferred by mussels. Over time, the physical force of these higher base flows can dislodge mussels from the sediment and permanently alter the geomorphology of rivers (Clark and Mangham 2019, pp. 6–7; Kondolf 1997, p. 533).

Runoff from impervious surfaces prevalent in urban areas affects the natural hydrology of streams by increasing flood magnitude, duration, and frequency (Bressler et al. 2009, p. 292). Frequent floods in urban areas scour stream substrate and banks, thereby increasing erosion and sedimentation and altering geomorphology. Geomorphic changes, such as changes in channel width, occur with impervious areas as low as 2 to 10 percent (Booth and Jackson 1997, p.

1084; Dunne and Leopold 1978, pp. 275–277; Morisawa and LaFlure 1979, figure 11). Initial degradation of fish communities and lower larval densities have been associated with as low as 10 percent impervious areas (Limburg and Schmidt 1990, pp. 1241–1242; Steedman 1988, pp. 498–499). Unpaved road networks also interact with streams, delivering sediment runoff and increasing water velocity entering stream channels, thereby increasing stream energy, eroding streambanks, scouring channels, and increasing flooding (Coffin 2007, pp. 397–398).

Landscape Alterations

Many rivers where the western fanshell and ''Ouachita'' fanshell occur are threatened by land use activities and changes (for example, increased urbanization, alteration of riparian buffers, improperly designed and maintained unpaved roads). Urbanization of a watershed can result in increased pollutant loads from stormwater runoff, altered flow, decreased bank stability, and increased water temperature. Urbanization can also indirectly increase channel erosion and downstream sedimentation by increasing the frequency and volume of channel-altering storm flows (Hammer 1972, p. 1530; Leopold 1968, entire). These effects of urbanization can lower fish species richness and density, leading to predictable changes in species composition, and these changes can accrue rapidly (less than 10 years) and are detectable at low levels (approximately 5 to 10 percent urbanization) (Walters et al. 2005, p. 1). In 2016, 80 percent of the western and ''Ouachita'' fanshell MUs had 5 percent or greater urban land use, but all were less than 10 percent (Service 2022, appendix I–A).

The amount of impervious surface and riparian forest cover influences stream hydrology and water quality (Brabec et al. 2002, pp. 505–507). Riparian forest cover intercepts and moderates the timing of runoff, buffers temperature extremes, filters pollutants in runoff, provides woody debris to stream channels that enhances aquatic food webs, and stabilizes excessive erosion. Furthermore, the removal of riparian trees in forested watersheds has a strong influence on stream invertebrate communities (Wallace et al. 1997, entire). In 2016, forest cover ranged from 70 to 76 percent in ''Ouachita'' fanshell MUs and from 12 to 77 percent in western fanshell MUs (Service 2022, appendix I–A).

Agricultural practices, such as livestock grazing and tilling on land adjacent to streams, can lead to soil erosion and subsequent runoff of fine sediments, nutrients, and pesticides (for example, Schulz and Liess 1999, p. 155). Watersheds with the most habitat converted to farmland often have the greatest levels of mussel richness decline (Poole and Downing 2004, p. 123). In 2016, agricultural land use ranged from 5 to 13 percent in ''Ouachita'' fanshell MUs and from 17 to 68 percent in western fanshell MUs and decreased in all MUs for both species from 2011 to 2016 (Service 2022, appendix I–A).

Roads adversely affect watershed integrity by intercepting, concentrating, and diverting water. Roads directly affect natural sediment and hydrologic regimes by altering stream flow, sediment loading, sediment transport and deposition, channel morphology, channel stability, substrate composition, stream temperature, water quality, and riparian condition (Lee et al. 1997, pp. 1102–1104). Hydrologic effects are sensitive to road density, with increased peak flows evident at road densities of 2 to 3 kilometers (km)/square kilometers (km^2) (Forman and Alexander 1998, p. 223). In 2016, unpaved road density in all the western and ''Ouachita'' fanshell mussel MUs were 1.6 km/km^2 or less.

Habitat Fragmentation

Hydrologic and geomorphic processes directly relate to habitat extent. The number and distribution of habitat patches and their connectivity influence species population health. Historically, the two fanshell species likely occurred throughout the river basins described in the SSA report (Service 2022, pp. 22–32). Large-scale reductions in mussel diversity and abundance are largely due to habitat changes caused by impoundments (Neves et al. 1997, p. 63). The number of impoundments in ''Ouachita'' fanshell MUs ranges from 3 to 51, and in western fanshell MUs ranges from 4 to 73.

Effects of Climate Change

We examined information on the anticipated effects of climate change, including changes to water temperatures and precipitation patterns. In its 5th Assessment Report, the Intergovernmental Panel on Climate Change (IPCC) adopted ''representative concentration pathways'' (RCPs), which are greenhouse gas concentration trajectories, to describe potential future climate outcomes, depending on the amount of greenhouse gases that are emitted in the future (IPCC 2014, pp. 126–127). Under RCP4.5 and RCP8.5, the seasonal averages of 30 Coupled Model Intercomparison Project 5 (CMIP5) models from 1950 to 2100 indicate warming air temperatures in the Lower Mississippi River region, with a central tendency of less than 2 inches change in precipitation (Alder and Hostetler 2013, pp. 2–3). We expect changes in stream temperatures to reflect changes in air temperature, at a rate of an approximately 0.6–0.8 °C increase in stream water temperature for every 1 °C increase in air temperature (Morrill et al. 2005, pp. 1–2, 15). These water temperature changes will have implications for temperature-dependent water quality parameters (such as dissolved oxygen and ammonia toxicity), spawning, and physiological effects to thermally sensitive species.

Future increases in the frequency and severity of both extreme drought and extreme rainfall are expected to transform many ecosystems in the Southeast, including Arkansas (Carter et al. 2018, pp. 743–808). Mussels are highly sensitive to secondary effects of drought (for example, water temperature, etc.), but their ability to withstand severe drought is highly dependent on where they occur (Haag and Warren 2008, p. 1165) and sufficient time between sequential drought events for mussel populations to recover (Vaughn et al. 2015, pp. 1297–1298).

We also considered whether the threats discussed above may be exacerbated by small population size (or low condition). Although there are populations in low condition in all the basins in which the two species occur, none of the basins have seen their populations reduced to one or two populations in low condition.

Regulatory Mechanisms

State Protections

In Kansas, the western fanshell is listed as State endangered with designated critical habitats under the Kansas Nongame and Endangered Species Conservation Act. Under State law, any time an eligible project is proposed that will impact the species' preferred habitats within its probable range in Kansas, the project sponsor must contact the KDWP regarding potential permit requirements. In addition, Kansas manages the take and possession of mussels for personal use and prohibits the personal take of any mussel species listed as endangered or threatened by Kansas or the Federal Government. The western fanshell and ''Ouachita'' fanshell do not receive protection under State law in any other States.

Other Regulatory Mechanisms

The U.S. Forest Service (2005, p. 58) established a wildlife and fish habitat road density objective of less than or equal to 1.6 km/2.6 km² on the Ouachita National Forest in west-central Arkansas, which includes the Ouachita Headwaters and Caddo MUs for ''Ouachita'' fanshell. The Arkansas Unpaved Roads Program, authorized by that State's Act 898 of the 90th General Assembly in 2015, establishes a proactive, incentive-based management program that results in utilization of best management practices on unpaved roads to minimize erosion and maintain and improve the health of priority lakes and rivers (TNC 2017, entire), including those where both fanshell mussel species occur.

Current Conditions

We described current (and future) conditions using categories that estimate the overall condition (resiliency) of the western fanshell and ''Ouachita'' fanshell populations. These categories are based on an evaluation of multiple population and habitat factors (Service 2022, pp. 17–21). In the absence of species-specific genetic information, we used contiguous hydrologic units at the HUC–4 level to assess the species' genetic, ecological, and geographical diversity (representation), and we used the number of populations and MUs to describe the species' redundancy.

Western Fanshell

The western fanshell's current range includes a total of 11 MUs across three HUC–4 units: Neosho-Verdigris (2 MUs), Lower Mississippi–St. Francis (3 MUs), and Upper White (6 MUs) river drainages of Arkansas, Missouri, Kansas, and Oklahoma. Historically, the western fanshell occurred in another 14 MUs and is presumed extirpated from the Lower Arkansas (HUC–4) river drainage. Of the current MUs, three (27 percent) are estimated to be highly resilient, three (27 percent) are estimated to be moderately resilient, and five (46 percent) are estimated to have low resiliency (Service 2022, pp. 37–46). The habitat conditions across the 11 extant populations are medium to high (Service 2022, p. 42).

''Ouachita'' Fanshell

The ''Ouachita'' fanshell currently occurs in four MUs within portions of the Ouachita River basin (HUC–4) in Arkansas. One MU is presumed extirpated. Of the current MUs, one (25 percent) is estimated to be highly resilient, one (25 percent) is estimated to be moderately resilient, and two (50 percent) are estimated to have low resiliency (Service 2022, pp. 47–49). The habitat conditions across the four extant populations are medium to high (Service 2022, p. 50).

Future Conditions

We forecasted the western fanshell's and ''Ouachita'' fanshell's responses to plausible future scenarios of varying environmental conditions. The future scenarios project the threats into the future and consider the impacts those threats could have on the viability of the western fanshell and ''Ouachita'' fanshell. We apply the concepts of resiliency, redundancy, and representation to the future scenarios to describe possible future conditions of the western fanshell and ''Ouachita'' fanshell. The scenarios described in the SSA report represent the plausible upper and lower bounds of the future conditions for each species. Uncertainty is inherent in any projection of future condition, so we must consider plausible scenarios to make our determinations. When assessing the future, viability is not a specific state, but rather a continuous measure of the likelihood that the species will sustain populations over time.

In the SSA, we considered two future scenarios. Scenario 1 assesses the species' responses to moderate increases in stressors influencing the western fanshell and ''Ouachita'' fanshell populations, although current conservation practices would remain in place. Scenario 2 assesses the species' responses to severe increases in stressors. We projected these two scenarios over a 40-year period. We restricted our evaluation to 40 years primarily due to limitations projecting non-modeled, extrapolated future conditions for water quality, road density, and habitat fragmentation. A full description of the future scenarios and our methods is available in the SSA report (Service 2022, pp. 67–72).

Under Scenario 1, populations of both fanshell species are projected to decline in resiliency and redundancy over time as conditions moderately decline from current conditions. For western fanshell, we project five (45 percent) of the currently extant MUs to become extirpated. Of the remaining six populations, four (67 percent) would be in medium condition, and two (33 percent) in low condition, with no MUs in high condition. For ''Ouachita'' fanshell, we project two (50 percent) of the currently extant MUs to become extirpated. Of the remaining two populations, one (50 percent) would be in medium condition, and one (50 percent) in low condition, with no MUs in high condition. Neither species loses any areas of representation although redundancy is reduced within the representation units (HUC–4 river basins) for both species. However, we do not expect reduced adaptive capacity of either species to future environmental change in the next 40 years.

While our projections under Scenario 2 do not anticipate additional extirpations (and therefore further loss of redundancy) from those observed under Scenario 1, we expect all remaining populations of both species to be in low condition in 40 years. All extant HUC–4 river basins would remain occupied for both species. However, we do not expect reduced adaptive capacity of either species to future environmental change in the next 40 years.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Determination of Status for the Western Fanshell and ''Ouachita'' Fanshell

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or

curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In conducting our status assessment of the western fanshell and ''Ouachita'' fanshell, we evaluated all identified threats under the Act's section 4(a)(1) factors and assessed how the cumulative impact of all threats acts on the viability of the species as a whole. That is, all the anticipated effects from both habitat-based and direct mortality-based threats are examined in total and then evaluated in the context of what those combined negative effects will mean to the current and future condition of the western fanshell and ''Ouachita'' fanshell. However, for the majority of potential threats, the effect on the western fanshell and ''Ouachita'' fanshell (*e.g.,* total losses of individual mussels or their habitat) cannot be quantified with available information. Instead, we use the best available information to gauge the magnitude of each individual threat on the western fanshell and ''Ouachita'' fanshell, and then assess how those effects combined (and may be ameliorated by any existing regulatory mechanisms or conservation efforts) will impact the western fanshell's or ''Ouachita'' fanshell's current and future viability.

Western Fanshell—Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we determined that the western fanshell has experienced a reduction in populations/MUs from historical conditions. However, the species still ranges over three of four major drainages (HUC–4 representation units) in which it historically occurred. Eleven of 27 historical MUs are extant. Of those 11, 3 MUs are currently in high condition, 3 in medium condition, and 5 in low condition. The majority (54 percent) of the MUs are in high or medium condition. Representation is maintained with at least one MU in high condition in each of the 3 extant representation units. With 11 extant MUs across three HUC–4s, the species currently retains redundancy to withstand and survive potential catastrophic events, although there is no imminent catastrophic threat. Therefore, after assessing the best available information, we conclude that the species is not currently in danger of extinction throughout all of its range.

However, the following threats currently acting on the western fanshell will likely continue into the foreseeable future and decrease the condition of the species further over time: water quality degradation, altered flow, landscape changes, and habitat fragmentation (Factor A). These threats are reasonably expected to be exacerbated by continued urbanization, and threats of water quality (temperature) and flow are especially exacerbated by climate change (Factor E). These threats will continue to impact the species into the foreseeable future, and the existing regulatory mechanisms (Factor D) are not adequately reducing the impact of these threats on the species. The best available data do not indicate that the western fanshell is currently impacted at the population level by overutilization for commercial, recreational, scientific, or educational purposes (Factor B) or predation or disease (Factor C), nor do the best available data indicate that the species will be impacted by these factors in the future.

Given the projection of threats 40 years into the future, the number of western fanshell populations will decline with the projected loss of five MUs, reducing the species' redundancy. Across the plausible future scenarios, resiliency also declines with zero to four populations projected to be in medium condition and two to six populations in low condition. No populations are projected to be in high condition in the foreseeable future. Representation is projected to remain across the range, but the considerable loss of redundancy and resiliency makes the species likely to become in danger of extinction in the foreseeable future throughout its range. Thus, after assessing the best available information, we conclude that the western fanshell is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Western Fanshell—Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), vacated the provision of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (Final Policy; 79 FR 37578; July 1, 2014) that provided if the Services determine that a species is threatened throughout all of its range, the Services will not analyze whether the species is endangered in a significant portion of its range.

Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Everson,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for the western fanshell, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species may be endangered.

We evaluated the range of the western fanshell to determine if the species is in danger of extinction now in any portion of its range. The range of a species can theoretically be divided into portions in an infinite number of ways. We focused our analysis on portions of the species' range that may meet the definition of an endangered species. For the western fanshell, we considered whether the threats or their effects on the species are greater in any biologically meaningful portion of the species' range than in other portions such that the species is in danger of extinction now in that portion.

We examined the following threats: water quality degradation, altered flow, landscape changes, and habitat fragmentation, including cumulative effects. We evaluated multiple factors—including various water quality parameters, land cover data, road density, and barriers—that contribute to these primary threats. These habitat factors are in a medium to high condition across the species' range with the exception of the Spring River MU, which has low water quality and low landscape conditions. However, overall habitat for the Spring River MU is medium condition. Based on this assessment, we found that threats are

acting similarly within the occupied river basins across the species' range. We found no locations where threats are more concentrated in any portion of the western fanshell's range at a biologically meaningful scale. There are no threats that are having greater impacts on the species in any one area. Therefore, there is no biologically meaningful portion that has a different status from the overall rangewide status. Thus, there are no portions of the species' range where the species has a different status from its rangewide status. Therefore, no portion of the species' range provides a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not apply the aspects of the Final Policy, including the definition of ''significant'' that those court decisions held to be invalid.

Western Fanshell—Determination of Status

Our review of the best available scientific and commercial information indicates that the western fanshell meets the Act's definition of a threatened species. Therefore, we are listing the western fanshell as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

''Ouachita'' Fanshell—Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we determined that the ''Ouachita'' fanshell has experienced a reduction in resiliency and redundancy from historical conditions. The species is extant in four MUs within one major drainage (HUC–4 representation unit). The species historically occurred in Bayou Bartholomew in Louisiana. Of the four extant MUs, one is currently in high condition, one in medium condition, and two in low condition. The species appears to be endemic to the Ouachita River basin. Although the species is known from only one representation unit, half of the extant populations are in high or medium condition, maintaining the species' representation. The species currently retains redundancy to withstand and survive potential catastrophic events, although there is no imminent catastrophic threat. Therefore, we determined that the species is not currently in danger of extinction throughout all of its range.

The following threats currently acting on the ''Ouachita'' fanshell will likely continue into the foreseeable future and decrease the condition of the species further over time: water quality degradation, altered flow, landscape changes, and habitat fragmentation (Factor A). These threats are reasonably expected to be exacerbated by continued urbanization, and threats of water quality (temperature) and flow are especially exacerbated by climate change (Factor E). These threats will continue to impact the species into the foreseeable future, and the existing regulatory mechanisms (Factor D) are not adequately reducing the impact of these threats on the species. The best available data do not indicate that the ''Ouachita'' fanshell is currently impacted at the population level by overutilization for commercial, recreational, scientific, or educational purposes (Factor B) or predation or disease (Factor C), nor do the best available data indicate that the species will be impacted by these factors in the future.

Given the projection of threats 40 years into the future, the number of ''Ouachita'' fanshell populations will decline with the projected loss of two MUs, reducing the species' redundancy. Resiliency also declines with three to four populations projected to be in low condition and zero to one population(s) in medium condition. No populations are projected to be in high condition in the foreseeable future. As the species occurs in only the Ouachita River basin, representation is projected to remain, but the considerable loss of redundancy and resiliency makes the species likely to become in danger of extinction in the foreseeable future throughout its range. Thus, after assessing the best available information, we conclude that the ''Ouachita'' fanshell is likely to become in danger of extinction within the foreseeable future throughout all of its range.

''Ouachita'' Fanshell—Status Throughout a Significant Portion of Its Range

See above, under *Western Fanshell—Status Throughout a Significant Portion of Its Range,* for a description of our evaluation methods and our policy application.

In undertaking the analysis for the ''Ouachita'' fanshell, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species may be endangered. For the ''Ouachita'' fanshell, we considered whether the threats or their effects on the species are greater in any biologically meaningful portion of the species' range than in other portions such that the species is in danger of extinction now in that portion.

We examined the following threats: water quality degradation, altered flow, landscape changes, and habitat fragmentation, including cumulative effects. We evaluated multiple factors—including various water quality parameters, land cover data, road density, and barriers—that contribute to these primary threats. These habitat factors are in a medium to high condition across the species' range with no habitat factors in low condition. Based on this assessment, we found that threats are acting similarly across the species' range. We found no locations where threats are more concentrated in any portion of the ''Ouachita'' fanshell's range at a biologically meaningful scale. There are no threats that are having greater impacts on the species in any one area. Therefore, there is no biologically meaningful portion that has a different status from the overall rangewide status. Thus, there are no portions of the species' range where the species has a different status from its rangewide status. Therefore, no portion of the species' range provides a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not apply the aspects of the Final Policy, including the definition of ''significant'' that those court decisions held to be invalid.

''Ouachita'' Fanshell—Determination of Status

Our review of the best available scientific and commercial information indicates that the ''Ouachita'' fanshell meets the Act's definition of a threatened species. Therefore, we are listing the ''Ouachita'' fanshell as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (*https://www.fws.gov/program/endangered-species*), or from our Arkansas Ecological Services Field Office for ''Ouachita'' fanshell or Missouri Ecological Services Field Office for western fanshell (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Once these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Arkansas, Kansas, Missouri, and Oklahoma will be eligible for Federal funds to implement management actions that promote the protection or recovery of the western fanshell or ''Ouachita'' fanshell or both species. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Please let us know if you are interested in participating in recovery efforts for the western fanshell or ''Ouachita'' fanshell. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph may include, but are not limited to, management and any other landscape-altering activities on Federal lands administered by the following agencies:

(1) U.S. Army Corps of Engineers (channel dredging and maintenance; dam projects including flood control, navigation, hydropower, bridge projects, stream restoration, and Clean Water Act (33 U.S.C. 1251 *et seq.*) permitting).

(2) U.S. Department of Agriculture, including the Natural Resources Conservation Service and Farm Service Agency (technical and financial assistance for projects) and the Forest Service (aquatic habitat restoration, fire management plans, fuel reduction treatments, forest plans, mining permits).

(3) U.S. Department of Energy (renewable and alternative energy projects).

(4) Federal Energy Regulatory Commission (interstate pipeline construction and maintenance, dam relicensing, and hydrokinetics).

(5) U.S. Department of Transportation (highway and bridge construction and maintenance).

(6) U.S. Fish and Wildlife Service (issuance of section 10 permits for enhancement of survival, HCPs, and SHAs; National Wildlife Refuge planning and refuge activities; Partners for Fish and Wildlife program projects benefiting these species or other listed species; Wildlife and Sportfish Restoration program sportfish stocking).

(7) Environmental Protection Agency (water quality criteria, permitting).

(8) Office of Surface Mining (land resource management plans, mining permits, oil and natural gas permits, renewable energy development).

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of the listed species. The discussion below regarding protective regulations under

section 4(d) of the Act complies with our policy.

II. Final Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened. The U.S. Supreme Court has noted that statutory language like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [s]he may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising our authority under section 4(d), we have developed a rule that is designed to address the western fanshell's and ''Ouachita'' fanshell's specific threats and conservation needs. Although the statute does not require us to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the western fanshell and ''Ouachita'' fanshell. As discussed above under Summary of Biological Status and Threats, we have concluded that the western fanshell and ''Ouachita'' fanshell are likely to become in danger of extinction within the foreseeable future primarily due to water quality degradation, changes to flow, and impoundments, which are expected to be exacerbated by continued urbanization and effects of climate change.

The provisions of this 4(d) rule will promote conservation of the western fanshell and ''Ouachita'' fanshell by encouraging management of the landscape in ways that meet both land management considerations and conservation needs of the western fanshell and ''Ouachita'' fanshell. The provisions of this rule are one of many tools that the Service will use to promote the conservation of the western fanshell and ''Ouachita'' fanshell.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

This obligation does not change in any way for a threatened species with a species-specific 4(d) rule. Actions that result in a determination by a Federal agency of ''not likely to adversely affect'' continue to require the Service's written concurrence and actions that are ''likely to adversely affect'' a species require formal consultation and the formulation of a biological opinion.

Provisions of the 4(d) Rule

The protective regulations for western fanshell and ''Ouachita'' fanshell incorporate prohibitions from section 9(a)(1) of the Act to address the threats to the species. In particular, this 4(d) rule will provide for the conservation of the western fanshell and ''Ouachita'' fanshell by prohibiting the following activities, unless they fall within specific exceptions or are otherwise authorized or permitted: Importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce.

As discussed above under Summary of Biological Status and Threats, we have concluded that the western fanshell and ''Ouachita'' fanshell are likely to become in danger of extinction within the foreseeable future primarily due to water quality degradation, changes to flow, and impoundments, which are expected to be exacerbated by continued urbanization and effects of climate change.

Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulation at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating take will help preserve the species' remaining populations, slow their rate of decline, and decrease synergistic, negative effects from other stressors. Therefore, we prohibit take of the western fanshell and ''Ouachita'' fanshell, except for take resulting from those actions and activities specifically excepted by the 4(d) rule.

The 4(d) rule provides for the conservation of the species by allowing exceptions, including certain standard exceptions, to take prohibitions caused by actions and activities that, while they may have some minimal level of disturbance to the western fanshell and ''Ouachita'' fanshell, will not have a negative impact (*i.e.,* will have only de minimis impacts) on the species' conservation. The exceptions to these prohibitions include incidental take associated with (1) Channel and bank restoration projects; (2) silviculture and forest management that implements best management practices; and (3) transportation projects that avoid instream disturbance in waters occupied by the species.

The first exception is for incidental take resulting from channel and bank restoration projects for creation of natural, physically stable, ecologically functioning streams, taking into consideration connectivity with floodplain and groundwater aquifers. This exception includes a requirement that bank restoration projects require planting appropriate native vegetation, including woody species appropriate for the region and habitat. This exception also includes a requirement for surveys and relocation prior to commencement of restoration actions (and, if applicable, monitoring after relocation) for western fanshell and ''Ouachita'' fanshell that would otherwise be negatively affected by the actions. Actions related to restoration activities that would negatively affect western fanshell and ''Ouachita'' fanshell include individual mussels being removed, dislodged, crushed, and/or killed by heavy equipment operations and rip-rap placement; removal, destruction, and/or replacement of habitat; increased turbidity from streambed disturbance; and alterations to flow and turbidity from permanent (weirs) or temporary (causeways) structures needed for construction.

The second exception is for incidental take resulting from silviculture and forest management activities that use State-approved best management practices to protect water and sediment quality and stream and riparian habitat. Best management practices are designed to reduce sedimentation, erosion, and bank destruction, thereby protecting instream habitat for these species.

The third exception is for incidental take resulting from transportation projects that do not include activities that disturb instream habitat. Bridge designs that include spanning the stream and avoiding stream bank disturbance reduce sedimentation and erosion, thereby protecting instream habitat for these species.

In addition, as discussed above under Summary of Changes from the Proposed Rule, the 4(d) rule temporarily excepts purposeful take that results from capture, handling, and release of western fanshell and ''Ouachita'' fanshell related to presence/absence surveys, studies to document habitat use, and population monitoring by individuals permitted to conduct these same activities for other species of mussels for a period of 6 months from this final rule's effective date (see **DATES**, above). This provision will allow time for us to process applications for amendments to existing permit holders.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

We recognize the special and unique relationship with our State natural resource agency partners in contributing to the conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist us in implementing all aspects of the Act. In this regard, section 6 of the Act provides that we must cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with us in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, is able to conduct activities designed to conserve the western fanshell and ''Ouachita'' fanshell that may result in otherwise prohibited take without additional authorization.

Nothing in this 4(d) rule changes in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or our ability to enter into partnerships for the management and protection of the western fanshell and ''Ouachita'' fanshell. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between us and other Federal agencies, where appropriate.

III. Critical Habitat for the Western Fanshell and ''Ouachita'' Fanshell

Background

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, we designate a species' critical habitat concurrently with listing the species. Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

This critical habitat designation was proposed when the regulations defining ''habitat'' (85 FR 81411; December 16, 2020) and governing the 4(b)(2) exclusion process for the Service (85 FR 82376; December 18, 2020) were in place and in effect. However, those two regulations have been rescinded (87 FR 37757; June 24, 2022, and 87 FR 43433; July 21, 2022) and no longer apply to any designations of critical habitat. Therefore, for this final rule designating critical habitat for the western fanshell and ''Ouachita'' fanshell, we apply the regulations at 424.19 and the 2016 Joint Policy on 4(b)(2) exclusions (81 FR 7226; February 11, 2016).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures

that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, habitat restoration, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and other information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in the 4(d) rule. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of these species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations

of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

As described above under Summary of Biological Status and Threats, western fanshell and ''Ouachita'' fanshell occur in large creeks and rivers. Occasional or regular interaction among individuals in different river reaches not interrupted by a barrier likely occurs, but in general, interaction is strongly influenced by habitat fragmentation and distance between occupied river or stream reaches. Once released from their fish host, freshwater mussels are benthic (bottom-dwelling), generally sedentary aquatic organisms and closely associated with appropriate habitat patches within a river or stream.

We derive the specific physical or biological features essential for the western fanshell and ''Ouachita'' fanshell from studies of these species' (or appropriate surrogate species') habitat, ecology, and life history. The primary habitat elements that influence resiliency of the western fanshell and ''Ouachita'' fanshell include water quality, water quantity, substrate, habitat connectivity, and the presence of host fish species to ensure recruitment. These features are also described above as species needs under Summary of Biological Status and Threats, and a full description is available in the SSA reports; the individuals' needs are summarized below in Table 1.

TABLE 1—REQUIREMENTS FOR LIFE STAGES OF WESTERN FANSHELL AND ''OUACHITA'' FANSHELL

Life stage	Resource needs—habitat requirements	References
All Life Stages	*Water Quality:* Naturally clean, high quality water with little or no harmful pollutants (that is, pollutants occur below tolerance limits of mussels, fish hosts, prey). The values below are based on the best available science and assume mussels respond to average values of a constituent over time (acute or chronic exposure). ➢ Dissolved oxygen >3 milligrams per liter (mg/L). ➢ Low salinity/total dissolved solids. ➢ Low nutrient concentrations: ➢ Total ammonia nitrogen <0.3–1.0 mg/L at pH 8.0 and 25 °C. ➢ Nitrate <2.0 mg/L. ➢ Nitrite <55.8 mg/L. ➢ Low concentrations of metals: ➢ Cadmium <0.014 mg/L at 50 mg/L calcium carbonate ($CaCO_3$) hardness. ➢ Zinc <0.120 mg/L at 50 mg/L $CaCO_3$ hardness. ➢ Lead <0.205 mg/L at 50 mg/L $CaCO_3$ hardness. ➢ Copper <0.005 mg/L in moderately hard water. ➢ Natural, unaltered ambient water temperature generally <27 °C.	Allen et al. 2007, pp. 80–85; Augspurger et al. 2003, p. 2569; Bringolf et al. 2007a, p. 2094; 2007b, p. 2086; Cope et al. 2008, p. 455; Fuller 1974, pp. 240–246; Gillis et al. 2008, pp. 140–141; Gray et al. 2002, pp. 155–156; Kolpin et al. 2002, pp. 1208–1210; Spooner and Vaughn 2008, p. 311; Steingraeber et al. 2007, p. 297; Wang et al. 2007a, 2007b, 2010, 2013, entire.
	Water Quantity: Flowing water in sufficient quantity to support the life-history requirements of mussels and their fish hosts.	Galbraith and Vaughn 2009, p. 46; Allen and Vaughn 2010, p. 390; Peterson et al. 2011, p. 115; Daraio et al. 2010, p. 838.
Gamete (sperm, egg development, fertilization) Glochidia.	➢ Sexually mature males and females with appropriate water temperatures for spawning, fertilization, and brooding. ➢ Presence of fish hosts (of appropriate species) with sufficient flow to allow attachment, encystment, relocation, excystment, and dispersal of glochidia.	Haag 2012, pp. 38–39; Galbraith and Vaughn 2009, pp. 45–46; Barnhart et al. 2008, p. 372.
Juvenile, sub-adult, and adult (from excystment to maturity).	➢ Stable substrate comprised of mixed sand, gravel and cobble, and appropriate for burrowing, pedal feeding, and survival. ➢ Appropriate food sources (phytoplankton, zooplankton, protozoans, detritus, dissolved organic matter) in adequate supply. ➢ Presence and abundance of fish hosts available for recruitment.	Allen and Vaughn 2010, pp. 384–385; Haag 2012, pp. 26–42; Eckert 2003, pp. 18–19, 33.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the western fanshell and ''Ouachita'' fanshell from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in chapter 2 of the SSA report (Service 2022, pp. 9–16), which is available on *https://www.regulations.gov* under Docket No. FWS–R3–ES–2021–0061. We have determined that the following physical or biological features are essential to the conservation of western fanshell and ''Ouachita'' fanshell:

(1) Adequate flows, or a hydrologic flow regime (magnitude, timing, frequency, duration, rate of change, and overall seasonality of discharge over time), necessary to maintain benthic habitats where the species are found and to maintain stream connectivity, specifically providing for the exchange of nutrients and sediment for maintenance of the mussels' and fish hosts' habitat and food availability, maintenance of spawning habitat for native host fishes, and the ability for newly transformed juveniles to settle and become established in their habitats. Adequate flows ensure delivery of oxygen, enable reproduction, deliver food to filter-feeding mussels, and reduce contaminants and fine sediments from interstitial spaces.

(2) Suitable substrates and connected instream habitats, characterized by geomorphically stable stream channels and banks (that is, channels that maintain lateral dimensions,

longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation) with habitats that support a diversity of freshwater mussel and native fish (such as stable riffle-run-pool habitats that provide flow refuges consisting of silt-free gravel and coarse sand substrates).

(3) Water and sediment quality necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages, including, but not limited to: dissolved oxygen (generally above 3 parts per million (ppm)) and water temperature (generally below 80 degrees Fahrenheit (°F) (27 degrees Celsius (°C)). Additionally, water and sediment should be low in ammonia (generally below 1.0 ppm total ammonia-nitrogen) and heavy metals, and lack excessive total suspended solids and other pollutants.

(4) The presence and abundance of fish hosts necessary for recruitment of the western fanshell and ''Ouachita'' fanshell. For the western fanshell, this includes logperch (*Percina caprodes*), rainbow darter (*Etheostoma caeruleum*), slenderhead darter (*Percina phoxocephala*), fantail darter (*Etheostoma flabellare*), or orangebelly darter (*Etheostoma radiosum*). For the ''Ouachita'' fanshell, this includes logperch (*Percina caprodes*), slenderhead darter (*Percina phoxocephala*), or orangebelly darter (*Etheostoma radiosum*).

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection.

The features essential to the conservation of the western fanshell and ''Ouachita'' fanshell may require special management considerations or protections to reduce the following threats: (1) Alteration of the natural flow regime (modifying the natural hydrograph and seasonal flows), including water withdrawals, resulting in flow reduction and available water quantity; (2) urbanization of the landscape, including (but not limited to) land conversion for urban and commercial use, infrastructure (pipelines, roads, bridges, utilities), and urban water uses (resource extraction activities, water supply reservoirs, wastewater treatment, etc.); (3) significant alteration of water quality and nutrient pollution from a variety of activities, such as industrial and municipal effluents, mining, and agricultural activities; (4) land use activities that remove large areas of forested wetlands and riparian systems; (5) dam construction and culvert and pipe installation that create barriers to movement for the western fanshell and ''Ouachita'' fanshell, or their host fishes; (6) changes and shifts in seasonal precipitation patterns as a result of climate change; and (7) other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

Management activities that could ameliorate these threats include, but are not limited to: Use of best management practices designed to reduce sedimentation, erosion, and bank destruction; protection of riparian corridors and woody vegetation; moderation of surface and ground water withdrawals to maintain natural flow regimes; improved stormwater management; and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

In summary, we find that the occupied areas we are designating as critical habitat contain the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. Special management considerations or protection may be required of the Federal action agency to eliminate, or to reduce to negligible levels, the threats affecting the physical and biological features of each unit.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not designating any areas outside the geographical area occupied by the western fanshell or ''Ouachita'' fanshell because we have not identified any unoccupied areas that meet the definition of critical habitat. We have determined that occupied areas are sufficient to conserve these species.

Methodology Used For Selection of Units

First, we included current populations with high or medium resiliency. These populations show recruitment or varied age class structure and could be used for recovery actions to augment other populations through propagation activities or direct translocations within their basins. We defined a population as ''current'' if it contains live or recent dead individuals observed in surveys from 2000 to present (Service 2022, p. 22).

Second, we evaluated spatial representation and redundancy across the species' ranges, to include last remaining population(s) in major river basins.

Third, we examined the overall contribution of populations in low condition and threats to those populations. We considered adjacency and connectivity to high and medium populations, as well as isolated populations with potentially important genetic or adaptive traits, and we did not include populations that have potentially low likelihood of recovery due to low abundance and limited distribution or populations currently under high levels of threats.

Sources of data for these critical habitat designations include information from State agencies throughout the species' ranges and numerous survey reports on streams throughout the species' ranges (Service 2022, entire). We have also reviewed available information that pertains to the habitat requirements of these species. Sources of information on habitat requirements include studies conducted at occupied sites and published in peer-reviewed articles, agency reports, and data collected during monitoring efforts (Service 2022, entire).

In summary, for areas within the geographic area occupied by these species at the time of listing, we delineated critical habitat unit boundaries using a precise set of criteria. Specifically, we identified river and stream reaches with observations from 2000 to present. We determined it is reasonable to find these areas occupied, given the variable data associated with timing and frequency of mussel surveys conducted throughout the species' ranges and available State heritage databases, and information supports the likelihood of both species' continued presence in these areas within this timeframe. Specific habitat areas were delineated, based on Natural Heritage Element Occurrences, published reports, and unpublished

survey data provided by States. These areas provide habitat for western fanshell and ''Ouachita'' fanshell populations and are large enough to be self-sustaining over time, despite fluctuations in local conditions. The areas within the critical habitat units represent continuous river and stream reaches of free-flowing habitat patches capable of sustaining host fishes and allowing for seasonal transport of glochidia, which are essential for reproduction and dispersal of western fanshell and ''Ouachita'' fanshell.

We consider portions of the following rivers and streams to be occupied by these species at the time of listing, and appropriate for critical habitat designation:

(1) Western fanshell—Black River, Fall River, Middle Fork Little Red River, St. Francis River, South Fork Spring River, Spring River, Strawberry River, and Verdigris River (see Final Critical Habitat Designation, below).

(2) ''Ouachita'' fanshell—Little Missouri River, Ouachita River, and Saline River (see Final Critical Habitat Designation, below).

Critical Habitat Maps

When determining critical habitat boundaries, we made every effort to avoid including developed areas, such as lands covered by buildings, pavement, and other structures, because such lands lack physical or biological features necessary for the western fanshell and ''Ouachita'' fanshell. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation under the Act with respect to critical habitat and the requirement of no adverse modification unless the specific action will affect the physical or biological features in the adjacent critical habitat.

We are designating as critical habitat stream reaches that we have determined are occupied at the time of listing (*i.e.,* currently occupied) and that contain one or more of the physical or biological features that are essential to support life-history processes of the species. Six units for the western fanshell and three units for the ''Ouachita'' fanshell are designated based on the presence of the physical or biological features that support the western fanshell's or ''Ouachita'' fanshell's life-history processes. Some units contain all of the identified physical or biological features and support multiple life-history processes. Some units contain only some of the physical or biological features necessary to support the western fanshell's or ''Ouachita'' fanshell's particular use of that habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the discussion of individual units below. We will make the coordinates or plot points or both on which each map is based available to the public on *https://www.regulations.gov* at Docket No. FWS–R3–ES–2021–0061, and on our internet sites at *https://www.fws.gov/species/western-fanshell-cyprogenia-aberti* for western fanshell and *https://www.fws.gov/species/ouachita-fanshell-cyprogenia-sp-cf-aberti* for ''Ouachita'' fanshell.

Final Critical Habitat Designation

We are designating a total of 261.4 river miles (river mi) (420.7 kilometers (km)) in 6 units as critical habitat for the western fanshell and a total of 227.7 river mi (366.5 km) in 3 units as critical habitat for the ''Ouachita'' fanshell. All units are occupied by their respective species. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the western fanshell and ''Ouachita'' fanshell. The six areas designated as critical habitat for the western fanshell are: Upper Black River (Unit WF 1), Lower Black/Strawberry River (Unit WF 2), St. Francis River (Unit WF 5), South Fork Spring River (Unit WF 6), Spring River (AR) (Unit WF 7), and Spring River (MO) (Unit WF 8). The three areas designated as critical habitat for the ''Ouachita'' fanshell are: Little Missouri River (Unit OF 1), Ouachita River (Unit OF 3), and Saline River (Unit OF 4). For both the western fanshell and ''Ouachita'' fanshell, unit numbers are not sequential because of exclusions we are making in this final rule; see *Exclusions Based on Other Relevant Impacts,* below, for more information. Tables 2 and 3 show the critical habitat units and the approximate river miles of each unit.

TABLE 2—CRITICAL HABITAT UNITS FOR THE WESTERN FANSHELL

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Adjacent riparian land ownership by type	River miles (kilometers)
WF 1. Upper Black River	Public (Federal, State)	13.7 (22)
	Private	51 (82.1)
WF 2. Lower Black/Strawberry River	Public (State)	10.9 (17.5)
	Private	100.4 (161.6)
WF 5. St. Francis River	Public (Federal, State)	12.6 (20.2)
	Private	36.7 (59.1)
WF 6. South Fork Spring River	Private	13.4 (21.6)
WF 7. Spring River (AR)	Private	14.2 (22.9)
WF 8. Spring River (MO)	Private	8.5 (13.7)
Totals	Public	37.2 (59.7)
	Private	224.2 (361)
	Total	261.4 (420.7)

Note: River miles may not sum due to rounding.

TABLE 3—CRITICAL HABITAT UNITS FOR THE "OUACHITA" FANSHELL

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Adjacent riparian land ownership by type	River miles (kilometers)
OF 1. Little Missouri River	Private	22.9 (36.9)
OF 3. Ouachita River	Private	53.5 (86.1)
OF 4. Saline River	Public (State)	0.5 (0.8)
	Private	150.8 (242.7)
Totals	Public	0.5 (0.8)
	Private	227.2 (365.7)
	Total	227.7 (366.5)

Note: River miles may not sum due to rounding.

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the western fanshell or ''Ouachita'' fanshell, below.

WF 1: Upper Black River

Unit WF 1 consists of 64.7 river mi (104.1 km) of Black River in Butler and Wayne Counties, Missouri, from Clearwater Dam southwest of Piedmont, Wayne County, extending downstream to Butler County Road 658 crossing southeast of Poplar Bluff, Butler County. Unit WF 1 includes the river channel up to the ordinary high water mark. Riparian lands that border the unit include approximately 51 river mi (82.1 km; 79 percent) in private ownership and 13.7 river mi (22 km; 21 percent) in public (Federal or State) ownership. Approximately 2.7 miles of the public ownership in this unit are State lands associated with Missouri Department of Conservation's (MDC) Bradley A. Hammer Memorial Conservation Area, Dan River Access, Hilliard Access, and Stephen J. Sun Conservation Area. Eleven miles are Federal land associated with the U.S. Forest Service's (USFS) Mark Twain National Forest and U.S. Army Corps of Engineers (USACE) Clearwater Recreation Area. General land use within the adjacent riparian areas of this unit includes forest, agriculture, several State-managed game lands, the town of Mill Spring, and city of Poplar Bluff. Clearwater Dam is operated by the USACE. Unit WF 1 is occupied by the species and contains all of the physical or biological features essential to the conservation of the species. This unit does not overlap with any designated critical habitat for other listed species.

Threats identified within the unit include degradation of habitat and water quality from impoundments, channelization, and point and nonpoint source water pollution, including siltation and pollution associated with agriculture, development, and wastewater treatment plants. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss associated with agriculture, development, and wastewater treatment plants (see Special Management Considerations or Protection, above).

WF 2: Lower Black/Strawberry River

Unit WF 2 consists of 111.3 river mi (179.1 km) of Black River and Strawberry River in Independence, Jackson, Lawrence, and Sharp Counties in Arkansas. Unit WF 2 includes the river channel up to the ordinary high water mark. Black River makes up 54.6 river mi (87.9 km) from the mouth of Spring River northeast of Black Rock, extending downstream to the mouth of Strawberry River northeast of Dowdy, Independence County, Arkansas. Strawberry River makes up 56.7 river mi (91.2 km) from the mouth of Lave Creek north of Evening Shade, Sharp County, extending downstream to the confluence with Black River northeast of Dowdy, Independence County, Arkansas. Riparian lands that border the unit include approximately 100.4 river mi (161.6 km; 90 percent) in private ownership and 10.9 river mi (17.5 km; 10 percent) in public (State) ownership. The public land ownership in this unit is associated with Arkansas Game and Fish Commission's Shirey Bay Rainey Brake Wildlife Management Area on Black River. The Nature Conservancy's Strawberry River Preserve and Ranch on Strawberry River is also in this unit. General land use within the adjacent riparian areas of this unit includes forest, agriculture, State-managed game lands, the town of Powhatan, and city of Black Rock. Unit WF 2 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation. There is overlap of 70.3 river mi (113.1 km) of this unit with designated critical habitat for rabbitsfoot (*Quadrula cylindrica cylindrica*) (see 50 CFR 17.95(f) and 80 FR 24692, April 30, 2015).

Threats identified within the unit include degradation of habitat and water quality from impoundments, channelization, and point and nonpoint source water pollution, including siltation and pollution associated with agriculture, development, unpaved roads, and wastewater treatment plants. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss associated with agriculture, development, and wastewater treatment plants (see Special Management Considerations or Protection, above).

WF 5: St. Francis River

Unit WF 5 consists of 49.3 river mi (79.3 km) of St. Francis River in Madison and Wayne Counties, Missouri, extending from the mouth of Wachita Creek west of Fredericktown, Madison County, downstream to the mouth of Big Creek northwest of Silva, Wayne County. Unit WF 5 includes the river channel up to the ordinary high water mark. Riparian lands that border the unit include approximately 36.7 river mi (59.1 km; 74 percent) in private ownership and 12.6 river mi (20.2 km; 26 percent) in public (Federal or State) ownership. Approximately 2.4 river mi of the public ownership in this unit are State lands associated with MDC's Coldwater Conservation Area, Mill Stream Gardens, and Roselle Access. Ten miles are Federal land associated with the USFS's Mark Twain National Forest. General land use within the adjacent riparian areas of this unit is predominantly forest and pasture with isolated occurrences of developed areas. Unit WF 5 is occupied by the species and contains one or more of the physical or biological features essential

to the species' conservation. Unit WF 5 entirely overlaps with designated critical habitat for rabbitsfoot (see 50 CFR 17.95(f) and 80 FR 24692, April 30, 2015).

Threats identified within the unit include degradation of habitat and water quality from impoundments and point and nonpoint source water pollution, including siltation and pollution associated with development, unpaved roads, and wastewater treatment plants. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss associated with agriculture, development, and wastewater treatment plants (see Special Management Considerations or Protection, above).

WF 6: South Fork Spring River

Unit WF 6 consists of 13.4 river mi (21.6 km) of South Fork Spring River in Fulton County, Arkansas, from the mouth of Camp Creek east of Salem, Fulton County, extending downstream to the Arkansas Highway 289 crossing northwest of Cherokee Village in Fulton County. Unit WF 6 includes the river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership. General land use within the adjacent riparian areas of this unit is predominantly forest, agriculture, and pasture with isolated occurrences of developed areas. Unit WF 6 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation. This unit does not overlap with any designated critical habitat for other listed species.

Threats identified within the unit include degradation of habitat and water quality from point and nonpoint source water pollution, including siltation and pollution associated with agriculture, development, unpaved roads, and wastewater treatment plants. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss associated with agriculture, development, and wastewater treatment plants (see Special Management Considerations or Protection, above).

WF 7: Spring River (AR)

Unit WF 7 consists of 14.2 river mi (22.9 km) of Spring River in Lawrence and Randolph Counties, Arkansas, from the mouth of Wells Creek at Ravenden, extending downstream to the mouth of Stennitt Creek southeast of Imboden, Lawrence County. Unit WF 7 includes the river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership. General land use within the adjacent riparian areas of this unit includes forest, agriculture, pasture, and the towns of Imboden and Ravenden. Unit WF 7 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation. Unit WF 7 entirely overlaps with designated critical habitat for rabbitsfoot (see 50 CFR 17.95(f) and 80 FR 24692, April 30, 2015).

Threats identified within the unit include degradation of habitat and water quality from point and nonpoint source water pollution, including siltation and pollution associated with agriculture, development, unpaved roads, and wastewater treatment plants. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss associated with agriculture, development, and wastewater treatment plants (see Special Management Considerations or Protection, above).

WF 8: Spring River (MO)

Unit WF 8 consists of 8.5 river mi (13.7 km) of Spring River in Jasper County, Missouri, from the mouth of North Fork Spring River east of Asbury, Jasper County, Missouri, extending downstream to the Kansas State line, then from where it re-enters Missouri to the mouth of Center Creek west of Carl Junction, Jasper County, Missouri. Unit WF 8 includes the river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership. General land use within the adjacent riparian areas of this unit is predominantly forest, agriculture, and pasture, with isolated occurrences of developed areas. Unit WF 8 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation. Unit WF 8 entirely overlaps with designated critical habitat for Neosho mucket and rabbitsfoot (see 50 CFR 17.95(f) and 80 FR 24692, April 30, 2015).

Threats identified within the unit include degradation of habitat and water quality from point and nonpoint source water pollution, including siltation and pollution associated with agriculture, development, unpaved roads, wastewater treatment plants, and historical heavy metal mining. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss associated with agriculture, development, wastewater treatment plants, and heavy metal contamination (see Special Management Considerations or Protection, above).

In our March 3, 2022, proposed rule, we proposed Unit WF 8 as including 15 river mi (24.1 km) of Spring River in Jasper County, Missouri, and Cherokee County, Kansas. The Kansas Agreement covers 6.5 river miles (10.5 km) of the proposed Unit WF 8, and we have excluded that portion of the proposed unit from this final designation (see *Exclusions Based on Other Relevant Impacts,* below).

OF 1: Little Missouri River

Unit OF 1 consists of 22.9 river mi (36.9 km) of Little Missouri River in Clark, Nevada, and Ouachita Counties, Arkansas, from the mouth of Garland Creek northeast of Prescott, Nevada County, downstream to the mouth of Horse Branch north of Red Hill, Ouachita County. Unit OF 1 includes the river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership. General land use within the adjacent riparian areas of this unit includes forest and agriculture. Unit OF 1 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation. This unit does not overlap with any designated critical habitat for other listed species.

Threats identified within the unit include dams, impoundments, and point and nonpoint source water pollution, including siltation and pollution associated with a variety of land uses. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss and fragmentation (see Special Management Considerations or Protection, above).

OF 3: Ouachita River

Unit OF 3 consists of 53.5 river mi (86.1 km) of Ouachita River in Clark, Dallas, and Ouachita Counties, Arkansas, from the mouth of L'Eau Frais Creek southeast of Arkadelphia, Clark County, downstream to the mouth of Ecore Fabre Bayou north of Camden, Ouachita County. Unit OF 3 includes the river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership. There is a Wetlands Reserve Program easement within the unit. General land use within the adjacent riparian areas of this unit

includes forest, agriculture, and pasture. Unit OF 3 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation. There is overlap of 22.8 river mi (36.7 km) of this unit with designated critical habitat for rabbitsfoot (see 50 CFR 17.95(f) and 80 FR 24692, April 30, 2015).

Threats identified within the unit include dams, impoundments, and point and nonpoint source water pollution, including siltation and pollution associated with a variety of land uses. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss and fragmentation (see Special Management Considerations or Protection, above).

OF 4: Saline River

Unit OF 4 consists of 151.3 river mi (243.5 km) of Saline River in Ashley, Bradley, Cleveland, Dallas, Drew, and Grant Counties, Arkansas, from U.S. Highway 270 east of Poyen, Grant County, downstream to the mouth of Mill Creek north of Stillions, Ashley County. Unit OF 4 includes the river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership and less than 1 percent is in public ownership. The public ownership in this unit is State-owned land associated with Jenkins Ferry State Park. General land use within the adjacent riparian areas of this unit includes forest, agriculture, pasture, the town of Tull, and city of Benton. Unit OF 4 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation. There is overlap of 74.2 river mi (119.4 km) of this unit with designated critical habitat for the rabbitsfoot (see 50 CFR 17.95(f) and 80 FR 24692, April 30, 2015).

Threats identified within the unit include dams, impoundments, mining, development, and point and nonpoint source water pollution, including siltation and pollution associated with development in the headwaters and a variety of other land uses. Special management considerations or protection measures to reduce or alleviate the threats may include reducing water quality degradation and habitat loss and fragmentation (see Special Management Considerations or Protection, above).

In our March 3, 2022, proposed rule, we proposed Unit OF 4 as including 185.3 river mi (298.2 km) of Saline River in Ashley, Bradley, Cleveland, Dallas, Drew, Grant, and Saline Counties, Arkansas. The Headwaters Agreement covers 34.1 river miles (54.9 km) of the proposed Unit OF 4, and we have excluded that portion of the proposed unit from this final designation (see *Exclusions Based on Other Relevant Impacts,* below).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation: (a) if the amount or extent of taking specified in the incidental take statement is exceeded; (b) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or (d) if a new species is listed or critical habitat designated that may be affected by the identified action. The reinitiation requirement applies only to actions that remain subject to some discretionary Federal involvement or control. As provided in 50 CFR 402.16, the requirement to reinitiate consultations for new species listings or critical habitat designation does not apply to certain agency actions (*e.g.,* land management plans issued by the Bureau of Land Management in certain circumstances).

Application of the ''Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that we may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify critical habitat include, but are not limited to, actions that would: (1) Alter the geomorphology of the species' stream and river habitats (for example, instream excavation or dredging, impoundment, channelization, sand and gravel mining, clearing riparian vegetation, and discharge of fill materials); (2) significantly alter the existing flow regime where these species occur (for example, impoundment, urban development, water diversion, water withdrawal, water draw-down, and hydropower generation); (3) significantly alter water chemistry or water quality (for example, hydropower discharges, or the release of chemicals, biological pollutants, or heated effluents into surface water or connected groundwater at a point source or by dispersed release (nonpoint source)); or (4) significantly alter streambed material composition and quality by increasing sediment deposition or filamentous algal growth (for example, construction projects, gravel and sand mining, oil and gas development, coal mining, livestock grazing, irresponsible logging practices, and other watershed and floodplain disturbances that release sediments or nutrients into the water).

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act Improvement Act of 1997 (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. There are no DoD lands with a completed INRMP within the critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (2016 Policy; 81 FR 7226, February 11, 2016)—both of which were developed jointly with National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled, ''The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act'' (M–37016). We explain each decision to exclude areas, as well as decisions not to exclude, to demonstrate that the decision is reasonable.

The Secretary may exclude any particular area if she determines that the benefits of such exclusion outweigh the benefits of including such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

We describe below the process that we undertook for deciding whether to exclude any areas—taking into consideration each category of impacts and our analyses of the relevant impacts.

Exclusions Based on Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. In order to consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which, together with our narrative and interpretation of effects, we consider our economic analysis of the critical habitat designation and related factors (Service 2021, entire). The analysis, dated March 19, 2021, was made available for public review from March 3, 2022, through May 2, 2022 (87 FR 12338; March 3, 2022). The economic analysis addressed probable economic impacts of critical habitat designation for the western fanshell and ''Ouachita'' fanshell. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Additional information relevant to the probable incremental economic impacts of critical habitat designation for the western fanshell and ''Ouachita'' fanshell is summarized below and available in the screening analysis for the species (Industrial Economics, Inc. 2021, entire), available at *https://www.regulations.gov.*

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess, to the extent practicable, the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the designation of critical habitat for the western fanshell and ''Ouachita'' fanshell, first we identified, in the IEM dated February 1, 2021 (Service 2021, entire), probable incremental economic impacts associated with the following categories of activities: Instream excavation or dredging; impoundments; channelization; sand and gravel mining;

clearing riparian vegetation; discharge of fill materials; urban development; water diversion; water withdrawal; water draw-down; hydropower generation and discharges; release of chemicals, biological pollutants, or heated effluents into surface water or connected ground water at a point source or by dispersed release (nonpoint); construction projects; oil and gas development; coal mining; livestock grazing; timber harvest; and other watershed or floodplain activities that release sediments or nutrients into the water. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement.

Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, the designation of critical habitat affects activities conducted, funded, permitted, or authorized by Federal agencies only. In areas where the western fanshell or ''Ouachita'' fanshell are present, Federal agencies are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. Consultations to avoid the destruction or adverse modification of critical habitat will be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the western fanshell's and ''Ouachita'' fanshell's critical habitat. Because we are designating critical habitat for the western fanshell and ''Ouachita'' fanshell concurrently with listing the species, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species' being listed and those which will result solely from the designation of critical habitat; this is particularly difficult where there is no unoccupied critical habitat and, thus, there will be consultations for all areas based on the species' presence in those areas. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the western fanshell or ''Ouachita'' fanshell would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this designation of critical habitat.

The final critical habitat designation for the western fanshell includes six units, all of which are occupied by the species. Ownership of riparian lands adjacent to the units includes 224.2 river mi (361 km; 86 percent) in private ownership and 37.2 river mi (59.7 km; 14 percent) in public (Federal or State government) ownership. The final critical habitat designation for the ''Ouachita'' fanshell includes three units, all of which are occupied by the species. Ownership of riparian lands adjacent to the units includes 227.2 river mi (365.7 km; 99.8 percent) in private ownership and 0.5 river mi (0.8 km; 0.2 percent) in public (State government) ownership.

Total incremental costs of critical habitat designation for the western fanshell are not expected to exceed $48,000 (2021 dollars) per year (Industrial Economics, Inc. 2021, p. 18). With the exclusion of proposed Units WF 3, 4, and 9 and the Kansas portion of proposed Unit WF 8, we anticipate these costs will be even lower. Total incremental costs of critical habitat designation for the ''Ouachita'' fanshell are not expected to exceed $30,000 (2021 dollars) per year (Industrial Economics, Inc. 2021, p. 18). With the exclusion of proposed Unit OF 2 and a portion of proposed Unit OF 4, we anticipate these costs will also be lower. The costs are reflective of: (1) All units are considered occupied, (2) project modifications requested to avoid adverse modification are likely to be the same as those recommended to avoid jeopardy in occupied habitat for these species, and (3) the designations receive baseline protection from the presence of critical habitat for co-occurring listed mussel species with similar habitat needs in 54 percent of the western fanshell's designated critical habitat and in 43 percent of the ''Ouachita'' fanshell's designated critical habitat. Because consultation will be required as a result of the listing of the western fanshell and ''Ouachita'' fanshell and is already required in some of these areas as a result of the presence of other listed species and critical habitats, the economic costs of the critical habitat designation will likely be primarily limited to additional administrative efforts to consider adverse modification for these two species in section 7 consultations (Industrial Economics, Inc. 2021, p. 12).

Based on the consultation history regarding historical projects and activities overlapping the critical habitat area for the western fanshell, the number of future consultations, including technical assistance efforts, is likely to be no more than 23 per year across all six units. Based on the consultation history regarding historical projects and activities overlapping the critical habitat area for the ''Ouachita'' fanshell, the number of future consultations, including technical assistance efforts, is likely to be no more than 15 per year across all three units. Overall, transportation and utilities activities are expected to result in the largest portion of consultations for both the western and ''Ouachita'' fanshells and, therefore, incur the highest costs. The geographic distribution of future section 7 consultations and associated costs are likely to be most heavily concentrated in western fanshell Unit 2 and ''Ouachita'' fanshell Unit 4. However, even assuming consultation activity increases substantially, incremental administrative costs are still likely to remain well under $100 million per year (Industrial Economics, Inc. 2021, p. 18).

We solicited data and comments from the public regarding the economic analysis, as well as all aspects of the March 3, 2022, proposed rule (87 FR 12338). We did not receive any additional information on economic impacts during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of the Act's section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

As discussed above, we considered the economic impacts of the critical habitat designation, and the Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for the western fanshell and ''Ouachita'' fanshell based on economic impacts.

A copy of the IEM and screening analysis with supporting documents may be obtained by contacting the Missouri Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**) or by downloading from the internet at *https://www.regulations.gov.*

Exclusions Based on Impacts on National Security and Homeland Security

In preparing this rule, we determined that there are no lands within the designated critical habitat for western fanshell or ''Ouachita'' fanshell that are

owned or managed by the DoD or Department of Homeland Security; therefore, we anticipate no impact on national security or homeland security. We did not receive any additional information during the public comment period for the proposed designation regarding impacts of the designation on national security or homeland security that would support excluding any specific areas from the final critical habitat designation under authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19, as well as the 2016 Policy.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security as discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area such as HCPs, SHAs, or CCAAs, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other impacts that might occur because of the designation.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive due to the protection from destruction or adverse modification as a result of actions with a Federal nexus, the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

In the case of western fanshell and ''Ouachita'' fanshell, the benefits of critical habitat include public awareness of the presence of the species and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for western fanshell and ''Ouachita'' fanshell due to protection from destruction or adverse modification of critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation, or in the continuation, strengthening, or encouragement of partnerships. Additionally, continued implementation of an ongoing management plan that provides equal to or more conservation than a critical habitat designation would reduce the benefits of including that specific area in the critical habitat designation.

We evaluate the existence of a conservation plan when considering the benefits of inclusion. We consider a variety of factors, including, but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments we received, and the best scientific data available, we evaluated whether certain lands in the proposed critical habitat Units WF 3, WF 4, WF 8, WF 9, OF 2, and OF 4 are appropriate for exclusion from this final designation under section 4(b)(2) of the Act. If our analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise her discretion to exclude the lands from the final designation. In the paragraphs below, we provide a detailed balancing analysis of the areas being excluded under section 4(b)(2) of the Act.

Private or Other Non-Federal Conservation Plans Related to Permits Under Section 10 of the Act

HCPs for incidental take permits under section 10(a)(1)(B) of the Act provide for partnerships with non-Federal entities to minimize and mitigate impacts to listed species and their habitat. In some cases, HCP permittees agree to do more for the conservation of the species and their habitats on private lands than designation of critical habitat would provide alone. We place great value on the partnerships that are developed during the preparation and implementation of HCPs.

CCAAs and SHAs are voluntary agreements designed to conserve candidate and listed species, respectively, on non-Federal lands. In exchange for actions that contribute to the conservation of species on non-Federal lands, participating property owners are covered by an ''enhancement of survival'' permit under section 10(a)(1)(A) of the Act, which authorizes incidental take of the covered species that may result from implementation of conservation actions, specific land uses, and, in the case of SHAs, the option to return to a baseline condition under the agreements. We also provide enrollees assurances that we will not impose further land-, water-, or resource-use restrictions, or require additional commitments of land, water, or finances, beyond those agreed to in the agreements.

When we undertake a discretionary section 4(b)(2) exclusion analysis, we will always consider areas covered by an approved CCAA/SHA/HCP, and we anticipate consistently excluding such areas if incidental take caused by the activities in those areas is covered by the permit under section 10 of the Act and the CCAA/SHA/HCP meets all of the following three factors (see the 2016 Policy for additional details):

a. The permittee is properly implementing the CCAA/SHA/HCP and is expected to continue to do so for the term of the agreement. A CCAA/SHA/HCP is properly implemented if the permittee is, and has been, fully implementing the commitments and provisions in the CCAA/SHA/HCP, implementing agreement, and permit.

b. The species for which critical habitat is being designated is a covered species in the CCAA/SHA/HCP, or very similar in its habitat requirements to a covered species. The recognition that we extend to such an agreement depends on the degree to which the conservation measures undertaken in the CCAA/SHA/HCP would also protect the habitat features of the similar species.

c. The CCAA/SHA/HCP specifically addresses the habitat of the species for which critical habitat is being designated and meets the conservation needs of the species in the planning area.

The Kansas Aquatic Species Conservation Agreement: A Programmatic Safe Harbor Agreement and Candidate Conservation Agreement With Assurances for Fourteen Aquatic Species in Kansas (''Kansas Agreement'')

In 2021, the Secretary of the KDWP signed the Kansas Agreement, and on December 13, 2022, the Service approved an amendment to this agreement, submitted by the State of Kansas, to include western fanshell as a covered species. The Kansas Agreement was part of an application for an enhancement-of-survival permit under section 10(a)(1)(A) of the Act. The Kansas Agreement facilitates the introduction, reintroduction, augmentation, and translocation, and conserves the habitat, of imperiled native aquatic species in the State of Kansas. The Kansas Agreement, a programmatic SHA and CCAA, is between the KDWP and the Service (collectively, ''the Parties'').

The Kansas Agreement covers all eligible, non-Federal lands in the State of Kansas for all eligible non-Federal landowners who wish to participate in the Kansas Agreement (''cooperators''). Non-Federal lands are those lands owned by non-Federal landowners which include, but are not limited to, State, Tribal, regional, or local governments; private or nonprofit organizations; or private citizens. By entering into this agreement, the Parties are using the Service's SHA and CCAA programs to further the conservation of the Nation's fish and wildlife. Both components of the Kansas Agreement and their associated permits target non-Federal lands in Kansas, whose owners or land managers are willing to engage in habitat management actions to benefit the species covered by the agreement (the ''covered species'').

The duration of the Kansas Agreement is 50 years from its effective date. Each participating landowner, or cooperator, will enroll in the SHA, CCAA, or both through a landowner management agreement (''landowner agreement''). Once the landowner agreement is signed, KDWP will issue the cooperator a certificate of inclusion (COI). The duration of the landowner agreements entered into under the Kansas Agreement and the associated COI will be for the remaining duration of the permit unless another time period is agreed upon by the Parties and the cooperator.

The conservation goals of the Kansas Agreement are to increase the resiliency, redundancy, and representation of the covered species' populations through reintroductions and to protect, enhance, and expand habitat availability (stream bed and banks). Under the Kansas Agreement, cooperators will maintain habitat available to the covered species and will assist with habitat conservation for the remainder of the term of the Kansas Agreement. Cooperators will facilitate the ability to reintroduce and augment populations and manage enrolled lands, as agreed to in their landowner agreement, in a manner that maintains existing habitat and improves and restores habitat for the covered species.

Expected outcomes of implementing the Kansas Agreement include the protection, enhancement, and restoration of instream habitat; improved water quality; reduced erosion and sedimentation; improved riparian habitat; and improved land use practices on enrolled lands during the term of the Kansas Agreement. The Kansas Agreement covers activities that will maintain existing or baseline riparian habitat, ensure the connectivity of covered species, and adhere to best management practices to protect water quantity and quality. Cooperators are encouraged to include habitat management actions on enrolled lands that will enhance the habitat beyond the documented baseline or existing conditions. These activities could include establishment and enhancement of stream buffers; installation and maintenance of erosion and pollution control measures; cessation, reduction, or modification of land use practices, such as pesticide application, animal or vehicle activity in streamside areas, or ground disturbance; capture and treatment of stormwater or other runoff to improve water quality, and fish passage improvement projects. The Kansas Agreement includes the plains minnow, Topeka shiner, and Neosho madtom within the range of western fanshell and although these are not host fish for western fanshell, improvements to their habitat and populations would also benefit western fanshell host fish. Implementation of these activities would maintain and/or improve the physical or biological features of adequate flow, suitable substrate and connected instream habitat, water and sediment quality, and the presence and abundance of host fish. The reintroduction activities included in the Kansas Agreement will increase the probability that covered species will expand their range, survive, and recruit new cohorts in reintroduced areas. Under the Kansas Agreement, the criteria for eligible landowners with land neighboring western fanshell habitat is: ''Mainstem of waterbody where reintroduction occurs extending onto adjoining parcels, plus direct tributaries containing suitable habitat. Eligible property must also support suitable habitat for mainstem and direct tributaries (*i.e.,* perennial flows and the presence of host fish species).'' The Kansas Agreement in its entirety can be found at: *https://ecos.fws.gov/ecp/report/conservation-plan?plan_id=4829.*

The Amended Programmatic Safe Harbor Agreement and Programmatic Candidate Conservation Agreement With Assurances for the Speckled Pocketbook, Yellowcheek Darter, Rabbitsfoot, and Nineteen Other Aquatic Species of Greatest Conservation Need in the Upper Little Red River Watershed, Arkansas (the ''Upper Little Red River Agreement'')

In 2015, the Arkansas Game and Fish Commission (AGFC) and three other parties signed the Upper Little Red River Agreement, which includes western fanshell as a covered species. The Upper Little Red River Agreement was part of an application for an enhancement-of-survival permit under section 10(a)(1)(A) of the Act. The agreement facilitates the conservation of habitat for 22 imperiled aquatic species in the upper Little Red River watershed in the State of Arkansas. The Upper Little Red River Agreement, a programmatic SHA and a CCAA, is between the AGFC, the Service, The Nature Conservancy, and Natural Resources Conservation Service (NRCS) (collectively, ''the Parties'').

The Upper Little Red River Agreement covers all eligible, non-Federal lands in the upper Little Red River watershed for all eligible non-Federal landowners (''cooperators'') who wish to participate in this agreement. Non-Federal lands are those lands owned by non-Federal landowners which include, but are not limited to, State, Tribal, regional, or local governments; private or nonprofit organizations; or private citizens. By entering into the Upper Little Red River Agreement, the Parties are using the Service's SHA and CCAA programs to further the conservation of the Nation's fish and wildlife. Both components of this agreement and their associated permits target non-Federal lands in the upper Little Red River watershed in Arkansas, whose owners or land managers are willing to engage in habitat management actions to benefit the species covered by the agreement (the ''covered species'').

The duration of the Upper Little Red River Agreement is 29 years from its effective date, and the permit for the

Upper Little Red River Agreement expires on January 1, 2044. Each participating landowner, or cooperator, will enroll in the SHA, CCAA, or both through a property owner management agreement (POMA). Once the POMA is signed, the enrolling Party will issue the cooperator a certificate of inclusion (COI). The duration of the POMAs entered into under the Upper Little Red River Agreement and the associated COI will be for the remaining duration of the permit unless another time period is agreed upon by the Parties and cooperator.

The conservation goals of the Upper Little Red River Agreement are to protect, enhance, and expand habitat availability (stream bed and banks); reduce sediment and pollutant runoff, thereby enhancing water quality and instream habitat (water and stream bed); and allow for subsequent natural population expansion or, if necessary, reintroduction of the covered species in the upper Little Red River watershed. Under the Upper Little Red River Agreement, cooperators will maintain habitat available to the covered species and will assist with habitat conservation for the remainder of the term of the Upper Little Red River Agreement. Cooperators will manage their enrolled lands in a manner that maintains existing habitat and improves and restores habitat for the covered species.

Expected outcomes of implementing the Upper Little Red River Agreement include the protection, enhancement, and restoration of instream habitat; improved water quality; reduced erosion and sedimentation; improved riparian habitat; and improved land use practices on enrolled lands during the term of this agreement. Implementation of these activities would maintain and/or improve the physical or biological features of suitable substrate and connected instream habitat and water and sediment quality. The conservation activities included in the Upper Little Red River Agreement will increase the probability that covered species will expand their range, survive, and recruit new cohorts. A copy of the Upper Little Red River Agreement may be obtained by contacting the Arkansas Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Programmatic Safe Harbor Agreement and Candidate Conservation Agreement With Assurances for the Arkansas Fatmucket, Pink Mucket, Spectaclecase, Rabbitsfoot, Harperella, and Twenty Other Aquatic Species of Greatest Conservation Need in the Upper Saline, Caddo, and Ouachita River (Headwaters) Watersheds, Arkansas (the ''Headwaters Agreement'')

In 2016, the AGFC and three other parties signed the Headwaters Agreement, which includes the ''Ouachita'' fanshell, which at the time was known as the western fanshell, as a covered species. The Headwaters Agreement was part of an application for an enhancement-of-survival permit under section 10(a)(1)(A) of the Act. The Headwaters Agreement facilitates the conservation of habitat of 25 imperiled aquatic species in the upper Saline, Caddo, and Ouachita River watersheds that occur in Saline, Grant, Garland, Hot Spring, Clark, Pike, Montgomery, and Polk Counties in the State of Arkansas. The Headwaters Agreement, a programmatic SHA and a CCAA, is between the AGFC, the Service, The Nature Conservancy, and Natural Resources Conservation Service (NRCS) (collectively, ''the Parties'').

The Headwaters Agreement is structured identically to the aforementioned Upper Little Red River Agreement. The duration of the Headwaters Agreement is 35 years from its effective date, and the permit for the Headwaters Agreement expires on September 12, 2051. Each participating landowner, or cooperator, will enroll in the SHA, CCAA, or both, through a property owner management agreement (POMA). Once the POMA is signed, the enrolling Party will issue the cooperator a certificate of inclusion (COI). The duration of the POMAs entered into under the Headwaters Agreement and the associated COI will be for the remaining duration of the permit unless another time period is agreed upon by the Parties and cooperator.

Expected outcomes of implementing the Headwaters Agreement include the protection, enhancement, and restoration of instream habitat; improved water quality; reduced erosion and sedimentation; improved riparian habitat; and improved land use practices on enrolled lands during the term of this agreement. Implementation of these activities would maintain and/or improve the physical or biological features of suitable substrate and connected instream habitat and water and sediment quality. The conservation activities included in the Headwaters Agreement will increase the probability that covered species will expand their range, survive, and recruit new cohorts. A copy of the Headwaters Agreement may be obtained by contacting the Arkansas Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Benefits of Inclusion

The principal benefit of including an area in critical habitat designation is the requirement of Federal agencies to ensure that actions that they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, which is the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. In areas where a listed species occurs, Federal agencies must consult with the Service on actions that may affect a listed species and refrain from actions that are likely to jeopardize the continued existence of such species.The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species.Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat.Because all of the proposed critical habitat units for western fanshell and ''Ouachita'' fanshell are occupied by the species, there would be consultations for all areas based on the species' presence in those areas. As discussed above under *Exclusions Based on Economic Impacts,* we found limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. Therefore, critical habitat designation may provide a limited regulatory benefit for the western fanshell and ''Ouachita'' fanshell on lands covered under the three agreements described above when there is a Federal nexus present for a project that might adversely modify critical habitat.

Another possible benefit of including lands in critical habitat is public education regarding the special management considerations required and potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species.We consider any information about the western fanshell and ''Ouachita'' fanshell and their habitats that reaches a wide audience, including parties engaged in conservation activities, to be valuable. Designation of critical habitat would provide educational benefits by informing Federal agencies and the public about the presence of listed species for all units.

In summary, we find that the benefits of inclusion of approximately 64.4 river mi (103.6 km) of waterways in proposed Units WF 3, WF 8, and WF 9 in the State of Kansas and approximately 100.9 river mi (162.4 km) of waterways in proposed Unit WF 4 and proposed Units OF 2 and OF 4 in the State of Arkansas are: (1) A regulatory benefit when there is a Federal nexus present for a project that might adversely modify critical habitat; and (2) educational benefits for the western fanshell, ''Ouachita'' fanshell, and their habitats.

Benefits of Exclusion

The benefits of excluding approximately 64.4 river mi (103.6 km) of Kansas waterways and approximately 100.9 river mi (162.4 km) of Arkansas waterways under the three SHA and CCAA agreements from the designation of critical habitat for the western fanshell and ''Ouachita'' fanshell are substantial and include: (1) Continuance and strengthening of our effective working relationship with private landowners to promote voluntary, proactive conservation of the western fanshell, ''Ouachita'' fanshell, and their habitats; (2) allowance for continued meaningful collaboration and cooperation in working toward species recovery, including conservation benefits that might not otherwise occur; (3) inclusion of a monitoring program to ensure the conservation measures are effective; and (4) encouragement to develop additional conservation easements and other conservation and management plans in the future for other federally listed and sensitive species.

Some landowners may perceive critical habitat as an unfair and unnecessary regulatory burden. According to some, the designation of critical habitat on (or adjacent to) private lands may reduce the likelihood that landowners will support and carry out conservation actions (Main et al. 1999, pp. 1,263–1,265; Bean 2002, p. 412). The magnitude of this negative outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, and control of invasive species) are necessary for species conservation (Bean 2002, pp. 412–414). We find that the exclusion of these specific areas of non-federally owned lands from the critical habitat designation for western fanshell and ''Ouachita'' fanshell can contribute to species recovery and provide a superior level of conservation than critical habitat can provide alone. We find that, where consistent with the discretion provided by the Act, it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation (Wilcove et al. 1996, pp. 1–15; Bean 2002, entire).

Additionally, partnerships with non-Federal landowners are vital to the conservation of listed species, especially on non-Federal lands; therefore, the Service is committed to supporting and encouraging such partnerships through the recognition of positive conservation contributions. In the case considered here, excluding these areas from critical habitat will help foster the partnerships the landowners and land managers in question have developed with Federal and State agencies and local conservation organizations, will encourage the continued implementation of voluntary conservation actions for the benefit of the western fanshell and ''Ouachita'' fanshell and their habitats on these lands, and may also serve as a model and aid in fostering future cooperative relationships with other parties here and in other locations for the benefit of other endangered or threatened species. Therefore, we consider the positive effect of excluding from critical habitat areas managed by active conservation partners to be a significant benefit of exclusion.

Benefits of Exclusion Outweigh the Benefits of Inclusion

We evaluated the exclusion of approximately 165.3 river mi (266 km) of waterways adjacent to private land within the areas covered by the Kansas Agreement, Upper Little Red River Agreement, and Headwaters Agreement from our designation of critical habitat, and we determined the benefits of excluding these lands outweigh the benefits of including them as critical habitat for the western fanshell and ''Ouachita'' fanshell.

We conclude that the additional regulatory and educational benefits of including these lands as critical habitat are relatively small because of the limited distinction between actions to avoid jeopardy and adverse modification. These benefits are further reduced by the existence of these three agreements, which include habitat conservation that addresses the special management considerations.

Furthermore, the potential educational and informational benefits of critical habitat designation on areas containing the physical and biological features essential to the conservation of the western fanshell and ''Ouachita'' fanshell would be minimal because the landowners and land managers under consideration have demonstrated their knowledge of the species and its habitat needs in the process of developing their partnerships with the Service.

In contrast, the benefits derived from excluding the subject areas and enhancing our partnership with these landowners and land managers is significant. Because voluntary conservation efforts for the benefit of listed species on non-Federal lands are so valuable, the Service considers the maintenance and encouragement of conservation partnerships to be a significant benefit of exclusion. The development and maintenance of effective working partnerships with non-Federal landowners for the conservation of listed species is particularly important in areas such as Arkansas and Kansas, States with relatively little Federal landownership but many species of conservation concern. Excluding these areas from critical habitat will help foster the partnerships the landowners and land managers in question have developed with Federal and State agencies and local conservation organizations and will encourage the continued implementation of voluntary conservation actions for the benefit of the western fanshell and ''Ouachita'' fanshell and their habitats on these lands. The current active conservation efforts on some of these areas contribute to our knowledge of the species through monitoring and scientific research. In addition, these partnerships not only provide a benefit for the conservation of these species but may also serve as a model and aid in fostering future cooperative relationships with other parties in these areas of Arkansas and Kansas and in other locations for the benefit of other endangered or threatened species.

We find that excluding areas from critical habitat that are receiving both long-term conservation and management for the purpose of protecting the habitat that supports the western fanshell and ''Ouachita'' fanshell will preserve our partnership with the private landowners in the States of Arkansas and Kansas and will encourage future collaboration towards conservation and recovery of listed species. The partnership benefits are significant and outweigh the small potential regulatory, educational, and ancillary benefits of including the land in the final critical habitat designation for the western fanshell and ''Ouachita'' fanshell. Therefore, the agreements provide greater protection of habitat for the western fanshell and ''Ouachita'' fanshell than could be gained through

the project-by-project analysis resulting from a critical habitat designation.

Exclusion Will Not Result in Extinction of the Species

We determined that the exclusion of approximately 165.3 river mi (266 km) of waterways within the boundaries of the States of Arkansas and Kansas covered by the Kansas Agreement, Upper Little Red River Agreement, and Headwaters Agreement will not result in extinction of the western fanshell or ''Ouachita'' fanshell. Protections afforded to the western fanshell and ''Ouachita'' fanshell and their habitats by these three agreements provide assurances that these species will not go extinct as a result of excluding these lands from the critical habitat designation.

An important consideration as we evaluate these exclusions and their potential effect on the species in question is that critical habitat does not carry with it a regulatory requirement to restore or actively manage habitat for the benefit of listed species; the regulatory effect of critical habitat is only the avoidance of destruction or adverse modification of critical habitat should an action with a Federal nexus occur. It is, therefore, advantageous for the conservation of these species to support the proactive efforts of non-Federal landowners who are contributing to the enhancement of essential habitat features for listed species through exclusion. The jeopardy standard of section 7 of the Act will also provide protection in these occupied areas when there is a Federal nexus.

Summary of Exclusions

As discussed above, based on the information provided by entities seeking exclusion, as well as any additional public comments received, we evaluated whether certain lands in the proposed critical habitat were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. We are excluding the following areas from critical habitat designation for the ''Ouachita'' fanshell and western fanshell: Unit OF 2, the upper portion of Unit OF 4, Unit WF 3, Unit WF 4, the Kansas portion of Unit WF 8, and Unit WF 9. Tables 4 and 5, below, provide approximate areas that meet the definition of critical habitat but which we are excluding under section 4(b)(2) of the Act from this final critical habitat designation.

TABLE 4—AREAS EXCLUDED BY CRITICAL HABITAT UNIT FOR THE WESTERN FANSHELL

Proposed critical habitat unit	Proposed critical habitat (river mi (km))	Area excluded (river mi (km))	Final critical habitat (river mi (km))
WF 3: Fall River	45.5 (73.2)	45.5 (73.2)	0
WF 4: Middle Fork Little Red River	34.1 (54.9)	34.1 (54.9)	0
WF 8: Spring River	15 (24.1)	6.5 (10.5)	8.5 (13.7)
WF 9: Verdigris River	12.4 (20)	12.4 (20)	0

TABLE 5—AREAS EXCLUDED BY CRITICAL HABITAT UNIT FOR THE ''OUACHITA'' FANSHELL

Proposed critical habitat unit	Proposed critical habitat (river mi (km))	Area excluded (river mi (km))	Final critical habitat (river mi (km))
OF 2: Ouachita Headwaters	32.7 (52.6)	32.7 (52.6)	0
OF 4: Saline River	185.3 (298.2)	34.1 (54.9)	151.3 (243.5)

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

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

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual

sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities will be directly regulated by this rulemaking, we certify that this critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule, we reviewed and evaluated all information submitted during the comment period on the proposed rule (87 FR 12338; March 3, 2022) that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Facilities that provide energy supply, distribution, or use occur within some units of the critical habitat designations (*e.g.,* dams, pipelines) and may potentially be affected. We determined that consultations, technical assistance, and requests for species lists may be necessary in some instances. However, in our economic analysis, we did not find that these critical habitat designations will significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

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

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

(1) This final rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this final rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the western fanshell and ''Ouachita'' fanshell in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying

out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for the western fanshell and ''Ouachita'' fanshell does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this final rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of these critical habitat designations with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the final rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designations may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) will be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this rule identifies the physical or biological features essential to the conservation of the species. The areas of designated critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations and species-specific protective regulations promulgated concurrently with a decision to list or reclassify a species as threatened. The courts have upheld this position (*e.g., Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995) (critical habitat); *Center for Biological Diversity* v. *U.S. Fish and Wildlife Service,* 2005 WL 2000928 (N.D. Cal. Aug. 19, 2005) (concurrent 4(d) rule)).

However, when any of the areas that meet the definition of ''critical habitat'' for the species are in States within the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, such as that of the western fanshell, we undertake a NEPA analysis for that critical habitat designation consistent with the Tenth Circuit's ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996). However, with the exclusion of all critical habitat within the State of Kansas, which is within the Tenth Circuit, we have not prepared an environmental analysis pursuant to NEPA.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. In accordance with Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have identified no Tribal interests that will be affected by this rule.

References Cited

A complete list of all references cited is available on the internet at *https://www.regulations.gov* and upon request from the Missouri Ecological Services Field Office for western fanshell and the Arkansas Ecological Services Field Office for ''Ouachita'' fanshell (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Missouri and Arkansas Ecological Services Field Offices.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

■ 2. In § 17.11, in paragraph (h), amend the List of Endangered and Threatened Wildlife by adding entries for ''Fanshell, 'Ouachita' '' and ''Fanshell, western'' in alphabetical order under CLAMS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
CLAMS				
*	*	*	*	*
Fanshell, ''Ouachita''	*Cyprogenia* cf. *aberti*	Wherever found	T	88 FR [Insert **Federal Register** page where the document begins], June 27, 2023; 50 CFR 17.45(f); [4d] 50 CFR 17.95(f).[CH]
Fanshell, western	*Cyprogenia aberti*	Wherever found	T	88 FR [Insert **Federal Register** page where the document begins], June 27, 2023; 50 CFR 17.45(f); [4d] 50 CFR 17.95(f).[CH]
*	*	*	*	*

■ 3. Amend § 17.45 by adding reserved paragraphs (c) through (e) and paragraph (f) to read as follows:

§ 17.45 Special rules—snails and clams.

* * * * *

(c)–(e) [Reserved]

(f) ''Ouachita'' fanshell (*Cyprogenia* cf. *aberti*) and western fanshell (*Cyprogenia aberti*)—(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the ''Ouachita'' fanshell and western fanshell. Except as provided under paragraph (f)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take, as set forth at § 17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) Channel and bank restoration projects for creation of natural, physically stable, ecologically functioning streams, taking into consideration connectivity with floodplain and groundwater aquifers. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; connection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools comprised of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands. For bank stabilization projects that use bioengineering methods to replace preexisting, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species, stream banks may be stabilized using native species live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native species live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or native species brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Bank restoration projects require planting appropriate native vegetation, including woody species appropriate for the region and habitat. These projects will not include the sole use of quarried rock (rip-rap) or the use of rock baskets or gabion structures. To qualify under this exception, restoration projects must include the following:

(*1*) Surveys to determine presence of ''Ouachita'' fanshell and western fanshell prior to the commencement of restoration actions;

(*2*) If either mussel is present, coordination with the Service's local Ecological Services field office for relocation of ''Ouachita'' fanshell and western fanshell mussels to suitable habitat outside of the project footprint prior to project implementation; and

(*3*) If relocation of mussels occurs, monitoring of relocated mussels post-implementation of restoration activities.

(B) Silviculture practices and forest management activities that use State-approved best management practices to protect water and sediment quality and stream and riparian habitat.

(C) Transportation projects that avoid or do not include instream disturbance in waters occupied by the species.

(v) Purposeful take that results from capture, handling, and release related to presence/absence surveys, studies to document habitat use, and population monitoring by individuals permitted to conduct these same activities for other species of mussels until January 25, 2024.

(vi) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

■ 4. In § 17.95, amend paragraph (f) by adding entries for '''Ouachita' Fanshell (*Cyprogenia* cf. *aberti*)'' and ''Western Fanshell (*Cyprogenia aberti*)''

immediately following the entry for ''Appalachian Elktoe (*Alasmidonta raveneliana*)'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and Snails.*

* * * * *

''Ouachita'' Fanshell (*Cyprogenia* cf. *aberti*)

(1) Critical habitat units are depicted for Ashley, Bradley, Clark, Cleveland, Dallas, Drew, Grant, Nevada, and Ouachita Counties, Arkansas, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of ''Ouachita'' fanshell consist of the following components:

(i) Adequate flows, or a hydrologic flow regime (magnitude, timing, frequency, duration, rate of change, and overall seasonality of discharge over time), necessary to maintain benthic habitats where the species is found and to maintain stream connectivity, specifically providing for the exchange of nutrients and sediment for maintenance of the mussel's and fish hosts' habitat and food availability, maintenance of spawning habitat for native host fishes, and the ability for newly transformed juveniles to settle and become established in their habitats. Adequate flows ensure delivery of oxygen, enable reproduction, deliver food to filter-feeding mussels, and reduce contaminants and fine sediments from interstitial spaces.

(ii) Suitable substrates and connected instream habitats, characterized by geomorphically stable stream channels and banks (that is, channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation) with habitats that support a diversity of freshwater mussel and native fish (such as stable riffle-run-pool habitats that provide flow refuges consisting of silt-free gravel and coarse sand substrates).

(iii) Water and sediment quality necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages, including, but not limited to, dissolved oxygen (generally above 3 parts per million (ppm)) and water temperature (generally below 80 degrees Fahrenheit (°F) (27 degrees Celsius (°C)). Additionally, water and sediment should be low in ammonia (generally below 1.0 ppm total ammonia-nitrogen) and heavy metals, and lack excessive total suspended solids and other pollutants.

(iv) The presence and abundance of fish hosts necessary for recruitment of the ''Ouachita'' fanshell, including logperch (*Percina caprodes*), slenderhead darter (*Percina phoxocephala*), or orangebelly darter (*Etheostoma radiosum*).

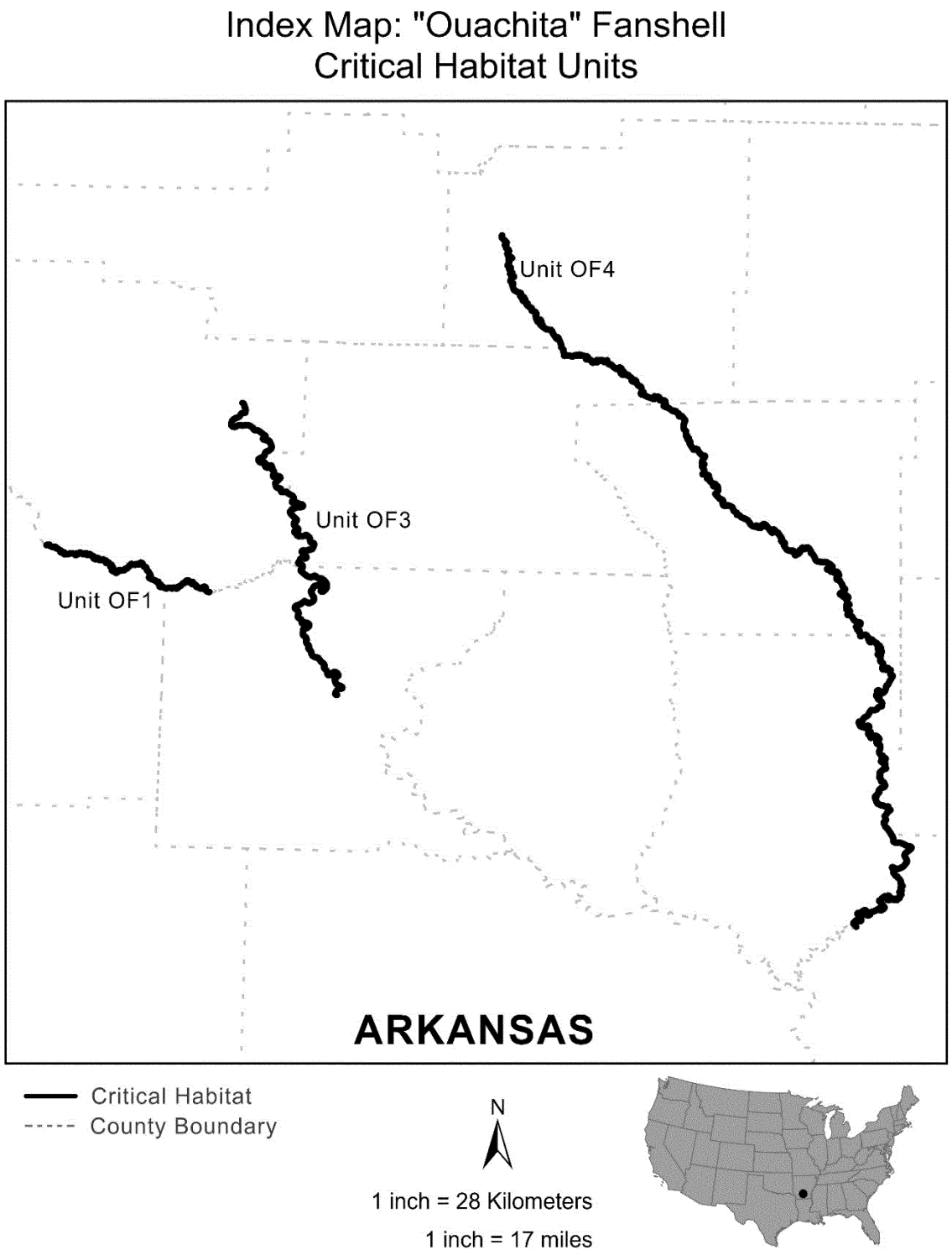
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on July 27, 2023.

(4) Data layers defining map units were created by overlaying Natural Heritage Element Occurrence data and U.S. Geological Survey hydrologic data for stream reaches using ESRI ArcGIS mapping software. Critical habitat unit upstream and downstream limits were delineated at the nearest road crossing or stream confluence of each occupied reach. Data layers defining map units were created with U.S. Geological Survey National Hydrography Dataset (NHD) Medium Flowline data. ArcGIS was also used to calculate river kilometers and river miles from the NHD dataset, and it was used to determine longitude and latitude coordinates in decimal degrees. The projection used in mapping and calculating distances and locations within the units was EPSG:4269–NAD83 Geographic. Natural Heritage program and State mussel database species presence data from Arkansas were used to select specific river and stream segments for inclusion in the critical habitat layer. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/species/ouachita-fanshell-cyprogenia-sp-cf-aberti,* at *https://www.regulations.gov* at Docket No. FWS–R3–ES–2021–0061, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map for ''Ouachita'' fanshell critical habitat units follows:

BILLING CODE 4333–15–P

Figure 1 to ''Ouachita'' Fanshell (*Cyprogenia* cf. *aberti*) paragraph (5)

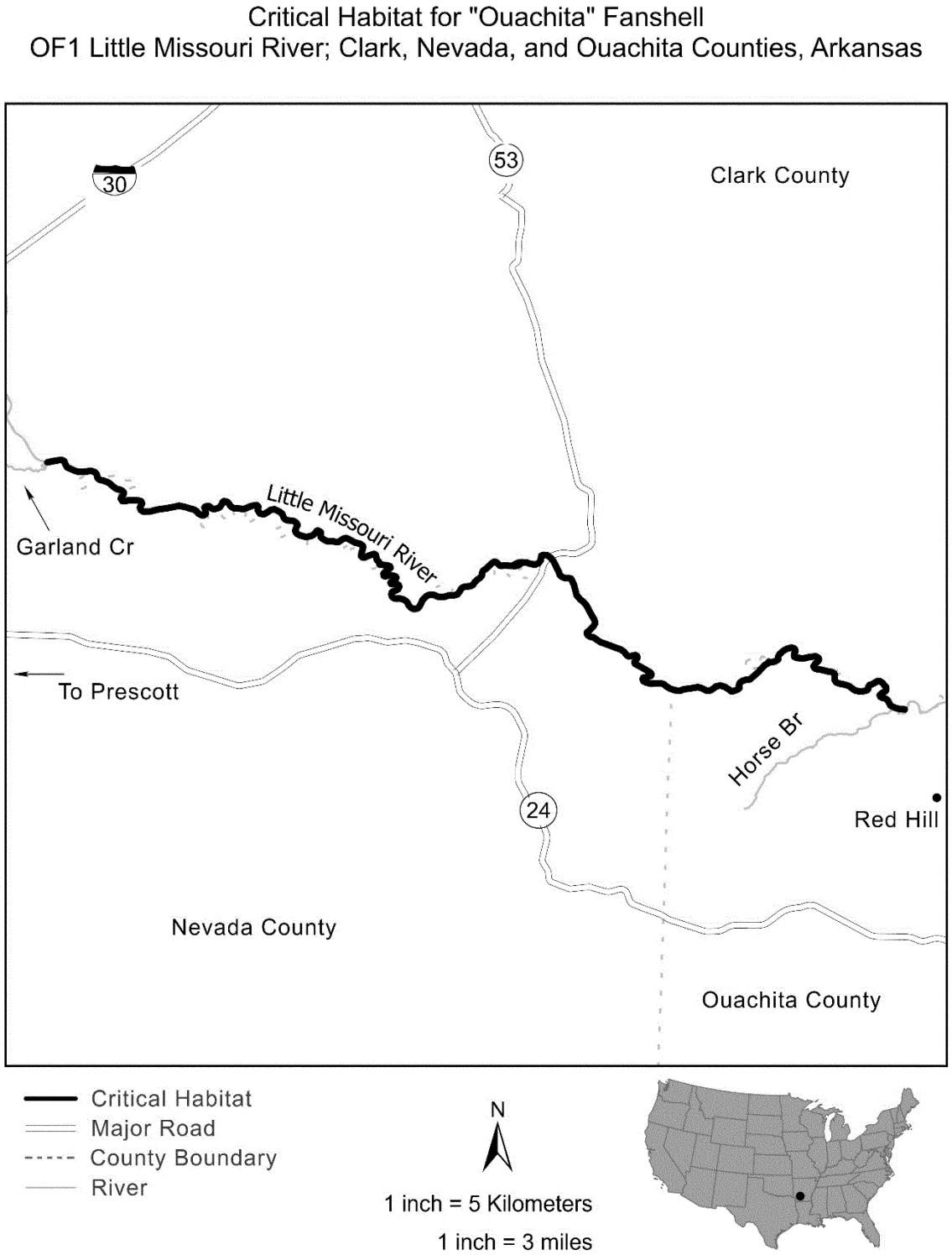


(6) Unit OF 1: Little Missouri River; Clark, Nevada, and Ouachita Counties, Arkansas.

(i) Unit OF 1 consists of 22.9 river miles (mi) (36.9 kilometers (km)) of Little Missouri River in Clark, Nevada, and Ouachita Counties, Arkansas, from the mouth of Garland Creek northeast of Prescott, Nevada County, downstream to the mouth of Horse Branch north of Red Hill, Ouachita County. Unit OF 1 includes the river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership.

(ii) Map of Unit OF 1 follows:

Figure 2 to ''Ouachita'' Fanshell (*Cyprogenia* cf. *aberti*) paragraph (6)(ii)



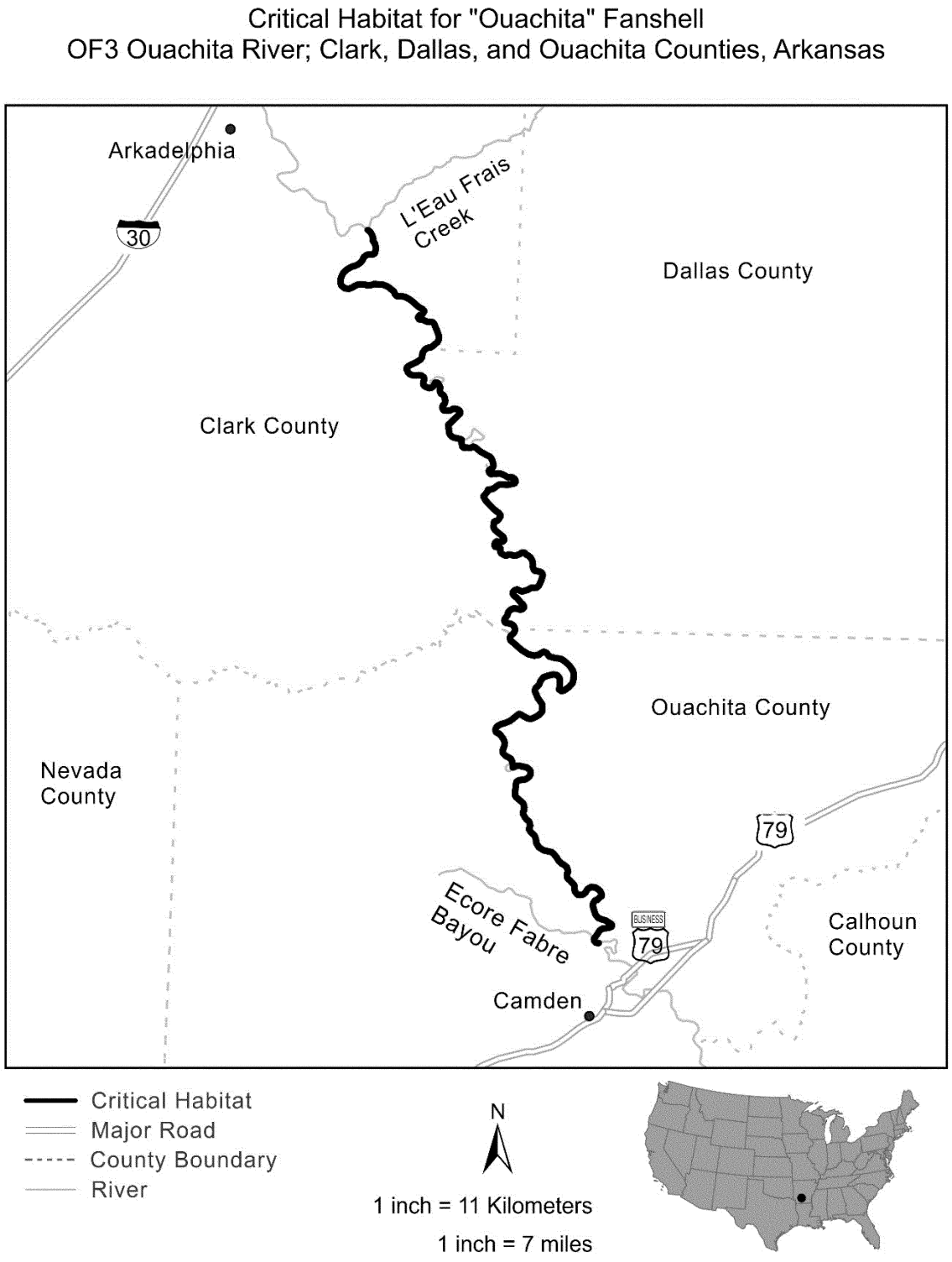
(7) Unit OF 2 has been excluded from this critical habitat designation.

(8) Unit OF 3: Ouachita River; Clark, Dallas, and Ouachita Counties, Arkansas.

(i) Unit OF 3 consists of 53.5 river mi (86.1 km) of Ouachita River in Clark, Dallas, and Ouachita Counties, Arkansas, from the mouth of L'Eau Frais Creek southeast of Arkadelphia, Clark County, downstream to the mouth of Ecore Fabre Bayou north of Camden, Ouachita County. Unit OF 3 includes the river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership. There is a Wetlands Reserve Program easement within the unit.

(ii) Map of Unit OF 3 follows:

Figure 3 to ''Ouachita'' Fanshell (*Cyprogenia* cf. *aberti*) paragraph (8)(ii)

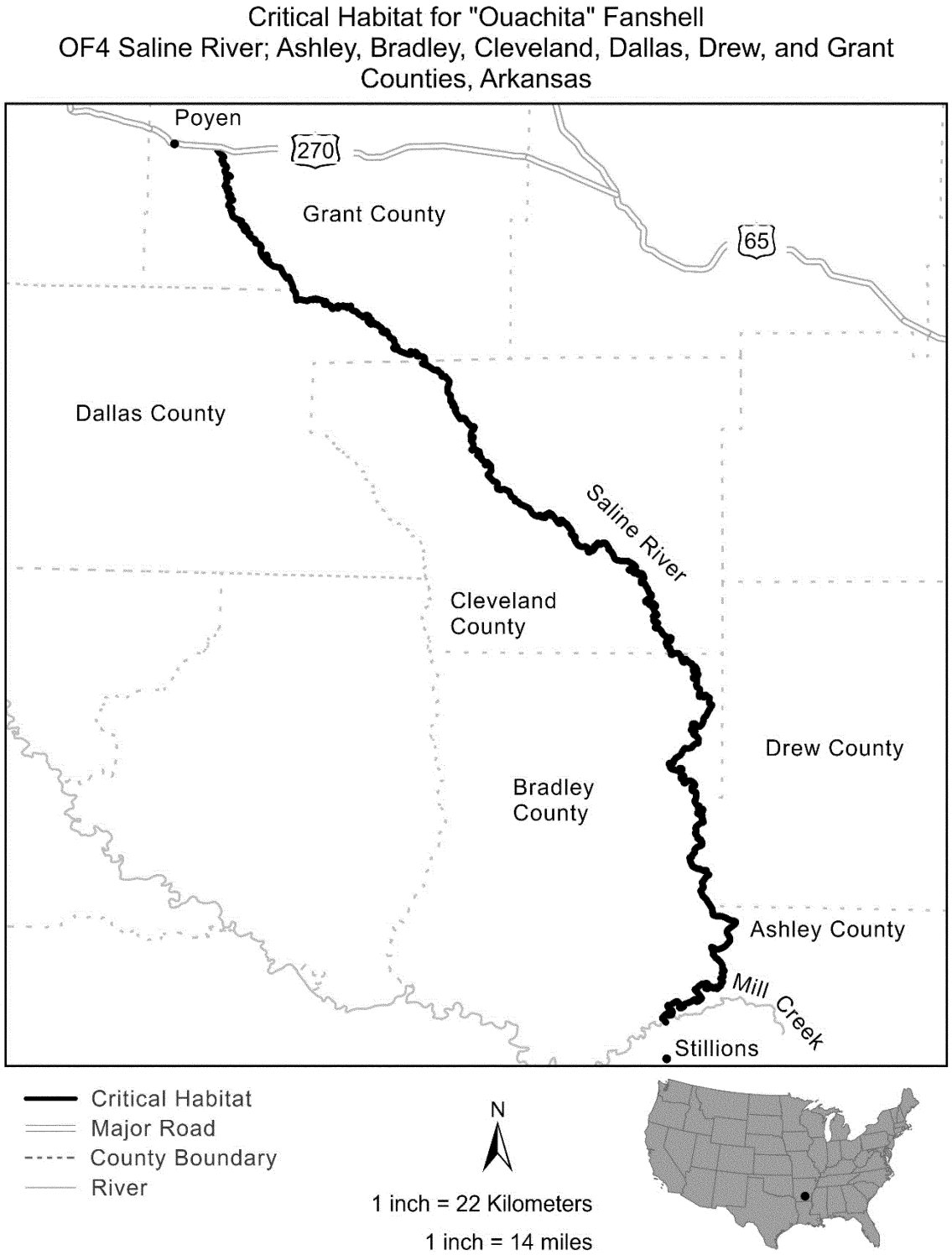


(9) Unit OF 4: Saline River; Ashley, Bradley, Cleveland, Dallas, Drew, and Grant Counties, Arkansas.

(i) Unit OF 4 consists of 151.3 river mi (243.5 km) of Saline River in Ashley, Bradley, Cleveland, Dallas, Drew, and Grant Counties, Arkansas, from U.S. Highway 270 east of Poyen, Grant County, downstream to the mouth of Mill Creek north of Stillions, Ashley County. Unit OF 4 includes the river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership, and less than 1 percent is in public ownership. The public ownership in this unit is State-owned land associated with Jenkins Ferry State Park.

(ii) Map of Unit OF 4 follows:

Figure 4 to ''Ouachita'' Fanshell (*Cyprogenia* cf. *aberti*) paragraph (9)(ii)



Western Fanshell (*Cyprogenia aberti*)

(1) Critical habitat units are depicted for Fulton, Independence, Jackson, Lawrence, Randolph, and Sharp Counties, Arkansas, and Butler, Jasper, Madison, and Wayne Counties, Missouri, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of western fanshell consist of the following components:

(i) Adequate flows, or a hydrologic flow regime (magnitude, timing, frequency, duration, rate of change, and overall seasonality of discharge over time), necessary to maintain benthic habitats where the species is found and to maintain stream connectivity, specifically providing for the exchange of nutrients and sediment for maintenance of the mussel's and fish hosts' habitat and food availability, maintenance of spawning habitat for native host fishes, and the ability for newly transformed juveniles to settle and become established in their habitats. Adequate flows ensure delivery of oxygen, enable reproduction, deliver food to filter-feeding mussels,

and reduce contaminants and fine sediments from interstitial spaces.

(ii) Suitable substrates and connected instream habitats, characterized by geomorphically stable stream channels and banks (that is, channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation) with habitats that support a diversity of freshwater mussel and native fish (such as stable riffle-run-pool habitats that provide flow refuges consisting of silt-free gravel and coarse sand substrates).

(iii) Water and sediment quality necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages, including, but not limited to: dissolved oxygen (generally above 3 parts per million (ppm)) and water temperature (generally below 80 degrees Fahrenheit (°F) (27 degrees Celsius (°C)). Additionally, water and sediment should be low in ammonia (generally below 1.0 ppm total ammonia-nitrogen) and heavy metals, and lack excessive total suspended solids and other pollutants.

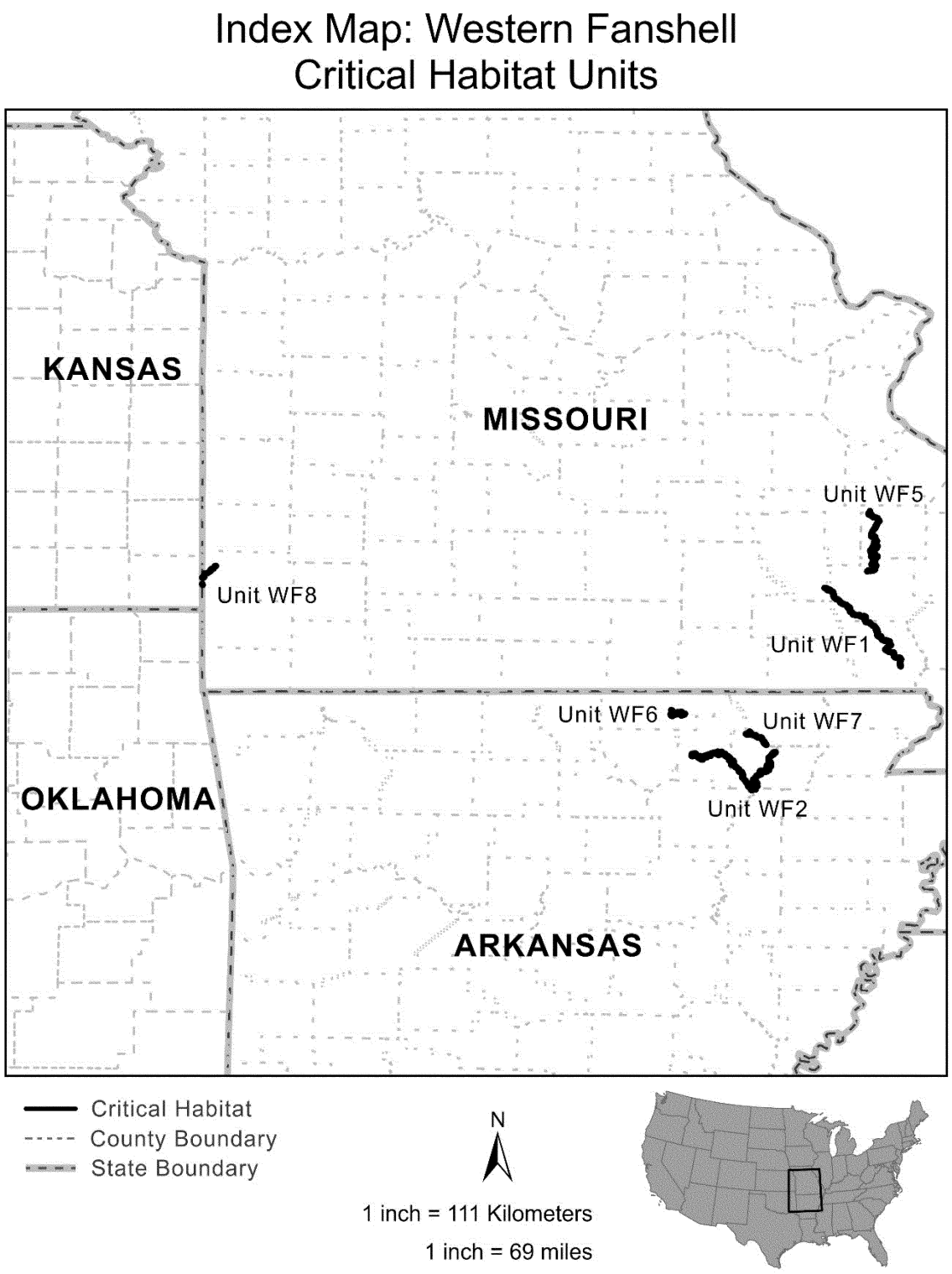
(iv) The presence and abundance of fish hosts necessary for recruitment of the western fanshell, including logperch (*Percina caprodes*), rainbow darter (*Etheostoma caeruleum*), slenderhead darter (*Percina phoxocephala*), fantail darter (*Etheostoma flabellare*), or orangebelly darter (*Etheostoma radiosum*).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on July 27, 2023.

(4) Data layers defining map units were created by overlaying Natural Heritage Element Occurrence data and U.S. Geological Survey hydrologic data for stream reaches using ESRI ArcGIS mapping software. Critical habitat unit upstream and downstream limits were delineated at the nearest road crossing or stream confluence of each occupied reach. Data layers defining map units were created with U.S. Geological Survey National Hydrography Dataset (NHD) Medium Flowline data. ArcGIS was also used to calculate river kilometers and river miles from the NHD dataset, and it was used to determine longitude and latitude coordinates in decimal degrees. The projection used in mapping and calculating distances and locations within the units was EPSG:4269–NAD83 Geographic. Natural Heritage program and State mussel database species presence data from Arkansas and Missouri were used to select specific river and stream segments for inclusion in the critical habitat layer. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/species/western-fanshell-cyprogenia-aberti,* at *https://www.regulations.gov* at Docket No. FWS–R3–ES–2021–0061, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map for western fanshell critical habitat units follows:

Figure 1 to Western Fanshell (*Cyprogenia aberti*) paragraph (5)



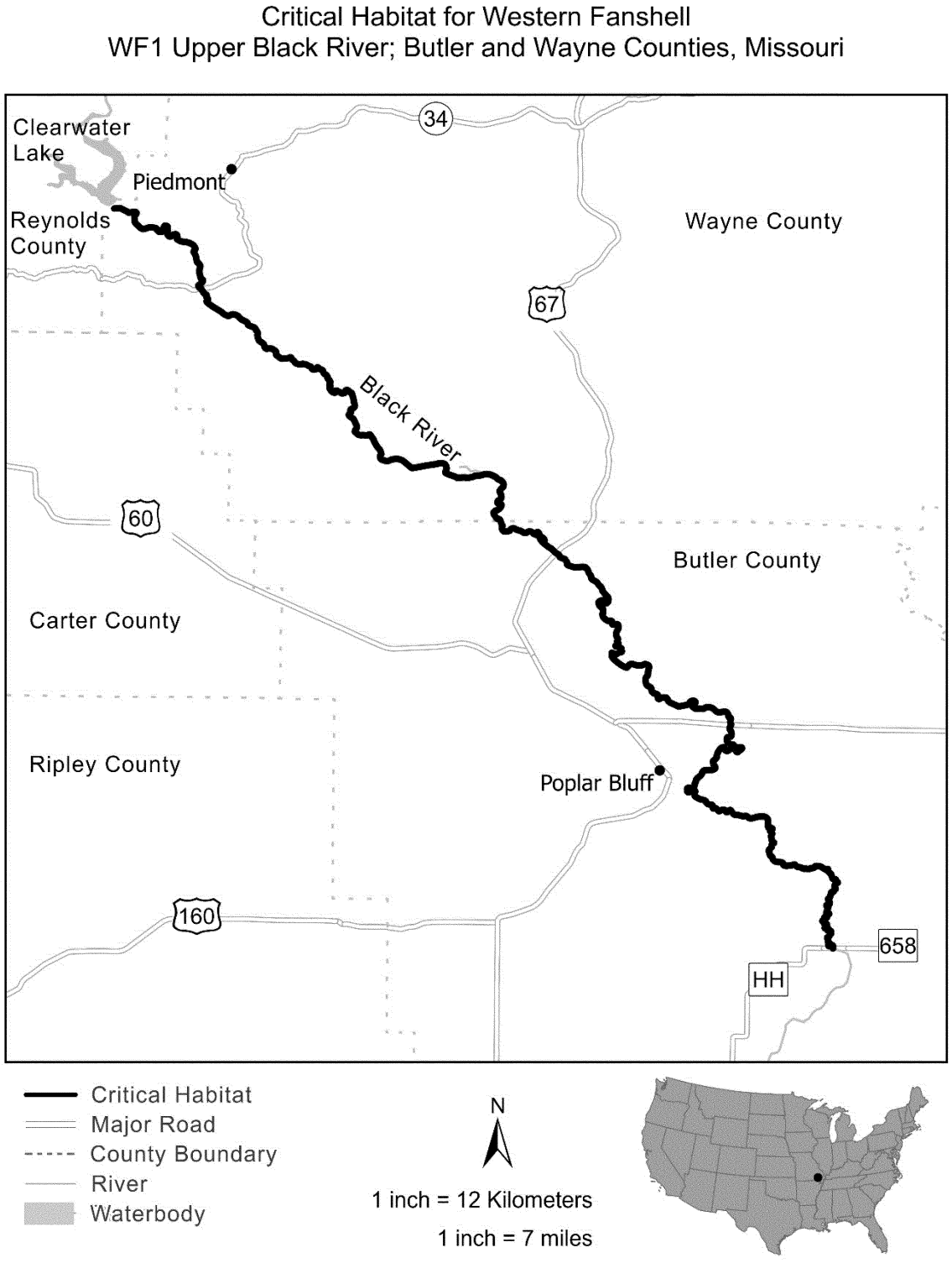
(6) Unit WF 1: Upper Black River; Butler and Wayne Counties, Missouri.

(i) Unit WF 1 consists of 64.7 river miles (mi) (104.1 kilometers (km)) of Black River in Butler and Wayne Counties, Missouri, from Clearwater Dam southwest of Piedmont, Wayne County, extending downstream to Butler County Road 658 crossing southeast of Poplar Bluff, Butler County. Unit WF 1 includes the river channel up to the ordinary high water mark. Riparian lands that border the unit include approximately 51 river mi (82.1 km; 79 percent) in private ownership and 13.7 river mi (22 km; 21 percent) in public (Federal or State) ownership. Approximately 2.7 miles of the public ownership in this unit are State lands associated with Missouri Department of Conservation's (MDC) Bradley A. Hammer Memorial Conservation Area, Dan River Access, Hilliard Access, and Stephen J. Sun Conservation Area. Eleven miles are Federal land associated with the U.S. Forest Service's (USFS) Mark Twain National Forest and U.S.

Army Corps of Engineers' Clearwater Recreation Area.

(ii) Map of Unit WF 1 follows:

Figure 2 to Western Fanshell (*Cyprogenia aberti*) paragraph (6)(ii)



(7) Unit WF 2: Lower Black/Strawberry River; Independence, Jackson, Lawrence, and Sharp Counties, Arkansas.

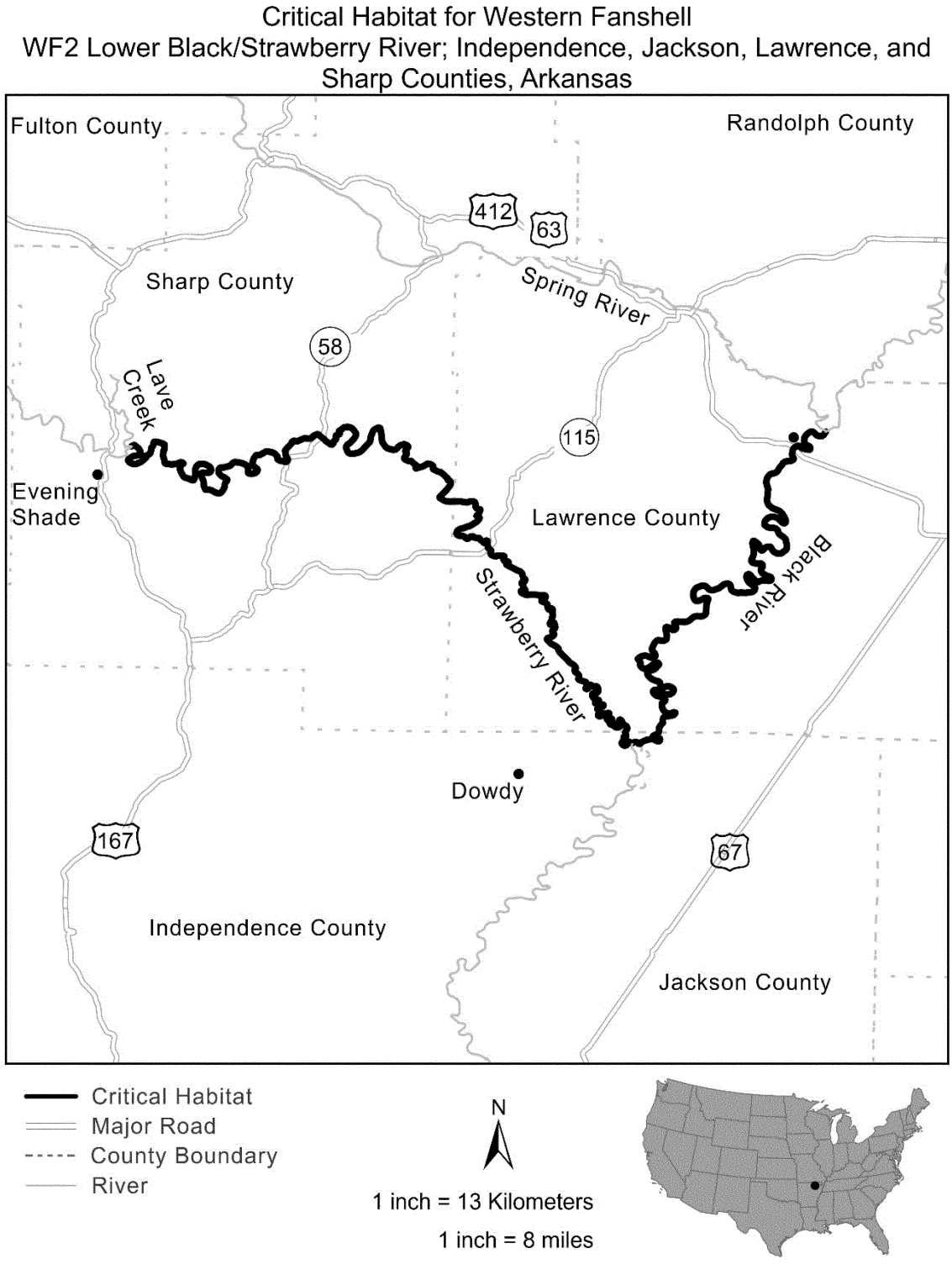
(i) Unit WF 2 consists of 111.3 river mi (179.1 km) of Black River and Strawberry River in Independence, Jackson, Lawrence, and Sharp Counties in Arkansas. Unit WF 2 includes the river channel up to the ordinary high water mark. Black River makes up 54.6 river mi (87.9 km) from the mouth of Spring River northeast of Black Rock, extending downstream to the mouth of

Strawberry River northeast of Dowdy, Independence County. Strawberry River makes up 56.7 river mi (91.2 km) from the mouth of Lave Creek north of Evening Shade, Sharp County, extending downstream to the confluence with Black River northeast of Dowdy, Independence County.

Riparian lands that border the unit include approximately 100.4 river mi (161.6 km; 90 percent) in private ownership and 10.9 river mi (17.5 km; 10 percent) in public (State) ownership. The public land ownership in this unit is associated with Arkansas Game and Fish Commission's Shirey Bay Rainey Brake Wildlife Management Area on Black River. The Nature Conservancy's Strawberry River Preserve and Ranch on Strawberry River is also in this unit.

(ii) Map of Unit WF 2 follows:

Figure 3 to Western Fanshell (*Cyprogenia aberti*) paragraph (7)(ii)



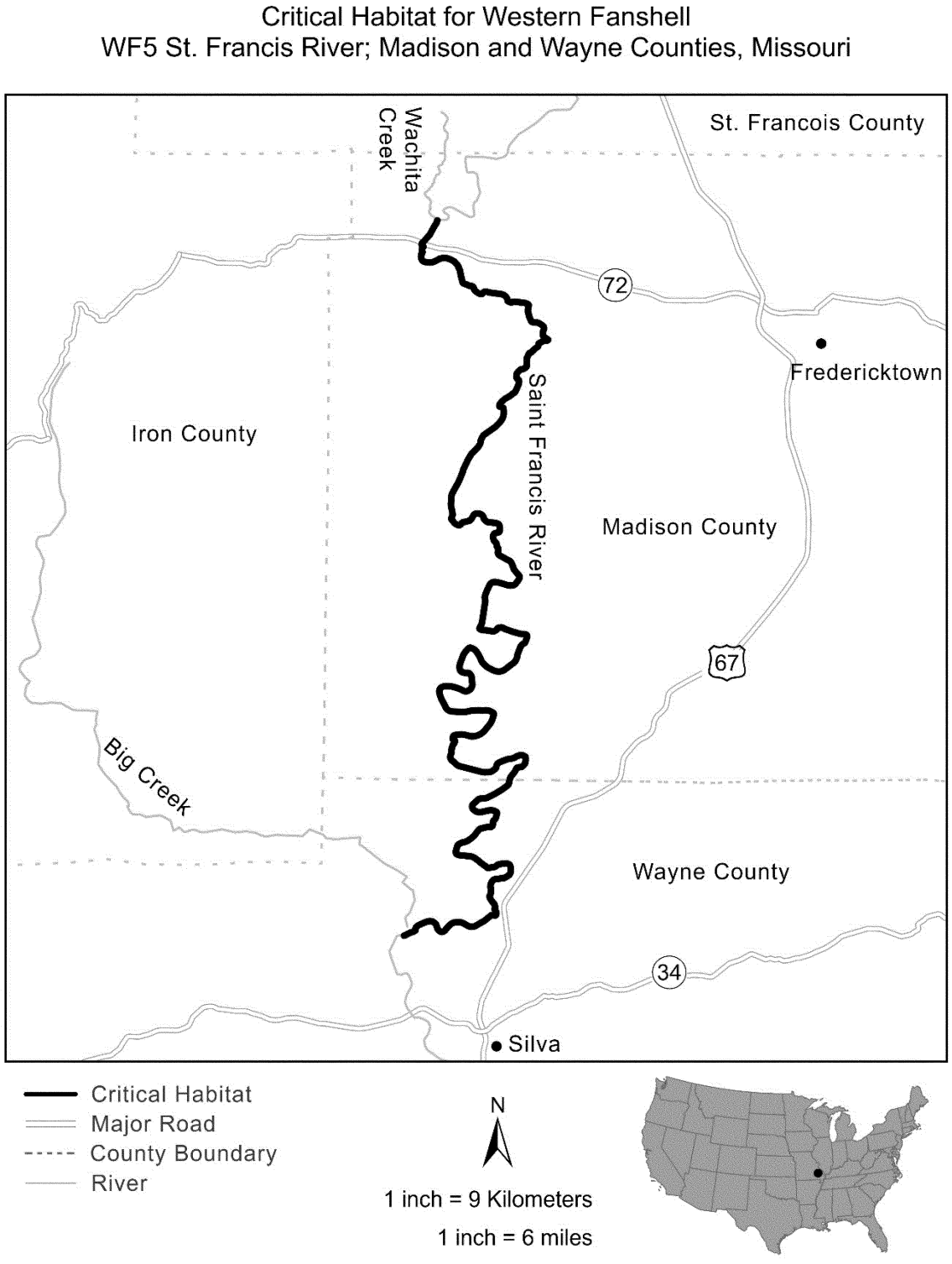
(8) Units WF 3 and WF 4 have been excluded from this critical habitat designation.

(9) Unit WF 5: St. Francis River; Madison and Wayne Counties, Missouri.

(i) Unit WF 5 consists of 49.3 river mi (79.3 km) of St. Francis River in Madison and Wayne Counties, Missouri, extending from the mouth of Wachita Creek west of Fredericktown, Madison County, downstream to the mouth of Big Creek northwest of Silva, Wayne County. Unit WF 5 includes the river channel up to the ordinary high water mark. Riparian lands that border the unit include approximately 36.7 river mi (59.1 km; 74 percent) in private ownership and 12.6 river mi (20.2 km; 26 percent) in public (Federal or State) ownership. Approximately 2.4 river mi of the public ownership in this unit are State lands associated with MDC's Coldwater Conservation Area, Mill Stream Gardens, and Roselle Access. Ten miles are Federal land associated with the USFS's Mark Twain National Forest.

(ii) Map of Unit WF 5 follows:

Figure 4 to Western Fanshell (*Cyprogenia aberti*) paragraph (9)(ii)

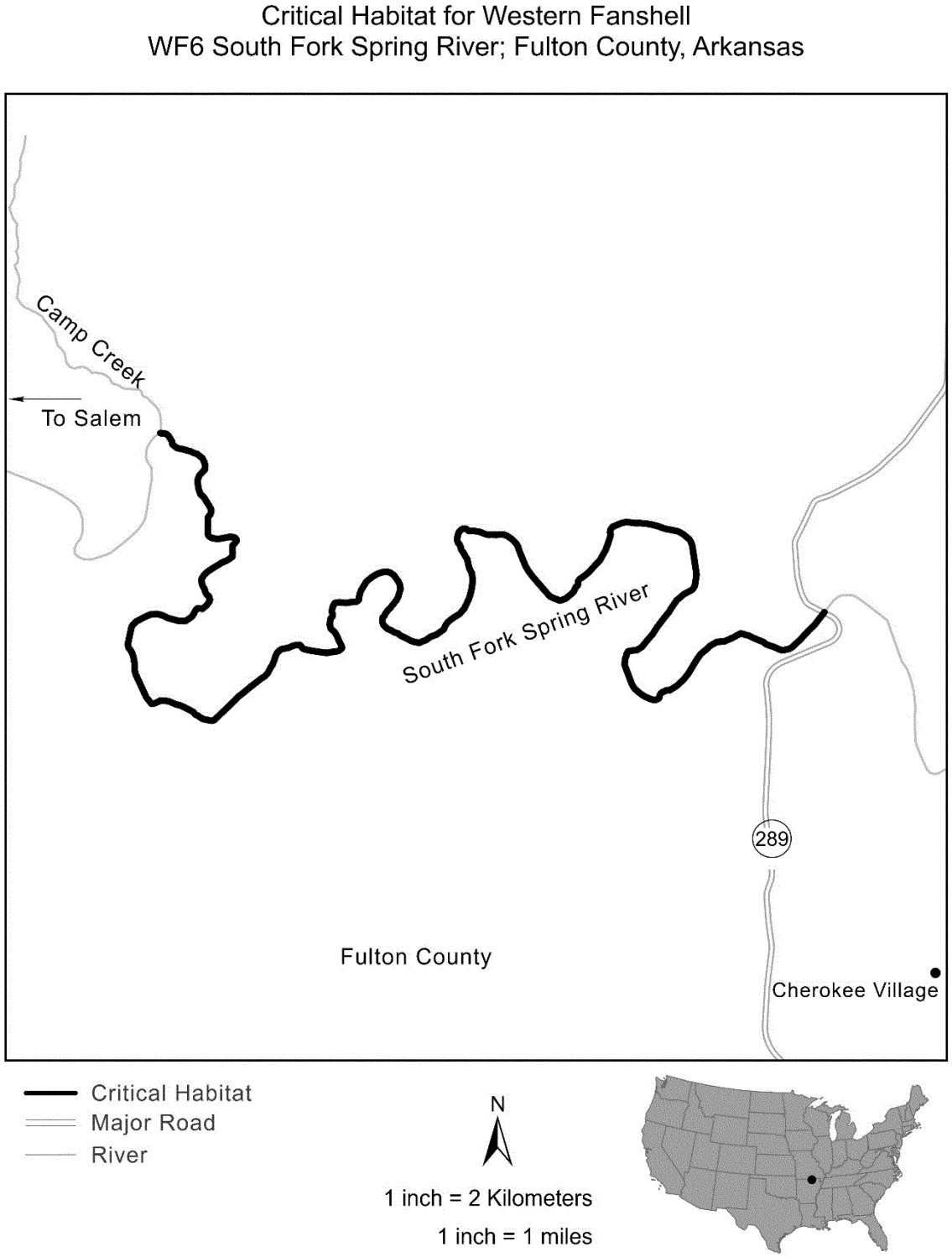


(10) Unit WF 6: South Fork Spring River; Fulton County, Arkansas.

(i) Unit WF 6 consists of 13.4 river mi (21.6 km) of South Fork Spring River in Fulton County, Arkansas, from the mouth of Camp Creek east of Salem, Fulton County, extending downstream to the Arkansas Highway 289 crossing northwest of Cherokee Village, Fulton County. Unit WF 6 includes the river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership.

(ii) Map of Unit WF 6 follows:

Figure 5 to Western Fanshell (*Cyprogenia aberti*) paragraph (10)(ii)

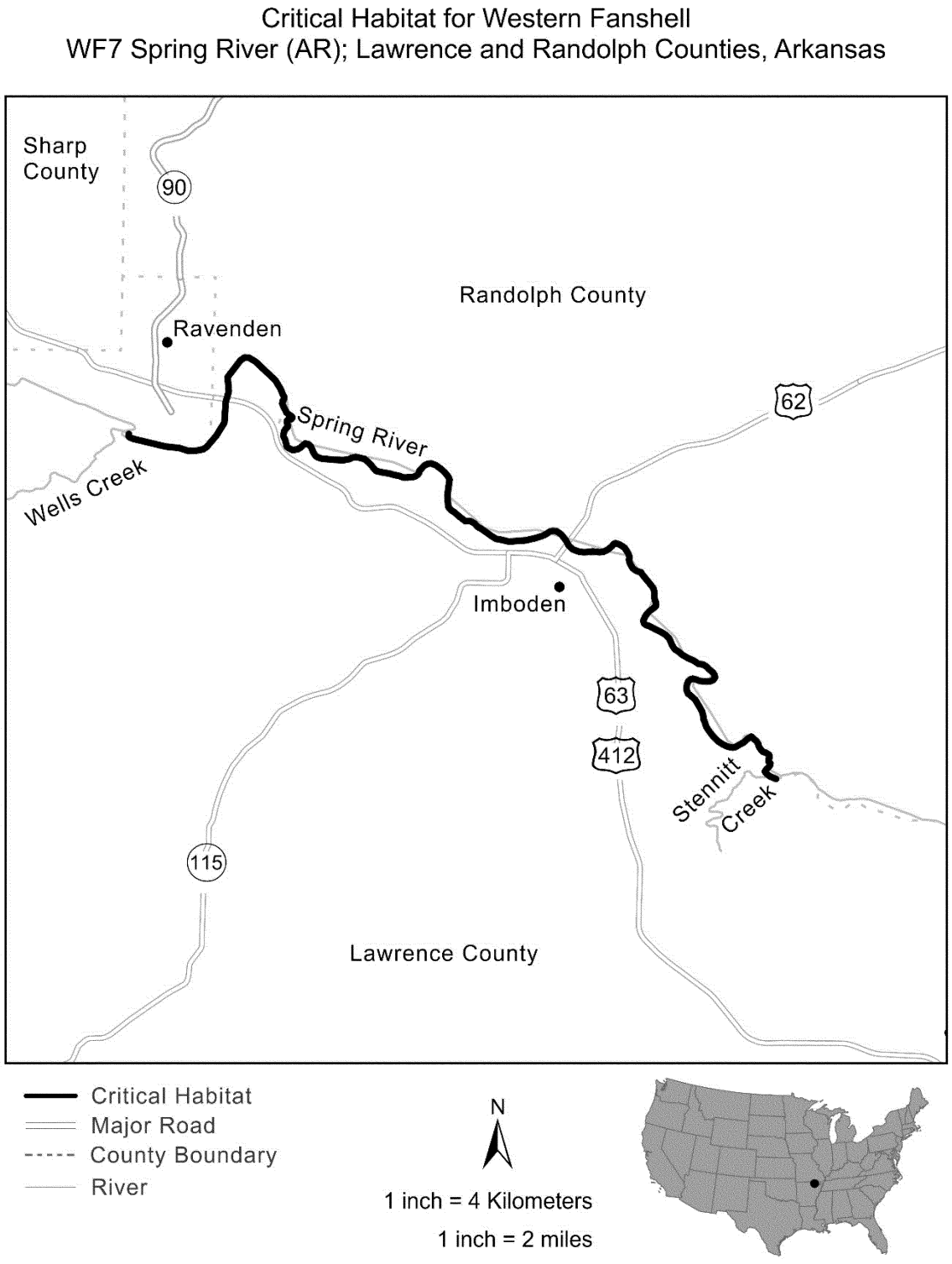


(11) Unit WF 7: Spring River (AR); Lawrence and Randolph Counties, Arkansas.

(i) Unit WF 7 consists of 14.2 river mi (22.9 km) of Spring River in Lawrence and Randolph Counties, Arkansas, from the mouth of Wells Creek at Ravenden, extending downstream to the mouth of Stennitt Creek southeast of Imboden, Lawrence County. Unit WF 7 includes the river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership.

(ii) Map of Unit WF 7 follows:

Figure 6 to Western Fanshell (*Cyprogenia aberti*) paragraph (11)(ii)



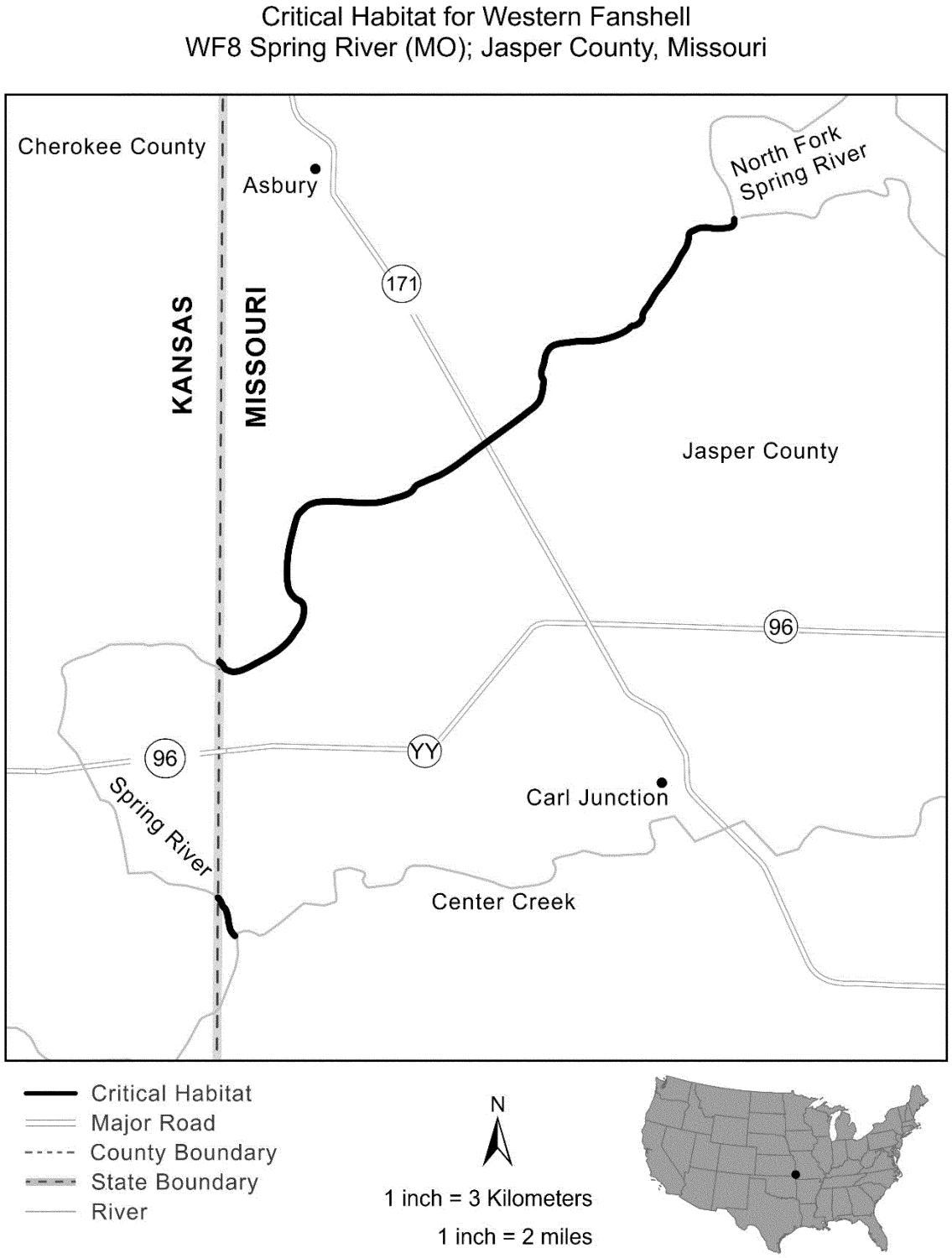
(12) Unit WF 8: Spring River (MO); Jasper County, Missouri.

(i) Unit WF 8 consists of 8.5 river mi (13.7 km) of Spring River in Jasper County, Missouri, from the mouth of North Fork Spring River east of Asbury,

Jasper County, Missouri, extending downstream to the Kansas State line, then from where it reenters Missouri to the mouth of Center Creek west of Carl Junction, Jasper County, Missouri. Unit WF 8 includes the river channel up to the ordinary high water mark. Approximately 100 percent of the riparian lands that border the unit are in private ownership.

(ii) Map of Unit WF 8 follows:

Figure 7 to Western Fanshell (*Cyprogenia aberti*) paragraph (12)(ii)



(13) Unit WF 9 has been excluded from this critical habitat designation.

* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–13461 Filed 6–26–23; 8:45 am]

BILLING CODE 4333–15–C

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Part III

Commodity Futures Trading Commission

17 CFR Chapter I

Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Domiciled in the French Republic and Federal Republic of Germany and Subject to Capital and Financial Reporting Requirements of the European Union; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Domiciled in the French Republic and Federal Republic of Germany and Subject to Capital and Financial Reporting Requirements of the European Union

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed order and request for comment.

SUMMARY: The Commodity Futures Trading Commission is soliciting public comment on an application submitted by the Institute of International Bankers, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association requesting that the Commission determine that the capital and financial reporting laws and regulations of the European Union applicable to CFTC-registered swap dealers organized and domiciled in the French Republic and Federal Republic of Germany provide sufficient bases for an affirmative finding of comparability with respect to the Commission's swap dealer capital and financial reporting requirements adopted under the Commodity Exchange Act. The Commission is also soliciting public comment on a proposed order providing for the conditional availability of substituted compliance in connection with the application.

DATES: Comments must be received on or before August 28, 2023.

ADDRESSES: You may submit comments, identified by ''EU Swap Dealer Capital Comparability Determination,'' by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this proposed order and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (''FOIA''), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in Commission Regulation 145.9.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the proposed determination and order will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Amanda L. Olear, Director, 202–418–5283, *aolear@cftc.gov;* Thomas Smith, Deputy Director, 202–418–5495, *tsmith@cftc.gov;* Rafael Martinez, Associate Director, 202–418–5462, *rmartinez@cftc.gov;* Liliya Bozhanova, Special Counsel, 202–418–6232, *lbozhanova@cftc.gov;* Joo Hong, Risk Analyst, 202–418–6221, *jhong@cftc.gov;* Justin McPhee, Risk Analyst, 202–418–6223; *jmchpee@cftc.gov,* Market Participants Division; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is soliciting public comment on an application dated September 24, 2021 (the ''EU Application'') submitted by the Institute of International Bankers, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association (together, the ''Applicants'').[2] The Applicants request that the Commission determine that registered nonbank swap dealers [3] (''nonbank SDs'') organized and domiciled within the European Union (''EU'') (''EU nonbank SDs'') may satisfy certain capital and financial reporting requirements under the Commodity Exchange Act (''CEA'') [4] by being subject to, and complying with, comparable capital and financial reporting requirements under EU laws and regulations. As described below, the EU Application addresses nonbank SDs located in the French Republic (''France'') and the Federal Republic of Germany (''Germany''), the two member states of the EU (''EU Member States'') in which EU nonbank SDs currently registered with the Commission are located.[5] The Commission also is soliciting public comment on a proposed order under which EU nonbank SDs organized and domiciled in France and Germany would be able, subject to defined conditions, to comply with certain CFTC nonbank SD capital and financial reporting requirements in the manner set forth in the proposed order.

I. Introduction

A. Regulatory Background—Swap Dealer and Major Swap Participant Capital and Financial Reporting Requirements

Section 4s(e) of the CEA [6] directs the Commission and ''prudential regulators'' [7] to impose capital requirements on all SDs and major swap participants (''MSPs'') registered with the Commission.[8] Sections 4s(e) of the

[1] 17 CFR 145.9. Commission regulations referred to in this release are found at 17 CFR chapter I, and are accessible on the Commission's website: *https://www.cftc.gov/LawRegulation/CommodityExchangeAct/index.htm.*

[2] *See* Letter dated September 24, 2021 from Stephanie Webster, General Counsel, Institute of International Bankers, Steven Kennedy, Global Head of Public Policy, International Swaps and Derivatives Association, and Kyle Brandon, Managing Director, Head of Derivatives Policy, Securities Industry and Financial Markets Association. The EU Application is available on the Commission's website at: *https://www.cftc.gov/LawRegulation/DoddFrankAct/CDSCP/index.htm.*

[3] As discussed in Section I.A. immediately below, the Commission has the authority to impose capital requirements on registered swap dealers (''SDs'') that are not subject to regulation by a U.S. prudential regulator (*i.e.,* nonbank SDs).

[4] 7 U.S.C. 1 *et seq.* The CEA may be accessed through the Commission's website at: *https://www.cftc.gov/LawRegulation/CommodityExchangeAct/index.htm.*

[5] As further discussed below, there are currently four EU nonbank SDs registered with the Commission: BofA Securities Europe SA and Goldman Sachs Paris Inc. et Cie are organized and domiciled in France; Citigroup Global Markets Europe AG and Morgan Stanley Europe SE are organized and domiciled in Germany.

[6] 7 U.S.C. 6s(e).

[7] The term ''prudential regulator'' is defined in the CEA to mean the Board of Governors of the Federal Reserve System (''Federal Reserve Board''); the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency. *See* 7 U.S.C. 1a(39).

[8] Subject to certain exceptions, the term ''swap dealer'' is generally defined as any person that (i) holds itself out as a dealer in swaps; (ii) makes a market in swaps; (iii) regularly enters into swaps

CEA also directs the Commission and prudential regulators to adopt regulations imposing initial and variation margin requirements on swaps entered into by SDs and MSPs that are not cleared by a registered derivatives clearing organization (''uncleared swaps'').

Section 4s(e) applies a bifurcated approach with respect to the above Congressional directives, requiring each SD and MSP that is subject to the regulation of a prudential regulator (''bank SD'' and ''bank MSP,'' respectively) to meet the minimum capital requirements and uncleared swaps margin requirements adopted by the applicable prudential regulator, and requiring each SD and MSP that is not subject to the regulation of a prudential regulator (''nonbank SD'' and ''nonbank MSP,'' respectively) to meet the minimum capital requirements and uncleared swaps margin requirements adopted by the Commission.[9] Therefore, the Commission's authority to impose capital requirements and margin requirements for uncleared swap transactions extends to nonbank SDs and nonbank MSPs, including nonbanking subsidiaries of bank holding companies regulated by the Federal Reserve Board.[10]

The prudential regulators implemented Section 4s(e) in 2015 by amending existing capital requirements applicable to bank SDs and bank MSPs to incorporate swap transactions into their respective bank capital frameworks, and by adopting rules imposing initial and variation margin requirements on bank SDs and bank MSPs that engage in uncleared swap transactions.[11] The Commission adopted final rules imposing initial and variation margin obligations on nonbank SDs and nonbank MSPs for uncleared swap transactions on January 6, 2016.[12] The Commission also approved final capital requirements for nonbank SDs and nonbank MSPs on July 24, 2020, which were published in the **Federal Register** on September 15, 2020 with a compliance date of October 6, 2021 (''CFTC Capital Rules'').[13]

Section 4s(f) of the CEA addresses SD and MSP financial reporting requirements.[14] Section 4s(f) of the CEA authorizes the Commission to adopt rules imposing financial condition reporting obligations on all SDs and MSPs (*i.e.,* nonbank SDs, nonbank MSPs, bank SDs, and bank MSPs). Specifically, Section 4s(f)(1)(A) of the CEA provides, in relevant part, that each registered SD and MSP must make financial condition reports as required by regulations adopted by the Commission.[15] The Commission's financial reporting obligations were adopted with the Commission's nonbank SD and nonbank MSP capital requirements, and have a compliance date of October 6, 2021 (''CFTC Financial Reporting Rules'').[16]

B. Commission Capital Comparability Determinations for Non-U.S. Nonbank Swap Dealers and Non-U.S. Nonbank Major Swap Participants

Commission Regulation 23.106 establishes a substituted compliance framework whereby the Commission may determine that compliance by a non-U.S. domiciled nonbank SD or non-U.S. domiciled nonbank MSP with its home country's capital and financial reporting requirements will satisfy all or parts of the CFTC Capital Rules and all or parts of the CFTC Financial Reporting Rules (such a determination referred to as a ''Capital Comparability Determination'').[17] The availability of such substituted compliance is conditioned upon the Commission issuing a determination that the relevant foreign jurisdiction's capital adequacy and financial reporting requirements, and related financial recordkeeping requirements, for non-U.S. nonbank SDs and/or non-U.S. nonbank MSPs are comparable to the corresponding CFTC Capital Rules and CFTC Financial Reporting Rules. The Commission will issue a Capital Comparability Determination in the form of a Commission order (''Capital Comparability Determination Order'').[18]

The Commission's approach for conducting a Capital Comparability Determination with respect to the CFTC Capital Rules and the CFTC Financial Reporting Rules is a principles-based, holistic approach that focuses on whether the applicable foreign jurisdiction's capital and financial reporting requirements achieve comparable outcomes to the corresponding CFTC requirements.[19] In this regard, the approach is not a line-by-line assessment or comparison of a foreign jurisdiction's regulatory requirements with the Commission's requirements.[20] In performing the analysis, the Commission recognizes that jurisdictions may adopt differing approaches to achieving comparable outcomes, and the Commission will focus on whether the foreign jurisdiction's capital and financial reporting requirements are comparable to the Commission's in purpose and effect, and not whether they are comparable in every aspect or contain identical elements.

A person requesting a Capital Comparability Determination is required to submit an application to the Commission containing: (i) a description of the objectives of the relevant foreign jurisdiction's capital adequacy and financial reporting requirements applicable to entities that are subject to the CFTC Capital Rules and the CFTC Financial Reporting Rules; (ii) a description (including specific legal and regulatory provisions) of how the relevant foreign jurisdiction's capital adequacy and financial reporting requirements address

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with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps. *See* 7 U.S.C. 1a(49). The term ''major swap participant'' is generally defined as any person who is not an SD, and (i) subject to certain exclusions, maintains a substantial position in swaps for any of the major swap categories as determined by the Commission; (ii) whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets; or (iii) maintains a substantial position in outstanding swaps in any major swap category as determined by the Commission. *See* 7 U.S.C. 1a(33).

[9] 7 U.S.C. 6s(e)(2).

[10] 7 U.S.C. 6s(e)(1) and (2).

[11] *See Margin and Capital Requirements for Covered Swap Entities,* 80 FR 74840 (Nov. 30, 2015).

[12] *See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,* 81 FR 636 (Jan. 6, 2016).

[13] *See Capital Requirements of Swap Dealers and Major Swap Participants,* 85 FR 57462 (Sept. 15, 2020).

[14] 7 U.S.C. 6s(f).

[15] 7 U.S.C. 6s(f)(1)(A).

[16] *See* 85 FR 57462.

[17] 17 CFR 23.106. Commission Regulation 23.106(a)(1) provides that a request for a Capital Comparability Determination may be submitted by a non-U.S. nonbank SD or a non-U.S. nonbank MSP, a trade association or other similar group on behalf of its SD or MSP members, or a foreign regulatory authority that has direct supervisory authority over one or more non-U.S. nonbank SDs or non-U.S. nonbank MSPs. In addition, Commission regulations provide that any non-U.S. nonbank SD or non-U.S. nonbank MSP that is dually-registered with the Commission as a futures commission merchant (''FCM'') is subject to the capital requirements of Commission Regulation 1.17 (17 CFR 1.17) and may not petition the Commission for a Capital Comparability Determination. *See* 17 CFR 23.101(a)(5) and (b)(4), respectively. Furthermore, non-U.S. bank SDs and non-U.S. bank MSPs may not petition the Commission for a Capital Comparability Determination with respect to their respective financial reporting requirements under Commission Regulation 23.105(p) (17 CFR 23.105(p)). Commission staff has issued, however, a time-limited no-action letter stating that the Market Participants Division will not recommend enforcement action against a non-U.S. bank SD that files with the Commission certain financial information that is provided to its home country regulator in lieu of certain financial reports required by Commission Regulation 23.105(p). *See* CFTC Staff Letter 21–18, issued on August 31, 2021.

[18] 17 CFR 23.106(a)(3).

[19] *See* 85 FR 57462 at 57521.

[20] *Id.*

the elements of the CFTC Capital Rules and CFTC Financial Reporting Rules, including, at a minimum, the methodologies for establishing and calculating capital adequacy requirements and whether such methodologies comport with any international standards; and (iii) a description of the ability of the relevant foreign regulatory authority to supervise and enforce compliance with the relevant foreign jurisdiction's capital adequacy and financial reporting requirements. The applicant must also submit, upon request, such other information and documentation as the Commission deems necessary to evaluate the comparability of the capital adequacy and financial reporting requirements of the foreign jurisdiction.[21]

The Commission may consider all relevant factors in making a Capital Comparability Determination, including: (i) the scope and objectives of the relevant foreign jurisdiction's capital and financial reporting requirements; (ii) whether the relevant foreign jurisdiction's capital and financial reporting requirements achieve comparable outcomes to the Commission's corresponding capital requirements and financial reporting requirements; (iii) the ability of the relevant foreign regulatory authority or authorities to supervise and enforce compliance with the relevant foreign jurisdiction's capital adequacy and financial reporting requirements; and (iv) any other facts or circumstances the Commission deems relevant, including whether the Commission and foreign regulatory authority or authorities have a memorandum of understanding (''MOU'') or similar arrangement that would facilitate supervisory cooperation.[22]

In performing the comparability assessment for foreign nonbank SDs, the Commission's review will include the extent to which the foreign jurisdiction's requirements address: (i) the process of establishing minimum capital requirements for nonbank SDs and how such process addresses risk, including market risk and credit risk of the nonbank SD's on-balance sheet and off-balance sheet exposures; (ii) the types of equity and debt instruments that qualify as regulatory capital in meeting minimum requirements; (iii) the financial reports and other financial information submitted by a nonbank SD to its relevant regulatory authority and whether such information provides the regulatory authority with the means necessary to effectively monitor the financial condition of the nonbank SD; and (iv) the regulatory notices and other communications between a nonbank SD and its foreign regulatory authority that address potential adverse financial or operational issues that may impact the firm. With respect to the ability of the relevant foreign regulatory authority to supervise and enforce compliance with the foreign jurisdiction's capital adequacy and financial reporting requirements, the Commission's review will include a review of the foreign jurisdiction's surveillance program for monitoring nonbank's SDs compliance with such capital adequacy and financial reporting requirements, and the disciplinary process imposed on firms that fail to comply with such requirements.

In performing the comparability assessment for foreign nonbank MSPs,[23] the Commission's review will include the extent to which the foreign jurisdiction's requirements address: (i) the process of establishing minimum capital requirements for a nonbank MSP and how such process establishes a minimum level of capital to ensure the safety and soundness of the nonbank MSP; (ii) the financial reports and other financial information submitted by a nonbank MSP to its relevant regulatory authority and whether such information provides the regulatory authority with the means necessary to effectively monitor the financial condition of the nonbank MSP; and (iii) the regulatory notices and other communications between a nonbank MSP and its foreign regulatory authority that address potential adverse financial or operational issues that may impact the firm. With respect to the ability of the relevant foreign regulatory authority to supervise and enforce compliance with the foreign jurisdiction's capital adequacy and financial reporting requirements, the Commission's review will include a review of the foreign jurisdiction's surveillance program for monitoring nonbank MSPs' compliance with such capital adequacy and financial reporting requirements, and the disciplinary process imposed on firms that fail to comply with such requirements.

Commission Regulation 23.106 further provides that the Commission may impose any terms or conditions that it deems appropriate in issuing a Capital Comparability Determination.[24] Any specific terms or conditions with respect to capital adequacy or financial reporting requirements will be set forth in the Commission's Capital Comparability Determination Order. As a general condition to all Capital Comparability Determination Orders, the Commission expects to require notification from applicants of any material changes to information submitted by the applicants in support of a comparability finding, including, but not limited to, changes in the relevant foreign jurisdiction's supervisory or regulatory regime.

The Commission's capital adequacy and financial reporting requirements are designed to address and manage risks that arise from a firm's operation as a SD or MSP. Given their functions, both sets of requirements and rules must be applied on an entity-level basis (meaning that the rules apply on a firm-wide basis, irrespective of the type of transactions involved) to effectively address risk to the firm as a whole. Therefore, in order to rely on a Capital Comparability Determination, a nonbank SD or nonbank MSP domiciled in the foreign jurisdiction and subject to supervision by the relevant regulatory authority (or authorities) in the foreign jurisdiction must file a notice with the Commission of its intent to comply with the applicable capital adequacy and financial reporting requirements of the foreign jurisdiction set forth in the Capital Comparability Determination in lieu of all or parts of the CFTC Capital Rules and/or CFTC Financial Reporting Rules.[25] Notices must be filed electronically with the Commission's Market Participants Division (''MPD'').[26] The filing of a notice by a non-U.S. nonbank SD or non-U.S. nonbank MSP provides MPD staff, acting pursuant to authority delegated by the Commission,[27] with the opportunity to engage with the firm and to obtain representations that it is subject to, and complies with, the laws and regulations cited in the Capital Comparability Determination and that it will comply with any listed conditions. MPD will issue a letter under its delegated authority from the Commission confirming that the non-U.S. nonbank SD or non-U.S. nonbank MSP may comply with foreign laws and regulations cited in the Capital Comparability Determination in lieu of

[21] 17 CFR 23.106(a)(2).

[22] *See* 17 CFR 23.106(a)(3) and 85 FR 57520–57522.

[23] Commission Regulation 23.101(b) requires a nonbank MSP to maintain positive tangible net worth. There are no MSPs currently registered with the Commission. 17 CFR 23.101(b).

[24] *See* 17 CFR 23.106(a)(5).

[25] 17 CFR 23.106(a)(4).

[26] Notices must be filed in electronic form to the following email address: *MPDFinancialRequirements@cftc.gov.*

[27] *See* 17 CFR 140.91(a)(11).

complying with the CFTC Capital Rules and the CFTC Financial Reporting Rules upon MPD's determination that the firm is subject to and complies with the applicable foreign laws and regulations, is subject to the jurisdiction of the applicable foreign regulatory authority (or authorities), and can meet any conditions in the Capital Comparability Determination.

Each non-U.S. nonbank SD and/or non-U.S. nonbank MSP that receives, in accordance with the applicable Commission Capital Comparability Determination Order, confirmation from the Commission that it may comply with a foreign jurisdiction's capital adequacy and/or financial reporting requirements will be deemed by the Commission to be in compliance with the corresponding CFTC Capital Rules and/or CFTC Financial Reporting Rules.[28] Accordingly, if a nonbank SD or nonbank MSP fails to comply with the foreign jurisdiction's capital adequacy and/or financial reporting requirements, the Commission may initiate an action for a violation of the corresponding CFTC Capital Rules and or CFTC Financial Reporting Rules.[29] In addition, a non-U.S. nonbank SD or non-U.S. nonbank MSP that receives confirmation of its ability to use substituted compliance remains subject to the Commission's examination and enforcement authority.[30]

The Commission will consider an application for a Capital Comparability Determination to be a representation by the applicant that the laws and regulations of the foreign jurisdiction that are submitted in support of the application are finalized and in force, that the description of such laws and regulations is accurate and complete, and that, unless otherwise noted, the scope of such laws and regulations encompasses the relevant non-U.S. nonbank SDs and/or non-U.S. nonbank MSPs domiciled in the foreign jurisdiction.[31] A non-U.S. nonbank SD or non-U.S. nonbank MSP that is not legally required to comply with a foreign jurisdiction's laws or regulations determined to be comparable in a Capital Comparability Determination may not voluntarily comply with such laws or regulations in lieu of compliance with the CFTC Capital Rules or the CFTC Financial Reporting Rules. Each non-U.S. nonbank SD or non-U.S. nonbank MSP that seeks to rely on a Capital Comparability Determination Order is responsible for determining whether it is subject to the foreign laws and regulations found comparable in the Capital Comparability Determination and the Capital Comparability Determination Order.

C. Application for a Capital Comparability Determination for Certain EU Nonbank Swap Dealers

The Applicants submitted the EU Application requesting that the Commission issue a Capital Comparability Determination finding that an EU nonbank SD's compliance with the capital requirements of the EU and the financial reporting requirements of the EU, as specified in the EU Application, satisfies corresponding CFTC Capital Rules and the CFTC Financial Reporting Rules applicable to a nonbank SD under Sections 4s(e)–(f) of the CEA and Commission Regulations 23.101 and 23.105.[32] There are currently four EU nonbank SDs registered with the Commission: BofA Securities Europe SA and Goldman Sachs Paris Inc. et Cie are organized and domiciled in France; Citigroup Global Markets Europe AG and Morgan Stanley Europe SE are organized and domiciled in Germany.

The capital and financial reporting framework applicable to EU financial institutions is established by EU regulations and directives. Specifically, the Capital Requirements Regulation [33] and the Capital Requirements Directive [34] set forth capital and financial reporting requirements applicable to entities defined as ''credit institutions'' or ''investment firms,'' including EU nonbank SDs.

The term ''credit institution'' includes an entity engaged in taking deposits or other repayable funds from the public and granting credits for its own account (''Banking Activities'').[35] An entity engaged in Banking Activities is subject to the capital and financial reporting requirements of CRR and CRD.

The term ''credit institution'' also includes an entity engaged in (i) dealing for its own account, (ii) underwriting financial instruments, or (iii) placing financial instruments on a firm commitment basis (collectively, ''Investment Activities''), provided that the entity also meets certain defined financial thresholds set forth in the definition.[36] Specifically, an entity engaged in Investment Activities that maintains a total value of consolidated assets equal to or in excess of EUR 30 billion is required to be authorized as a ''credit institution'' and is subject to the capital and financial reporting requirements of CRR and CRD.[37]

Credit institutions that qualify as ''significant supervised entities'' are subject to the direct prudential supervision of the European Central Bank (''ECB'').[38] Credit institutions that

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[28] 17 CFR 23.106(a)(4).

[29] *Id.*

[30] *Id.*

[31] The Commission has provided the Applicants with an opportunity to review for accuracy and completeness, and comment on, the Commission's description of relevant EU laws and regulations on which this proposed Capital Comparability Determination is based. The Commission relies on this review and any corrections received from the Applicants in making its proposal. Thus, to the extent that the Commission relies on an inaccurate description of foreign laws and regulations submitted by the Applicants, the comparability determination may not be valid.

[32] EU Application, p. 1. There are currently no MSPs registered with the Commission, and the Applicants have not requested that the Commission issue a Capital Comparability Determination concerning EU nonbank MSPs. Accordingly, the Commission's Capital Comparability Determination and proposed Capital Comparability Determination Order do not address EU nonbank MSPs.

[33] *Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012,* as amended (''Capital Requirements Regulation'' or ''CRR'').

[34] *Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC,* as amended (''Capital Requirements Directive'' or ''CRD'').

[35] CRR, Article 4(1)(1) (defining the term ''credit institution'').

[36] *Id.*

[37] *Id.* and CRD, Articles 8 and 8a (requiring an entity that engages in Investment Activities and meets the financial thresholds to submit an application for authorization as a ''credit institution'' under the relevant provisions of the applicable national law).

CRR, Article 4(1)(1) provides that an entity carrying out Investment Activities meets the financial threshold for authorization as a credit institution if: (i) the total value of the consolidated assets of the entity is equal to or in excess of EUR 30 billion; (ii) the total value of the assets of the entity is less than EUR 30 billion, and the entity is part of a group in which the total value of the consolidated assets of all entities in that group that individually have total assets of less than EUR 30 billion and that engage in Investment Activities is equal to or in excess of EUR 30 billion; or (iii) the total value of the assets of the entity is less than EUR 30 billion, and the entity is part of a group in which the total value of the consolidated assets of all entities in the group that engage in Investment Activities is equal to or in excess of EUR 30 billion, where the consolidated supervisor, in consultation with the supervisory college, decides that the entity must be authorized as a credit institution in order to address potential risks of circumvention and potential risks for financial stability of the EU.

[38] *See generally, Council Regulation (EU) 1024/2013 of 15 October 2013 Conferring Specific Tasks to the European Central Bank Concerning Policies Relating to the Prudential Supervision of Credit Institutions* (''SSM Regulation'') and *Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 Establishing the Framework for Cooperation within the Single Supervisory Mechanism Between the European Central Bank and the National Competent Authorities and with National Designated Authorities* (''SSM Framework Regulation'').

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are ''less significant supervised entities'' are prudentially supervised by the applicable prudential supervisory authority in the entity's home EU Member State (''national competent authority'').[39] The term ''competent authority'' is used in this document to refer to the ECB or the national competent authority, as appropriate.

The term ''investment firm'' is defined as an entity authorized under the Markets in Financial Instruments Directive,[40] and whose regular business is the provision of one or more investment services to third parties and/or the performance of one or more investment-related activities on a professional basis (including Investment Activities as defined above).[41] An investment firm that engages in Investment Activities and maintains total consolidated assets of at least EUR 15 billion is also subject to the capital and financial reporting requirements of CRR and CRD.[42] The investment firm, however, is not required to be authorized as a ''credit institution'' under the relevant provisions of the applicable national law in the EU Member State and is prudentially supervised by the national competent authority.

Lastly, an entity defined as an ''investment firm'' that does not engage in Investment Activities, or that engages in Investment Activities but does not meet the criteria of either maintaining consolidated assets of at least EUR 15 billion or maintaining consolidated assets of at least EUR 5 billion and meeting certain criteria of significance and interconnectedness, is not subject to CRR and CRD.[43] Such an investment firm is subject to new capital and financial reporting requirements established by IFR and IFD, which EU Member States were required to adopt and apply by June 26, 2021.[44] The new IFR and IFD capital and financial reporting requirements are tailored to the risks faced and posed by smaller investment firms that operate differently from banking entities and larger investment firms. Such smaller investment firms are also prudentially supervised by the national competent authority.

The four EU nonbank SDs currently registered with the Commission are subject to CRR and CRD.[45] The EU Application does not include an analysis of the comparability of the capital and financial reporting rules under the IFR and IFD to the CFTC Capital Rules and CFTC Financial Reporting Rules. Therefore, the Commission is not assessing the comparability of the capital and financial reporting requirements imposed by IFR and IFD on smaller investment firms with the CFTC Capital Rules and CFTC Financial Reporting Rules. Thus, an EU nonbank SD, or a future EU nonbank SD applicant, that is subject to the IFR and IFD framework and seeks substituted compliance for some or all of the CFTC Capital Rules and CFTC Financial Reporting Rules must submit an application to the Commission in accordance with Commission Regulation 23.106.[46] The application must include a description of how IFR and IFD address the elements of the Commission's capital adequacy and financial reporting requirements for nonbank SDs, including, at a minimum, the methodologies for establishing and calculating capital adequacy requirements.[47]

In addition, as noted above, the four EU nonbank SDs that are currently registered with the Commission are domiciled in the EU Member States of France and Germany. As further described below, the Commission's analysis therefore involves an assessment of how certain EU directives were implemented into the national laws of France and Germany. The Commission has not reviewed the implementation of the relevant EU directives in other EU Member States. Therefore, an entity organized and domiciled in an EU Member State other than France or Germany that seeks to register with the Commission as an SD and to comply with some or all of the Commission's capital and financial reporting rules via substituted compliance would have to submit an application for a Capital Comparability Determination under Commission Regulation 23.106. Commission staff expects that it will engage with such entities during the registration process

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The criteria for determining whether credit institutions are considered ''significant supervised entities'' include size, economic importance for the specific EU Member State or the EU economy, significance of cross-border activities, and request for or receipt of direct public financial assistance. *See* SSM Regulation, Article 6 and SSM Framework Regulation, Articles 39–44 and 50–62.

[39] SSM Regulation, Article 6. Less significant entities are supervised by their national competent authorities in close cooperation with the ECB. With respect to the prudential supervision of less significant entities, the ECB has the power to issue regulations, guidelines or general instructions to the national competent authorities. SSM Regulation, Article 6(5)(a). At any time, the ECB can also decide to directly supervise a less significant entity to ensure that high supervisory standards are applied consistently. SSM Regulation, Article 6(5)(b).

[40] *Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU* (''Markets in Financial Instruments Directive'' or ''MiFID'').

[41] CRR, Article 4(1)(2) cross-referencing Article 4(1)(1) of MiFID.

[42] *See Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014* (''Investment Firms Regulation'' or ''IFR''), Article 1(1) and (1)(2) (indicating that an investment firm that engages in Investment Activities is subject to CRR (and by cross-reference to CRD) if any of the following applies: (i) the total value of the consolidated assets of the investment firm is equal to or exceeds EUR 15 billion; (ii) the total value of the consolidated assets of the investment firm is less than EUR 15 billion, and the investment firm is part of a group in which the total value of the consolidated assets of all investment firms in the group that individually have total assets of less than EUR 15 billion and that engage in Investment Activities is equal to or exceeds EUR 15 billion; or (iii) the total value of the consolidated assets of the investment firm is equal to or exceeds EUR 5 billion, the investment firm engages in Investment Activities, and the competent authority has determined that the investment firm should be subject to CRR based on criteria set forth in Article 5 of Directive (EU) 2019/2034). *See also, Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU* (''Investment Firms Directive'' or ''IFD''), Article 5 (providing that the competent authority may decide to apply the requirements of CRR to an investment firm whose consolidated assets are equal or exceed EUR 5 billion and that engages in Investment Activities if one or more of the following criteria apply: (i) the investment firm engages in Investment Activities on a scale that the failure or distress of the investment firm could lead to systemic risk; (ii) the investment firm is a clearing member; and/or (iii) the competent authority considers it to be justified in light of the size, nature, scale and complexity of the activities of the investment firm considering the importance of the investment firm for the economy of the EU or of the relevant EU Member State, the significance of the investment firm's cross-border activities, and the interconnectedness of the investment firm with the financial system).

[43] *See* IFD, Article 5 (setting forth the criteria that may justify a decision by the competent authority to apply the requirements of CRR to an investment firm that engages in Investment Activities and whose consolidated assets equal or exceed EUR 5 billion).

[44] IFR, Article 66 and IFD, Article 67.

[45] BofA Securities Europe SA, Citigroup Global Markets Europe AG and Morgan Stanley Europe SE have been authorized as credit institutions. The three EU nonbank SDs also qualify as ''significant supervised entities'' subject to the direct supervision of the ECB. Goldman Sachs Paris Inc. et Cie has a pending application for authorization as a credit institution. CRD, Article 8a allows entities engaged in Investment Activities to continue carrying out such activities until they obtain authorization as credit institutions. The Applicants represented that Goldman Sachs Paris Inc et Cie would likely be a categorized as a ''less significant supervised entity'' and subject to direct supervision by the national competent authority. According to the Applicants, however, the ECB is still considering whether it may exercise direct supervisory authority over the entity, pursuant to SSM Regulation, Article 6. *See* Responses to Staff Questions of May 15, 2023.

[46] 17 CFR 23.106.

[47] Commission Regulation 23.106(a)(2)(ii). 17 CFR 23.106(a)(2)(ii).

and rely to the extent practicable on the analysis performed in this document to assess the comparability of the applicant's home country capital and financial reporting requirements with the Commission's corresponding requirements.

As noted above, the EU nonbank SDs currently registered with the Commission are subject to CRR and CRD. CRR, as a regulation, is binding in its entirety and directly applicable in all EU Member States.[48] CRD, as a directive, was required to be transposed into EU Member States' national law.[49] France implemented CRD in various provisions of its Monetary and Financial Code (''MFC'') [50] and through several ministerial orders, including Ministerial Order on Capital Buffers [51] and Ministerial Order on Internal Control.[52] France also adopted Ministerial Order on Distribution Restrictions [53] and amended relevant national law provisions, including the above-referenced ministerial orders, to implement CRD V.[54] Germany implemented CRD via amendments to the Banking Act (Kreditwesengesetz, ''KWG'') and its subordinate statutory instruments.[55] In addition, Germany adopted and published the Risk Reduction Act (Risikoreduzierungsgesetz, ''RiG'') on December 14, 2020 to implement CRD V, with most of the relevant changes becoming effective on December 28, 2020. CRR and CRD as implemented in French and German law are collectively referred to hereafter as the ''EU Capital Rules.''

The Applicants also represent that in addition to CRR and CRD, the Bank Recovery and Resolution Directive (''BRRD'') includes relevant EU capital requirements.[56] BRRD establishes a framework for recovery and resolution of credit institutions and investment firms, and mandates that EU Member States require such institutions to satisfy ''a minimum requirement for own funds and eligible liabilities'' (''MREL'') if they meet certain requirements.[57] France implemented BRRD primarily via amendments to the MFC.[58] Germany transposed BRRD into national law by the Recovery and Resolution Act (Sanierungs und Abwicklungsgesetz, ''SAG'').[59]

The Applicants further represent that with respect to supervisory financial reporting, Commission Implementing Regulation (EU) 2021/451 [60] supplements CRR with implementing technical standards (''CRR Reporting ITS'') specifying, among other things, uniform formats and frequencies for the financial reporting required under CRR.[61] In addition, the ECB has adopted a regulation setting forth a common minimum set of financial information that should be reported by credit institutions subject to CRR, including EU nonbank SDs, on the basis of the CRR Reporting ITS (''ECB FINREP Regulation'').[62] The Applicants also represent that Directive 2013/34/EU [63] contains provisions related to financial reporting, including a mandate that entities of a certain size be required to prepare annual audited financial statements and a management report.[64] CRR, CRR Reporting ITS, ECB FINREP Regulation, relevant provisions of CRD regarding certain notice requirements as implemented in French and German law, and the relevant provisions of the Accounting Directive as implemented in French and German law are collectively referred to hereafter as the ''EU Financial Reporting Rules.''

The Applicants also note that the U.S. Securities and Exchange Commission (''SEC'') has issued orders permitting an SEC-registered nonbank security-based swap dealer domiciled in France or

[48] *Consolidated Version of the Treaty on the Functioning of the European Union,* OJ (C 326) 171, Oct. 26, 2012 (''TFEU''), Article 288. Accordingly, CRR is directly applicable and binding law in France and Germany, the two EU Member States where EU nonbank SDs are currently organized and operating. Most CRR requirements, including provisions introduced by *Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013* (''CRR II''), have been in effect since June 28, 2021, with some provisions having an earlier effective date. CRR II, Article 3. Several provisions have a delayed effective date. These include market risk-related amendments to CRR, Article 106 (Internal Hedges) and new Article 204a (Eligible Types of Equity Derivatives), which will come into effect on June 28, 2023. *Id.*

[49] TFEU, Article 288 (stating that a directive is binding as to the result to be achieved upon each EU Member State to which the directive is addressed, and further provides, however, that each EU Member State elects the form and method of implementing the directive). In this connection, EU Member States were required to implement and start applying amendments to CRD, introduced by *Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures* (''CRD V'') by December 29, 2020. Some CRD V provisions were subject to delayed implementation deadlines of June 28, 2021 and January 1, 2022, but all CRD V provisions are currently effective. CRD V, Article 2.

[50] In particular, MFC, Articles L.511–41 to L.511–50–1 contain provisions relating to prudential requirements applicable to credit institutions. In addition, MFC, Articles L.612–1 to L.612–50 relate to the role, functioning, and powers of the national competent authority.

[51] *Arrêté of 3 November 2014 Relating to Capital Buffers of Banking Services Providers and Investment Firms Other Than Portfolio Management Companies.*

[52] *Arrêté of 3 November 2014 on Internal Control of Companies in the Banking, Payment Services and Investment Services Sector Subject to the Control of Autorité de Contrôle Prudentiel et de Résolution.*

[53] *Arrêté of 25 February 2021 Relating to Distribution Restrictions Applicable to Credit Institutions, Financial Companies and Certain Investment Firms.*

[54] Specifically, to implement CRD V, France amended the MFC via *Ordinance No. 2020–1635 of December 21, 2020* and *Decree No. 2020–1637 of December 22, 2020,* with most of the relevant changes becoming effective on December 29, 2020. France also introduced consecutive amendments to *Ministerial Order on Capital Buffers* and *Ministerial Order on Internal Control,* with the latest changes effective as of August 1, 2021.

[55] Specifically, the KWG includes, among other things, provisions related to capital adequacy requirements, including provisions granting power the Federal Ministry of Finance to issue statutory instruments to provide details on capital adequacy requirements (Section 10(1)), provisions specifying the basis for imposing higher capital requirements (Section 10(3)), provisions setting forth requirements related to capital buffers (Sections 10c to 10i) and provisions describing the powers of the competent authority (Sections 6b, 56, 60b).

[56] *Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council. See* EU Application, p. 5.

[57] EU Member States were required to transpose BRRD into national law and start applying the implementing measures from January 1, 2015. BRRD, Article 130. BRRD was amended by *Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards loss-absorbing and recapitalization capacity of credit institutions and investment firms and Directive 98/26/EC* (''Bank Recovery and Resolution Directive II'' or ''BRRD II'') and EU Member States were required to start applying national law measures implementing BRRD II by December 28, 2020. BRRD II, Article 3. BRRD as amended by BRRD II will be referred to as ''BRRD'' in this document, unless otherwise stated.

[58] Among other provisions, MFC Article L.613–44 relates in particular to the MREL requirement and Article R.613–46–1 defines the conditions that items and instruments need to meet to qualify as ''eligible liabilities.''

[59] In particular, SAG, Section 49(1) and (2) relate to the MREL requirement.

[60] *Commission Implementing Regulation (EU) 2021/451 of 17 December 2020 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to supervisory reporting of institutions and repealing Implementing Regulation (EU) No 680/2014.*

[61] EU Application, p. 21 and Responses to Staff Questions of May 15, 2023.

[62] *Regulation (EU) 2015/534 of the European Central Bank of 17 March 2015 on reporting of supervisory financial information.*

[63] *Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/394/EEC* (''Accounting Directive'').

[64] EU Application, p. 5. Accounting Directive, Articles 4, 19 and 34.

Germany (''EU nonbank SBSD'') to satisfy SEC capital [65] and financial reporting requirements via substituted compliance with applicable French and German capital and financial reporting.[66] The French Order and German Order conditioned substituted compliance for capital requirements on an EU nonbank SBSD complying with specified laws and regulations, including CRR, CRD, and BRRD, and also maintaining total liquid assets in an amount that exceeds the EU nonbank SBSD's total liabilities by at least $100 million and by at least $20 million after applying certain deductions to the value of the liquid assets to reflect market, credit, and other potential risks to the value of the assets.[67]

II. General Overview of Commission and EU Nonbank Swap Dealer Capital Rules

A. General Overview of the CFTC Nonbank Swap Dealer Capital Rules

The CFTC Capital Rules provide nonbank SDs with three alternative capital approaches: (i) the Tangible Net Worth Capital Approach (''TNW Approach''); (ii) the Net Liquid Assets Capital Approach (''NLA Approach''); and (iii) the Bank-Based Capital Approach (''Bank-Based Approach'').[68]

Nonbank SDs that are ''predominantly engaged in non-financial activities'' may elect the TNW Approach.[69] The TNW Approach requires a nonbank SD to maintain a level of ''tangible net worth'' [70] equal to or greater than the higher of: (i) $20 million plus the amount of the nonbank SD's ''market risk exposure requirement'' [71] and ''credit risk exposure requirement'' [72] associated with the nonbank SD's swap and related hedge positions that are part of the nonbank SD's swap dealing activities; (ii) 8 percent of the nonbank SD's ''uncleared swap margin'' amount; [73] or (iii) the amount of capital required by a registered futures association of which the nonbank SD is a member.[74] The TNW Approach is intended to ensure the safety and soundness of a qualifying nonbank SD by requiring the firm to maintain a minimum level of tangible net worth that is based on the nonbank SD's swap dealing activities to provide a sufficient level of capital to absorb losses resulting from its swap dealing and other business activities.

The TNW approach requires a nonbank SD to compute its market risk exposure requirement and credit risk exposure requirement using standardized capital charges set forth in SEC Rule 18a–1 [75] that are applicable to entities registered with the SEC as SBSDs or standardized capital charges set forth in Commission Regulation 1.17 applicable to entities registered as FCMs or entities dually-registered as an FCM and nonbank SD.[76] Nonbank SDs that have received Commission or NFA approval pursuant to Commission Regulation 23.102 may use internal models to compute market risk and/or credit risk capital charges in lieu of the SEC or CFTC standardized capital charges.[77]

A nonbank SD that elects the NLA Approach is required to maintain ''net capital'' in an amount that equals or exceeds the greater of: (i) $20 million; (ii) 2 percent of the nonbank SD's uncleared swap margin amount; or (iii) the amount of capital required by NFA.[78] The NLA Approach is intended to ensure the safety and soundness of a nonbank SD by requiring the firm to maintain at all times at least one dollar of highly liquid assets to cover each dollar of the nonbank SD's liabilities.

A nonbank SD is required to reduce the value of its highly liquid assets by the market risk exposure requirement and/or the credit risk exposure requirement in computing its net capital.[79] A nonbank SD that does not have Commission or NFA approval to use internal models must compute its market risk exposure requirement and/

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[65] Section 15F(e)(1)(B) of the Exchange Act (15 U.S.C. 78o–10) directs the SEC to adopt capital rules for security-based swap dealers (''SBSDs'') that do not have a prudential regulator.

[66] *See Amended and Restated Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Federal Republic of Germany; Amended Orders Addressing Non-U.S. Security-Based Swap Entities Subject to Regulation in the French Republic or the United Kingdom; and Order Extending the Time to Meet Certain Conditions Relating to Capital and Margin,* 86 FR 59797 (Oct. 28, 2021) (''German Order''); *Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the French Republic,* 86 FR 41612 (Aug. 8, 2021) (''French Order''); *and Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants that are not U.S. Persons and are Relying on Substituted Compliance with Respect to Rule 18a–7,* 86 FR 59208 (Oct. 26, 2021) (''SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information'').

[67] The conditioning of the German and French substituted compliance orders on EU nonbank SBSDs maintaining liquid assets in an amount that exceeds the EU nonbank SBSD's total liabilities by at least $100 million and by at least $20 million after applying certain deductions to the value of the liquid assets reflects that the SEC's capital rule for nonbank SBSDs is a liquidity-based requirement and that the SEC capital requirements are not based on the Basel bank capital standards. *See* 17 CFR 240.18a–1(a)(1) (requiring a SBSD to maintain, in relevant part, net capital of $20 million or, if approved to use capital models, $100 million of tentative net capital and $20 million of net capital).

[68] 17 CFR 23.101.

[69] 17 CFR 23.101(a)(2). The term ''predominantly engaged in non-financial activities'' is defined in Commission Regulation 23.100 and generally provides that: (i) the nonbank SD's, or its parent entity's, annual gross financial revenues for either of the previous two completed fiscal years represents less than 15 percent of the nonbank SD's or the nonbank SD's parent's, annual gross revenues for all operations (*i.e.,* commercial and financial) for such years; and (ii) the nonbank SD's, or its parent entity's, total financial assets at the end of its two most recently completed fiscal years represents less than 15 percent of the nonbank SD's, or its parent's, total consolidated financial and nonfinancial assets as of the end of such years. 17 CFR 23.100.

[70] The term ''tangible net worth'' is defined in Commission Regulation 23.100 and generally means the net worth (*i.e.,* assets less liabilities) of a nonbank SD, computed in accordance with applicable accounting principles, with assets further reduced by a nonbank SD's recorded goodwill and other intangible assets. 17 CFR 23.100.

[71] The terms ''market risk exposure'' and ''market risk exposure requirement'' are defined in Commission Regulation 23.100 and generally mean the risk of loss in a financial position or portfolio of financial positions resulting from movements in market prices and other factors. 17 CFR 23.100. Market risk exposure is the sum of: (i) general market risks including changes in the market value of a particular asset that results from broad market movements, which may include an additive for changes in market value under stressed conditions; (ii) specific risk, which includes risks that affect the market value of a specific instrument but do not materially alter broad market conditions; (iii) incremental risk, which means the risk of loss on a position that could result from the failure of an obligor to make timely payments of principal and interest; and (iv) comprehensive risk, which is the measure of all material price risks of one or more portfolios of correlation trading positions.

[72] The term ''credit risk exposure requirement'' is defined in Commission Regulation 23.100 and generally reflects the amount at risk if a counterparty defaults before the final settlement of a swap transaction's cash flows. 17 CFR 23.100.

[73] The term ''uncleared swap margin'' is defined in Commission Regulation 23.100 to generally mean the amount of initial margin that a nonbank SD would be required to collect from each counterparty for each outstanding swap position of the nonbank SD. 17 CFR 23.100. A nonbank SD must include all swap positions in the calculation of the uncleared swap margin amount, including swaps that are exempt or excluded from the scope of the Commission's uncleared swap margin regulations. A nonbank SD must compute the uncleared swap margin amount in accordance with the Commission's margin rules for uncleared swaps. *See* 17 CFR 23.154.

[74] The National Futures Association (''NFA'') is currently the only entity that is a registered futures association. The Commission will refer to NFA in this document when referring to the requirements or obligations of a registered futures association.

[75] 17 CFR 240.18a–1.

[76] 17 CFR 23.101(a)(2)(ii)(A).

[77] *Id.*

[78] 17 CFR 23.101(a)(1)(ii)(A). ''Net capital'' consists of a nonbank SD's highly liquid assets (subject to haircuts) less all of the firm's liabilities, excluding certain qualified subordinated debt. *See* 17 CFR 240.18a–1 for the calculation of ''net capital.''

[79] *See* 17 CFR 240.18a–1(c) and (d).

or credit risk exposure requirement using the standardized capital charges contained in SEC Rule 18a–1 as modified by the Commission's rule.[80]

A nonbank SD that has obtained Commission or NFA approval, may use internal market risk and/or credit risk models to compute market risk and/or credit risk capital charges in lieu of the standardized capital charges.[81] A nonbank SD that is approved to use internal market risk and/or credit risk models is further required to maintain a minimum of $100 million of ''tentative net capital.'' [82]

The Commission's NLA Approach is consistent with the SEC's SBSD capital rule, and is based on the Commission's capital rule for FCMs and the SEC's capital rule for securities broker-dealers (''BDs''). The quantitative and qualitative requirements for NLA Approach internal market and credit risk models are also consistent with the quantitative and qualitative requirements of the Commission's Bank-Based Approach as described below.

The Commission's Bank-Based Approach for computing regulatory capital for nonbank SDs is based on certain capital requirements imposed by the Federal Reserve Board for bank holding companies.[83] The Bank-Based Approach also is consistent with the Basel Committee on Banking Supervision's (''BCBS'') international framework for bank capital requirements.[84] The Bank-Based Approach requires a nonbank SD to maintain regulatory capital equal to or in excess of each of the following requirements: (i) $20 million of common equity tier 1 capital; (ii) an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital (including qualifying subordinated debt) equal to or greater than 8 percent of the nonbank SD's risk-weighted assets (provided that common equity tier 1 capital comprises at least 6.5 percent of the 8 percent minimum requirement); (iii) an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital equal to or greater than 8 percent of the nonbank SD's uncleared swap margin amount; and (iv) an amount of capital required by NFA.[85] The Bank-Based Approach is intended to ensure that the safety and soundness of a nonbank SD by requiring the firm to maintain at all times qualifying capital in an amount sufficient to absorb unexpected losses, expenses, decrease in firm assets, or increases in firm liabilities without the firm becoming insolvent.

The terms used in the Commission's Bank-Based Approach are defined by reference to regulations of the Federal Reserve Board.[86] Specifically, the term ''common equity tier 1 capital'' is defined for purposes of the CFTC Capital Rules to generally mean the sum of a nonbank SD's common stock instruments and any related surpluses, retained earnings, and accumulated other comprehensive income.[87] The term ''additional tier 1 capital'' is defined to include equity instruments that are subordinated to claims of general creditors and subordinated debt holders, but contain certain provisions that are not available to common stock, such as the right of nonbank SD to call the instruments for redemption or to convert the instruments to other forms of equity.[88] The term ''tier 2 capital'' is defined to include certain types of instruments that include both debt and equity characteristics (*e.g.,* certain perpetual preferred stock instruments and subordinated term debt instruments).[89] Subordinated debt also must meet certain requirements to qualify as tier 2 capital, including that the term of the subordinated debt instrument is for a minimum of one year (with the exception of approved revolving subordinated debt agreements which may have a maturity term that is less than one year), and the debt instrument is an effective subordination of the rights of the lender to receive any payment, including accrued interest, to other creditors.[90]

Common equity tier 1 capital, additional tier 1 capital, and tier 2 capital are unencumbered and generally long-term or permanent forms of capital that help ensure that a nonbank SD will be able to absorb losses resulting from its operations and maintain confidence in the nonbank SD as a going concern. In addition, in setting an equity ratio requirement, this limits the amount of asset growth and leverage a nonbank SD can incur, as a nonbank SD must fund its asset growth with a certain percentage of regulatory capital.

A nonbank SD also must compute its risk-weighted assets using standardized capital charges or, if approved, internal models. Risk-weighting assets involves adjusting the notional or carrying value of each asset based on the inherent risk of the asset. Less risky assets are adjusted to lower values (*i.e.,* have less risk-weight) than more risky assets. As a result, nonbank SDs are required to hold lower levels of regulatory capital for less risky assets and higher levels of regulatory capital for riskier assets.

Nonbank SDs not approved to use internal models to risk-weight their assets must compute market risk capital charges using the standardized charges contained in Commission Regulation 1.17 and SEC Rule 18a–1, and must compute their credit risk charges using the standardized capital charges set forth in regulations of the Federal Reserve Board for bank holding companies in Subpart D of 12 CFR part 217.[91]

Standardized market risk charges are computed under Commission Regulation 1.17 and SEC Rule 18a–1 by multiplying, as appropriate to the specific asset schedule, the notional value or market value of the nonbank SD's proprietary financial positions (such as swaps, security-based swaps, futures, equities, and U.S. Treasuries) by fixed percentages set forth in the Regulation or Rule.[92] Standardized credit risk charges require the nonbank SD to multiply on-balance sheet and off-balance sheet exposures (such as receivables from counterparties, debt instruments, and exposures from derivatives) by predefined percentages set forth in the applicable Federal Reserve Board regulations contained in Subpart D of 12 CFR part 217.

A nonbank SD also may apply to the Commission or NFA for approval to use internal models to compute market risk exposure and/or credit risk exposure for

[80] *See* 17 CFR 23.101(a)(1)(ii).

[81] *See* 17 CFR 23.102.

[82] 17 CFR 23.101(a)(1)(ii)(A)(*1*). The term ''tentative net capital'' is defined in Commission Regulation 23.101(a)(1)(ii)(A)(*1*) by reference to SEC Rule 18a–1 and generally means a nonbank SD's net capital prior to deducting market risk and credit risk capital charges.

[83] *See* 17 CFR 23.101(a)(1)(i).

[84] The BCBS is the primary global standard-setter for the prudential regulation of banks and provides a forum for cooperation on banking supervisory matters. Institutions represented on the BCBS include the Federal Reserve Board, the European Central Bank, Deutsche Bundesbank, Bank of England, Bank of France, Bank of Japan, Banco de Mexico, and Bank of Canada. The BCBS framework is available at *https://www.bis.org/basel_framework/index.htm.*

[85] 17 CFR 23.101(a)(1)(i).

[86] *Id.* Commission Regulation 23.101(a)(1)(i) references Federal Reserve Board Rule 217.20 for purposes of defining the terms used in establishing the minimum capital requirements under the Bank-Based Approach. 17 CFR 23.101(a)(1)(i) and 12 CFR 217.20.

[87] *See* 12 CFR 217.20(b).

[88] *See* 12 CFR 217.20(c).

[89] *See* 12 CFR 217.20(d).

[90] The subordinated debt must meet the requirements set forth in SEC Rule 18a–1d (17 CFR 240.18a–1d). *See* 17 CFR 23.101(a)(1)(i)(B) providing that the subordinated debt used by a nonbank SD to meet its minimum capital requirement under the Bank-Based Approach must satisfy the conditions for subordinated debt under SEC Rule 18a–1d.

[91] *See* 17 CFR 23.101(a)(1)(i)(B) and the definition of the term *BHC risk-weighted assets* in 17 CFR 23.100.

[92] *See* 17 CFR 1.17(c)(5) and 17 CFR 240.15c3–1(c)(2).

purposes of determining its total risk-weighted assets.[93] Nonbank SDs approved to use internal models for the calculation of credit risk or market risk, or both, must follow the model requirements set forth in Federal Reserve Board regulations for bank holding companies codified in Subpart E and F, respectively, of 12 CFR part 217. Credit risk and market risk capital charges computed with internal models require the estimation of potential losses, with a certain degree of likelihood, within a specified time period, of a portfolio of assets. Internal models allow for consideration of potential co-movement of prices across assets in the portfolio, leading to offsets of gains and losses. Internal credit risk models can also further include estimation of the likelihood of default of counterparties.

B. General Overview of EU Capital Rules for EU Nonbank SDs

The Applicants state that the EU Capital Rules impose bank-like capital requirements on an EU nonbank SD that are consistent with the BCBS framework for international bank-based capital standards.[94] The Applicants further state that the EU Capital Rules are intended to require each EU nonbank SD to hold a sufficient amount of qualifying equity capital and subordinated debt based on the EU nonbank SD's activities, to absorb decreases in the value of firm assets, increases in the value of firm liabilities, and to cover losses from business activities, including possible counterparty defaults and margin collateral shortfalls associated with swap dealing activities, without the firm becoming insolvent.[95]

The EU Capital Rules require each EU nonbank SD to hold and maintain regulatory capital in the form of qualifying common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in an aggregate amount that equals or exceeds 8 percent of the EU nonbank SD's total risk exposure amount, which is calculated as a sum of the firm's risk-weighted assets and exposures.[96] Common equity tier 1 capital must comprise a minimum of 4.5 percent of the 8 percent capital ratio,[97] and tier 1 capital (which is the aggregate of common equity tier 1 capital and additional tier 1 capital) must comprise a minimum of 6 percent of the total 8 percent capital ratio.[98] Tier 2 capital may comprise a maximum of 2 percent of the total 8 percent capital ratio.[99]

Under the EU Capital Rules, common equity tier 1 capital is composed of common equity capital instruments, retained earnings, accumulated other comprehensive income, and other reserves of the EU nonbank SD.[100] Additional tier 1 capital is composed of capital instruments other than common equity and retained earnings (*i.e.,* common equity tier 1 capital), and includes certain long-term convertible debt securities.[101] Tier 2 capital instruments, which provide an additional layer of supplementary capital, include other reserves, hybrid capital instruments, and certain subordinated debt.[102]

To qualify as tier 2 regulatory capital, capital instruments and subordinated debt must meet certain conditions including that: (i) the capital instruments are issued by the EU nonbank SD and are fully paid-up; (ii) the capital instruments are not purchased by the EU nonbank SD or its subsidiaries; (iii) the claims on the principal amount of the capital instruments rank below any claim from instruments that are ''eligible liabilities,'' [103] meaning that they are effectively subordinated to claims of all non-subordinated creditors of the EU nonbank SD; (iv) the capital instruments have an original maturity of at least five years; and (v) the provisions governing the capital instruments do not include any incentive for the principal amount to be redeemed or repaid by the EU nonbank SD prior to the capital instruments' respective maturities.[104]

In addition to the requirement to maintain total regulatory capital in an amount equal to or in excess of 8 percent of its risk-weighted assets, the EU Capital Rules also require an EU nonbank SD to maintain a capital conservation buffer composed exclusively of common equity tier 1 capital in an amount equal to 2.5 percent of the firm's total risk-weighted assets.[105] The common equity tier 1 capital used to meet the 2.5 percent capital conservation buffer must be separate and independent of the 4.5 percent of common equity tier 1 capital used to meet the 8 percent core capital requirement.[106]

[93] *See* 17 CFR 23.102.

[94] *See* EU Application, p. 10.

[95] *See* EU Application, pp. 5–6, 10 and 15.

[96] CRR, Articles 26, 28, 50–52, 61–63 and 92.

[97] *Id.,* Article 92(1)(a).

[98] *Id.,* Article 92(1)(b).

[99] *Id.,* Article 92(1)(c), which provides that the total capital ratio must be equal to or greater than 8 percent, with a minimum common equity and additional tier 1 capital comprising at least 6 percent of the 8 percent minimum requirement. In addition to the requirement to maintain minimum capital ratios, an EU nonbank SD will not be authorized as a credit institution by its competent authorities unless it maintains at least EUR 5 million of common equity tier 1 capital. CRD, Article 12.

[100] CRR, Articles 26 and 28. Retained earnings, accumulated other comprehensive income and other reserves qualify as common equity tier 1 capital only where the funds are available to the EU nonbank SD for unrestricted and immediate use to cover risks or losses as such risks or losses occur. *See* CRR, Article 26(1).

[101] *Id.,* Articles 50–52.

[102] *Id.,* Articles 62–63.

[103] ''Eligible liabilities'' are non-capital instruments, including instruments that are directly issued by the EU nonbank SD and fully paid up with remaining maturities of at least a year. CRR, Articles 72a and 72b. In addition, the liabilities cannot be owned, secured, or guaranteed, by the EU nonbank SD itself, and the EU nonbank SD cannot have either directly or indirectly funded their purchase. CRR, Article 72b.

[104] *Id.,* Article 63 (listing the conditions that capital instruments must meet to qualify as tier 2 instruments) and Articles 72a–72b (listing the conditions that liabilities must meet to qualify as eligible liabilities). *See also* infra note 123.

[105] CRD, Articles 129. CRD, Article 129(1) directs EU Member States to impose a capital conservation buffer on certain institutions, including the four EU nonbank SDs that are currently registered with the Commission, that requires each institution to maintain a capital conservation buffer of common equity tier 1 capital equal to 2.5 percent of the institution's total risk exposure amount. CRD, Article 129(1) was transposed into French law by Article L.511–41–1–A of the French MFC and Article 2 of Ministerial Order on Capital Buffers and was transposed into German law by Section 10c(1) of KWG.

[106] *Id.* In effect, the EU Capital Rules require an EU nonbank SD to hold common equity tier 1 capital equal to or in excess of 7 percent of the firm's risk-weighted assets, and total capital equal to or in excess of 10.5 percent of the firm's risk-weighted assets.

In addition, an EU nonbank SD may also be subject to: (i) an institution-specific capital countercyclical buffer, if the EU Member States in which the EU nonbank SD has exposures have implemented a capital countercyclical buffer; (ii) a global systemically important institution (''G–SII'') or other systemically important institution (''O–SII'') buffer, if the EU nonbank SD has been designated as a G–SII or O–SII; and (iii) a systemic risk buffer if the EU Member State in which the EU nonbank SD is domiciled, or at least one EU Member State in which the EU nonbank SD has exposures, has implemented a systemic risk buffer. *See* CRD, Articles 130, 131 and 133. To meet these additional capital buffer requirements, the EU nonbank SD must maintain a level of common equity tier 1 capital that is in addition to the common equity tier 1 capital required to meet its core capital requirement of 4.5 percent of its risk-weighted assets and the common equity tier 1 capital required to meet its capital conservation buffer. *See* CRR, Article 92(1) and CRD, Article 130(5). The total amount of common equity tier 1 capital required to meet all applicable capital buffer requirements is referred to as the ''combined buffer requirement.'' CRD, Article 128. In practice, several EU Member States, including France and Germany, have implemented countercyclical capital buffers with rates ranging from 0.5 percent to 2.5 percent of risk-weighted assets and several EU Member States, including Germany, have implemented systemic risk buffers with rates ranging from 0.5 to 9 percent of risk-weighted assets, varying across subsets of exposures. Germany's systemic risk buffer applies only with respect to exposures secured by residential property. In addition, as of

The EU Capital Rules further impose a 3 percent leverage ratio floor on EU nonbank SDs as an additional element of the capital requirements.[107] Specifically, each EU nonbank SD is required to maintain tier 1 capital (*i.e.,* an aggregate of common equity tier 1 capital and additional tier 1 capital) equal to or in excess of 3 percent of the firm's total on-balance sheet and off-balance sheet exposures, including exposures on uncleared swaps, without regard to any risk-weighting.[108] The leverage ratio is a non-risk based minimum capital requirement that is intended to prevent an EU nonbank SD from engaging in excessive leverage, and complements the risk-based minimum capital requirement that is based on the EU nonbank SD's risk-weighted assets.

As noted above, the amount of regulatory capital that an EU nonbank SD is required to hold is determined by calculating the firm's total risk exposure, which requires the EU nonbank SD to risk-weight its on-balance sheet and off-balance sheet assets and exposures using specified standardized weights or, if approved for use by competent authorities, internal model-based methodologies.[109] Risk-weighting assets and exposures involves adjusting the notional or carrying value of each asset and risk exposure based on the inherent risk of the asset or exposure. Less risky assets and exposures are adjusted to lower values (*i.e.,* have less weight) than more risky assets or exposures. As a result, EU nonbank SDs are required to hold lower levels of regulatory capital for less risky assets and exposures and higher levels of regulatory capital for riskier assets and exposures. The categories of risk charges that an EU nonbank SD must include in determining its total risk exposure include charges reflecting: (i) market risk; (ii) credit risk; (iii) settlement risk; (iv) CVA risk of OTC derivative instruments; and (v) operational risk.[110] The methods for calculating such risk charges are based on the BCBS framework.[111]

Standardized market risk charges are generally calculated by multiplying the notional or carrying amount of net positions or of adjusted net positions by risk-weighting factors, which are based on the underlying market risk of each asset or exposure. The sum of the calculated amounts comprises the portion of the risk exposure amount attributable to market risk.[112] Standardized credit risk charges are generally calculated by multiplying the notional or carrying value of the EU nonbank SD's on-balance sheet and off-balance sheet assets and exposures by clearly defined risk-weighting factors, which are based on the underlying credit risk of each asset or exposure. The sum of the calculated amounts comprises the portion of the risk exposure amount attributable to credit risk.[113]

Settlement risk charges are intended to account for the price difference to which an EU nonbank SD is exposed if its transactions remain unsettled after the respective transaction's due delivery date.[114] CVA risk charges reflect the current market value of the credit risk of the counterparty to the EU nonbank SD in an OTC derivatives transaction.[115] Operational risk charges reflect the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, and includes legal risk.[116]

As noted above, EU nonbank SDs may use internal model-based methodologies to calculate certain categories of risk charges in lieu of standardized charges if they have obtained the requisite regulatory approval.[117] EU Capital Rules set out quantitative and qualitative requirements that internal models must meet in order to obtain and maintain approval.[118] Quantitative and qualitative requirements address, among other issues, governance, validation, monitoring, and review. Modeled risk charges generally require the estimation of potential losses, with a certain degree of likelihood, within a specified time period, of a portfolio of assets.[119] Internal models allow for consideration of potential co-movement of prices across assets in the portfolio, leading to offsets of gains and losses. Credit risk models can also further include estimation of the likelihood of default of counterparties.

Furthermore, the EU Capital Rules also impose separate requirements on an EU nonbank SD to address liquidity risk. The liquidity requirements are composed of three main obligations. First, an EU nonbank SD is required to hold an amount of sufficiently liquid assets to meet the firm's expected payment obligations under stressed conditions for 30 days.[120] Second, an EU nonbank SD is subject to a stable funding requirement whereby the firm must hold a diversity of stable funding instruments [121] sufficient to meet long-term obligations under both normal and stressed conditions.[122] Third, to ensure that an EU nonbank SD continues to meet its liquidity requirements, the firm is required to maintain robust strategies, policies, processes, and system for the

January 2023, none of the four EU nonbank SDs registered with the Commission has been designated as G–SII and only one entity, Citigroup Global Markets Europe AG has been designated as an O–SII and subject to a 0.25 percent additional capital requirement.

[107] CRR, Article 92(1).

[108] Total exposures are required to be computed in accordance with CRR, Article 429.

[109] With regulator permission, EU nonbank SDs may use internal models to calculate credit risk (CRR, Article 143), including certain counterparty credit risk exposures (CRR, Article 283), operational risk (CRR, Article 312(2)), market risk (CRR, Article 363), and credit valuation adjustment risk (''CVA risk'') of over-the-counter (''OTC'') derivatives instruments (CRR, Article 383). The permission to use, and continue using, internal models is subject to strict criteria and supervisory oversight by the competent authorities.

[110] CRR, Article 92(3).

[111] EU Application, pp. 10–11.

[112] CRR, Articles 326–350.

[113] *Id.,* Articles 111–134.

[114] *Id.,* Article 378.

[115] *Id.,* Article 381.

[116] *Id.,* Article 4(1)(52).

[117] *Id.,* Articles 143 (credit risk), 283 (counterparty credit risk); 312(2) (operational risk), 363 (market risk), and 383 (CVA risk).

[118] *See e.g.,* CRR, Articles 144, 283(2); 321–322 and 365–369.

[119] The EU Capital Rules require EU nonbank SDs with internal model approval for market risk to use a VaR model with a 99 percent, one-tailed confidence interval with: (i) price change equivalent to 10 business-day movement in rates and prices; (ii) effective historical observation periods of at least one year; and (iii) at least monthly data set updates. *See* CRR, Article 365(1). EU nonbank SDs approved to use internal ratings-based credit risk models must support the assessment of credit risk, the assignment of exposures to rating grades or pools, and the quantification of default and loss estimates that have been developed for a certain type of exposures, among other conditions. *See* CRR, Articles 142–144. In addition, when EU nonbank SDs are approved to use a model to calculate counterparty credit risk exposures for OTC derivatives transactions, the model must specify the forecasting distribution for changes in the market value of a netting set attributable to joint changes in relevant market variables and calculate the exposure value for the netting set at each of the future dates on the basis of the joint changes in the market variables. *See* CRR, Article 284. EU nonbank SDs allowed to follow the ''advanced method'' of calculating CVA risk charges for OTC derivatives transactions must also use an internal market risk model to simulate changes in the credit spreads of counterparties, applying a 99 percent confidence interval and a 10-day equivalent holding period. *See* CRR, Article 383. Finally, EU nonbank SDs using ''advanced measurement approaches'' based on their own measurement systems to compute operational risk exposures must calculate capital requirements as comprising both expected loss and unexpected loss and capture potentially severe tail events, achieving a sound standard comparable to a 99.9 confidence interval over a one-year period. *See* CRR, Article 322.

[120] CRR, Article 412(1). Liquid assets primarily include cash, exposures to central banks, government-backed assets and other highly liquid assets with high credit quality. *Id.* Article 416(1).

[121] Stable funding instruments include common equity tier 1 capital instruments, additional tier 1 capital instruments, tier 2 capital instruments, and other preferred shares and capital instruments in excess of the tier 2 allowable amount with an effective maturity of one year or greater. CRR, Article 427(1).

[122] CRR, Article 413(1).

identification of liquidity risk over an appropriate set of time horizons, including intra-day.[123] The EU Capital Rules' liquidity requirements are intended to help ensure that EU nonbank SDs can continue to fund their operations over various time horizons, including the timely making of payments to customers and counterparties.

In addition, resolution authorities [124] in EU Member States may require that EU nonbank SDs satisfy an institution-specific MREL pursuant to provisions transposing BRRD.[125] The MREL requirement is separate from the minimum capital requirements imposed on EU nonbank SDs under CRR and CRD and is designed to ensure that credit institutions and investment firms, including the EU nonbank SDs subject to the requirement,[126] maintain at all times sufficient eligible instruments to facilitate the implementation of the preferred resolution strategy.[127] Specifically, the MREL is intended to permit loss absorption, where appropriate, such that the EU nonbank SD's capital and leverage ratios could be restored to the level necessary for compliance with its capital requirements.[128] The MREL is set by the relevant resolution authority and is expressed as two ratios that have to be met in parallel: (i) a percentage of the entity's total risk exposure amount, and (ii) a percentage of the entity's total leverage ratio exposure measure.[129] The MREL amount varies depending on the entity's size, funding model, and risk profile, among other considerations.[130]

Furthermore, CRR imposes an additional supplemental standard of total loss absorbing capacity (''TLAC'') for G–SII entities [131] identified as resolution entities [132] and requires such entities to maintain a risk-based capital and eligible liabilities ratio of 18 percent of the entity's total risk exposure amount and a non-risk-based capital and eligible liabilities ratio of 6.75 percent of the firm's total leverage ratio exposure measure.[133] In addition, CRR requires that ''material subsidiaries'' of non-EU G–SIIs, including subsidiaries of U.S. GSIBs, that are not resolution entities maintain MREL equal to 90 percent of the foregoing as applied to their parent entity at all times.[134]

III. Commission Analysis of the Comparability of the EU Capital Rules and EU Financial Reporting Rules With CFTC Capital Rules and CFTC Financial Reporting Rules

The following section provides a description and comparative analysis of the regulatory requirements of the EU Capital Rules and EU Financial Reporting Rules to the CFTC Capital Rules and CFTC Financial Reporting Rules. Immediately following a description of the requirement(s) of the CFTC Capital Rules or the CFTC Financial Reporting Rules for which a comparability determination was requested by the Applicants, the Commission provides a description of the EU's corresponding laws, regulations, or rules. The Commission then provides a comparative analysis of the EU Capital Rules or the EU Financial Reporting Rules with the corresponding CFTC Capital Rules or CFTC Financial Reporting Rules and identifies any material differences between the respective rules.

The Commission performed this proposed Capital Comparability Determination by assessing the comparability of the EU Capital Rules for EU nonbank SDs as set forth in the EU Application with the Commission's Bank-Based Approach. For clarity, the Commission did not assess the comparability of the EU Capital Rules to the Commission's TNW Approach or NLA Approach as the Commission understands that the EU nonbank SDs, as of the date of the EU Application, are subject to the current bank-based capital approach of the EU Capital Rules. In addition, as noted in Section I.C. above, the Applicants did not include the capital framework and requirements imposed on small investment firms under the IFR and IFD as part of the EU Application, and the Commission did not assess the comparability of the IFR and IFD capital requirements with the CFTC Capital Rules. Accordingly, when the Commission makes a preliminary determination herein regarding the comparability of the EU Capital Rules with the CFTC Capital Rules, the determination pertains to the comparability of the EU Capital Rules as imposed under CRR and CRD with the

[123] CRD, Article 86 provides that EU Member States' competent authorities must ensure that institutions, including EU nonbank SDs, have robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of liquidity risk over an appropriate set of time horizons, including intra-day, so as to ensure that entities maintain adequate levels of liquidity buffers. The strategies, policies, processes, and systems must be tailored to business lines, currencies, branches, and legal entities and must include adequate allocation mechanisms of liquidity costs, benefits and risks.

[124] In application of BRRD, Article 3, EU Member States designate resolution authorities that are empowered to apply the resolution tools and exercise the resolution powers described in BRRD. EU Member States may provide that the resolution authority is the competent authority for supervision for the purposes of CRR and CRD, provided an operational independence exists between the resolution functions and the supervisory or other functions of the relevant authority. BRRD, Article 3(3).

[125] BRRD, Articles 45, 45a to 45h; French MFC, Article L.613–44; and German SAG, Sections 49(1) and (2). Eligible liabilities include, among others items, instruments that are directly issued by the EU nonbank SD and fully paid up with remaining maturities of at least a year. CRR, Articles 72a and 72b. In addition, the liabilities cannot be owned, secured or guaranteed, by the EU nonbank SD itself, and the EU nonbank SD cannot have either directly or indirectly funded its purchase. CRR, Article 72b. The inclusion of derivatives is possible if certain requirements are met. BRRD, Article 45b(2); French MFC, Article R. 613–46–1; German SAG, Section 49b.

[126] Of the four EU nonbank SDs currently registered with the Commission, two—Citigroup Global Markets Europe AG and and Morgan Stanley Europe SE—are subject to MREL. *See* Responses to Staff Questions of May 15, 2023.

[127] BRRD, Article 45c. *See also* Single Resolution Board, *Minimum Requirement for Own Funds and Eligible Liabilities (MREL),* June 2022 (''SRB MREL Policy 2022''), at 5, available at: *https://www.srb.europa.eu/system/files/media/document/2022-06-08_MREL_clean.pdf.*

[128] BRRD, Article 45c.

[129] BRRD, Articles 45 and 45c. Pursuant to BRRD, Article 45, the total risk exposure amount is calculated in accordance with CRR, Article 92(3) and the total leverage ratio exposure measure is calculated in accordance with CRR, Articles 429 and 429a.

[130] BRRD, Article 45c(1)(d).

[131] ''G–SII entity'' is defined in CRR, Article 4(1)(136) as entity that is a G–SII or is part of a G–SII or of a non-EU G–SII. Although none of the EU nonbank SDs that are currently registered with the Commission has been designated as a G–SII in France or Germany as of January 2023, all four EU nonbank SDs are subsidiaries of a U.S. global systemically important bank (''GSIB'') and therefore considered a G–SII entity.

[132] ''Resolution entity'' is defined in general terms to mean a legal entity established in the EU, which has been identified by the resolution authority as an entity in respect of which the resolution plan provides for a resolution action. BRRD, Article 1(1)(83a). None of the four EU nonbank SDs is currently designated as a resolution entity as of March 30, 2023. *See* Responses to Staff Questions of May 15, 2023. As such, the EU nonbank SDs currently registered with the Commission are not subject to a TLAC requirement.

[133] CRR, Article 92a(1). As indicated in CRR, Article 92a(1), the total risk exposure amount is calculated in accordance with CRR, Articles 92(3) and 92(4) and the total leverage ratio exposure measure is calculated in accordance with CRR, Article 429(4).

[134] *Id.,* Article 92b(1). An EU nonbank SD may become subject to the requirement of CRR, Article 92b should it become a ''material subsidiary'' of non-EU G–SII. The term ''material subsidiary'' is defined as a subsidiary that on an individual or consolidated basis meets any of the following conditions: (i) the subsidiary holds more than 5 percent of the consolidated risk-weighted assets of the parent entity; (ii) the subsidiary generates more than 5 percent of the total operating income of the parent entity; or (iii) the total exposure measure (*i.e.,* the total on-balance sheet and off-balance sheet exposures) of the subsidiary is more than 5 percent of the consolidated total exposure measure of the parent entity. *See* CRR, Article 4(135) (defining the term ''material subsidiary'') and Article 429 (setting forth the method for calculating the total exposure measure). None of the EU nonbank SDs registered with the Commission is currently considered a ''material subsidiary'' of a non-EU G–SII and, therefore, subject to the 90 percent of MREL requirement.

Bank-Based Approach under the CFTC Capital Rules.

As described below, it is proposed that any material changes to the EU Capital Rules will require notification to the Commission. Therefore, if there are subsequent material changes to the EU Capital Rules to include, for example, another capital approach, the Commission will review and assess the impact of such changes on the Capital Comparability Determination Order as it is then in effect, and may amend or supplement the Order.[135]

In addition, although the BCBS bank capital standards establish minimum capital standards that are consistent with the requirements of the Commission's Bank-Based Approach, the Commission notes that consistency with the international standards is not determinative of a finding of comparability with the CFTC Capital Rules. In the Commission's view, a foreign jurisdiction's consistency with the BCBS international bank capital standards is an element in the Commission's comparability assessment, but, in and of itself, it may not be sufficient to demonstrate comparability with the CFTC Capital Rules without an assessment of the individual elements of the foreign jurisdiction's capital framework.

Capital and financial reporting regimes are complex structures comprised of a number of interrelated regulatory components. Differences in how jurisdictions approach and implement these regimes are expected, even among jurisdictions that base their requirements on the principles and standards set forth in the BCBS international bank capital framework. Therefore, the Commission's comparability determination involves a detailed assessment of the relevant requirements of the foreign jurisdiction and whether those requirements, viewed in the aggregate, lead to an outcome that is comparable to the outcome of the CFTC's corresponding requirements. Consistent with this approach, the Commission has grouped the CFTC Capital Rules and CFTC Financial Reporting Rules into the key categories that focus the analysis on whether the EU capital and financial reporting requirements are comparable to the Commission's SD requirements in purpose and effect, and not whether the EU requirements meet every aspect or contain identical elements as the Commission's requirements.

Specifically, as discussed in detail below, the Commission used the following key categories in its review: (i) the quality of the equity and debt instruments that qualify as regulatory capital, and the extent to which the regulatory capital represents committed and permanent capital that would be available to absorb unexpected losses or counterparty defaults; (ii) the process of establishing minimum capital requirements for an EU nonbank SD and how such process addresses market risk and credit risk of the firm's on-balance sheet and off-balance sheet exposures; (iii) the financial reports and other financial information submitted by an EU nonbank SD to its relevant regulatory authorities to effectively monitor the financial condition of the firm; and (iv) the regulatory notices and other communications between the EU nonbank SD and its relevant regulatory authorities that detail potential adverse financial or operational issues that may impact the firm. The Commission also reviewed the manner in which compliance by an EU nonbank SD with the EU Capital Rules and EU Financial Reporting rules is monitored and enforced. The Commission invites public comment on all aspects of the EU Application and on the Commission's proposed Capital Comparability Determination discussed below.

A. Regulatory Objectives of CFTC Capital Rules and CFTC Financial Reporting Rules and EU Capital Rules and EU Financial Reporting Rules

1. Regulatory Objectives of CFTC Capital Rules and CFTC Financial Reporting Rules

The regulatory objectives of the CFTC Capital Rules and the CFTC Financial Reporting Rules are to further the Congressional mandate to ensure the safety and soundness of nonbank SDs to mitigate the greater risk to nonbank SDs and the financial system arising from the use of swaps that are not cleared.[136] A primary function of the nonbank SD's capital is to protect the solvency of the firm from decreases in the value of firm assets, increases in the value of firm liabilities, and from losses, including losses resulting from counterparty defaults and margin collateral failures, by requiring the firm to maintain an appropriate level of quality capital, including qualifying subordinated debt, to absorb such losses without becoming insolvent. With respect to swap positions, capital and margin perform complementary risk mitigation functions by protecting nonbank SDs, containing the amount of risk in the financial system as a whole, and reducing the potential for contagion arising from uncleared swaps.

The objective of the CFTC Financial Reporting Rules is to provide the Commission with the means to monitor and assess a nonbank SD's financial condition, including the nonbank SD's compliance with minimum capital requirements. The CFTC Financial Reporting Rules are designed to provide the Commission and NFA, which, along with the Commission, oversees nonbank SDs' compliance with Commission regulations, with a comprehensive view of the financial health and activities of the nonbank SD. The Commission's rules require nonbank SDs to file financial information, including periodic unaudited and annual audited financial statements, specific financial position information, and notices of certain events that may indicate a potential financial or operational issue that may adversely impact the nonbank SD's ability to meet its obligations to counterparties and other creditors in the swaps market, or impact the firm's solvency.[137]

2. Regulatory Objective of EU Capital Rules and EU Financial Reporting Rules

The regulatory objective of the EU Capital Rules is to ensure the safety and soundness of EU financial institutions, including EU nonbank SDs.[138] The EU Capital Rules are designed to preserve the financial stability and solvency of an EU nonbank SD by requiring the firm to maintain a sufficient amount of qualifying equity capital and subordinated debt based on the EU nonbank SD's activities to absorb decreases in the value of firm assets, increases in the value of firm liabilities, and to cover losses from business activities, including possible counterparty defaults and margin collateral shortfalls associated with the firm's swap dealing activities.[139] The EU Capital Rules are also designed to ensure that the EU nonbank SDs have sufficient liquidity to meet their financial obligations to counterparties and other creditors in a distress scenario by requiring each firm to hold an amount of sufficiently liquid assets to meet expected payment obligations under stressed conditions for 30 days[140]

[135] The Commission also may amend or supplement the Capital Comparability Determination Order to address any material changes to the CFTC Capital Rules and CFTC Financial Reporting Rules that are adopted after a final Order is issued.

[136] *See* 7 U.S.C. 6s(e)(3)(A).

[137] *See* 17 CFR 23.105.

[138] EU Application, pp. 5–6.

[139] *Id.*

[140] CRR, Article 412(1). Liquid assets primarily include cash, exposures to central banks,

Continued

and to hold a diversity of stable funding instruments sufficient to meet long-term obligations under both normal and stressed conditions.[141]

With respect to financial reporting, the objective of the EU Financial Reporting Rules is to enable the applicable supervisory authorities to assess the financial condition and safety and soundness of EU nonbank SDs. The EU Financial Reporting Rules aim to achieve this objective by requiring an EU nonbank SD to provide financial reports and other financial position and capital information to the applicable supervisory authorities on a regular basis.[142] The financial reporting by an EU nonbank SD provides the supervisory authorities with information necessary to effectively monitor the EU nonbank SD's overall financial condition and its ability to meet its regulatory obligations as a nonbank SD.

3. Commission Analysis

The Commission has reviewed the EU Application and the relevant EU laws and regulations, and has preliminarily determined that the overall objectives of the EU Capital Rules and CFTC Capital Rules are comparable in that both sets of rules are intended to ensure the safety and soundness of nonbank SDs by establishing a regulatory regime that requires nonbank SDs to maintain a sufficient amount of qualifying regulatory capital to absorb losses, including losses from swaps and other trading activities, and to absorb decreases in the value of firm assets and increases in the value of firm liabilities without the nonbank SDs becoming insolvent. The EU Capital Rules and CFTC Capital Rules are also based on, and consistent with, the BCBS international bank capital framework, which is designed to ensure that banking entities hold sufficient levels of capital to absorb losses and decreases in the value of assets without the banks becoming insolvent.

The Commission further preliminarily believes that the EU Financial Reporting Rules have comparable objectives with the CFTC Financial Reporting Rules as both sets of rules require nonbank SDs to file and/or publish, as applicable, periodic financial reports, including unaudited financial reports and an annual audited financial report, detailing their financial operations and demonstrating their compliance with minimum capital requirements, with the goal of providing the EU supervisory authorities and the CFTC staff with information necessary to comprehensively assess the financial condition of a nonbank SD on an ongoing basis. In addition, to achieve this objective, the financial reports further provide the CFTC and EU authorities with information regarding potential changes in a nonbank SD's risk profile by disclosing changes in account balances reported over a period of time. Such changes in account balances may indicate that the nonbank SD has entered into new lines of business, has increased its activity in an existing line of business relative to other activities, or has terminated a previous line of business.

The prompt and effective monitoring of the financial condition of nonbank SDs through the receipt and review of periodic financial reports supports the Commission and EU supervisory authorities in meeting their respective objectives of ensuring the safety and soundness of nonbank SDs. In connection with these objectives, the early identification of potential financial issues provides the Commission and EU supervisory authorities with an opportunity to address such issues with the nonbank SD before the issues develop to a state where the financial condition of the firm is impaired such that it may no longer hold a sufficient amount of qualifying regulatory capital to absorb decreases in the value of firm assets or increases in the value of firm liabilities, or to cover losses from the firm's business activities, including the firm's swap dealing activities and obligations to swap counterparties.

The Commission invites public comment on its analysis above, including comment on the EU Application and relevant EU laws and regulations.

B. Nonbank Swap Dealer Qualifying Capital

1. CFTC Capital Rules: Qualifying Capital Under Bank-Based Approach

The CFTC Capital Rules require a nonbank SD electing the Bank-Based Approach to maintain regulatory capital in the form of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in amounts that meet certain stated minimum requirements set forth in Commission Regulation 23.101.[143] Common equity tier 1 capital, additional tier 1 capital, and tier 2 capital are composed of certain defined forms of equity of the nonbank SD, including common stock, retained earnings, and qualifying subordinated debt.[144] The Commission's requirement for a nonbank SD to maintain a minimum amount of defined qualifying capital and subordinated debt is intended to ensure that the firm maintains a sufficient amount of regulatory capital to absorb decreases in the value of the firm's assets and increases in the value of the firm's liabilities, and to cover losses resulting from the firm's swap dealing and other activities, including possible counterparty defaults and margin collateral shortfalls, without the firm becoming insolvent.

Common equity tier 1 capital is generally composed of an entity's common stock instruments and any related surpluses, retained earnings, and accumulated other comprehensive income, and is a more conservative or permanent form of capital than additional tier 1 and tier 2 capital.[145] Additional tier 1 capital is generally composed of equity instruments such as preferred stock and certain hybrid securities that may be converted to common stock if triggering events occur.[146] Total tier 1 capital is composed of common equity tier 1 capital and further includes additional tier 1 capital.[147] Tier 2 capital includes certain types of instruments that include both debt and equity characteristics such as qualifying subordinated debt.[148]

Subordinated debt must meet certain conditions to qualify as tier 2 capital under the CFTC Capital Rules. Specifically, subordinated debt instruments must have a term of at least one year (with the exception of approved revolving subordinated debt agreements which may have a maturity term that is less than one year), and contain terms that effectively subordinate the rights of lenders to receive any payments, including accrued interest, to other creditors of the firm.[149]

government-backed assets and other highly liquid assets with high credit quality. CRR, Article 416(1).

[141] Stable funding instruments include common equity tier 1 capital instruments, additional tier 1 capital instruments, tier 2 capital instruments, and other preferred shares and capital instruments in excess of the tier 2 allowable amount with an effective maturity of one year or greater. CRR, Article 427(1).

[142] CRR, Article 430.

[143] *See* 17 CFR 23.101(a)(1)(i).

[144] The terms ''common equity tier 1 capital,'' ''additional tier 1 capital,'' and ''tier 2 capital'' are defined in the bank holding company regulations of the Federal Reserve Board. *See* 12 CFR 217.20.

[145] 12 CFR 217.20.

[146] *Id.*

[147] *Id.*

[148] *Id.*

[149] The subordinated debt must meet the requirements set forth in SEC Rule 18a–1d (17 CFR 240.18a–1d). *See* 17 CFR 23.101(a)(1)(i)(B) (providing that the subordinated debt used by a nonbank SD to meet its minimum capital requirement under the Bank-Based Approach must satisfy the conditions for subordinated debt under SEC Rule 18a–1d).

Common equity tier 1 capital, additional tier 1 capital, and tier 2 capital are permitted to be included in a nonbank SD's regulatory capital and used to meet the firm's minimum capital requirement due to their characteristics of being permanent forms of capital that are subordinate to the claims of other creditors, which ensures that a nonbank SD will have this regulatory capital to absorb decreases in the value of the firm's assets and increases in the value of the firm's liabilities, and to cover losses from business activities, including swap dealing activities, without the firm becoming insolvent.

2. EU Capital Rules: Qualifying Capital

The EU Capital Rules require an EU nonbank SD to maintain an amount of regulatory capital (*i.e.,* equity capital and qualifying subordinated debt) equal to or greater than 8 percent of the EU nonbank SD's total risk exposure, which is calculated as the sum of the firm's: (i) capital charges for market risk; (ii) risk-weighted exposure amounts for credit risk; (iii) capital charges for settlement risk; (iv) CVA risk of OTC derivatives instruments; and (v) capital charges for operational risk.[150] The EU Capital Rules limit the composition of regulatory capital to common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in a manner consistent with the BCBS bank capital framework.[151] In this regard, the EU Capital Rules provide that an EU nonbank SD's regulatory capital may be composed of: (i) common equity tier 1 capital instruments, which generally include the EU nonbank SD's common equity, retained earnings, and accumulated other comprehensive income; [152] (ii) additional tier 1 capital instruments, which include other forms of capital instruments and certain long-term convertible debt instruments; [153] and (iii) tier 2 capital instruments, which includes other reserves, hybrid capital instruments, and certain qualifying subordinated term debt.[154]

Furthermore, subordinated debt instruments must meet certain conditions to qualify as tier 2 regulatory capital under the EU Capital Rules, including that the: (i) loans are not granted by the EU nonbank SD or its subsidiaries; (ii) claims on the principal amount of the subordinated loans under the provisions governing the subordinated loan agreement rank below any claim from eligible liabilities instruments (*i.e.,* certain non-capital instruments), meaning that they are effectively subordinated to claims of all non-subordinated creditors of the EU nonbank SD; (iii) subordinated loans are not secured, or subject to a guarantee that enhances the seniority of the claim, by the EU nonbank SD, its subsidiaries, or affiliates; (iv) loans have an original maturity of at least five years; and (v) provisions governing the loans do not include any incentive for the principal amount to be repaid by the EU nonbank SD prior to the loans' maturity.[155]

An EU nonbank SD must also maintain a capital conservation buffer equal to 2.5 percent of the firm's total risk exposure in addition to the requirement to maintain qualifying regulatory capital in excess of 8 percent of its total risk exposure.[156] The 2.5 percent capital conservation buffer must be met with common equity tier 1 capital.[157] Common equity tier 1 capital, as noted above, is limited to the EU nonbank SD's common equity, retained earnings, and accumulated other comprehensive income, and represents a more permanent form of capital than equity instruments that qualify as additional tier 1 capital and tier 2 capital.

The EU Capital Rules also impose different ratios for the various components of regulatory capital that are consistent with the BCBS bank capital framework.[158] In this regard, the EU Capital Rules provide that an EU nonbank SD's minimum regulatory capital must satisfy the following requirements: (i) common equity tier 1 capital ratio of 4.5 percent of the firm's total risk exposure amount; (ii) total tier 1 capital (*i.e.,* common equity tier 1 capital plus additional tier 1 capital) ratio of 6 percent of the firm's total risk exposure amount; and (iii) total capital (*i.e.,* an aggregate amount of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital) ratio of 8 percent of the firm's total risk exposure amount. As noted above, an EU nonbank SD must also maintain a capital conservation buffer of 2.5 percent of its total risk exposure amount that must be met with common equity tier 1 capital.[159] With the addition of the capital conservation buffer, each EU nonbank SD is required to maintain minimum regulatory capital that equals or exceeds 10.5 percent of the firm's total risk exposure amount, with common equity tier 1 capital comprising at least 7 percent of the 10.5 percent minimum regulatory capital requirement.[160]

Common equity tier 1 capital, additional tier 1 capital, and tier 2 capital are permitted to be included in an EU nonbank SD's regulatory capital and used to meet the firm's minimum capital requirement due to their characteristics of being permanent forms of capital that are subordinate to the claims of other creditors, which ensures

[150] CRR, Article 92.

[151] *Id.*

[152] CRR, Articles 26 and 28. Capital instruments that qualify as common equity tier 1 capital under the EU Capital Rules include instruments that: (i) are issued directly by the EU nonbank SD; (ii) are paid in full and not funded directly or indirectly by the EU nonbank SD; and (iii) are perpetual. In addition, the principal amount of the instruments may not be reduced or repaid, except in the liquidation of the EU nonbank SD or the repurchase of shares pursuant to the permission of the appropriate regulatory authority.

[153] *Id.,* Articles 50–52. To qualify as additional tier 1 capital, the instruments must meet certain conditions including: (i) the instruments are issued directly by the EU nonbank SD and paid in full; (ii) the instruments are not owned by the EU nonbank SD or its subsidiaries; (iii) the purchase of the instruments is not funded directly or indirectly by the EU nonbank SD; (iv) the instruments rank below tier 2 instruments in the event of the insolvency of the EU nonbank SD; (v) the instruments are not secured or guaranteed by the EU nonbank SD or an affiliate; (vi) the instruments are perpetual and do not include an incentive for the EU nonbank SD to redeem them; and (vii) distributions under the instruments are pursuant to defined terms and may be cancelled under the full discretion of the EU nonbank SD.

[154] *Id.,* Articles 62–63.

[155] *Id.,* Article 63.

[156] CRD, Article 129(1). In addition, an EU nonbank SD may also be subject to a capital countercyclical buffer which requires the EU nonbank SD to hold an additional amount of common equity tier 1 capital equal to its total risk-weighted assets multiplied by the weighted average of the countercyclical buffer rates that apply in all EU countries where the relevant exposures of the EU nonbank SD are located. CRD, Articles 130 and 140. EU nonbank SDs may also be subject to a G–SII or an O–SII buffer if they are of systemic importance. CRD, Article 131. In practice, however, only one of the EU nonbank SD registered with the Commission, Citigroup Global Markets Europe AG, is subject to an O–SII buffer (of 0.25 percent) as of January 2023 and none of the entities is subject to a G–SII buffer. Finally, EU nonbank SDs may be subject to a systemic risk buffer if the EU Member State in which they are domiciled or at least one EU Member State in which they have exposures has implemented a systemic risk buffer. CRD, Article 133. To meet the additional buffer requirements, if applicable, an EU nonbank SD must maintain a level of common equity tier 1 capital that is in addition to the common equity tier 1 capital required to meet its core capital requirement of 4.5 percent of its risk-weighted assets and the common equity tier 1 capital required to meet its capital conservation buffer. *See* CRD, Articles 130(1), 131(4), 131(5a) and 133(1). For EU Member States that have implemented capital countercyclical buffer rates, the rate varies between 0.5 percent and 2.5 percent of total risk exposure. *See* information about EU Member States' countercyclical capital buffer rate available here: *https://www.esrb.europa.eu/national_policy/ccb/html/index.en.html.*

[157] CRD, Article 129(1).

[158] CRR, Article 92(1).

[159] CRD, Article 129(1).

[160] The countercyclical capital buffer, the G–SII or O–SII buffer, and the systemic risk buffer are not included in the analysis given their varying implementation by EU Member States and limited applicability to the EU nonbank SDs that are currently registered with the Commission.

that an EU nonbank SD will have this regulatory capital to absorb decreases in the value of the firm's assets and increases in the value of the firm's liabilities, and to cover losses from business activities, including swap dealing activities, without the firm becoming insolvent.

3. Commission Analysis

The Commission has reviewed the EU Application and the relevant EU laws and regulations, and has preliminarily determined that the EU Capital Rules are comparable in purpose and effect to the CFTC Capital Rules with regard to the types and characteristics of a nonbank SD's equity that qualifies as regulatory capital in meeting its minimum requirements. The EU Capital Rules and the CFTC Capital Rules for nonbank SDs both require a nonbank SD to maintain a quantity of high-quality capital and permanent capital, all defined in a manner that is consistent with the BCBS international bank capital framework, that based on the firm's activities and on-balance sheet and off-balance sheet exposures, is sufficient to absorb losses and decreases in the value of the firm's assets and increases in the value of the firm's liabilities without resulting in the firm becoming insolvent. Specifically, equity instruments that qualify as common equity tier 1 capital and additional tier 1 capital under the EU Capital Rules and the CFTC Capital Rules have similar characteristics (*e.g.,* the equity must be in the form of high-quality, committed and permanent capital) and the equity instruments generally have no priority in distribution of firm assets or income with respect to other shareholders or creditors of the firm, which makes the equity available to a nonbank SD to absorb unexpected losses, including counterparty defaults.[161]

In addition, the Commission has preliminarily determined that the conditions imposed on subordinated debt instruments under the EU Capital Rules and the CFTC Capital Rules are comparable and are designed to ensure that the subordinated debt has qualities that support its recognition by a nonbank SD as equity for regulatory capital purposes. Specifically, in both sets of rules, the conditions include a requirement that the debt holders have effectively subordinated their claims for repayment of the debt to the claims of other creditors of the nonbank SD.[162]

Having reviewed the EU Application and the relevant EU laws and regulations, the Commission has made a preliminary determination that the EU Capital Rules and CFTC Capital Rules impose comparable requirements on EU nonbank SDs with respect to the types and characteristics of equity capital that must be used to meet minimum regulatory capital requirements. The Commission invites public comment on its analysis above, including comment on the EU Application and relevant EU laws and regulations.

C. Nonbank Swap Dealer Minimum Capital Requirement

1. CFTC Capital Rules: Nonbank SD Minimum Capital Requirement

The CFTC Capital Rules require a nonbank SD electing the Bank-Based Approach to maintain regulatory capital that satisfies each of the following criteria: (i) an amount of common equity tier 1 capital of at least $20 million; (ii) an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in an amount equal to or in excess of 8 percent of the nonbank SD's uncleared swap margin amount; (iii) an aggregate amount of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital equal to or greater than 8 percent of the nonbank SD's total risk-weighted assets, provided that common equity tier 1 capital comprises at least 6.5 percent of the 8 percent; and (iv) the amount of capital required by the NFA.[163]

Prong (i) above requires each nonbank SD electing the Bank-Based Approach to maintain a minimum of $20 million of common equity tier 1 capital to operate as a nonbank SD. The requirement that each nonbank SD electing the CFTC Bank-Based Approach maintain a minimum of $20 million of common equity tier 1 capital is also consistent with the minimum capital requirement for nonbank SDs electing the NLA Approach and the TNW Approach.[164] The Commission adopted this minimum requirement as it believed that the role a nonbank SD performs in the financial markets by engaging in swap dealing activities warranted a minimum level of capital, stated as a fixed dollar amount that does not fluctuate with the level of the firm's dealing activities to help ensure the safety and soundness of the nonbank SD.[165]

Prong (ii) above is a minimum capital requirement that is based on the amount of uncleared margin for swap transactions entered into by the nonbank SD and is computed on a counterparty by counterparty basis. The requirement for a nonbank SD to maintain minimum capital equal to or greater than 8 percent of the firm's uncleared swap margin provides a capital floor based on a measure of the risk and volume of the swap positions, and the number of counterparties and the complexity of operations, of the nonbank SD. The intent of the minimum capital requirement based on a percentage of the nonbank SD's uncleared swap margin was to establish a minimum capital requirement that would help ensure that the nonbank SD meets all of its obligations as a SD to market participants, and to cover potential operational risk, legal risk, and liquidity risk in addition to the risks associated with its trading portfolio.[166]

Prong (iii) above is a minimum capital requirement that is based on the Federal Reserve Board's capital requirements for bank holding companies and is consistent with the BCBS international capital framework for banking institutions. As noted above, a nonbank SD under prong (iii) must maintain an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in an amount equal to or greater than 8 percent of the nonbank SD's total risk-weighted assets, with common equity tier 1 capital comprising at least 6.5 percent of the 8 percent. Risk-weighted assets are a nonbank SD's on-balance sheet and off-balance sheet exposures, including proprietary swap, security-based swap, equity, and futures positions, weighted according to risk. The Bank-Based Approach requires each nonbank SD to maintain regulatory capital in an amount that equals or exceeds 8 percent of the firm's total risk-weighted assets to help ensure that the nonbank SD's level of capital is sufficient to absorb decreases in the value of the firm's assets and increases

[161] *Compare* 12 CFR 217.20(b) (defining capital instruments that qualify as common equity tier 1 capital under the rules of the Federal Reserve Board) and 12 CFR 217.20(c) (defining capital instruments that qualify as additional tier 1 capital under the rules of the Federal Reserve Board) *with* CRR, Articles 26 and 28 (defining items and capital instruments that qualify as common equity tier 1 capital under the EU Capital Rules) and CRR, Article 52 (defining capital instruments that qualify as additional tier 1 capital under the EU Capital Rules).

[162] *Compare* 17 CFR 240.18a–1d *with* CRR, Article 63(d).

[163] *See* 17 CFR 23.101(a)(1)(i). NFA has adopted the CFTC minimum capital requirements for nonbank SDs, but has not adopted additional capital requirements at this time.

[164] Nonbank SDs electing the NLA Approach are subject to a minimum capital requirement that includes a fixed minimum dollar amount of net capital of $20 million. *See* 17 CFR 23.101(a)(1)(ii)(A)(*1*). Nonbank SDs electing the TNW Approach are required to maintain levels of tangible net worth that equals or exceeds $20 million plus the amount of the nonbank SDs' market risk and credit risk associated with the firms' dealing activities. *See* 17 CFR 23.101(a)(2)(ii)(A).

[165] *See, e.g.,* 85 FR 57492.

[166] *See* 85 FR 57462.

in the value of the firm's liabilities, and to cover unexpected losses resulting from business activities, including uncollateralized defaults from swap counterparties, without the nonbank SD becoming insolvent.

A nonbank SD must compute its risk-weighted assets using standardized market risk and/or credit risk charges, unless the nonbank SD has been approved by the Commission or NFA to use internal models.[167] For standardized market risk charges, the Commission incorporates by reference the standardized market risk charges set forth in Commission Regulation 1.17 for FCMs and SEC Rule 18a–1 for nonbank SBSDs.[168] The standardized market risk charges under Commission Regulation 1.17 and SEC Rule 18a–1 are calculated as a percentage of the market value or notional value of the nonbank SD's marketable securities and derivatives positions, with the percentages applied to the market value or notional value increasing as the expected or anticipated risk of the positions increases.[169] The resulting total market risk exposure amount is multiplied by a factor of 12.5 to cancel the effect of the 8 percent multiplication factor applied to all of the nonbank SD's risk-weighted assets, which effectively requires a nonbank SD to hold qualifying regulatory capital equal to or greater than 100 percent of the amount of its market risk exposure.[170]

With respect to standardized credit risk charges for exposures from non-derivatives positions, a nonbank SD computes its on-balance sheet and off-balance sheet exposures in accordance with the standardized credit risk charges adopted by the Federal Reserve Board and set forth in Subpart D of 12 CFR 217 as if the SD itself were a bank holding company subject to Subpart D.[171] Standardized credit risk charges are computed by multiplying the amount of the exposure by defined counterparty credit risk factors that range from 0 percent to 150 percent.[172] A nonbank SD with off-balance sheet exposures is required to calculate a credit risk charge by multiplying each exposure by a credit conversion factor that ranges from 0 percent to 100 percent, depending on the type of exposure.[173] In addition to the risk-weighted assets for general credit risk, a nonbank SD calculating risk charges under Subpart D of 12 CFR 217 must also calculate risk-weighted assets for unsettled transactions involving securities, foreign exchange instruments, and commodities that have a risk of delayed settlement or delivery.

A nonbank SD may compute standardized credit risk charges for derivatives positions, including uncleared swaps and non-cleared security-based swaps, using either the current exposure method (''CEM'') or the standardized approach for measuring counterparty credit risk (''SA–CCR'').[174] Both CEM and SA–CCR are non-model, rules-based, approaches to calculating counterparty credit risk exposures for derivatives positions. Credit risk exposure under CEM is the sum of: (i) the current exposure (*i.e.,* the positive mark-to-market) of the derivatives contract; and (ii) the potential future exposure, which is calculated as the product of the notional principal amount of the derivatives contract multiplied by a standard credit risk conversion factor set forth in the rules of the Federal Reserve Board.[175] Credit risk exposure under SA–CCR is defined as the exposure at default amount of a derivatives contract, which is computed by multiplying a factor of 1.4 by the sum of: (i) the replacement costs of the contract (*i.e.,* the positive mark-to market); and (ii) the potential future exposure of the contract.[176]

A nonbank SD may also obtain approval from the Commission or NFA to use internal models to compute market risk and/or credit risk charges in lieu of the standardized charges. A nonbank SD seeking approval to use an internal model is required to submit an application to the Commission or NFA.[177] The application is required to include, among other things, a list of categories of positions that the nonbank SD holds in its proprietary accounts and a brief description of the methods that the nonbank SD will use to calculate market risk and/or credit risk charges for such positions, as well as a description of the mathematical models used to compute market risk and credit risk charges.

A nonbank SD approved by the Commission or NFA to use internal models to compute market risk is required to comply with Subpart F of the Federal Reserve Board's Part 217 regulations (''Subpart F'').[178] Subpart F is based on models that are consistent with the BCBS Basel 2.5 capital framework.[179] The Commission's qualitative and quantitative requirements for internal capital models are also comparable to the SEC's existing internal capital model requirements for broker-dealers in securities and SBSDs,[180] which are broadly based on the BCBS Basel 2.5 capital framework.

A nonbank SD approved to use internal models to compute credit risk charges is required to perform such computation in accordance with Subpart E of the Federal Reserve Board's Part 217 regulations [181] as if the SD itself were a bank holding company subject to Subpart E.[182] The internal credit risk modeling requirements are also based on the Basel 2.5 capital framework and the Basel 3 capital framework. A nonbank SD that computes its credit risk charges using internal models must multiply the resulting capital requirement by a factor of 12.5.[183]

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[167] *See* 17 CFR 23.101(a)(1)(i)(B) and the definition of the term *BHC equivalent risk-weighted assets* in 17 CFR 23.100.

[168] *See* paragraph (3) of the definition of the term *BHC equivalent risk-weighted assets* in 17 CFR 23.100.

[169] *See* 17 CFR 240.18a–1(c)(1).

[170] *See* 17 CFR 23.100 (Definition of *BHC equivalent risk-weighted assets*). As noted, a nonbank SD is required to maintain qualifying capital (*i.e.,* an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital) in an amount that exceeds 8 percent of its market risk-weighted assets and credit-risk-weighted assets. The regulations, however, require the nonbank SD to effectively maintain qualifying capital in excess of 100 percent of its market risk-weighted assets by requiring the nonbank SD to multiply its market-risk-weighted assets by 12.5.

[171] *See* 17 CFR 23.101(a)(1)(i)(B) and paragraph (1) of the definition of the term *BHC equivalent risk-weighted assets* in 17 CFR 23.100.

[172] *See* 17 CFR 217.32. Lower credit risk factors are assigned to entities with lower credit risk and higher credit risk factors are assigned to entities with higher credit risk. For example, a credit risk factor of 0% is applied to exposures to the U.S. government, the Federal Reserve Bank, and U.S. government agencies (*see* 12 CFR 217.32 (a)(1)), and a credit risk factor of 100% is assigned to an exposure to foreign sovereigns that are not members of the Organization of Economic Co-operation and Development (*see* 12 CFR 217.32(a)(2)).

[173] *See* 17 CFR 217.33.

[174] *See* 17 CFR 217.34. *See also,* Commission Regulation 23.100 (17 CFR 23.100) defining the term *BHC risk-weighted assets,* which provides that a nonbank SD that does not have model approval may use either CEM or SA–CCR to compute its exposures for over-the-counter derivative contracts without regard to the status of its affiliate entities with respect to the use of a calculation approach under the Federal Reserve Board's capital rules.

[175] *See* 12 CFR 217.34.

[176] *See* 12 CFR 217.132(c).

[177] *See* 17 CFR 23.102(c).

[178] *See* paragraph (4) of the definition of *BHC equivalent risk-weighted assets* in 17 CFR 23.100.

[179] *Compare* 17 CFR 23.100 (providing for a nonbank SD that is approved to use internal models to calculate market and credit risk to calculate its risk-weighted assets using Subparts E and F of 12 CFR part 217), Subpart F of 12 CFR, 17 CFR 23.101(a)(1)(ii) (providing for an SD that elects the Net Liquid Assets Approach to calculate its net capital in accordance with Rule 18a–1), and 17 CFR 23.102(a), *with* Basel Committee on Banking Supervision, Revisions to the Basel II Market Risk Framework (2011), *https://www.bis.org/publ/bcbs193.pdf* (describing the revised internal model approach under Basel 2.5).

[180] The SEC internal model requirements for SBSDs are listed in 17 CFR 240.18a–1(d).

[181] 12 CFR 217 Subpart E.

[182] *See* 85 FR 57462 at 57496.

[183] 12 CFR 217.131(e)(1)(iii), 217.131(e)(2)(iv), and 217.132(d)(9)(iii).

In adopting the final Bank-Based Approach rules, the Commission also noted that in choosing an alternative calculation, the nonbank SD must adopt the entirety of the alternative. As such, if the nonbank SD is calculating its risk-weighted assets using the regulations in Subpart E of 12 CFR 217, the nonbank SD must include charges reflecting all categories of risk-weighted assets applicable under these regulations, which include among other things, charges for operational risk, CVA of OTC derivatives contracts, and unsettled transactions involving securities, foreign exchange instruments, and commodities that have a risk of delayed settlement or delivery.[184] The capital charge for operational risk and CVA of OTC derivatives contracts calculated in accordance with Subpart E of 12 CFR 217 must also be multiplied by a factor of 12.5.[185]

Under the Basel 2.5 capital framework, nonbank SDs have flexibility in developing their internal models, but must follow certain minimum standards. Internal market risk and credit risk models must follow a Value-at-Risk (''VaR'') structure to compute, on a daily basis, a 99th percentile, one-tailed confidence interval for the potential losses resulting from an instantaneous price shock equivalent to a 10-day movement in prices (unless a different time-frame is specifically indicated). The simulation of this price shock must be based on a historical observation period of minimum length of one year, but there is flexibility on the method used to render simulations, such as variance-covariance matrices, historical simulations, or Monte Carlo.

The Commission and the Basel standards for internal models also have requirements on the selection of appropriate risk factors as well as on data quality and update frequency.[186] One specific concern is that internal models must capture the non-linear price characteristics of options positions, including but not limited to, relevant volatilities at different maturities.[187]

In addition, BCBS standards for market risk models include a series of additive components for risks for which the broad VaR is ill-suited or that may need targeted calculation. These include the calculation of a Stressed VaR measure (with the same specifications as the VaR, but calibrated to historical data from a continuous 12-month period of significant financial stress relevant to the firm's portfolio); a Specific Risk measure (which includes the effect of a specific instrument); an Incremental Risk measure (which addresses changes in the credit rating of a specific obligor which may appear as a reference in an asset); and a Comprehensive Risk measure (which addresses risk of correlation trading positions).

2. EU Capital Rules: EU Nonbank Swap Dealer Minimum Capital Requirements

The EU Capital Rules impose bank-like capital requirements on an EU nonbank SD that, consistent with the BCBS international bank capital framework, require the EU nonbank SD to hold a sufficient amount of qualifying equity capital and subordinated debt based on the EU nonbank SD's activities to absorb decreases in the value of firm assets and increases in the value of the firm's liabilities, and to cover losses from its business activities, including possible counterparty defaults and margin collateral shortfalls associated with the firm's swap dealing activities, without the firm becoming insolvent. Specifically, the EU Capital Rules require each EU nonbank SD to maintain sufficient levels of capital to satisfy the following capital ratios, expressed as a percentage of the EU nonbank SD's total risk exposure amount (*i.e.,* the sum of the EU nonbank SD's risk-weighted assets and exposures): (i) a common equity tier 1 capital ratio of 4.5 percent; [188] (ii) a tier 1 capital ratio of 6 percent; [189] and (iii) a total capital ratio of 8 percent.[190] The EU Capital Rules further require an EU nonbank SD to maintain a capital conservation buffer composed of common equity capital tier 1 capital in amount equal to 2.5 percent of the firm's total risk exposure.[191] The common equity tier 1 capital used to meet the capital conservation buffer must be separate and in addition to the 4.5 percent of common equity tier 1 capital that the EU nonbank is required to maintain in meeting its core 8 percent capital requirement.[192] Thus, an EU nonbank SD is required to maintain regulatory capital equal to at least 10.5 percent of its total risk exposure amount, with common equity tier 1 capital comprising at least 7 percent of the regulatory capital (4.5 percent of the core capital plus the 2.5 percent capital conservation buffer).

An EU nonbank SD's total risk exposure amount is calculated as the sum of the firm's: (i) capital requirements for market risk; (ii) risk-weighted exposure amounts for credit risk; (iii) capital requirements for settlement risk; (iv) capital requirements for CVA risk of OTC derivatives instruments; and (v) capital requirements for operational risk.[193] Capital charges for market risk and risk-weighted exposures for credit risk are computed based on the EU nonbank SD's on-balance sheet and off-balance sheet exposures, including proprietary swap, security-based swap, equity, and futures positions, weighted according to risk.[194] Settlement risk capital charges reflect the price difference to which an

[184] Settlement risk for OTC derivatives contracts is addressed as part of the counterparty-credit risk calculation methodology described in 12 CFR 217.132.

[185] 12 CFR 217.162(c) (operational risk) and 217.132(e)(4) (CVA of OTC derivative contracts).

[186] *See* 17 CFR Appendix A to Subpart E of Part 23(i)(2)(iii), and Basel Committee on Banking Supervision, Revisions to the Basel II Market Risk Framework (2011), paragraph 718(Lxxvi)(e), available at: *https://www.bis.org/publ/bcbs193.pdf.*

[187] The Commission's requirement is set forth in paragraph (i)(2)(iv)(A) of Appendix A to Subpart E of 17 CFR part 23. *See also,* Basel Committee on Banking Supervision, Revisions to the Basel II Market Risk Framework (2011), paragraph 718(Lxxvi)(h), available at: *https://www.bis.org/publ/bcbs193.pdf.*

[188] CRR, Article 92(1)(a).

[189] *Id.,* Article 92(1)(b). Tier 1 capital is the sum of the EU nonbank SD's common equity tier 1 capital and additional tier 1 capital.

[190] *Id.,* Article 92(1)(c). The total capital is the sum of the EU nonbank SD's tier 1 capital and tier 2 capital.

[191] CRD, Article 129(1).

[192] *Id.* An EU nonbank SD may also be required to maintain a countercyclical capital buffer composed of common equity tier 1 capital equal to the firm's total risk exposure multiplied by an entity-specific countercyclical buffer rate. The entity-specific countercyclical capital buffer rate is determined by calculating the weighted average of the countercyclical buffer rates that apply in the jurisdictions in which the EU nonbank SD has relevant credit exposures. *See* CRD, Article 140. In each EU Member State, the countercyclical buffer rate is set by a designated authority on a quarterly basis. *See* CRD, Article 136. In addition, an EU nonbank SD may be subject to a G–SII or O–SII buffer, if the entity is of systemic importance, and a systemic risk buffer if the EU Member State in which the EU nonbank SD is domiciled or at least one EU Member State in which the EU nonbank SD has exposures has implemented one. *See* CRD, Articles 131 and 133. In practice, however, currently only one of the EU nonbank SD registered with the Commission, Citigroup Global Markets Europe AG, is subject to O–SII buffer (of 0.25 percent) as of January 2023 and none of the registered EU nonbank SDs is subject to a G–SII buffer.

[193] CRR, Article 92(3).

[194] To compute capital requirements for market risk, EU nonbank SDs are required to calculate capital charges for all trading book positions and non-trading book positions that are subject to foreign exchange or commodity risk. *See* CRR, Article 325. The risk-weighted exposure amounts for credit risk include: (i) risk-weighted exposure amounts for credit risk and dilution risk in respect of all the business activities of the EU nonbank SD, excluding risk-weighted exposure amounts from the trading book business of the firm; and (ii) risk-weighted exposure amounts for counterparty risk arising from the trading book business for certain derivatives transactions, repurchase agreements, securities or commodities lending or borrowing transactions, margin lending or long settlement transactions. *See* CRR, Article 92(3)(a) and (f).

EU nonbank SD is exposed if its transactions in debt instruments, equity, foreign currency, and commodities remain unsettled after the respective product's due delivery date.[195] CVA is an adjustment to the mid-market value of the portfolio of OTC derivative transactions with a counterparty and reflects the current market value of the credit risk of the counterparty to the EU nonbank SD.[196] Operational risk capital charges reflect the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, and includes legal risk.[197] To compute its total risk exposure amount, an EU nonbank SDs is also required to multiply the capital requirements for market risk, settlement risk, CVA risk, and operational risk, calculated in accordance with the EU Capital Rules, by a factor of 12.5, which effectively requires an EU nonbank SD to hold qualifying regulatory capital equal to or greater than the full amount of the relevant risk exposures.[198] The formulae for calculating risk-weighted exposure amounts for credit risk also include a 12.5 multiplication factor.[199]

Consistent with the Commission's Bank-Based Approach and the BCBS capital framework, the EU Capital Rules require EU nonbank SDs to compute market risk exposures and credit risk exposures using a standardized approach or, if approved by the relevant competent authorities, internal risk models.[200] In addition, EU Capital Rules, consistent with the BCBS capital framework, require EU nonbank SDs to compute capital charges for CVA risk and operational risk using standardized approaches, unless approved to use internal models by relevant competent authorities.[201]

EU nonbank SDs calculate standardized market risk charges generally by multiplying the notional or carrying amount of net positions by risk-weighting factors, which are based on the underlying market risk of each asset or exposure and increase as the expected risk of the positions increase. Market risk requirements for debt instruments and equity instruments are calculated separately under the standardized approach, and are each calculated as the sum of specific risk and general risk of the positions. Securitizations are treated as debt instruments for market risk requirements,[202] whereas derivative positions are generally treated as exposures on their underlying assets,[203] with options being delta-adjusted.[204]

The EU Capital Rules also require EU nonbank SDs to include in their risk-weighted assets market risk exposures to certain foreign currency and gold positions. Specifically, an EU nonbank SD with net positions in foreign exchange and gold that exceed 2 percent of the firm's total capital must calculate capital requirements for foreign exchange risk.[205] The capital requirement for foreign exchange risk under the standardized approach is 8 percent of the EU nonbank SD's net positions in foreign exchange and gold.[206]

The EU Capital Rules further require EU nonbank SDs to include exposures to commodity positions in calculating the firm's risk-weighted assets. The standardized calculation of commodity risk exposures may follow one of three approaches depending on type of position or exposure. The first is the sum of a flat percentage rate for net positions, with netting allowed among tightly defined sets, plus another flat percentage rate for the gross position.[207] The other two standardized approaches are based on maturity-ladders, where unmatched portions of each maturity band (*i.e.,* portions that do not net out to zero) are charged at a step-up rate in comparison to the base charges for matched portions.[208]

With respect to credit risk, the EU Capital Rules require an EU nonbank SD to calculate its standardized credit risk exposure in a manner aligned with the Commission's Bank-Based Approach and the BCBS framework by taking the carrying value or notional value of each of the EU nonbank SD's on-balance sheet and off-balance sheet exposures, making certain additional credit risk adjustments, and then applying specific risk-weights based on the type of counterparty and the asset's credit quality.[209] For instance, high quality credit exposures, such as exposures to EU Member States' central banks, carry a zero percent risk-weight. Exposures to EU banks, other investment firms, or other businesses, however, may carry risk-weights between 20 percent and 150 percent depending on the credit ratings available for the entity or, for exposures to banks and investment firms, for its central government.[210] If no credit rating is available, the EU nonbank SD must generally apply a 100 percent risk-weight, meaning the total accounting value of the exposure is used.[211]

With respect to counterparty credit risk for derivatives transactions and certain other agreements that give rise to bilateral credit risk, the EU Capital Rules require an EU nonbank SD that is not approved to use credit risk models to calculate its exposure using the standardized approach for counterparty credit risk (*i.e.,* SA–CCR),[212] which is one of the methods that a nonbank SD may use to calculate its credit risk exposure under a derivatives transaction pursuant to the Commission's Bank-Based Approach.[213] The exposure amount under the SA–CCR is computed, under both the EU Capital Rules and the Commission's Bank-Based Approach, as the sum of the replacement cost of the contract and the potential future exposure of the contract, multiplied by a factor of 1.4.[214]

EU Capital Rules also require an EU nonbank SD to calculate capital requirements for settlement risk.[215] Consistent with the BCBS framework, the capital charge for settlement risk for transactions settled on a delivery-versus-payment basis is computed by multiplying the price difference to which an EU nonbank SD is exposed as a result of an unsettled transaction by a

[195] CRR, Article 378. Settlement risk is calculated as 8 percent, 50 percent, 75 percent, or 100 percent of the price difference for transactions that are not settled within 5 to 15 business days, 16 to 30 business days, 31 to 45 business days, or 46 or more business days, respectively, from the due settlement date.

[196] *Id.,* Article 381.

[197] *Id.,* Article 4(1)(52).

[198] *Id.,* Article 92(4).

[199] *Id.,* Article 153 *et seq.*

[200] With the permission of the relevant competent authority, an EU nonbank SD may use internal models to calculate market risk (*see* CRR, Article 363) and credit risk (*see* CRR, Articles 143 and 283).

[201] *See,* CRR, Articles 382–384 for CVA risk calculations; and Article 312(2) for operational risk.

[202] *Id.,* Article 326. *See also* CRR, Articles 334–340 (provisions related to debt instruments) and 341–343 (provisions related to equities).

[203] *Id.,* Articles 328–330, 358.

[204] *Id.,* Article 329.

[205] *Id.,* Article 351.

[206] *Id.*

[207] *Id.,* Article 360.

[208] *Id.,* Articles 359–361.

[209] *Id.,* Articles 111 and 113(1).

[210] *Id.,* Articles 114–122.

[211] *Id.,* Articles 121(2) and 122(2).

[212] CRR, Articles 92(3)(f) and 274–280e. EU nonbank SDs with smaller-sized derivatives business may also use a ''simplified standardized approach to counterparty credit risk'' (CRR, Article 281) or an ''original exposure method'' (CRR, Article 282) as simpler methods for calculating exposure values. To use either of these alternative methods, an entity's on-and off-balance sheet derivatives business must be equal or less than 10 percent of the entity's total assets and EUR 300 million or 5 percent of the entity's total assets and EUR 100 million, respectively. CRR, Article 273a.

[213] 12 CFR 217.34.

[214] CRR, Article 274(2) and 12 CFR 217.132(c).

[215] CRR, Article 378 (indicating that if transactions in which debt instruments, equities, foreign currencies and commodities excluding repurchase transactions and securities or commodities lending and securities or commodities borrowing are unsettled after their due delivery dates, an EU nonbank SD must calculate the price difference to which it is exposed).

percentage factor that varies from 8 percent to 100 percent based on the number of working days after the due settlement date during which the transaction remains unsettled.[216] The CFTC's Bank-Based Approach provides for a similar calculation methodology for risk-weighted asset amounts for unsettled transactions involving securities, foreign exchange instruments, and commodities.[217]

Consistent with the BCBS framework, an EU nonbank SD is also required to calculate capital charges for CVA risk for OTC derivative instruments [218] to reflect the current market value of the credit risk of the counterparty to the EU nonbank SD.[219] CVA can be calculated following similar methodologies as those described in Subpart E of the Federal Reserve Board's Part 217 regulations.[220]

EU nonbank SD's total risk exposure amount also includes operational risk charges. Consistent with the BCBS framework, EU nonbank SDs may calculate standardized operational risk charges using either one of two approaches—the Basic Indicator Approach or the Standardized Approach.[221] Both the Basic Indicator Approach and the Standardized Approach use as a calculation basis the three-year average of the ''relevant indicator,'' which is the sum of certain items on the statement of income/loss (*i.e.,* the firm's net interest income and net non-interest income). Under the Basic Indicator Approach, EU nonbank SDs are required to multiply the relevant indicator by a factor of 15 percent. When using the Standardized Approach, firms need to allocate the relevant indicator into eight business lines specified by regulation (*e.g.,* trading and sales; retail brokerage; corporate finance) and multiply the corresponding portion by a percentage factor ranging from 12 to 18 percent depending on the business line. The capital requirements for operational risk are calculated as the sum of the individual business lines' charges.

As noted above, if approved by its relevant supervisory authority, an EU nonbank SD may use internal models to calculate its market risk charges, credit risk charges, including counterparty credit risk charges, CVA risk charges, and operational risk charges in lieu of using a standardized approach.[222] To obtain permission, an EU nonbank SD must demonstrate to the satisfaction of the relevant authority that it meets certain conditions for the use of models.[223]

With respect to market risk, the relevant supervisory authority may grant an EU nonbank SD permission to use internal models to calculate one or more of the following risk categories: (i) general risk of equity instruments, (ii) specific risk of equity instruments, (iii) general risk of debt instruments, (iv) specific risk of debt instruments, (v) foreign exchange risk, or (vi) commodities risk,[224] along with interest rate risk on derivatives.[225] To obtain approval to use a market risk model, an EU nonbank SD must meet conditions related to specified model elements and controls including risk and stressed risk calculations,[226] back-testing and multiplication factors,[227] risk measurement requirements,[228] governance and qualitative requirements,[229] internal validation,[230] and specific requirements by risk categories.[231] An EU nonbank SD approved to use models must also obtain approval from the relevant authority to implement a material change to the model or make a material extension to the use of the model.[232] The EU Capital Rules' market risk model-based methodology is based on the Basel 2.5 standard [233] and incorporates relevant aspects of the BCBS framework in terms of requiring EU nonbank SDs with model approval to use a VaR model with a 99 percent, one-tailed confidence level with (i) price changes equivalent to a 10-business day movement in rates and prices, (ii) effective historical observation periods of at least one year, and (iii) at least monthly data set updates.[234] EU Capital Rules also include a framework for governance that includes requirements related to the implementation of independent risk management,[235] senior management's involvement in the risk-control process,[236] establishment of procedures for monitoring and ensuring compliance with a documented set of internal policies and controls,[237] and the conducting of independent review of the models as part of the internal audit process.[238]

With regulatory permission, EU nonbank SDs may also use models to calculate credit risk exposures.[239] Credit risk models may include internal ratings based on the estimation of default probabilities and loss given default, consistent with the BCBS framework and subject to similar model risk management guidelines.[240] To obtain approval for the use of internal ratings-based models, an EU nonbank SD must meet requirements related to, among other things, the structure of its rating systems and its criteria for assigning exposures to grades and pools within a rating system, the parameters of risk quantification, the validation of internal estimates, and the internal governance and oversight of the rating systems and estimation processes.[241]

In addition, subject to regulatory approval, EU nonbank SDs may use internal models to calculate counterparty credit risk exposures for derivatives, securities financing, and long settlement transactions.[242] The prerequisites for approval for such models include requirements related to the establishment and maintenance of a counterparty credit risk management framework, stress testing, the integrity of the modelling process, the risk

[216] *Id.* The price difference to which an EU nonbank SD is exposed is the difference between the agreed settlement price for an instrument (*i.e.,* a debt instrument, equity, foreign currency or commodity) and the instrument's current market value, where the difference could involve a loss for the firm. CRR, Article 378.

[217] 17 CFR 23.100 (definition of *BHC equivalent risk-weighted assets*), 12 CFR 217.38 and 12 CFR 217.136.

[218] CRR, Article 382 (1). CVA risk charges need not be calculated for credit derivatives recognized to reduce risk-weighted exposure amounts for credit risk. *Id.*

[219] *Id.,* Article 381. CVA is defined to exclude debit valuation adjustment.

[220] *See* CRR, Articles 383–384 and 12 CFR 217.132(e)(5) and (6). Under the CFTC's Bank-Based Approach, nonbank SDs calculating their credit risk-weighted assets using the regulations in Subpart D of the Federal Reserve Board's Part 217 regulations, do not calculate CVA of OTC derivatives instruments.

[221] CRR, Article 312.

[222] *Id.,* Articles 143 (credit risk), 283 (counterparty credit risk), 312 (operational risk), 363 (market risk) and 383 (CVA risk). EU nonbank SDs are not permitted, however, to calculated counterparty credit risk charges using internal models when calculating large exposures. CRR, Article 390(4).

[223] *Id.,* Articles 143, 283, 312(2) and 363(1).

[224] *Id.,* Article 363(1).

[225] *Id.,* Article 331(1), using sensitivity models.

[226] *Id.,* Articles 364–365.

[227] *Id.,* Article 366.

[228] *Id.,* Article 367.

[229] *Id.,* Article 368.

[230] *Id.,* Article 369.

[231] *Id.,* Articles 364–377.

[232] *Id.,* Article 363(3).

[233] *Compare* CRR, Articles 362–377 *with* Revisions to the Basel II Market Risk Framework.

[234] *Id.,* Article 365(1).

[235] *Id.,* Articles 368 (1)(b).

[236] *Id.,* Articles 368 (1)(c).

[237] *Id.,* Articles 368 (1)(e).

[238] *Id.,* Articles 368 (1)(h).

[239] *Id.,* Article 143.

[240] *Id.*

[241] *Id.,* Articles 170–177 (rating systems), 178–184 (risk quantification), 185 (validation of internal estimates), and 189–191 (internal governance and oversight).

[242] *Id.,* Article 283. As noted above, however, EU nonbank SDs are not permitted to calculate counterparty credit risk charges using internal models when calculating large exposures. CRR, Article 390(4).

management system, and validation.[243] The EU Capital Rules' internal counterparty credit risk model-based methodology is also based on the Basel 2.5 standard.[244] The EU Capital Rules allow for the estimation of expected exposure as a measure of the average of the distribution of exposures at a particular future date,[245] with adjustments to the period of risk, as appropriate to the asset and counterparty.

EU nonbank SDs may also obtain regulatory permission to use ''advanced measurement approaches'' based on their own operational risk measurement systems, to calculate capital charges for operational risk. To obtain such permission, EU nonbank SDs must meet qualitative and quantitative standards, as well as general risk management standards set forth in the EU Capital Rules.[246] Specifically, among other qualitative standards, EU nonbank SDs must meet requirements related to the governance and documentation of their operational risk management processes and measurement systems.[247] In addition, EU nonbank SDs must meet quantitative standards related to process, data, scenario analysis, business environment and internal control factors laid down in the EU Capital Rules.[248]

As an additional element to the capital requirements, the EU Capital Rules further impose a 3 percent leverage ratio floor on EU nonbank SDs.[249] Specifically, each EU nonbank SD is required to maintain an aggregate amount of common equity tier 1 capital and additional tier 1 capital equal to or in excess of 3 percent of the firm's total on-balance sheet and off-balance sheet exposures, including exposures on uncleared swaps, without regard to any risk-weighting.[250] The leverage ratio is a non-risk based minimum capital requirement that is intended to prevent an EU nonbank SD from engaging in excessive leverage, and complements the risk-based minimum capital requirement that is based on the EU nonbank SD's risk-weighted assets.

Furthermore, the EU Capital Rules also impose separate liquidity requirements on an EU nonbank SD to address liquidity risk. The liquidity requirements are composed of three main obligations. First, an EU nonbank SD is required to hold an amount of sufficiently liquid assets to meet the firm's expected payment obligations under stressed conditions for 30 days.[251] Second, an EU nonbank SD is subject to a stable funding requirement whereby the firm must hold a diversity of stable funding instruments [252] sufficient to meet long-term obligations under both normal and stressed conditions.[253] Third, to ensure that an EU nonbank SD continues to meet its liquidity requirements, the firm is required to maintain robust strategies, policies, processes, and systems for the identification of liquidity risk over an appropriate set of time horizons, including intra-day.[254] The EU Capital Rules' liquidity requirements are intended to help ensure that EU nonbank SDs can continue to fund their operations over various time horizons, including the timely making of payments to customers and counterparties.

The EU Capital Rules also require EU nonbank SDs to comply with a minimum initial capital requirement of EUR 5 million in order to become and remain licensed as a credit institution.[255] The initial capital requirement must be met with common equity tier 1 capital.[256]

3. Commission Analysis

The Commission has reviewed the EU Application and the relevant EU laws and regulations, and has preliminarily determined that the EU Capital Rules are comparable in purpose and effect to the CFTC Capital Rules with regard to the establishment of the nonbank SD's minimum capital requirement and the calculation of the nonbank SD's amount of regulatory capital to meet that requirement.[257] Although there are differences between the EU Capital Rules and the CFTC Capital Rules, as discussed below, the Commission preliminarily believes that the EU Capital Rules and the CFTC Capital Rules are designed to ensure the safety and soundness of a nonbank SD and, subject to the proposed conditions discussed below, will achieve comparable outcomes by requiring the firm to maintain a minimum level of qualifying regulatory capital, including subordinated debt, to absorb losses from the firm's business activities, including swap dealing activities, and decreases in the value of the firm's assets and increases in the value of the firm's liabilities, without the nonbank SD becoming insolvent. The Commission's preliminary finding of comparability is based on a comparative analysis of the three minimum capital requirements thresholds of the CFTC Capital Rules' Bank-Based Approach (*i.e.,* the three prongs recited in Section III.C.1 above) and the respective elements of the EU Capital Rules' requirements, as discussed below.

a. Fixed Amount Minimum Capital Requirement

CFTC Capital Rules and the EU Capital Rules both require nonbank SDs to hold a minimum amount of regulatory capital that is not based on the risk-weighted assets of the firms. Prong (i) of the CFTC Capital Rules requires each nonbank SD electing the Bank-Based Approach to maintain a minimum of $20 million of common

[243] *Id.,* Articles 283–294.

[244] Compare CRR, Article 362–377 with Revisions to the Basel II Market Risk Framework.

[245] CRR, Article 272(19), 283–285.

[246] CRR, Article 312(1), cross-referencing CRR, Articles 321 and 322 and CRD, Articles 74 and 85.

[247] CRR, Article 321.

[248] *Id.,* Article 322.

[249] *Id.,* Article 92(1)(d).

[250] Total exposures are required to be computed in accordance with CRR, Article 429.

[251] CRR, Article 412(1) provides that an EU nonbank SD shall hold liquid assets in amount sufficient to cover the liquidity outflows less the liquidity inflows under stressed conditions so as to ensure the firm maintains levels of liquidity buffers that are adequate to address any possible imbalance between liquidity inflows and outflows under stressed conditions over a period of 30 days. Liquid assets primarily include cash, deposits with central banks (to the extent that the deposits can be withdrawn at any times in periods of stress), government-backed assets and other highly liquid assets with high credit quality. *Id.,* Article 416(1).

[252] Stable funding instruments include common equity tier 1 capital instruments, additional tier 1 capital instruments, tier 2 capital instruments, and other preferred shares and capital instruments in excess of the tier 2 allowable amount with an effective maturity of one year or greater. CRR, Article 427(1).

[253] CRR, Article 413(1).

[254] CRD, Article 86 provides that EU Member States' competent authorities must ensure that institutions, including EU nonbank SDs, have robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of liquidity risk over an appropriate set of time horizons, including intra-day, so as to ensure that entities maintain adequate levels of liquidity buffers. The strategies, policies, processes, and systems must be tailored to business lines, currencies, branches, and legal entities and must include adequate allocation mechanisms of liquidity costs, benefits, and risks. CRD, Article 86 was implemented into French law by MFC, Articles L.511–41–1–B and L.511–41–1–C for credit institutions and L.533–2–1 for investment firms subject to the CRR/CRD framework, as well as the Articles 148 to 186 of the Ministerial Order on Internal Control. Article 86 was implemented into German law by Bundesanstalt für Finanzdienstleistungsaufsicht's (''BaFin'') Minimum Requirements for Risk Management (''MaRisk'') Circular.

[255] CRD, Article 12(1).

[256] *Id.,* Article 12(2).

[257] The Commission notes that pursuant to Article 7 of CRR, the competent authority may exempt an entity subject to CRR from the applicable capital requirements, provided certain conditions are met. In such case, the relevant requirements would apply to the entity's parent entity, on a consolidated basis. The Commission's assessment does not cover the application of Article 7 of CRR and therefore an entity that benefits from an exemption under Article 7 of CRR would not qualify for substituted compliance under the Capital Comparability Determination Order.

equity tier 1 capital. The CFTC's $20 million fixed-dollar minimum capital requirement is intended to ensure that each nonbank SD maintains a level of regulatory capital, without regard to the level of the firm's dealing and other activities, sufficient to meet its obligations to swap market participants given the firm's status as a CFTC-registered nonbank SD and to help ensure the safety and soundness of the nonbank SD.[258] The EU Capital Rules also contain a requirement that an EU nonbank SD maintain a fixed amount of minimum initial capital of EUR 5 million of common equity tier 1 capital in order to become and remain authorized as a credit institution.[259]

The Commission recognizes that the $20 million fixed-dollar minimum capital required under the CFTC Capital Rules is substantially higher than the EUR 5 million minimum initial capital required under the EU Capital Rules and the Commission preliminarily believes that the $20 million represents a more appropriate level of minimum capital to help ensure the safety and soundness of the nonbank SD that is engaging in uncleared swap transactions. Accordingly, the Commission is proposing to condition the Capital Comparability Determination Order to require each EU nonbank SD to maintain, at all times, a minimum level of $20 million regulatory capital in the form of common equity tier 1 items as defined in Article 26 of CRR.[260] The proposed condition would require each EU nonbank SD to maintain an amount of common equity tier 1 capital denominated in euro that is equivalent to the $20 million in U.S. dollars.[261] The Commission is also proposing that an EU nonbank SD may convert the euro-denominated common equity tier 1 capital amount to the U.S. dollar equivalent based on a commercially reasonable and observable exchange rate.

b. Minimum Capital Requirement Based on Risk-Weighted Assets

Prong (iii) of the CFTC Capital Rules requires each nonbank SD to maintain an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in an amount equal to or greater than 8 percent of the nonbank SD's total risk-weighted assets, with common equity tier 1 capital comprising at least 6.5 percent of the 8 percent.[262] Risk-weighted assets are a nonbank SD's on-balance sheet and off-balance sheet market risk and credit risk exposures, including exposures associated with proprietary swap, security-based swap, equity, and futures positions, weighted according to risk. The requirements and capital ratios set forth in prong (iii) are based on the Federal Reserve Board's capital requirements for bank holding companies and are consistent with the BCBS international bank capital adequacy framework. The requirement for each nonbank SD to maintain regulatory capital in an amount that equals or exceeds 8 percent of the firm's total risk-weighted assets is intended to help ensure that the nonbank SD's level of capital is sufficient to absorb decreases in the value of the firm's assets and increases in the value of the firm's liabilities, and to cover unexpected losses resulting from the firm's business activities, including losses resulting from uncollateralized defaults from swap counterparties, without the nonbank SD becoming insolvent.

The EU Capital Rules contain capital requirements for EU nonbank SDs that the Commission preliminarily believes are comparable to the requirements contained in prong (iii) of the CFTC Capital Rules. Specifically, the EU Capital Rules require an EU nonbank SD to maintain: (i) common equity tier 1 capital equal to at least 4.5 percent of the EU nonbank SD's total risk exposure amount; (ii) total tier 1 capital (*i.e.,* common equity tier 1 capital plus additional tier 1 capital) equal to at least 6 percent of the EU nonbank SD's total risk exposure amount; and (iii) total capital (*i.e.,* an aggregate amount of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital) equal to at least 8 percent of the EU nonbanks SD's total risk exposure amount.[263] In addition, the EU Capital Rules further require each EU nonbank SD to maintain an additional capital conservation buffer equal to 2.5 percent of the EU nonbank SD's total risk exposure amount, which must be met with common equity tier 1 capital.[264] Thus, an EU nonbank SD is effectively required to maintain total qualifying regulatory capital in an amount equal to or in excess of 10.5 percent of the market risk, credit risk, CVA risk, settlement risk and operational risk of the firm (*i.e.,* total capital requirement of 8 percent of risk-weighted assets and an additional 2.5 percent of risk-weighted assets as a capital conservation buffer), which is higher than the 8 percent required of nonbank SDs under prong (iii) of the CFTC Capital Rules.[265]

The Commission also preliminarily believes that the EU Capital Rules and the CFTC Capital Rules are comparable with respect to the calculation of capital charges for market risk and credit risk (including as it relates to aspects of settlement risk and CVA risk), in determining the nonbank SD's risk-weighted assets. More specifically, with respect to the calculation of market risk charges and general credit risk charges, both regimes require a nonbank SD to use standardized approaches to compute market and credit risk, unless the firms are approved to use internal models. The standardized approaches follow the same structure that is now the common global standard: (i) allocating assets to categories according to risk and assigning each a risk-weight; (ii) allocating counterparties according to risk assessments and assigning each a risk factor; (iii) calculating gross exposures based on valuation of assets; (iv) calculating a net exposure allowing offsets following well defined procedures and subject to clear limitations; (v) adjusting the net exposure by the market risk-weights; and (vi) finally, for credit risk exposures, multiplying the sum of net exposures to each counterparty by their corresponding risk factor.

Internal market risk and credit risk models under the EU Capital Rules and the CFTC Capital Rules are based on the BCBS framework and contain comparable quantitative and qualitative requirements, covering the same risks, though with slightly different categorization, and including comparable model risk management requirements. As both rule sets address the same types of risk, with similar allowed methodologies and under similar controls, the Commission

[258] 85 FR 57492.

[259] CRD, Article 12.

[260] The Commission notes that the proposed requirement that EU nonbank SDs maintain a minimum level of $20 million of common equity tier 1 capital is consistent with conditions set forth in the proposed Capital Comparability Determination Orders for Japan and Mexico, respectively. *See, Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination from the Financial Services Agency of Japan,* 87 FR 48092 (Aug. 8, 2022) (''Proposed Japan Order''); *Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on behalf of Nonbank Swap Dealers subject to Regulation by the Mexican Comision Nacional Bancaria y de Valores,* 87 FR 76374 (Dec. 13, 2022) (''Proposed Mexico Order'').

[261] Each of the four current EU nonbank SDs currently maintains common equity tier 1 capital in excess of $20 million based on financial filings made with the Commission. Therefore, the Commission does not anticipate that the proposed condition would have any material impact on the EU nonbank SDs currently registered with the Commission. Nonetheless, the Commission requests comment on the proposed condition.

[262] 17 CFR 23.101(a)(1)(B).

[263] CRR, Article 92(1).

[264] CRD, Article 129(1).

[265] CRR, Article 92(1) and CRD, Article 129(1).

preliminarily believes that these requirements are comparable.

The Commission also preliminarily believes that the EU Capital Rules and CFTC Capital Rules are comparable in that nonbank SDs are required to account for operational risk in computing their minimum capital requirements. In this connection, the EU Capital Rules require an EU nonbank SD to calculate an operational risk exposure as a component of the firm's total risk exposure amount.[266] EU nonbank SDs may use either a standardized approach or, if the EU nonbank SD has obtained regulatory permission, an internal approach based on the firm's own measurement systems, to calculate their capital charges for operational risk. The CFTC Capital Rules address operational risk both as a stand-alone, separate minimum capital requirement that a nonbank SD is required to meet under prong (ii) of the Bank-Based Approach[267] and as a component of the calculation of risk-weighted assets for nonbank SDs that use Subpart E of the Federal Reserve Board's Part 217 regulations to calculate their credit risk-weighted assets via internal models.[268]

c. Minimum Capital Requirement Based on the Uncleared Swap Margin Amount

As noted above, prong (ii) of the CFTC Capital Rules' Bank-Based Approach requires a nonbank SD to maintain regulatory capital in an amount equal to or greater than 8 percent of the firm's total uncleared swaps margin amount associated with its uncleared swap transactions to address potential operational, legal, and liquidity risks.

The EU Capital Rules differ from the CFTC Capital Rules in that they do not impose a capital requirement on EU nonbank SDs based on a percentage of the margin for uncleared swap transactions. The Commission notes, however, that the EU Capital Rules impose capital and liquidity requirements that may compensate for the lack of direct analogue to the 8 percent uncleared swap margin requirement. Specifically, as discussed above, under the EU Capital Rules, the total risk exposure amount is computed as the sum of the EU nonbank SD's capital charges for market risk, credit risk, settlement risk, CVA risk of OTC derivatives instruments, and operational risk.[269] Notably, the EU Capital Rules require that EU nonbank SDs, including firms that do not use internal models, calculate capital charges for operational risk as a separate component of the total risk exposure amount. The EU Capital Rules also impose separate liquidity requirements designed to ensure that the EU nonbank SDs can meet both short- and long-term obligations, in addition to the general requirement to maintain processes and systems for the identification of liquidity risk.[270] In comparison, the Commission requires nonbank SDs to maintain a risk management program covering liquidity risk, among other risk categories, but does not have a distinct liquidity requirement.[271]

As such, the Commission preliminarily believes the inclusion of an operational risk charge in the EU nonbank SD's total risk exposure amount in all circumstances, and the existence of separate liquidity requirements, will achieve a comparable outcome to the Commission's requirement for nonbank SDs to hold regulatory capital in excess of 8 percent of its uncleared swap margin amount. In that regard, the Commission, in establishing the requirement that a nonbank SD must maintain a level of regulatory capital in excess of 8 percent of the uncleared swap margin amount associated with the firm's swap transactions, stated that the intent of the requirement was to establish a method of developing a minimum amount of required capital for a nonbank SD to meet its obligations as an SD to market participants, and to cover potential operational, legal, and liquidity risks.[272]

d. Preliminary Finding of Comparability

Based on a principles-based, holistic assessment, the Commission has preliminarily determined, subject to the proposed condition below, and further subject to its consideration of public comments to the proposed Capital Comparability Determination and Order, that the purpose and effect of the EU Capital Rules and the CFTC Capital Rules are comparable. In this regard, the EU Capital Rules and the CFTC Capital Rules are both designed to require a nonbank SD to maintain a sufficient amount of qualifying regulatory capital and subordinated debt to absorb losses resulting from the firm's business activities, and decreases in the value of firm assets, without the nonbank SD becoming insolvent.

The Commission invites comment on the EU Application, the EU laws and regulations, and the Commission's analysis above regarding its preliminary determination that, subject to the $20 million minimum capital requirement, the EU Capital Rules and the CFTC Capital Rules are comparable in purpose and effect and achieve comparable outcomes with respect to the minimum regulatory capital requirements and the calculation of regulatory capital for nonbank SDs. The Commission also specifically seeks public comment on the question of whether the requirements under the EU Capital Rules that EU nonbank SDs calculate an operational risk exposure as part of the firm's total risk exposure amount and meet separate liquidity requirements are sufficiently comparable in purpose and effect to the Commission's requirement for a nonbank SD to hold regulatory capital equal to or greater than 8 percent of its uncleared swap margin amount.

[266] CRR, Article 92(3).

[267] Specifically, as further discussed below, prong (ii) of the CFTC Capital Rules' Bank-Based Approach requires a nonbank SD to maintain regulatory capital in an amount equal to or greater than 8 percent of the firm's total uncleared swaps margin amount associated with its uncleared swap transactions to address potential operational, legal, and liquidity risks. 17 CFR 101(a)(i)(C). The term ''uncleared swap margin'' is defined by Commission Regulation 23.100 as the amount of initial margin, computed in accordance with the Commission's margin rules for uncleared swaps, that a nonbank SD would be required to collect from each counterparty for each outstanding swap position of the nonbank SD. 17 CFR 23.100 and 23.154. A nonbank SD must include all swap positions in the calculation of the uncleared swap margin amount, including swaps that are exempt or excluded from the scope of the Commission's margin regulations for uncleared swaps pursuant to Commission Regulation 23.150, exempt foreign exchange swaps or foreign exchange forwards, or netting set of swaps or foreign exchange swaps, for each counterparty, as if that counterparty was an unaffiliated swap dealer. 17 CFR 23.100 and 23.150. Furthermore, in computing the uncleared swap margin amount, a nonbank SD may not exclude any de minis thresholds contained in Commission Regulation 23.151. 17 CFR 23.100 and 23.151.

[268] 17 CFR 23.101(a)(1)(i) and 17 CFR 23.100 (definition of *BHC equivalent risk-weighted assets*).

[269] CRR, Article 92(3).

[270] More specifically, the EU Capital Rules impose separate liquidity buffers and ''stable funding'' requirements designed to ensure that EU nonbank SDs can cover both long-term obligations and short-term payment obligations under stressed conditions for 30 days. CRR, Article 412–413. In addition, EU nonbank SDs are required to maintain robust strategies, policies, processes, and systems for the identification of liquidity risk over an appropriate set of time horizons, including intra-day. CRD, Article 86.

[271] Specifically, CFTC Regulation 23.600(b) requires each SD to establish, document, maintain, and enforce a system of risk management policies and procedures designed to monitor and manage the risks related to swaps, and any products used to hedge swaps, including futures, options, swaps, security-based swaps, debt or equity securities, foreign currency, physical commodities, and other derivatives. The elements of the SD's risk management program are required to include the identification of risks and risk tolerance limits with respect to applicable risks, including operational, liquidity, and legal risk, together with a description of the risk tolerance limits set by the SD and the underlying methodology in written policies and procedures. 17 CFR 23.600.

[272] *See* 85 FR 57462 at 57485.

D. Nonbank Swap Dealer Financial Reporting Requirements

1. CFTC Financial Recordkeeping and Reporting Rules for Nonbank Swap Dealers

The CFTC Financial Reporting Rules impose financial recordkeeping and reporting requirements on nonbank SDs. The CFTC Financial Reporting Rules require each nonbank SD to prepare and keep current ledgers or similar records summarizing each transaction affecting the nonbank SD's asset, liability, income, expense, and capital accounts.[273] The nonbank SD's ledgers and similar records must be prepared in accordance with generally accepted accounting principles as adopted in the United States (''U.S. GAAP''), except that if the nonbank SD is not otherwise required to prepare financial statements in accordance with U.S. GAAP, the nonbank SD may prepare and maintain its accounting records in accordance with International Financial Reporting Standards (''IFRS'') issued by the International Accounting Standards Board.[274]

The CFTC Financial Reporting Rules also require each nonbank SD to prepare and file with the Commission and with NFA periodic unaudited and annual audited financial statements.[275] A nonbank SD that elects the TNW Approach is required to file unaudited financial statements within 17 business days of the close of each quarter, and its annual audited financial statements within 90 days of its fiscal year-end.[276] A nonbank SD that elects the NLA Approach or the Bank-Based Approach is required to file unaudited financial statements within 17 business days of the end of each month, and to file its annual audited financial statements within 60 days of its fiscal year-end.[277]

The CFTC Financial Reporting Rules provide that a nonbank SD's unaudited financial statements must include: (i) a statement of financial condition; (ii) a statement of income/loss; (iii) a statement of changes in liabilities subordinated to claims of general creditors; (iv) a statement of changes in ownership equity; (v) a statement demonstrating compliance with and calculation of the applicable regulatory requirement; and (vi) such further material information necessary to make the required statements not misleading.[278] The annual audited financial statements must include: (i) a statement of financial condition; (ii) a statement of income/loss; (iii) a statement of cash flows; (iv) a statement of changes in liabilities subordinated to claims of general creditors; (v) a statement of changes in ownership equity; (vi) a statement demonstrating compliance with and calculation of the applicable regulatory capital requirement; (vii) appropriate footnote disclosures; and (viii) a reconciliation of any material differences from the unaudited financial report prepared as of the nonbank SD's year-end date.[279]

A nonbank SD that has obtained approval from the Commission or NFA to use internal capital models also must submit certain model metrics, such as aggregate VaR and counterparty credit risk information, each month to the Commission and NFA.[280] A nonbank SD also is required to provide the Commission and NFA with a detailed list of financial positions reported at fair market value as part of its monthly unaudited financial statements.[281] Each nonbank SD is also required to provide information to the Commission and NFA regarding its counterparty credit concentration for the 15 largest exposures in derivatives, a summary of its derivatives exposures by internal credit ratings, and the geographical distribution of derivatives exposures for the 10 largest countries.[282]

CFTC Financial Reporting Rules also require a nonbank SD to attach to each unaudited and audited financial report an oath or affirmation that to the best knowledge and belief of the individual making the affirmation the information contained in the financial report is true and correct.[283] The individual making the oath or affirmation must be a duly authorized officer if the nonbank SD is a corporation, or one of the persons specified in the regulation for business organizations that are not corporations.[284]

The CFTC Financial Reporting Rules further require a nonbank SD to make certain financial information publicly available by posting the information on its public website.[285] Specifically, a nonbank SD must post on its website a statement of financial condition and a statement detailing the amount of the nonbank SD's regulatory capital and the minimum regulatory capital requirement based on its audited financial statements and based on its unaudited financial statements that are as of a date that is six months after the nonbank SD's audited financial statements.[286] Such public disclosure is required to be made within 10 business days of the filing of the audited financial statements with the Commission, and within 30 calendar days of the filing of the unaudited financial statements required with the Commission.[287] A nonbank SD also must obtain written approval from NFA to change the date of its fiscal year-end for financial reporting.[288]

The CFTC Financial Reporting Rules also require a nonbank SD to provide the Commission and NFA with information regarding the custodianship of margin for uncleared swap transactions (''Margin Report'').[289] The Margin Report must contain: (i) the name and address of each custodian holding initial margin or variation margin that is required for uncleared swaps subject to the CFTC margin rules (''uncleared margin rules''), on behalf of the nonbank SD or its swap counterparties; (ii) the amount of initial and variation margin required by the uncleared margin rules held by each custodian on behalf of the nonbank SD and on behalf its swap counterparties; and (iii) the aggregate amount of initial margin that the nonbank SD is required to collect from, or post with, swap counterparties for uncleared swap transactions subject to the uncleared margin rules.[290] The Commission requires this information in order to monitor the use of custodians by nonbank SDs and their swap counterparties. Such information assists the Commission in monitoring the safety and soundness of a nonbank SD by verifying whether the firm is current with its swap counterparties with respect to the posting and collecting of margin required by the uncleared margin rules. By requiring the nonbank SD to report the required amount of margin to be posted and collected, and the amount of margin that is actually posted and collected, the Commission could identify potential issues with the margin practices and compliance by nonbank SDs that may hinder the ability of the firm to meet its obligations to market participants. The Margin Report also allows the Commission to identify custodians used by nonbank SDs and

[273] 17 CFR 23.105(b).

[274] *Id.*

[275] 17 CFR 23.105(d) and (e).

[276] 17 CFR 23.105(d)(1) and (e)(1).

[277] *Id.*

[278] 17 CFR 23.105(d)(2).

[279] 17 CFR 23.105(e)(4).

[280] 17 CFR 23.105(k) and (l) and Appendix B to Subpart E of Part 23.

[281] 17 CFR 23.105(l) and Appendix B to Subpart E of Part 23.

[282] 17 CFR 23.105(l) and Appendix B to Subpart E of Part 23, Schedules 2, 3, and 4.

[283] 17 CFR 23.105(f).

[284] *Id.*

[285] 17 CFR 23.105(i).

[286] *Id.*

[287] *Id.*

[288] 17 CFR 23.105(g).

[289] 17 CFR 23.105(m).

[290] *Id.*

their counterparties, which may permit the Commission to assess potential market issues, including a concentration of custodial services by a limited number of banks.

2. EU Nonbank Swap Dealer Financial Reporting Requirements

The EU Financial Reporting Rules impose financial reporting requirements on an EU nonbank SD that are designed to provide relevant EU competent authorities with a comprehensive view of the financial information and capital position of the firm. Specifically, Article 430 of CRR requires an EU nonbank SD to report information to the relevant competent authorities concerning its capital and financial condition sufficient to provide a comprehensive view of the firm's risk profile, including information on the firm's capital requirements, leverage ratio, large exposures, and liquidity requirements.[291]

Article 430 of CRR does not mandate the specific individual financial statements that an EU nonbank SD is required to provide to its applicable competent authorities in view of differing local conventions in EU Member States. Instead, the relevant competent authorities specify the financial statements to be submitted. To ensure a level of consistency, the European Banking Authority (''EBA'') developed implementing technical standards to specify uniform reporting templates and to determine the frequency of reporting by EU nonbank SDs.[292]

The implementing technical standards under Article 430 of CRR (''CRR Reporting ITS'') [293] require an EU nonbank SD subject to the standards, including the EU nonbank SDs currently registered with the Commission, to prepare and deliver to its competent authorities common reporting (''COREP'') on a quarterly basis. COREP requires, among other things, calculations in relation to the EU nonbank SD's capital and capital requirements,[294] capital ratios and capital levels,[295] and market risk (the listed items are collectively referred to hereinafter as ''COREP Reports'').[296]

The CRR Reporting ITS also specify the contents of the required financial reports (''FINREP'') for certain EU nonbank SDs that report financial information on a consolidated basis.[297] To further ensure comparability of the financial information reported by EU nonbank SDs, the ECB has adopted a regulation setting forth a common minimum set of financial information that must be reported by credit institutions subject to CRR to their relevant competent authorities on the basis of the CRR Reporting ITS (''ECB FINREP Regulation'').[298] More specifically, the ECB FINREP Regulation complements the CRR Reporting ITS by imposing financial reporting requirements applying on an individual basis to entities subject to CRR, including EU nonbank SDs, whereas CRR, Article 430 and the CRR Reporting ITS impose financial reporting requirements on a consolidated basis.[299] In addition to those requirements, each national competent authority has discretion to require institutions subject to CRR to report additional supervisory information on the basis of CRR and the CRR Reporting ITS or of national law.[300]

Pursuant to the CRR Reporting ITS, as complemented by the ECB FINREP Regulation, an EU nonbank SD is required to provide, among other items, the following statements or reports to its relevant competent authorities: (i) on a quarterly basis, a balance sheet statement (or statement of financial position) that reflects the EU nonbank SD's financial condition; [301] (ii) on a quarterly basis, a statement of profit or loss; [302] (iii) on a quarterly basis, a breakdown of financial liabilities by product and by counterparty sector; [303] (iv) on a quarterly basis, a listing of subordinated financial liabilities; [304] and (v) on an annual basis, a statement of changes in equity.[305] Under the FINREP requirements, an EU nonbank SD subject to the CRR Reporting ITS is also required to provide its competent authorities with additional financial information, including a breakdown of its loans and advances by product and type of counterparty,[306] as well as detailed information regarding its

[291] CRR, Article 430(1). CRR also establishes reporting requirements for reporting on stable funding (Articles 427–428) and TLAC (Articles 92a and 430).

[292] The EBA is a regulatory agency of the EU that is tasked with establishing a single regulatory and supervisory framework for the banking sector in EU Member States. CRR, Article 430(7) provides that the EBA shall develop draft implementing technical standards to specify the uniform reporting formats and templates, the instructions and methodology on how to use the templates, the frequency and dates of reporting, and the definitions.

[293] *See Commission Implementing Regulation (EU) 2021/451 of 17 December 2020 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to supervisory reporting of institutions and repealing Implementing Regulation (EU) No 680/2014.*

[294] CRR, Article 430; Annex I, Template Numbers 1 and 2 CRR Reporting ITS.

[295] CRR, Article 430; Annex I, Template Number 3 CRR Reporting ITS.

[296] CRR, Article 430; Annex I, Template Numbers 18–25 (as applicable) CRR Reporting ITS.

[297] *See* CRR, Article 430(3), (4), and (9); CRR Reporting ITS, Articles 11 and 12 (requiring EU nonbank SDs subject to CRR to submit FINREP reports on a consolidated basis if they are any of the following: (i) an entity that prepares its consolidated accounts in accordance with IFRS; (ii) an entity that determines its capital requirements on a consolidated basis in accordance with IFRS and has been required by the competent authority to submit FINREP reports on a consolidated basis; and (iii) an entity subject to a national accounting framework that is not already reporting on a consolidated basis, to which the competent authority has decided to extend the requirement to submit FINREP reports on a consolidated basis).

[298] *See Regulation (EU) 2015/534 of the European Central Bank of March 17, 2015 on reporting of supervisory financial information.*

[299] ECB FINREP Regulation, Articles 6, 7, 13, and 14.

[300] In France, the Autorité de Contrôle Prudentiel et de Résolution (''ACPR''), the French regulatory authority with prudential supervision authority over French financial firms, including EU nonbank SDs domiciled in France, requires the submission of several statistical financial reports and may request additional information during examinations pursuant to French MFC, Articles L.612–1 and L.612–24. In Germany, BaFin, the German financial sector regulatory authority, may request information on all business matters pursuant to German KWG, Section 44. *See* Responses to Staff Questions of May 15, 2023.

[301] CRR, Article 430; Annex III, Template Numbers 1.1, 1.2, and 1.3 (for reporting according to IFRS) and Annex IV, Template Numbers 1.1., 1.2, and 1.3 (for reporting according to national accounting frameworks), CRR Reporting ITS; and ECB FINREP Regulation, Articles 6, 7 and 13 (referring to Annex III and Annex IV of the CRR Reporting ITS, as applicable).

[302] CRR, Article 430; Annex III, Template Number 2 (for reporting according to IFRS) and Annex IV, Template Number 2 (for reporting according to national accounting frameworks), CRR Reporting ITS; and ECB FINREP Regulation, Articles 6, 7 and 13 (referring to Annex III and Annex IV of the CRR Reporting ITS, as applicable).

[303] CRR, Article 430; Annex III, Template Number 8.1 (for reporting according to IFRS) and Annex IV, Template Number 8.1(for reporting according to national accounting frameworks), CRR Reporting ITS; and ECB FINREP Regulation, Articles 6, 7 and 13 (referring to Annex III and Annex IV of the CRR Reporting ITS, as applicable).

[304] CRR, Article 430, Annex III, Template Number 8.2 (for reporting according to IFRS) and Annex IV, Template Number 8.3 (for reporting according to national accounting frameworks), CRR Reporting ITS; and ECB FINREP Regulation, Articles 6, 7 and 13 (referring to Annex III and Annex IV of the CRR Reporting ITS, as applicable).

[305] CRR, Article 430; Annex III, Template Number 46 (for reporting according to IFRS) and Annex IV, Template Number 46 (for reporting according to national accounting frameworks), CRR Reporting ITS; and ECB FINREP Regulation, Articles 6, 7 and 13 (referring to Annex III and Annex IV of the CRR Reporting ITS, as applicable).

[306] CRR, Article 430; Annex III, Template Numbers 5.1 and 6.1 (for reporting according to IFRS) and Annex IV, Template Numbers 5.1 and 6.1, CRR Reporting ITS; and ECB FINREP Regulation, Articles 6, 7 and 13 (referring to Annex III and Annex IV of the CRR Reporting ITS, as applicable).

derivatives trading activities,[307] collateral and guarantees.[308]

Furthermore, with the exception of certain ''small'' entities, EU nonbank SDs are required to prepare annual audited financial statements and a management report (together, ''annual audited financial report'') pursuant to Article 430 of CRR and the Accounting Directive.[309] The audit of the financial statements and management report is required to be performed by one or more statutory auditors or auditors approved by EU Member States to conduct audits of EU nonbank SDs.[310] The annual audited financial report, together with the opinion and statements of the auditor, must be published.[311]

The annual audited financial statements must comprise, at a minimum, a balance sheet, a profit and loss statement, and notes to the financial statements.[312] The auditor's audit report must include: (i) a specification of the financial statements subject to the audit and the financial reporting framework that was applied in their preparation; (ii) a description of the scope of the audit, which must specify the auditing standards used to conduct the audit; (iii) an audit opinion stating whether the financial statements give a true and fair view in accordance with the relevant financial reporting framework; and (iv) a reference to any matters emphasized by the auditor that did not qualify the audit opinion.[313]

The management report is required to include a review of the development and performance of the EU nonbank SD's business and of its position, with a description of the principal risks and uncertainties that the firm faces.[314] The auditors are required to express an opinion on whether the management report is consistent with the financial statements for the same financial year, and whether the management report has been prepared in accordance with applicable legal requirements.[315] The opinion also must state whether the auditor has identified material misstatements in the management report and, if so, describe the misstatement.[316]

In addition, the SEC's French and German Orders granting substituted compliance for financial reporting to EU nonbank SBSDs, as supplemented by the SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information, require an EU nonbank SBSD to file an unaudited SEC Form X–17A–5 Part II (''FOCUS Report'') with the SEC on a monthly basis.[317] The FOCUS Report is required to include, among other statements and schedules: (i) a statement of financial condition; (ii) a statement of the EU nonbank SBSD's capital computation in accordance with home country Basel-Based requirements; (iii) a statement of income/loss; and (iv) a statement of capital withdrawals.[318] An EU nonbank SBDS is required to file its FOCUS Report with the SEC within 35 calendar days of the month end.[319]

3. Commission Analysis

The Commission has reviewed the EU Application and the relevant EU laws and regulations, and has preliminarily determined that, subject to the proposed conditions described below, the financial reporting requirements of the EU Financial Reporting Rules are comparable to CFTC Financial Reporting Rules in purpose and effect as they are intended to provide the relevant EU competent authorities and the Commission, respectively, with financial information to monitor and assess the financial condition of nonbank SDs and their ability to absorb decreases in firm assets and increases in firm liabilities, and to cover losses from business activities, including swap dealing activities, without the firm becoming insolvent.

The EU Financial Reporting Rules require EU nonbank SDs to prepare and submit to the competent authorities on a quarterly basis unaudited financial information that includes: (i) a statement of financial condition; (ii) a statement of profit or loss; and (iii) a schedule of the breakdown of financial liabilities by product and by counterparty sector. The EU Financial Reporting Rules also require EU nonbank SDs to prepare and submit to the competent authorities on an annual basis an unaudited statement of changes in equity. Under the FINREP reporting requirements, an EU nonbank SD is also required to provide its competent authorities with additional financial information, including a breakdown of its loans and advances by product and type of counterparty, as well as detailed information regarding its derivatives trading activities, collateral, and guarantees. In addition, under the COREP reporting requirement, an EU nonbank SD is required to provide its competent authorities on a quarterly basis with calculations in relation to the EU nonbank SD's capital requirements and capital ratios, among other items.

The EU Financial Reporting Rules further require an EU nonbank SD to prepare and publish an annual audited financial report. The annual audited financial report is required to include a statement of financial condition and a statement of profit or loss, and must also include relevant notes to the financial statements.[320]

The Commission preliminarily finds that the EU Financial Reporting Rules impose reporting requirements that are comparable with respect to overall form and content to the CFTC Financial Reporting Rules, which require each nonbank SD to file, among other items, periodic unaudited financial reports with the Commission and NFA that contain: (i) a statement of financial condition; (ii) a statement of profit or loss; (iii) a statement of changes in liabilities subordinated to the claims of general creditors; (iv) a statement of changes in ownership equity; and (v) a statement demonstrating compliance with the capital requirements. Accordingly, the Commission has preliminarily determined that an EU nonbank SD may comply with the financial reporting requirements contained in Commission Regulation 23.105 by complying with the corresponding EU Financial Reporting

[307] CRR, Article 430; Annex III, Template Number 10 (for reporting according to IFRS) and Annex IV, Template Number 10 (for reporting according to national accounting frameworks), CRR Reporting ITS; and ECB FINREP Regulation, Articles 6, 7 and 13 (referring to Annex III and Annex IV of the CRR Reporting ITS, as applicable).

[308] CRR, Article 430; Annex III, Template Number 13 (for reporting according to IFRS) and Annex IV, Template Number 13 (for reporting according to national accounting frameworks), CRR Reporting ITS; and ECB FINREP Regulation, Articles 6, 7 and 13 (referring to Annex III and Annex IV of the CRR Reporting ITS, as applicable).

[309] Accounting Directive, Articles 4, 19 and 34; French MFC, Articles L.511–35 to L.511–38; German Commercial Code (*Handelsgesetzbuch,* ''HGB''), Section 316 *et seq.* The Accounting Directive provides that the audit requirement is not applicable to ''small'' entities defined as firms meeting the following requirements: (1) the firm's balance sheet is not more than EUR 4 million; (2) the firm's net turnover does not exceed more than EUR 8 million; or (3) the firm did not employ more than 50 employees during the financial year. *See* Article 3(2) and Article 34 of the Accounting Directive. The Applicants represent that the four EU nonbank SDs currently registered with the Commission do not meet the criteria to be classified as ''small'' entities and, therefore, are required to prepare audited annual financial reports. *See* EU Application, p. 5.

[310] Accounting Directive, Article 34(1).

[311] *Id.,* Article 30.

[312] *Id.,* Article 4(1).

[313] *Id.,* Article 35.

[314] *Id.,* Article 19.

[315] *Id.*

[316] *Id.*

[317] *See,* French Order and German Order. *See also,* SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information.

[318] *See,* SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information.

[319] *Id.*

[320] Accounting Directive, Articles 4(1), 30, and 34.

Rules, subject to the conditions set forth below.[321]

The Commission is proposing to condition the Capital Comparability Determination Order on an EU nonbank SD providing the Commission and NFA with copies of the relevant templates of the FINREP reports and COREP reports that correspond to the EU nonbank SD's statement of financial condition, statement of income/loss, and statement of regulatory capital, total risk exposure, and capital ratios. These templates consist of FINREP templates 1.1 (Balance Sheet Statement: assets), 1.2 (Balance Sheet Statement: liabilities), 1.3 (Balance Sheet Statement: equity), 2 (Statement of profit or loss), and 10 (Derivatives—Trading and economic hedges), and COREP templates 1 (Own Funds), 2 (Own Funds Requirements) and 3 (Capital Ratios). The Commission also notes that EU nonbank SDs submit FINREP and COREP templates in addition to the ones listed above to their competent authorities. These templates generally provide supporting detail to the core financial templates that the Commission is proposing to require from each EU nonbank SD. The Commission is not proposing to require an EU nonbank SD to file these additional FINREP and COREP templates as a condition to the Capital Comparability Order, and alternatively would exercise its authority under Commission Regulation 23.105(h) to direct EU nonbank SDs to provide such additional information to the Commission and NFA on an ad hoc basis as necessary to oversee the financial condition of the firms.[322]

As noted in Section D.2. of this Determination, EU Financial Reporting Rules require EU nonbank SDs to submit the unaudited FINREP and COREP templates to their competent authorities on a quarterly basis. The CFTC Financial Reporting Rules contain a more frequent reporting requirement by requiring nonbank SDs that elect the Bank-Based Approach to file unaudited financial information with the Commission and NFA, on a monthly basis.[323] The financial statement reporting requirements are an integral part of the Commission's and NFA's oversight programs to effectively and timely monitor nonbank SDs' compliance with capital and other financial requirements, and for Commission and NFA staff to assess the overall financial condition and business operations of nonbank SDs. The Commission has extensive experience with monitoring the financial condition of registrants through the receipt of financial statements, including FCMs and, more recently, nonbank SDs. Both FCMs and nonbank SDs that elect the Bank-Based Approach or NLA Approach file financial statements with the Commission and NFA on a monthly basis. The Commission preliminarily believes that receiving financial information from EU nonbank SDs on a quarterly basis is not comparable with the CFTC Financial Reporting Rules and would impede the Commission's and NFA's ability to effectively and timely monitor the financial condition of EU nonbank SDs for the purposes of assessing their safety and soundness, as well as their ability to meet obligations to creditors and counterparties without becoming insolvent. Therefore, the Commission is preliminarily proposing to include a condition in the Capital Comparability Determination Order to require EU nonbank SDs to file the applicable templates of the FINREP reports and COREP reports with the Commission and NFA on a monthly basis. The Commission also is proposing to condition the Capital Comparability Determination Order on the EU nonbank SD filing the above-listed templates of the FINREP reports and COREP reports with the Commission and NFA within 35 calendar days of the end of each month.[324]

The Commission is further proposing that in lieu of filing such FINREP and COREP reports, EU nonbank SDs that are registered with the SEC as EU nonbank SBSDs could satisfy this condition by filing with the CFTC and NFA, on a monthly basis, copies of the unaudited FOCUS Reports that the EU nonbank SDs are required to file with the SEC pursuant to the SEC French Order or SEC German Order, as supplemented by the SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information. The FOCUS Report is required to include, among other statements and schedules: (i) a statement of financial condition; (ii) a statement of the EU nonbank SBSD's capital computation in accordance with home country Basel-Based requirements; (iii) a statement of income/loss; and (iv) a statement of capital withdrawals.[325]

The filing of a FOCUS Report would be at the election of the EU nonbank SD as an alternative to the filing of unaudited FINREP and COREP templates that such firms would otherwise be required to file with the Commission and NFA pursuant to the proposed Order. Three of the EU nonbank SDs currently registered with the SEC as EU nonbank SBSDs would be eligible to file copies of their monthly FOCUS Report with the Commission and NFA in lieu of the FINREP and COREP templates and Schedule 1. An EU nonbank SD electing to file copies of its monthly FOCUS Reports would be required to submit the reports to the Commission and NFA within 35 calendar days of the end of each month.

In addition, the Commission is proposing to condition the Capital Comparability Determination Order on an EU nonbank SD submitting to the Commission and NFA copies of the EU nonbank SD's annual audited financial report that is required to be prepared pursuant to provisions implementing the Accounting Directive.[326] EU nonbank SDs would be required to file the annual audited financial report with the Commission and NFA on the earliest of the date the report is filed with the competent authority, the date the report is published, or the date the report is required to be filed with the competent authority or the date the report is required to be published pursuant to the EU Financial Reporting Rules.

The Commission is also proposing to condition the Capital Comparability Determination Order on the EU nonbank SD translating the reports and statements into the English language with balances converted to U.S. dollars.[327] The Commission, however, recognizes that the requirement to translate accounts denominated in euro to U.S. dollars on the annual audited financial report may impact the opinion provided by the independent auditor. The Commission is therefore proposing

[321] An EU nonbank SD that qualifies and elects to seek substituted compliance with the EU Capital Rules must also seek substituted compliance with the EU Financial Reporting Rules.

[322] Commission Regulation 23.105(h) provides that the Commission or NFA may, by written notice, require any nonbank SD to file financial or operational information as may be specified by the Commission or NFA. 17 CFR 23.105(h).

[323] Commission Regulation 23.105(d) (17 CFR 23.105(d)).

[324] The proposed condition for EU nonbank SDs to file monthly unaudited financial information with the Commission and NFA is consistent with proposed conditions contained in the Commission's proposed Capital Comparability Determinations for Japanese nonbank SDs and Mexican nonbank SDs. *See* Proposed Japan Order and Proposed Mexico Order.

[325] *See,* SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information.

[326] Accounting Directive, Articles 4, 19, and 34; French MFC, Articles L.511–35 to L.511–38; German HGB, Section 316 *et seq.*

[327] The translation of audited financial statements into the English language and the conversion of account balances from euro to U.S. dollars is not required to be subject to the audit of the independent auditor. An EU nonbank SD must report the exchange rate that it used to convert balances from euro to U.S. dollars to the Commission and NFA as part of the financial reporting.

to accept the annual audited financial report denominated in euro, provided that the report is translated into the English language.

The Commission is proposing to impose these conditions as they are necessary to ensuring that the CFTC Financial Reporting Rules and EU Financial Reporting Rules, supplemented by the proposed conditions, are comparable and provide the Commission and NFA with appropriate financial information to effectively monitor the financial condition of EU nonbank SDs. Frequent financial reporting is a central component of the Commission's and NFA's programs for monitoring and assessing the safety and soundness of nonbank SDs as required under Section 4s(e) of the CEA. Although, as further discussed in Section D.2. below, the Commission preliminarily believes that the competent authorities have the necessary powers to supervise and enforce compliance by EU nonbank SDs with applicable capital and financial reporting requirements, the Commission is proposing the conditions to facilitate the timely access to information allowing the Commission and NFA to effectively monitor and assess the ongoing financial condition of all nonbank SDs, including EU nonbank SDs, to help ensure their safety and soundness and their ability to meet their financial obligations to customers, counterparties, and creditors.

The Commission preliminarily considers that its approach of requiring EU nonbank SDs to provide the Commission and NFA with the selected FINREP and COREP templates and the annual audited financial report that the firms currently file with the relevant competent authorities strikes an appropriate balance of ensuring that the Commission receives the financial reporting necessary for the effective monitoring of the financial condition of the nonbank SDs, while also recognizing the existing regulatory structure of the EU Financial Reporting Rules. Under the proposed conditions, the EU nonbank SD would not be required to prepare different financial reports and statements for filing with the Commission, but would be required to prepare selected reports and statements in the content and format used for submissions to the relevant competent authority and translate the reports and financial statements into the English language with balances converted to U.S. dollars so that Commission staff may properly understand and efficiently analyze the financial information. Although the Commission is proposing to require submission of certain reports (*i.e.,* selected FINREP and COREP templates) on a more frequent basis (monthly instead of quarterly as required by the EU Financial Reporting Rules), the proposed conditions provide the EU nonbank SDs with 35 calendar days from the end of each month to translate the documents into English and to convert balances to U.S. dollars. In addition, EU nonbank SDs that are registered as SBSDs with the SEC would have the option of filing a copy of the FOCUS Report they submit to the SEC in lieu of the FINREP and COREP templates. The Commission preliminarily believes that by requiring that EU nonbank SDs file unaudited financial reports on a monthly basis instead of quarterly, the Commission would help ensure that the CFTC Financial Reporting Rules and the EU Financial Reporting Rules achieve a comparable outcome.

The Commission is also proposing to condition the Capital Comparability Determination Order on EU nonbank SDs filing with the Commission and NFA, on a monthly basis, the aggregate securities, commodities, and swap positions information set forth in Schedule 1 of Appendix B to Subpart E of Part 23.[328] The Commission is proposing to require that Schedule 1 be filed with the Commission and NFA as part of the EU nonbank SD's monthly submission of selected FINREP and COREP templates or FOCUS Report, as applicable. Schedule 1 provides the Commission and NFA with detailed information regarding the financial positions that a nonbank SD holds as of the end of each month, including the firm's swap positions, which will allow the Commission and NFA to monitor the types of investments and other activities that the firm engages in and will enhance the Commission's and NFA's ability to monitor the safety and soundness of the firm.

The Commission is also proposing to condition the Capital Comparability Determination Order on an EU nonbank SD submitting with each set of selected FINREP and COREP templates, annual audited financial report, and the applicable Schedule 1 a statement by an authorized representative or representatives of the EU nonbank SD that to the best knowledge and belief of the person(s) the information contained in the respective reports and statements is true and correct, including the translation of the reports and statements into the English language and conversion of balances in the statements to U.S. dollars, as applicable. The statement by the authorized representative or representatives of the EU nonbank SD is in lieu of the oath or affirmation required of nonbank SDs under Commission Regulation 23.105(f), and is intended to ensure that reports and statements filed with the Commission and NFA are prepared and submitted by firm personnel with knowledge of the financial reporting of the firm who can attest to the accuracy of the reporting and translation.

The Commission is further proposing to condition the Capital Comparability Determination Order on an EU nonbank SD filing the Margin Report specified in Commission Regulation 23.105(m) with the Commission and NFA. The Margin Report contains: (i) the name and address of each custodian holding initial margin or variation margin on behalf of the nonbank SD or its swap counterparties; (ii) the amount of initial and variation margin held by each custodian on behalf of the nonbank SD and on behalf its swap counterparties; and (iii) the aggregate amount of initial margin that the nonbank SD is required to collect from, or post with, swap counterparties for uncleared swap transactions.[329]

The Commission preliminarily believes that receiving this margin information from EU nonbank SDs will assist in the Commission's assessment of the safety and soundness of the EU nonbank SDs. Specifically, the Margin Report would provide the Commission with information regarding an EU nonbank SD's swap book, the extent to which it has uncollateralized exposures to counterparties or has not met its financial obligations to counterparties. This information, along with the list of custodians holding both the firms' and counterparties' collateral for swap transactions, is expected to assist the Commission in assessing and monitoring potential financial impacts to the nonbank SD resulting from defaults on its swap transactions. The Commission is further proposing to require an EU nonbank SD to file the Margin Report with the Commission and NFA within 35 calendar days of the end of each month, which corresponds with the proposed timeframe for the EU nonbank SD to file the selected FINREP and COREP templates or FOCUS Report, as applicable, and proposing to require the Margin Report to be prepared in the

[328] Schedule 1 of Appendix B to Subpart E of Part 23 includes a nonbank SD's holding of U.S Treasury securities, U.S. government agency debt securities, foreign debt and equity securities, money market instruments, corporate obligations, spot commodities, cleared and uncleared swaps, cleared and non-cleared security-based swaps, and cleared and uncleared mixed swaps in addition to other position information.

[329] 17 CFR 23.105(m).

English language with balances reported in U.S. dollars.

The Commission notes that the proposed conditions in the EU Capital Comparability Determination Order are consistent with the proposed conditions set forth in the proposed Capital Comparability Determination Orders for Japan and Mexico,[330] and reflects the Commission's approach of preliminarily determining that non-U.S. nonbank SDs could meet their financial statement reporting obligations to the Commission by filing financial reports currently prepared for home country regulators, albeit in the case of certain financial reports under a more frequent submission schedule, provided such reports are translated into English language and, in certain circumstances, balances expressed in U.S. dollars. The Commission's proposed conditions also include certain financial information and notices that the Commission believes are necessary for effective monitoring of EU nonbank SDs that are not currently part of the relevant EU authorities' supervision regimes.

The Commission is not proposing to require that an EU nonbank SD that has been approved by the relevant competent authority to use capital models files with the Commission or NFA the monthly model metric information contained in Commission Regulation 23.105(k) [331] or that an EU nonbank SD files with the Commission or NFA the monthly counterparty credit exposure information specified in Commission Regulation 23.105(l) and Schedules 2, 3, and 4 of Appendix B to Subpart E of Part 23.[332]

The Commission, in making the preliminary determination to not require an EU nonbank SD to file the model metrics and counterparty exposures required by Commission Regulations 23.105(k) and (l), respectively, recognizes that NFA's current risk monitoring program requires each bank SD and each nonbank SD, including each EU nonbank SD, to file risk metrics addressing market risk and credit risk with NFA on a monthly basis. NFA's monthly risk metric information includes: (i) VaR for interest rates, credit, foreign exchange, equities, commodities, and total VaR; (ii) total stressed VaR; (iii) interest rate, credit spread, foreign exchange market, and commodity sensitivities; (iv) total swaps current exposure both before and after offsetting against collateral held by the firm; and (v) a list of the 15 largest swaps counterparty current exposures before collateral and net of collateral.[333]

Although there are differences in the information required under Commission Regulations 23.105(k) and (l), the NFA risk metrics provide a level of information that allows NFA to identify SDs that may pose heightened risk and to allocate appropriate NFA regulatory oversight resources. The Commission preliminarily believes that the proposed financial statement reporting set forth in the proposed Capital Comparability Determination Order, and the risk metric and counterparty exposure information currently reported by nonbank SDs (including EU nonbank SDs) under NFA rules, provide the appropriate balance of recognizing the comparability of the EU Financial Reporting Rules to the CFTC Financial Reporting Rules while also ensuring that the Commission and NFA receive sufficient data to monitor and assess the overall financial condition of EU nonbank SDs. The Commission has access to the monthly risk metric filings collected by NFA. In addition, the Commission retains authority to request EU nonbank SDs to provide information regarding their model metrics and counterparty exposures on an ad hoc basis.

Furthermore, the Commission notes that although the EU Financial Reporting Rules do not contain an analogue to the CFTC's requirements for nonbank SDs to file monthly model metric information and counterparty exposures information, the competent authorities have access to comparable information. More specifically, under the EU Financial Reporting Rules, the competent authorities have broad powers to request any information necessary for the exercise of their functions.[334] As such, the competent authorities have access to information allowing them to assess the ongoing performance of risk models and to monitor the EU nonbank SD's credit exposures, which may be comprised of credit exposures to primarily other EU counterparties. In addition, the COREP reports, which EU nonbank SDs are required to file with the competent authority on a quarterly basis, include information regarding the EU nonbank SD's risk exposure amounts, including risk-weighted exposure amounts for credit risk.[335]

The Commission invites public comment on its analysis above, including comment on the EU Application and relevant EU Financial Reporting Rules. The Commission also invites comment on the proposed conditions listed above and on the Commission's proposal to exclude EU nonbank SDs from certain reporting requirements outlined above. Specifically, the Commission requests comment on its preliminary determination to not require EU nonbank SDs to submit the information set forth in Commission Regulations 23.105(k) and (l). Are there specific elements of the data required under Commission Regulations 23.105(k) and (l) that the Commission should require of EU nonbank SDs for purposes of monitoring model performance?

The Commission requests comment on the proposed filing dates for the reports and information specified above. Specifically, do the proposed filing dates provide sufficient time for EU nonbank SDs to prepare the reports, translate the reports into English, and, where required, convert balances into U.S. dollars? If not, what period of time should the Commission consider imposing on one or more of the reports?

The Commission also requests specific comment regarding the setting of compliance dates for any new reporting obligations that the proposed Capital Comparability Determination Order would impose on EU nonbank SDs. In this connection, if the Commission were to require EU nonbank SDs to file the Margin Report discussed above and included in the proposed Order below, how much time would EU nonbank SDs need to develop new systems or processes to capture information that is required? Would EU nonbank SDs need a period of time to develop any systems or processes to

[330] *See* Proposed Japan Order and Proposed Mexico Order.

[331] Commission Regulation 23.105(k) requires a nonbank SD that has obtained approval from the Commission or NFA to use internal capital models to submit to the Commission and NFA each month information regarding its risk exposures, including VaR and credit risk exposure information when applicable. The model metrics are intended to provide the Commission and NFA with information that would assist with the ongoing oversight and assessment of internal market risk and credit risk models that have been approved for use by a nonbank SD. 17 CFR 23.105(k).

[332] Commission Regulation 23.105(l) requires each nonbank SD to provide information to the Commission and NFA regarding its counterparty credit concentration for the 15 largest exposures in derivatives, a summary of its derivatives exposures by internal credit ratings, and the geographic distribution of derivatives exposures for the 10 largest countries in Schedules 2, 3, and 4, respectively. 17 CFR 23.105(l).

[333] *See* NFA Financial Requirements, Section 17—*Swap Dealer and Major Swap Participant Reporting Requirements,* and Notice to Members—*Monthly Risk Data Reporting for Swap Dealers* (May 30, 2017).

[334] *See* CRD, Article 65(3)(a), French MFC, Article L.612–24, and SSM Regulation, Article 10 (indicating that competent authorities have broad information gathering powers).

[335] *See* CRR Reporting ITS, Annex I.

meet any other reporting obligations in the proposed Capital Comparability Determination Order? If so, what would be an appropriate amount of time for an EU nonbank SD to develop and implement such systems or processes?

E. Notice Requirements

1. CFTC Nonbank SD Notice Reporting Requirements

The CFTC Financial Reporting Rules require nonbank SDs to provide the Commission and NFA with written notice of certain defined events.[336] The notice provisions are intended to provide the Commission and NFA with an opportunity to assess whether the information contained in the notices indicates the existence of actual or potential financial and/or operational issues at a nonbank SD, and, when necessary, allows the Commission and NFA to engage the nonbank SD in an effort to minimize potential adverse impacts on swap counterparties and the larger swaps market. The notice provisions are part of the Commission's overall program for helping to ensure the safety and soundness of nonbank SDs and the swaps markets in general.

The CFTC Financial Reporting Rules require a nonbank SD to provide written notice within specified timeframes if the firm is: (i) undercapitalized; (ii) fails to maintain capital at a level that is in excess of 120 percent of its minimum capital requirement; or (iii) fails to maintain current books and records.[337] A nonbank SD is also required to provide written notice if the firm experiences a 30 percent or more decrease in excess regulatory capital from its most recent financial report filed with the Commission.[338] A nonbank SD also is required to provide notice if the firm fails to post or collect initial margin for uncleared swap and non-cleared security-based swap transactions or exchange variation margin for uncleared swap and non-cleared security-based swap transactions as required by the Commission's uncleared swaps margin rules or the SEC's non-cleared security-based swaps margin rules, respectively, if the aggregate is equal to or greater than: (i) 25 percent of the nonbank SD's required capital under Commission Regulation 23.101 calculated for a single counterparty or group of counterparties that are under common ownership or control; or (ii) 50 percent of the nonbank SD's required capital under Commission Regulation 23.101 calculated for all of the firm's counterparties.[339]

The CFTC Financial Reporting Rules further require a nonbank SD to provide notice two business days prior to a withdrawal of capital by an equity holder that would exceed 30 percent of the firm's excess regulatory capital.[340] Finally, a nonbank SD that is dually-registered with the SEC as an SBSD or major security based swap participant (''MSBSP'') must file a copy of any notice with the Commission and NFA that the SBSD or MSBSP is required to file with the SEC under SEC Rule 18a–8 (17 CFR 240.18a–8).[341] SEC Rule 18a–8 requires SBSDs and MSBSPs to provide written notice to the SEC for comparable reporting events as in the CFTC Capital Rule in Commission Regulation 23.105(c), including if a SBSD or MSBSP is undercapitalized or fails to maintain current books and records.

2. EU Nonbank Swap Dealer Notice Requirements

The EU capital and resolution frameworks require EU nonbank SDs to provide certain notices to competent authorities concerning the firm's compliance with relevant laws and regulations. The EU Financial Reporting Rules require an EU nonbank SD to provide notice within five business days to the competent authority [342] if the firm fails to meet its combined buffer requirement, which at a minimum consists of a capital conservation buffer of 2.5 percent of the EU nonbank SD's total risk exposure amount.[343] As noted earlier, to meet its capital buffer requirements, an EU nonbank SDs must hold common equity tier 1 capital in addition to the minimum common equity tier 1 ratio requirement of 4.5 percent of the firm's core capital requirement of 8 percent of the firm's total risk exposure amount. The notice to the competent authority must be accompanied by a capital conservation plan that sets out how the EU nonbank SD will restore its capital levels.[344] The capital conservation plan is required to include: (i) estimates of income and expenditures and a forecast balance sheet; (ii) measures to increase the capital ratios of the EU nonbank SD; (iii) a plan and timeframe for the increase in the capital of the EU nonbank SD with the objective of meeting fully the combined buffer requirement; and (iv) any other information that the competent authority considers to be necessary to assess the capital conservation plan.[345]

The relevant competent authority is required to assess the capital conservation plan, and may approve the plan only if it considers that the plan would be reasonably likely to conserve or raise sufficient capital to enable the EU nonbank SD to meet its combined capital buffer requirement within a timeframe that the competent authority considers to be appropriate.[346] If the relevant competent authority does not approve the capital conservation plan, the competent authority may impose requirements for the EU nonbank SD to increase its capital to specified levels within a specified time or the competent authority may impose more restrictions on distributions.[347]

In addition, an EU nonbank SD must immediately notify its relevant resolution authority in situations where the firm meets the combined buffer requirement, but fails to meet the combined buffer requirement when considered in addition to the applicable MREL requirements.[348] The EU nonbank SD must also notify the relevant resolution authority if it

[336] 17 CFR 23.105(c).

[337] 17 CFR 23.105(c)(1), (2), and (3).

[338] 17 CFR 23.105(c)(4).

[339] 17 CFR 23.105(c)(7).

[340] 17 CFR 23.105(c)(5).

[341] 17 CFR 23.105(c)(6).

[342] As further discussed in Section F.2. below, the relevant prudential competent authority may either be the national competent authority with jurisdiction to oversee compliance with the EU Capital Rules and the EU Financial Reporting Rules or, for EU nonbank SDs that are authorized as credit institutions and qualify as ''significant supervised entities,'' the ECB. *See generally* SSM Regulation and SSM Framework Regulation.

[343] CRD, Article 142; French MFC, Article L.511–41–1–A; French Ministerial Order on Capital Buffers, Articles 61 to 64; German KWG, Sections 10i(2) to (9). The combined capital buffer requirement is the total common equity tier 1 capital required to meet the requirement for the capital conservation buffer required by Article 129 of CRD, extended to include, as applicable, an institution-specific countercyclical buffer required by Article 130 of CRD, a G–SII buffer required by Article 131(4) of CRD, an O–SII buffer required by Article 131(5) of CRD, and a systemic risk buffer required by Article 133 of CRD. CRD, Article 128.

[344] *Id.,* Article 142(1); French Ministerial Order on Capital Buffers, Article 61; German KWG, Section 10i(6). The competent authority may extend the filing deadline, and require the EU nonbank SD to file the capital conservation plan within 10 days of the firm identifying that it failed to meet the applicable buffer requirements.

[345] *Id.,* Article 142(2); French Ministerial Order on Capital Buffers, Article 62; German KWG, Section 10i(6).

[346] *Id.,* Article 142(3); French MFC, Article L.511–41–1–1; French Ministerial Order on Capital Buffers, Article 63; German KWG, Section 10i(7).

[347] *Id.,* Article 142(4); French MFC, Article L.511–41–1–A; French Ministerial Order on Capital Buffers, Article 64 and French Ministerial Order on Distribution Restrictions, Articles 2 to 9; German KWG, Section 10i(8).

[348] BRRD, Article 16a; French MFC, Article L.613–56 III and French Ministerial Order on Distribution Restrictions, Articles 7 and 8; German SAG, Article 58a.

considers the firm to be failing or likely to fail.[349]

Furthermore, if an EU nonbank SD breaches its liquidity or MREL requirements, the EU authorities possess wide-ranging tools to deal with the firm's financial deterioration. Specifically, the competent authority may impose administrative penalties or other administrative measures, including prudential capital charges, if an EU nonbank SD's liquidity position repeatedly or persistently falls below the liquidity and stable funding requirements established at the national or EU level.[350]

In addition, if MREL is breached, the EU nonbank SD's resolution authority may take early measures to intervene, such as requiring management to take certain actions, order members of management to be removed or replaced, or require changes to the firm's business strategy or legal or operational structure, among other measures.[351] If additional requirements are met, it is also possible that resolution authorities may assess the EU nonbank SD as ''failing or likely to fail,'' triggering a resolution action, which could occur even before the firm actually breached its minimum capital requirements.[352] A breach of the EU nonbank SD's MREL requirements may also trigger restrictions on the firm's ability to make certain distributions (*e.g.,* paying certain dividends or employee bonuses).[353]

3. Commission Analysis

The Commission has reviewed the EU Application and the relevant EU laws and regulations, and has preliminarily determined that the EU Financial Reporting Rules related to notice provisions, subject to the conditions specified below, are comparable to the notice provisions of the CFTC Financial Reporting Rules. The Commission is therefore proposing to issue a Capital Comparability Determination Order providing that an EU nonbank SD may comply with the notice provisions required under EU laws and regulations in lieu of certain notice provisions required of nonbank SDs under Commission Regulation 23.105(c),[354] subject to the conditions set forth below.

The notice provisions contained in Commission Regulation 23.105(c) are intended to provide the Commission and NFA with information in a prompt manner regarding actual or potential financial or operational issues that may adversely impact the safety and soundness of a nonbank SD by impairing the firm's ability to meet its obligations to counterparties, creditors, and the general swaps market. Upon the receipt of a notice from a nonbank SD under Commission Regulation 23.105(c), the Commission and NFA initiate reviews of the facts and circumstances that resulted in the notice being filed including, as appropriate, communicating with personnel of the nonbank SD. The review of the facts and the interaction with the personnel of the nonbank SD provide the Commission and NFA with information to develop an assessment of whether it is necessary for the nonbank SD to take remedial action to address potential financial or operational issues, and whether the remedial actions instituted by the nonbank SD properly address the issues that are the root cause of the operational or financial issues. Such actions may include the infusion of additional capital into the firm, or the development and implementation of additional internal controls to address operational issues. The notice filings further allow the Commission and NFA to monitor the firm's performance after the implementation of remedial actions to assess the effectiveness of such actions.

The EU Financial Reporting Rules require an EU nonbank SD to provide notice to competent authorities if the firm fails to maintain a minimum capital ratio of common equity tier 1 capital to risk-weighted assets equal or greater than 7 percent (4.5 percent of the core capital requirement plus the 2.5 percent capital conservation buffer requirement, assuming no other capital buffer requirements apply). The EU nonbank SD is also required to file a capital conservation plan with its notice to the competent authority. The capital conservation plan is required to contain information regarding actions that the EU nonbank SD will take to ensure proper capital adequacy.

The Commission has preliminarily determined that the requirement for an EU nonbank SD to provide notice of a breach of its capital buffer requirements to its competent authority is not sufficiently comparable in purpose and effect to the CFTC notice provisions contained in Commission Regulation 23.105(c)(1) and (2),[355] which require a nonbank SD to provide notice to the Commission and to NFA if the firm fails to meet its minimum capital requirement or if the firm's regulatory capital falls below 120 percent of its minimum capital requirement (''Early Warning Level''). The requirement for an EU nonbank SD to provide notice of a breach of its capital buffer requirements does not achieve a comparable outcome to the CFTC's Early Warning Level requirement due to the difference in the thresholds triggering a notice requirement in the respective rule sets.

The requirement for a nonbank SD to file notice with the Commission and NFA if the firm becomes undercapitalized or if the firm experiences a decrease of excess regulatory capital below defined levels is a central component of the Commission's and NFA's oversight program for nonbank SDs.[356] Therefore, the Commission preliminarily believes that it is necessary for the Commission and NFA to receive copies of notices filed under Article 142 of CRD by EU nonbank SDs alerting competent authorities of a breach of the EU nonbank SD's combined capital buffer. The notice must be filed by the EU nonbank SD within 24 hours of the filing of the notice with the relevant competent authority, and the Commission expects that, upon the receipt of a notice, Commission staff and NFA staff will engage with staff of the EU nonbank SD to obtain an understanding of the facts that led to the filing of the notice and will discuss with the EU nonbank SD the firm's capital conservation plan. The proposed condition would not require the EU nonbank SD to file copies of its capital conservation plan with the Commission or NFA. To the extent Commission staff needs further information from the EU nonbank SD, the Commission expects to request such information as part of its assessment of the notice and its communications with the EU nonbank SD.

In addition, due to the lack of a sufficiently comparable analogue to the CFTC Financial Reporting Rules' Early Warning Level requirement, the Commission is proposing to condition the Capital Comparability Determination Order to require an EU nonbank SD to file a notice with the

[349] BRRD, Article 81(1); French MFC, Article L.613–49; German SAG, Section 138(1).

[350] CRD, Articles 67(1)(j) and 105; French MFC, Articles L.511–41–3 and L.612–40; German KWG, Section 45(1), (2) and (3), 36(1) and (3).

[351] BRRD, Article 27(1); French MFC, Article L.511–41–5; German SAG, Section 36(1).

[352] BRRD, Article 32(1)(a); French MFC, Article L.613–49; German SAG, Section 62(2).

[353] BRRD, Article 16a; French MFC, Article L.613–56 III and French Ministerial Order on Distribution Restrictions, Articles 7 and 8; German SAG, Article 58a.

[354] 17 CFR 23.105(c).

[355] 17 CFR 23.105(c)(1) and (2).

[356] *See* Commission Regulation 23.105(c)(4), which requires a nonbank SD to file notice with the Commission and NFA if it experiences decrease in excess capital of 30 percent or more from the excess capital reported in its last financial filing with the Commission. 17 CFR 23.105(c)(4).

Commission and NFA if the firm's capital ratio does not equal or exceed 12.6 percent.[357] The proposed condition would further require the EU nonbank SD to file the notice with the Commission and NFA within 24 hours of when the firm knows or should have known that its regulatory capital was below 120 percent of its minimum capital requirement. The timing requirement for the filing of the proposed notice with the Commission and NFA is consistent with the Commission's requirements for an FCM or a nonbank SD, which are both required to file an Early Warning Level notice with the Commission and NFA when the firm knows or should have known that its regulatory capital is below specified reporting levels.[358] The requirement for a firm to file a notice with the Commission when it knows or should have known that its capital is below the reporting level is designed to prevent a situation where a firm's deficient recordkeeping leads to an inadequate monitoring of the Early Warning Level threshold. More generally, the ''should have known'' part of the timing standard for the filing of the proposed notice is intended to cover facts and circumstances that should reasonably lead the firm to believe that its regulatory capital is below 120 percent of the minimum requirement.[359] In practice, even if the EU nonbank SD's books and records do not reflect a decrease of regulatory capital below 120 percent of the minimum requirement or if the computations that may reveal a decrease of regulatory capital below 120 percent have not been made yet, the firm would be expected to provide notice if it became aware of deficiencies in its recordkeeping processes that could result in inaccurate recording of the firm's capital levels or if it had other reasons to believe its regulatory capital is below the Early Warning Level threshold.[360]

As noted above, a purpose of the proposed Early Warning Level notice provision is to allow the Commission and NFA to initiate conversations and fact finding with a registrant that may be experiencing operational or financial issues that may adversely impact the firm's ability to meet its obligations to market participants, including customers or swap counterparties. The notice filing is a central component of the Commission's and NFA's oversight program, and the Commission believes that a firm that is experiencing operational challenges that prevent the firm from definitively computing its capital level during a period when it recognizes from the facts and circumstances that the firm's capital level may be below the reporting threshold should file the notice with the Commission and NFA. Therefore, the Commission preliminarily deems it appropriate to include a similar early warning notice condition in the Capital Comparability Determination Order.

The EU Financial Reporting Rules also do not contain an explicit requirement for an EU nonbank SD to notify its competent authority if the firm fails to maintain current books and records, experiences a decrease in regulatory capital over levels previously reported, or fails to collect or post initial margin with uncleared swap counterparties that exceed certain threshold levels.[361] The EU Financial Reporting Rules also do not require an EU nonbank SD to provide the relevant competent authority with advance notice of equity withdrawals initiated by equity holders that exceed defined amounts or percentages of the firm's excess regulatory capital.[362]

To ensure that the Commission and NFA receive prompt information concerning potential operational or financial issues that may adversely impact the safety and soundness of an EU nonbank SD, the Commission is proposing to condition the Capital Comparability Determination Order to require EU nonbank SDs to file certain notices required under the CFTC Financial Reporting Rules with the Commission and NFA. In this connection, the Commission is proposing to condition the Capital Comparability Determination Order on an EU nonbank SD providing the Commission and NFA with notice if the firm fails to maintain current books and records with respect to its financial condition and financial reporting requirements. For avoidance of doubt, in this context the Commission believes that books and records would include current ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting the EU nonbank SD's asset, liability, income, expense and capital accounts in accordance with the accounting principles accepted by the relevant competent authorities.[363] The Commission preliminarily believes that the maintenance of current books and records is a fundamental and essential component of operating as a registered nonbank SD and that the failure to comply with such a requirement may indicate an inability of the firm to promptly and accurately record transactions and to ensure compliance with regulatory requirements, including regulatory capital requirements. Therefore, the proposed Order would require an EU nonbank SD to provide the Commission and NFA with a written notice within 24 hours if the firm fails to maintain books and records on a current basis.

The proposed Capital Comparability Determination Order would also require an EU nonbank SD to file notice with the Commission and NFA if: (i) a single counterparty, or group of counterparties under common ownership or control, fails to post required initial margin or pay required variation margin on uncleared swap and security-based swap positions that, in the aggregate, exceeds 25 percent of the EU nonbank SD's minimum capital requirement; (ii) counterparties fail to post required initial margin or pay required variation margin to the EU nonbank SD for uncleared swap and security-based swap positions that, in the aggregate, exceeds 50 percent of the EU nonbank

[357] The Commission's proposed reporting level of 12.6 percent reflects the aggregate of the EU nonbank SD's core capital requirement of 8 percent and capital conservation buffer requirement of 2.5 percent, multiplied by a factor of 1.20. For purposes of the calculation, the Commission proposes that the 20 percent capital increase must be comprised of common equity tier 1 capital (*i.e.,* common equity tier 1 capital must comprise a minimum of 8.4 percent, which reflects the aggregate of the 4.5 percent core common equity tier 1 capital requirement and the 2.5 percent capital conservation buffer requirement, multiplied by a factor of 1.20).

[358] 17 CFR 1.12 and 17 CFR 23.105(c)(ii)(2).

[359] This interpretation is consistent with the Commission's discussion of the timing standard in the preamble to the 1998 final rule adopting amendments to Commission Regulation 1.12, where the Commission noted that the part of the standard requiring an FCM to report when it ''should know'' of a problem may be defined as the point at which a party, in the exercise of reasonable diligence, should become aware of an event. *See* 63 FR 45711 at 45713.

[360] To that point, in discussing the standard applicable to the timing requirement for the filing of a notice by an FCM to report an undersegregated or undersecured condition (*i.e.,* situation where the FCM has insufficient funds in accounts segregated for the benefit of customers trading on U.S. contract markets or has insufficient funds set aside for customers trading on non-U.S. markets to meet the FCM's obligations to its customers), the Commission noted that an obligation to file a notice could arise even before the required computations that would reveal deficiencies must be made. *See id.*

[361] 17 CFR 23.105(c)(3), (4), and (7).

[362] Commission Regulation 23.105(c)(5) requires a nonbank SD to provide written notice to the Commission and NFA two business days prior to the withdrawal of capital by action of the equity holders if the amount of the withdrawal exceeds 30 percent of the nonbank SD's excess regulatory capital. 17 CFR 23.105(c)(5).

[363] For comparison, see Commission Regulation 23.105(b), which similarly defines the term ''current books and records'' as used in the context of the Commission's requirements. 17 CFR 23.105(b).

SD's minimum capital requirement; (iii) an EU nonbank SD fails to post required initial margin or pay required variation margin for uncleared swap and security-based swap positions to a single counterparty or group of counterparties under common ownership and control that, in the aggregate, exceeds 25 percent of the EU nonbank SD's minimum capital requirement; and (iv) an EU nonbank SD fails to post required initial margin or pay required variation margin to counterparties for uncleared swap and security-based swap positions that, in the aggregate, exceeds 50 percent of the EU nonbank SD's minimum capital requirement. The Commission is proposing to require this notice so that it and the NFA may commence communication with the EU nonbank SD and the relevant competent authority in order to obtain an understanding of the facts that have led to the failure to exchange material amounts of initial margin and variation margin in accordance with the applicable margin rules, and to assess whether there is a concern regarding the financial condition of the firm that may impair its ability to meet its financial obligations to customers, counterparties, creditors, and general market participants, or otherwise adversely impact the firm's safety and soundness.

The proposed Capital Determination Order would not require an EU nonbank SD to file notices with the Commission and NFA concerning withdrawals of capital or changes in capital levels as such information will be reflected in the financial statement reporting filed with the Commission and NFA as conditions of the Order, and because the EU nonbank SD's capital levels are monitored by the relevant competent authority, which the Commission preliminarily believes renders the separate reporting to the Commission superfluous.

The proposed Capital Comparability Determination Order would require an EU nonbank SD to file any notices required under the Order with the Commission and NFA in English and, where applicable, to reflect any balances in U.S. dollars. Each notice required by the proposed Capital Comparability Determination Order must be filed in accordance with instructions issued by the Commission or NFA.[364]

The Commission invites public comment on its analysis above, including comment on the EU Application and relevant EU Financial Reporting Rules. The Commission also invites comment on the proposed conditions to the Capital Comparability Determination Order that are listed above.

The Commission requests comment on the timeframes set forth in the proposed conditions for EU nonbank SDs to file notices with the Commission and NFA. In this regard, the proposed conditions would require EU nonbank SDs to file certain written notices with the Commission within 24 hours of the occurrence of a reportable event or of being alerted to a reportable event by the relevant competent authority. These notices would have to be translated into English prior to being filed with the Commission and NFA. The Commission requests comment on the issues EU nonbank SDs may face meeting the filing requirements given time-zone difference, translation, and governance issues, as applicable. The Commission also requests specific comment regarding the setting of compliance dates for the notice reporting conditions that the proposed Capital Comparability Determination Order would impose on EU nonbank SDs.

F. Supervision and Enforcement

1. Commission and NFA Supervision and Enforcement of Nonbank SDs

The Commission and NFA conduct ongoing supervision of nonbank SDs to assess their compliance with the CEA, Commission regulations, and NFA rules by reviewing financial reports, notices, risk exposure reports, and other filings that nonbank SDs are required to file with the Commission and NFA. The Commission and/or NFA also conduct periodic examinations as part of the supervision of nonbank SDs, including routine onsite examinations of nonbank SDs' books, records, and operations to ensure compliance with CFTC and NFA requirements.[365]

As noted in Section D.1. above, financial reports filed by a nonbank SD provide the Commission and NFA with information necessary to ensure the firm's compliance with minimum capital requirements and to assess the firm's overall safety and soundness and its ability to meet its financial obligations to customers, counterparties, and creditors. A nonbank SD is also required to provide written notice to the Commission and NFA if certain defined events occur, including that the firm is undercapitalized or maintains a level of capital that is less than 120 percent of the firm's minimum capital requirements.[366] The notice provisions, as stated in Section E.1. above, are intended to provide the Commission and NFA with information of potential issues at a nonbank SD that may impact the firm's ability to maintain compliance with the CEA and Commission regulations. The Commission and NFA also have the authority to require a nonbank SD to provide any additional financial and/or operational information on a daily basis or at such other times as the Commission or NFA may specify to monitor the safety and soundness of the firm.[367]

The Commission also has authority to take disciplinary actions against a nonbank SD for failing to comply with the CEA and Commission regulations. Section 4b–1(a) of the CEA [368] provides the Commission with exclusive authority to enforce the capital requirements imposed on nonbank SDs adopted under Section 4s(e) of the CEA.[369]

2. EU Authorities' Supervision and Enforcement of EU Nonbank SDs

Supervision of EU nonbank SDs' compliance with the EU Capital Rules and the EU Financial Reporting Rules is conducted by the ECB and the relevant national competent authorities in the EU Member States. EU nonbank SDs that are registered as credit institutions and that qualify as ''significant supervised entities'' fall under the direct authority of the ECB and are supervised within the ''Single Supervisory Mechanism'' (''SSM'').[370] Within the SSM, the ECB supervises firms for compliance with the EU Capital Rules and the EU Financial Reporting Rules through joint supervisory teams (''JSTs''), comprised of ECB staff and staff of the national competent

[364] The proposed conditions for EU nonbank SDs to file a notice with the Commission and NFA if the firm fails to maintain current books and records or fails to collect or post margin with uncleared swap counterparties that exceed the above-referenced threshold levels are consistent with the proposed conditions in the proposed Capital Comparability Determination Orders for Japan and Mexico. *See* Proposed Japan Order and Proposed Mexico Order.

[365] Section 17(p)(2) of the CEA requires NFA as a registered futures association to establish minimum capital and financial requirements for non-bank SDs and to implement a program to audit and enforce compliance with such requirements. 7 U.S.C. 21(p)(2). Section 17(p)(2) further provides that NFA's capital and financial requirements may not be less stringent than the capital and financial requirements imposed by the Commission.

[366] *See* 17 CFR 23.105(c).

[367] *See* 17 CFR 23.105(h).

[368] 7 U.S.C. 6b–1(a).

[369] 7 U.S.C. 6s(e).

[370] *See generally* SSM Regulation and SSM Framework Regulation. The criteria for determining whether credit institutions are considered ''significant supervised entities'' include size, economic importance for the specific EU Member State or the EU economy, significance of cross-border activities, and request for or receipt of direct public financial assistance. *See* SSM Regulation, Article 6 and SSM Framework Regulation, Articles 39–44 and 50–62.

authorities.[371] EU nonbank SDs that are registered as credit institutions and that qualify as ''less significant supervised entities,'' [372] or EU nonbank SDs registered as investment firms that remain subject to the CRR/CRD framework regime, fall under the direct authority of the applicable national competent authorities.[373]

The ECB and the ACPR have supervision, audit, and investigation powers with respect to EU nonbank SDs, which include the power to require EU nonbank SDs to provide all necessary information in order for the authorities to carry out their supervisory tasks; [374] examine the books and records of EU nonbank SDs; obtain written and oral explanations from the EU nonbank SD's management, staff, and other persons; [375] and conduct all necessary inspections at the business premises of EU nonbank SDs and other group entities.[376]

The competent authorities also monitor the capital adequacy of EU nonbank SDs through supervisory measures on an ongoing basis. The monitoring includes assessing the notices and the capital conservation plan discussed in Section E.2. above. In addition to the tools described in Section E.2., the relevant competent authorities are empowered with a variety of measures to address an EU nonbank SD's financial deterioration. Specifically, if an EU nonbank SD fails to meet its capital or liquidity thresholds or if the competent authority has evidence that the EU nonbank SD is likely to breach its capital or liquidity thresholds in the next 12 months, the competent authority may order an EU nonbank SD to comply with additional requirements, including: (i) maintaining additional capital in excess of the minimum requirements, if certain conditions are met; (ii) requiring that the EU nonbank SD submit a plan to restore compliance with applicable capital or liquidity thresholds; (iii) imposing restrictions on the business or operations of the EU nonbank SD; (iv) imposing restrictions or prohibitions on distributions or interest payments to shareholders or holders of additional tier 1 capital instruments; (v) requiring additional or more frequent reporting requirements; and (vi) imposing additional specific liquidity requirements.[377] The competent authority may also withdraw an EU nonbank SD's authorization if the firm no longer meets its minimum capital requirements.[378]

Although the relevant competent authorities generally have broad discretion as to what powers they may exercise, the EU Capital Rules and the EU Financial Reporting Rules specifically mandate that the competent authorities require EU nonbank SDs to hold increased capital when: (i) risks or elements of risks are not covered by the capital requirements imposed by the EU Capital Rules; (ii) the EU nonbank SD lacks robust governance arrangements, appropriate resolution and recovery plans, processes to manage large exposures or effective processes to maintain on an ongoing basis the amounts, types and distribution of capital needed to cover the nature and level of risks to which they might be exposed and it is unlikely that other supervisory measures would be sufficient to ensure that those requirements can be met within an appropriate timeframe; (iii) the EU nonbank SD repeatedly fails to establish or maintain an adequate level of additional capital to cover the guidance communicated by the relevant competent authorities; or (iv) other entity-specific situations deemed by the relevant competent authority to raise material supervisory concerns.[379]

The national competent authorities can also issue administrative penalties and other administrative measures if an EU nonbank SD (or its management) does not fully comply with its reporting requirements.[380] These penalties and measures include: (i) public statements identifying a firm or one or more of its managers as responsible for the breach; (ii) cease-and-desist orders; (iii) temporary bans against a member of the firm's management body or other manager; (iv) administrative monetary penalties against the firm of up to 10 percent of the total annual net turnover of the preceding year; (v) administrative monetary penalties of up to twice the amount of the profits gained or losses avoided because of the breach; or (vi) withdrawal of the firm's authorization.[381]

The ECB has the same powers to impose administrative monetary penalties for breaches of directly applicable EU laws and regulations.[382] In addition, the ECB can instruct the national competent authorities to open proceedings that may lead to the imposition of non-monetary penalties for breaches of directly applicable EU law and regulations, monetary and non-monetary penalties for breaches of EU Member State laws implementing relevant directives, and monetary and non-monetary penalties against natural

[371] SSM Framework Regulation, Article 3.

[372] SSM Regulation, Article 6. Entities that qualify as ''less significant supervised entities'' are supervised by their national competent authorities in close cooperation with the ECB. With respect to the prudential supervision of these entities, the ECB has the power to issue regulations, guidelines or general instructions to the national competent authorities. SSM Regulation, Article 6(5)(a). At any time, the ECB can also decide to directly supervise any one of these less significant supervised entities to ensure that high supervisory standards are applied consistently. SSM Regulation, Article 6(5)(b).

[373] Three of the four EU nonbank SDs currently registered with the Commission (BofA Securities Europe S.A.; Citigroup Global Markets Europe AG; and Morgan Stanley Europe SE) are registered as credit institutions and qualify as ''significant supervised entities'' subject to the direct supervision of the ECB. One entity (Goldman Sachs Paris Inc. et Cie) is registered as an investment firm, but has a pending application for authorization as a credit institution. The Applicants represented that Goldman Sachs Paris Inc et Cie would likely be a categorized as a ''less significant supervised entity'' and subject to direct supervision by the French ACPR. According to the Applicants, however, the ECB is still considering whether it may exercise direct supervisory authority over the entity, pursuant to SSM Regulation, Article 6. *See* Responses to Staff Questions of May 15, 2023.

Accordingly, this Section describes the supervisory powers of the ECB and the French ACPR and refers to provisions establishing those powers. Therefore, if a future EU nonbank SD applicant that is subject to supervision by a national competent authority in an EU Member State other than France, seeks substituted compliance for some or all of the CFTC Capital Rules and CFTC Financial Reporting Rules, the EU nonbank SD applicant must submit an application to the Commission in accordance with Commission Regulation 23.106 (17 CFR 23.106) and provide, among other information, a description of the ability of the relevant EU Member State regulatory authority to supervise and enforce compliance with the relevant EU Member State's capital adequacy and financial reporting requirements.

[374] CRD, Article 65(3)(a); French MFC, Article L.612–24; and SSM Regulation, Article 10.

[375] CRD, Article 65(3)(b); French MFC, Article L.612–24; and SSM Regulation, Article 11.

[376] CRD, Article 65(3)(c); French MFC, Articles L.612–23 and L.612–26; and SSM Regulation, Article 12.

[377] CRD, Articles 102(1) and 104(1); French MFC, Articles L.511–41–3 and L.612–31 to L.612–33; SSM Regulation, Article 16.

[378] CRD Article 18; MiFID, Article 8c; French MFC, Articles L.532–6 and L.612–40; SSM Regulation, Article 14.

[379] CRD, Article 104 and 104a; French MFC, Article L.511–41–3; German KWG, Section 6c(1); and SSM Regulation, Articles 9 (indicating that the ECB shall have all the powers and obligations that national authorities have under EU law, unless otherwise provided in the SSM Regulation, and that the ECB may require, by way of instructions, that national competent authorities make use of their powers, where the SSM Regulation does not confer such powers to the ECB) and 16 (describing ECB's supervisory powers, including the power to require entities subject to its authority to hold capital in excess of the capital requirements imposed by relevant EU law).

[380] CRD, Articles 65, 67(1)(e) to (i) and 67(2); French MFC, Article L.612–39 and L.612–40; German KWG, Sections 56(6) and (7), 60b(1) and (3).

[381] *Id.*

[382] SSM Regulation, Article 18.

persons for breaches of relevant EU laws and regulations.[383]

3. Commission Analysis

Based on the above, the Commission preliminarily finds that the competent authorities have the necessary powers to supervise, investigate, and discipline EU nonbank SDs for compliance with the applicable capital and financial reporting requirements, and to detect and deter violations of, and ensure compliance with, the applicable capital and financial reporting requirements in the EU.[384]

The Commission would expect to communicate and consult, to the fullest extent permissible under applicable law, with the relevant competent authorities regarding the supervision of the financial and operational condition of the EU nonbank SDs. An appropriate MOU or similar arrangement with the relevant competent authorities would facilitate cooperation and information sharing in the context of supervising the EU nonbank SDs. Such an arrangement would enhance communication with respect to entities within the arrangement's scope (''Covered Firms''), as appropriate, regarding: (i) general supervisory issues, including regulatory, oversight, or other related developments; (ii) issues relevant to the operations, activities, and regulation of Covered Firms; and (iii) any other areas of mutual supervisory interest, and would anticipate periodic meetings to discuss relevant functions and regulatory oversight programs. The arrangement would provide for the Commission and the relevant competent authority to inform each other of certain events, including any material events that could adversely impact the financial or operational stability of a Covered Firm, and would provide a procedure for any on-site examinations of Covered Firms.

In the absence of an MOU or similar information sharing arrangement, the Commission is proposing to condition the Capital Comparability Determination Order on an EU nonbank SD providing notice to the Commission and NFA if its competent authority has required an EU nonbank SD to: (i) maintain additional capital in excess of the minimum requirements; (ii) require that the EU nonbank SD submit a plan to restore compliance with applicable capital or liquidity thresholds; (iii) impose restrictions on the business or operations of the EU nonbank SD; (iv) impose restrictions or prohibitions on distributions or interest payments to shareholders or holders of additional tier 1 capital instruments; (v) require additional or more frequent reporting requirements; or (vi) impose additional specific liquidity requirements.[385] Upon receipt of such notice, the Commission and NFA would communicate with the EU nonbank SD to obtain further information regarding the underlying issues that prompted the competent authority to direct the EU nonbank SD to take such actions and would obtain information regarding how the EU nonbank SD would address the underlying issues.

The Commission invites public comment on the EU Application, the EU laws and regulations, and the Commission's analysis above regarding its preliminary determination that the competent authorities in the EU and the CFTC have supervision programs and enforcement authority that are comparable in that the purpose of the relevant programs and authority is to ensure that nonbank SDs maintain compliance with applicable capital and financial reporting requirements.

IV. Proposed Capital Comparability Determination Order

A. Commission's Proposed Comparability Determination

The Commission's preliminary view, based on the EU Application and the Commission's review of applicable EU laws and regulations, is that the EU Capital Rules and the EU Financial Reporting Rules, subject to the conditions set forth in the proposed Capital Comparability Determination Order below, achieve comparable outcomes and are comparable in purpose and effect to the CFTC Capital Rules and CFTC Financial Reporting Rules. In reaching this preliminary conclusion, the Commission recognizes that there are certain differences between the EU Capital Rules and CFTC Capital Rules and certain differences between the EU Financial Reporting Rules and the CFTC Financial Reporting Rules. The proposed Capital Comparability Determination Order is subject to proposed conditions that are preliminarily deemed necessary to promote consistency in regulatory outcomes, or to reflect the scope of substituted compliance that would be available notwithstanding certain differences. In the Commission's preliminary view, the differences between the two rules sets would not be inconsistent with providing a substituted compliance framework for EU nonbank SDs subject to the conditions specified in the proposed Order below.

Furthermore, the proposed Capital Comparability Determination Order is limited to the comparison of the EU Capital Rules to the Bank-Based Approach contained within the CFTC Capital Rules. As noted previously, the Applicants have not requested, and the Commission has not performed, a comparison of the EU Capital Rules to the Commission's NAL Approach or TNW Approach. In addition, as discussed in Section I.C. above, the Applicants have not requested, and the Commission has not performed, a comparison of the capital rules for smaller EU investment firms under IFR to the Commission's Bank-Based Approach, NAL Approach, or TNW Approach.

B. Proposed Capital Comparability Determination Order

The Commission invites comments on all aspects of the EU Application, relevant EU laws and regulations, the Commission's preliminary views expressed above, the question of whether requirements under the EU Capital Rules are comparable in purpose and effect to the Commission's requirement for a nonbank SD to hold regulatory capital equal to or greater than 8 percent of its uncleared swap margin amount, and the Commission's proposed Capital Comparability Determination Order, including the proposed conditions included in the proposed Order, set forth below.

C. Proposed Order Providing Conditional Capital Comparability Determination for Certain EU Nonbank Swap Dealers

It is hereby determined and ordered, pursuant to Commodity Futures Trading Commission (''CFTC'' or ''Commission'') Regulation 23.106 (17 CFR 23.106) under the Commodity Exchange Act (''CEA'') (7 U.S.C. 1 *et seq.*) that a swap dealer (''SD'') organized and domiciled in the French Republic (''France'') or the Federal

[383] SSM Regulation, Article 9.

[384] The Commission, the French Autorité des Marchés Financiers (''AMF'') (the French market conduct regulatory authority with which the ACPR shares supervision authority over French financial firms, including EU nonbank SDs domiciled in France, as it regards business conduct matters), and the German BaFin (the German financial sector regulatory authority whose staff participates in the SSM's JSTs that conduct prudential supervision of the two EU nonbank SDs domiciled in Germany) are signatories to the *IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (revised May 2012), which covers primarily information sharing in the context of enforcement matters.

[385] The authority for the competent authorities to impose such conditions or requirements is set forth in CRD, Articles 102(1) and 104(1); French MFC, Articles L.511–41–3 and L.612–31 to L.612–33; SSM Regulation, Article 16.

Republic of Germany (''Germany'') and subject to the Commission's capital and financial reporting requirements under Sections 4s(e) and (f) of the CEA (7 U.S.C. 6s(e) and (f)) may satisfy the capital requirements under Section 4s(e) of the CEA and Commission Regulation 23.101(a)(1)(i) (17 CFR 23.101(a)(1)(i)) (''CFTC Capital Rules''), and the financial reporting rules under Section 4s(f) of the CEA and Commission Regulation 23.105 (17 CFR 23.105) (''CFTC Financial Reporting Rules''), by complying with certain specified requirements of the European Union (''EU'') laws and regulations cited below and otherwise complying with the following conditions, as amended or superseded from time to time:

(1) The SD is not subject to regulation by a prudential regulator defined in Section 1a(39) of the CEA (7 U.S.C. 1a(39));

(2) The SD is organized under the laws of France or Germany (''EU Member State'') and is domiciled in France or Germany, respectively (''EU nonbank SD'');

(3) The EU nonbank SD is licensed as a credit institution or an investment firm in an EU Member State and is treated for the purposes of the EU capital and financial reporting rules as an ''institution,'' as defined in *Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012* (''Capital Requirements Regulation'' or ''CRR''), Article 4(1)(3), and *Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC* (''Capital Requirements Directive'' or ''CRD''), Article 3(1)(3);

(4) The EU nonbank SD is subject to and complies with: CRR and CRD as implemented in the national laws of France and Germany (collectively, ''EU Capital Rules'');

(5) The EU nonbank SD satisfies at all times applicable capital ratio and leverage ratio requirements set forth in Article 92 of CRR, the capital conservation buffer requirements set forth in Article 129 of CRD, and applicable liquidity requirements set forth in Articles 412 and 413 of CRR, and otherwise complies with the requirements to maintain a liquidity risk management program as required under Article 86 of CRD;

(6) The EU nonbank SD is subject to and complies with: *Commission Implementing Regulation (EU) 2021/451 of 17 December 2020 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to supervisory reporting of institutions and repealing Implementing Regulation (EU) No 680/2014* (''CRR Reporting ITS''); *Regulation (EU) 2015/534 of the European Central Bank of 17 March 2015 on reporting of supervisory financial information* (''ECB FINREP Regulation''); and *Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC* (''Accounting Directive'') as implemented in the national laws of France and Germany (collectively and together with CRR and CRD as implemented in the national laws of France and Germany, ''EU Financial Reporting Rules'');

(7) The EU nonbank SD is subject to prudential supervision by an EU Member State supervisory authority with jurisdiction to enforce the requirements set forth by the EU Capital Rules and the EU Financial Reporting Rules or the European Central Bank (''ECB''), as applicable (''competent authority'');

(8) The EU nonbank SD maintains at all times an amount of regulatory capital in the form of common equity tier 1 capital as defined in Article 26 of CRR, equal to or in excess of the equivalent of $20 million in United States dollars (''U.S. dollars''). The EU nonbank SD shall use a commercially reasonable and observable euro/U.S. dollar exchange rate to convert the value of the euro-denominated common equity tier 1 capital to U.S. dollars;

(9) The EU nonbank SD has filed with the Commission a notice stating its intention to comply with the EU Capital Rules and the EU Financial Reporting Rules in lieu of the CFTC Capital Rules and the CFTC Financial Reporting Rules. The notice of intent must include the EU nonbank SD's representation that the firm is organized and domiciled in an EU Member State, is a licensed investment firm or a credit institution in an EU Member State, and is subject to, and complies with, the EU Capital Rules and EU Financial Reporting Rules. An EU nonbank SD may not rely on this Capital Comparability Determination Order until it receives confirmation from Commission staff, acting pursuant to authority delegated by the Commission, that the EU nonbank SD may comply with the applicable EU Capital Rules and EU Financial Reporting Rules in lieu of the CFTC Capital Rules and CFTC Reporting Rules. Each notice filed pursuant to this condition must be prepared in the English language and submitted to the Commission via email to the following address: *MPDFinancialRequirements@cftc.gov;*

(10) The EU nonbank SD prepares and keeps current ledgers and other similar records in accordance with accounting principles required by the relevant competent authority;

(11) The EU nonbank SD files with the Commission and with the National Futures Association (''NFA'') a copy of templates 1.1 (Balance Sheet Statement: assets), 1.2 (Balance Sheet Statement: liabilities), 1.3 (Balance Sheet Statement: equity), 2 (Statement of profit or loss), and 10 (Derivatives—Trading and economic hedges) of the financial reports (''FINREP'') that EU nonbank SDs are required to submit pursuant to CRR Reporting ITS, Annex III or IV, or the ECB FINREP Regulation, as applicable, and templates 1 (Own Funds), 2 (Own Funds Requirements) and 3 (Capital Ratios) of the common reports (''COREP'') that EU nonbank SDs are required to submit pursuant to CRR Reporting ITS, Annex I. The FINREP and COREP templates must be translated into the English language and balances must be converted to U.S. dollars. The FINREP and COREP templates must be filed with the Commission and NFA within 35 calendar days of the end of each month. EU nonbank SDs that are registered as security-based swap dealers (''SBSDs'') with the U.S. Securities and Exchange Commission (''SEC'') may comply with this condition by filing with the Commission and NFA a copy of Form X–17A–5 (''FOCUS Report'') that the EU nonbank SD is required to file with the SEC or its designee pursuant to an order granting conditional substituted compliance with respect to Securities Exchange Act of 1934 Rule 18a–7. The copy of the FOCUS Report must be filed with the Commission and NFA within 35 calendar days after the end of each month in the manner, format and conditions specified by the SEC in Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants that are not U.S. Persons and are Relying on Substituted Compliance with Respect to Rule 18a–7, 86 FR 59208 (Oct. 26, 2021);

(12) The EU nonbank SD files with the Commission and with NFA a copy

of its annual audited financial statements and management report (together, ''annual audited financial report'') that are required to be prepared and published pursuant to Articles 4, 19, 30 and 34 of the Accounting Directive as implemented in the national laws of France and Germany. The annual audited financial report must be translated into the English language and balances may be reported in euro. The annual audited financial report must be filed with the Commission and NFA on the earliest of the date the report is filed with the competent authority, the date the report is published, or the date the report is required to be filed with the competent authority or the date the report is required to be published pursuant to the EU Financial Reporting Rules;

(13) The EU nonbank SD files Schedule 1 of Appendix B to Subpart E of Part 23 of the CFTC's regulations (17 CFR 23 Subpart E—Appendix B) with the Commission and NFA on a monthly basis. Schedule 1 must be prepared in the English language with balances reported in U.S. dollars and must be filed with the Commission and NFA within 35 calendar days of the end of each month;

(14) The EU nonbank SD submits with each set of FINREP and COREP templates, annual audited financial report, and Schedule 1 of Appendix B to Subpart E of Part 23 of the CFTC's regulations a statement by an authorized representative or representatives of the EU nonbank SD that to the best knowledge and belief of the representative or representatives the information contained in the reports, including the translation of the reports into English and conversion of balances in the reports to U.S. dollars, is true and correct. The statement must be prepared in the English language;

(15) The EU nonbank SD files a margin report containing the information specified in Commission Regulation 23.105(m) (17 CFR 23.105(m)) with the Commission and with NFA within 35 calendar days of the end of each month. The margin report must be in the English language and balances reported in U.S. dollars;

(16) The EU nonbank SD files a notice with the Commission and NFA within 24 hours of being informed by a competent authority that the firm is not in compliance with any component of the EU Capital Rules or EU Financial Reporting Rules. The notice must be prepared in the English language;

(17) The EU nonbank SD files a notice within 24 hours with the Commission and NFA if it fails to maintain regulatory capital in the form of common equity tier 1 capital as defined in Article 26 of CRR, equal to or in excess of the U.S. dollar equivalent of $20 million using a commercially reasonable and observable euro/U.S. dollar exchange rate. The notice must be prepared in the English language;

(18) The EU nonbank SD provides the Commission and NFA with notice within 24 hours of filing a capital conservation plan with the relevant competent authority pursuant to the relevant EU Member State's provisions implementing Article 143 of CRD, indicating that the firm has breached its combined capital buffer requirement. The notice filed with the Commission and NFA must be prepared in the English language;

(19) The EU nonbank SD provides the Commission and NFA with notice within 24 hours if it is required by its competent authority to maintain additional capital or additional liquidity requirements, or to restrict its business operations, or to comply with other requirements pursuant to Articles 102(1) and 104(1) of CRD as implemented in the national laws of France or to Article 16 of *Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.* The notice filed with the Commission and NFA must be prepared in the English language;

(20) The EU nonbank SD files a notice with the Commission and NFA within 24 hours if it fails to maintain its minimum requirement for own funds and eligible liabilities (''MREL''), if such requirement is applicable to the EU nonbank SD pursuant to *Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council* as implemented in the national laws of France and Germany. The notice filed with the Commission and NFA must be prepared in the English language;

(21) The EU nonbank SD files a notice with the Commission and NFA within 24 hours of when the firm knew or should have known that its regulatory capital fell below 120 percent of its minimum capital requirement, comprised of the firm's core capital requirements and any applicable capital buffer requirements. For purposes of the calculation, the 20 percent excess capital must be in the form of common equity tier 1 capital. The notice filed with Commission and NFA must be prepared in the English language;

(22) The EU nonbank SD files a notice with the Commission and NFA within 24 hours if it fails to make or keep current the financial books and records. The notice must be prepared in the English language;

(23) The EU nonbank SD files a notice with the Commission and NFA within 24 hours of the occurrence of any of the following: (i) a single counterparty, or group of counterparties under common ownership or control, fails to post required initial margin or pay required variation margin on uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 25 percent of the EU nonbank SD's minimum capital requirement; (ii) counterparties fail to post required initial margin or pay required variation margin to the EU nonbank SD for uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 50 percent of the EU nonbank SD's minimum capital requirement; (iii) the EU nonbank SD fails to post required initial margin or pay required variation margin for uncleared swap and non-cleared security-based swap positions to a single counterparty or group of counterparties under common ownership and control that, in the aggregate, exceeds 25 percent of the EU nonbank SD's minimum capital requirement; or (iv) the EU nonbank SD fails to post required initial margin or pay required variation margin to counterparties for uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 50 percent of the EU nonbank SD's minimum capital requirement. The notice must be prepared in the English language;

(24) The EU nonbank SD files a notice with the Commission and NFA of a change in its fiscal year-end approved or permitted to go into effect by the relevant competent authority. The notice required by this paragraph will satisfy the requirement for a nonbank SD to obtain the approval of NFA for a change in fiscal year-end under Commission Regulation 23.105(g) (17 CFR 23.105(g)). The notice of change in fiscal year-end must be prepared in the English language and filed with the Commission and NFA at least 15 business days prior to the effective date of the EU nonbank SD's change in fiscal year-end;

(25) The EU nonbank SD or an entity acting on its behalf notifies the

Commission of any material changes to the information submitted in the application for capital comparability determination, including, but not limited to, material changes to the EU Capital Rules or EU Financial Reporting Rules imposed on EU nonbank SDs, the ECB or relevant EU Member State authority's supervisory authority or supervisory regime over EU nonbank SDs, and proposed or final material changes to the EU Capital Rules or EU Financial Reporting Rules as they apply to EU nonbank SDs; and

(26) Unless otherwise noted in the conditions above, the reports, notices, and other statements required to be filed by the EU nonbank SD with the Commission and NFA pursuant to the conditions of this Capital Comparability Determination Order must be submitted electronically to the Commission and NFA in accordance with instructions provided by the Commission or NFA.

Issued in Washington, DC, on June 20, 2023, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Domiciled in the French Republic and Federal Republic of Germany and Subject to Capital and Financial Reporting Requirements of the European Union—Voting Summary and Commissioners' Statements

Appendix 1—Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman Rostin Behnam in Support of the Notice of Proposed Order and Request for Comment on the Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Domiciled in the French Republic and Federal Republic of Germany and Subject to Capital and Financial Reporting Requirements of the European Union

I support the Commission's proposed order and request for comment on an application for a preliminary capital comparability determination on behalf of four nonbank swap dealers that are domiciled in France or Germany. All four of these EU nonbank SDs are subject to, and comply with, the EU capital and financial reporting rules as implemented by the national laws of France or Germany, which the Commission has preliminarily determined are comparable to certain capital and financial reporting requirements under the Commodity Exchange Act and the Commission's regulations, subject to certain conditions. This preliminary capital comparability determination for these EU nonbank SDs is the third proposed order and request for comment to come before the Commission since it adopted its substituted compliance framework for non-U.S. domiciled nonbank swap dealers in July 2020.

Appendix 3—Statement of Commissioner Kristin N. Johnson in Support of Notice and Order on EU Capital Comparability Determination

I support the Commission's issuance of the proposed capital comparability order for comment (Proposed Order).[1] The Proposed Order, if approved, will allow registered nonbank swap dealers (SDs) organized and domiciled in France and Germany to satisfy certain capital and financial reporting requirements under the Commodity Exchange Act (CEA) by being subject to and complying with comparable capital and financial reporting requirements under the European Union (EU) laws and regulations applicable in those countries. Since July 2020, this is the third proposed capital comparability determination approved for comment.[2]

As I previously noted in the context of another recent proposed capital comparability determination,[3] the Commission vigilantly monitors and surveils risk management activities by our market participants. Capital requirements play a critical role in fostering the safety and soundness of financial markets. Our efforts to coordinate and harmonize regulation with regulators around the world reinforce the adoption, implementation, and enforcement of sound prudential and capital requirements. These requirements aim to ensure the integrity of entities operating in these markets, to ensure rapid identification and remediation of liquidity crises, and to mitigate the threat of systemic risks that may threaten the stability of domestic and global financial markets.

Section 4s(e) of the CEA directs the Commission to impose capital requirements on all SDs registered with the Commission.[4] Section 4s(f) of the CEA directs the Commission to adopt rules imposing financial condition reporting obligations on all SDs.[5] The Commission's capital and financial reporting requirements adopted pursuant to these sections of the CEA are critical to ensuring the safety and soundness of our markets by addressing and managing risks that arise from a firm's operation as an SD.[6] Ensuring necessary levels of capital, as well as accurate and timely reporting about financial conditions, helps to protect swap dealers and the broader financial markets ecosystem from shocks, thereby ensuring solvency and resiliency. This, in turn, protects the financial system as a whole, reducing the risk of contagion that could arise from uncleared swaps. Financial reporting requirements work with the capital requirements by allowing the Commission to monitor and assess an SD's financial condition, including compliance with minimum capital requirements. The Commission uses the information it receives pursuant to these requirements to detect potential risks before they materialize.

I support acknowledging market participants' compliance with the regulations of foreign jurisdictions when the requirements lead to an outcome that is comparable to the outcome of complying with the CFTC's corresponding requirements. Moreover, notwithstanding our issuance of the Proposed Order, the covered swap dealers domiciled in France and Germany would remain subject to the Commission's examination and enforcement authority. Capital adequacy and financial reporting are pillars of risk management oversight for any business, and, for firms operating in our markets, it is of the utmost importance that rules governing these risk management tools

[1] The application here is by three trade associations (the Institute of International Bankers, the International Swaps and Derivatives Association, and the Securities Industry and Financial Markets Association), and there are currently four nonbank swap dealers who would be eligible to take advantage of a comparability determination if made (France: BofA Securities Europe SA and Goldman Sachs Paris Inc. et Cie; Germany: Citigroup Global Markets Europe AG and Morgan Stanley Europe SE). *See* Letter dated Sept. 24, 2021, from Stephanie Webster, General Counsel, Institute of International Bankers, Steven Kennedy, Global Head of Public Policy, International Swaps and Derivatives Association, and Kyle Brandon, Managing Director, Head of Derivatives Policy, Securities Industry and Financial Markets Association, *https://www.cftc.gov/LawRegulation/DoddFrankAct/CDSCP/index.htm.* There are no other nonbank SDs registered with the Commission and organized and domiciled within the EU.

[2] The Commission approved a Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination from the Financial Services Agency of Japan at its July 27, 2022 open meeting. *See* 87 FR 48,092 (Aug. 8, 2022); *see also* Statement of Commissioner Kristin N. Johnson in Support of Proposed Order on Japanese Capital Comparability Determination, July 27, 2022, *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement072722c.*

The Commission approved a Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Subject to Regulation by the Mexican Comisión Nacional Bancaria y de Valores at its November 10, 2022 open meeting. *See* 87 FR 76374 (Dec. 13, 2022); *see also* Statement of Commissioner Kristin N. Johnson in Support of Proposed Order and Request for Comment on Mexican Capital Comparability Determination, Nov. 10, 2022, *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement111022c.*

[3] *See* Statement of Commissioner Kristin N. Johnson in Support of Proposed Order and Request for Comment on Mexican Capital Comparability Determination, Nov. 10, 2022, *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement111022c; see also* Statement of Commissioner Kristin N. Johnson in Support of Proposed Order on Japanese Capital Comparability Determination, July 27, 2022, *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement072722c.*

[4] 7 U.S.C. 6s(e).

[5] 7 U.S.C. 6s(f).

[6] *See* 7 U.S.C. 6s(e); 17 CFR subpart E.

are effectively calibrated, continuously assessed, and fit for purpose. The Commission's efforts in considering the Proposed Order reflect careful and thoughtful evaluation of the comparability of relevant standards and an attempt to coordinate our efforts to bring transparency to the swaps market and reduce its risks to the public. I look forward to reviewing the comments that the Commission will receive in response to the Proposed Order.

I commend the work of staff in the Market Participants Division and their careful consideration of this application. I commend the staff of the Market Participants Division: Amanda Olear, Tom Smith, Rafael Martinez, Liliya Bozhanova, Joo Hong, and Justin McPhee, as well as the members of the Office of International Affairs for their careful review of the capital and financial reporting requirements for SDs organized and domiciled in France and Germany.

I also want to thank my fellow Commissioners for their support in advancing this matter before the Commission. Successfully implementing comparability determinations requires collaboration between the CFTC and its partner regulators in other countries. The EU is one of our closest partners internationally, and increased collaboration can only be beneficial in achieving our key goals of customer protection and market integrity.

Appendix 4—Statement of Commissioner Christy Goldsmith Romero on the CFTC's Proposed Comparability Determination for European Swap Dealer Capital Requirements

Today, the Commission considers efforts to safeguard the resilience of four swap dealers in the European Union (''EU'').[1] The proposal is part of the Commission's ''substituted compliance'' framework—a framework that promotes global harmonization with like-minded foreign regulators that have rules, supervision and enforcement that are comparable in purpose and effect to the CFTC. Our capital rules are a critical pillar of the Dodd-Frank Act reforms. We must ensure that our comparability assessments are sound and do not increase risk to U.S. markets.

The CFTC's capital framework for swap dealers heeds the lessons of the 2008 financial crisis.

The 2008 financial crisis precipitated the failure or near-failure of almost every major investment bank and a number of systemically important banks. It demonstrated all too clearly the financial stability risks presented by undercapitalized financial institutions, including a sprawling network of globally interconnected derivatives dealers. That is why Congress mandated that the Commission establish capital requirements for non-bank swap dealers. The Dodd-Frank Act provided that swap dealer capital requirements should ''offset the greater risk to the SD . . . and the financial system arising from the use of swaps that are not cleared'' [2] and ''help ensure the safety and soundness of the SD.'' [3] The Commission's capital requirements, adopted in 2020,[4] are intended to do exactly that.

Our capital requirements promote the resilience of swap dealers and protect the U.S. financial system. They ensure that swap dealers can weather economic downturns, and remain resilient during periods of stress to continue their critical market functions. Our capital requirements also help prevent contagion of losses spreading to other financial institutions.

The CFTC must ensure that capital requirements eligible for substituted compliance are comparable in outcomes, supervision, and enforcement.

Substituted compliance must leave U.S. markets at no greater risk than full compliance with our rules. The Commission has to proceed cautiously given the importance of capital to financial stability, the complexity of capital frameworks, the interconnected nature of global derivatives markets, and the speed of contagion in the global financial system.

First, we have to ensure that our substituted compliance framework recognizes only those frameworks that are comparable with respect to the most fundamental outcome—the amount of capital required to support a swap dealer's activities. The substituted compliance framework must result in the application of capital rules that are legitimately a *substitute* for the capital protections provided by U.S. law.

Second, the fact that a foreign regulator may have comparable capital rules will not be enough. We have to look beyond the four corners of rules. Substituted compliance requires a like-minded foreign regulator with comparable supervision and enforcement to the CFTC.

Our substituted compliance decisions should not allow for regulatory arbitrage for swap dealers to escape strong U.S. capital rules—a situation that could erode Dodd-Frank Act post-crisis reforms. I served as the Special Inspector General for the Troubled Asset Relief Program (''SIGTARP'') for more than a decade, providing oversight over the U.S. Government's unprecedented taxpayer-funded injections of hundreds of billions of dollars in capital into Wall Street as a response to the 2008 financial crisis. I have testified before Congress and reported to Congress about how inadequate capitalization at the largest banks contributed to the financial crisis, how the significant interconnections between financial institutions posed systemic risk, and the painful toll the crisis took on hardworking America families and small businesses.

All four swap dealers who would be able to avail themselves of our determination today are affiliated with the largest TARP recipients. That fact alone is a good reminder of what is at stake in terms of risk. It is not just danger to financial institutions, but also American families and businesses. Under this proposal in addition to the Commission's two prior capital comparability proposals,[5] 10 of 106 registered swap dealers would be eligible to rely on substituted compliance.[6]

Strong capital requirements and areas where the Commission would particularly benefit from public comment.

Three of the four EU swap dealers are dually-registered with the U.S. Securities and Exchange Commission (''SEC''). The SEC has issued final comparability determination orders permitting them to satisfy certain SEC capital requirements through substituted compliance with applicable French and German requirements.[7]

In conducting the CFTC's own analysis, it is important to remember that substituted compliance is not an all-or-nothing proposition. The Commission retains examinations and enforcement authority and it can, should, and will, impose any conditions and take all actions appropriate to protect the safety and soundness of swap dealers and the U.S. financial system. Today, the Commission proposes 24 conditions, including conditions requiring capital reporting and Commission notification that are essential to monitoring the financial condition and capital adequacy of swap dealers.

Just as with swap dealers in Japan and Mexico,[8] one of the most important

[1] The four swap dealers in the European Union are located in France and Germany—BofA Securities Europe SA (France), Citigroup Global Markets Europe AG (Germany), Morgan Stanley Europe SE (Germany), and Goldman Sachs Paris Inc. et Cie (France).

[2] 7 U.S.C. 6s(e)(3)(A).

[3] 7 U.S.C. 6s(e)(3)(A)(i). The capital requirements also must ''be appropriate to the risk associated with non-cleared swaps.'' 7 U.S.C. 6s(e)(3)(A)(ii).

[4] *See* Commodity Futures Trading Commission, *Capital Requirements of Swap Dealers and Major Swap Participants,* 85 FR 57462 (Sept. 15, 2020).

[5] *See* Commodity Futures Trading Commission, *Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination from the Financial Services Agency of Japan,* 87 FR 48092 (Aug. 8, 2022); *See also* Commodity Futures Trading Commission, *Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on behalf of Nonbank Swap dealers subject to Regulation by the Mexican Comision Nacional Bancaria y de Valores,* 87 FR 76374 (Dec. 13, 2022).

[6] 55 of the 107 swap dealers are subject to U.S. prudential regulatory capital requirements.

[7] *See Amended and Restated Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Federal Republic of Germany; Amended Orders Addressing Non-U.S. Security-Based Swap Entities Subject to Regulation in the French Republic or the United Kingdom; and Order Extending the Time to Meet Certain Conditions Relating to Capital and Margin,* 86 FR 59797 (Oct. 28, 2021); *Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the French Republic,* 86 FR 41612 (Aug. 8, 2021); *and Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants that are not U.S. Persons and are Relying on Substituted Compliance with Respect to Rule 18a–7,* 86 FR 59208 (Oct. 26, 2021).

[8] *See* CFTC Commissioner Christy Goldsmith Romero, *Proposal for Strong Capital Requirements and Financial Reporting for Swap Dealers in Japan,* (July 27, 2022) Statement of Commissioner Christy

Continued

conditions is that the Commission will continue to require compliance with the CFTC's minimum capital requirement of $20 million in common equity tier 1 capital.[9] This is one of the most critical components of the CFTC's capital requirements. It helps to ensure that each nonbank swap dealer, whether current or a future new entrant, maintains at all times, $20 million of the highest quality capital to meet its financial obligations without becoming insolvent.

Today, the Commission preliminarily finds that EU capital rules requiring 8 percent of risk-weighted assets and an additional 2.5 percent buffer, for a total of 10.5 percent, are higher than the CFTC's requirement of 8 percent of risk-weighted assets. This capital requirement helps ensure that the swap dealer has sufficient capital levels to cover for example, unexpected losses from business activities.

There are proposed deviations from the Commission's bank-based capital requirements that should be closely scrutinized. For example, the Commission proposes to permit compliance with EU capital rules that are not necessarily anchored by a threshold percentage of uncleared swap margin as the CFTC requires. I note that EU capital rules address liquidity, operational risks, as well as other risks arising from derivatives exposures, through other mechanisms. I look forward to public comment on the comparability of the approaches.

In these areas, and others, public comments will be tremendously beneficial. I approve.

Appendix 5—Statement of Commissioner Caroline D. Pham in Support of Proposed Order and Request for Comment on Comparability Determination for EU Nonbank Swap Dealer Capital and Financial Reporting Requirements

In order to implement Title VII of the Dodd-Frank Act and create a comprehensive regulatory framework for over-the-counter (OTC) derivatives markets, the Commodity Futures Trading Commission (Commission or CFTC) promulgated rules for the registration of swap dealers in 2012.[1] Since that time, the Commission has issued dozens of rules for the oversight of swap dealers and their activities.[2] Because swaps markets are global and involve cross-border transactions, and both U.S. and non-U.S. swap dealers must register with the CFTC, the Commission has also made 12 comparability determinations in order to provide for substituted compliance for non-U.S. swap dealers with home jurisdiction regulations that are comparable and comprehensive.[3]

I support the Commission's proposed order and request for comment on a comparability determination for European Union (EU) nonbank swap dealer capital and financial reporting requirements. I would like to first deeply thank the staff of the Market Participants Division (MPD) for their hard work on these incredibly technical and detailed requirements, involving many hours of engagement with the European Central Bank (ECB), Autorité de contrôle prudentiel et de resolution (ACPR), and CFTC registrants. This proposal is the staff's third proposed capital adequacy and financial reporting comparability determination in the past year, after Japan[4] and Mexico,[5] with the UK to be addressed next.

I want to remind you that this decidedly unglamorous work by CFTC staff creates the underpinnings of global markets that enable governments, central banks and commercial banks, asset managers and investors, and companies to manage the risks inherent in international flows of capital that fuel economic growth and prosperity in both developed and developing economies. I commend these MPD staff members for their dedication and work on this proposal: Amanda Olear, Tom Smith, Rafael Martinez, Liliya Bozhanova, Joo Hong, and Justin McPhee.

Conditions for Notice Requirements

I especially thank the staff for addressing my comments on the prior capital and financial reporting comparability determination proposals, by providing more clarity on the conditions for notice requirements for certain defined events such as undercapitalization or breaches of capital levels. Generally, the proposal states that written notice to the CFTC and the National Futures Association (NFA) is required within 24 hours of when the firm ''knows or should have known'' of the defined event.

I am pleased that this proposal solves the guessing game and now makes clear that the ''should have known'' part of the timing standard for the filing of the proposed notice is ''intended to cover facts and circumstances that should reasonably lead the firm to believe'' that the defined event has occurred. This additional clarity will allow EU nonbank swap dealers to implement reasonably designed notification processes to comply with the proposed conditions.

In addition, I thank the staff for providing more clarity in response to my feedback on conditions for written notice within 24 hours to the CFTC and NFA if an EU nonbank swap dealer fails to maintain current books and records. I am pleased that this proposal now makes clear that the proposed notice requirement applies to books and records with respect to the EU nonbank swap dealer's financial condition and financial reporting requirements, such as ''current ledgers or other similar records'' regarding asset, liability, income, expense, and capital accounts ''in accordance with the accounting principles accepted by the relevant competent authorities.''

Without this substantive clarification, the proposed notice requirement could have been so overbroad as to require 24 hours' written notice to the CFTC and NFA for *any* failure to maintain books and records. The Commission could have been inundated by a nonstop deluge of written notices for recordkeeping lapses, no matter how immaterial.

Market Fragmentation and Good Practices for Cross-Border Regulation

The importance of substituted compliance and these comparability determinations for global swaps markets cannot be overstated. As noted by the International Organization of Securities Commissions (IOSCO) in its 2019 report on *Market Fragmentation and Cross-Border Regulation*[6] under the Japanese Presidency of the G20, unintended market fragmentation[7] can be harmful to wholesale securities and derivatives markets.

Despite its flaws and inauspicious beginnings,[8] the CFTC's 2013 Cross-Border Guidance is the foundation for today's $600 trillion notional swaps markets[9] that spans

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Goldsmith Romero Regarding the Proposal for Strong Capital Requirements and Financial Reporting for Swap Dealers in Japan available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement072722b. See also* CFTC Commissioner Christy Goldsmith Romero, *Promoting the Resilience of Swap Dealers in Mexico Through Strong Capital Requirements and Financial Reporting,* (Nov. 10, 2022) Statement of Commissioner Christy Goldsmith Romero on a Proposed Comparability Determination for Capital available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatment111022b.*

[9] This CFTC capital rule substantially exceeds the EUR 5 million minimum capital required under EU capital rules.

[1] *See* Registration of Swap Dealers and Major Swap Participants (Final Rule), 77 FR 2613 (Jan. 19, 2012), *https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2012-792a.pdf.*

[2] These rules range from business conduct standards to thresholds for registration with the CFTC. *See, e.g.,* Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties (Final Rule), 77 FR 9734 (Feb. 17, 2012).

[3] *See generally,* 7 U.S.C. 2(i). The Commission created the comparable and comprehensive standard for substituted compliance determinations. *See* Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act (Proposed Rule), 77 FR 41214, 41230 (July 12, 2012). The comparable standard is now in CFTC regulations 23.23 for swap dealer registration, 23.160 for margin, and 23.106 for capital. *See* 17 CFR 23.23, 23.160, and 23.106. The CFTC maintains its list of comparability determinations for substituted compliance purposes at *https://www.cftc.gov/LawRegulation/DoddFrankAct/CDSCP/index.htm.*

[4] Commissioner Pham ''Concurring Statement of Commissioner Caroline D. Pham Regarding Proposed Swap Dealer Capital and Financial Reporting Comparability Determination'' (July 27, 2022).

[5] Commissioner Pham ''Concurring Statement of Commissioner Caroline D. Pham Regarding Proposed Order and Request for Comment on an Application for a Capital Comparability Determination'' (Nov. 10, 2022).

[6] IOSCO Report ''Market Fragmentation & Cross Border Regulation'' (June 2019), *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD629.pdf.*

[7] Both the Financial Stability Board and IOSCO have defined ''market fragmentation'' as ''global markets that break into segments, either geographically or by type of products or participants.'' *Id.* at 6–9.

[8] Commissioner O'Malia ''Statement of Dissent by Commissioner Scott D. O'Malia, Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations and Related Exemptive Order'' (July 12, 2013), *https://www.cftc.gov/PressRoom/SpeechesTestimony/omaliastatement071213b.*

[9] *See* Bank for International Settlements ''OTC derivatives statistics at end-June 2022'' (Nov. 30, 2022), *https://www.bis.org/publ/otc_hy2211.pdf.*

the globe from one financial markets trading hub to another—New York, to London, Paris, Frankfurt, Tokyo, Hong Kong, Singapore, and beyond. The Commission and its staff have labored for the past 10 years to improve upon the Cross-Border Guidance and promote international regulatory harmonization through substituted compliance comparability determinations, rulemakings, guidance, advisories, and no-action letters. These efforts have helped to address features and indicators of market fragmentation set forth in the IOSCO 2019 report:

- Multiple liquidity pools in market sectors or for instruments of the same economic value which reduces depth and may reduce firms' abilities to diversify or hedge their risks and result in similar assets quoted at significantly different prices
- Reduction in cross-border flows that would otherwise occur to meet demand
- Increased costs to firms in both risks and fees
- Potential scope for regulatory arbitrage or hindrance of effective market oversight

I am pleased that the Commission is finishing what it started back in 2012 by taking these steps to complete comparability determinations necessary to providing a substituted compliance regime over the whole of the CFTC's swaps regulation. As I have stated before, global collaboration and coordination are critical to promoting regulatory cohesion and financial stability, and mitigating market fragmentation and systemic risk.[10]

I continue to believe that the CFTC should take an outcomes-based approach to substituted compliance that promotes efficient global markets and preserves access for U.S. persons to other markets. In particular, I encourage the Commission, its staff, and our regulatory counterparts around the world to adhere to the recommendations in IOSCO's 2020 report on *Good Practices on Processes for Deference,* which was developed to provide solutions to the challenges and drivers of market fragmentation.[11]

As set forth in the IOSCO 2020 report, such processes for deference[12] are typically outcomes-based; risk-sensitive; transparent; cooperative; and sufficiently flexible.

Conclusion

When used appropriately, substituted compliance can take a balanced approach to achieving these key objectives: (1) facilitating market access to foreign market participants seeking to conduct business on a cross-border basis; (2) maintaining appropriate levels of market participant protection; and (3) managing systemic risks.[13] I commend the staff for striking the appropriate balance in this proposed order and request for comment on a comparability determination for EU nonbank swap dealer capital and financial reporting requirements. I encourage the public to comment on this, and to especially note any areas where the proposed conditions may be unnecessarily burdensome, create operational complexity, or present implementation challenges.

[FR Doc. 2023–13446 Filed 6–26–23; 8:45 am]

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[10] Commissioner Pham ''Opening Statement of Commissioner Caroline D. Pham before the Global Markets Advisory Committee'' (Feb. 13, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement021323.*

[11] IOSCO Report, ''Good Practices on Processes for Deference'' (June 2020), *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD659.pdf.*

[12] IOSCO uses ''deference'' as an ''overarching concept to describe the reliance that authorities place on one another when carrying out regulation or supervision of participants operating cross-border.'' *Id.* at 1. The CFTC's use of substituted compliance for swaps regulation is an example of regulatory deference mechanisms.

[13] These considerations for regulatory authorities were recognized by IOSCO in its 2015 *Report on Cross-Border Regulation. See* IOSCO Report, ''IOSCO Task Force on Cross-Border Regulation Final Report'' (Sept. 2015), *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD507.pdf.*

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