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Presidential Documents

Title 3—

The President

Proclamation 10601 of July 21, 2023

Made in America Week, 2023

By the President of the United States of America

A Proclamation

American workers are the best in the world; and today, with a historic Investing in America agenda, we are proving that the phrase ''Made in America'' is not just a slogan—it is a reality. During Made in America Week, we celebrate the workers, unions, and innovators who power our Nation's prosperity and make it possible for America to once again lead the world in manufacturing.

American manufacturing has long been the backbone of our economy. But for decades, companies moved jobs and production overseas, hollowing out the middle class, rewarding wealth instead of work, leaving our supply chains vulnerable, and robbing countless communities of a sense of pride and self-worth. I ran for President to change that—and thanks to the historic legislation that we have passed in these last 2 years, it is happening. Those laws form the foundation of our Investing in America agenda, which has already attracted hundreds of billions of dollars in private investment and created nearly 800,000 new manufacturing jobs in everything from semiconductors and electric car batteries to clean energy technology and more.

Our Bipartisan Infrastructure Law makes a once-in-a-generation investment in rebuilding America's roads, bridges, railways, ports, airports, and water systems, using American-made iron, steel, manufactured products, and construction materials. And because this bill included provisions like $7.5 billion to build a national network of 500,000 electric vehicle charging stations with American-made equipment, we have seen a boom in manufacturing and private investment here at home. Our historic CHIPS and Science Act brings semiconductor manufacturing home, protecting national security and boosting our supply of those tiny computer chips that power everything from cell phones and computers to washing machines. Our Inflation Reduction Act, meanwhile, makes our biggest investment in fighting the climate crisis in history, with tax credits to boost demand for American-made clean energy technology. We are expanding Registered Apprenticeship and pre-apprenticeship programs, training the next generation of American workers to lead the world in these new industries throughout the 21st century. Last month, we launched www.Invest.gov, an interactive website showing the historic public and private investments that these laws are bringing to States and territories across the country so Americans everywhere can see ''Made in America'' progress in their own communities and feel new hope and pride reborn.

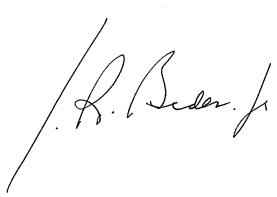
At the same time, we are using the purchasing power of the Federal Government—the largest buyer of consumer goods in the world—to directly boost demand for American-made products. During my first week as President, I signed an Executive Order directing agencies to tighten Buy America and Buy American policies, close loopholes, increase coordination, and ensure transparency. We also enacted the biggest change to the Buy American Act in nearly 70 years, now requiring a record 60 percent of the value of products' components to be American-made, which will reach 75 percent by 2029. We are also using a federally funded national network—the Manufacturing Extension Partnership—to increase the capabilities of small- and

medium-sized domestic manufacturers so that they win more Federal contracts. And to help all American businesses find these opportunities, we launched www.MadeinAmerica.gov.

These historic actions are making sure American workers make American goods on American soil—a key part of my Administration's mission to rebuild our economy from the middle out and bottom up, not the top down. America has always been a can-do country full of possibilities, and together we will keep working to make our economy the most competitive and innovative in the world, while leaving no one behind. This week, we can all feel new pride in those three powerful words—Made in America.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim July 23 through July 29, 2023, as Made in America Week. I call upon all Americans to observe this week by celebrating Made in America and supporting American workers and domestic businesses that are the backbone of building a future here in America.

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



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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3555

Single Family Housing Section 502 Guaranteed Loan Program

AGENCY: Rural Housing Service, USDA.

ACTION: Announcement of pilot programs.

SUMMARY: The Rural Housing Service (RHS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is announcing the implementation of two pilot programs for the Section 502 Single Family Housing Guaranteed Loan Program (SFHGLP), which are the Tribal Property Valuation Pilot Program and the Tribal Rehabilitation Pilot Program. Both pilot programs will provide flexible options for obtaining financing on tribal lands, one with a flexible appraisal option and the other permitting rehabilitation loans for homeowners. The Agency's intention is to evaluate the existing regulations, expand opportunities for economic development, and improve the quality of life in rural tribal communities. Details about these two pilot programs are provided in this notification.

DATES: The effective date of the two pilot programs is July 26, 2023. The duration of both pilot programs is anticipated to continue until July 28, 2025, at which time the RHS may extend the pilot programs (with or without modifications) or terminate them depending on the workload and resources needed to administer the programs, feedback from the public, and the effectiveness of the programs. RHS will notify the public if the pilot programs are extended or terminated.

FOR FURTHER INFORMATION CONTACT: For general information about the pilot programs, contact Laurie Mohr, Finance and Loan Analyst, Policy, Analysis, and Communications Branch, Single Family Housing Guaranteed Loan Division, Rural Development, U.S. Department of Agriculture, Email: *laurie.mohr@usda.gov;* Phone: (314) 679–6917.

SUPPLEMENTARY INFORMATION:

Authority

Title V, section 502 of the Housing Act of 1949, as amended; 42 U.S.C. 1472.

Background

The RHS is committed to helping improve the economy and quality of life in rural areas by offering a variety of programs. The Agency offers loans, grants, and loan guarantees to help create jobs, expand economic development, and provide critical infrastructure investments. RHS also provides technical assistance loans and grants by partnering with agricultural producers, cooperatives, Indian tribes, non-profits, and other local, state, and Federal agencies.

Affordable housing is essential to the vitality of communities in rural America. RHS's Single Family Housing Programs give families and individuals the opportunity to purchase, build, repair their existing home, or to refinance their current mortgage under certain criteria. Eligibility for these loans, loan guarantees, or grants is based on income, which varies according to the average median income for each eligible rural area. Through various program options, RHS offers qualifying individuals and families the opportunity to purchase or build a new single family home with no money down, to repair their existing home, or to refinance their current mortgage under certain qualifying circumstances. There are also programs to assist non-profit entities in their efforts to provide new homes or home repair to qualifying individuals and families. One such program is the Section 502 Guaranteed Loan Program, implemented under 7 CFR part 3555, which provides a 90% loan note guarantee to approved lenders which are intended to assist low- and moderate-income households with the opportunity to own adequate, modest, decent, safe, and sanitary dwellings as their primary residence in eligible rural areas.

The SFHGLP offers applicants without sufficient resources to provide the necessary housing on their own account, and unable to secure the credit necessary for such housing from other sources upon terms and conditions, which the applicant can reasonably be expected to fulfill without the guarantee, an opportunity to acquire, build, rehabilitate, improve, or relocate dwellings in rural areas. Eligible applicants may purchase, build, rehabilitate, improve, or relocate a dwelling in an eligible rural area. Applicant eligibility for this program is determined by an approved lender.

The RHS is exploring ways the SFHGLP may be able to assist in breaking down barriers in lending on tribal land. One such way is to use its statutory authority to authorize limited demonstration programs (*i.e.,* pilot programs) as allowed by law. The objective of these pilot programs is to test new approaches to offering housing under the statutory authority granted to the Secretary, as set forth in 7 CFR 3555.2(b) (Demonstration programs). Such demonstration programs may not be consistent with some of the provisions contained in 7 CFR part 3555. However, any SFHGLP requirements that are statutory will remain in effect. These pilot programs are intended to assist more eligible very low to moderate income applicants seeking to purchase or rehabilitate affordable housing on tribal land. This notification outlines two new pilot programs under the Section 502 SFHGLP, the Tribal Property Valuation Pilot Program and the Tribal Rehabilitation Pilot Program.

Issues in Lending on Tribal Land

Native American stakeholders have identified significant barriers regarding mortgage lending on tribal land. These include obtaining accurate and fair priced appraisals and being able to secure funds to improve a dwelling even when the dwelling is owned without any encumbrances.

With the unique aspects of real estate located on tribal land, it has become increasingly difficult to secure a traditional appraisal that is both accurate and completed at a reasonable price. There are very few local appraisers and lenders are forced to hire appraisers from different counties, and sometimes different states, to complete appraisal reports. These appraisals often yield reports that are very expensive and frequently completed by

individuals that are unfamiliar with the local market area. The local market area will have few or no comparable housing units. The result can be an appraisal report that is not accurate, with a value that is not reflective of the true property value, or the report is not completed to industry standards. The Tribal Property Valuation Pilot Program intends to provide more individuals the ability to purchase homes on tribal lands by allowing an alternative appraisal option to obtain the value of the property.

On tribal lands, it is typical to hand down dwellings from one generation to another and many of these dwellings need extensive renovations. In many situations, the property does not have liens. Over time, many of these homes require substantial repairs or restoration. The current SFHGLP regulations do not allow RHS to finance these properties unless the applicant was to purchase the property, instead of inheriting the home, or unless they currently have an existing Single Family Housing Guaranteed Loan.

The National Congress of American Indians (NCAI) [1] estimates that 40% of housing on tribal land is considered substandard, with less than 50% connected to public sewer systems and 16% lacking indoor plumbing. The U.S. Department of Health and Human Services [2] reported that as of 2019, an estimated 5.7 million people living in the United States are American Indian and/or Alaska Native, with approximately 22% living on tribal land. The median household income for American Indian and Alaska Native families is $46,906, compared to $71,664 for non-Hispanic white households. According to the World Population Review, 33 percent of all Native Americans live in poverty.[3] Consequently, many live in homes on tribal lands that are overcrowded and in poor condition.

These statistics show there is a significant need for affordable financial resources to be made available to improve housing conditions on tribal land. Currently, the SFHGLP can assist with purchase transactions on tribal land, which may provide funding for repairs at acquisition. The SFHGLP, however, cannot assist those that already own their own home on tribal land. The Tribal Rehabilitation Pilot Program intends to help those that currently own a home without encumbrances and need to make improvements to ensure these individuals have adequate and safe housing for their families on tribal land.

These pilot programs will provide additional flexibility in lending on tribal lands. One pilot program offers an alternative appraisal option and the other offers funding to rehabilitate homes owned without liens or encumbrances that will facilitate additional homeownership opportunities and allow others to remain in improved and safer homes on tribal land.

Discussion of the Two Pilot Programs

(1) Tribal Property Valuation Pilot Program

The implementation of the Tribal Property Valuation pilot program is an alternative approach to obtain values when providing financing in remote rural properties on tribal lands. Currently, the SFHGLP regulation at 7 CFR 3555.107(d) (Appraisals) requires the lender to ''supply a current appraisal report of the property for which the guarantee is requested.'' Furthermore, 7 CFR 3555.107(d)(6) (Appraisals) specifies that the ''[u]se of an alternative approach to value for appraisals performed in remote rural areas, on tribal lands, or where a lack of market activity exists may be accepted at the Agency's discretion.'' Qualified appraisers that understand and are in close proximity to tribal land in rural areas are limited. This forces lenders to often use appraisers that must travel long distances. Many times, the appraisal report will cost substantially more, and, in some cases, the appraiser will not be familiar with the local market which will affect the accuracy of the appraisal report itself.

Typically, Tribally Designated Housing Entities (TDHE), Tribal Housing Authorities (THA), Tribal Housing Programs, and other tribal organizations have experience determining property values, adjustments, satisfactory comparables, cost of improvements, etc. on tribal land. Many Tribes have established relationships with appraisers that are familiar with their market area and trends, however many times travel is required to complete a traditional appraisal report. Additionally, the Agency has appraisal staff who are familiar with lending on tribal land. Building partnerships between Rural Development programs and appraisal staff, lenders, tribal organizations, and appraisers to develop a method to obtain accurate appraisals on tribal land would eliminate a significant barrier in tribal mortgage lending and provide a path to increase affordable homeownership opportunities for tribal members. The alternative method would be a desktop appraisal, as explained in the eligibility requirements section of this notification.

(i) *Eligibility Requirements.* Approved lenders in the SFHGLP do not require additional approval to participate in this pilot program. Under 7 CFR 3555.107(d)(6), (Appraisals) the ''[u]se of an alternative approach to value for appraisals performed in remote rural areas, on tribal lands, or where a lack of market activity exists may be accepted at the Agency's discretion.'' This pilot program will allow lenders to provide property information obtained from a qualified entity to either a qualified appraiser or the Agency for review and completion of a desktop appraisal to accurately determine the appraised value of properties located on tribal land. To be eligible for financing under the Tribal Property Valuation Pilot Program, all program requirements of 7 CFR part 3555 must be met, with the following exceptions and/or considerations:

(A) property must be located on tribal land;

(B) property must meet the existing dwelling property standards and new construction inspection requirements described in 7 CFR 3555.202 (Dwelling requirements);

(C) the site must have acceptable water and wastewater disposal systems to ensure the property is decent, safe, sanitary, and meets community standards. Inspections of private water and wastewater disposal systems are required in accordance with 7 CFR 3555.201 (Site requirements);

(D) fees charged by the qualified entity providing the property documentation required to complete the appraisal constitute an eligible loan cost under 7 CFR 3555.101(b) (Eligible costs); and

(E) the applicant(s) and property must meet all other criteria set forth in 7 CFR part 3555.

(ii) *Desktop Appraisals.* Based on the availability of qualified appraisers, the lender may use one of the following two options to obtain a desktop appraisal on tribal land:

Option 1—When a qualified appraiser is readily available to complete a desktop appraisal, at reasonable terms, the following process will be used:

(A) A qualified entity, as determined by the lender and appraiser, will provide all required property documentation to the lender for consideration. Examples of qualified

[1] *https://www.ncai.org/policy-issues/economic-development-commerce/housing-infrastructure.*

[2] *https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=62.*

[3] Native American Issues Today | Current Problems & Struggles 2022—*https://www.powwows.com/issues-and-problems-facing-native-americans-today/.*

entities include TDHE, THA, or other entities familiar with housing construction, repair, and conditions on tribal lands. Documentation provided by a party who has a financial interest in the sale of the property may be accepted if the appraiser verifies such data from a disinterested source.

(B) The lender will submit the required property *documentation to the appraiser for review. The appraiser will review the documentation provided by the lender and determine if the information is accurate, reliable, and sufficient to produce a creditable report.

(C) Once all necessary information has been received, the appraiser will complete a desktop appraisal. Upon completion, the appraisal will be provided to the lender for review and acceptance. The appraisal will be included in the complete loan application package submitted to Rural Development for a Conditional Commitment request.

(D) If the lender determines this option is not available, they may use option two.

Option 2—When the lender determines a qualified appraiser is not readily available to complete a desktop appraisal at reasonable terms, a Rural Development Staff Appraiser will become involved, and the following process will be used:

(A) A qualified entity, as determined by the lender and concurred with by Rural Development, will provide all required property documentation to the lender for consideration. Documentation provided by a party who has a financial interest in the sale or financing of the property may be accepted if the Rural Development Staff Appraiser verifies such data from a disinterested source.

(B) The lender will submit the required property *documentation to Rural Development for review. The Rural Development Staff Appraiser will review the documentation provided by the lender and determine if the information is accurate, reliable, and sufficient to produce a creditable report. Once all necessary information has been received, the Rural Development Staff Appraiser will complete a desktop appraisal.

(C) When an approved lender needs to use RD for the desktop appraisal, they will email *SFH.GLPDTA@USDA.GOV* with their lender name, lender number, contact name, phone number, email address, and property address. A staff member from the Agency will complete the request for the appraisal division to complete a desktop appraisal for the transaction on tribal land. The request will be placed on the national SharePoint for appraisal requests to be completed by the RD team of staff appraisers. The RD appraisal division uses SharePoint to track all appraisal requests and will forward a request out to the lender with all items needed. The appraisal will be completed with USDA identified as the client.

(D) Upon completion, a copy of the appraisal prepared for Rural Development will be provided to the lender and the Policy, Analysis and Communication (PAC) Branch. The lender will have the appraisal available to submit with the rest of the file to the Origination and Processing Division (OPD) in the complete loan application package for a Conditional Commitment request.

(iii) **Documentation.* At a minimum, include the following, as applicable:

(A) address of property;

(B) legal description;

(C) assessor data from local website;

(D) status of utilities (present, working condition, etc.);

(E) site plan-approximate well and septic location;

(F) all property structures and any improvements;

(G) copy of floor plan with exterior dimensions and approximate interior walls;

(H) purchase agreement;

(I) seller disclosure statement;

(J) copy of specifications, including materials list for construction and interior finishes (*for new constructions*);

(K) scope of rehabilitation/repairs to be completed;

(L) copy of specifications including materials list for repairs and interior finishes;

(M) copy of land leases;

(N) photos of site and street providing access to the site;

(O) prior appraisal assignment results if available;

(P) photos of existing home; exterior front and back, interior photos of each room, interior and exterior photo repair, and rehabilitation items necessary;

(Q) street providing access;

(R) any information deemed relevant to accurately value the property.

(iv) *Submission to the Agency.* These guaranteed loan applications must be manually underwritten; however, the documents may be uploaded through Guaranteed Underwriting System (GUS). A job aid for this type of submission is available in our USDA LINC Training and Resources Library in the ''Loan Origination'' menu at the following link: *https://www.rd.usda.gov/resources/usda-linc-training-resource-library/loan-origination.* Use of the job aid is optional and not required. The lender will use the Lender Loan Closing (LLC) system to load the loan closing documents.

When option 2 is utilized, thus the appraisal is prepared by Rural Development, the requirements of 7 CFR 3555.108(d)(1)(iv) will be waived. All other requirements of 7 CFR 3555.108(d)(1) remain in effect. In all instances, the lender remains responsible for the accuracy of the property documentation provided to complete the appraisal and to ensure compliance with all investor requirements that may apply.

Please be aware investors may require a note be made at loan delivery that a desktop appraisal was used as the appraisal method in the mortgage transaction. The lender is responsible for ensuring all investor requirements are met.

(2) Tribal Rehabilitation Pilot Program

The implementation of the Tribal Rehabilitation pilot program is intended to focus on providing a rehabilitation loan program for homes free of encumbrances on tribal lands. The Agency is proposing to provide loan funds to finance renovations of an existing home without being part of an acquisition, provided the property is on tribal land. Consistent with the statute, the SFHGLP regulation 7 CFR 3555.101(a) (Eligible purposes) identifies the following eligible purposes which loan funds may be utilized for: (1) the construction or purchase of a new dwelling; (2) the cost of acquisition of an existing dwelling; (3) the cost of repairs associated with the acquisition of an existing dwelling; or (4) acquisition and relocation of an existing dwelling.

In addition, 7 CFR 3555.101(d) (Refinancing) authorizes utilizing loan funds for refinancing transactions, in limited circumstances, however funding for repairs associated with a refinance transaction is not permitted.

With many homes on tribal lands being passed on from one generation to the next, many of these homes need renovations to make them safe and bring them up to current codes. Additionally, many of these properties are free of encumbrances, which would enable this pilot to benefit many homes on tribal lands. The pilot program will allow individuals to remain in safe and improved housing on tribal lands and improve their quality of life.

(i) *Eligibility Requirements.* Approved lenders in the SFHGLP do not require additional approval to participate in this pilot program. The regulation at 7 CFR 3555.101(a) (Eligible purposes) allows the cost of repairs associated with the acquisition of an existing dwelling.

Since the inception of the program, the SFHGLP has restricted loan funds from being used to finance solely the rehabilitation of an existing home, without being part of an acquisition. Since many properties on tribal land need significant rehabilitation, this pilot program will allow loan funds to be utilized to finance repairs to existing dwellings located on tribal land that are owned and are free of encumbrances.

To be eligible for financing under the pilot, all program requirements of 7 CFR part 3555 must be met, with the following exceptions and/or considerations:

(A) The home must be located on tribal land;

(B) The home must be owned by the proposed applicant(s), with no outstanding mortgages encumbering or other liens on the property;

(C) The guaranteed loan must have first lien position at closing. The acceptable lien position requirements outlined in 7 CFR 3555.204 (Security requirements) apply for the purpose of this pilot program;

(D) The transaction will be considered as a ''purchase'' transaction;

(F) The loan amount cannot exceed the as-improved appraised value of the property, only to the extent that the excess represents the financed guarantee fee;

(G) Additional guidance on appraisal requirements may be found in 7 CFR 3555.107(d) (Appraisals);

(H) Property and construction requirements described in 7 CFR 3555.105 (Combination construction and permanent loans) apply;

(I) The site must have acceptable water and wastewater disposal systems to ensure the property is decent, safe, sanitary, and meets community standards.

(J) Inspections of private water and wastewater disposal systems are required in accordance with 7 CFR 3555.201(b) (Site standards);

(K) Upon completion of the repairs, the home must meet the minimum property requirements of Department of Housing and Urban Development (HUD) Handbook 4000.1;

(L) Properties must have adequate hazard insurance on the collateral to protect against fire and weather-related damage (7 CFR 3555.252(b) (Payment of taxes and insurance), and an escrow account for property taxes (if applicable) and hazard insurance will be maintained by the lender.

(M) Manufactured home requirements.

(1) Repairs to existing manufactured homes constitute an eligible loan purpose under the pilot program when the requirements of 7 CFR 3555.208 are met, including: The manufactured home was constructed on or after January 1, 2006; in conformance with the Federal Manufactured Home Construction and Safety Standards (FMHCSS), as evidenced by an affixed Housing and Urban Development (HUD) Data Plate and Certification Label.

(2) The unit inspection is required using one of the following two methods:

Option 1—Form HUD–309, ''HUD Manufactured Home Installation Certification and Verification Report,'' completed in accordance with 24 CFR 3286.507(b) by a party qualified as required by 7 CFR 3286.511 such as: a manufactured home or residential building inspector employed by the local authority having jurisdiction over the site of the home, provided that the jurisdiction has a residential code enforcement program; a professional engineer; a registered architect; a HUD-accepted Production Inspection Primary Inspection Agency (IPIA) or a Design Approval Primary Inspection Agency (DAPIA), or an International Code Council (ICC) certified Inspector.

Option 2—Obtain a certification that the foundation design meets the requirements of either HUD Handbook 4930.3G or HUD Publication 7584, which updated and revised the pre-1996 version of HUD Handbook 4930.3G, ''Permanent Foundations Guide for Manufactured Housing (PFGMH).'' Certifications referencing either Publication 7584 or Handbook 4930.3G are acceptable. The foundation certification must be from a licensed professional engineer, or registered architect, who is licensed/registered in the state where the manufactured home is located and must attest to compliance with current guidelines of the PFGMH. The certification must be site specific and contain the engineer's or registered architect's signature, seal and/or state license/certification number. This certification can take place of Form HUD–309.

(3) The unit must not have had any alterations or modifications to it since construction in the factory, except for porches, decks or other structures which were built to engineered designs or were approved and inspected by local code officials.

(4) The unit must not have been previously installed on a different homesite.

(5) The unit must have a floor area of not less than 400 square feet.

(6) The unit must meet the Comfort Heating and Cooling Certificate Uo (coefficient of heat transmission) Value Zone for the location.

(7) The towing hitch and running gear must have been removed.

(8) The manufactured home must be classified and taxed (if applicable) as real estate.

(9) The remaining economic life of the property must meet or exceed the 30-year term of the proposed loan.

(N) The applicant(s) and property must meet all other criteria set forth in 7 CFR part 3555. Loan servicing will be conducted in accordance with 7 CFR part 3555.

(ii) *Submission to the Agency.* These Guaranteed loan applications must be manually underwritten; however, the documents may be uploaded through GUS. A job aid for this type of submission is available in our USDA LINC Training and Resources Library in the ''Loan Origination'' tab or directly here: *https://www.rd.usda.gov/resources/usda-linc-training-resource-library/loan-origination.* Use of the job aid is optional and not required.

The lender will use the Lender Loan Closing (LLC) system to load the loan closing documents. The Loan Note Guarantee will be issued prior to the completion of the repairs. Once the repairs are completed, the lender is responsible to go back in the LLC System and complete the Lender Administration Page. A job aid for this task is available in our USDA LINC Training and Resources Library in the ''Loan Closing'' tab or directly here: *https://www.rd.usda.gov/resources/usda-linc-training-resource-library/loan-closing.* Use of the job aid is optional and not required.

Paperwork Reduction Act

The regulatory waivers for this pilot program contain no new reporting or recordkeeping burdens under Office of Management and Budget (OMB) control number 0575–0179 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or

funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

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

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

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

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

(3) *Email: Program.Intake@usda.gov.*

Cathy Glover,

Acting Administrator, Rural Housing Service, Rural Development, USDA.

[FR Doc. 2023–15759 Filed 7–25–23; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2019–BT–TP–0026]

RIN 1904–AE60

Energy Conservation Program: Test Procedure for Dehumidifiers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (''DOE'') is amending its test procedure for dehumidifiers to reference the current version of an applicable industry standard; change the rating test period to be two hours; permit the use of sampling trees in conjunction with an aspirating psychrometer or relative humidity sensor; and provide additional specification for testing dehumidifiers with network capabilities. This rulemaking fulfills DOE's obligation to review its test procedures for covered products at least once every seven years.

DATES: The effective date of this rule is August 25, 2023. The amendments will be mandatory for product testing starting January 22, 2024.

The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register on August 25, 2023. The incorporation by reference of certain other materials listed in this rule were approved by the Director of the Federal Register as of April 6, 2012 and August 31, 2015.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket web page can be found at *www.regulations.gov/docket/EERE-2019-BT-TP-0026.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Dr. Carl Shapiro, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–5649. Email: *carl.shapiro@ee.doe.gov.*

Mr. Peter Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE maintains previously approved incorporations by reference and incorporates by reference the following industry standard into part 430:

AHAM Standard DH–1–2022, Energy Measurement Test Procedure for Dehumidifiers, copyright 2022 (''AHAM DH–1–2022'').

A copy of AHAM DH–1–2022 can be obtained from the Association of Home Appliance Manufacturers (''AHAM''), 1111 19th Street NW, Suite 402, Washington, DC 20036, (202) 872–5955; or *www.aham.org.*

For a further discussion of this standard, see section IV.N of this document.

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I. Authority and Background

Dehumidifiers are included in the list of ''covered products'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6293(b)(13); 42 U.S.C. 6295(cc)) DOE's energy conservation standards and test procedures for dehumidifiers are

currently prescribed at 10 CFR 430.32(v); and 10 CFR part 430, subpart B, appendix X (''appendix X'') and appendix X1 (''appendix X1''), respectively. The following sections discuss DOE's authority to establish test procedures for dehumidifiers and relevant background information regarding DOE's consideration of test procedures for this product.

A. Authority

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B of EPCA [2] established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include dehumidifiers, the subject of this document. (42 U.S.C. 6291(34); 42 U.S.C. 6293(b)(13); 42 U.S.C. 6295(cc))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA (42 U.S.C. 6295(s)), and (2) making other representations about the efficiency of those products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle (as determined by the Secretary) or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including dehumidifiers, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A))

If the Secretary determines, on her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. (42 U.S.C. 6293(b)(1)(A)(ii))

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, unless the current test procedure already incorporates the standby mode and off mode energy consumption, or if such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)(A)) If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures for the covered product, if a separate test is technically feasible. *Id.* Any such amendment must consider the most current versions of the IEC 62301 [3] and IEC Standard 62087 [4] as applicable. *Id.*

DOE is publishing this final rule in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

B. Background

DOE last amended the test procedure for dehumidifiers at appendix X on July 31, 2015 (''July 2015 Final Rule''), to provide technical clarifications and improve repeatability of the test procedure. 80 FR 45801. The July 2015 Final Rule also established a new test procedure for dehumidifiers at appendix X1 that, among other things, changed the test conditions for portable dehumidifiers and established separate provisions for testing whole-home dehumidifiers. *Id.* Manufacturers were not required to use appendix X1 until the compliance date of a subsequent amendment to the energy conservation standards for dehumidifiers. On June 13, 2016, DOE published a final rule establishing amended energy conservation standards for dehumidifiers, for which compliance, and the use of appendix X1, was required beginning June 13, 2019. 81 FR 38337.

On June 30, 2021, DOE published in the **Federal Register** an early assessment review request for information (''June 2021 RFI'') in which it sought data and information regarding issues pertinent to whether an amended test procedure would more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle for the product without being unduly burdensome to conduct. 86 FR 34640. DOE also requested comments on specific topics relevant to the proposed dehumidifier test procedure, including updates to industry test standards, variable-speed dehumidifiers, psychrometer setup, network functions, and ventilation air for whole-home dehumidifiers. *Id.*

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[4] IEC 62087, *Audio, video and related equipment—Methods of measurement for power consumption* (Edition 1.0, Parts 1–6: 2015, Part 7: 2018).

On June 9, 2022, DOE published in the **Federal Register** a notice of proposed rulemaking (''June 2022 NOPR'') proposing to reference the current version of an applicable industry standard, allow the rating test period to be two or six hours, permit the use of a sampling tree in conjunction with an aspirating psychrometer or relative humidity sensor, and specify for dehumidifiers with network capabilities that all network functions must be disabled throughout testing. DOE requested comments from interested parties on the proposal. 87 FR 35286. DOE held a public meeting related to the June 2022 NOPR on July 12, 2022.

In response to the June 2022 NOPR, DOE received comments from the interested parties listed in Table II.1.

TABLE II.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE JUNE 2022 NOPR

Commenter(s)	Reference in this final rule	Comment No. in the Locket	Commenter type
Anonymous	Anonymous	12	Individual.
Intertek Laboratories	Intertek	13	Test Laboratory.
Aprilaire, a division of Research Products Corporation	Aprilaire	14	Manufacturer.
Madison Indoor Air Quality	MIAQ	15	Manufacturer.
GE Appliances	GEA	16	Manufacturer.
Association of Home Appliance Manufacturers	AHAM	17	Trade Association.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Consumer Federation of America, Natural Resources Defense Council, Northwest Energy Efficiency Alliance.	Joint Commenters	18	Efficiency Organizations.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[5] To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the July 12, 2022 public meeting, DOE cites the written comments throughout this final rule. Any oral comments provided during the webinar that are not substantively addressed by written comments are summarized and cited separately throughout this final rule.

II. Synopsis of the Final Rule

In this final rule, DOE amends the test procedures for dehumidifiers as follows:

(1) Incorporate by reference the most recent version of the relevant industry test procedure, AHAM DH–1–2022, ''Energy Measurement Test Procedure for Dehumidifiers'';

(2) Amend the definitions at 10 CFR 430.2 for ''portable dehumidifier'' and ''whole-home dehumidifier'' to reference the manufacturer instructions available to a consumer as they relate to the ducting configuration and installation;

(3) Change the rating test period in sections 4.1.1, 4.1.2, and 5.4 of appendix X1 to 2 hours;

(4) Add a provision in section 3.1.1.2 of appendix X1 allowing for the use of a sampling tree for all dehumidifier tests; and

(5) Add a requirement in section 3.1.2.4 of appendix X1 that dehumidifiers be tested in accordance with Section 5.5 of AHAM DH–1–2022, including with the network functions in the ''off'' position if it can be disabled by the end-user; otherwise test in the factory default setting.

(6) Remove appendix X and references to appendix X at 10 CFR 430.3 and 10 CFR 430.23.

The adopted amendments are summarized in Table II.1 compared to the test procedure provision prior to the amendment, as well as the reason for the adopted change.

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE

DOE test procedure prior to the amendment	Amended test procedure	Attribution
Incorporates by reference ANSI/AHAM DH–1–2008.	Incorporates by reference AHAM DH–1–2022	Updated industry test method.
Defines ''portable dehumidifier'' and ''whole-home dehumidifier'' based on design intent.	Defines ''portable dehumidifier'' and ''whole-home dehumidifier'' by reference to the manufacturer instructions and operational capabilities.	Improve clarity of definitions to provide added specificity to product definitions.
Does not allow for the use of a sampling tree for a dehumidifier with a single process air intake grille.	Adds provision to allow for the use of a sampling tree for all tests.	Improve test procedure repeatability and reproducibility.
Specifies a test period of 6 hours for dehumidification mode.	Specifies a test period of 2 hours for dehumidification mode.	Reduce test burden while maintaining representativeness.
Does not explicitly address dehumidifiers with network functions.	Adds a requirement to test dehumidifiers that offer network functions with the network functions in the ''off'' position if it can be disabled by the end-user; otherwise test in the factory default setting.	Ensure test procedure reproducibility.
Subpart B contains appendix X and appendix X1.	Removes appendix X	Remove obsolete test procedure.

[5] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for dehumidifiers. (Docket No. EERE–2019–BT–TP–0026, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE—Continued

DOE test procedure prior to the amendment	Amended test procedure	Attribution
10 CFR 430.3 includes materials incorporated by reference for appendix X.	Removes materials incorporated by reference for appendix X.	Remove obsolete test procedure references.
10 CFR 430.23(z) specifies instructions for determining capacity and efficiency using appendix X or appendix X1.	Removes appendix X instructions at 10 CFR 430.23(z).	Remove obsolete test procedure references.

DOE has determined that the amendments described in section III of this document and adopted in this document will not alter the measured efficiency of dehumidifiers or require retesting or recertification solely as a result of DOE's adoption of the amendments to the test procedures. Additionally, DOE has determined that the amendments will not increase the cost of testing. DOE's actions are addressed in detail in section III of this document.

The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the amended test procedures beginning 180 days after the publication of this final rule.

III. Discussion

In the following sections, DOE provides certain amendments to its test procedures for dehumidifiers. For each amendment, DOE provides relevant background information and discusses relevant public comments.

A. General Comments

In response to the June 2022 NOPR, DOE received the following general comments regarding the proposed changes to the test procedure.

According to an anonymous commenter, the amended test procedure should require the same level of rigor as the current one. (Anonymous, No. 12 at p. (1)

DOE has evaluated the changes to the test procedure adopted in this rulemaking and determined that they will not adversely affect test procedure representativeness or reproducibility and will not be unduly burdensome to conduct.

AHAM stated that the overlapping comment periods for this test procedure rulemaking and the preliminary technical support document from the dehumidifier energy conservation standards rulemaking posed a challenge to manufacturers seeking to evaluate both documents. AHAM stated that DOE should fully receive stakeholder comments on the test procedure before proceeding with the energy conservation standards rulemaking. AHAM commented that the current process diminishes the value of stakeholder engagement early in the process. (AHAM, No. 17 at pp. 4–5)

MIAQ supported the finalization of changes to the test procedure before undertaking a new standards rulemaking. (MIAQ, No. 15 at p. 10)

Section 8(d)(1) of appendix A to 10 CFR part 430, subpart C (''appendix A'') generally provides that new test procedures and amended test procedures that impact measured energy use or efficiency will be finalized at least 180 days prior to the close of the comment period for a NOPR proposing new or amended energy conservation standards. DOE will continue to conduct additional analyses based on this finalized test procedure before proposing any new energy conservation standards, and stakeholders will be provided an opportunity to comment on any updated analysis as part of any proposal published regarding new or amended standards.

B. Scope of Applicability

EPCA defines a dehumidifier as a self-contained, electrically operated, and mechanically encased assembly consisting of (1) a refrigerated surface (evaporator) that condenses moisture from the atmosphere; (2) a refrigerating system, including an electric motor; (3) an air-circulating fan; and (4) a means for collecting or disposing of the condensate. (42 U.S.C. 6291(34)) In the July 2015 Final Rule, DOE codified a regulatory definition of ''dehumidifier'' that clarified the definition by excluding products that may provide condensate removal or latent heat removal as a secondary function. 80 FR 45801, 45805. DOE, therefore, adopted a definition that explicitly excluded portable air conditioners, room air conditioners, and packaged terminal air conditioners, because these are products that may provide condensate removal or latent heat removal as a secondary function.

Consumer products meeting the definition of ''dehumidifier'' as codified at 10 CFR 430.2 are subject to DOE's regulations for testing, certifying, and complying with energy conservation standards.

In the July 2015 Final Rule, DOE established definitions for two groups of dehumidifiers: ''portable dehumidifiers'' and ''whole-home dehumidifiers.'' 80 FR 45801, 45805. A ''portable dehumidifier'' is a dehumidifier designed to operate within the dehumidified space without ducting (although means may be provided for optional duct attachment). 10 CFR 430.2. A ''whole-home dehumidifier'' is a dehumidifier designed to be installed with ducting to deliver return process air to its inlet and dehumidified process air to one or more locations in the dehumidified space. *Id.* The July 2015 Final Rule also established a definition for ''refrigerant-desiccant dehumidifier'' to mean a whole-home dehumidifier that removes moisture from the process air by means of a desiccant material in addition to a refrigeration system. *Id.*

1. Dehumidifier Configuration Definitions

As stated, a whole-home dehumidifier is designed to be *installed with ducting* while a portable dehumidifier is designed to operate *without the attachment of additional ducting,* although a means may be provided for optional duct attachment [emphasis added]. In the June 2022 NOPR, DOE stated that the ''designed to'' wording in these definitions may imply that DOE makes subjective determinations about how a dehumidifier is categorized, which may lead to confusion. 87 FR 35286, 35291. DOE proposed to amend the portable dehumidifier and whole-home dehumidifier definitions to instead reference manufacturer instructions available to a consumer as they relate to the ducting configuration. *Id.* Specifically, DOE proposed to define a portable dehumidifier as a dehumidifier that, in accordance with any manufacturer instructions available to a consumer, operates within the dehumidified space without the attachment of additional ducting, although means may be provided for optional duct attachment. *Id.* DOE proposed to define a whole-home dehumidifier as a dehumidifier that, in accordance with any manufacturer

instructions available to a consumer, operates with ducting to deliver return process air to its inlet and to supply dehumidified process air from its outlet to one or more locations in the dehumidified space. *Id.* DOE also proposed not to delineate a definition for ''crawlspace dehumidifiers,'' as suggested by commenters, because of concerns that such a definition would not only reduce regulatory transparency but also create challenges for enforcement. *Id.*

The anonymous commenter supported the use of clear product categories for dehumidifiers and specifically supported DOE's decision not to create a ''crawlspace dehumidifier'' definition. The commenter stated that new dehumidifier definitions that do not represent true differences between units could lead to new retail price tiers, which would negatively affect the secondary market. (Anonymous, No. 12 at p. 1)

MIAQ proposed that DOE change the configuration names from portable dehumidifier and whole-home dehumidifier to ''ductless dehumidifier'' and ''ducted dehumidifier,'' respectively. MIAQ stated that these changes to the definition would reduce market and regulatory confusion and result in more units being tested using the most representative conditions. MIAQ commented that its proposed ''ductless'' definition would eliminate confusion around dehumidifiers intended for crawlspace use, as these units meet the DOE definition of a portable dehumidifier because manufacturers provide instructions for operation without ducting, but industry stakeholders consider the units to be different from portable dehumidifiers because they are often hung from joists or placed in inaccessible areas. (MIAQ, No. 15 at pp. 2–3)

DOE notes that the currently applicable definition in 10 CFR 430.2, as well as the definition proposed in the June 2022 NOPR and finalized in this final rule, for ''portable dehumidifier'' expressly states that such a dehumidifier is designed to operate within the dehumidified space without ducting (although means may be provided for optional duct attachment), thereby providing as much clarity in determining product classification on the basis of duct configuration as would MIAQ's proposed term ''ductless dehumidifier.'' Similarly, the definition of ''whole-home dehumidifier'' states that it is designed to be installed with ducting (*i.e.,* is a ''ducted dehumidifier''). Further, the ''portable'' and ''whole-home'' dehumidifier categories are widely known and used in industry and are the basis of the current DOE energy conservation standards. Additionally, the installation circumstances of portable dehumidifiers mounted between joists do not in themselves necessitate a change in test approach, as the portable dehumidifier test conditions and test setup are representative of typical conditions encountered by dehumidifiers without installed ducting. For these reasons, DOE is maintaining the current nomenclature of ''whole-home'' and ''portable'' dehumidifiers in this final rule.

MIAQ also suggested that DOE remove the words ''to deliver return process air to its inlet and'' from the whole-home dehumidifier definition because whole-home dehumidifiers may be installed such that they draw air from a single space, such as a basement or hallway, rather than from the heating, ventilation, and air conditioning (''HVAC'') return air supply. MIAQ said that if DOE removed ''to deliver return process air to its inlet and'' from the whole-home dehumidifier definition, it would suggest that some whole-home dehumidifiers typically operate with inlet air conditions of 65 degrees Fahrenheit (''°F'') and 60 percent relative humidity. (MIAQ, No. 15 at pp. 3–4)

DOE recognizes that whole-home dehumidifiers may be installed in various ducting configurations, as specified by manufacturers. These include installation with inlet ducting connected to the HVAC supply, as well as other sources of return air, (*e.g.,* return air from a centrally located area of the structure, as identified by MIAQ in their comment), or other areas. DOE notes that whole-home dehumidifier configurations that include ducting from either the HVAC return or from other central locations in the dwelling both meet the existing whole-home dehumidifier definition, as these units ''operate with ducting'' to collect return process air and supply dehumidified process air from its outlet. As discussed in the June 2015 Final Rule, DOE considers an inlet air temperature of 73 °F, representing a whole-home dehumidifier ducted to an HVAC return air supply, to be the most representative test configuration for whole-home dehumidifiers. 80 FR 45802, 45811. In this way, DOE's whole-home dehumidifier test procedure determines performance in the most representative configuration and with the most representative test conditions. Therefore, in this final rule, DOE is making no further amendments to the whole-home dehumidifier definition beyond those proposed in the June 2022 NOPR and discussed previously.

2. Non-Residential Dehumidifiers

In the June 2022 NOPR, DOE responded to comments suggesting that DOE clarify how the current dehumidifier definitions apply to non-residential dehumidifiers, such as horticultural dehumidifiers. 87 FR 35286, 35291. With respect to horticultural dehumidifiers and other dehumidifiers marketed for non-residential applications, DOE noted that dehumidifiers are ''consumer products.'' *Id.* EPCA defines a ''consumer product'' as any article (other than an automobile, as defined in section 32901(a)(3) of title 49) of a type (A) which in operation consumes, or is designed to consume, energy or, with respect to showerheads, faucets, water closets, and urinals, water; and (B) which, to any significant extent, is distributed in commerce for personal use or consumption by individuals; without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual. (42 U.S.C. 6291(1)) Accordingly, DOE stated in the June 2022 NOPR that to the extent that a dehumidifier model is of a type distributed in commerce for personal use or use by an individual, it would be within the scope of the dehumidifier test procedure, regardless of how they are marketed and whether they are distributed for personal or individual use. 87 FR 35286, 35291.

MIAQ also commented that the use of ''portable'' in the ''portable dehumidifier'' definition could lead to confusion regarding the applicability of appendix X1 to fire and flood remediation dehumidifiers, which are portable but not intended for consumer use. Further, MIAQ stated that changing the name of ''whole-home dehumidifiers'' to ''ducted dehumidifiers'' would clearly indicate that this product category is intended to be ducted dehumidifier whether that unit is ducted into a home, apartment, or light commercial space or any other space units in the product category can be found. (MIAQ, No. 15 at pp. 2–3)

In response to MIAQ, DOE reiterates its discussion from the June 2022 NOPR that with respect to dehumidifiers marketed for non-residential applications, such as horticultural, flood and fire remediation, and light commercial uses, to the extent that a dehumidifier model is of a type that is, to any significant extent, distributed in commerce for personal use or use by an individual, it would meet the definition of ''dehumidifier'' and would be within

the scope of the dehumidifier test procedure in accordance with the definition of a consumer product in 42 U.S.C. 6291(1)(B), regardless of how it is marketed and whether the model is distributed for personal or individual use. To the extent that dehumidifiers marketed for non-residential applications do not meet the definition of consumer product, such as dehumidifiers that are connected exclusively to three-phase power that is not present in U.S. households, they are excluded from the DOE test procedure. DOE has not received any information from commenters about specific features or designs that would differentiate horticultural, fire and flood remediation, or non-residential dehumidifiers from those within the scope of the DOE test procedure. DOE has published guidance on making ''of a type'' determinations at *www.energy.gov/gc/enforcement-policies-and-statements,* ''Guidance Concerning Consumer/Commercial Distinction.'' A manufacturer may submit a petition to waive any test procedure requirements if it believes that its dehumidifier contains one or more design characteristics that either (1) prevent testing of the basic model according to the prescribed test procedure; or (2) cause the prescribed test procedure to evaluate the dehumidifier in a manner so unrepresentative of its true energy and/or water consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a). The petition should suggest an alternative method for testing the basic models identified in the waiver. 10 CFR 430.27(b)(1)(iii).

3. Dehumidifiers With External Heat Rejection

In the June 2022 NOPR, DOE responded to a comment from MIAQ suggesting that DOE consider a definition that includes dehumidifiers with external heat rejection, which MIAQ described as units that provide cool, dry air as an air conditioner does, except that the focus is on obtaining the proper level of dehumidification first, and cooling is a by-product of the process. 87 FR 35286, 35290. In response, DOE explained that the primary function of an air conditioner is to provide cooling by removing both sensible and latent heat, whereas a dehumidifier is intended to remove only latent heat. *Id.* Accordingly, portable air conditioners, room air conditioners, and packaged terminal air conditioners are explicitly excluded in the existing definition of ''dehumidifier.'' These explicit exclusions include the unitary air conditioning products of concern to MIAQ. *Id.* Any other non-dehumidifier product on the market that would meet the definition of ''dehumidifier'' is already explicitly excluded. *Id.* Accordingly, DOE tentatively determined that the explicit exclusions in the regulatory definition of dehumidifier already address MIAQ's concern and therefore did not propose to add any such exclusions to the dehumidifier definition. *Id.*

In response to the June 2022 NOPR, MIAQ recommended that DOE revise the dehumidifier definition by replacing the wording ''that is self-contained'' with ''that is predominately intended to remove latent heat.'' MIAQ commented that this change would acknowledge that there are dehumidifiers that include external heat rejection with an outdoor condenser and that these products provide cooling but, because their primary purpose is dehumidification, they should be considered dehumidifiers. MIAQ asserted that adding this phrase to the dehumidifier definition would clarify that units with a primary function of dehumidification should be certified as dehumidifiers. (MIAQ, No. 15 at p. 2)

Following a review of the market, DOE is not aware of any residential dehumidifiers on the market that are not self-contained. With respect to latent heat removal, DOE reiterates its discussion from the June 2022 NOPR that the primary function of an air conditioner is to provide cooling by removing both sensible and latent heat, whereas a dehumidifier is intended to remove only latent heat. 87 FR 35286, 35290. The dehumidifier definition explicitly excludes portable air conditioners, room air conditioners, and packaged terminal air conditioners to ensure that other non-dehumidifier products on the market that would meet the definition of ''dehumidifier'' but primarily provide cooling, do not meet the definition. These explicit exclusions limit the dehumidifier definition to units that primarily remove latent heat, instead of both sensible and latent heat. Accordingly, DOE has determined that the explicit exclusions in the regulatory definition of dehumidifier found in 10 CFR 430.2 already address MIAQ's concern. Therefore, DOE is not adding exclusions to the dehumidifier definition in this final rule.

C. Test Procedure

Dehumidifiers are currently tested in accordance with appendix X1, which adopts certain text provisions from ANSI/AHAM DH–1–2008, with modification. In part, the DOE test procedure specifies a different dry-bulb temperature (65 °F for portable dehumidifiers and 73 °F for whole-home dehumidifiers) than ANSI/AHAM DH–1–2008, while still maintaining the relative humidity specified by ANSI/AHAM DH–1–2008, and specifies provisions for inactive, off-cycle, and off mode testing. *See* sections 4.1.1 and 3.2 of appendix X1. Appendix X1 also includes instructions regarding instrumentation, condensate collection, control settings, setup, and ducting for whole-home dehumidifiers. *See* sections 3.1.2.2; 3.1.1.4; 3.1.1.5; 3.1.1.1; and 3.1.3 of appendix X1.

Under the current test procedure, a unit's capacity is the volume of water, in pints, the unit removes from the ambient air per day, normalized to a standard ambient temperature and relative humidity. *See* section 2.14 of appendix X1. The integrated energy factor (''IEF''), representing the efficiency of the unit expressed in liters per kilowatt-hour, is the ratio between the capacity and the combined amount of energy consumed by the unit in dehumidification mode and standby and/or off mode(s), adjusted for the representative number of hours per year spent in each mode. *See* section 5.4 of appendix X1.

1. Relevant Industry Standard

Intertek recommended that the DOE test procedure reference ANSI/American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE'') 37 rather than ANSI/AMCA 210, as Intertek believes that ANSI/ASHRAE 37 is more appropriate and accurate for dehumidifiers. (Intertek, No. 13 at p. 1)

DOE has reviewed ANSI/ASHRAE 37–2009 (reaffirmed in 2019) and found it to be largely consistent with the requirements from ANSI/AMCA 210, used in appendix X1. DOE was not able to identify provisions in ANSI/ASHRAE 37 that would improve the representativeness or reproducibility of the whole-home dehumidifier test procedure, and Intertek did not identify which provisions in ANSI/ASHRAE 37 are more appropriate for the test procedure. Without additional information and given the overall general consistency between the two standards, DOE is maintaining ANSI/AMCA 210 as the test standard referenced in appendix X1 for whole-home dehumidifiers.

2. Updates to Industry Standards

As discussed, the dehumidifier test procedure at appendix X1 references ANSI/AHAM DH–1–2008, an industry test procedure for dehumidifiers, with modification. While ANSI/AHAM DH–

1–2008 provides instructions for testing portable dehumidifiers, appendix X1 also references ANSI/AHAM DH–1–2008 when specifying test setup and instrumentation requirements for whole-home dehumidifiers. In 2017, AHAM published a revision to AHAM DH–1, (*i.e.,* AHAM DH–1–2017), which established provisions for testing dehumidifier energy use in off-cycle, inactive, and off modes, and for including energy consumption in those modes in efficiency calculations. AHAM DH–1–2017 also added guidance for instrumentation setup, multiple air-intakes, and control settings; lowered air temperature; and tightened tolerances. Specifically, AHAM DH–1–2017 lowered the standard dry-bulb temperature condition for dehumidifiers from 80 °F (as in ANSI/AHAM DH–1–2008) to 65 °F (with the required wet-bulb temperature changing accordingly to maintain the same relative humidity) and tightened the maximum allowed variation for dry-bulb and wet-bulb temperature readings from 2.0 °F to 1.0 °F and from 1.0 °F to 0.5 °F, respectively. In the June 2022 NOPR, DOE requested comment on the proposal to incorporate AHAM DH–1–2017 by reference.

DOE also noted in the June 2022 NOPR that the AHAM DH–1 task force had released a publicly available draft version of the updated standard, AHAM DH–1–2022, on March 30, 2022, but had not yet finalized the standard. DOE had reviewed the changes to AHAM DH–1–2017 made in the draft and either proposed to adopt the changes or raised them for comment in the NOPR. DOE also stated that if AHAM DH–1–2022 was finalized during the course of this rulemaking, DOE would consider adopting that updated version in the final rule to the extent it is consistent with the discussions presented in the NOPR. 87 FR 35286, 35292 (*See also* Public Meeting Transcript, No. 11 at pp. 8–10).

MIAQ supported DOE's proposal to incorporate AHAM DH–1–2017 by reference. (MIAQ, No. 15 at p. 4)

AHAM recommended that DOE adopt a more recently updated version of AHAM DH–1, (*i.e.,* AHAM DH–1–2022), resulting from cooperation between AHAM, DOE, and efficiency advocates. AHAM noted that AHAM DH–1–2022 addresses many of the issues that DOE raised in the June 2022 NOPR and is consistent with EPCA's requirements that an amended test procedure be reasonably designed to produce test results that represent an average period of use and not unduly burdensome to conduct. (AHAM, No. 17 at pp. 1–2)

AHAM DH–1–2022 was finalized and published on December 12, 2022. DOE has reviewed AHAM DH–1–2022 and found it is reasonably designed to produce test results that represent an average period of use and not unduly burdensome to conduct, and is therefore incorporating by reference this version of the industry standard with the following exceptions: the test duration, as discussed in section III.C.5 of this document; the sampling tree requirements in section 8.4 of the standard, as discussed in section III.C.6 of this document; and the run-in period and pre-stabilization period requirements in sections 5.6 and 5.7 of the standard, discussed in the section that follows. DOE further found that the provisions it is adopting in this final rule are consistent with the 2017 edition of the standard and the discussions presented in the June 2022 NOPR. of these exceptions and DOE's amendments to the AHAM DH–1–2022 approach that are adopted in this final rule are discussed below in the relevant sections.

3. Run-In and Pre-Stabilization Periods

Section 3.1.1.6 of the current appendix X1 requires a run-in period, during which the compressor operates for a cumulative total of at least 24 hours prior to dehumidification mode testing, consistent with ANSI/AHAM DH–1–2008 and AHAM DH–1–2017. AHAM DH–1–2022 adds new requirements for the run-in period in section 5.6 of the standard, namely that the dehumidifier shall not be exposed to temperatures less than 62 °F during the run-in period, and that after the run-in period, the unit must be inactive for 4 hours before the beginning of the pre-stabilization period; a pre-stabilization period was also newly introduced in AHAM DH–1–2022. The new pre-stabilization period, discussed in section 5.7 of AHAM DH–1–2022, takes place between the time a unit is turned on in the test chamber and the start of the 30-minute stabilization period. AHAM DH–1–2022 also specifies that the dehumidifier must not be exposed to temperatures less than 62 °F during the pre-stabilization period.

While not explicitly discussed in AHAM DH–1–2022, it is DOE's understanding through participation in the process to develop AHAM DH–1–2022 that these new provisions in AHAM DH–1–2022 are intended to ensure that there is no frost build-up on the evaporator coils prior to testing, which could directly reduce performance during the test or result in periods of defrost during which a test unit may shut off the compressor, resulting in further reduction in measured efficiency and performance.

DOE has evaluated the additional test burden that would be associated with the new provisions in AHAM DH–1–2022. These new requirements in AHAM DH–1–2022 would increase the total time required to test a dehumidifier by 4 hours compared to the current testing time of approximately 30 hours. Furthermore, ensuring that the ambient temperature remains above 62 °F during the run-in period and pre-stabilization period could require that the run-in period be conducted in a different location in the laboratory that has better temperature controls and monitoring rather than the current locations within the test laboratory where they may be currently performed.

DOE has conducted an evaluation to determine whether the new requirements in AHAM DH–1–2022 would satisfy the EPCA criteria that test procedures produce test results that measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, without being unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) Specifically, DOE reviewed testing that was conducted in support of this rulemaking to determine whether the addition of the pre-stabilization period and the temperature requirement for the run-in period would improve the representativeness of test results. DOE's review of its test data indicates that the 30-minute stabilization period conducted in the chamber at the test temperature of 65 °F, during which all conditions are maintained and the test unit operates in a stable manner, is sufficient to produce test results that measure the energy use of a dehumidifier during a representative average use cycle or period of use, as none of the dehumidifiers tested entered defrost operation at any time during the test. Because DOE does not expect frost to develop during testing that would necessitate a defrost operation, the additional test time and test requirements would not change the performance measured by the test procedure. Furthermore, as discussed in section III.C.5 of this document, DOE considers defrost operation in dehumidifiers to be uncharacteristic of typical dehumidifier operation at the 65 °F test condition. Based on this evaluation, DOE has determined that the new requirements in AHAM DH–1–2022 would not provide an improvement in representativeness commensurate with the additional test burden that would be imposed, and

therefore would be unduly burdensome. As the new AHAM DH–1–2022 run-in and pre-stabilization requirements do not conflict with the current appendix X1 requirements, manufacturers may choose to test units in accordance with the AHAM DH–1–2022 run-in and pre-stabilization requirements and still comply with the DOE test procedure. Therefore, DOE is maintaining the current appendix X1 run-in period requirements in this final rule.

4. Variable-Speed Dehumidifiers

a. Variable-Speed Compressors

Some dehumidifiers available on the U.S. market incorporate variable-speed compressors (*i.e.,* ''variable-speed dehumidifiers''). A variable-speed compressor can operate at a variety of speeds rather than just the single speed achievable by conventional compressors. A single-speed compressor cycles on and off during operation, which can introduce inefficiencies in performance often referred to as ''cycling losses,'' whereas a variable-speed compressor is able to adjust its speed up or down during operation, thereby reducing or eliminating cycling losses. Variable-speed dehumidifiers may avoid condensate re-evaporation into the ambient room air, which can occur when a dehumidifier cycles off its compressor but not its fan during off-cycle mode. The current test procedure in appendix X1 does not capture any ''cycling losses'' for single-speed dehumidifiers (nor, conversely, does it capture the avoidance of such losses for variable-speed dehumidifiers) because the test unit operates at full capacity throughout the test.

In the June 2022 NOPR, DOE evaluated whether the avoidance of ''cycling losses'' for variable-speed dehumidifiers provides significant energy savings that should be captured by the test procedure, as in the case of room air conditioners and portable air conditioners. Based on DOE's evaluation, and consistent with the points raised by commenters, DOE tentatively determined in the June 2022 NOPR that variable-speed dehumidifiers may not be able to achieve significant efficiency gains over single-speed units, given that dehumidifiers must maintain evaporator temperatures below the dew point to efficiently remove water from the air. 87 FR 35286, 35293. DOE noted, however, that there could be some efficiency gains if the variable-speed compressor is inherently more efficient. DOE requested information and data regarding any efficiency and performance benefits associated with variable-speed dehumidifiers, both generally and relative to those with single-speed dehumidifiers. *Id.*

DOE did not receive additional information and data regarding any efficiency and performance benefits associated with variable-speed dehumidifiers and therefore is not adopting additional test procedure provisions to address their operation.

b. Multiple Test Conditions

The current test procedure specified in appendix X1 requires one test condition for each category of dehumidifier: a dry-bulb temperature of 65 °F for portable dehumidifiers and 73 °F for whole-home dehumidifiers. *See* section 4.1.1 of appendix X1.

In the June 2022 NOPR, in response to comments submitted by interested parties, DOE considered expanding the portable dehumidifier test to three test conditions. 87 FR 35286, 35296–35297. DOE discussed its findings through investigative testing that a three-temperature-condition approach resulted in no substantive improvement in representativeness compared to the current test procedure that uses a single temperature condition. *Id.* Accordingly, DOE tentatively determined that the increase in test burden associated with requiring multiple test conditions would not be justified, and DOE did not propose any new test conditions in the June 2022 NOPR. *Id.*

Aprilaire supported maintaining a single-temperature-condition test procedure for each dehumidifier configuration. Aprilaire stated that additional test conditions would result in unwarranted test burden in the form of lengthened product design cycles and added quality control costs. (Aprilaire, No. 14 at p. 1)

MIAQ stated that a three-temperature-condition test would be more representative of the average period of use for a dehumidifier and supported expanding the number of test conditions required. MIAQ noted that dehumidifiers can have a variety of inlet process air conditions depending on their installation configuration or placement within a home. MIAQ stated that more test conditions would provide additional information to consumers and industry stakeholders while not constituting an unnecessary test burden. (MIAQ, No. 15 at pp. 4–5)

As discussed in the June 2022 NOPR, while dehumidifiers may encounter temperatures between 55 °F and 80 °F depending on their installation and operating conditions, DOE's investigative testing showed that when additional test conditions were added and performance at these test conditions was weighted based on the operating hours DOE expected at each test condition, the resulting efficiency corresponded very closely to the measured efficiency at 65 °F using the existing test procedure. 87 FR 35286, 35296–35297. This result suggests that the current single test condition already produces a measure of efficiency that is representative of dehumidifier performance across the range of temperature conditions it may encounter. Therefore, DOE maintains its conclusion that the weighted-average performance based on additional test conditions is not substantively different than the performance represented by the current single-temperature-condition test procedure. Accordingly, DOE has determined that the additional test burden that would be associated with a three-temperature-condition test would be unduly burdensome. Therefore, in this final rule, DOE is maintaining the existing single-temperature-condition test approach in appendix X1.

c. Load-Based Test

Under the current test procedure, temperature and humidity conditions are held constant throughout the test (*i.e.,* a steady-state test). As such, the test unit operates at full capacity throughout the duration of the test.

In the July 2015 Final Rule, DOE considered a load-based test for dehumidifiers, which would capture cycling behavior in dehumidifiers with single-speed compressors or compressor speed modulation for variable-speed dehumidifiers. The load-based test would involve adding moisture to the test chamber at a fixed rate and allowing the control system of the dehumidifier to respond to changing moisture levels in the room. 80 FR 45801, 45809. DOE determined not to adopt a load-based test for the dehumidifier test procedure in the July 2015 Final Rule, due to concerns about the potential increase in test burden. *Id.* at 80 FR 45810.

In the June 2022 NOPR, DOE presented the results of investigative testing using a load-based approach. 87 FR 35286, 35298–35299. The testing did not show that variable-speed dehumidifiers were more efficient than single-speed dehumidifiers. This finding corresponded with the evaluation discussed above that variable-speed dehumidifiers do not have any unique efficiency benefits over single-speed dehumidifiers. In the June 2022 NOPR, DOE tentatively concluded that load-based testing was not appropriate for appendix X1 because the increases in test burden were not justified by improvements in test representativeness. *Id.*

Aprilaire agreed that load-based testing should not be implemented in appendix X1 due to novel testing challenges associated with load-based testing. Aprilaire stated that overcoming these challenges would represent a significant test burden and could limit competition because smaller manufacturers may not be able to conduct load-based testing. (Aprilaire, No. 14 at pp. 1–2)

MIAQ stated that it does not produce dehumidifiers with variable-speed dehumidifiers. MIAQ commented that the most efficient way to operate a dehumidifier is to operate at full capacity and that reductions in dehumidification capacity due to variable-speed operation are hard for users to perceive and have little effect on mold or mildew control. Because variable-speed dehumidifiers offer little consumer benefit, MIAQ stated that load-based testing would constitute an unnecessary test burden. (MIAQ, No. 15 at pp. 5–6)

The anonymous commenter supported load-based testing. (Anonymous, No. 12 at p. 1)

The Joint Commenters encouraged DOE to continue investigating load-based testing for dehumidifiers. While DOE did not find that load-based testing captured any unique efficiency of variable-speed dehumidifiers, the Joint Commenters noted that the discrepancy between the performance of the single-speed and variable-speed units under load-based testing suggests that the current DOE test procedure may overestimate the real-world efficiency of variable-speed units. (Joint Commenters, No. 18 at pp. 1–2; Appliance Standards Awareness Project, Public Meeting Transcript, No. 11 at pp. 25–26)

DOE's testing showed that as the moisture load (*i.e.,* the rate at which moisture was introduced to the test room) decreased below the full-load dehumidification capacity of the dehumidifiers tested, the efficiency of both the single-speed and variable-speed dehumidifiers decreased. As the load decreased, the efficiency of the variable-speed dehumidifier decreased by a greater amount than for the single-speed dehumidifier, contrary to any initial expectation that the variable-speed dehumidifier would operate more efficiently than the single-speed dehumidifier at reduced loads. 87 FR 35286, 35299. This result confirmed DOE's understanding that variable-speed dehumidifiers do not offer efficiency benefits relative to single-speed dehumidifiers. However, the finding that the variable-speed dehumidifier performed less efficiently than the single-speed dehumidifier at the same conditions was unexpected, given DOE's understanding that variable-speed and single-speed dehumidifiers typically operate in the same manner in real-world conditions (*i.e.,* cycling the compressor on and off to maintain the relative humidity setpoint). This result from testing a single variable-speed and single-speed dehumidifier suggests that future investigation may be warranted to better understand any differences between variable-speed and single-speed dehumidifier performance at such time that additional variable-speed dehumidifiers are available for testing.

AHAM requested that DOE provide test data from load-based testing on the record, along with details of the load-based test procedure used. Specifically, AHAM requested data regarding the test conditions (dry-bulb temperature, *etc.*), general information about test setup including dehumidifier set point, use of manufacturer settings, type of test room, rate of moisture load change, method of moisture load control and monitoring, and whether DOE conducted a repeatability assessment. (AHAM, No. 17 at p. 4)

In response to AHAM's request, DOE describes its investigative load-based testing process. DOE conducted the investigative load-based testing for this rulemaking with the test chamber at the appendix X1 portable dehumidifier test conditions—65 °F dry-bulb and 56.6 °F wet-bulb. The dehumidifiers were set using user controls to maintain a 60-percent relative humidity in the room. The testing was conducted in a calorimeter chamber in order to achieve the precise level of moisture control necessary to conduct load-based testing, because as discussed in the June 2022 NOPR, psychrometer chambers lack the equipment and controls necessary to maintain a given moisture load (*see* 87 FR 35286, 35297). DOE did not conduct tests with a dynamically variable moisture load, but instead collected performance data with the moisture introduction rate held fixed at percentages of the full-load dehumidification capacity of each tested unit. The testing was conducted in a calorimeter chamber in order to achieve the precise level of moisture control necessary to conduct load-based testing. DOE tested two dehumidifiers with comparable capacities from the same manufacturer, one with a variable-speed compressor and one with a single-speed compressor. This investigative testing effort included testing each unit once at each of the four tested moisture load conditions (100 percent, 75 percent, 50 percent, and 25 percent of the full-load dehumidification capacity for the unit under test). 87 FR 35286, 35298.

Based on DOE's finding discussed in the June 2022 NOPR that load-based testing does not improve the representativeness of the dehumidifier test procedure, concerns about the potential significant increase in test burden, and in the absence of any additional data from commenters showing the viability of load-based testing, DOE is not prescribing a load-based test in appendix X1 in this final rule.

5. Test Duration

Appendix X1 requires a test duration of 6 hours for the dehumidification mode test, after a 30-minute stabilization period. *See* section 5.4 of appendix X1. In the June 2022 NOPR, DOE discussed that DOE and AHAM's DH–1 working group identified an opportunity to reduce this test duration, thereby reducing test burden. 87 FR 35286, 35299–35300. To identify a potential shorter test duration that could be considered, DOE conducted investigative testing on 13 portable dehumidifiers of varying capacities, one of which was variable-speed, at the 65 °F dry-bulb temperature, in accordance with appendix X1. DOE used the gravity drain condensate collection approach in appendix X1 and recorded the weight of the condensate collected every 30 seconds. *See* section 3.1.1.4 of the current appendix X1. DOE was, therefore, able to calculate energy consumption and collected condensate at any of the 30-second intervals throughout the 6-hour test and did so at each hour of testing.

The results of DOE's testing indicated that capacity and efficiency vary only slightly from the 6-hour test results when using shorter test durations. This investigative testing suggested that a 6-hour dehumidification mode test duration for portable dehumidifiers may be unnecessary, as the data showed there is minimal difference in measured efficiency between the 2-hour and 6-hour test durations. DOE tentatively determined that a 2-hour test duration is appropriate for both whole-home dehumidifiers and portable dehumidifiers and would provide representative results with minimized test burden. DOE also recognized, however, that removing the requirement for a 6-hour test duration would require recertification for units previously certified under a test duration of 6 hours. Therefore, in the June 2022 NOPR, DOE proposed a dehumidification mode test duration of either 2 or 6 hours for both portable and whole-home dehumidifiers. 87 FR

35286, 35299–35300. DOE notes that AHAM DH–1–2022 contains the same provision specifying either a 2-hour or 6-hour test.

Aprilaire supported DOE's proposal to add a 2-hour test option and stated that based on its testing experience, results for both portable and whole-home dehumidifiers at this shorter test duration would not vary significantly. (Aprilaire, No. 14 at p. 2)

MIAQ stated that the variation in power use and condensate collected over the course of tests on two units running for 2, 3, 4, 5, and 6 hours was under 4 percent for all test durations. MIAQ noted that neither unit entered a defrost cycle during this testing and stated that a 4-hour or 6-hour test would be more appropriate for a unit that enters a defrost cycle. MIAQ stated that reducing the required test time to 2 hours would represent a reduction in test burden, mainly in the form of saved technician hours. The reduced test burden could allow 2–3 times more tests to be conducted per day for the same cost. (MIAQ, No. 15 at pp. 6, 9)

AHAM stated that a 2-hour test duration would result in a loss of test repeatability and reproducibility for dehumidifiers that enter defrost during the test. AHAM noted that defrost cycles are within typical use conditions and should be considered in the DOE test procedure. AHAM commented that in a 2-hour test, a defrost cycle could account for 30 minutes of the 2-hour test, or 25 percent of the total test time; whereas, in a 6-hour test, this 30-minute cycle would only account for 8 percent of the test time, resulting in a higher efficiency rating more representative of the actual percentage of time spent by dehumidifiers in defrost cycles in the field. AHAM generally favored test procedure amendments that decrease test burden but commented that in this case, the 2-hour test period is more likely to cause a failed test or force manufacturers to conservatively rate their products to avoid false findings of noncompliance. AHAM asked whether DOE would conduct enforcement testing using the test duration used in the certification test or whether the verification laboratory would be able to choose the duration used. Because of the potential impacts on measured efficiency, AHAM stated that if DOE proceeds with the proposed 2-hour test duration, DOE should require compliance with the revised test procedure when the amended energy conservation standards next come into effect. (AHAM, No. 17 at p. 3)

GEA presented data detailing the performance of how a dehumidifier entering defrost mode impacts the measured efficiency over a number of test durations, with lower impacts associated with longer test durations. GEA's data showed a decrease in variance in efficiency results of approximately 5 percent in a 2-hour test down to approximately 2 percent in a 6-hour test. According to GEA, these data show that a 2-hour test option would have an unacceptable amount of variance due to the impact of defrost cycles. GEA supported AHAM's position that the test procedure should include only a 6-hour test option, which would reduce these impacts to an appropriate level. (GEA, No. 16 at p. 1)

DOE recognizes that 30 minutes of defrost activity within a 2-hour test would be likely to impact the final measured efficiency, given that 30 minutes would represent a significant portion of a 2-hour test period. However, DOE notes that the defrost operation shown in GEA's data appears to occur roughly 5 hours and 30 minutes into the test duration, suggesting that the defrost operation would not affect the result of a 2-hour test for this GEA unit. Additionally, based on extensive testing in support of this rulemaking, DOE has not observed defrost behavior in any models at the appendix X1 test conditions. Specifically, none of the 13 units that DOE tested in support of this rulemaking entered defrost operation at any point during the test. Based on these observations, DOE concludes that defrost operation is uncharacteristic of dehumidifier operation while conducting the appendix X1 test procedure. While the data provided by GEA does show a unit entering defrost operation, it is unclear which model was tested, which test procedure was performed, and whether the model that was tested is currently on the market and certified to the currently applicable appendix X1. As discussed above, no units in DOE's sample of dehumidifiers, containing models representative of products on the market certified using the currently applicable appendix X1, entered defrost operation during the test. Therefore, DOE finds that a 2-hour test duration produces test results that are representative of dehumidifier operation by consumers.

For the reasons discussed in the June 2022 NOPR, and in consideration of comments as discussed in this section, DOE has concluded that a 2-hour test duration produces test results that are comparable to test results produced by a 6-hour test duration, that test results produced by a 2-hour test duration are representative of dehumidifier operation by consumers, and that a 2-hour test duration would reduce test burden as compared to a 6-hour test duration. As discussed above, DOE does not consider defrost operation to be characteristic of dehumidifiers at the DOE test condition, so DOE has concluded that retaining the 6-hour test option is not necessary to maintain test procedure representativeness or reproducibility nor would adopting a 2-hour test duration require re-testing of any currently certified dehumidifier, given that measured performance would be comparable under a 2-hour and 6-hour test. Retaining the option of either a 2-hour or 6-hour test duration could create ambiguity regarding which test duration should be used for certification, as noted in AHAM's comments. Accordingly, in this final rule, DOE is adopting a 2-hour test duration requirement for appendix X1. DOE is not maintaining an option to perform a 6-hour test, as was proposed in the June 2022 NOPR.

6. Psychrometer Setup and Instrumentation

Appendix X1, through reference to section 4 ''Instrumentation'' of ANSI/AHAM DH–1–2008, requires dehumidifiers with a single air intake to be monitored with an aspirating-type psychrometer [6] perpendicular to, and 1 foot in front of, the unit; and, in the case of multiple air intakes, monitored with a separate sampling tree. *See* sections 3.1.1, 3.1.1.2, 3.1.1.3 of appendix X1.

The test procedure at appendix X1 does not currently permit the use of a sampling tree in conjunction with an aspirating psychrometer to measure relative humidity for portable dehumidifiers with a single air inlet. In the July 2015 Final Rule, DOE was unable to conclude whether using a psychrometer only or using a psychrometer in conjunction with a sampling tree would produce the most repeatable results. 80 FR 45802.

DOE is aware, however, that using a sampling tree with an aspirating psychrometer is standard practice for many test laboratories when conducting psychrometric testing. Therefore, in the June 2022 NOPR, DOE proposed to allow measurements taken using an aspirating psychrometer or relative humidity sensor with a sampling tree in appendix X1 for dehumidifiers with a single air inlet, which is required in the currently applicable test procedure for dehumidifiers with multiple air inlets. 87 FR 35286, 35302.

[6] In an aspirating-type psychrometer, a wet-bulb and a dry-bulb thermometer are mounted inside a case that also contains a fan. The fan draws air across both thermometers, and the resulting wet-bulb and dry-bulb temperatures are used to determine the percent relative humidity.

Aprilaire supported DOE's proposal to allow use of an aspirating psychrometer in conjunction with a sampling tree to measure humidity. Aprilaire stated that this sort of apparatus is common and familiar in the HVAC industry. (Aprilaire, No. 14 at p. 2)

MIAQ supported DOE's proposal of allowing relative humidity measurements taken using an aspirating psychrometer with sampling tree in appendix X1 for dehumidifiers with a single air inlet. (MIAQ, No. 15 at pp. 6–7)

AHAM stated that sampling trees should be required for both psychrometer testing (as was proposed) and for relative humidity sensors. AHAM claimed that use of sampling trees leads to more representative results by sampling across the entire inlet air of the dehumidifier and noted that sampling trees are already required in the test procedures for other HVAC equipment. AHAM stated that multiple measurement points are needed to produce representative results because dehumidifiers measure air temperature and humidity using air from a wider inlet area, not a single point. (AHAM, No. 17 at p. 2)

These comments support DOE's understanding that using a sampling tree with an aspirating psychrometer is already standard practice for many test laboratories when testing dehumidifiers; effectively measures the inlet operating conditions for a dehumidifier while under test, both for units with a single air inlet and for units with multiple air inlets; and facilitates the determination of representative dehumidifier performance. Therefore, for the reasons discussed in the June 2022 NOPR and summarized above, DOE is permitting the use of sampling trees in conjunction with either an aspirating psychrometer or relative humidity sensor for all dehumidifier test configurations in appendix X1. DOE is not aware of data that quantify any benefits that sampling trees may provide over a single point measurement and is thus unable to determine if requiring sampling trees for all dehumidifier tests, as AHAM suggests, would be unduly burdensome for test laboratories that currently use single-point aspirating psychrometer or relative humidity sensor measurements. Therefore, to avoid imposing an undue test burden, DOE is allowing the test procedure to be conducted with or without sampling trees in appendix X1 in this final rule, when using either an aspirating psychrometer or relative humidity sensor.

In addition to the proposal to allow sampling trees in conjunction with aspirated psychrometer testing, DOE proposed in the June 2022 NOPR to require that the sensing elements within the psychrometer box be shielded or positioned to minimize radiation effects from the fan motor; that there be line of sight separation between any fans and sensing elements within the test fixture; and that at least 3 feet of separation, along the path of airflow, be maintained between any fans and sensing elements within the test fixture. 87 FR 35286, 35302. DOE notes that AHAM subsequently adopted the same requirements for psychrometer shielding and placement in AHAM DH–1–2022.

MIAQ supported DOE's proposal to require that the psychrometer box contain shielding or be configured to minimize radiation effects on the sensing elements. (MIAQ, No. 15 at p. 7)

For the reasons discussed in the June 2022 NOPR, in this final rule, DOE is incorporating in appendix X1 the AHAM DH–1–2022 requirements for psychrometer shielding and placement. These requirements are consistent with the requirements for psychrometer shielding and placement as proposed in the June 2022 NOPR.

7. Whole-Home Dehumidifiers

In the July 2015 Final Rule, DOE established a test procedure for whole-home dehumidifiers in appendix X1. 80 FR 45802, 45810–45811. Whole-home dehumidifiers differ from portable dehumidifiers, as they are installed in a ducted configuration in a home. The whole-home dehumidifier test procedure specifies a ducted test setup with instructions for measuring and maintaining the air flow through these ducts. *See* section 3.1.3 of appendix X1.

a. Air Velocity

Section 5.2 of AHAM DH–1–2017 requires that ''the air flow approaching the test unit shall be uniform in temperature, humidity and velocity. The air velocity shall not exceed 50 feet per minute (''ft/min'') (0.25 meters per second (''m/s'')) within 3 ft (0.91 m) of the dehumidifier with the unit not operating.''

In the June 2022 NOPR, DOE considered alternate air velocity specifications based on suggestions by commenters that the 50 ft/min maximum air velocity requirement in AHAM DH–1–2017 may represent an undue burden on manufacturers of large-capacity portable dehumidifiers and whole-home dehumidifiers. Although DOE did not propose changing the maximum air velocity requirement in the June 2022 NOPR, DOE discussed that it would consider raising the maximum air flow requirement by an amount appropriate to the increased air flow of the largest units on the market, *e.g.,* to 100 ft/min. DOE stated, however, that it was not aware of any data that quantify the impact on repeatability and reproducibility of raising the maximum air velocity requirement to a less-stringent level. 87 FR 35286, 35302–35303.

MIAQ recommended that DOE continue to investigate the value of an increased air velocity. MIAQ noted that it is in the process of conducting air velocity testing and would be willing to confidentially share this data with DOE for analysis. (MIAQ, No. 15 at p. 7)

DOE notes that AHAM DH–1–2022 maintains 50 ft/min maximum air velocity requirement, indicating that there is not an industry consensus that a requirement higher than 50 ft/min would be acceptable. DOE has not received any data supporting that a 100 ft/min air velocity requirement would maintain test procedure repeatability and reproducibility. Therefore, without sufficient data to confirm that this test procedure change would allow for equally repeatable and reproduceable tests as the current requirement, in this final rule, DOE is maintaining the air velocity minimum requirement of 50 ft/min, consistent with AHAM DH–1–2022.

b. Nozzle Test Method

Section 3.1.2.2.3.2 of appendix X1 specifies measuring velocity pressures using the same pitot traverses as are used for measuring external static pressure (''ESP''), which are specified in section 3.1.2.2.3.1 of appendix X1, and calculating volumetric flow rates in each duct in accordance with section 7.3.1, ''Velocity Traverse,'' of ANSI/AMCA 210.

In the June 2022 NOPR, DOE summarized a comment submitted by Aprilaire asserting that there are a limited number of test facilities that still use this technology for measuring airflow. 87 FR 35286, 35303. Aprilaire suggested that DOE adopt the alternative method of using airflow nozzles to measure airflow as specified in section 7.3.2 of ANSI/AMCA 210. Aprilaire stated that most laboratories are using the nozzle method in ANSI/AMCA 210 for measuring airflow and that this method is listed by ASHRAE Standard 37 as the method to use for HVAC equipment. *Id.*

In the June 2022 NOPR, DOE discussed that it had inquired with a number of laboratories and is aware that a limited number of test laboratories use pitot-tube traverses when conducting

testing in accordance with ANSI/AMCA 210. (*See* sections 4.2.2, 4.3.1, and 7.3.1 of ANSI/AMCA 210) DOE discussed that it is aware that test laboratories typically use the alternate calibrated nozzle approach detailed in sections 4.2.3, 4.3.2 and 7.3.2 of ANSI/AMCA 210 when conducting testing in accordance with ANSI/AMCA 210 for products other than dehumidifiers, which is not currently permitted in appendix X1. Based on the industry-accepted standard (*i.e.,* ANSI/AMCA 210), the understanding that the two approaches are substantively similar, and feedback from test laboratories that use of the calibrated nozzle approach can reduce the test burden as compared to use of the pitot-tube traverses, DOE proposed in the June 2022 NOPR to allow calibrated nozzle testing according to the requirements of sections 4.2.3, 4.3.2, and 7.3.2 of ANSI/AMCA 210 for whole-home dehumidifiers in appendix X1. 87 FR 35286, 35303.

Aprilaire and MIAQ both supported DOE's proposal to include the calibrated nozzle approach from AMCA 210 in the appendix X1 test procedure for whole-home dehumidifiers. (Aprilaire, No. 14 at p. 2; MIAQ, No. 15 at p. 7)

DOE concludes, for the reasons discussed in the June 2022 NOPR, that the calibrated nozzle approach from ANSI/AMCA 210 produces repeatable and reproduceable results consistent with the pitot tube traverse method. Therefore, in this final rule, DOE is permitting the use of the calibrated nozzle approach in appendix X1, as proposed in the June 2022 NOPR.

c. Ventilation Air

Section 3.1.3 of appendix X1 requires capping and sealing any fresh-air inlet on a whole-home dehumidifier during testing. In the July 2015 Final Rule, DOE determined that, while sealing the fresh-air inlet on dehumidifiers designed to operate with the fresh-air intake open may negatively impact capacity and efficiency, those effects are not significant enough to warrant the added test burden of providing separate fresh-air inflow. 80 FR 45802, 45811. In the June 2022 NOPR, DOE summarized comments received by interested parties stating that capping the fresh-air intake should not appreciably impact the total airflow through the unit and subsequently should have little effect on the efficiency. DOE stated that is not aware of publicly available data, nor has DOE received information from commenters, regarding the prevalence of fresh-air inlet use among whole-home dehumidifier consumers. DOE further stated that comments received on this issue are consistent with DOE's prior determination that the burden of adding an additional air stream in the testing configuration to account for fresh-air inlet on those whole-home dehumidifiers equipped with such a feature would outweigh the benefits. Therefore, in the June 2022 NOPR, DOE tentatively determined to continue requiring capping and sealing the fresh-air inlet during testing of a whole-home dehumidifier in appendix X1. 87 FR 35286, 35303.

MIAQ supported DOE's tentative determination to retain the requirement to cap and seal the fresh-air inlet during testing of a whole-home dehumidifier. (MIAQ, No. 15 at p. 7)

For the reasons discussed in the June 2022 NOPR, DOE is retaining the requirement to cap and seal the fresh-air inlet during testing of a whole-home dehumidifier in appendix X1 in this final rule.

d. External Static Pressure

The DOE test procedure at appendix X1 requires that the ESP, the difference in process air outlet static pressure minus the process air inlet static pressure, be 0.2 inches of water column (''in. w.c.'') for the duration of the test when conducting whole-home dehumidifier testing. *See* section 3.1.2.2.3.1 of appendix X1.

In the June 2022 NOPR, DOE responded to comments submitted by MIAQ suggesting that DOE adopt two to different ESP conditions—one at 0 in. w.c. and the other at 0.4 in. w.c.—for testing whole-home dehumidifiers. In considering this comment, DOE noted that MIAQ did not provide support regarding the representativeness of its suggested ESP requirements. In addition, DOE discussed that it had previously considered and rejected multiple ESP requirements in a previous rulemaking based on a field study and other information. DOE explained that while DOE understands that installation configurations and environmental factors vary for whole-home dehumidifiers, DOE tentatively concluded that testing whole-home dehumidifiers twice—once with 0 in. w.c. ESP and once with 0.4 in. w.c. ESP—would not be sufficiently more representative than the current single 0.2 in. w.c. ESP requirement as to justify the increased test burden. Therefore, DOE did not propose to amend the ESP requirements for whole-home dehumidifiers in the June 2022 NOPR. 87 FR 35286, 35303.

In response to the June 2022 NOPR, Aprilaire noted that HVAC system pressures vary greatly with system design for residential applications. Aprilaire stated that a single static test pressure test point is preferrable, as a second test point would increase test burden in the form of both an extra rating test and additional quality verification testing. (Aprilaire, No. 14 at p. 2)

MIAQ stated that 0.2 in. w.c. ESP is a representative test condition for ducted dehumidifiers. MIAQ also suggested that additional research be conducted into whether higher external pressures could be representative of typical installation cases, such as when dehumidifiers are connected to furnace systems. MIAQ cited studies from the National Renewable Energy Laboratory and the California Energy Commission that observed pressures between 0.53 and 0.9 in. w.c in practice. (MIAQ, No. 15 at pp. 7–8)

For the reasons discussed in the June 2022 NOPR, and in consideration of these additional comments suggesting that 0.2 in. w.c. ESP is a representative test condition for ducted dehumidifiers and that requiring an additional test point would increase test burden, DOE continues to conclude that a single test approach for whole-home dehumidifiers is fully representative of whole-home dehumidifier performance. The studies referenced by MIAQ do not provide information specific to whole-home dehumidifiers sufficient for DOE to determine that ESP conditions between 0.53 and 0.9 in. w.c. are representative of typical whole-home dehumidifier installation. Therefore, DOE is maintaining the current test approach in appendix X1.

e. Additional Test Condition

In response to the June 2022 NOPR, MIAQ commented that all whole-home dehumidifiers should be tested at both the whole-home dehumidifier test conditions and the portable dehumidifier test conditions. MIAQ stated that adopting this change would be more representative of actual whole-home dehumidifier operation because whole-home units can be installed in configurations where the inlet air is drawn from indoor basement air, such as in crawlspace applications or when not connected to the HVAC return air stream. (MIAQ, No. 15 at pp. 3–4)

While DOE acknowledges that whole-home dehumidifiers may be installed in situations where the unit inlet air is drawn from unconditioned spaces (*e.g.,* a basement or crawlspace), such a situation does not represent typical operation of these units. As indicated by the product definition, whole-home dehumidifiers are designed to be installed in a ducted configuration, typically in line with an HVAC system,

and the test procedure requirements for whole-home dehumidifiers reflect this most representative installation scenario. Requiring whole-home units to be tested at an additional test condition applicable to portable dehumidifiers would add test burden without improving the representativeness of test results. Therefore, in this final rule, DOE is maintaining the single test condition for whole-home dehumidifiers. However, to the extent that a unit meets both the whole-home and portable dehumidifier definitions, it must be tested in each configuration and comply with both applicable energy conservation standards.

8. Network Functions

Many types of consumer products (*e.g.,* refrigerators, clothes dryers, room air conditioners) are now equipped with ''network functions,'' such as mobile alerts/messages, remote control, and energy information and demand response capabilities to support future smart grid interconnection. In the June 2022 NOPR, DOE noted that certain manufacturers have also incorporated some of these features, such as Wi-Fi capability, into dehumidifiers. 87 FR 35286, 35304.

Based on testing and information from interested parties regarding network functions in consumer products, DOE stated in the June 2022 NOPR that it expects the power consumption attributable to network functions to be on the order of 1 watt (''W'') or less. The impact on IEF of power consumption of network functions is expected to be no more than 1 percent, based on DOE's testing that indicated an average impact on IEF of less than 0.75 percent for the units in DOE's test sample. 87 FR 35286, 35304–35305. DOE also stated that it is aware there are dehumidifiers on the market with varying implementations of network functions. However, DOE stated that it was not aware of any data available, nor did interested parties provide any data, regarding the consumer use of network functions. Without this data, DOE stated it was unable to establish a representative test configuration to assess the energy consumption of network functions for dehumidifiers. *Id.*

Therefore, in the June 2022 NOPR, DOE proposed to specify that if a dehumidifier has network functions, all network functions must be disabled throughout testing using means available to the end user pursuant to instructions provided in the product's user manual. DOE further proposed to specify that if network functions cannot be disabled by the consumer or the manufacturer's user manual does not provide instruction for disabling the function, the energy consumption of the enabled network function must be included, as it is more representative than excluding the energy consumption associated with the network function. *Id.*

Aprilaire, MIAQ, and AHAM supported DOE's proposal to disable network functions if possible. AHAM noted that this proposal is consistent with the draft of AHAM DH–1–2022. (Aprilaire, No. 14 at p. 2; MIAQ, No. 15 at p. 8; AHAM, No. 17 at p. 3)

The anonymous commentor recommended developing test methods which can better accommodate networked models (Anonymous, No. 12 at p. 1)

The Joint Commenters requested that DOE require dehumidifiers to be tested with network functions in the factory default setting if possible, rather than disabled. The Joint Commenters stated that DOE's approach may not be representative of real-world operation, as consumers would be unlikely to disable connected functionality if a unit is shipped with connected functions enabled, and testing using the network default settings would result in a more representative energy use measurement. (Joint Commenters, No. 18 at p. 2; Appliance Standard Awareness Project, Public Meeting Transcript, No. 11 at p. 21)

As discussed in the June 2022 NOPR, DOE is not aware of any consumer usage data, nor did interested parties provide any such data, regarding the consumer use of network connectivity. Without this data, DOE is unable to establish a representative test configuration for assessing the energy consumption of network connectivity features for dehumidifiers. 87 FR 35286, 35305.

DOE similarly lacks data regarding whether consumers not using connected functions would disable such functions or leave them in the as-shipped setting. Therefore, due to a lack of data regarding consumer usage of network connectivity features and to harmonize with the industry standard, DOE maintains its June 2022 NOPR proposals and in this final rule is requiring that for dehumidifiers with network functions, follow the requirements in section 5.5 of AHAM DH–1–2022, that (1) the network functions must be disabled throughout testing if such settings can be disabled by the end-user and the product's user manual provides instructions on how to do so; and (2) if network functions cannot be disabled by the end-user, or the product's user manual does not provide instruction for disabling network functions, then the unit must be tested with the network functions in the factory default configuration for the test period.

9. Removal of Appendix X

Appendix X to subpart B of 10 CFR part 430 is no longer required for use. For dehumidifiers manufactured on or after January 27, 2016, use of appendix X1 to subpart B of 10 CFR part 430 is required for any representations of energy use or efficiency of portable and whole-home dehumidifiers, including demonstrating compliance with the currently applicable energy conservation standards. As discussed in this document, DOE is maintaining the currently applicable appendix X1, with amendments. The updated version of appendix X1 will be used for the evaluation and issuance of any updated efficiency standards, and for determining compliance with those standards. In the June 2022 NOPR, DOE proposed to remove the obsolete appendix X. 87 FR 35286, 35305.

MIAQ supported DOE's proposal to remove appendix X along with all references to appendix X in 10 CFR parts 429 and 430.

In this final rule, DOE removes appendix X to subpart B of 10 CFR part 430, along with all references to appendix X in 10 CFR part 430.

D. Test Procedure Costs

EPCA requires that test procedures proposed by DOE not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) DOE has determined that the amendments in this final rule are not unduly burdensome. The following sections discuss DOE's evaluation of estimated costs and savings associated with the amendments to appendix X1.

In this final rule, DOE updates the existing test procedure for dehumidifiers by amending appendix X1 to incorporate the current version of the applicable industry standard, specify the dehumidification mode rating test period to be 2 hours, permit the use of a sampling tree in conjunction with an aspirating psychrometer or relative humidity sensor for a dehumidifier with a single process air intake grille, and specify requirements for testing dehumidifiers with network functions. If the network functions can be disabled by the end-user and instructions to disable appear in the manual, test with those functions disabled; otherwise, test in the factory default setting. DOE has determined that these proposed amendments would not increase testing costs. As discussed in the following paragraphs, DOE has also determined that two amendments would likely reduce testing costs:

shortening the test duration and permitting use of a sampling tree.

1. Reduced Test Period

DOE amends appendix X1 to specify the dehumidification mode rating test period to be 2 hours for portable and whole-home dehumidifiers. As discussed in section III.C.5 of this document, DOE expects that this amendment will decrease test cost for dehumidifier manufacturers due to reduced test chamber time. Based on past experiences with conducting appendix X1 testing, DOE estimates that 6 hours in a psychrometric chamber for dehumidifier testing according to appendix X1 costs $1,100. Reducing the test period by 4 hours yields an estimated cost savings per test of $750, which is two-thirds of the estimated cost of operation of the test chamber for 6 hours.

DOE has determined that the amendments would not affect the representations of dehumidifier energy efficiency/energy use, as discussed in section III.C.5 of this document. DOE expects that manufacturers would be able to rely on data generated under the current test procedure. As such, retesting and recertification of dehumidifiers would not be required solely as a result of DOE's adoption of the amendments to the test procedure.

2. Sampling Tree

DOE amends appendix X1 to allow relative humidity measurements using an aspirating psychrometer or relative humidity sensor with a sampling tree for all dehumidifiers. As discussed in section III.C.6 of this document, DOE expects this would not substantively impact repeatability or reproducibility of the test procedure or the representativeness of the measured energy efficiency. The amendment would not result in a change of the measured energy efficiency of any currently certified dehumidifiers because the proposed use of a sampling tree would be an alternate test set-up to the current test set-up. The amendment would also likely reduce the test burden for certain test laboratories that would otherwise be required to change their aspirating psychrometer or relative humidity sensor configuration to remove the sampling tree and reposition the psychrometer within the test chamber. There is no cost attributable to this amendment.

DOE has determined that the amendments in this final rule would not impact the measured energy use or representations of dehumidifier energy efficiency/energy use. DOE has also determined that manufacturers would be able to rely on data generated under the current test procedure as amended. As such, DOE does not expect re-testing of any dehumidifier would be required solely as a result of DOE's adoption of these amendments to the test procedure.

3. Other Amendments

DOE has determined that the amendments to incorporate the updated version of the relevant industry testing standard and to provide additional direction regarding units with network functions will not change the measured energy efficiency as compared to the current test procedure and would not change the test costs. DOE expects that manufacturers would be able to rely on data generated under the current test procedure. As such, retesting and recertification of dehumidifiers would not be required solely as a result of DOE's adoption of the amendments to the test procedure. Based on review of AHAM DH–1–2022, DOE expects that the amended test procedure for measuring IEF will not increase testing costs per unit compared to the current DOE test procedure. DOE also does not expect that the direction to disable network functions during testing will impact test cost or the measured energy efficiency, as network function does not represent a significant portion of the overall energy efficiency, as discussed previously.

While DOE does not expect that the amendments to the test procedure will require manufacturers to re-test and recertify their models, manufacturers may choose to re-test units using the new test procedure. DOE estimates that testing under the new test procedure would cost roughly $2,000 per test, based on recent testing quotes and reduced testing cost due to the shorter test duration.

E. Effective and Compliance Dates

The effective date for the adopted test procedure amendment will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 180 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2))

EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. *Id.* To the extent the modified test procedure adopted in this final rule is required only for the evaluation and issuance of updated efficiency standards, compliance with the amended test procedure does not require use of such modified test procedure provisions until the compliance date of updated standards.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866, 13563, and 14094

Executive Order (''E.O.'')12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011) and amended by E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons

stated in this preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any final rule where the agency was first required by law to publish a proposed rule for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.* DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE has concluded that this rule would not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows:

For manufacturers of dehumidifiers, the Small Business Administration (''SBA'') considers a business entity to be small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. DOE used SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. These size standards and codes are established by the North American Industry Classification System (''NAICS'') and are available at *www.sba.gov/document/support_table-size-standards.* Manufacturing of portable dehumidifiers is classified under NAICS 335210, ''Small Electrical Appliance Manufacturing,'' whereas the manufacturing of whole-home dehumidifiers is classified under NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' The SBA sets a threshold of 1,500 employees or fewer and 1,250 employees or fewer for an entity to be considered as a small business in these industry categories, respectively.[7] For manufacturers of both portable and whole-home dehumidifiers, DOE used the higher (or more conservative) threshold of 1,500 employees or fewer.

DOE used its Compliance Certification Database (''CCD''),[8] California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS''),[9] and ENERGY STAR's Product Finder dataset [10] to create a list of companies that sell the products covered by this rulemaking in the United States. DOE then consulted publicly available data, such as manufacturer websites, manufacturer specifications and product literature, import/export logs, and basic model numbers, to identify original equipment manufacturers (''OEMs'') of the products covered by this rulemaking. DOE relied on public data and subscription-based market research tools (*e.g.,* Dun & Bradstreet reports [11]) to determine company location, headcount, and annual revenue. DOE screened out companies that do not offer products covered by this proposed rulemaking, do not meet the SBA's definition of a ''small business,'' or are foreign-owned and operated.

DOE identified 16 OEMs of dehumidifiers for the U.S. market. DOE estimates that 12 are OEMs of portable dehumidifiers, three are OEMs of whole-home dehumidifiers, and one is an OEM of both portable and whole-home dehumidifiers. Of the 16 total OEMs identified, one qualifies as a ''small business'' and is not foreign-owned or operated.

DOE did not receive any comments that specifically addressed impacts on small businesses or that were provided in response to the initial regulatory flexibility analysis.

In this final rule, DOE updates the existing test procedure for dehumidifiers by amending appendix X1 to incorporate the current version of the applicable industry standard, specify the dehumidification mode rating test period to be 2 hours, permit the use of a sampling tree in conjunction with an aspirating psychrometer or relative humidity sensor for a dehumidifier with a single process air intake grille, and specify requirements for testing dehumidifiers with network functions. If the network functions can be disabled by the end-user and instructions to disable appear in the manual, test with those functions disabled; otherwise, test in the factory default setting. DOE has determined that these amendments would not increase testing costs. DOE has also determined that two amendments would likely reduce testing costs: shortening the test duration and permitting use of a sampling tree.

DOE has determined that the amendments in this final rule would not impact the measured energy use or representations of dehumidifier energy efficiency/energy use. DOE has also determined that manufacturers would be able to rely on data generated under the current test procedure as amended. As such, DOE does not expect retesting of any dehumidifier would be required solely as a result of DOE's adoption of these amendments to the test procedure.

Therefore, DOE concludes that the cost effects accruing from the final rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE has submitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of dehumidifiers must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including dehumidifiers. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the

[7] U.S. Small Business Administration, ''Table of Size Standards.'' (Effective December 19, 2022). Available at *www.sba.gov/document/support-table-size-standards* (last accessed January 23, 2023).

[8] U.S. Department of Energy, Compliance Certification Database. Available at *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A** (last accessed October 11, 2022).

[9] California Energy Commission, Modernized Appliance Efficiency Database System. Available at: *cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx* (last accessed January 23, 2022).

[10] U.S. Environmental Protection Agency, ENERGY STAR Product Finder data set. Available at *www.energystar.gov/productfinder/* (last accessed January 24, 2022).

[11] The Dun & Bradstreet Hoovers subscription login is available online at *app.dnbhoovers.com/* (last accessed January 23, 2023).

certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours 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.

DOE is not amending the certification or reporting requirements for dehumidifiers in this final rule.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for dehumidifiers. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedure for dehumidifiers adopted in this final rule incorporates testing methods contained in certain sections of the following commercial standards: AHAM DH–1–2022, ANSI/AMCA 210, ANSI/ASHRAE 41.1, and IEC 62301. DOE has evaluated these standards and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

AHAM DH–1–2022 is an industry-accepted test procedure that measures the capacity and energy input of portable dehumidifiers under specified test conditions. AHAM DH–1–2022 includes provisions for testing dehumidifier energy use in off-cycle, inactive, and off modes, and for including energy consumption in those modes in efficiency calculations. Appendix X1 references sections of AHAM DH–1–2022 for definitions, instrumentation, and test procedure requirements. AHAM DH–1–2022 is reasonably available from AHAM at *www.aham.org/AHAM/AuxStore.*

The following standards appear in the amendatory text of this document and were previously approved for the locations in which they appear: ANSI/AMCA 210, ANSI/ASHRAE 41.1, and IEC 62301.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on July 11, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, 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 July 11, 2023.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends part 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.2 is amended by revising the definitions of ''Portable dehumidifier'' and ''Whole-home dehumidifier'' to read as follows:

§ 430.2 Definitions.

* * * * *

Portable dehumidifier means a dehumidifier that, in accordance with any manufacturer instructions available to a consumer, operates within the dehumidified space without the attachment of additional ducting, although means may be provided for optional duct attachment.

* * * * *

Whole-home dehumidifier means a dehumidifier that, in accordance with any manufacturer instructions available to a consumer, operates with ducting to deliver return process air to its inlet and to supply dehumidified process air from its outlet to one or more locations in the dehumidified space.

■ 3. Section 430.3 is amended by:

■ a. Removing the words ''*http://*'' and ''*https://*'' wherever they appear;

■ b. Revising paragraphs (a) and (i)(3);

■ c. Removing paragraph (o)(2);

■ d. Redesignating paragraphs (o)(3) and (4) as paragraphs (o)(2) and (3), respectively;

■ e. Revising paragraph (q)(6); and

■ f. Redesignating paragraph (q)(9) as paragraph (q)(8).

The revisions read as follows:

§ 430.3 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the U.S. Department of Energy (DOE) must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at the Department of Energy (DOE) and at the National Archives and Records Administration (NARA). Contact DOE at: The U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121, (202) 586–9127, *Buildings@ee.doe.gov, www.energy.gov/eere/buildings/appliance-and-equipment-standards-program.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the sources in the following paragraphs of this section.

* * * * *

(i) * * *

(3) AHAM DH–1–2022, *Energy Measurement Test Procedure for Dehumidifiers,* copyright 2022; IBR approved for appendix X1 to subpart B.

* * * * *

(q) * * *

(6) IEC 62301 (''IEC 62301''), *Household electrical appliances—Measurement of standby power,* (Edition 2.0, 2011–01); IBR approved for appendices C1, C2, D1, D2, F, G, I, I1, J, J2, N, O, P, Q, U, X1, Y, Y1, Z, BB, CC, CC1, EE, and FF to subpart B.

* * * * *

■ 4. Section 430.23 is amended by revising paragraph (z) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(z) *Dehumidifiers.* (1) Determine the capacity, expressed in pints/day, according to section 5.2 of appendix X1 to this subpart.

(2) Determine the integrated energy factor, expressed in L/kWh, according to section 5.4 of appendix X1 to this subpart.

(3) Determine the case volume, expressed in cubic feet, for whole-home dehumidifiers in accordance with section 5.7 of appendix X1 of this subpart.

* * * * *

Appendix X to Subpart B of Part 430 [Removed and Reserved]

■ 5. Remove and reserve appendix X to subpart B of part 430.

■ 6. Amend Appendix X1 to subpart B of part 430 by:

■ a. Revising the introductory note;

■ b. Adding section 0;

■ c. Revising sections 2 and 3.1.1;

■ d. Removing section 3.1.1.2;

■ e. Redesignating sections 3.1.1.3 through 3.1.1.6 as sections 3.1.1.2 through 3.1.1.5;

■ f. Revising newly redesignated sections 3.1.1.2 and 3.1.1.4;

■ g. Revising sections 3.1.2, 3.1.2.2.3.1, 3.1.2.2.3.2, 3.1.2.3, 3.2.2.1, 4.1.1, 4.1.2, 4.2, and 4.3;

■ h. Removing sections 4.3.1 and 4.3.2; and

■ i. Revising section 5.4.

The revisions and additions read as follows:

Appendix X1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dehumidifiers

Note: After January 22, 2024, any representations made with respect to the energy efficiency of a dehumidifier must be made in accordance with the results of testing pursuant to this appendix. Manufacturers conducting tests of a dehumidifier prior to January 22, 2024, must conduct such test in accordance with either this appendix or the previous version of this appendix as it appeared in the Code of Federal Regulations on January 1, 2023. Any representations made with respect to the energy efficiency of such dehumidifier must be in accordance with whichever version is selected.

0. Incorporation by Reference

DOE incorporated by reference in § 430.3, the entire standard for AHAM DH–1–2022, ANSI/AMCA 210, ANSI/ASHRAE 41.1, and IEC 62301; however, only enumerated provisions of those documents are applicable to this appendix. To the extent there is a conflict between the terms or provisions of a referenced industry standard and the CFR, the CFR provisions control.

0.1 AHAM DH–1–2022

(a) Section 3 ''Definitions'', as specified in sections 2 and 3.1.2 of this appendix.

(b) Section 4 ''Instrumentation'', as specified in sections 3.1.1 and 3.1.2 of this appendix.

(c) Section 5.1 ''General'', as specified in sections 3.1.1 and 3.1.2 of this appendix.

(d) Section 5.2 ''Test Room'', as specified in sections 3.1.1 and 3.1.2 of this appendix.

(e) Section 5.3 ''Positioning of Test Unit'', as specified in sections 3.1.1 and 3.1.1.2 of this appendix.

(f) Section 5.5 ''Control settings'', as specified in sections 3.1.1, 3.1.1.4, and 3.1.2 of this appendix.

(g) Section 7 ''Test Tolerances'', as specified in section 4.1.1 of this appendix.

(h) Section 8 ''Capacity Test'', as specified in sections 4.1.1 and 4.1.2 of this appendix.

(i) Section 8.3 ''Standard Test Voltage'', as specified in section 3.2.2.1 of this appendix.

(j) Section 8.4 ''Psychrometer Placement'', as specified in section 3.1.1.2 of this appendix.

(k) Section 9 ''Energy Consumption'', as specified in sections 4.1.1 and 4.1.2 of this appendix.

(l) Section 9.3.2 ''Inactive/Off Mode'', as specified in section 4.2 of this appendix.

(m) Section 9.3.1 ''Off-Cycle Mode'', as specified in section 4.3 of this appendix.

(n) Section 9.4 ''Calculation of Test Results'', as specified in section 4.1.2 of this appendix.

0.2 ANSI/AMCA 210

(a) Section 5.2.1.6 ''Airflow straightener'', as specified in section 3.1.2.1 of this appendix.

(b) Figure 6A ''Flow Straightener—Cell Type'', as specified in section 3.1.2.1 of this appendix.

(c) Section 4.2.2 ''Pitot-static tube'', as specified in section *3.1.2.2.3.1* of this appendix.

(d) Section 4.2.3 ''Static pressure tap'', as specified in section *3.1.2.2.3.1* of this appendix.

(e) Section 4.3.1 ''Pitot Traverse'', as specified in section *3.1.2.2.3.1* of this appendix.

(f) Section 4.3.2 ''Flow nozzle'', as specified in section *3.1.2.2.3.1* of this appendix.

(g) Section 7.5.2 ''Pressure Losses'', as specified in section *3.1.2.2.3.1* of this appendix.

(h) Section 7.3.1 ''Velocity Traverse'', as specified in section *3.1.2.2.3.2* of this appendix.

(i) Section 7.3.2 ''Nozzle'', as specified in section *3.1.2.2.3.2* of this appendix.

(j) Section 7.3 ''Fan airflow rate at test conditions'', as specified in section 5.6 of this appendix.

0.3 ANSI/ASHRAE 41.1

(a) Section 5.3.5 ''Centers of Segments—Grids'', as specified in section 3.1.2.2.1 of this appendix.

(b) [Reserved]

0.4 IEC 62301

(a) Section 5.2 ''Preparation of product'', as specified in section 3.2.1 of this appendix.

(b) Section 4.3.2 ''Supply voltage waveform'', as specified in section 3.2.2.2 of this appendix.

(c) Section 4.4 ''Power measuring instruments'', as specified in section 3.2.3 of this appendix.

(d) Section 4.2 ''Test room'', as specified in section 3.2.4 of this appendix.

* * * * *

2. Definitions

Definitions for terms, modes, calculations, etc. are in accordance with AHAM DH–1–2022, section 3, with the following added definitions:

Energy factor for dehumidifiers means a measure of energy efficiency of a dehumidifier calculated by dividing the water removed from the air by the energy consumed, measured in liters per kilowatt-hour (L/kWh).

External static pressure (ESP) means the process air outlet static pressure minus the process air inlet static pressure, measured in inches of water column (in. w.c.).

Process air means the air supplied to the dehumidifier from the dehumidified space and discharged to the dehumidified space after some of the moisture has been removed by means of the refrigeration system.

Product capacity for dehumidifiers means a measure of the ability of the dehumidifier to remove moisture from its surrounding atmosphere, measured in pints collected per 24 hours of operation under the specified ambient conditions.

Product case volume for whole-home dehumidifiers means a measure of the rectangular volume that the product case occupies, exclusive of any duct attachment collars or other external components.

Reactivation air means the air drawn from unconditioned space to remove moisture from the desiccant wheel of a refrigerant-desiccant dehumidifier and discharged to unconditioned space.

* * * * *

3.1 * * *

3.1.1 *Portable dehumidifiers and whole-home dehumidifiers other than refrigerant-desiccant dehumidifiers.* The test apparatus and instructions for testing in dehumidification mode and off-cycle mode must conform to the requirements specified in Section 4, ''Instrumentation,'' section 5.1, ''General,'' section 5.2, ''Test Room,'' Section 5.3, ''Positioning of Test Unit,'' and section 5.5, ''Control settings'' of AHAM DH–1–2022, with the following exceptions. If a product is able to operate as either a portable or whole-home dehumidifier by means of removal or installation of an optional ducting kit, in accordance with any manufacturer instructions available to a consumer, test and rate both configurations.

* * * * *

3.1.1.2 *Instrumentation placement.* If using a sampling tree, follow the instrumentation placement instructions in sections 5.3 and 8.4 of AHAM DH–1–2022. If not using a sampling tree, place the aspirating psychrometer or relative humidity and dry-bulb temperature sensors perpendicular to, and 1 ft. in front of, the center of the process air intake grille. During each test, use the psychrometer or relative humidity and dry-bulb sensors to monitor inlet conditions of only one unit under test. When using relative humidity and dry-bulb temperature sensors without sampling trees to test a unit that has multiple process air intake grilles, place a relative humidity sensor and dry-bulb temperature sensor perpendicular to, and 1 ft. in front of, the center of each process air intake grille.

* * * * *

3.1.1.4 *Control settings.* Follow the control settings instructions in section 5.5 of AHAM DH–1–2022.

* * * * *

3.1.2 *Refrigerant-desiccant dehumidifiers.* The test apparatus and instructions for testing refrigerant-desiccant dehumidifiers in dehumidification mode must conform to the requirements specified in section 3, ''Definitions,'' section 4, ''Instrumentation,'' and section 5.1, ''General,'' section 5.2, ''Test Room,'' and section 5.5, ''Control settings,'' of AHAM DH–1–2022, except as follows.

* * * * *

3.1.2.2.3.1 External static pressure. Measure static pressures in each duct using pitot-static tube traverses, a flow nozzle or a bank of flow nozzles. For pitot-static tube traverses, conform to the specifications in section 4.3.1, ''Pitot Traverse,'' of ANSI/AMCA 210 and section 4.2.2, ''Pitot-Static Tube,'' of ANSI/AMCA 210, except use only two intersecting and perpendicular rows of pitot-static tube traverses. For a flow nozzle or bank of flow nozzles, conform to the specifications in section 4.3.2, ''Flow nozzle,'' of ANSI/AMCA 210 and section 4.2.3, ''Static pressure tap'' of ANSI/AMCA 210. Record the static pressure within the test duct as follows. When using pitot-static tube traverses, record the pressure as measured at the pressure tap in the manifold of the traverses that averages the individual static pressures at each pitot-static tube. When using a flow nozzle or bank of nozzles, record the pressure or in accordance with section 4.2.3.2, ''Averaging,'' of ANSI/AMCA 210. Calculate duct pressure losses between the unit under test and the plane of each static pressure measurement in accordance with section 7.5.2, ''Pressure Losses,'' of ANSI/AMCA 210. The external static pressure is the difference between the measured inlet and outlet static pressure measurements, minus the sum of the inlet and outlet duct pressure losses. For any port with no duct attached, use a static pressure of 0.00 in. w.c. with no duct pressure loss in the calculation of external static pressure. During dehumidification mode testing, the external static pressure must equal 0.20 in. w.c. ± 0.02 in. w.c.

3.1.2.2.3.2 Velocity pressure. Measure velocity pressures using the same pitot traverses or nozzles as used for measuring external static pressure, which are specified in section 3.1.2.2.3.1 of this appendix. When using pitot-static tube traverses, determine velocity pressures at each pitot-static tube in a traverse as the difference between the pressure at the impact pressure tap and the pressure at the static pressure tap and calculate volumetric flow rates in each duct in accordance with section 7.3.1, ''Velocity Traverse,'' of ANSI/AMCA 210. When using a flow nozzle or a bank of flow nozzles, calculate the volumetric flow rates in each duct in accordance with section 7.3.2, ''Nozzle,'' of ANSI/AMCA 210.

* * * * *

3.1.2.3 *Control settings.* Follow the control settings instructions in section 5.5 of AHAM DH–1–2022.

* * * * *

3.2.2 * * *

3.2.2.1 *Electrical supply.* For the inactive mode and off mode testing, maintain the electrical supply voltage and frequency indicated in section 8.3, ''Standard Test Voltage,'' of AHAM DH–1–2022. The electrical supply frequency shall be maintained ±1 percent.

* * * * *

4.1 * * *

4.1.1 *Portable dehumidifiers and whole-home dehumidifiers other than refrigerant-desiccant dehumidifiers.* Measure the energy consumption in dehumidification mode, EDM, in kilowatt-hours (kWh), the average percent relative humidity, Ht, either as measured using a relative humidity sensor or using Tables 2 and 3 when using an aspirating psychrometer, and the product capacity, Ct, in pints per day (pints/day), in accordance with the test requirements specified in section 7, ''Test Tolerances,'' section 8, ''Capacity Test,'' and section 9, ''Energy Consumption,'' of AHAM DH–1–2022, with two exceptions. First, the rating test period must be 2 hours. Second, maintain the standard test conditions as shown in Table 1.

TABLE 1 TO PARAGRAPH 4.1.1—STANDARD TEST CONDITIONS FOR DEHUMIDIFIER TESTING

Configuration	Dry-bulb temperature (°F)	Aspirating psychrometer Wet-bulb temperature (°F)	Relative humidity sensor relative humidity (%)
Portable dehumidifiers	65 ± 2.0	56.6 ± 1.0	60 ± 2
Whole-home dehumidifiers	73 ± 2.0	63.6 ± 1.0	60 ± 2

When using relative humidity and dry-bulb temperature sensors, for dehumidifiers with multiple process air intake grilles, average the measured relative humidities and average the measured dry-bulb temperatures to determine the overall intake air conditions.

TABLE 2 TO PARAGRAPH 4.1.1—RELATIVE HUMIDITY AS A FUNCTION OF DRY-BULB AND WET-BULB TEMPERATURES FOR PORTABLE DEHUMIDIFIERS

Wet-bulb temperature (°F)	Dry-bulb temperature (°F)										
	64.5	64.6	64.7	64.8	64.9	65	65.1	65.2	65.3	65.4	65.5
56.3	60.32	59.94	59.57	59.17	58.8	58.42	58.04	57.67	57.3	56.93	56.56
56.4	60.77	60.38	60	59.62	59.24	58.86	58.48	58.11	57.73	57.36	56.99
56.5	61.22	60.83	60.44	60.06	59.68	59.3	58.92	58.54	58.17	57.8	57.43
56.6	61.66	61.27	60.89	60.5	60.12	59.74	59.36	58.98	58.6	58.23	57.86
56.7	62.4	61.72	61.33	60.95	60.56	60.18	59.8	59.42	59.04	58.67	58.29
56.8	62.56	62.17	61.78	61.39	61	60.62	60.24	59.86	59.48	59.1	58.73
56.9	63.01	62.62	62.23	61.84	61.45	61.06	60.68	60.3	59.92	59.54	59.16

TABLE 3 TO PARAGRAPH 4.1.1—RELATIVE HUMIDITY AS A FUNCTION OF DRY-BULB AND WET-BULB TEMPERATURES FOR WHOLE-HOME DEHUMIDIFIERS

Wet-bulb temperature (°F)	Dry-bulb temperature (°F)										
	72.5	72.6	72.7	72.8	72.9	73	73.1	73.2	73.3	73.4	73.5
63.3	60.59	60.26	59.92	59.59	59.26	58.92	58.6	58.27	57.94	57.62	57.3
63.4	60.98	60.64	60.31	59.75	59.64	59.31	58.98	58.65	58.32	58	57.67
63.5	61.37	61.03	60.7	60.36	60.02	59.69	59.36	59.03	58.7	58.38	58.05
63.6	61.76	61.42	61.08	60.75	60.41	60.08	59.74	59.41	59.08	58.76	58.43
63.7	62.16	61.81	61.47	61.13	60.8	60.46	60.13	59.8	59.47	59.14	58.81
63.8	62.55	62.2	61.86	61.52	61.18	60.85	60.51	60.18	59.85	59.52	59.19
63.9	62.94	62.6	62.25	61.91	61.57	61.23	60.9	60.56	60.23	59.9	59.57

4.1.2 *Refrigerant-desiccant dehumidifiers.* Establish the testing conditions set forth in section 3.1.2 of this appendix. Measure the energy consumption, EDM, in kWh, in accordance with the test requirements specified in section 8, ''Capacity Test,'' and section 9, ''Energy Consumption,'' respectively, of AHAM DH–1–2022, with the following exceptions and adjustments:

(a) Each measurement of the temperature and relative humidity of the air entering the process air inlet duct and the reactivation air inlet must be within 73 °F ± 2.0 °F dry-bulb temperature and 60 percent ± 5 percent relative humidity, and the arithmetic average of the inlet test conditions over the test period shall be within 73 °F ± 0.5 °F dry-bulb temperature and 60 percent ± 2 percent relative humidity;

(b) Disregard the instructions for psychrometer placement;

(c) Record dry-bulb temperatures, relative humidities, static pressures, velocity pressures in each duct, volumetric air flow rates, and the number of measurements in the test period;

(d) Disregard the requirement to weigh the condensate collected during the test;

(e) The rating test period must be 2 hours; and

(f) To perform the calculations in section 9.4, ''Calculation of Test Results,'' of AHAM DH–1–2022:

(i) Replace ''Condensate collected (lb)'' and ''mlb'', with the weight of condensate removed, W, as calculated in section 5.6 of this appendix; and

(ii) Use the recorded relative humidities, not the tables in section 4.1.1 of this appendix, to determine average relative humidity.

4.2 *Off-cycle mode.* Follow requirements for test measurement in off-cycle mode of operation in accordance with section 9.3.2 of AHAM DH–1–2022.

4.3 *Inactive and off mode.* Follow requirements for test measurement in inactive and off modes of operation in accordance with section 9.3.1 of AHAM DH–1–2022.

* * * * *

5. * * *

5.4 *Integrated energy factor.* Calculate the integrated energy factor, IEF, in L/kWh, rounded to two decimal places, according to the following:

$$IEF = \frac{\left(C_r \times \frac{2 \times 1.04}{24}\right) \times 0.454}{\left[E_{DM} + \left(\left(\frac{E_{TLP}}{1095}\right) \times 2\right)\right]}$$

Where:

C_r = corrected product capacity in pints per day, as determined in section 5.2 of this appendix;

2 = dehumidification mode test duration in hours;

E_{DM} = energy consumption during the 2-hour dehumidification mode test in kWh, as measured in section 4.1 of this appendix;

E_{TLP} = annual combined low-power mode energy consumption in kWh per year, as calculated in section 5.3 of this appendix;

1,095 = dehumidification mode annual hours, used to convert E_{TLP} to combined low-power mode energy consumption per hour of dehumidification mode;

1.04 = the density of water in pounds per pint;

0.454 = the liters of water per pound of water; and

24 = the number of hours per day.

* * * * *

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BILLING CODE 6450–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AF51

Federal Credit Union Bylaws

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: On March 15, 2022, Congress enacted the Credit Union Governance Modernization Act of 2022 (Governance Modernization Act). Under the statute, the NCUA has 18 months following the date of enactment to develop a policy by which a Federal credit union (FCU) member may be expelled for cause by a two-thirds vote of a quorum of the FCU's board of directors. The NCUA Board (Board) is issuing this final rule to amend the standard FCU bylaws (FCU Bylaws) to adopt such a policy.

DATES: The final rule is effective August 25, 2023.

FOR FURTHER INFORMATION CONTACT: John Tamashiro, Director, Division of Consumer Access; Paul Dibble, Consumer Access Program Officer, Office of Credit Union Resources and Expansion; Lisa Roberson, Deputy Director, Office of Consumer Financial Protection; Rachel Ackmann, Senior Staff Attorney; or Ian Marenna, Associate General Counsel, Office of General Counsel; 1775 Duke Street, Alexandria, VA 22314–3428. John Tamashiro can be reached at (703) 548–2577, Paul Dibble can be reached at (703) 664–3164, Lisa Roberson can be reached at (703) 548–2466, Rachel Ackmann can be reached at (703) 548–2601, and Ian Marenna can be reached at (703) 518–6554.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Federal Credit Union Act (FCU Act) and standard FCU Bylaws prior to the effective date of this final rule, there were two ways a member may be expelled, namely: (1) by a two-thirds vote of the membership present at a special meeting called for that purpose, and only after the individual is provided an opportunity to be heard; and (2) for non-participation in the affairs of the credit union, as specified in a policy adopted and enforced by the board.[1] These requirements were set out in the standard FCU Bylaws in appendix A to part 701 of the NCUA's regulations.[2]

The FCU Bylaws were last amended by the NCUA Board in 2019 (2019 FCU Bylaws Final Rule).[3] The 2019 FCU Bylaws Final Rule was a comprehensive update that sought to modernize, clarify, and simplify the FCU Bylaws and was the culmination of several years of engagement between the NCUA and factoring in an assessment of stakeholder input. During the 2019 FCU Bylaws Final Rule rulemaking, several commenters expressed concern that the FCU Act expulsion provisions discussed previously made it difficult to proactively limit security threats or financial harm caused by violent, belligerent, disruptive, or abusive credit union members. Specifically, commenters were concerned about the burden from requiring members to call a special meeting to seek to expel such members.

The 2019 FCU Bylaws Final Rule, however, did not modify the procedures for expelling an FCU member as the procedures for expelling a member are governed by the FCU Act. Instead, the 2019 FCU Bylaws Final Rule added a new section to the FCU Bylaws on limiting services for certain members. The 2019 FCU Bylaws Final Rule created the concept of a ''member in good standing.'' [4] So long as a member remains in good standing, that member retains all the rights and privileges associated with FCU membership. A member not in good standing, however, may be subject to an FCU's limitation of services policy. For example, an FCU may limit all or most credit union services, such as ATM services, credit cards, loans, share draft privileges, preauthorized transfers, and access to credit union facilities, to a member who has engaged in conduct that has caused a loss to the FCU or that threatens the safety of credit union staff, facilities, or other members in the FCU or its surrounding property.

The 2019 FCU Bylaws Final Rule was clear that certain actions warrant immediate limitation of services or access to credit union facilities, such as violence against other credit union members or credit union staff in the credit union facility or the surrounding property. The Board also stated clearly that an FCU may immediately take actions such as contacting local law enforcement, seeking a restraining order, or pursuing other lawful means to protect the credit union, credit union members, and staff. Nothing in the FCU Act or the FCU Bylaws prevents an FCU from using whatever lawful means it deems necessary to address circumstances in which a member poses a risk of harm to the FCU, its property, its members, or its staff and officials.

Even a member deemed not in good standing, however, retains fundamental rights as a credit union member. For example, a member not in good standing has the right to attend, participate in, and vote at the annual and special meetings of the members and the right to maintain a share account.[5] Those rights may be terminated only through a member's expulsion, and the Board explained in the 2019 FCU Bylaws Final Rule that it cannot amend the statutorily prescribed expulsion procedures for members.

In March 2022, however, Congress enacted the Governance Modernization Act to revise the FCU Act procedures for expelling members.[6] The legislative history of the Governance Modernization Act focused on FCUs' concerns that their ability to address violent and aggressive behaviors of certain members was inadequate. Like comments raised during the 2019 FCU Bylaws Final Rule rulemaking, the legislative history included concerns that FCUs lacked the tools to adequately protect employees and other members

[1] 12 U.S.C. 1764.

[2] 12 CFR part 701, appendix A. Section 108 of the FCU Act requires the Board to prepare periodically a form of bylaws for use by FCU incorporators and to provide that form to FCU incorporators upon request. 12 U.S.C. 1758. FCU incorporators must submit proposed bylaws to the NCUA as part of the chartering process. Once the NCUA has approved an FCU's proposed bylaws, the FCU must operate according to its approved bylaws or seek agency approval for a bylaw amendment that is not among permissible options in the standard FCU Bylaws. 12 CFR 701.2(a).

[3] 84 FR 53278 (Oct. 4, 2019).

[4] 12 CFR part 701, appendix A, Art. II, sec. 5.

[5] The Board understands that a restraining or protective order from a court would bar a member from attending such meetings in person.

[6] Public Law 117–103 (Mar. 15, 2022).

from violent and abusive members and included concerns that members had threatened the life of an employee or in another case physically attacked a service representative. To address these concerns, Congress modified the FCU Act to provide FCUs with an option for expelling a member for cause by a two-thirds vote of a quorum of the board of directors. The legislative history also described the need for using this authority as a rare option and focused on more extreme examples of member behavior. This statutory authority, however, is not self-executing. The legislation gave the Board 18 months following the date of enactment of the statute to develop and promulgate pursuant to a rulemaking a policy that FCUs may adopt to expel members for cause.

The Board notes that it is focused on improving access to financial services, in part, through its Advancing Communities through Credit, Education, Stability and Support (ACCESS) initiative.[7] As part of this initiative, the NCUA is working to expand the availability of credit to stimulate economic growth and improve the financial well-being of all Americans. This work also aims to ensure that the credit union system achieves its statutory mission of meeting the credit and savings needs of people, especially those of modest means.[8]

The Board believes the expulsion of members is an extreme remedy that may have the effect of denying individuals access to financial services. In addition, as financial cooperatives, a credit union's expulsion of a member-owner is a particularly significant action resulting in financial exclusion. Therefore, consistent with certain statements in the legislative history, use of the authority under the Governance Modernization Act should be rare and used only for egregious member behavior.

II. The Proposed Rule

At its September 22, 2022, meeting, the Board issued a proposed rule to amend the FCU Bylaws to adopt an expulsion policy consistent with the Governance Modernization Act.[9] The proposal provided for a 60-day comment period, which ended on December 2, 2022. The Board received 26 comments from FCUs, credit union leagues and trade associations, and a law firm. All commenters were generally supportive of increased flexibility for FCU boards of directors to expel members for cause. Almost all commenters, however, raised additional considerations for the Board, and several commenters recommended specific changes to the proposed rule. The comments are discussed in detail in the next section.

III. The Final Rule

The NCUA Board is now issuing a final rule to adopt a policy by which an FCU member may be expelled for cause by a vote of two-thirds of a quorum of an FCU's board of directors. The final rule also makes conforming changes to Article II of the FCU Bylaws regarding members in good standing.

Member in Good Standing

As discussed previously, the 2019 FCU Bylaws Final Rule codified the concept of a ''member in good standing.'' So long as a member remains in good standing, that member retains all the rights and privileges associated with FCU membership.[10] A member not in good standing, however, may be subject to an FCU's limitation of services policy. The primary reason for permitting FCUs to adopt a limitation of services policy was to provide FCUs with an alternative to holding a special meeting to address certain egregious member behavior.[11] The enactment of the Governance Modernization Act, however, has provided FCUs' boards of directors with direct authority (subject to the NCUA Board promulgating a rule, described in the legislation as a policy) to expel a member for cause.

The proposed rule retained the provisions on limitation of services. The proposed rule discussed several reasons for retaining these provisions, including additional flexibility for FCUs to address certain disruptive member behaviors through less severe restrictions, the ability of FCU boards to restrict access and services in the case of a violent or abusive member who has yet to be expelled,[12] and to provide FCUs an easier and more expeditious tool to address abusive and disruptive members. A board vote is not required under the limitation of services policy. All commenters who discussed the issue supported retaining the limitation of services policy in the FCU Bylaws. The Board agrees and continues to believe retaining the limitation of services policy provides important flexibility to FCU boards, and the final rule includes the limitation of services policy as proposed.

The proposed rule also included a few substantive changes to the limitation of services provisions. Specifically, the definition of a member not in good standing was removed. This definition included a list of behaviors that if engaged in by a member could trigger limitation of FCU services. However, the Governance Modernization Act also includes a list of behaviors that may warrant termination of membership. Instead of including two separate lists of disruptive, abusive, or violent behaviors, the proposed rule defined a member not in good standing as a member who has engaged in any of the conduct listed in the Governance Modernization Act, as implemented in Article XIV of the FCU Bylaws.

Commenters differed on whether the final rule should include the same set of ''for cause'' behaviors for both expulsion and limitation of services. Many commenters thought the same behaviors should be used for both actions. Other commenters recommended a more expansive list of behaviors available to trigger a limitation of services. For these commenters, expulsion is a more extreme remedy than the limitation of services and the conduct triggering each remedy should not be synonymous. The Board has not made changes in response to these commenters. The Board believes the list of ''for cause'' behaviors is already expansive and includes the types of actions that are reasonable grounds for limiting services or expulsion.

The proposed rule also made other technical conforming changes. For example, the proposed rule amended the requirement that the disruptive, violent, or abusive behavior have a logical relationship between the objectionable activities and the services to be suspended. This provision was removed because it is not included in the Governance Modernization Act. The Board sought comment on whether it should retain the existing language regarding a logical relationship between the ''for cause'' behavior and limitation of services. Many commenters recommended removing this qualification as it is not included in the Governance Modernization Act. The final rule does not include the express provision related to the nexus between the behavior and the limitation of services; however, the Board expects each FCU's board of directors to use

[7] *https://www.ncua.gov/support-services/access.*

[8] Public Law 105–218, 112 Stat. 912 (Aug. 7, 1998).

[9] 87 FR 59740 (Oct. 3, 2022).

[10] 12 CFR part 701, appendix A, Art. II, sec. 5.

[11] 84 FR 53278 (Oct. 4, 2019).

[12] An FCU may immediately take actions such as contacting local law enforcement, seeking a restraining order, or pursuing other lawful means to protect the FCU, its members, and staff, and nothing in the FCU Act nor the FCU Bylaws prevents an FCU from using whatever lawful means it deems necessary to address circumstances in which a member poses a risk of harm to the FCU, its property, its members, or its staff or officials.

appropriate discretion and only limit services when necessary.

The proposed rule also included a question on whether the abusive or disruptive conduct must occur at the FCU. Many commenters objected to limiting expulsion to behaviors that occur at the FCU. Some of these commenters discussed electronic communications. For example, one commenter stated in an increasingly digital world with more channels for members to interact with an FCU, abusive behavior can occur over the phone, on social media, or through other channels that may not fit this physical location definition. These communications would likely be covered under the proposed rule, which stated dangerous or abusive behavior includes conduct while on credit union premises and through the use of telephone, mail, email, or other electronic method.

Other commenters raised concerns about certain abuses that would not likely be covered under the proposed definition. Some examples of behavior that would not likely be included under the proposed rule include threats made at a location other than the credit union (such as a community event), stalking or assaulting of an employee that occurs at another location, or a violent crime committed by a member. The Board agrees with the commenters that these behaviors should be grounds for expulsion, and the final rule includes a catchall category of other behaviors related to credit union activities. Therefore, any conduct that is dangerous or abusive and related to a credit union's activities, regardless of the location of the conduct, may be grounds for limitation of services or expulsion. The catchall category would not include violent crime or dangerous or abusive behavior that is unrelated to the credit union's activities. The Board believes conduct that is unrelated to credit union activities should not be grounds for limitations of services or expulsion and is more appropriately handled through law enforcement.

Finally, a few commenters suggested the final rule should clarify that limitation of services does not require a notice or hearing. The Board is clarifying that use of the limitation of services policy does not require notice or a hearing.

Expulsion and Withdrawal

Under the Governance Modernization Act, a member may be expelled for cause by a two-thirds vote of a quorum of the FCU's board of directors. An FCU may only use this process to expel a member after the NCUA Board has developed a corresponding policy for expulsion and implemented such policy through rulemaking within 18 months following the date of enactment (March 15, 2022), and the FCU has adopted the related standard Bylaw amendment. The final policy for member expulsion is discussed below.

Notice of the Expulsion Policy

Under the Governance Modernization Act, an FCU's directors may expel a member only if the FCU has provided, in written or electronic form, a copy of NCUA's expulsion policy to each member of the credit union. The proposed rule sought comment on whether the final rule should include a standard disclosure form of the NCUA expulsion policy outside of the language in Article XIV of the FCU Bylaws. Many commenters stated the final rule should include an optional model standard disclosure. A few commenters characterized a potential model as a safe harbor. In response to commenters' request, the Board has provided an optional standard disclosure. The disclosure is provided at the end of the standard FCU Bylaws.[13]

A few commenters also requested that the Board clarify that FCUs may add the expulsion policy notice to the membership/account terms and conditions. The Board has no objection to FCUs adding the policy to membership and account terms and conditions.

One commenter stated that the final rule should specify that the requirement for ''each'' member to receive a copy of the expulsion policy does not permit members to avoid expulsion by an operational error as to whether another member has received a copy of the policy. However, the requirement for ''each'' member to receive the policy is from the Governance Modernization Act, and the Board may not modify the requirement.

The proposed rule also sought comment on whether FCUs should be required to get NCUA approval for all bylaw amendments related to expulsion procedures. Specifically, should certain modifications be considered fill-in-the-blank type provisions and therefore not require NCUA approval. Most commenters who discussed this issue believed the final rule should include some fill-in-the-blank type options for FCUs to customize their expulsion procedures without receiving NCUA approval. For example, a few commenters stated that if an FCU decides to allow an in-person hearing, NCUA approval should not be required.

The final rule does not require NCUA approval to require an in-person hearing. Additionally, as discussed subsequently, the NCUA will not consider hearing procedures such as the order of speakers or the length of the hearing as amendments to an expulsion policy. Therefore, hearing procedures do not require NCUA approval, provided the procedures are not inconsistent with the terms of NCUA's expulsion policy. Any variation to the express terms of NCUA's expulsion policy, or Article XIV, constitutes a bylaw amendment and is subject to NCUA approval.

Finally, the Board sought comment on whether it should require both mail and electronic delivery of notices, even if the member has elected to receive electronic communications. No commenters who discussed this issue supported both mail and electronic delivery of notices, and the final rule does not require both mail and electronic delivery of notices for those members electing to receive electronic communications.

Expulsion Vote and Notice of Pending Expulsion

The Governance Modernization Act provides that an FCU's board of directors may vote to expel a member for cause by a two-thirds vote of a quorum of the directors of the credit union. If a member will be subject to expulsion, the member shall be notified of the pending expulsion, along with the reason for such expulsion. The Board sought comment on how prescriptive the final rule should be regarding the content of the pending expulsion notice. A few commenters stated the proposed requirements are too prescriptive or vague and may lead to conflict with examiners, and a few commenters requested the Board provide a standard disclosure for the notice of pending expulsion. One commenter stated that the Board should outline the categories of information required to be included in a pending expulsion notice and do so by a published form document.

The Board does not believe a standard disclosure is appropriate for the notice of pending expulsion as the Board expects each notice to be tailored to the specific member and their pending expulsion. In response to commenters, however, the final rule does include additional clarifying information on

[13] The optional standard disclosure has been added for FCUs' convenience. However, it may not serve as a ''safe harbor'' as requested by commenters in all cases. Use of the standard disclosure would provide a ''safe harbor'' from potential NCUA action; however, members may have rights and potential remedies they could pursue under other laws than the Governance Modernization Act.

what is expected in the notice. Specifically, the final rule provides that relevant dates, sufficient detail for the member to understand the grounds for expulsion, how to request a hearing, the procedures related to the hearing and, if applicable, a general statement on the effect of expulsion related to the member's accounts or loans at the credit union must be included in the pending expulsion notice.

The proposed rule required that the reason for the pending expulsion be specific and not just include conclusory statements. For example, a general statement saying the member's behavior has been deemed abusive and the member is being subject to expulsion procedures is insufficient as an explanation. Instead, the FCU should include the date(s) of the interaction(s) and specific information describing the interaction(s), including a description of the member's conduct. Likewise, a notice stating the member violated the membership agreement also is insufficient as an explanation for the pending expulsion.

One commenter stated that the pending expulsion notice should not require the identification of any specific FCU employee and instead generic terms such as ''loan officer'' should be sufficient. The Board agrees and is clarifying that FCUs do not need to identify any employee by name or branch location and generic terms such as ''customer service representative,'' ''loan officer,'' or ''teller'' are sufficient.

The notice should, however, include specific information about how the member violated the agreement or engaged in dangerous or abusive behavior and include other relevant information as appropriate. The member is relying on the provided notice if a hearing is requested. As such, the notice must include sufficient detail for the member to understand why he or she is being subject to expulsion so that the member has a meaningful opportunity to present their case against expulsion and an opportunity to respond to the FCU's concerns in a requested hearing.

The notice must also tell the member that any complaints related to their potential expulsion should be submitted to NCUA's website if the complaint cannot be resolved directly by the credit union.[14] Several commenters expressed concerns with this proposed requirement. One commenter questioned how this process would align with the general process to forward certain complaints to the Consumer Financial Protection Bureau, or CFPB. One commenter questioned the NCUA's authority for this requirement. One commenter requested specific timelines for when the NCUA receives the complaint compared to the hearing date and whether the NCUA would share the complaint with the FCU. One commenter asked that the NCUA only accept complaints after the hearing.

The Board has made two changes in response to these comments. The final rule provides that complaints should be raised with the NCUA only if the member has first tried to resolve the complaint directly with the credit union and clarified complaints should be sent to NCUA's Consumer Assistance Center. The Board believes credit unions should have an opportunity to address members' complaints first. However, the Board believes contacting the NCUA is an appropriate avenue for members' concerns or complaints. Therefore, the Board has not removed the requirement to notify the members of their right to complain to the NCUA. Additionally, the Board notes that notifying members of their right to complain is not providing members any new rights, and the notice is intended solely to remind members of their existing rights.

Additionally, the Board does not believe notification of the right to file complaints is novel when considering routine FCU activity. For example, loan denial notices also include similar language regarding member complaints. The Board also does not believe including the statement on complaints presents a burden to FCUs. Finally, the NCUA generally has the right to remedy violations of laws, rules, or regulations, which would include the Governance Modernization Act and this rule, under 12 U.S.C. 1786.

Hearing

Under the Governance Modernization Act, a member has 60 calendar days from the date of receipt of a notification of pending expulsion to request a hearing from the board of directors of the FCU. The proposed rule discussed that the member has 60 calendar days from the date of receipt, not the date the FCU provides the notice. Further, the proposed rule stated that the member has 60 calendar days to provide the FCU with a request for a hearing. Therefore, the member may mail the notice 60 days after receiving the notice. As such, the FCU may not receive the notice within 60 calendar days, and the Board recommended that FCUs provide sufficient time for both the member's receipt and the FCU's receipt before expelling a member.

Many commenters had concerns about these provisions and requested that the Board incorporate a presumption of receipt by the member. Suggestions for this presumption ranged from three to five business days after the FCU mailed the expulsion letter to the address on file. One FCU expressed concerns about situations in which the FCU does not have a current address on file. Another commenter raised concerns if the member denied receipt of a mailing, and another recommended that a Certificate of Mailing should satisfy this requirement.

The Board has not amended the final rule to add a presumption of receipt. A member who objects to an expulsion due to the lack of receipt of a notice may either file a complaint with the NCUA or pursue a private right of action in court.[15] The NCUA would consider a letter that was properly addressed and mailed as received by its intended recipient absent conclusive evidence it was not received, but local jurisdictions may have their own procedures regarding presumptions of receipt. These are evidentiary issues related to due process that the Board encourages FCUs to consider in developing their procedures, to reasonably ensure they withstand potential legal challenges.[16]

Another commenter objected to the proposed policy to provide the member 60 days to mail a hearing request, instead of 60 days for the FCU to receive a hearing request. This commenter recommended the final rule provide that the deadline for requesting a hearing is past if the FCU has not received the notice within 60 days after the member's receipt of the notice. The Board has not made any changes to the final rule in response to this comment.

While rules in each jurisdiction may vary, often items postmarked by deadlines are considered timely. Further, any formal appeal by the member would likely be in the form of a private right of action and not to the NCUA, as the Governance Modernization Act does not include appeal rights to the NCUA. The Board suggests FCUs consider consulting with local counsel regarding the requirements in their jurisdiction

[14] Currently complaints can be submitted to the NCUA at either *https://mycreditunion.gov/consumer-assistance-center* or *https://ncua.gov/consumers.*

[15] The NCUA will not investigate matters that are the subject of a pending lawsuit or offer legal assistance. Additionally, the NCUA will not represent consumers in settling claims or recovering damages.

[16] The FCUs have the option of sending notices by certified or registered mail as an additional step to preemptively address potential legal challenges from a member on the adequacy of notice.

regarding receipt and timeliness of mailings.

Other commenters generally objected to the Governance Modernization Act's requirement that a member has 60 days to request a hearing. A few commenters recommended this period be reduced. Some commenters recommended 30 days. Other commenters recommended the Board allow FCUs to expel certain members immediately. Another commenter recommended the Board interpret the Governance Modernization Act to allow for an immediate expulsion and then a 60-day period after expulsion to request a hearing.

The Governance Modernization Act provides that the FCU must provide ''Notification of pending expulsion.'' The statute also uses the term ''in advance of the expulsion'' and then provides for expulsion after 60 days if the member does not request a hearing. Therefore, the Board finds no authority in the statute to permit immediate expulsions or to allow a shorter timeframe than 60 days to request a hearing.

The proposed rule provided that the FCU must maintain a copy of the notice provided for its records. The Board sought comment on whether this requirement is burdensome. In response, two credit unions stated that this requirement is not a burden, one commenter stated state law should determine this requirement, and one commenter generally stated if the notice is not retained, then the FCU should maintain a written record of the facts. The Board has not made any changes to the final rule in response to commenters as it believes the requirement represents only a small burden to credit unions and would assist examiners in any review of an FCU's expulsions. It also ensures an FCU has records available in the event of legal disputes over an expulsion.

Form of the Hearing

Under the Governance Modernization Act, if a member does not request a hearing, the member is automatically expelled after the end of the 60-day period. If a member requests a hearing, the board of directors must provide the member with a hearing. The statute is silent on whether the hearing must be in person, and the proposed rule permitted in-person or virtual hearings and permitted members an option to offer only written testimony. The Board sought comments on whether fairness, other principles, or other laws may call for an in-person hearing or other hearing procedures. No commenter expressed support for mandatory in-person hearings.

Commenters had wide ranging suggestions on the form of the hearing. Several commenters stated the final rule should permit FCUs to choose between in-person, virtual, and hearings conducted solely through written submissions (referred to as on-the-paper hearing), especially in cases of a violent or abusive member. Some commenters stated that there should be no hearing, just a written response if the member is dangerous or abusive. A few commenters recommended permitting telephonic hearings. For example, if a violent member does not have access to a computer to conduct a videoconference hearing, then the FCU should offer a telephonic hearing. One commenter recommended requiring members to appear virtually (and not permitting only written testimony as is permitted under the proposed rule). Another commenter, however, recommended requiring written testimony in addition to any oral testimony.

In response to commenters, the final rule does not require in-person hearings, as the Board continues to believe it is not necessary and may be problematic in cases of expulsion due to violence or threatened violence. Further, the Board agrees with commenters that a telephonic hearing would be appropriate if a member cannot participate by videoconference.[17] Therefore, the final rule has been amended to permit the option of a telephonic hearing if the member cannot participate through a virtual hearing.

The Board continues to believe that telephonic hearings and written hearings should not be the primary means of conducting hearings and are more appropriate forums for a hearing only if a virtual or in-person hearing is not a viable option. Therefore, the Board is not amending the rule to permit FCUs to offer members only telephonic hearings or written hearings. Members who are potentially subject to expulsion should have the option of orally presenting their case through a virtual hearing, or in-person if there are no safety concerns.

Hearing Procedures

The proposed rule did not include many prescriptive requirements related to the structure and procedure for the hearing and included only general principles related to the fairness of the hearing, such as the FCU could not raise any reason or rationale for expulsion that is not explicitly included in the notice to the member. The proposed rule did not, for example, include provisions for the order of testimony at the hearing, time limits for members, or whether the member or board members may ask questions.

Several commenters stated that the Board has provided sufficient guidance in the proposal regarding the structure and procedure of an expulsion hearing, and no further guidance is necessary. Other commenters objected to the proposed requirements not found in the Governance Modernization Act and characterized these elements as turning the expulsion process into something closer to the due process afforded a student facing expulsion at a public university than the termination of a consumer finance relationship. One commenter requested that the Board clarify that hearings do not need to follow the parliamentary procedure noted in Article IV, section 4(k) of the FCU Bylaws. One commenter suggested that the final rule include time limits for members at the hearing, such as 15 minutes. This commenter also requested that the final rule state FCU boards have no evidentiary burden.

The Board agrees with the commenters who stated the proposed rule included sufficient guidance regarding the structure and procedure of an expulsion hearing and no further guidance is necessary. The Board believes that each FCU should have the flexibility to conduct a hearing as it deems appropriate and standard procedures across all FCUs are unnecessary. As requested by a commenter, the Board is clarifying that the hearings do not need to follow the same procedures as meetings of the members.

To simplify the requirements for the hearing, the Board has also removed the proposed requirement that subsequent conduct cannot be raised at the hearings. Commenters discussed that subsequent conduct is relevant to the hearing, this requirement is not part of the Governance Modernization Act, and the hearing is not a criminal trial. Therefore, subsequent conduct could be discussed at an expulsion hearing; however, the subsequent conduct must be related to the conduct outlined in the notice for fairness reasons. For example, if the original conduct and rationale for proposed expulsion was abusive personal conduct, and the person repeated abusive conduct after the notice was sent that could be discussed at the hearing.

But, at the hearing the credit union should not raise a violation of the membership agreement related to a loan loss as that is a new unrelated rationale

[17] For clarity, the final rule uses the terms videoconference and telephonic instead of the term virtual.

for the expulsion and the member would not be on notice of the new rationale. A member should not be expected to address new rationales not discussed in the notice of pending expulsion. In adopting their own hearing procedures, FCUs should do their best to ensure they adopt procedures they reasonably expect are defensible under any applicable law and are consistent with the intent of the Governance Modernization Act.

Additionally, the Board is clarifying that hearing procedures are not considered amendments to NCUA's expulsion policy and do not require Board approval. For example, procedures related to the order, amount of time members have to speak, or whether questions will be asked are not governed by NCUA's expulsion policy. Each credit union may determine its own hearing procedures.

The final rule generally only requires that hearings provide members a meaningful opportunity to present their case to the FCU's board orally. The Board expects hearings to be held in a fair, reasonable, and consistent manner that provides members a reasonable opportunity to present their case, but the final rule does not include prescriptive procedures. These general principles are intended to guide credit unions and ensure members are given a fair opportunity to present their case against expulsion and an opportunity to respond to the FCU's concerns without limiting FCU boards from determining the structure of their own hearings. Finally, the Board notes that members can file complaints with the NCUA if the complaint cannot be resolved directly with the credit union or consider the possibility of independent legal action if the FCU does not provide fair and reasonable hearing procedures.[18]

One commenter also requested that if a member does not attend a hearing, the final rule should state the FCU may proceed with the expulsion vote. The Board agrees. If a member requests a hearing and does not attend, the FCU board may proceed with the expulsion vote.

Appeal Rights

The Board also sought comment on whether the final rule should include an appeal right for members. No commenters expressed support for an appeal right, and several stated that a request for reinstatement is a form of an appeal. A few commenters also explicitly stated that the final rule should not require supervisory committees to review records related to expulsion, but it would make sense for the FCU to review expulsions as part of an internal audit. A few commenters mentioned that there may be a private right of action related to expulsion, and therefore, formal appeal rights are unnecessary.

The Board has not adopted formal appeal rights in the final rule. As discussed previously, a member's concern about fairness can be addressed through complaints to the NCUA or consideration of private rights of action. The Board encourages FCUs to discuss the potential of private rights of action with local counsel, particularly when they are inclined to adopt more restrictive hearing procedures.

FCU Board Vote

After the hearing, the FCU board of directors must hold a vote in a timely manner on expelling the member. The proposed rule defined a timely manner as within 30 calendar days. A few commenters stated that this timeline was reasonable, several thought the final rule should provide discretion to boards of directors, and two commenters thought 90 days is a more appropriate timeline.

The final rule provides 30 calendar days for the Board vote. The Board believes 30 days represents a reasonable time to hold a vote and that 90 days would be too long to provide the member with a resolution to the notice of pending expulsion. In addition, a three-month delay in an expulsion vote may undermine the board of director's position on the severity of the member's activity that the Board expects as justification for the potential expulsion.

Notice of Expulsion

Under the proposed rule, once a member is expelled the FCU must provide notice to the member. The notice should state the reason for the member's expulsion, and if a hearing was conducted or written testimony provided, the FCU should provide a response to the member's statements. The notice must also provide information on the effect of the expulsion, including information related to account access and any deductions related to amounts due.

One commenter recommended the Board provide model language for the expulsion notice. The Board is declining to provide model language covering these aspects of an expulsion. The Board believes each termination notice should be tailored to the specific member subject to expulsion. For example, the effect of expulsion may depend on the accounts held by the member at the FCU and the contract terms of those accounts. Additionally, without a standard form it is more likely FCUs would be intentional about articulating the grounds for expulsion in a manner that best protects the credit union and provides appropriate rights and notice to the member. Therefore, the Board does not believe this type of disclosure is appropriate for a standard form.

Under the final rule, if a member is expelled, either after the board votes to expel the member following a hearing or 60 days after receipt of the notice if no hearing is requested, the FCU must provide written notice of the expulsion. The notice must provide information on the effect of the expulsion, including information related to account access and any withdrawals by the FCU related to amounts due.

Specifically, the notice should include pertinent information to the member, including that expulsion does not relieve a member of any liability to the FCU and that the FCU will pay all the member's shares upon their expulsion less any amounts due. The notice should include a line-by-line accounting of any deductions related to amounts due. The notice should also include when and how the member will receive any money in their accounts. The written notice must be provided to the member in person, by mail to the member's address, or electronically if the member has elected to receive electronic communications from the credit union.

The proposed rule explicitly asked whether the final rule should include a minimum amount of time before an FCU is permitted to call an existing obligation or offset amounts owed. Many commenters stated that the final rule should leave the option to call the member's outstanding loans or other obligations to the FCU. Commenters generally stated that an option to freeze any available funds would prevent the member from withdrawing funds and leaving the FCU with a potential loss. One commenter stated that FCUs should call closed-end secured credit (such as an auto loan) and offset any available funds, assuming the contract permitted such an action. The final rule does not include any restrictions on calling or offsetting existing obligations. Instead, the Board believes this is a matter that should be left to state contract law, consumer protection laws, and FCU boards' discretion.

[18] The NCUA will not investigate matters that are the subject of a pending lawsuit or offer legal assistance. Additionally, the NCUA will not represent consumers in settling claims or recovering damages.

For Cause

Under the Governance Modernization Act, an FCU's board may expel a member for cause, which means the following: (a) a substantial or repeated violation of the membership agreement of the credit union; (b) a substantial or repeated disruption, including dangerous or abusive behavior (as defined by the NCUA Board pursuant to a rulemaking), to the operations of a credit union; or (c) fraud, attempted fraud, or other illegal conduct that a member has been convicted of in relation to the credit union, including in connection with the credit union's employees conducting business on behalf of the credit union.

For repeated violations of the membership agreement that are non-substantial, the proposed rule required prior notice to the member. A few commenters disagreed on the need for repeated notice for non-substantial violations. One commenter stated that members have already received the expulsion policy and a member can raise exculpatory information at the hearing. The same commenter also stated that the Governance Modernization Act does not specify that the same provision of the membership agreement needs to be repeatedly violated to trigger expulsion. Therefore, the Board should permit an FCU to expel a member who violates any provision or combination of provisions of the membership agreement repeatedly.

The Board has not made changes in response to these comments, and the final rule requires notice for repeated non-substantial violations of the membership agreement. First, FCU boards have considerable discretion to determine what violation is non-substantial, and an initial notice is only required for non-substantial violations. If an FCU board determines a violation is non-substantial, then it is likely the member would be unaware the conduct could result in expulsion. Second, the Board believes an initial notice is necessary to ensure members are aware that they may be expelled for repeated, non-substantial violations of the membership agreement.

The warning notice before the notice of expulsion is only for potential expulsions related to repeated violations that are deemed non-substantial. The FCU's board may act to expel a member immediately for substantial violations of the membership agreement and does not need to provide a warning notice for substantial violations of the membership agreement. The Board does not believe the added burden or time required by an extra notice is outweighed by the potential benefit to members who may be unaware that their conduct is grounds for expulsion.

The Board also specifically sought comment on whether the final rule should limit the time between the FCU's notice of a violation and the repeated behavior. Many commenters stated any repeated behavior should be grounds for expulsion regardless of the time between the events. One commenter favored a maximum amount of time for non-substantial repeated violations to qualify as grounds for expulsion. The commenter noted, however, the FCU should retain the flexibility to limit services prior to that time. The Board agrees, and the final rule includes a two-year limit on the amount of time that may occur between non-substantial repeated violations to qualify as grounds for expulsion. The Board believes that non-substantial conduct that occurs less frequently than every two years does not present sufficient disruptions to the FCU's operations to warrant expulsion.

The Board also solicited comments on typical violations of a membership agreement that cause concern for FCUs and whether FCUs consider causing a loss to be a substantial violation of the membership agreement. One commenter recommended examples of substantial violations of the membership agreement. FCUs provided many examples of potential grounds for expulsion related to violating the membership agreement, including red flags for money laundering, participation in restricted activities (for example, personal share draft accounts being used for business transactions), causing property damage or engaging in fraudulent activities, causing physical or mental harm to an employee, members sharing account access devices with unauthorized individuals, account service abuse, engaging in conduct that would give rise to a bond or insurance claim, and causing a financial loss to the credit union (or conduct that would have caused a loss but for the FCU's loss prevention).

A few FCUs raised examples of concerns that the Board does not universally agree should be grounds for expulsion. The Board is commenting on these examples to provide guidance to FCUs in how the agency will interpret and administer the final rule. One credit union stated failing to keep accounts secure (for example, keeping the PIN with the debit card) should be grounds for expulsion. In such a case, the Board recommends limiting services and access to debit cards if the credit union believes access should be limited. The Board has intentionally kept the limitation of services policy for credit unions to have a variety of remedies available for problematic conduct. One FCU stated that a member filing bankruptcy should be considered *per se* or automatic material loss, and another commenter stated that the final rule should permit FCUs to expel people who could target credits unions after being forced out of a bank.[19] The Board disagrees.

The Board considers both examples to be sources of potential harm to the FCU and, without more, not actual disruptions or violations. Additionally, the Board is concerned a policy that states filing bankruptcy is *a per se* loss might unfairly impact members who have prioritized loan payments to the FCU. For example, a member who has prioritized paying an auto loan should not be subject to expulsion due to filing bankruptcy from overwhelming medical debt.

The final rule, however, provides FCU boards discretion to determine what behaviors constitute substantial violations of the membership agreement or dangerous or abusive behaviors. The Board believes such a determination would be dependent on the particular facts and would be difficult to determine through a universal policy applicable to all FCUs. Therefore, the final rule does not define or otherwise limit an FCU's discretion to determine what behavior or violation of the membership agreement is substantial.

One commenter also discussed that not all FCUs have a document called a ''membership agreement,'' and many read the term as a combination of several documents. The Board believes the term should generally be defined as any documents customarily provided to the member at account opening that include terms and conditions of FCU membership and terms and conditions of the account being opened.

Under the proposed rule, a member may also be expelled by an FCU board for a substantial or repeated disruption, including dangerous or abusive behavior, to the operations of a credit union. The proposed rule defined dangerous or abusive behavior as follows: (1) violence, intimidation, physical threats, harassment, or physical or verbal abuse of officials or employees of the credit union, members, or agents of the credit union (this includes actions while on FCU premises, through use of telephone,

[19] The Board notes that there may be statutory restrictions outside of the FCU Act on FCUs taking certain actions based on a member's bankruptcy filing. The Board recommends FCUs consult with counsel before engaging in any expulsion solely due to a member's bankruptcy filing.

mail, email, or other electronic method, or otherwise related to the credit union's activities); (2) behavior that causes or threatens damage to FCU property; or (3) unauthorized use or access of FCU property.

The proposed rule generally relied on the current definition of a member not in good standing to define dangerous or abusive behavior. The proposed rule also stated that expressions of frustration with the FCU or its employees through elevated volume and tone or repeated interactions with employees are insufficient to constitute dangerous or abusive behavior. One trade association urged the Board to remove this statement. The commenter stated that depending upon the facts and circumstances, these behaviors may well constitute harassment or verbal abuse and a valid basis for restricting services as harassment.

The Board wants to be clear that racist, sexist, personally insulting, or otherwise offensive language is grounds for limiting access to FCU employees or expulsion. However, the Board also wants to be clear that members who are upset, frustrated, or otherwise agitated with an FCU should not be expelled on that basis alone. The Board believes this determination is likely dependent on the context and should be considered on a case-by-case basis. Deciding which side of the line a member is on is not a simple matter insofar as it requires the credit union to balance the need to preserve the safety of individual staff, other members, and the integrity of the workplace with the rights of the affected member.

As with repeated violations of the membership agreement, if the FCU's board acts to expel a member for repeated disruptions that are non-substantial, the FCU must have first provided written notice to the member after an instance of such disruption. In contrast, substantial disruptions, including any conduct that would constitute dangerous or abusive behavior, may be grounds for immediate action and termination of membership.

This distinction and requirement to put a member on notice of conduct that, if repeated, may lead to expulsion, stem from the Governance Modernization Act, which defines ''cause'' in part as ''a substantial or repeated disruption.'' Additionally, as discussed previously in connection with limitation of services policies, an FCU may immediately take actions such as limiting services, contacting local law enforcement, seeking a restraining order, or pursuing other lawful means to protect the credit union, its property, credit union members, staff and officials, and nothing in the FCU Act or the FCU Bylaws prevents an FCU from using whatever lawful means it deems necessary to address circumstances in which a member poses a risk of harm to the FCU, its members, or its staff.

A member may also be expelled for cause if the member has engaged in fraud, attempted fraud, or been convicted of other illegal conduct in relation to the credit union, including in connection with the credit union's employees conducting business on behalf of the credit union. The Board solicited comments on whether it should define fraud or attempted fraud. Many commenters stated the Board does not need to define the term fraud. The final rule does not include a definition of fraud or attempted fraud. One commenter suggested clarifying in the regulatory text that a conviction is not necessary for fraud or attempted fraud. The Board agrees and has made this clarification.

Reinstatement

Under the Governance Modernization Act, a member expelled by a two-thirds vote of an FCU's board of directors must be given an opportunity to request reinstatement of membership. The member may be reinstated by either a majority vote of a quorum of the directors of the FCU or a majority vote of the members of the FCU present at a meeting, which the proposed rule said must be a special meeting. Two commenters recommended the Board clarify how the determination is made between the two options. These commenters recommended that the decision be at the sole discretion of the FCU. The Board agrees and is clarifying that FCU boards have discretion to choose between the two options.

One commenter stated that if an FCU opts for a member vote the final rule should permit the vote to occur at an annual meeting. The Board agrees. Under the final rule, the FCU may act on a reinstatement request through a majority vote of a quorum of the directors of the credit union, a majority vote of the members of the credit union present at a special meeting, or majority vote of members at an annual meeting provided that the annual meeting occurs within 90 days of the member's reinstatement request.

The final rule requires that if the FCU addresses the reinstatement request through an annual meeting, this meeting must occur within 90 days of the reinstatement request. The Board believes a previously expelled member should not have to wait up to one year (which may be necessary if an annual meeting occurs just before the member requests reinstatement) for a resolution to their reinstatement request. Finally, the rule clarifies that an in-person vote is not required if the FCU holds a meeting of the members to vote on the reinstatement request.

The proposed rule also specified that an FCU is required to hold a board vote or special meeting in response to a reinstatement request only once. Many commenters agreed that FCU boards should not have to vote on reinstatement more than once. Some commenters suggested the final rule provide a minimum amount of time before an FCU must act on a reinstatement request (for example, one year after expulsion). The final rule does not include a minimum amount of time for a reinstatement request. Members are only entitled to one reinstatement request, and the Board believes each member should be able to make that request based on that member's own circumstances.

Finally, the Board solicited comments on whether a member convicted of other illegal conduct should be automatically reinstated if the conviction is later overturned. No commenters who discussed this issue were in favor of automatic reinstatement. The final rule does not include automatic reinstatement if the conviction is overturned. Each FCU board could take this into consideration if a member requests reinstatement. The overturning of a conviction might cause the FCU to reconsider its expulsion decision, but the underlying conduct that led to expulsion may still be relevant. In this area, the Board believes that FCUs should exercise sound judgment and consult with counsel if they need further guidance.

Class of Members

Under the Governance Modernization Act, an expulsion of a member by an FCU's board of directors must be done on an individual, case-by-case basis. Further, neither the NCUA Board nor any FCU may expel a class of members. The proposed rule stated that a class of members included a class of members that have caused a loss. One commenter was opposed to this interpretation. The Governance Modernization Act, however, is clear that expulsion must be done individually on a case-by-case basis.[20]

Further, all anti-discrimination laws and regulations remain applicable, and expulsions of a class of members based on any class or characteristic such as, but not limited to, race, color, religion, national origin, gender, sexual

[20] 12 U.S.C. 1764(e).

orientation, gender identity, age, familial status, or disability status, are strictly prohibited. An FCU may have liability if it exercises its discretion in a manner that has a discriminatory purpose or effect or disparate impact under anti-discrimination laws. In addition, members cannot be expelled due to or in retaliation for their complaints to the NCUA or any other regulatory agency or law enforcement, such as the CFPB, and members who are employees or former employees of the FCU cannot be expelled for any protected whistleblower activities.[21]

The proposed rule also sought comment on whether the possibility of FCUs expelling some members but not others for engaging in certain behavior is a cause for concern. A few FCUs stated this concern would likely be addressed through adoption of policies on expulsions. Another commenter, however, stated FCUs should not be required to adopt any policy on expulsion. One commenter generally thought this would not likely be an issue because FCUs are focused on growing membership and would not arbitrarily expel members. One commenter thought private rights of actions would address this concern.

FCUs should be aware of the potential for discrimination, including disparate impacts on and arbitrary treatment of members. An FCU must ensure that its implementation of the authority to expel members for cause is done consistently and does not violate anti-discrimination laws or regulations. The Board recommends each FCU consider adopting a policy related to when its board should expel members, especially if the FCU intends to expel members for violations of the membership agreement. Each FCU should periodically review its past expulsions to ensure there is not a disparate impact created from its expulsion policy.

To enable NCUA examiners to review relevant information related to expulsions, the proposed rule required FCUs to maintain records relating to expelled members for five years. Commenters provided a variety of responses to this proposed requirement. One stated any record retention policy should align with other member documents that must be retained after account closing. One commenter suggested setting the requirement at seven years as that should meet or exceed most statutes of limitation. One stated the proposed five-year retention period is reasonable and not a compliance burden. This commenter recommended FCUs retain evidence of the member behavior leading up to the expulsion decision, all formal written communications to the member related to the behavior and the expulsion decision, and documents used or introduced in the hearing. One commenter recommended that the retention of clear copies (and not originals) is sufficient.

The final rule has increased the retention period to six years. The Board agrees with the commenter who recommended aligning the retention period with state statute of limitation laws. The Board believes that six years is likely the most common statute of limitations for contracts under state law. The Board also wants FCUs to retain records over a sufficient period so examiners can review the records and have the necessary data to ensure expulsions do not have a disparate impact on a protected class.[22]

The rule does not specify necessary documents for the record or the format for retention, but the Board expects a record to include general documents related to the member, such as the member's last known contact information, membership agreement, loan files, and specific documents related to the cause of the member's expulsion, including written communications from the credit union regarding the expulsion, the board's decision to expel the member, any written response from the member, and information or minutes relating to any hearing, should one occur.

Past Member Conduct as Grounds for Expulsion

The proposed rule discussed whether FCUs may only expel members for conduct that occurs after a certain date, such as when notice of the policy is provided to members, when the FCU board adopts a bylaw amendment, or when the Governance Modernization Act was enacted. A few commenters stated that the final rule should provide the option of reviewing past behavior of the member. Many offered the date the Governance Modernization Act was signed into law.

The final rule does not prescribe a date after which member conduct must occur for the conduct to serve as grounds for expulsion. The Board agrees there are some reasonable examples of past conduct that could serve as grounds for expulsion and does not want to remove the option for FCUs to expel these members. The Board, however, recommends that FCUs consider fairness issues and litigation risk when considering past conduct as grounds for expulsion. For example, expelling a member who currently is subject to a limitation of services for a violent action would be more reasonable than expelling someone for past conduct that has not led to a limitation in services.

More broadly, while Congress did not specifically constrain an FCU's reliance on past conduct, the legislation requires each FCU to provide a copy of its expulsion policy to each member before an FCU may implement it. Relying on conduct that occurred before an FCU provides the policy to each member may raise legal risks for the FCU.

Other Comments

A few commenters raised issues with aspects of the proposal that were from the Governance Modernization Act and outside of the Board's discretion. One commenter stated that FCU management, and not FCU boards of directors, should make the member expulsion decision. One FCU recommended that the expulsion procedures mirror or be significantly similar to that of state-chartered credit unions.

One commenter requested that the Board provide a flow chart to help FCUs understand the expulsion process. The Board does not believe the rule is sufficiently complex that a flow chart is warranted as part of this final rule.

One commenter stated that there should be no private right of action under the Governance Modernization Act. The Board notes that the Act does not include an express private right of action. The Board neither intends to establish a private right of action with this final rule nor preclude a private right of action that may be available under existing law. FCUs should consider legal risks when establishing their policies.

Finally, one commenter discussed whether FCUs could take steps to address delinquencies without invoking the limitation of services policy. The commenter asked that Article II provide either of the following: (a) the standard is not ''significantly delinquent'' but rather the old standard of ''loss,'' or (b) the concept of limitation of services for members not in good standing does not prohibit day-to-day collections activities, actions resulting from the creditworthiness of members, or targeted responses to abuse in a single

[21] See 12 U.S.C. 1790b. The final rule clarifies that retaliation is impermissible even if other reasons motivate the expulsion. In particular, the relevant text in appendix A has been revised to remove the qualifier ''solely.''

[22] FCUs should be aware that any minimum retention period required by regulation may be extended if litigation develops, and the final rule does not purport to preempt the requirements of judicial forums with respect to ongoing record preservation for reasonably anticipated litigation.

account or communications channel. The Board is clarifying in this preamble that the limitation of services policy is not intended to limit day-to-day collections activities, actions resulting from the creditworthiness of members, or targeted responses to abuse in a single account or communications channel.

Implementation

After the effective date of this final rule, FCUs have the option to amend their bylaws to provide their boards of directors with authority to expel members for cause. FCUs seeking to adopt these authorities must amend their bylaws through a two-thirds vote of their boards of directors. Such FCUs do not need to submit the amendment to the NCUA for its approval provided the amendment is identical to the language included in this final rule or only includes additional language on hearing procedures as discussed in the preceding paragraphs. FCUs may adopt amendments immediately after the effective date of the final rule or at any point in the future. However, the amendment included in this final rule is optional, and FCUs do not need to amend their bylaws or take any other action in response to this final rule. Those FCUs electing not to act in response to this final rule, however, could expel a member solely through a special meeting of the members or on the basis of a violation of a nonparticipation policy.

IV. Regulatory Procedures

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new or amends existing information collection requirements.[23] For purposes of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a valid Office of Management and Budget (OMB) control number. The current information collection requirements for FCU Bylaws are approved under OMB control number 3133–0052. The proposed rule included an estimated burden of 5,227 hours associated with the rulemaking. The Board received and considered comments on the estimated burden.

Under the final rule, the notice requirements to be provided to the member are as follows: (1) the notice of potential expulsion for cause, (2) the notice of expulsion, and (3) the notice of expulsion due to repeated, non-substantial violations of the membership agreement or repeated disruptions for non-substantial conduct. These notices will be provided to the member by the FCU as prescribed by proposed sections 2 and 3 of Article XIV of appendix A to part 701. The information collection requirements associated with these disclosure notices vary depending on the number of respondents. An estimated total of 5,227 responses will be generated, taking an hour per response, for a total of 5,227 burden hours associated with the notice requirements. Additionally, FCUs are required to retain and maintain all records associated with the expulsion policy, and it is estimated to average 30 minutes per FCU for a total annual burden of 1,230 hours. Therefore, there is a total burden of 6,457 hours associated with this rulemaking.

The total burden associated with *OMB Control Number:* 3133–0052 is as follows:

OMB Control Number: 3133–0052.

Title of information collection: Federal Credit Union Bylaws, Appendix A to Part 701.

Estimated number of respondents: 3,076.

Estimated number of responses per respondent: 347.

Estimated total annual responses: 1,067,833.

Estimated total annual burden hours per response: 0.35.

Estimated total annual burden hours: 377,263.

The total annual burden hours increased due to the disclosure requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule or a final rule pursuant to the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. For purposes of the RFA, the Board considers credit unions with assets less than $100 million to be small entities.[24] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule.

The Board does not believe the final rule results in any burden or other significant economic impact to small entities. First, adoption of the flexibilities included in the rule is optional, and FCUs are not required to amend their bylaws. Additionally, even if FCUs revise their bylaws in response to the rule, it is within FCUs' discretion to exercise the authority provided in the final rule to expel a member. The Board also believes that expulsion will continue to be rare, and thus, any impact from the rule will be limited. Further, the final rule includes no affirmative requirements for small credit unions and will not affect the competitive balance between small and large credit unions. Therefore, the Board certifies that the final rule does not have a significant economic impact on a substantial number of small entities.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive order to adhere to fundamental federalism principles.

This final rule applies to FCUs only and does not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Any effect the final rule might have on state-chartered credit unions or development of state law on expulsion would be purely speculative and attenuated. The NCUA has therefore determined that this rule does not constitute a policy that has federalism implications for purposes of the Executive order.

Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998). In particular, the NCUA has reviewed the criteria specified in section 654(c)(1) of that act, by evaluating whether this rule (1) impacts the stability or safety of the family, particularly in terms of marital

[23] 44 U.S.C. 3507(d); 5 CFR part 1320.

[24] NCUA Interpretive Ruling and Policy Statement 15–1, 80 FR 57512 (Sept. 24, 2015).

commitment, (2) impacts the authority of parents in the education, nurture, and supervision of their children, (3) helps the family perform its functions, (4) affects disposable income or poverty of families and children, (5) only financially impacts families, if at all, to the extent such impacts are justified; (6) may be carried out by State or local government or by the family, or (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. Under this statute, if the agency determines the rule may negatively affect family well-being, then the agency must provide an adequate rationale for its implementation.

The NCUA has determined that the implementation of this proposed rule would not affect family well-being within the meaning of the statute. Of the seven factors in the statute, the factors on disposable income and financial impact appear most relevant. Removing access to financial services at an FCU may negatively affect a member and their family. These actions, however, would be unlikely to affect disposable income or poverty directly, so the NCUA finds that the rule does not have a negative effect as described in the statute. Moreover, the final rule implements a statutory mandate, and the NCUA cannot decline to implement the legislation. The NCUA has taken potentially adverse effects on members into account in designing the rule.

Small Business Regulatory Enforcement Fairness Act—Congressional Review Act

The Congressional Review chapter of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) generally provides for congressional review of agency rules.[25] A reporting requirement is triggered in instances where the NCUA issues a final rule as defined in the Administrative Procedure Act.[26] Besides being subject to congressional oversight, an agency rule may also be subject to a delayed effective date if it is a ''major rule.'' The NCUA does not believe this rule is a ''major rule'' within the meaning of the relevant sections of the statute. As required by the statute, the NCUA will submit this final rule OMB for it to determine if this final rule is a ''major rule'' for purposes of the statute. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

[25] 5 U.S.C. 551.

[26] *Id.*

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Federal credit union bylaws.

By the NCUA Board on July 20, 2023.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons discussed in the preamble, the Board amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. In appendix A to part 701:

■ a. Revise Articles II and Article XIV; and

■ b. In Official NCUA Commentary—Federal Credit Union Bylaws, revise Articles II and Article XIV.

The revisions read as follows:

Appendix A to Part 701—Federal Credit Union Bylaws

* * * * *

Article II. Qualifications for Membership

Section 1. *Field of membership.* The field of membership of this credit union is limited to that stated in Section 5 of its charter.

Section 2. *Membership application procedures.* Persons eligible for membership under Section 5 of the charter must sign a membership application on approved forms. The applicant becomes a member upon approval of the application by a membership officer, after subscription to at least one share, payment of the initial installment, and payment of a uniform entrance fee if required by the board. If the membership officer denies a person's membership application, the credit union must explain the reasons for the denial in writing upon written request.

Section 3. *Maintenance of membership share required.* A member who withdraws all shareholdings or fails to comply with the time requirements for restoring his or her account balance to par value in Article III, section 3, ceases to be a member. By resolution, the board may require persons readmitted to membership to pay another entrance fee.

Section 4. *Continuation of membership.*

(a) *Once a member, always a member.* Once a member, always a member until the person or organization chooses to withdraw its membership or is expelled under the Act and Article XIV of these bylaws.

(b) *Limitation of services.* Notwithstanding any provision of these bylaws, the board of directors may adopt a policy that limits credit union services to any member not in good standing.

Section 5. *Member in good standing.* Members in good standing retain all their rights and privileges in the credit union. A member not in good standing may be subject to a policy that limits credit union services. A member not in good standing is one who has engaged in any of the conduct in Article XIV, section 3, related to for-cause expulsion. In the event of a suspension of service, the member will be notified of what accounts or services have been discontinued. Subject to Article XIV and any applicable limitation of services policy approved by the board, members not in good standing retain their right to attend, participate, and vote at the annual and special meetings of the members and maintain a share account.

* * * * *

Article XIV. Expulsion and Withdrawal

Section 1. *Expulsion procedure.* A credit union may expel a member in one of three ways. The first way is through a special meeting. Under this option, a credit union must call a special meeting of the members, provide the member the opportunity to be heard, and obtain a two-thirds vote of the members present at the special meeting to expel a member. The second way to expel a member is under a nonparticipation policy given to each member that follows the requirements found in the Act. The third way to expel a member is by a two-thirds vote of a quorum of the directors of the credit union. A credit union can only expel a member for cause and through a vote of the directors of the credit union if it follows the policy for expulsion in section 2.

Section 2. A credit union's directors may vote to expel a member for cause if the credit union has provided a written copy of this Article or the optional standard disclosure notice to each member of the credit union. The communication of the policy, along with all notices required under this section, must be legible, written in plain language, reasonably understandable by ordinary members, and may be provided electronically only in the case of members who have elected to receive electronic communications from the credit union.

If a member will be subject to expulsion, the member shall be notified in writing in advance, along with the reason for such expulsion. The notice must include, at minimum, (i) relevant dates, (ii) sufficient detail for the member to understand the grounds for expulsion, (iii) the member's right to request a hearing, (iv) how to request a hearing, (v) the procedures related to the hearing, (vi) notification that, if a hearing is not requested, membership will terminate after 60 calendar days, and (vii) if applicable, a general statement on the effect of expulsion related to the member's accounts or loans at the credit union. The notice cannot include only conclusory statements regarding the reason for the member's expulsion. The notice must also tell the member that any complaints related to the member's potential expulsion should be submitted to NCUA's Consumer Assistance Center if the complaint cannot be resolved directly with the credit union. The FCU must maintain a copy of the

provided notice for its records. The notice shall be provided in person, by mail to the member's address, or, if the member has elected to receive electronic communications from the credit union, may be provided electronically.

A member shall have 60 calendar days from the date of receipt of a notification to request a hearing from the board of directors of the credit union. A member is not entitled to attend the hearing in person, but the member must be provided a meaningful opportunity to present the member's case orally to the FCU board through a videoconference hearing. The member may choose to provide a written submission to the Board instead of a hearing with oral statements. If a member cannot participate in a videoconference hearing, then the FCU may offer a telephonic hearing. If a member does not request a hearing or provide a written submission, the member shall be expelled after the end of the 60-day period after receipt of the notice. If a member requests a hearing, the board of directors must provide the member with a hearing. At the hearing, the board of directors may not raise any rationale for expulsion that is not explicitly included in the notice to the member.

After the hearing, the board of directors of the credit union must hold a vote within 30 calendar days on expelling the member. If a member is expelled, either through the expiration of the 60-day period or a vote to expel the member after a hearing, written notice of the expulsion must be provided to the member in person, by mail to the member's address, or, if the member has elected to receive electronic communications from the credit union, may be provided electronically. The notice must provide information on the effect of the expulsion, including information related to account access and any deductions by the credit union related to amounts due. The notice must also tell the member that any complaints related to their expulsion should be submitted to NCUA's Consumer Assistance Center if the complaint cannot be resolved directly with the credit union. The notice must also state that the member has an opportunity to request reinstatement.

A member expelled under this authority must be given an opportunity to request reinstatement of membership. The FCU may act on a reinstatement request through a majority vote of a quorum of the directors of the credit union, a majority vote of the members of the credit union present at a special meeting, or a majority vote of members at an annual meeting, provided the annual meeting occurs within 90 days of the member's reinstatement request. If the FCU holds a meeting of the members to vote on the reinstatement request, an in-person vote is not required. An FCU is only required to hold a board vote or special meeting in response to a member's first reinstatement request following expulsion.

FCUs are required to maintain records related to any member expelled through a vote of the directors of the credit union for six years.

Section 3. The term cause in this Article means (A) a substantial or repeated violation of the membership agreement of the credit union; (B) a substantial or repeated disruption, including dangerous or abusive behavior, to the operations of a credit union, as defined below; or (C) fraud, attempted fraud, or conviction of other illegal conduct in relation to the credit union, including the credit union's employees conducting business on behalf of the credit union.

If the FCU is considering expulsion of a member due to repeated non-substantial violations of the membership agreement or repeated disruptions to the credit union's operations, the credit union must provide written notice to the member at least once prior to the notice of expulsion, and the violation or conduct must be repeated within two years after having been notified of the violation. The written notice must state the specific nature of the violation or conduct and that if the violation or conduct occurs again, the member may be expelled from the credit union.

Dangerous or abusive behavior includes the following: (1) violence, intimidation, physical threats, harassment, or physical or verbal abuse of officials or employees of the credit union, members, or agents of the credit union. This only includes (a) actions while on credit union premises or otherwise related to credit union activities, and through use of telephone, mail, email, or other electronic method; (b) behavior that causes or threatens damage to credit union property; or (c) unauthorized use or access of credit union property. Expressions of frustration with the credit union or its employees through elevated volume and tone; expressions of intent to seek lawful recourse, regardless of perceived merit; or repeated interactions with credit union employees are insufficient to constitute dangerous or abusive behavior. Additionally, members cannot be expelled due to or in retaliation for their complaints to the NCUA or any other regulatory agency or law enforcement, and members who are employees or former employees of the FCU cannot be expelled for any protected whistleblower activities.

Section 4. Expulsion or withdrawal does not relieve a member of any liability to the credit union. The credit union will pay all of the member's shares upon the member's expulsion or withdrawal less any amounts due to the credit union.

Section 5. An expulsion of a member pursuant to section 2 shall be done individually, on a case-by-case basis, and neither the NCUA Board nor any credit union may expel a class of members.

* * * * *

Official NCUA Commentary—Federal Credit Union Bylaws

Article II. Qualifications for Membership

i. *Entrance fee:* FCUs may not vary the entrance fee among different classes of members (such as students, minors, or non-natural persons) because the Act requires a uniform fee. FCUs may, however, eliminate the entrance fee for all applicants.

ii. *Membership application procedures:* Under section 113 of the Act,[3] the board acts upon applications for membership. However, the board can appoint membership officers from among the members of the credit union. Such membership officers cannot be a paid officer of the board, the financial board officer, any assistant to the paid officer of the board or to the financial officer, or any loan officer. As described under section 2 of this Article, an applicant becomes a member upon approval by a membership officer and payment of at least one share (or installment) and uniform entrance fee, if applicable.

(iii) *Violent, belligerent, disruptive, or abusive members:* Many credit unions have confronted the issue of handling a violent, belligerent, disruptive, or abusive individual. Doing so is not a simple matter insofar as it requires the credit union to balance the need to preserve the safety of individual staff, other members, and the integrity of the workplace, on one hand, with the rights of the affected member on the other. In accordance with the Act and applicable legal interpretations, there is a reasonably wide range within which FCUs may fashion a policy that addresses these interrelated responsibilities.

Thus, an individual who has become violent, belligerent, disruptive, or abusive may be prohibited from entering the premises or making telephone contact with the credit union, and the individual may be severely restricted in terms of eligibility for products or services. So long as the individual is not barred from exercising the right to vote at annual meetings and is allowed to maintain a regular share account, the FCU may fashion and implement a policy that is reasonably designed to preserve the safety of its employees and the integrity of the workplace. The policy need not be identical nor applied uniformly in all cases; there is room for flexibility and a customized approach to fit the circumstances. In fact, the NCUA anticipates that in some circumstances, such as violence or a credible threat of violence against another member or credit union staff in the FCU or its surrounding property, an FCU may take immediate action to restrict most, if not all, services to the member. This may occur along a parallel track as the credit union begins the process of expelling the member under Article XIV. In other situations, such as a member who frequently writes checks with insufficient funds, the FCU may attempt to resolve the matter with the member before limiting check writing services. Once a limitation of services policy is adopted or revised, members must receive notice. The FCU should disclose the policy to new members when they join and notify existing members of the policy at least 30 calendar days before it becomes effective. The credit union's board has the option to adopt the amendment addressing members in good standing.

* * * * *

Article XIV. Expulsion and Withdrawal

As noted in the commentary to Article II, there is a wide range of measures available to the credit union in responding to abusive or unreasonably disruptive members. A credit union can limit services under Article II for a member not in good standing. A credit union may also expel the member for cause after a two-thirds vote of the credit union's

[3] See 12 U.S.C. 1761b.

directors.[11] Dangerous and abusive behavior is considered any violent, belligerent, unreasonably disruptive, or abusive behavior. Examples of dangerous and abusive conduct include, but are not limited to, a member threatening physical harm to employees, a member repeatedly and unwelcomely giving gifts to or asking tellers on dates, a member repeatedly using racial or sexist language towards employees, and a member threatening to follow a loan officer home for denying a loan.

A credit union must provide notice of the expulsion to the member. The notice must include the reason for the expulsion, and if a hearing was conducted or written testimony provided, the credit union should provide a response to the member's statements. The notice must be specific and not just include conclusory statements regarding the reason for the member's expulsion. For example, a general statement that the member's behavior has been deemed abusive and the member is being subject to expulsion procedures would be insufficient as an explanation. A credit union is prohibited from expelling a class of members under this provision. That would include a board acting to remove all delinquent members or class of delinquent members.

If a special meeting of the members is called to expel the member, only in-person voting is permitted in conjunction with the special meeting, so that the affected member has an opportunity to present the member's case and respond to the credit union's concerns. However, an in-person meeting is not required if a member is expelled by a two-thirds vote of the board of directors. In addition, FCUs should consider the commentary under Article XVI about members using accounts for unlawful purposes.

Optional Standard Disclosure of Expulsion Policy

We may terminate your membership in [name of FCU] in one of three ways. The first way is through a special meeting. Under this option, we may call a special meeting of the members, provide you an opportunity to be heard, and obtain a two-thirds vote of the members present at the special meeting in favor of your expulsion. The second way to terminate your membership is under a nonparticipation policy given to each member that follows certain requirements. The third way to terminate your membership is by a two-thirds vote of a quorum of the directors of the credit union for cause.

Cause is defined as follows: (A) a substantial or repeated violation of [name of membership agreement] with [us]; (B) a substantial or repeated disruption, including dangerous or abusive behavior, to the credit union's operations; or (C) fraud, attempted fraud, or a conviction of other illegal conduct that a member has been convicted of in relation to [us], including in connection with our employees conducting business on behalf of us.

Before the board votes on an expulsion, [we] must provide written notice to your mail address (or email, if applicable) on record or personally provide the written notice. [We] must provide the specific reasons for the expulsion and allow you an opportunity to rebut those reasons through a hearing if you choose. It is your responsibility to keep your contact information with [us] up to date, and to open and read notices from [us]. Unless [we] determine to allow otherwise, there is no right to an in-person hearing with the board. If you fail to request a hearing within 60 calendar days of receipt of the notice, you will be expelled. You may submit any complaints about your pending expulsion or expulsion to NCUA's Consumer Assistance Center if the complaint cannot be resolved with the credit union.

[We] will confirm any expulsion with a letter with information on the effect of the expulsion and how you can request reinstatement. Expulsion or withdrawal from membership does not relieve a member of liability to the credit union, and we may demand immediate repayment of the money you owe to us after expulsion, subject to any applicable contract terms and conditions.

For additional information on expulsion and a copy of our expulsion policy, see [Article XIV of our Bylaws].

* * * * *

[FR Doc. 2023–15715 Filed 7–25–23; 8:45 am]

BILLING CODE 7535–01–P

[11] See 12 U.S.C. 1764.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1500; Project Identifier MCAI–2023–00642–T; Amendment 39–22511; AD 2023–14–11]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–100–1A10 airplanes. This AD was prompted by reports of unexpected pitch upset upon autopilot disconnect. This AD requires revising the Non-Normal Procedures section of the existing airplane flight manual (AFM) associated with Auto Flight. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 10, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 10, 2023.

The FAA must receive comments on this AD by September 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–2023–1500; 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 service information identified in this final rule, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com*; website *bombardier.com*.
- You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, 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–2023–1500.

FOR FURTHER INFORMATION CONTACT: Deep Gaurav, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email: *deep.gaurav@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1500; Project Identifier MCAI–2023–00642–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 Deep Gaurav, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email: *deep.gaurav@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

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2023–26, dated May 3, 2023 (Transport Canada AD CF–2023–26) (referred to after this as the MCAI), to correct an unsafe condition on certain Bombardier, Inc., Model BD–100–1A10 airplanes. The MCAI states that during several in-service events, the crew experienced an unexpected pitch upset upon autopilot disconnect. Investigations of these events identified that the airplane gained altitude via manual command of the elevator control surface without the use of the horizontal stabilizer pitch trim, even though the manual pitch trim was fully functional. The autopilot was then engaged while the airplane was in an out-of-trim condition. Subsequent disengagement of the autopilot when the horizontal stabilizer is not correctly trimmed can lead to high control column forces and difficulties in controlling the airplane.

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–2023–1500.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following AFM procedures, which include a Caution to the Auto Flight Non-Normal Procedures, to instruct crews to minimize changes to airspeed and configuration when using the autopilot disconnect switch in an out-of-trim situation.

- Section 05–14, Auto Flight, of Chapter 05, Non-Normal Procedures, of the Bombardier Challenger 300 (Imperial Version) Airplane Flight Manual, Publication No. CSP 100–1, Revision 68, dated June 14, 2022. (For obtaining the procedures for Bombardier Challenger 300 (Imperial Version) Airplane Flight Manual, Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.)
- Section 05–14, Auto Flight, of Chapter 05, Non-Normal Procedures, of the Bombardier Challenger 350 Airplane Flight Manual, Publication No. CH 350 AFM, Revision 34, dated June 14, 2022. (For obtaining the procedures for Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, use Document Identification No. CH 350 AFM.)

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** 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 and service information 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.

AD Requirements

This AD requires accomplishing the actions specified in the service information described previously.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because several events have occurred where the crew experienced an unexpected pitch upset upon autopilot disconnect. Such a result is hazardous as it could lead to high control column forces and difficulties in controlling the airplane. 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

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

Costs of Compliance

The FAA estimates that this AD affects 338 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$28,730

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–14–11 Bombardier, Inc.: Amendment 39–22511; Docket No. FAA–2023–1500; Project Identifier MCAI–2023–00642–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 10, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–100–1A10 airplanes, certificated in any category, serial numbers 20003 through 20910 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code: 27, Flight controls.

(e) Reason

This AD was prompted by reports of unexpected pitch upset upon autopilot disconnect. The FAA is issuing this AD to address an unexpected pitch upset occurrence when the autopilot is engaged while the airplane is in an out-of-trim condition and later disengaged. The unsafe condition, if not addressed, could result in high control column forces and difficulties in controlling the airplane.

(f) Compliance

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

(g) Airplane Flight Manual (AFM) Revision

Within 30 days after the effective date of this AD: revise the existing AFM to include the information specified in Section 05–14, Auto Flight, of Chapter 05, Non-Normal Procedures, of the Bombardier Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, Revision 68, dated June 14, 2022; or the Bombardier Challenger 350 Airplane Flight Manual, Publication No. CH 350 AFM, Revision 34, dated June 14, 2022; as applicable.

Note 1 to paragraph (g): For obtaining the procedures for Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.

Note 2 to paragraph (g): For obtaining the procedures for Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, use Document Identification No. CH 350 AFM.

(h) 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 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 (i)(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 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 Transport Canada; or Bombardier, Inc.'s Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Additional Information

(1) Refer to Transport Canada AD CF–2023–26, dated May 3, 2023, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1500.

(2) For more information about this AD, contact Deep Gaurav, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email: *deep.gaurav@faa.gov*.

(j) 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) Section 05–14, Auto Flight, of Chapter 05, Non-Normal Procedures, of the Bombardier Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, Revision 68, dated June 14, 2022.

Note 3 to paragraph (j)(2)(i): For obtaining this section of Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.

(ii) Section 05–14, Auto Flight, of Chapter 05, Non-Normal Procedures, of the Bombardier Challenger 350 Airplane Flight Manual, Publication No. CH 350 AFM, Revision 34, dated June 14, 2022.

Note 4 to paragraph (j)(2)(ii): For obtaining this section of Bombardier Challenger 350

AFM, Publication No. CH 350 AFM, use Document Identification No. CH 350 AFM.

(3) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com*; website *bombardier.com*.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, 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 July 13, 2023.

Victor Wicklund,

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

[FR Doc. 2023–15862 Filed 7–24–23; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1020; Airspace Docket No. 21–AEA–31]

RIN 2120–AA66

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends one and establishes three low altitude United States Area Navigation (RNAV) routes. The purpose of the new RNAV routes is to expand the availability of the enroute structure and provide additional RNAV routing within the National Airspace System (NAS) in support of transitioning it from ground-based to satellite-based navigation.

DATES: Effective date 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in the eastern United States and improve the efficient flow of air traffic within the NAS by lessening the dependency on ground-based navigation.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–1020 in the **Federal Register** (88 FR 29559; May 8, 2023), proposing to amend one and establish three low-altitude RNAV routes in support of transitioning the NAS from a ground-based to a satellite-based navigation. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Differences From the NPRM

In the NPRM's description of RNAV route T–452, the FAA incorrectly listed the VINSE, PA; BADDI, PA; JOANE, PA; and GEERI, PA route points as waypoints (WP). The route points are actually identified as Fixes in the National Airspace System Resource (NASR) database and charted as Fixes accordingly. This action corrects the error and changes the route points to be listed as Fixes.

Additionally, in the NPRM's description of RNAV route T–456, the FAA incorrectly listed the DELRO, PA, route point as a WP instead of Fix. This action also corrects the DELRO, PA, route point to be listed as a Fix.

Incorporation by Reference

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by amending one and establishing three low altitude RNAV T-routes in the northeast United States in support of transitioning from ground-based navigation aids to satellite-based navigation. The routes are described below.

T–299: Prior to this final rule, T–299 extended from the UCREK, VA, WP to the SCAPE, PA, WP. This action extends T–299 to the southwest from the Montebello, VA (MOL), Very High Frequency (VHF) Omnidirectional Range/Distance Measuring Equipment (VOR/DME) 279° radial at 5.5 nautical miles (OBEPE, VA, Fix) to the UCREK, VA, WP, and to the northeast to the intersection of the Harrisburg, PA (HAR), VOR/Tactical Air Navigation (VORTAC) 235° radial and the Westminster, MD (EMI), VORTAC 324° radial (SCAPE, PA, Fix) to the Albany, NY (ALB), VORTAC. The route overlays VOR Federal airway V–377 from the SCAPE, PA, Fix to the Harrisburg, PA (HAR), VORTAC; VOR Federal airway V–162 from the Harrisburg, PA (HAR), VORTAC to the Huguenot, NY (HUO), VOR/DME; and VOR Federal airway V–489 from the Huguenot, NY (HOU), VOR/DME to the Albany, NY (ALB), VORTAC.

T–452: T–452 is a new route that extends from the VINSE, PA, Fix to the REESY, PA, WP. The route is replacing VOR Federal airway V–469 from the St. Thomas, VA (THS), VORTAC to the

JOANE, PA, Fix. The VINSE, PA, WP is being used to replace the St. Thomas, VA (THS), VORTAC.

T–456: T–456 is a new route that extends from the VINSE, PA, Fix to the Modena, PA (MXE), VORTAC. The route overlays VOR Federal airway V–474 from the AMISH, PA, Fix to the Modena, PA (MXE), VORTAC.

T–477: T–477 is a new route that extends from the CPTAL, MD, WP to the Philipsburg, PA (PSB), VORTAC. The route overlays VOR Federal Airway V–501 from the Hagerstown, MD (HGR), VOR to the Philipsburg, PA (PSB), VORTAC.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of establishing RNAV routes T–452, T–456, and T–477, and the amendment of T–299 in the eastern United States to provide additional RNAV routing within the NAS in support of transitioning it from ground-based to satellite-based navigation, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*). . .''. As such, this airspace action is not expected to cause any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–299 OBEPE, VA TO ALBANY, NY (ALB) [AMENDED]

OBEPE, VA	FIX	(Lat. 37°54′23.03″ N, long. 079°13′21.04″ W)
UCREK, VA	WP	(Lat. 38°01′33.17″ N, long. 079°02′56.23″ W)
KAIJE, VA	WP	(Lat. 38°44′34.79″ N, long. 078°42′48.47″ W)
BAMMY, WV	WP	(Lat. 39°24′33.13″ N, long. 078°25′45.64″ W)
REEES, PA	WP	(Lat. 39°47′51.75″ N, long. 077°45′56.31″ W)
SCAPE, PA	FIX	(Lat. 39°56′41.76″ N, long. 077°32′12.33″ W)
Harrisburg, PA (HAR)	VORTAC	(Lat. 40°18′08.06″ N, long. 077°04′10.41″ W)
BOBSS, PA	FIX	(Lat. 40°17′41.78″ N, long. 076°45′00.73″ W)
East Texas, PA (ETX)	VOR/DME	(Lat. 40°34′51.74″ N, long. 075°41′02.51″ W)
Allentown, PA (FJC)	VORTAC	(Lat. 40°43′36.07″ N, long. 075°27′17.08″ W)
Huguenot, NY (HUO)	VOR/DME	(Lat. 41°24′34.87″ N, long. 074°35′29.74″ W)
WEARD, NY	FIX	(Lat. 41°45′43.63″ N, long. 074°31′30.07″ W)
Albany, NY (ALB)	VORTAC	(Lat. 42°44′50.21″ N, long. 073°48′11.46″ W)

* * * * *

T–452 VINSE, PA TO REESY, PA [NEW]

VINSE, PA	FIX	(Lat. 39°58′16.21″ N, long. 077°57′21.20″ W)
BADDI, PA	FIX	(Lat. 40°09′26.26″ N, long. 077°25′07.81″ W)
Harrisburg, PA (HAR)	VORTAC	(Lat. 40°18′08.06″ N, long. 077°04′10.41″ W)
JOANE, PA	FIX	(Lat. 40°02′38.48″ N, long. 076°27′21.40″ W)
GEERI, PA	FIX	(Lat. 39°56′59.70″ N, long. 076°17′38.99″ W)
REESY, PA	WP	(Lat. 39°45′27.94″ N, long. 075°52′07.09″ W)

* * * * *

T–456 VINSE, PA TO MODENA, PA (MXE) [NEW]

VINSE, PA	FIX	(Lat. 39°58′16.21″ N, long. 077°57′21.20″ W)
AMISH, PA	FIX	(Lat. 39°56′33.12″ N, long. 077°37′34.13″ W)
DELRO, PA	FIX	(Lat. 39°57′55.71″ N, long. 076°37′31.24″ W)

Modena, PA (MXE)	VORTAC	(Lat. 39°55′04.98″ N, long. 075°40′14.96″ W)

* * * * *

T–477 CPTAL, MD TO PHILIPSBURG, PA (PSB) [NEW]

CPTAL, MD	WP	(Lat. 39°32′16.02″ N, long. 077°41′55.65″ W)
Hagerstown, MD (HGR)	VOR	(Lat. 39°41′51.82″ N, long. 077°51′20.59″ W)
VINSE, PA	FIX	(Lat. 39°58′16.21″ N, long. 077°57′21.20″ W)
Philipsburg, PA (PSB)	VORTAC	(Lat. 40°54′58.53″ N, long. 077°59′33.78″ W)

* * * * *

Issued in Washington, DC, on July 20, 2023.

Karen L. Chiodini,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2023–15743 Filed 7–25–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 110, 119, 121, 125, and 136

[Docket No. FAA–2022–1563; Amdt. Nos. 91–370, 110–3, 119–20, 121–390, 125–74, 136–2]

RIN 2120–AL80

Update to Air Carrier Definitions

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is amending the regulatory definitions of certain air carrier and commercial operations. This final rule adds powered-lift to these definitions to ensure the appropriate sets of rules apply to air carriers' and certain commercial operators' operations of aircraft that FAA regulations define as powered-lift. The FAA is also updating certain basic requirements that apply to air carrier oversight, such as the contents of operations specifications and the experience applicable to certain management personnel. In addition, this final rule applies the rules for commercial air tours to powered-lift. This final rule is an important step in the FAA's integration of new entrant aircraft in the National Airspace System (NAS).

DATES: Effective September 25, 2023.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''How to Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jackie Clow, Aviation Safety Inspector, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: 202–267–8166; email: *jackie.a.clow@faa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

The FAA is adopting the regulatory amendments proposed in the notice of proposed rulemaking (NPRM), Update to Air Carrier Definitions.[1] The Update to Air Carrier Definitions NPRM proposed adding powered-lift to the definitions of five kinds of air carrier operations—commuter, domestic, flag, on-demand, and supplemental. This final rule will adopt those items proposed in the Update to Air Carrier Definitions NPRM without change.

In this final rule, the FAA adds powered-lift to the definitions in § 110.2 of title 14 of the Code of Federal Regulations (14 CFR) to enable air carrier operations with powered-lift. This rule also extends the applicability of certain operating rules to powered-lift, such as the rules that apply to certain noncommon carriage operations involving larger aircraft and rules that apply to commercial air tours.

In addition, this rule updates various provisions within 14 CFR part 119 (Certification: Air Carriers and Commercial Operators) to address air carriers' operations of powered-lift; amends certain aircraft-specific provisions in § 119.1, which outline the applicability of and exceptions from part 119; and adds sight-seeing flights in gliders to the exclusions from part 119. Furthermore, this rule amends the experience requirements for personnel in certain management positions for air carriers to ensure they have appropriate experience in powered-lift operations. This rule also makes various technical amendments to part 119 for clarity and to reflect current FAA practices pertaining to the information included in operations specifications.

Lastly, this rule amends part 136 by applying it to rotorcraft and powered-lift, making limited changes to ''suitable landing area'' and § 136.11(a)(2), and recodifying appendix A to subpart D as a technical amendment.

II. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is codified throughout Title 49 of the United States Code. The FAA issues this final rule under the authority in section 106. Section 106(f) establishes that the Administrator may promulgate regulations and rules. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. Furthermore, section 44701(a)(5) requires the Administrator to promote safe flight of civil aircraft in air commerce by prescribing regulations and setting minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

[1] Update to Air Carrier Definitions NPRM, 87 FR 74995 (Dec. 7, 2022).

Section 44702 provides express authority to the Administrator to issue certificates under and oversee aviation safety. In addition, section 44701(d)(1)(A) specifically states the Administrator, when prescribing safety regulations, must consider ''the duty of an air carrier to provide service with the highest possible degree of safety in the public interest.''

The FAA also issues this rule in accordance with sections 44711 and 44713. Section 44711(a)(4) prohibits a person from operating as an air carrier without an air carrier operating certificate or in violation of a term of the certificate. Similarly, section 44711(a)(5) prohibits a person from operating aircraft in air commerce in violation of a regulation prescribed or a certificate that the FAA issues under section 44701(a) or (b) or under sections 44702–44716. In addition, section 44713 requires air carriers to make, or cause to be made, inspections, repairs, or maintenance of equipment used in air transportation as required by part A of subtitle VII of Title 49 of the United States Code or regulations prescribed or orders issued by the FAA.

III. Background

At present, various manufacturers are developing powered-lift for civilian use. These aircraft vary in size and passenger-seating configurations and employ both new and traditional kinds of propulsion systems. The operations conceptualized include vertical takeoff and landing capability, transition from low airspeed to high-speed horizontal flight, and sustained level forward flight.

Powered-lift is defined in 14 CFR 1.1 as ''a heavier-than-air aircraft capable of vertical takeoff, vertical landing, and low speed flight that depends principally on engine-driven lift devices or engine thrust for lift during these flight regimes and on nonrotating airfoil(s) for lift during horizontal flight.''

Operations with powered-lift could offer many benefits over traditional rotorcraft. For example, some powered-lift may be capable of transporting heavier loads at higher altitudes and faster cruise speeds than a rotorcraft, while maintaining vertical takeoff and landing capability. Such capability may increase efficiency in transporting crew and material to remote locations such as offshore oil rigs.

Operators may also seek to use certain powered-lift for transporting passengers point-to-point; for example, such transportation could occur from a heliport and proceed at turboprop airspeeds and ranges. Other opportunities may also exist in concentrated urban environments, where short point-to-point distances coupled with vertical takeoff and landing capability may allow for more efficient transportation of passengers or cargo than existing ground transportation methods. Application of the appropriate set of rules for powered-lift in a range of certificate holders' operations serves as both a risk mitigation measure and a framework for FAA oversight, as necessary to achieve the requisite level of safety.

The FAA is engaging in a multi-step process of updating the regulations that apply to aircraft that traditionally have not operated under these parts. Overall, the FAA maintains a risk-based approach to the integration of new entrant aircraft into the national airspace system. When operations present a higher level of risk, based on volume of passengers carried and frequency of operation, the FAA will subject such operations to a regulatory framework designed to mitigate those risks.

In addition to this rulemaking, the FAA is proposing a Special Federal Aviation Regulation (SFAR), ''Integration of Powered-Lift: Pilot Certification and Operations; Miscellaneous Amendments Related to Rotorcraft and Airplanes'' (RIN 2120–AL72) (88 FR 38946, June 14, 2023), to establish temporary operating and airman certification regulations for powered-lift. The FAA plans to use the information gathered in this interim process to update its regulations to address powered-lift operations broadly.

A. Statement of the Problem

Currently, part 119 and the corresponding definitions in § 110.2 only allow airplanes or rotorcraft to be used in air carrier or commercial service operations. The primary purpose of this rulemaking is to amend the language of § 110.2, Definitions, and part 119, Certification: Air Carriers and Commercial Operators, to allow powered-lift to operate for compensation or hire. The rule will enable an air carrier or commercial operator to operate powered-lift in air commerce. Without this rule, air carriers and commercial operators are not allowed to operate powered-lift in air commerce.

B. The Notice of Proposed Rulemaking

On December 7, 2022, the FAA published a NPRM titled ''Update to Air Carrier Definitions.'' [2] In the NPRM, the FAA proposed adding ''powered-lift'' to certain part 91 regulations, to the air carrier and commercial operator certification parts (parts 110 and 119), as well as to the applicability for certain commercial operations. The FAA also proposed amendments that would reference ''rotorcraft'' instead of ''helicopter'' to be more consistent with other existing regulations. Adding references to ''powered-lift'' in these parts will enable the FAA to certificate operators for certain commercial operations and will serve as the first step for powered-lift entering commercial service.

The NPRM provided a 60-day comment period, which ended on February 6, 2023. The FAA received nine comments from industry (Airlines for America (A4A), Air Line Pilots Association, Int'l (ALPA), General Aviation Manufacturers Association (GAMA), Helicopter Association International (HAI), Jack Harter Helicopters, Inc., Joby Aviation (Joby), Wisk Aero, and two anonymous comments).

The FAA received four comments in general support of the NPRM, four comments proposing revisions to the rule, and one anonymous comment in general opposition.

IV. Discussion of the Final Rule and Comments Received

A. Certification of Air Carrier and Operator Definitions

Title 14 CFR 110.2 provides definitions that pertain to the certification of air carriers and operators for compensation or hire. Specifically, it defines commuter operation, domestic operation, flag operation, on-demand operation, and supplemental operation. In the NPRM, the FAA proposed to amend those definitions to include powered-lift. Therefore, the rules and applicability sections in 14 CFR chapter 1, subchapter G, would include use of powered-lift in those kinds of operations. Amending these definitions along with other provisions of part 119 enables powered-lift to engage in operations consistent with the applicable statutory framework that applies to air carrier and commercial operations. The FAA received four comments in general support of the revision of existing regulations to address powered-lift. None of the commenters raised concerns or commented directly on the revision of these definitions.

For the foregoing reasons, the FAA adopts as final § 110.2 that incorporates ''powered-lift'' into the following definitions: commuter operation,

[2] Update to Air Carrier Definitions NPRM, 87 FR 74995 (Dec. 7, 2022).

domestic operation, flag operation, on-demand operation, and supplemental operation.

B. Requirements and Applicability of Part 119

Part 119 contains basic requirements that apply to each person that operates or intends to operate a civil aircraft as an air carrier or commercial operator in air commerce. Part 119 also details the process for obtaining and maintaining an operating certificate.

The FAA proposed revising § 119.1(a)(2) to apply part 119 to each person operating or intending to operate, when common carriage is not involved, airplanes or powered-lift with a passenger-seat configuration of 20 or more seats and a payload capacity of 6,000 pounds or more. The FAA also proposed to add § 119.1(a)(3) for consistency with § 119.23 which was omitted during the creation of part 119. This new paragraph applies part 119 to each person operating or intending to operate airplanes or powered-lift for noncommon carriage or private carriage operations for compensation or hire with a passenger-seat configuration of less than 20 seats and a payload capacity of less than 6,000 pounds.

Similarly, the FAA proposed amending § 119.5(c) to include powered-lift operations in the description of which persons will be issued an operating certificate for operations when common carriage is not involved. The FAA also proposed amending §§ 119.21 and 119.23 to apply appropriate requirements to powered-lift operations of commercial operators engaged in intrastate common carriage, direct air carriers, or when common carriage is not involved.

Many operations are subject to exclusion from part 119. Some of the exclusions in § 119.1(e) do not specify the type of aircraft; however, some exclusions apply only to helicopters or only to airplanes and helicopters. Using the term ''rotorcraft'' throughout § 119.1 ensures consistency with other applicability provisions of part 119.

The FAA proposed replacing ''helicopter'' with ''rotorcraft'' and adding ''powered-lift'' to the exclusion described at § 119.1(e)(4)(v) for aerial work operations. The FAA anticipates powered-lift would perform functions in aerial work in much the same manner as rotorcraft currently do. Allowing powered-lift to operate under this exception poses low risk to the general public. The FAA also proposed a technical amendment in the NPRM regulatory text to clarify that the exception under § 119.1(e)(4)(v) does not apply to transportation to and from the site of construction or repair work operations. The FAA did not receive comments on this proposed amendment and adopts language clarifying the exception as final.

The FAA also proposed broadening the exclusion in § 119.1(e)(7) for helicopter flights conducted within a 25 statute mile radius of the airport of takeoff meeting specific conditions [3] to permit those flights to occur using powered-lift or rotorcraft, rather than only helicopters. Expanding this exclusion to rotorcraft and powered-lift ensures consistency with other applicability provisions of part 119.

In addition, the FAA proposed adding operations conducted in gliders to the exception that applies to sightseeing flights. The addition of gliders to this exception ensures the regulatory text of § 119.1(e)(5) reflects the FAA's current practices of permitting glider operations under this exception from part 119 and is consistent with the level of risk mitigation necessary for such operations.

Lastly, the FAA proposed adding powered-lift to § 119.1(e)(2), which currently excludes certain nonstop commercial air tour flights conducted in either an airplane or helicopter from the applicability of part 119. The FAA also proposed amending ''helicopter'' to ''rotorcraft''. The FAA did not receive any comments on the aforementioned amendments. Consequently, the FAA adopts these changes as final.

1. Records Regarding Operations

The existing text of § 119.49(a)(12), (b)(12), and (c)(11) requires operations specifications to contain ''[a]ny authorized deviation and exemption'' issued under 14 CFR chapter 1. The FAA determined this requirement as written is too broad, as it obligates certificate holders to ensure their operations specifications contain exemptions and deviations that also apply to the aircraft the certificate holder uses. The FAA proposed narrowing the current requirements in § 119.49 by requiring that operations specifications contain only exemptions and deviations the FAA has issued that apply to the certificate holder.

[3] The conditions listed in § 119.1(e)(7) include: (i) not more than two passengers are carried in the helicopter in addition to the required flightcrew; (ii) each flight is made under day visual flight rules (VFR) conditions; (iii) the helicopter used is certificated in the standard category and complies with the 100-hour inspection requirements of part 91; (iv) the operator notifies the responsible Flight Standards office at least 72 hours before each flight and furnishes any essential information that the office requests; (v) the number of flights does not exceed a total of six in any calendar year; (vi) each flight has been approved by the Administrator; and (vii) cargo is not carried in or on the helicopter.

Similar to this rule's amendments to § 119.49(a)(12), (b)(12), and (c)(11), the FAA proposed revising § 91.1015(a)(9) in a similar manner. Section 91.1015(a)(9) applies to management specifications that persons who participate in a fractional ownership program under part 91, subpart K, maintain. Requiring a listing or copies of exemptions that apply to the aircraft rather than the operator is unnecessary for the FAA's oversight of participants' operations under part 91, subpart K. The FAA did not receive comments regarding these proposed changes. As a result, the FAA adopts them as final.

2. Management of Operation

Sections 119.65 through 119.71 set forth management personnel requirements that certificate holders must comply with to ensure the highest degree of safety in their operations. The FAA proposed amending the experience requirements for operations conducted under part 121 by making these requirements applicable to aircraft as opposed to only airplanes. The FAA also proposed requiring at least one Chief Pilot for each category of aircraft that each certificate holder uses, when the certificate holder uses both airplanes and powered-lift. To enable eventual powered-lift operations in part 121, the FAA proposed amending these management personnel requirements to ensure these operations maintain the highest degree of safety.

The FAA received a comment from the Air Line Pilots Association (ALPA) indicating that they did not support proposed rules which lower the qualification and experience requirements for Directors of Operations, Chief Pilots, Directors of Maintenance, and Chief Inspectors for certificate holders. ALPA stated that the FAA is modifying §§ 119.65, 119.67, 119.69, and 119.71, which is not entirely correct. The FAA did not propose to change § 119.69 or § 119.71 because those sections already use the term ''aircraft'' rather than ''airplane'' and are therefore not specific to any particular category of aircraft. However, for §§ 119.65 and 119.67—the part 121 requirements—the term ''airplane'' is used, and therefore the FAA proposed changes to those sections to accommodate powered-lift. In addition, the FAA proposed in § 119.65 to have a chief pilot for each category of aircraft used. This would extend the level of safety currently provided in the regulation to powered-lift operations. The change proposed to § 119.67 is limited to changing ''airplane'' to ''aircraft'' and rewording the experience requirements for clarity.

The FAA disagrees with ALPA's comment that indicates it believes the FAA is lowering the qualification and experience requirements for Directors of Operations, Chief Pilots, Directors of Maintenance, and Chief Inspectors for certificate holders. The FAA is not lowering the qualification nor the experience requirements for any of the part 119 required management positions. Rather, the FAA is applying the same qualification and experience requirements to powered-lift as currently required for airplanes. Consequently, the FAA adopts the proposed amendments as final without changes.

The FAA also proposed removing the FAA internal routing codes from the regulatory text of § 119.67(e), as the FAA no longer uses such codes in its regulations. The FAA did not receive comments on this proposed change and adopts it as final.

Director of Operations

Currently, § 119.67(a)(2) (Management personnel: Qualifications for operations conducted under part 121 of this chapter) requires Directors of Operations to have experience in large ''airplanes.'' To broaden this section to cover Directors of Operations for certificate holders that use powered-lift, the FAA proposed using the general term large ''aircraft'' in that paragraph. Under the proposal, for certificate holders that conduct operations under part 121, the Director of Operations is required to have at least 3 years of supervisory or managerial experience within the last 6 years in a position that exercised operational control over any operations conducted with large aircraft under part 121 or part 135. In the alternative, if the certificate holder uses only small aircraft in its operations, then the Director of Operations may obtain this experience in large or small aircraft.

Existing § 119.67(a)(3) outlines the requirements for anyone who serves for the first time in a Director of Operations role for a certificate holder that conducts operations under part 121. The FAA proposed under this rule that a person who serves as Director of Operations needs to have experience as pilot-in-command in at least one of the categories of aircraft the certificate holder uses in its operations. In using the term ''category'' in this context, this rule means the broad classification of aircraft regarding the certification, ratings, privileges, and limitations of airmen. The FAA did not receive comments regarding the aforementioned proposed changes and adopts them as final.

Chief Pilot

To be qualified to serve as a Chief Pilot, a person must meet the qualification requirements of § 119.67(b). The FAA proposed requiring the Chief Pilot for powered-lift to hold an airline transport pilot (ATP) certificate and be appropriately rated in at least one of the powered-lift the certificate holder uses. This requirement is important because the Chief Pilot must maintain a detailed level of understanding of the particular aircraft the certificate holder operates to communicate effectively with the pilots who serve in a certificate holder's operations while performing his or her oversight duties.

Under § 119.67(b), the FAA also proposed clarifying that the ATP certificate with appropriate ratings must be for an aircraft the certificate holder uses in operations ''under part 121''. This clarification ensures certificate holders who may hold authority to conduct operations under both part 121 and part 135 know that they must have a Chief Pilot who holds an ATP certificate with appropriate ratings for an aircraft used in their part 121 operations. In addition, as with the Director of Operations qualifications discussed previously, the FAA proposed amending ''large airplane[s]'' and ''small airplane[s]'' to ''large aircraft'' and ''small aircraft'' under § 119.67(b).

The FAA also proposed requiring the Chief Pilot to have pilot-in-command experience in the category of aircraft for which he or she will exercise responsibility. In addition, the FAA proposed that the three years of experience as pilot-in-command must have occurred under either part 121 or part 135 and must have occurred within the past six years if the Chief Pilot candidate has not previously served as a Chief Pilot.

Finally, the FAA proposed amending § 119.65(a)(3) to require one Chief Pilot for each category of aircraft because the Chief Pilot must have a detailed understanding of the particular aircraft the certificate holder operates. The agency has long emphasized that it adopted the Chief Pilot experience requirements to ensure familiarity with operations of a certificate holder, and that such familiarity is critical to attain prior to assuming the responsibilities of Chief Pilot.[4]

In amending part 119 to apply to operations of powered-lift, the FAA has also remained mindful of the discretion that § 119.65(b) provides, which allows the FAA to approve positions or numbers of positions other than those listed in § 119.65(a). The FAA did not receive comments on the aforementioned proposed changes to the Chief Pilot requirements, and therefore adopts them as final. In making these amendments, the FAA ensures each certificate holder has sufficient qualified management personnel to ensure the highest degree of safety and address the risks that each category of aircraft may present.

Director of Maintenance

Section 119.65 requires each certificate holder that conducts operations under part 121 to have a Director of Maintenance, and § 119.67(c) describes the qualifications that must be met to serve as Director of Maintenance. The FAA proposed replacing the term ''airplane'' in § 119.67(c) with ''aircraft'' for the reasons previously articulated.

The FAA also proposed requiring the minimum one year of supervisory experience with either maintaining or repairing at least one of the aircraft in the same category and class of aircraft the certificate holder uses.[5] The Director of Maintenance needs to have accumulated three years of experience within the past six years in maintaining or repairing aircraft in the same category and class of aircraft the certificate holder uses. These experience and qualification requirements within § 119.67(c) are key components of ensuring the Director of Maintenance is adequately qualified to serve in the role of overseeing other mechanics and personnel performing maintenance. The FAA believes experience with aircraft of the same category and class of aircraft the certificate holder uses would achieve the FAA's objective of ensuring the Director of Maintenance has appropriate experience with adhering to procedures and ensuring compliance with rules and programs relevant to maintenance. The FAA did not receive comments on these proposed changes and therefore adopts them as final.

Chief Inspector

Section 119.67(d) outlines the requirements for a person to serve as a Chief Inspector for operations conducted under part 121. Chief

[4] See, Provision for Deviations from Qualifications Requirements for Chief Pilots, 34 FR 7175 (Apr. 30, 1969).

[5] The term ''category'' in this context would mean the grouping of aircraft based upon the intended use or operating limitations. The definition in 14 CFR 1.1 cites as examples: transport, normal, utility, acrobatic, limited, restricted and provisional. Similarly, the use of the term ''class'' in the context of § 119.67(c), means a broad grouping of aircraft having similar characteristics of propulsion, flight or landing. The definition cites the following as examples of class: balloon, glider, land airplane, rotorcraft and seaplane.

Inspectors have direct authority and responsibility over people performing the requisite inspections for the certificate holder. The FAA proposed amending the rule to permit the three years of maintenance experience to occur on different types of large aircraft with 10 or more passenger seats, rather than only large airplanes. This amendment is consistent with the other changes in this rule that assist in incorporating powered-lift into the framework of part 121. As with the Director of Maintenance qualifications, this retention of the 10-seat threshold ensures the Chief Inspector will have experience with an air carrier maintenance program [6] or a certificated repair station. The FAA did not receive comments on this proposed amendment and adopts it as final.

3. Operations Under Parts 121 and 135

Part 121 currently applies to any turbojet-powered airplane with one or more passenger seats used for scheduled operations. Scheduled operations under part 135 that are generally ''commuter'' operations are limited to 9 seats or fewer and cannot occur in turbojet airplanes. To ensure safety of passengers carried in those kinds of operations, the provisions of part 121 apply to scheduled operations of turbojet airplanes. The FAA proposed to include turbojet-powered powered-lift alongside the term ''turbojet powered airplane'' to ensure consistency in applying the appropriate risk mitigation measures for operations of turbojet-powered aircraft.

The FAA received an anonymous comment requesting that the FAA enable single-engine turbojet airplanes to conduct part 135 commuter operations. Specifically, the commenter requested that the FAA permit use of the Cirrus SF–50 single-engine jet in part 135 commuter operations. The commenter asserted that, due to the Cirrus SF–50's limited capacity—it has six seats—this aircraft should be permitted to conduct part 135 commuter operations. The commenter stated that if the Cirrus SF–50 was allowed to operate in commuter operations, the pilot in command would be required to hold an ATP certificate and a type rating since it is a turbojet airplane. Conversely, the pilot in command of a single-engine reciprocating airplane in commuter operations is only required to hold a commercial certificate. The FAA determined that this comment is not within the scope of this rulemaking. Although the FAA considered general changes pertaining to the definition of commuter operations to enable powered-lift operations, it did not specifically contemplate whether single-engine turbo-jet airplanes should be able to conduct part 135 commuter operations. As a result, the comment is not within the scope of this rule, and the FAA declines to make the requested change.

121 Applicability

Section 121.1 establishes the applicability of part 121, which prescribes the rules governing air carrier operations conducted under domestic, flag, or supplemental operations. Section 121.1(g) is the only paragraph in § 121.1 that currently uses the term ''airplane.'' The FAA proposed revising this paragraph to apply to ''aircraft'' instead of ''airplane.'' This change in § 121.1 is necessary to correspond to the changes in parts 110 and 119 to extend the applicability of these parts to eventual powered-lift operations. The FAA also proposed a technical correction to § 121.1(c) by removing ''SFAR No. 58'' and replacing it with ''subpart Y'' which was codified on September 16, 2005.[7] The FAA did not receive any comments on these proposed changes. As a result, the FAA adopts as final § 121.9(g) to apply to ''aircraft'' and § 121.1(c) to state ''subpart Y''.

Certain Flight Time Limitations and Rest Requirements Under Part 121

Regarding flight time limitations and rest requirements, the FAA proposed amending §§ 121.470, 121.480, and 121.500 to replace the word ''airplanes'' with the term ''aircraft.'' Permitting this option for powered-lift that conduct operations in aircraft with a seat configuration of 30 seats or fewer (excluding each crewmember seat) and a payload capacity of 7,500 pounds or less is appropriate because the FAA has previously determined that specific flight time limitations and rest requirements of §§ 135.261 through 135.273 adequately address the risk associated with lack of rest in such operations.[8]

In addition, § 121.470 contains an exception for operations conducted entirely within Alaska or Hawaii with certain airplanes. Permitting this option for powered-lift that conduct such operations entirely within the States of Alaska or Hawaii is appropriate for the same reasons the FAA permits this exception for similarly sized airplanes. For such operations, the specific flight time limitations and rest requirements of subpart R adequately address the risk associated with lack of rest.[9] The FAA did not receive any comments on these proposed revisions. As a result, the FAA adopts them as final.

4. Operations Under Part 125

Part 125 applies to certain air carrier operations referenced in 14 CFR 125.1. The FAA proposed to amend § 125.1 such that those provisions would include powered-lift. Specifically, the FAA proposed to amend paragraphs (a), (b), (c), and (e) of § 125.1, to add the term ''powered-lift'' or, where appropriate, ''aircraft.''

Large powered-lift, due to their size, weight, and passenger capacity, present a level of risk that part 125 mitigates. Extending these requirements and standards to applicable operations of large powered-lift aircraft is consistent with the FAA's strategy for mitigating risks. The FAA's amendments to §§ 119.23 and 125.1 clarify that operators that conduct operations when common carriage is not involved in powered-lift would do so under the rules of part 125, provided they fall within the scope outlined in § 119.23(a).

In addition, the FAA proposed changing the ''airplane'' to ''aircraft'' in the title of part 125 and amending § 125.23 to change the word ''airplane'' to ''aircraft,'' as § 125.23 generally addresses applicability of certain rules and standards concerning operations subject to part 125. The FAA did not receive any comments on these proposed changes. Therefore, the FAA adopts them as final.

C. Commercial Air Tours and Flights for the Benefit of Charitable, Nonprofit, or Community Events

Commercial air tours are currently limited to flights conducted for compensation or hire in an airplane or helicopter in which the purpose of the flight is sightseeing.[10] Passenger-carrying flights may also be conducted without compensation or hire for certain charitable, nonprofit, and community

[6] 14 CFR 135.411(a)(2); see also § 121.367. These regulations require a certificate holder to have an inspection program and a program covering other maintenance, preventative maintenance, and alterations.

[7] Advanced Qualification Program, Final Rule, 70 FR 54810 (Sept. 16, 2005).

[8] Flightcrew Member Duty and Rest Requirements, 77 FR 330, 332 (Jan. 4, 2012).

[9] Flightcrew Member Duty and Rest Requirements, 77 FR 330, 331 (Jan. 4, 2012); 78 FR 69287 (Nov. 19, 2013).

[10] 14 CFR 110.2 and 136.1(d). Some flights that are commercial air tours under part 136 or § 91.147 may also be subject to other requirements. For example, the requirements of 49 U.S.C. 40128 (''Overflights of national parks'') or 14 CFR part 93, subpart U (''Special Flight Rules in the Vicinity of Grand Canyon National Park, AZ''), refer to certain types of commercial air tours in ''powered aircraft.'' This rule would not affect the applicability of any such requirements.

events. As discussed in more detail below, the FAA proposed incorporating powered-lift for commercial air tours and flights for the benefit of charitable, nonprofit or community events, and revising the necessary provisions to address ''rotorcraft'' instead of ''helicopter''. These proposals ensure consistency with the changes made to the definition of commercial air tour in part 110, as well as the change made to nonstop commercial air tours within § 119.1.

1. Incorporation of New Types of Aircraft

Section 91.147 and the requirements of part 136, subpart A, are currently limited in applicability to airplanes and helicopters. The FAA proposed replacing ''helicopter'' with the term ''rotorcraft'' and adding ''powered-lift'' to the relevant applicability provisions of § 91.147 to ensure the appropriate safety risk mitigations apply to all commercial air tours. The FAA did not receive comments on this proposed change, and therefore adopts it as final.

In addition, as discussed in more detail below, the FAA proposed changing the term ''helicopter'' to ''rotorcraft'' throughout part 136 to ensure the safety standards of part 136 apply to all rotorcraft and not only helicopters. Applying the requirements of part 136 to airplanes, powered-lift, and rotorcraft that conduct commercial air tours is an appropriate step in ensuring safe integration of new types of aircraft.

2. Suitable Landing Area for Emergencies

The current definition of ''suitable landing area for helicopters'' in § 136.1(d) states such an area is one that provides the operator reasonable capability to land without damage to equipment or injury to persons. It further provides that such areas must be site-specific, designated by the operator, and accepted by the FAA. The FAA proposed broadening the applicability to incorporate rotorcraft to ensure they are subject to the safety standards of part 136. The FAA did not receive specific comments on broadening the applicability to incorporate rotorcraft, and therefore adopts that change as final.

The FAA also proposed removing the phrase ''damage to equipment'' from the definition of ''suitable landing area,'' and adding ''serious'' before ''injury.'' The FAA intends to clarify that a suitable landing area is one that provides a reasonable capability for rotorcraft to land without causing *serious* injury to persons.

In addition, the FAA proposed removing the last sentence of the definition that states the purpose of the definition is to provide an emergency landing area for helicopters that would not have the capability to reach a safe landing area after an engine power loss. The FAA determined this sentence is too narrow. The proposed definition includes the phrase ''in an emergency'' to describe the context for which the operator would designate landing areas for rotorcraft.

The FAA received two comments that agreed the current definition of ''suitable landing area for helicopters'' needed to be changed. Jack Harter Helicopters wanted the FAA to eliminate the definition entirely, and Helicopter Association International (HAI) wanted the FAA to remove the ''injury'' element. The FAA has determined that there is not a safety case to entirely remove this definition, agreeing with HAI in that the purpose of this definition is to ensure operators designate potential landing areas in advance of the operation so that the pilot in command is aware of these potential sites in case of an emergency landing. Furthermore, the FAA is already modifying the current definition from ''injury'' to ''serious injury'' which is relieving. The FAA has determined that in the interest of safety, the injury element should not be entirely eliminated and changing ''injury'' to ''serious injury'' strikes the appropriate balance.

Finally, both commenters expressed a concern with the policy of having FAA-accepted suitable landing areas. The concern is that the current requirement for operators to establish FAA-accepted suitable landing areas for helicopters does not mirror real-world operations. The FAA disagrees with these comments. In the air tour industry, those suitable landing areas should be designated in advance and the FAA should be involved in that determination. The FAA has concluded that removing the requirement to have those designated sites accepted by the FAA would then allow these operators to choose new sites that may have negative safety and environmental consequences for the surrounding communities. Allowing operators to determine their own landing areas without FAA acceptance could lead to some operators creating new routes that have not been vetted by the FAA. This could result in increased noise in the surrounding community and could impact the safety of the air tour and individuals on the ground. Therefore, the FAA is adopting the proposed changes as final with no further amendment.

3. Life Preservers for Operations Over Water

The FAA also proposed in the NPRM regulatory text amending § 136.9. Section 136.9 outlines requirements for life preservers for operations over water.[11] The FAA proposed amending the text in § 136.9(b)(3) to require operators to base performance plans on information derived from the ''approved aircraft flight manual for that aircraft''. Using this term is consistent with the reference to aircraft flight manual in § 135.81. The FAA also proposed a technical amendment to § 136.9 by adding the term ''or'' after § 136.9(b)(2). The FAA did not receive comments on these proposed changes and therefore adopts them as final.

4. Rotorcraft Floats for Over Water

Section 136.11 outlines requirements for helicopter floats for over water operations. The FAA proposed extending the § 136.11 requirements to rotorcraft operations that occur under part 136 to help mitigate the risks associated with emergency water landings.

Additionally, § 136.11(b)(2) does not include a reference to ''beyond the shoreline''. The FAA proposed adding this reference to clarify the requirement to have the flotation system armed when the aircraft is over water beyond the shoreline.[12] The FAA did not receive comments on the aforementioned proposed amendments and therefore adopts them as final.

5. Performance Plans

Section 136.13(a) currently requires commercial air tour operators to complete helicopter performance plans before each operation that will occur under part 136.[13] The FAA proposed amending § 136.13(a) by changing the term ''helicopter'' to ''rotorcraft'' for the reasons already cited. The FAA also proposed amending the text in § 136.13(a) to require operators to base performance plans on information

[11] This requirement also applies to operations that occur under §§ 91.146 (''Passenger-carrying flights for the benefit of a charitable, non-profit, or community event'') and 91.147 (''Passenger carrying flights for compensation or hire'').

[12] Shoreline means that area of the land adjacent to the water of an ocean, sea, lake, pond, river or tidal basin that is above the high water mark and excludes land areas unsuitable for landing such as vertical cliffs or land intermittently under water during the particular flight. See, 14 CFR 136.1.

[13] This requirement also applies to operations that occur under §§ 91.146 (''Passenger-carrying flights for the benefit of a charitable, non-profit, or community event'') and 91.147 (''Passenger carrying flights for compensation or hire'').

derived from the ''approved aircraft flight manual for that aircraft'' for the reasons cited in § 136.9(b)(2). The FAA did not receive comments on these proposed changes and therefore adopts them as final.

6. Commercial Air Tours in Hawaii

Appendix A to part 136 applies to airplane and helicopter tours in Hawaii. The appendix A requirements are equally important for air tour operations in aircraft other than helicopters.

Section 1 of appendix A outlines the applicability for air tour operations conducted in Hawaii. Based on the uses of terms ''airplane'' and ''helicopter,'' the appendix does not apply to other types of aircraft, such as powered-lift and rotorcraft that are not helicopters. The FAA proposed amending the applicability of appendix A to incorporate powered-lift and rotorcraft to apply the minimum flight altitude limitations to other categories of aircraft seeking to conduct air tours in Hawaii.

The FAA also proposed amending the references to ''Rotorcraft Flight Manual (RFM)'' currently throughout part 136 to ''aircraft flight manual''. As with the amendment to § 136.13, described above in section III.C.4 of this preamble, using this term is consistent with the reference to Aircraft Flight Manual in § 135.81. The FAA did not receive comments on these proposed changes, and therefore adopts them as final.

Finally, the FAA proposed amending part 136 by recodifying appendix A as a new subpart and applying the requirements to operations of powered-lift and rotorcraft. Jack Harter Helicopters objected to the continuation of the appendix A requirements and recodifying them into subpart D, stating this was originally SFAR 71 before it was brought into appendix A for part 136 and that the FAA previously stated it would reconsider whether appendix A should be removed at some point in the future. This commenter also stated that they wanted various changes to part 136 and objected that the FAA had failed to notify industry and the public that the FAA was ''opening'' part 136 for changes. This commenter also wanted an extension of the comment period. In response, the FAA notes that it is only making a limited change by applying part 136 rules to rotorcraft and incorporating powered-lift. The FAA is not opening part 136 for extensive changes at this time. The FAA is also making limited changes to part 136 which includes amending the definition of ''suitable landing area'', adding ''beyond the shoreline'' to § 136.11(a)(2), and recodifying appendix A to subpart D—which is a technical amendment. These limited changes help clarify part 136 and align part 136 with other changes made throughout this rule. The FAA disagrees that the remainder of part 136 should be modified at this time. As a result, the FAA is adopting the proposed changes as final with no further amendment.

7. Flights for the Benefit of Charitable, Nonprofit, or Community Events

Operators that conduct passenger-carrying flights for certain charitable, nonprofit, and community events must comply with § 91.146. The FAA proposed replacing ''helicopter'' with the term ''rotorcraft'' and adding ''powered-lift'' to the relevant applicability provisions of § 91.146 for the benefit of a charitable, nonprofit, or community event. The FAA did not receive comments on these proposed changes. As such, the FAA adopts them as final.

V. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $177 million using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

In conducting these analyses, the FAA has determined that this rule: will result in benefits that justify costs; is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; will not have a significant economic impact on a substantial number of small entities; will not create unnecessary obstacles to the foreign commerce of the United States; and will not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector by exceeding the threshold identified above.

A. Regulatory Evaluation

This rule enables operations of powered-lift to occur in accordance with 49 U.S.C. 44701(d), 44705, and 44711. Currently, the FAA's rules governing certificate holders' operations only apply to airplanes and rotorcraft, and do not mention powered-lift. The rule amends the definitions for the five kinds of operations codified at § 110.2—commuter, domestic, flag, on-demand, and supplemental—to ensure the operations occur in accordance with the statutory mandates, and to apply the appropriate set of operating rules to operations in powered-lift. The rule also amends the appropriate applicability of sections within part 119 to enable powered-lift, subject to applicable exemptions, to conduct air carrier and certain other commercial operations, commercial air tours, and noncommon carriage operations.

The rule also amends certain aircraft-specific exceptions from the applicability of part 119. Furthermore, this rule alters the requirements for management personnel in certain certificate holder management positions to ensure personnel have appropriate experience. This rule extends the applicability of certain operating rules that apply to commercial air tours such that they apply to operators that conduct flights in powered-lift and rotorcraft. Finally, this rule makes various additional amendments in the interest of ensuring clarity. By including powered-lift in the existing operational framework, the rule does not result in a reduction in safety because it maintains the risk-based approach to safety. When operations present a higher level of risk, based on volume and frequency, the FAA subjects such operations to a regulatory framework that mitigates those risks.

The current parameters for determining whether a certificate holder is conducting operations under part 121, 125, or 135 will be identical for certificate holders using powered-lift in their operations under this rule. These parameters are shown below.

TABLE 1—OPERATING RULES BY PART

Parameter	Passenger		Cargo	Non-common carriage
	Scheduled	Nonscheduled	Scheduled/ Nonscheduled	
Part 135 Operating Rules*				
Passenger Seating	<=9 seats	<=30 seats	NA	<20 seats.
Maximum Payload	<=7,500 lbs.		<=7,500 lbs	<6,000 lbs.
Kind of Operation	Part 135 Commuter if 5 or more roundtrips/week; otherwise, Part 135 On Demand.	Part 135 On Demand	Part 135 On Demand	Part 135 On Demand.
Aircraft Type	Non-Turbojet	Includes Turbojet	Includes Turbojet	Includes Turbojet.
Part 121 Operating Rules Part 125				
Passenger Seating	>9 seats	>30 seats	NA	≥20 seats.
Maximum Payload	> 7,500 lbs.		>7,500 lbs	≥6,000 lbs.
Kind of Operation	Part 121 Domestic if flown within the 48 contiguous United States or DC; otherwise, Part 121 Flag.	Part 121 Supplemental	Part 121 Supplemental	Part 125.
Aircraft Type	Includes Turbojet		Includes Turbojet	Includes Turbojet.

*All Rotorcraft Operations are conducted under part 135.
NA = Not applicable.

The table below lists the amendments adopted by this rule. The first column identifies the affected 14 CFR part and section; the second column describes the change from existing regulations; the third column provides the economic impact as a result of the change.

TABLE 2—AMENDMENTS TO RULE BY PART

14 CFR part and section	Change	Economic impact
PART 91—GENERAL OPERATING AND FLIGHT RULES Subpart B—Flight Rules		
§ 91.146 Passenger-carrying flights for the benefit of a charitable, nonprofit, or community event.	The regulatory text is revised to allow passenger-carrying flights for the benefit of a charitable, nonprofit, or community event to be conducted with powered-lift. The section is also amended to replace the term ''helicopters'' with ''rotorcraft.''	Enabling.
§ 91.147 Passenger-carrying flights for compensation or hire.	The regulatory text is revised to allow passenger-carrying flights for compensation or hire to be conducted with powered-lift. The section is also amended to replace the term ''helicopters'' with ''rotorcraft.''	Enabling.
PART 91—GENERAL OPERATING AND FLIGHT RULES Subpart K—Fractional Ownership Operation		
§ 91.1015 Management specifications	The regulatory text replaces the requirement for operations specifications to contain copies of *all* deviations and exemptions (including those applicable to a specific aircraft) with a requirement to include deviations and exemptions applicable only to the person conducting the operation.	Relieving.
PART 110—GENERAL REQUIREMENTS		
§ 110.2 Definitions	Certain definitions in this section are revised to enable powered lift to conduct the kinds of air carrier operations.	Enabling.
PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS Subpart A—General		
§ 119.1 Applicability	Section 119.1(a) is revised to incorporate powered-lift with seating for 20 or more passengers or a maximum payload capacity of 6,000 pounds or more, of certificate holders when common carriage is not involved.	Enabling.

TABLE 2—AMENDMENTS TO RULE BY PART—Continued

14 CFR part and section	Change	Economic impact
	Section 119.1(e) includes powered-lift and rotorcraft in the list of certain, specific types of operations that are excluded from the applicability of part 119. Section 119.1(a) is corrected to include certain airplanes and powered-lift with a passenger-seat configuration of less than 20 seats and a payload capacity of less than 6,000 pounds to be consistent with the existing § 119.23.	Technical amendment.
§ 119.5 Certifications, authorizations, and prohibitions.	Section 119.5 is revised to incorporate powered-lift with seating for 20 or more passengers or a maximum payload capacity of 6,000 pounds or more into the aircraft types authorized by the Administrator to be issued an operating certificate for conducting operations when common carriage is not involved.	Enabling.
PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS **Subpart B—Applicability of Operating Requirements to Different Kinds of Operations Under Part 121, 125, and 135 of This Chapter**		
§ 119.21 Commercial operators engaged in intrastate common carriage and direct air carriers.	Section 119.21(a) is revised to require commercial operators of powered-lift that are engaged in intrastate common carriage of persons or property for compensation or hire, or as a direct air carrier, to comply with either part 121 or part 135 depending on the kind of operation they conduct. Domestic, flag, and supplemental operations are to be conducted under part 121. Commuter and on-demand operations are to be conducted under part 135.	Imposes requirements on certain operators of powered-lift that are equivalent to the requirements currently imposed on operators conducting similar operations with airplanes or rotorcraft. No additional regulatory cost.
§ 119.23 Operators engaged in passenger-carrying operations, cargo operations, or both with airplanes when common carriage is not involved.	Section 119.23(a) is revised to require commercial operators of powered-lift when common carriage is not involved to comply in accordance with requirements in either part 125 or part 135. Aircraft size in terms of number of seats and payload capacity determines which part is applicable to the operator.	Imposes requirements on certain operators of powered-lift that are equivalent to the requirements currently imposed on operators conducting similar operations with airplanes. No additional regulatory cost.
§ 119.49 Contents of operations specifications.	The regulatory text replaces the requirement for a certificate holder's operations specifications to contain copies of *all* deviations and exemptions (including those applicable to a specific aircraft) with a requirement to include deviations and exemptions applicable only to the person conducting the operation.	Relieving.
§ 119.65 Management personnel required for operations conducted under part 121 of this chapter.	The rule requires certificate holders have a Chief Pilot, as qualified under § 119.67, for *each* category of aircraft the certificate holder uses. The rule continues to permit the Administrator to approve positions or numbers of positions other than those described in the regulation, based in part on the number and type of *aircraft* used.	Potential cost only if a certificate holder uses powered-lift and airplanes to conduct operations and the Chief Pilot is not dual qualified.
§ 119.67 Management personnel: Qualifications for operations conducted under part 121 of this chapter.	*Director of Operations:* The regulatory text for the part 121 certificate holder Director of Operations management position is restructured for clarity. It also replaces the term ''airplane'' with ''aircraft.'' *Chief Pilot:* The regulatory text is restructured for clarity and replaces ''airplanes'' with ''aircraft,'' which encompasses airplanes and powered-lift. The amendment also requires the holder(s) of the Chief Pilot position for a part 121 certificate holder to have an airline transport pilot (ATP) certificate, with appropriate ratings, for at least one of the aircraft within each category of the certificate holder's fleet. Similarly, the Chief Pilot will need the Pilot in Command time as the current regulation states. *Director of Maintenance:* The regulatory text replaces ''airplanes'' with ''aircraft,'' which encompasses airplanes and powered-lift. *Chief Inspector:* The regulatory text is restructured for clarity and replaces ''airplanes'' with ''aircraft,'' which encompasses airplanes and powered-lift.	Imposes requirements on operators of powered-lift that are equivalent to the requirements currently imposed on certificate holders that use airplanes. No additional regulatory cost.
PART 121—OPERATING REQUIREMENTS; DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS **Subpart A—General**		
§ 121.1 Applicability	The regulatory text replaces ''airplanes'' with ''aircraft'' that certificate holders would take actions to support continued airworthiness of each aircraft, which includes powered-lift used in domestic, flag, or supplemental operations as defined in § 110.2.	Imposes requirements on operators of powered-lift that are equivalent to the requirements currently imposed on certificate holders that use airplanes. No additional regulatory cost.

TABLE 2—AMENDMENTS TO RULE BY PART—Continued

14 CFR part and section	Change	Economic impact
§ 121.1(c) Applicability	The regulatory text makes a technical correction to § 121.1(c) by removing ''SFAR No. 58'' and replacing it with ''subpart Y'' which was codified on September 16, 2005.	No impact—technical amendment.
PART 121—OPERATING REQUIREMENTS; DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS Subpart Q—Flight Time Limitations and Rest Requirements: Domestic Operations		
§ 121.470 Applicability	The regulatory text of paragraph (a) replaces ''airplanes'' with ''aircraft'' to permit certificate holders using powered-lift in domestic, all-cargo operations of a certain size, to adhere to the requirements of §§ 135.261 through 135.272. These requirements set forth flight time limitations and rest requirements. In addition, paragraph (b) permits certificate holders that conduct scheduled operations entirely within Alaska or Hawaii using specific size aircraft to have the option of complying with subpart R of part 121 for those operations.	Provides options to certificate holders using powered-lift in operations under part 121 that are equivalent to the options currently allowed. No additional regulatory cost.
PART 121—OPERATING REQUIREMENTS; DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS Subpart R—Flight Time Limitations and Rest Requirements: Flag Operations		
§ 121.480 Applicability	The regulatory text replaces ''airplanes'' with ''aircraft'' to permit certificate holders using powered-lift in flag, all-cargo operations, and operations of a certain size to adhere to the requirements of §§ 135.261 through 135.273. These requirements set forth flight time limitations and rest requirements.	Provides options to certificate holders using powered-lift in operations under part 121 that are equivalent to the options currently allowed. No additional regulatory cost.
PART 121—OPERATING REQUIREMENTS; DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS Subpart S—Flight Time Limitations and Rest Requirements: Supplemental Operations		
§ 121.500 Applicability	The regulatory text replaces ''airplanes'' with ''aircraft'' to permit certificate holders using powered-lift in supplemental, all-cargo operations, of a certain size, to adhere to the requirements of §§ 135.261 through 135.273. These requirements set forth flight time limitations and rest requirements.	Provides options to certificate holders using powered-lift in operations under part 121 that are equivalent to the options currently allowed. No additional regulatory cost.
PART 125—CERTIFICATION AND OPERATIONS: *AIRCRAFT* HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT		
§ 125.1 Applicability	Part 125 applies only to operations when common carriage is not involved conducted with airplanes that have a seating configuration of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more. The rule amends § 125.1 to incorporate powered lift into the statements regarding applicability of part 125.	Imposes requirements on operators conducting operations with powered-lift that are equivalent to the requirements currently imposed on operators conducting operations with airplanes. No additional regulatory cost.
§ 125.23 Rules applicable to operations subject to this part.	This rule also amends § 125.23 to change the word ''airplane'' to ''aircraft,'' as § 125.23 generally addresses applicability of certain rules and standards concerning operations.	Imposes requirements on operators conducting operations with powered-lift and rotorcraft that are equivalent to the requirements currently imposed on operators conducting operations with airplanes. No additional regulatory cost.
PART 136—COMMERCIAL AIR TOURS AND NATIONAL PARKS AIR TOUR MANAGEMENT Subpart A—National Air Tour Safety Standards		
§ 136.1 Applicability and definitions	This change incorporates powered-lift into part 136 and changes ''helicopter'' to ''rotorcraft'' in several definitions. This change also provides relief to the definition of suitable landing area for rotorcraft..	Enabling.
§ 136.3 Letters of Authorization	The change is a technical amendment that changes the phrase ''14 CFR 119.51'' to ''§ 119.51 of this chapter''	No impact—technical amendment.
§ 136.5 Additional requirements for Hawaii.	The amendment is updated to reflect the recodification of appendix A as subpart D.	No impact—technical amendment.
§ 136.9 Life preservers for operations over water.	The change is a technical amendment to § 136.9 from ''airplane flight manual or rotorcraft flight manual'' to ''aircraft flight manual''.	No impact—technical amendment.

TABLE 2—AMENDMENTS TO RULE BY PART—Continued

14 CFR part and section	Change	Economic impact
§ 136.11 Rotorcraft floats for over water	The section title and this section are revised to extend to all rotorcraft the requirements for helicopter floats for operations that occur overwater beyond the shoreline.	Enabling—no impact over and above current requirements.
§ 136.13 Performance plan and operations.	The section title and this section are revised to extend requirements for helicopter performance plans to rotorcraft. The performance plan must be based on information in the approved Aircraft Flight Manual for that aircraft.	Enabling—no impact over and above current requirements.
Subpart D—Special Operating Rules for Air Tour Operators in the State of Hawaii.	This amendment recodifies ''appendix A'' as ''subpart D'' and extends the applicability of operating rules for Air Tour Operators in the State of Hawaii to include operations conducted with powered-lift and rotorcraft.	Enabling—no impact over and above current requirements.

1. Benefits

This rule enables air carrier and other commercial operations of powered-lift by extending applicability of the appropriate set of operating rules that would serve as both a risk mitigation measure and a framework for FAA oversight, as necessary to ensure the requisite level of safety.

Powered-lift operations could offer many benefits. For example, some powered-lift may be capable of transporting heavier loads at higher altitudes and faster cruise speeds than helicopters, while maintaining the capability of taking off and landing vertically. The faster cruise speeds could improve response times by as much as 50 percent for search and rescue operations and allow a higher level of life-saving care during transport because of a smoother flight profile compared to helicopters.[14] In addition, powered-lift operations could increase the efficiency of crew transport to oil rigs as they move further from land, or other locations with smaller landing areas. Certificate holders may also seek to use powered-lift for transporting passengers point-to-point; for example, transportation could occur from a heliport and proceed at turbo-prop airspeeds and ranges. Using powered-lift for transport of passengers could increase the capacity of the NAS and reduce delays without requiring additional infrastructure.[15]

Powered-lift projects exist that are either in certification, design, proof of concept, or prototype phases of design refinement. One project underway is a 9-passenger tilt-rotor turboshaft design. This manufacturer is also in the conceptual design phase of a 20-passenger powered-lift. Another powered-lift project underway is seeking to become the first certificated electric Vertical Takeoff and Landing (eVTOL) operator under part 119 to carry passengers in the United States.

2. Costs and Costs Savings

Cost Savings—Operations Specifications

The FAA amends provisions in §§ 119.49(a)(12), (b)(12), and (c)(11) and 91.1015(b)(9) as the FAA has determined they are broad and unduly burdensome. Currently, these provisions require a certificate holder's operations specifications to contain a list of exemptions and deviations issued under 14 CFR chapter 1 that are applicable to the aircraft, the operator, and airmen. The rule requires *only* exemptions and deviations that apply to the certificate holder (rather than to the aircraft) to be retained in operations specifications. Although the amendment to these provisions is relieving, the costs savings are minimal because the operations specifications are maintained electronically.

Costs—Part 121 Chief Pilot Management Position

This rulemaking expands the part 119 certificate holder requirements for the part 121 management position of Chief Pilot (§ 119.65). As amended, the certificate holder is required to have a Chief Pilot for each category of aircraft used by the certificate holder to conduct operations. Currently, the Chief Pilot is required to have an ATP certificate, with appropriate ratings, for at least one of the airplanes used in the certificate holder's operations. While one person could meet the requirements of the Chief Pilot, this person would have to be dual qualified in airplanes and powered-lift. Consequently, a certificate holder conducting operations with airplanes and powered-lift may have an increase in costs if more than one Chief Pilot is hired to meet the qualification requirements.

Should a certificate holder operating under part 121 choose to conduct operations with airplanes and powered-lift, the incremental cost to meet the Chief Pilot qualification requirements would be minimal because the individual(s) acting in this position could also serve as a line pilot. The FAA determines that certificate holders operating under part 121 that choose to conduct operations with powered-lift would do so only if the benefits of conducting the operations exceeded its costs.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) and the Small Business Jobs Act of 2010 (Pub. L. 111–240), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and 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 FAA published an Initial Regulatory Flexibility Analysis (IRFA) in the proposed rule and determined that the proposal would not result in a significant economic impact on a substantial number of small entities. The FAA requested public comment regarding this determination. The FAA did not receive comments from the public regarding this determination, nor were comments to the proposed rule filed by Chief Counsel for Advocacy of the Small Business Administration (SBA).

The final rule may impact small entities but will have a minimal economic impact as the final rule is enabling while imposing minimal costs.

[14] *Military, GLOBALSECURITY.ORG* (last visited August 22, 2022), available at *https://www.globalsecurity.org/military/world/europe/aw609.htm.*

[15] Costa, Guillermo J., *Conceptual Design of a 150-Passenger Civil Tiltrotor,* NASA Ames Research Center—Aeromechanics Branch (Aug. 2012), (last visited August 22, 2022) available at *https://rotorcraft.arc.nasa.gov/Publications/files/Guillermo_Costa_TR150_Paper.pdf.*

First and foremost, the final rule changes definitions contained in § 110.2 and the appropriate applicability of sections within part 119 to enable powered-lift to conduct air carrier and other certain commercial operations, commercial air tours and operations not involving common carriage. Absent this final rule, an air carrier desiring to conduct operations using powered-lift would not be able to comply with the requirements of 49 U.S.C. 44701(d) or 44705. Such operations, therefore, would be prohibited in the absence of this final rule.

Secondly, the final rule removes the requirement for a certificate holder to maintain a list of exemptions and deviations related to aircraft in its fleet as required by §§ 119.49(a)(12), (b)(12), and (c)(11) and 91.1015(a)(9). The impact could provide minimal relief for certificate holders by reducing the volume of records certificate holders must retain in their operations specifications.

Lastly, due to a change in the definitions contained in 14 CFR 110.2, this final rule enables part 121 certificate holders to conduct operations using powered-lift. As a result, the final rule revises part 121 certificate holder management qualifications for the Chief Pilot. Current regulations require Chief Pilots to have an ATP certificate for at least one of the airplanes used in a certificate holder's operations. The regulations will require the certificate holder to have a Chief Pilot qualified for each category of aircraft that the certificate holder uses.

As stated in the proposed rule, the FAA determines that the expansion of the qualifications for the position of Chief Pilot resulting from enabling additional aircraft categories to conduct part 121 operations imposes a minimal economic impact for part 121 certificate holders. Considering that this rulemaking is enabling, a part 121 certificate holder will voluntarily choose to operate a fleet of more than one aircraft category only if the expected benefits of doing so exceed the costs.

If an agency determines that a rulemaking would not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the Regulatory Flexibility Act. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking would not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety and does not operate in a manner that excludes 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.

The FAA has analyzed this rule in conjunction with the requirements of the Trade Agreements Act of 1979, as amended by the Uruguay Round Agreements Act. The FAA has determined the rule does not present any obstacle to foreign commerce of the United States. In addition, the rule is not contrary to international standards.

D. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or Tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those costs. The FAA determined that this final rule will not result in the expenditure of $177 million or more by State, local, or Tribal governments, in the aggregate, or the private sector, in any one year.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

The Office of Management and Budget previously approved the FAA's collection of information affiliated with this rule.[16] None of the information collection instruments will change due to this rule, however, the number of respondents to whom the information collection requirements apply may increase. The FAA will continue to collect the necessary information in the same manner as described in its prior notices concerning the information collections.

Each section below identifies the information collections affected by this rule. The FAA has estimated the increase in the existing burden based on four-part 119 certificate holders beginning part 135 operations with powered-lift by the end of the third year following publication of the final rule.[17] While this rule allows part 119 certificate holders to conduct operations under part 121, the FAA does not believe that any such certificate holders would do so in the first three years following adoption of the rule. Therefore, the FAA has not estimated any burden increase for existing information collection 2120–0008 (Part 121 Operating Requirements: Domestic, Flag, and Supplemental Operations). Further, the FAA does not believe that any such certificate holders would conduct operations under part 125 in the first three years following adoption of this rule. Therefore, the FAA has not estimated any burden increase for existing information collection 2120–0085 (Certification and Operations: Airplanes Having a Seating Capacity of 20 or More Passengers or a Maximum Payload Capacity of 6,000 Pounds or More).

1. Revision of Existing Information Collection 2120–0593: Federal Aviation Regulation part 119—Certification: Air Carriers and Commercial Operators [18]

Summary: This rule would extend the requirements of part 119 to certificate holders that conduct operations with powered-lift.

[16] Certification: Air Carriers and Commercial Operators, Supporting Statement: Information Collection Request Reference No. 2120–0593 (April 19, 2021), available at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202011-2120-001*.

[17] Official FAA forecasts related to the operation of powered-lift in the National Airspace System (NAS) have yet to be developed. As of July 2022, approximately 10 applicants were undergoing type certification at FAA for powered-lift projects. Two of these projects have progressed further through the approval process and could be issued a type certificate as early as 2024. For purposes of estimating the increase in the existing information collection, it is determined four-part 119 certificate holders will begin part 135 operations with powered-lift by the end of the third year following adoption of this rule. Publicly available data was used to forecast the powered-lift fleet. Forecasts for airmen and departures were developed based on utilization of the fleet (*i.e.,* hours flown).

[18] Ibid.

Public Comment: There were no comments submitted to the notice of proposed rulemaking concerning this information collection.

Use: Organizations that desire to become or remain certified as air carriers or commercial operators are mandated to report information to the FAA. The information collected reflects requirements necessary under parts 135, 121, and 125 to conform to 14 CFR part 119—Certification: Air Carriers and Commercial Operators. The FAA will use the information it collects and reviews to ensure compliance and adherence to regulations and, if applicable, to take enforcement action on violators of the regulations.

The FAA has estimated the increase in the existing burden based on four certificate holders beginning powered-lift operations by the end of the third year following adoption of this rule.[19] Note that not all information collection requirements are expected to increase as a result of the revision to this information collection.

TABLE 3—THREE-YEAR BURDEN ESTIMATE FOR INFORMATION COLLECTION 2120–0593 CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

Section	Section title	Number of respondents	Number of responses	Total responses	Time per response—technical ($32.21/hr.)	Time per response—admin. asst. ($24.51/hr.)	Total burden (hours)	Total burden (cost)
119.33c ..	Proving Test Plan	4	1	4	2.0	1.0	12	$356
119.35	Certificate Application Reqts—all Operators	4	1	4	80.0	16.0	384	11,876
119.36	Certificate Application Reqts for Commercial Operators.	4	1	4	2.0	4.0	24	650
119.41c ..	Amending a Certificate	1	1	1	0.5	0.1	0.6	19
119.69e3	Management Personnel Required, Part 135	4	1	4	1.0	0.5	6	178
119.71f ...	Management Personnel Qualifications, Part 135	4	1	4	1.0	0.5	6	178
							433	13,256

Note: Column and row totals may not sum due to rounding.

2. Revision of Existing Information Collection 2120–0607: Pilot Records Improvement Act of 1996/Pilot Records Database [20]

Summary: With the exception of Form 8060–14 and –15, an operator utilizes the various 8060 forms to report a request for the applicable records of all applicants for the position of pilot with their company as needed under the Pilot Records Improvement Act (PRIA).

Public Comment: There were no comments submitted to the notice of proposed rulemaking concerning this information collection.

Use: The information collected on these forms will be used only to facilitate search and retrieval of the requested records, and submission is mandatory until PRIA sunsets. Operators then ''may use such records only to assess the qualification of the individual in deciding whether or not to hire the individual as a pilot.'' (49 U.S.C. 44703(h)(11)). For purposes of this incremental information collection the FAA expects pilots to access the pilot records database web-based application to release records to operators for review and to update employment history. In turn, the hiring operator uses the information to help them perform a comprehensive assessment of the pilot prior to making a hiring decision, as required by the Act.

The FAA has estimated the increase in the existing burden for this collection based on four part 119 certificate holders employing 129 commercial pilots holding an airmen's certificate in the powered-lift category by the end of the third year following adoption of this rule. Note that not all information collection requirements are expected to increase as a result of the revision to this information collection.

[19] This burden is based on work performed by technical specialists and/or administrative assistants. The fully-burdened hourly wage used to estimate costs includes the base hourly wage for each job category plus an increase to account for fringe benefits and overhead. The base hourly wage for the technical specialist and administrative assistant is estimated to be $20.95 and $15.95, respectively (source: *https://www.payscale.com/research/US/Job=Technical_Specialist/Salary*; *https://www.payscale.com/research/US/Job=Administrative_Assistant/Hourly_Rate*). The base wage is increased by a multiplier of 34.1 percent for fringe benefits (source: *https://www.bls.gov/news.release/ecec.nr0.htm*) and 17.0 percent for overhead (source) Cody Rice, U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program'' June 10, 2002, *https://www.regulations.gov/document?D=EPA-HQ-OPPT-2014-0650-0005*. Summing together the base hourly wage, fringe benefits, and overhead results in a fully-loaded hourly wage of $32.21 for a technical specialist and $24.51 for an administrative assistant.

[20] Official FAA forecasts related to the operation of powered-lift in the National Airspace System (NAS) have yet to be developed. Thus, forecasts for operators of part 135 aircraft and fleet were prepared solely for the purpose of estimating the cost of the information collections affiliated with this rule, and developed using publicly available data related to orders and options for powered-lift. FAA notes that none of the orders for the multitude of powered-lift aircraft models being developed are firm as of the time of this writing, with the exception of one model. Using the fleet forecast and an assumption for fleet utilization (*i.e.* hours flown), forecasts for airmen and departures were also developed to estimate costs of the paperwork burden.

TABLE 4—THREE-YEAR BURDEN ESTIMATE FOR INFORMATION COLLECTION 2120–0607 [21] PILOT RECORDS DATABASE

			Year 1	Year 2	Year 3	Total
New Pilots			0	44	85	129
Cumulative Pilots			0	44	129	.....
Pilot activity—by event	Events per year	Hrs per event	Year 1 (hrs)	Year 2 (hrs)	Year 3 (hrs)	Total (hrs)
Database Registration—New Pilots	1.0	0.33	0	14.5	28.1	42.6
Input Employment History—New Pilots	1.0	0.03	0	1.3	2.6	3.9
Total Time (Hours)	.....	.....	0.0	15.8	30.7	46.5
Pilot Activity—by Cost		Cost per hr	Year 1	Year 2	Year 3	Total
Database Registration—New Pilots		$46.28	$0	$671	$1,301	$1,972
Input Employment History—New Pilots		46.28	0	60	120	181
Total Cost		.....	0	731	1,421	2,152
Operator Activity—by Event	Events per year	Hrs per event	Year 1 (hrs)	Year 2 (hrs)	Year 3 (hrs)	Total (hrs)
Training/checking events—Cumul. Pilots	2.7	0.07	0	8.3	24.4	32.7
Ground training events—Cumul. Pilots	1.0	0.07	0	3.1	9.0	12.1
Verification of NDR* Search—New Pilots	0.5	0.01	0	0.2	0.4	0.6
Initial train/check—New Pilots	1.0	0.07	0	3.1	6.0	9.1
Total Time (Hours)	.....	.....	0	14.7	39.8	54.5
Operator Events—by Cost		Cost per hr	Year 1	Year 2	Year 3	Total
Training/checking events—Cumul. Pilots		$91.33	$0	$758	$2,228	$2,986
Ground training events—Cumul. Pilots		91.33	0	283	822	1,105
Verification of NDR* Search—New Pilots		91.33	0	18	37	55
Initial train/check—New Pilots		91.33	0	283	548	4,146
Total Cost		.....	0	1,343	3,635	8,293

Note: Row and column totals may not sum due to rounding.

3. Revision of Existing Information Collection 2120–0535: Anti-Drug Program for Personnel Engaged in Specified Aviation Activities [22]

Summary: Part 119 certificate holders with the authority to operate under parts 121 and 135, air tour operators as defined in 14 CFR 91.147, non-FAA or Military Air Traffic Control Facilities, contractors, or repair stations under 14 CFR part 145 that conduct drug and alcohol testing programs are mandated to report information to this collection.

Public Comment: There were no comments submitted to the notice of proposed rulemaking concerning this information collection.

Use: The FAA uses this information for determining program compliance or non-compliance of regulated aviation employers, oversight planning, determining who must provide a mandatory annual Management Information System (MIS) testing information, and communicating with entities subject to the program regulations. In addition, the information is used to ensure that appropriate action is taken regarding crewmembers and other safety-sensitive employees who have tested positive for drugs or alcohol or have refused to submit to testing. The collection includes reporting, recordkeeping, and disclosure information. Using the information reported on the annual MIS allows the FAA Administrator to determine the random testing rates for the following year, which is published in the **Federal Register**.

The FAA has estimated the incremental increase in the existing burden for this collection based on four powered-lift operators entering service by the end of the third year following adoption of this rule. Below are the reporting requirements for this information collection. Note that not all information collection requirements are expected to increase as a result of the revision to this information collection.

[21] Occupational Employment and Wages, May 2019, 11–3121 Human Resources Managers, Bureau of Labor Statistics, Mean Hourly Wage Rate ($62.29). *https://www.bls.gov/oes/2019/may/oes113121.htm.* The fully-burdened wage rate is $91.33 and includes employee compensation that is related to fringe benefits and is estimated to be 31.8 percent of the fully-burdened wage. Source: Bureau of Labor Statistics, Employer Costs for Employee Compensation (*https://www.bls.gov/news.release/pdf/ecec.pdf; data provided in news release vary slightly by month).* The FAA used a ground instructor base hourly wage rate ($31.56) as a proxy for the pilot non-flying base hourly wage rate (source: Bureau of Labor Statistics (BLS) Occupational Employment Statistics for Air Transportation Industry). *https://www.bls.gov/oes/2019/may/oes131151.htm:* Training and Development Specialists (13–1151). The fully-burdened wage rate is $46.28 and includes employee compensation related to benefits that is estimated to be 31.8 percent of the fully-burdened wage. (Source: Bureau of Labor Statistics, Employer Costs for Employee Compensation.)

[22] Official FAA forecasts related to the operation of powered-lift in the National Airspace System (NAS) have yet to be developed. Thus, forecasts for operators of part 135 aircraft and fleet were prepared solely for the purpose of estimating the cost of the information collections affiliated with this rule, and developed using publicly available data related to orders and options for powered-lift. FAA notes that none of the orders for the multitude of powered-lift aircraft models being developed are firm as of the time of this writing, with the exception of one model. Using the fleet forecast and an assumption for fleet utilization (*i.e.* hours flown), forecasts for airmen and departures were also developed to estimate costs of the paperwork burden.

TABLE 5—THREE-YEAR BURDEN ESTIMATE FOR INFORMATION COLLECTION 2120–0535 ANTI-DRUG PROGRAM FOR PERSONNEL ENGAGED IN SPECIFIED AVIATION ACTIVITIES

PRA task item	Responses (three years)	Time per response (hours)	Total 3-Yr burden (hours)	Fully-burdened hourly wage ($25.33)	Total 3-Yr Burden ($)
Promulgate Policy	4	16.00	64.0	$25.33	$1,621
Registration (New or Amended)	4	1.00	4.0	25.33	101
Supervisory Drug and Alcohol Training	6	0.25	1.6	25.33	41
Employee Training Documentation	129	0.25	32.3	25.33	817
Reasonable Cause/Suspicion Documentation	1.5	2.00	3.0	25.33	76
Voluntary Disclosure	1.0	40.00	40.0	25.33	1,013
Emergency Maintenance	1	1.25	1.3	25.33	32
Scientifically Valid Random Testing Process	83	1.00	82.8	25.33	2,097
Medical Review Officer Recordkeeping Provision	4	0.25	1.0	25.33	25
Total Incremental Change for OMB 2120–0535	234	.....	229.9	.....	5,823

Note: Row and column totals may not sum due to rounding.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f for regulations and involves no extraordinary circumstances.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, will not have federalism implications.

B. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,[23] and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,[24] the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential 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; or to affect uniquely or significantly their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on Tribes resulting from this final rule.

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. The FAA has determined that it is not a ''significant energy action'' under the executive order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

D. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action will have no effect on international regulatory cooperation.

VII. Additional Information

A. Electronic Access and Filing

A copy of the NPRM, all comments received, this final rule, and all background material may be viewed online at *https://www.regulations.gov* using the docket number listed above. A copy of this rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *https://www.federalregister.gov* and the Government Publishing Office's website at *https://www.govinfo.gov.* A copy may also be found at the FAA's Regulations and Policies website at *https://www.faa.gov/regulations_policies.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or amendment number(s) of this rulemaking.

All documents the FAA considered in developing this final rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or

[23] 65 FR 67249 (Nov. 6, 2000).

[24] FAA Order No. 1210.20 (Jan. 28, 2004), available at *https://www.faa.gov/documentLibrary/media/1210.pdf.*

advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *https://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 91

Air carrier, Air taxis, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Transportation.

14 CFR Part 110

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 136

Air transportation, Aircraft, Aviation safety, National parks, Recreation and recreation areas, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Amend § 91.146 by revising paragraphs (b) introductory text and (b)(2), (3), (5), and (7) to read as follows:

§ 91.146 Passenger-carrying flights for the benefit of a charitable, nonprofit, or community event.

* * * * *

(b) Passenger-carrying flights in airplanes, powered-lift, or rotorcraft for the benefit of a charitable, nonprofit, or community event identified in paragraph (c) of this section are not subject to the certification requirements of part 119 of this chapter or the drug and alcohol testing requirements in part 120 of this chapter, provided the following conditions are satisfied and the limitations in paragraphs (c) and (d) of this section are not exceeded:

* * * * *

(2) The flight is conducted from a public airport that is adequate for the aircraft used, or from another location the FAA approves for the operation;

(3) The aircraft has a maximum of 30 seats, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds;

* * * * *

(5) Each aircraft holds a standard airworthiness certificate, is airworthy, and is operated in compliance with the applicable requirements of subpart E of this part;

* * * * *

(7) Reimbursement of the operator of the aircraft is limited to that portion of the passenger payment for the flight that does not exceed the pro rata cost of owning, operating, and maintaining the aircraft for that flight, which may include fuel, oil, airport expenditures, and rental fees;

* * * * *

■ 3. Amend § 91.147 by revising paragraph (a) to read as follows:

§ 91.147 Passenger-carrying flights for compensation or hire.

* * * * *

(a) For the purposes of this section and for drug and alcohol testing, *Operator* means any person conducting nonstop passenger-carrying flights in an airplane, powered-lift, or rotorcraft for compensation or hire in accordance with § 119.1(e)(2), § 135.1(a)(5), or § 121.1(d) of this chapter that begin and end at the same airport and are conducted within a 25-statute mile radius of that airport.

* * * * *

■ 4. Amend § 91.1015 by revising paragraph (a)(9) to read as follows:

§ 91.1015 Management specifications.

(a) * * *

(9) Any authorized deviation and exemption that applies to the person conducting operations under this subpart; and

* * * * *

PART 110—GENERAL REQUIREMENTS

■ 5. The authority citation for part 110 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

■ 6. Amend § 110.2 by revising the introductory text of the definition of ''Commercial air tour'' and by revising the definitions of ''Commuter operation'', ''Domestic operation'', ''Flag operation'', ''On-demand operation'', and ''Supplemental operation'' to read as follows:

§ 110.2 Definitions.

* * * * *

Commercial air tour means a flight conducted for compensation or hire in an airplane, powered-lift, or rotorcraft where a purpose of the flight is sightseeing. The FAA may consider the following factors in determining whether a flight is a commercial air tour:

* * * * *

Commuter operation means any scheduled operation conducted by any person operating one of the following types of aircraft with a frequency of operations of at least five round trips per week on at least one route between two or more points according to the published flight schedules:

(1) Rotorcraft; or

(2) Airplanes or powered-lift that:

(i) Are not turbojet-powered;

(ii) Have a maximum passenger-seat configuration of 9 seats or less, excluding each crewmember seat; and

(iii) Have a maximum payload capacity of 7,500 pounds or less.

* * * * *

Domestic operation means any scheduled operation conducted by any person operating any aircraft described in paragraph (1) of this definition at locations described in paragraph (2) of this definition:

(1) Airplanes or powered-lift that:

(i) Are turbojet-powered;

(ii) Have a passenger-seat configuration of more than 9 passenger seats, excluding each crewmember seat; or

(iii) Have a payload capacity of more than 7,500 pounds.

(2) Locations:

(i) Between any points within the 48 contiguous States of the United States or the District of Columbia; or

(ii) Operations solely within the 48 contiguous States of the United States or the District of Columbia; or

(iii) Operations entirely within any State, territory, or possession of the United States; or

(iv) When specifically authorized by the Administrator, operations between any point within the 48 contiguous States of the United States or the District of Columbia and any specifically authorized point located outside the 48 contiguous States of the United States or the District of Columbia.

* * * * *

Flag operation means any scheduled operation conducted by any person operating any aircraft described in paragraph (1) of this definition at locations described in paragraph (2) of this definition:

(1) Airplanes or powered-lift that:

(i) Are turbojet-powered;

(ii) Have a passenger-seat configuration of more than 9 passenger seats, excluding each crewmember seat; or

(iii) Have a payload capacity of more than 7,500 pounds.

(2) Locations:

(i) Between any point within the State of Alaska or the State of Hawaii or any territory or possession of the United States and any point outside the State of Alaska or the State of Hawaii or any territory or possession of the United States, respectively; or

(ii) Between any point within the 48 contiguous States of the United States or the District of Columbia and any point outside the 48 contiguous States of the United States and the District of Columbia; or

(iii) Between any point outside the U.S. and another point outside the U.S.

* * * * *

On-demand operation means any operation for compensation or hire that is one of the following:

(1) Passenger-carrying operations conducted as a public charter under part 380 of this chapter or any operations in which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative that are any of the following types of operations:

(i) Common carriage operations conducted with airplanes or powered-lift, including any that are turbojet-powered, having a passenger-seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less. The operations described in this paragraph do not include operations using a specific airplane or powered-lift that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) of this chapter for those operations are considered supplemental operations;

(ii) Noncommon or private carriage operations conducted with airplanes or powered-lift having a passenger-seat configuration of less than 20 seats, excluding each crewmember seat, and a payload capacity of less than 6,000 pounds; or

(iii) Any rotorcraft operation.

(2) Scheduled passenger-carrying operations conducted with one of the following types of aircraft, other than turbojet-powered aircraft, with a frequency of operations of less than five round trips per week on at least one route between two or more points according to the published flight schedules:

(i) Airplanes or powered-lift having a maximum passenger-seat configuration of 9 seats or less, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less; or

(ii) Rotorcraft.

(3) All-cargo operations conducted with airplanes or powered-lift having a payload capacity of 7,500 pounds or less, or with rotorcraft.

* * * * *

Supplemental operation means any common carriage operation for compensation or hire conducted with any aircraft described in paragraph (1) of this definition that is a type of operation described in paragraph (2) of this definition:

(1) Airplanes or powered-lift that:

(i) Have a passenger-seat configuration of more than 30 seats, excluding each crewmember seat.

(ii) Have a payload capacity of more than 7,500 pounds.

(iii) Are propeller-powered and:

(A) Have a passenger-seat configuration of more than 9 seats and less than 31 seats, excluding each crewmember seat; and

(B) Are used in domestic or flag operations but are so listed in the operations specifications as required by § 119.49(a)(4) of this chapter for such operations.

(iv) Are turbojet-powered and:

(A) Have a passenger seat configuration of 1 or more but less than 31 seats, excluding each crewmember seat; and

(B) Are used in domestic or flag operations and are so listed in the operations specifications as required by § 119.49(a)(4) of this chapter for such operations.

(2) Types of operation:

(i) Operations for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative.

(ii) All-cargo operations.

(iii) Passenger-carrying public charter operations conducted under part 380 of this chapter.

* * * * *

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 7. The authority citation for part 119 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105; sec. 215, Pub. L. 111–216, 124 Stat. 2348.

■ 8. Amend § 119.1 by:

■ a. Revising paragraph (a)(2);

■ b. Adding paragraph (a)(3); and

■ c. Revising paragraphs (e) introductory text, (e)(2), (e)(4)(v), (e)(5), (e)(7) introductory text, and (e)(7)(i), (iii), and (vii).

The revisions and addition read as follows:

§ 119.1 Applicability.

(a) * * *

(2) When common carriage is not involved, in operations of any U.S.-registered civil airplane or powered-lift with a seat configuration of 20 or more passengers, or a maximum payload capacity of 6,000 pounds or more; or

(3) When noncommon carriage is involved, except as provided in § 91.501(b) of this chapter, or in private carriage for compensation or hire, in operations of any U.S.-registered civil airplane or powered-lift with a passenger-seat configuration of less than 20 seats and a payload capacity of less than 6,000 pounds.

* * * * *

(e) Except for operations when common carriage is not involved conducted with any airplane or powered-lift having a passenger-seat configuration of 20 seats or more, excluding any required crewmember seat, or a payload capacity of 6,000 pounds or more, this part does not apply to—

* * * * *

(2) Nonstop Commercial Air Tours that occur in an airplane, powered-lift, or rotorcraft having a standard

airworthiness certificate and passenger-seat configuration of 30 seats or fewer and a maximum payload capacity of 7,500 pounds or less that begin and end at the same airport, and are conducted within a 25-statute mile radius of that airport, in compliance with the Letter of Authorization issued under § 91.147 of this chapter. For nonstop Commercial Air Tours conducted in accordance with part 136, subpart B, of this chapter, National Parks Air Tour Management, the requirements of this part apply unless excepted in § 136.37(g)(2). For Nonstop Commercial Air Tours conducted in the vicinity of the Grand Canyon National Park, Arizona, the requirements of SFAR 50–2, part 93, subpart U, of the chapter and this part, as applicable, apply.

* * * * *

(4) * * *

(v) Powered-lift or rotorcraft operations in construction or repair work (but part 119 of this chapter does apply to transportation to and from the site of operations); and

* * * * *

(5) Sightseeing flights conducted in hot air balloons or gliders;

* * * * *

(7) Powered-lift or rotorcraft flights conducted within a 25 statute mile radius of the airport of takeoff if—

(i) Not more than two passengers are carried in the aircraft in addition to the required flightcrew;

* * * * *

(iii) The aircraft used is certificated in the standard category and complies with the 100-hour inspection requirements of part 91 of this chapter;

* * * * *

(vii) Cargo is not carried in or on the aircraft;

* * * * *

■ 9. Amend § 119.5 by revising paragraphs (b) and (c) to read as follows:

§ 119.5 Certifications, authorizations, and prohibitions.

* * * * *

(b) A person not authorized to conduct direct air carrier operations, but authorized by the Administrator to conduct operations as a U.S. commercial operator, will be issued an Operating Certificate.

(c) A person not authorized to conduct direct air carrier operations, but authorized by the Administrator to conduct operations when common carriage is not involved as an operator of any U.S.-registered civil airplane or powered-lift with a seat configuration of 20 or more passengers, or a maximum payload capacity of 6,000 pounds or more, will be issued an Operating Certificate.

* * * * *

■ 10. Amend § 119.21 by revising paragraph (a) introductory text to read as follows:

§ 119.21 Commercial operators engaged in intrastate common carriage and direct air carriers.

(a) Each person who conducts airplane or powered-lift operations as a commercial operator engaged in intrastate common carriage of persons or property for compensation or hire in air commerce, or as a direct air carrier, shall comply with the certification and operations specifications requirements in subpart C of this part, and shall conduct its:

* * * * *

■ 11. Amend § 119.23 by revising the section heading, paragraphs (a) introductory text, (a)(2), and (b) introductory text to read as follows:

§ 119.23 Operators engaged in passenger-carrying operations, cargo operations, or both with airplanes or powered-lift when common carriage is not involved.

(a) Each person who conducts operations when common carriage is not involved with any airplane or powered-lift having a passenger-seat configuration of 20 seats or more, excluding each crewmember seat, or a payload capacity of 6,000 pounds or more, must, unless deviation authority is issued—

* * * * *

(2) Conduct its operations in accordance with the requirements of part 125 of this chapter; and

* * * * *

(b) Each person who conducts noncommon carriage (except as provided in § 91.501(b) of this chapter) or private carriage operations for compensation or hire with any airplane or powered-lift having a passenger-seat configuration of less than 20 seats, excluding each crewmember seat, and a payload capacity of less than 6,000 pounds, must—

* * * * *

■ 12. Amend § 119.49 by revising paragraphs (a)(12), (b)(12), and (c)(11) to read as follows:

§ 119.49 Contents of operations specifications.

(a) * * *

(12) Any authorized deviation or exemption from any requirement of this chapter that applies to the certificate holder.

* * * * *

(b) * * *

(12) Any authorized deviation or exemption from any requirement of this chapter that applies to the certificate holder.

* * * * *

(c) * * *

(11) Any authorized deviation or exemption from any requirement of this chapter that applies to the certificate holder.

* * * * *

■ 13. Amend § 119.65 by revising paragraphs (a)(3) and (b)(2) to read as follows:

§ 119.65 Management personnel required for operations conducted under part 121 of this chapter.

(a) * * *

(3) Chief Pilot for each category of aircraft the certificate holder uses, as listed in § 61.5(b)(1) of this chapter.

* * * * *

(b) * * *

(2) The number and type of aircraft used; and

* * * * *

■ 14. Revise § 119.67 to read as follows:

§ 119.67 Management personnel: Qualifications for operations conducted under part 121 of this chapter.

(a) *Director of Operations.* To serve as Director of Operations under § 119.65(a), a person must hold an airline transport pilot certificate and—

(1) If the certificate holder uses large aircraft, at least 3 years of supervisory or managerial experience within the last 6 years in large aircraft, in a position that exercised operational control over any operations conducted under part 121 or 135 of this chapter.

(2) If the certificate holder uses large aircraft, at least 3 years of experience as pilot in command under part 121 or 135 of this chapter in large aircraft in at least one of the categories of aircraft the certificate holder uses, as listed in § 61.5(b)(1) of this chapter. In the case of a person becoming Director of Operations for the first time, he or she must have accumulated this experience as pilot in command within the past 6 years.

(3) If the certificate holder uses only small aircraft in its operations, the experience required in paragraphs (a)(1) and (2) of this section may be obtained in either large or small aircraft.

(b) *Chief Pilot.* To serve as Chief Pilot under § 119.65(a), a person must:

(1) Hold an airline transport pilot certificate with appropriate ratings in the category of aircraft that the certificate holder uses in its operations under part 121 of this chapter and over which the Chief Pilot exercises responsibility; and

(2) Have at least 3 years of experience as pilot in command in the same category of aircraft that the certificate holder uses, as listed in § 61.5(b) of this chapter. The experience as pilot in command described in this paragraph (b)(2) must:

(i) Have occurred within the past 6 years, in the case of a person becoming a Chief Pilot for the first time.

(ii) Have occurred in large aircraft operated under part 121 or 135 of this chapter. If the certificate holder uses only small aircraft in its operation, this experience may be obtained in either large or small aircraft.

(iii) Be in the same category of aircraft over which the Chief Pilot exercises responsibility.

(c) *Director of Maintenance.* To serve as Director of Maintenance under § 119.65(a), a person must:

(1) Hold a mechanic certificate with airframe and powerplant ratings;

(2) Have 1 year of experience in a position responsible for returning aircraft to service;

(3) Have at least 1 year of experience in a supervisory capacity under either paragraph (c)(4)(i) or (ii) of this section maintaining the same category and class of aircraft as the certificate holder uses; and

(4) Have 3 years of experience within the past 6 years in one or a combination of the following—

(i) Maintaining large aircraft with 10 or more passenger seats, including, at the time of appointment as Director of Maintenance, experience in maintaining the same category and class of aircraft as the certificate holder uses; or

(ii) Repairing aircraft in a certificated airframe repair station that is rated to maintain aircraft in the same category and class of aircraft as the certificate holder uses.

(d) *Chief Inspector.* To serve as Chief Inspector under § 119.65(a), a person must:

(1) Hold a mechanic certificate with both airframe and powerplant ratings, and have held these ratings for at least 3 years;

(2) Have at least 3 years of maintenance experience on different types of large aircraft with 10 or more passenger seats with an air carrier or certificated repair station, 1 year of which must have been as maintenance inspector; and

(3) Have at least 1 year of experience in a supervisory capacity maintaining the same category and class of aircraft as the certificate holder uses.

(e) *Deviation.* A certificate holder may request a deviation to employ a person who does not meet the appropriate airman experience, managerial experience, or supervisory experience requirements of this section if the Manager of the Air Transportation Division or the Manager of the Aircraft Maintenance Division, as appropriate, finds that the person has comparable experience and can effectively perform the functions associated with the position in accordance with the requirements of this chapter and the procedures outlined in the certificate holder's manual. Deviations under this paragraph (e) may be issued after consideration of the size and scope of the operation and the qualifications of the intended personnel. The Administrator may, at any time, terminate any grant of deviation authority issued under this paragraph (e).

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 15. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40119, 41706, 42301 preceding note added by Pub. L. 112–95, sec. 412, 126 Stat. 89, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44729, 44732; 46105; Pub. L. 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112–95, 126 Stat. 62 (49 U.S.C. 44732 note); Pub. L. 115–254, 132 Stat. 3186 (49 U.S.C. 44701 note).

■ 16. Amend § 121.1 by revising paragraphs (c) and (g) to read as follows:

§ 121.1 Applicability.

* * * * *

(c) Each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum segment under subpart Y of this part, and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an Advanced Qualification Program under subpart Y of this part.

* * * * *

(g) This part also establishes requirements for operators to take actions to support the continued airworthiness of each aircraft.

§ 121.470 [Amended]

■ 18. Amend § 121.470 in paragraphs (a) and (b) by removing the word ''airplanes'' and adding in its place the word ''aircraft''.

§ 121.480 [Amended]

■ 19. Amend § 121.480 in paragraph (a) by removing the word ''airplanes'' and adding in its place the word ''aircraft''.

§ 121.500 [Amended]

■ 20. Amend § 121.500 in paragraph (a) by removing the word ''airplanes'' and adding in its place the word ''aircraft''.

PART 125—CERTIFICATION AND OPERATIONS: AIRCRAFT HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 21. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 22. The heading for part 125 is revised to read as set forth above.

■ 23. Amend § 125.1 by revising paragraphs (a), (b) introductory text, (b)(4), (c), and (e) to read as follows:

§ 125.1 Applicability.

(a) Except as provided in paragraphs (b) through (d) of this section, this part prescribes rules governing the operations of U.S.-registered civil airplanes and powered-lift, when those aircraft have a seating configuration of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more when common carriage is not involved.

(b) The rules of this part do not apply to the operations of aircraft specified in paragraph (a) of this section, when—

* * * * *

(4) They are being operated under part 91 of this chapter by an operator certificated to operate those aircraft under the rules of part 121, 135, or 137 of this chapter, they are being operated under the applicable rules of part 121 or 135 of this chapter by an applicant for a certificate under part 119 of this chapter or they are being operated by a foreign air carrier or a foreign person engaged in common carriage solely outside the United States under part 91 of this chapter;

* * * * *

(c) This part, except § 125.247, does not apply to the operation of aircraft specified in paragraph (a) of this section when they are operated outside the United States by a person who is not a citizen of the United States.

* * * * *

(e) This part also establishes requirements for operators to take actions to support the continued airworthiness of each aircraft.

■ 24. Amend § 125.23 by revising the introductory text to read as follows:

§ 125.23 Rules applicable to operations subject to this part.

Each person operating an aircraft in operations under this part shall—

* * * * *

PART 136—COMMERCIAL AIR TOURS AND NATIONAL PARKS AIR TOUR MANAGEMENT

■ 25. The authority citation for part 136 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

■ 26. Amend § 136.1:
■ a. By revising paragraphs (a), (b) introductory text, and (c); and
■ b. In paragraph (d):
■ i. In the definition of ''Commercial Air Tour'':
■ A. By removing ''Commercial Air Tour'' and adding ''Commercial air tour'' in its place;
■ B. By revising the introductory text; and
■ C. By redesignating paragraphs (1) through (8) as paragraphs (i) through (viii);
■ ii. By removing the definition of ''Suitable landing area for helicopters''; and
■ iii. By adding a definition for ''Suitable landing area for rotorcraft'' in alphabetical order.

The revisions and addition read as follows:

§ 136.1 Applicability and definitions.

(a) This subpart applies to each person operating or intending to operate a commercial air tour in an airplane, powered-lift, or rotorcraft and, when applicable, to all occupants of those aircraft engaged in a commercial air tour. When any requirement of this subpart is more stringent than any other requirement of this chapter, the person operating the commercial air tour must comply with the requirement in this subpart.

(b) This subpart applies to:

* * * * *

(c) This subpart does not apply to operations conducted in balloons, gliders (powered and un-powered), parachutes (powered and un-powered), gyroplanes, or airships.

(d) * * *

Commercial air tour means a flight conducted for compensation or hire in an airplane, powered-lift, or rotorcraft where a purpose of the flight is sightseeing. The FAA may consider the following factors in determining whether a flight is a commercial air tour for purposes of this subpart:

* * * * *

Suitable landing area for rotorcraft means an area that provides the operator reasonable capability to land in an emergency without causing serious injury to persons. These suitable landing areas must be site specific, designated by the operator, and accepted by the FAA.

* * * * *

■ 27. Revise § 136.3 to read as follows:

§ 136.3 Letters of Authorization.

Operators subject to this subpart who have Letters of Authorization may use the procedures described in § 119.51 of this chapter to amend or have the FAA reconsider those Letters of Authorization.

■ 28. Revise § 136.5 to read as follows:

§ 136.5 Additional requirements for Hawaii.

Any operator subject to this subpart who meets the criteria of § 136.71 must comply with the additional requirements and restrictions in subpart D of this part.

■ 29. Amend § 136.9 by revising the section heading and paragraphs (b)(1) through (3) to read as follows:

§ 136.9 Life preservers for operations over water.

* * * * *

(b) * * *

(1) The aircraft is equipped with floats;

(2) The airplane is within power-off gliding distance to the shoreline for the duration of the time that the flight is over water; or

(3) The aircraft is a multiengine that can be operated with the critical engine inoperative at a weight that will allow it to climb, at least 50 feet a minute, at an altitude of 1,000 feet above the surface, as provided in the approved aircraft flight manual for that aircraft.

* * * * *

■ 30. Revise § 136.11 to read as follows:

§ 136.11 Rotorcraft floats for over water.

(a) A rotorcraft used in commercial air tours over water beyond the shoreline must be equipped with fixed floats or an inflatable flotation system adequate to accomplish a safe emergency ditching, if—

(1) It is a single-engine rotorcraft; or

(2) It is a multi-engine rotorcraft that cannot be operated with the critical engine inoperative at a weight that will allow it to climb, at least 50 feet a minute, at an altitude of 1,000 feet above the surface, as provided in the approved aircraft flight manual for that aircraft.

(b) Each rotorcraft that is required to be equipped with an inflatable flotation system under this section must have:

(1) The activation switch for the flotation system on one of the primary flight controls; and

(2) The flotation system armed when the rotorcraft is over water beyond the shoreline and is flying at a speed that does not exceed the maximum speed prescribed in the approved aircraft flight manual for flying with the flotation system armed.

(c) Neither fixed floats nor an inflatable flotation system is required for a rotorcraft under this section when that rotorcraft is:

(1) Over water only during the takeoff or landing portion of the flight; or

(2) Operated within power-off gliding distance to the shoreline for the duration of the flight and each occupant is wearing a life preserver from before takeoff until the aircraft is no longer over water.

■ 31. Revise § 136.13 to read as follows:

§ 136.13 Performance plan.

(a) Each operator that uses a rotorcraft must complete a performance plan before each commercial air tour or flight operated under § 91.146 or § 91.147 of this chapter. The pilot in command must review for accuracy and comply with the performance plan on the day the flight occurs. The performance plan must be based on information in the approved aircraft flight manual for that aircraft taking into consideration the maximum density altitude for which the operation is planned, in order to determine:

(1) Maximum gross weight and center of gravity (CG) limitations for hovering in ground effect;

(2) Maximum gross weight and CG limitations for hovering out of ground effect; and

(3) Maximum combination of weight, altitude, and temperature for which height/velocity information in the approved aircraft flight manual is valid.

(b) Except for the approach to and transition from a hover for the purpose of takeoff and landing, or during takeoff and landing, the pilot in command must make a reasonable plan to operate the rotorcraft outside of the caution/warning/avoid area of the limiting height/velocity diagram.

(c) Except for the approach to and transition from a hover for the purpose of takeoff and landing, during takeoff and landing, or when necessary for safety of flight, the pilot in command must operate the rotorcraft in compliance with the plan described in paragraph (b) of this section.

Appendix A to Part 136—[Removed]

■ 32. Remove appendix A to part 136.

■ 33. Add subpart D to part 136 to read as follows:

Subpart D—Special Operating Rules for Air Tour Operators in the State of Hawaii

Sec.
136.71 Applicability.
136.73 Definitions.
136.75 Equipment and requirements.

Subpart D—Special Operating Rules for Air Tour Operators in the State of Hawaii

§ 136.71 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart prescribes operating rules for air tour flights conducted in airplanes, powered-lift, or rotorcraft under visual flight rules in the State of Hawaii pursuant to parts 91, 121, and 135 of this chapter.

(b) This subpart does not apply to:

(1) Operations conducted under part 121 of this chapter in airplanes with a passenger seating configuration of more than 30 seats or a payload capacity of more than 7,500 pounds.

(2) Flights conducted in gliders or hot air balloons.

§ 136.73 Definitions.

For the purposes of this subpart:

Air tour means any sightseeing flight conducted under visual flight rules in an airplane, powered-lift, or rotorcraft for compensation or hire.

Air tour operator means any person who conducts an air tour.

§ 136.75 Equipment and requirements.

(a) *Flotation equipment.* No person may conduct an air tour in Hawaii in a rotorcraft beyond the shore of any island, regardless of whether the rotorcraft is within gliding distance of the shore, unless:

(1) The rotorcraft is amphibious or is equipped with floats adequate to accomplish a safe emergency ditching and approved flotation gear is easily accessible for each occupant; or

(2) Each person on board the rotorcraft is wearing approved flotation gear.

(b) *Performance plan.* Each operator must complete a performance plan that meets the requirements of this paragraph (b) before each air tour flight conducted in a rotorcraft.

(1) The performance plan must be based on information from the current approved aircraft flight manual for that aircraft, considering the maximum density altitude for which the operation is planned to determine the following:

(i) Maximum gross weight and center of gravity (CG) limitations for hovering in ground effect;

(ii) Maximum gross weight and CG limitations for hovering out of ground effect; and

(iii) Maximum combination of weight, altitude, and temperature for which height-velocity information from the performance data is valid.

(2) The pilot in command (PIC) must comply with the performance plan.

(c) *Operating limitations.* Except for approach to and transition from a hover, and except for the purpose of takeoff and landing, the PIC of a rotorcraft may only operate such aircraft at a combination of height and forward speed (including hover) that would permit a safe landing in event of engine power loss, in accordance with the height-speed envelope for that rotorcraft under current weight and aircraft altitude.

(d) *Minimum flight altitudes.* Except when necessary for takeoff and landing, or operating in compliance with an air traffic control clearance, or as otherwise authorized by the Administrator, no person may conduct an air tour in Hawaii:

(1) Below an altitude of 1,500 feet above the surface over all areas of the State of Hawaii;

(2) Closer than 1,500 feet to any person or property; or

(3) Below any altitude prescribed by Federal statute or regulation.

(e) *Passenger briefing.* Before takeoff, each PIC of an air tour flight of Hawaii with a flight segment beyond the ocean shore of any island shall ensure that each passenger has been briefed on the following, in addition to requirements set forth in § 91.107, § 121.571, or § 135.117 of this chapter:

(1) Water ditching procedures;

(2) Use of required flotation equipment; and

(3) Emergency egress from the aircraft in event of a water landing.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5).

Polly Trottenberg,

Acting Administrator.

[FR Doc. 2023–15619 Filed 7–24–23; 11:15 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 255

Guides Concerning the Use of Endorsements and Testimonials in Advertising

AGENCY: Federal Trade Commission.

ACTION: Final rule; adoption of revised Guides.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is adopting revised Guides Concerning the Use of Endorsements and Testimonials in Advertising (''the Guides''). The revised Guides include additional changes not incorporated in the proposed revisions published for public comment on July 26, 2022.

DATES: Effective July 26, 2023.

FOR FURTHER INFORMATION CONTACT: Michael Ostheimer (202–326–2699), Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Overview of the Commission's Review of the Guides

The Commission began a review of the Guides pursuant to the agency's ongoing regulatory review of all current rules and guides. In February 2020, the Commission published a **Federal Register** document seeking comment on the overall costs, benefits, and regulatory and economic impact of the Guides. 85 FR 10104 (Feb. 21, 2020). Given the disruption caused by the COVID–19 pandemic, the Commission extended the comment period for two months. 85 FR 19709 (Apr. 8, 2020). One hundred eight unique substantive comments were filed in response to the Commission's February 2020 publication.

In July 2022, the Commission published a **Federal Register** document, 87 FR 44288 (July 26, 2022), that discussed the comments it had received in 2020, proposed certain revisions to the Guides, and requested comment on those revisions. Thirty unique substantive comments were filed.[1] After

[1] Comments were submitted by the American Association of Advertising Agencies (''AAAA''), the American Academy of Audiology (''Academy''), the American Optometric Association (''AOA''), the Association of National Advertisers (''ANA''), Bazaarvoice, Inc. (''Bazaarvoice''), BBB National Programs, the Center for Data Innovation (''CDI''), Common Sense Media (''Common Sense''), the Computer & Communications Industry Association (''CCIA''), Consumer Reports, Inc. (''Consumer Reports''), James A. Dudukovich, Esq. (''Dudukovich''), the Entertainment Software

reviewing those comments, the Commission is now making additional changes to the Guides and adopting the resulting revised Guides as final.[2]

II. Review of Comments on Proposed Revisions to the Guides and Additional Changes to Proposed Guides Published in July 2022

Many of the comments received by the Commission were generally supportive of the proposed revisions.[3] One comment urged the FTC not to backtrack in response to complaints from certain commenters.[4] One comment said the Commission should avoid making changes beyond updating examples and providing minor clarifications,[5] but the commenter only raised concerns about a few specific issues.[6] Another comment said the Commission should not use the Guides to communicate the policy interests of the Commission [7] and disagreed with many of the proposed changes.[8] Other commenters supported or opposed discrete revisions or asked for additional changes, guidance, or enforcement, but did not comment upon the proposed changes generally.[9]

What follows is a section-by-section discussion of comments received, the Commission's reactions to the comments, and any resulting changes to the Guides. The discussion also notes additional changes not prompted by the comments but does not flag non-substantive edits intended merely to improve the readability of the examples.

A. Section 255.0 Purpose and Definitions

1. The Significance of the Examples

One commenter assumed significance when an example did not address other possible issues that might arise from the facts described.[10] The Commission is adding a statement to § 255.0(a) noting that the examples in each section of the Guides apply the principles of that section to particular factual scenarios, but they do not address every possible issue the facts or principles might implicate.

2. Definitions of ''Endorsements'' and ''Endorsers''

The Commission proposed revising the definition of an ''endorsement'' to make clear that tags in social media posts can be endorsements. One comment stated addressing tags is beneficial [11] and two comments asserted, correctly, that not all tags are endorsements,[12] with one of them saying the proposed language communicates otherwise.[13] The Commission is therefore revising the language of the definition to clarify that tags and certain other types of communications ''can be'' endorsements. Another commenter assumed the list was exhaustive and if a type of message was not on the list, the Commission did not consider it to be an endorsement.[14] To the contrary, the list is illustrative and not exhaustive.

The Commission proposed revising the definition of an ''endorser'' to include what ''appear[s] to be an individual, group, or institution.'' Two commenters said the proposed revised definition addressing fabricated endorsers is beneficial.[15] A third commenter asked that the Commission make clear using express language or examples that the revised definition applies to virtual endorsers or fabricated endorsers.[16] A fourth commenter said the new language was ambiguous and, if the Commission simply intended to address virtual influencers, then it should use language to specifically address that concept.[17] The Commission does not agree that the new definitional language is ambiguous or addresses only virtual influencers; rather, the new language is intended to also encompass the writers of fake reviews and non-existent entities that purport to give endorsements. The Commission is adding a sentence to Example 12 stating that fake positive reviews used to promote a product are ''endorsements.'' The Commission is also deleting ''or service'' from ''product or service,'' because the term ''product'' includes a ''service.'' [18]

2. Definition of ''Product''

The Commission proposed including a ''brand'' within the definition of a ''product.'' Two commenters supported the inclusion of ''brands'' [19] and another commenter raised concerns its inclusion would complicate whether a third-party review platform should consider a review to be a product review or a service review.[20] The addition of the word ''brand'' to the definition of ''product'' is not intended to address or impact how review platforms categorize reviews of brands.

3. Definition of ''Clear and Conspicuous''

The Commission proposed adding a definition of ''clear and conspicuous'' to describe the characteristics necessary to make disclosures effective. A number of commenters supported the definition,[21] with one of them asking for flexibility in how the definition is applied.[22] One commenter asserted that requiring online disclosures to be unavoidable is unlikely to benefit consumers,[23] and another one opposed the definition, arguing for greater flexibility.[24] Some commenters asked for specific guidance about compliant or non-compliant disclosures,[25] and one supported addressing general principles in the Guides and providing more detailed guidance in staff business guidance.[26] The Commission is adopting the proposed definition, which it believes is both useful and flexible. For online disclosures to be effective, they must be unavoidable. The Commission further believes its current approach to endorsement-related guidance makes sense, with the Guides focused on general principles and examples, and the more informal (and more frequently updated) staff guidance focused on

Association (''ESA''), Fairplay for Kids (''Fairplay''), Generation Patient, Inc. (''Generation Patient''), the Hearing Industries Association (''HIA''), the Interactive Advertising Bureau, Inc. (''IAB''), InfluenceLogic, LLC (''InfluenceLogic''), the News/Media Alliance (''N/MA''), the North American Insulation Manufacturers Association (''NAIMA''), the Retail Industry Leaders Association (''RILA''), Tripadvisor LLC (''Tripadvisor''), Trustpilot Group plc (''Trustpilot''), Truth in Advertising, Inc. (''TINA.org''), and by seven individual consumers.

[2] The Guides represent administrative interpretations concerning the application of section 5 of the FTC Act, 15 U.S.C. 45, to the use of endorsements and testimonials in advertising. They are advisory in nature and intended to give guidance to the public in conducting its affairs in conformity with section 5.

[3] AOA at 1, Bazaarvoice at 1, CCIA at 2, 5, Consumer Reports at 1, InfluenceLogic at 1, NAIMA at 1, TINA.org at 1.

[4] Consumer Reports at 1.

[5] ESA at 1.

[6] *Id.* at 2–4.

[7] ANA at 2.

[8] *Id.* at 2–18.

[9] *See, e.g.,* AAAA, Academy, BBB National Programs, CDI, Common Sense, Generation Patient, Tripadvisor, and Trustpilot.

[10] Dudukovich at 3, 6.

[11] BBB National Programs at 3.

[12] ANA at 2, N/MA at 5.

[13] ANA at 3.

[14] Dudukovich at 2.

[15] BBB National Programs at 3, NAIMA at 2.

[16] TINA.org at 3.

[17] ANA at 3.

[18] *See* § 255.0(d). The Commission is also making similar wording changes to §§ 255.0(g)(12), 255.2(a), (b), and (d), and 255.5.

[19] BBB National Programs at 3, NAIMA at 2.

[20] Trustpilot at 2.

[21] AOA at 1–2; BBB National Programs at 3–5; Consumer Reports at 1, 8; Dudukovich at 3; NAIMA at 2; N/MA at 5–6.

[22] N/MA at 5–6.

[23] IAB at 3–4.

[24] ANA at 4.

[25] CDI at 1, Consumer Reports at 8, Dudukovich, ESA at 3, Generation Patient, TINA.org, RILA.

[26] N/MA at 2.

specific questions and issues, such as the use, language, and placement of disclosures of material connections on particular platforms.

4. Examples

The first example of § 255.0 involves a film producer excerpting a film critic's review and placing it in an advertisement. One commenter asserted the excerpted statement is not an endorsement because there is no material connection between the critic and the endorser.[27] The Commission disagrees: a statement can be an endorsement even absent a material connection with the advertiser. The Commission is modifying the example to clarify that, while the critic's review itself is not an endorsement, the excerpt used in the advertisement is an endorsement.

Example 3 concerns a spokesperson who does not purport to speak on the basis of their own opinions and therefore is not considered an endorser. Although no commenters addressed this example, the Commission is clarifying that the spokesperson also does not purport to speak from personal experience.

Example 4 discusses an ad for automobile tires featuring a well-known professional automobile racing driver. Given the driver's expertise in automotive products, the Commission believes many consumers would likely think what the driver says about the positive attributes of the tires reflects the driver's personal views based on having personal knowledge about the tires. One commenter took issue with the Commission's revised language that consumers would likely think the driver's statement was based upon personal knowledge or experience.[28] The Commission disagrees with the commenter. Many consumers would likely think a professional racer would not speak for a product within their field of expertise without actually believing in those statements. The Commission is, however, further editing the example to make it internally consistent.

The Commission proposed adding an alternative scenario to Example 5 involving a golfer who was ''hired'' to post a video to social media of them driving a particular brand of golf ball. One commenter said the example was helpful in demonstrating that images can be endorsements.[29] Another commenter said not every social media post by a golfer showing golf balls is an endorsement and the Commission should make it clearer that it is an endorsement because the golfer was hired.[30] Although the Commission believes the example was clear as written, it is making it even clearer by describing the social media post as a ''paid post.''

Example 6 is about an actor who says a home fitness system is ''the most effective and easy-to-use home exercise machine that I have ever tried.'' One commenter asserted this would only be deceptive if the actor had not used the machine.[31] The example is intended to illustrate why this statement is an endorsement and is not intended to address all the ways the statement could be deceptive or who could be liable for any such deception. The Commission notes, however, there are multiple ways in which the statement could be deceptive, including not representing the actor's actual opinions or misleading consumers as to the machine's effectiveness or ease of use.

Example 7 illustrates several scenarios in which a consumer's expressed views of a brand of dog food would or would not be considered an endorsement. In the first scenario, a consumer with no connection to the manufacturer decides to buy the product and post about it or review it online. The proposed revised example said certain statements by the consumer are not an endorsement. One commenter suggested the Commission clarify that the consumer purchased the product with the consumer's own money, and the example now does so.[32] Another commenter asked whether the consumer's review would be an endorsement if the manufacturer highlighted the review on its homepage.[33] The Commission is adding a sentence to the example stating that a featured review would be considered an endorsement. The Commission is also deleting a statement about whether the consumer's review would otherwise be an endorsement if posted on a manufacturer's or retailer's website. Such a conclusion may depend on specific legal and factual issues.

Example 7 includes an alternative scenario in which the consumer participates in a marketing program in which participants agree to periodically receive free products from various manufacturers and can write reviews if they want to do so. One commenter supported the example,[34] and two others questioned whether the reviews are endorsements given that they are entirely optional.[35] To clarify this issue, the Commission is making two changes. First, it is modifying the example to state the participants had agreed to write reviews of the free products and the reviews were therefore endorsements. Second, the Commission is adding a second alternative scenario in which an influencer receives a valuable, unsolicited product and is asked, but not required, to endorse the product. The Commission believes any resulting posts would be endorsements even though the influencer could have chosen not to endorse the product.

One commenter indicated support for proposed new Examples 8 through 11.[36]

Proposed Example 8 explains a video game influencer who is paid to play and live stream a game is implicitly endorsing the game by appearing to enjoy playing it. One commenter could not understand why the player's enjoyment is relevant.[37] The Commission is modifying the example to clarify that the player's apparent enjoyment is implicitly a recommendation.

To illustrate disclosures that are not clear and conspicuous, the Commission proposed adding Example 9, which contains several paragraphs. Paragraph (ii) involves an influencer disclosing their connection to a manufacturer in social media posts written such that consumers have to click on a link labeled ''more'' in order to see the disclosure. The example is based on the Commission's case against Teami, LLC, and its owners.[38] Two commenters supported the example [39] and a third asked the Commission to explain why the disclosure is unlikely to be noticed, read, or understood.[40] The Commission is clarifying the example by stating that, if the endorsement is visible without having to click on the link labeled ''more,'' but the disclosure is not visible without the viewer doing so, then the disclosure is not unavoidable and thus is not clear and conspicuous.

Proposed Example 10 posits that, when an ad is targeted to older consumers, whether the disclosure is clear and conspicuous will be evaluated from the perspective of older consumers, including those with diminished auditory, visual, or cognitive processing abilities. One

[27] Dudukovich at 3.

[28] ANA at 4.

[29] BBB National Programs at 5.

[30] ANA at 4–5.

[31] Dudukovich at 3.

[32] Tripadvisor at 6–7.

[33] Trustpilot at 4–5.

[34] Consumer Reports at 8.

[35] ANA at 5, Dudukovich at 4.

[36] Consumer Reports at 8.

[37] ANA at 5.

[38] Complaint at 12–15, 17–18, *FTC* v. *Teami, LLC,* No. 8:20–cv–00518 (M.D. Fla. Mar. 5, 2020).

[39] BBB National Programs at 5, Consumer Reports at 8.

[40] ANA at 5–6.

commenter, asserting the example is premised on unfair, insulting, and prejudicial assumptions about older adults and their abilities to understand ads, asked that the example be withdrawn.[41] The example does not assume older adults necessarily have diminished capacities, but it is reasonable to assume that population includes such individuals. The Commission's Deception Policy Statement recognizes that when ''representations . . . are targeted to a specific audience . . . the Commission determines the effect of the practice on a reasonable member of that group.'' [42]

Proposed Example 11 is intended to show how the definition of ''clear and conspicuous'' could apply to an advertisement microtargeted to a very discrete population. It imagines an advertisement for a cholesterol-lowering product that requires a disclosure because it contains testimonials about results that greatly exceed those generally experienced by the product's users. Based on online data collection, the ad is microtargeted to Spanish-speaking individuals who have high cholesterol levels and are unable to understand English. While the ad is in Spanish, the disclosure is only in English. One commenter expressed the view that the example was offensive and premised on inaccurate assumptions that a Spanish-speaking audience might be likely to have high cholesterol.[43] The example is not based upon such an assumption but is instead an illustration of when a disclosure is needed and how that disclosure must be in a language the target audience will understand. The example referenced Spanish speakers because Spanish is the second-most spoken language in the United States. The Commission is revising the example to make it more generically about speakers of a ''particular language . . . who are unable to understand English.'' The Commission is also adding a statement that the disclosure must be in the same language as the ad.

Proposed Example 12 addresses fake negative reviews of a competitor's product. Three commenters supported the example,[44] with one asking the Commission to state that commissioning a fake positive review is an unfair trade practice.[45] As discussed above, the Commission is adding a statement that fake positive reviews used to promote a product are endorsements. The Commission is also adding a cross-reference to an example in § 255.2 involving a manufacturer deceptively procuring a fake positive consumer review for its own product and having it published on a third-party review website.

Proposed Example 13 says it is a deceptive practice for users of social media platforms to purchase or create indicators of social media influence and then use the indicators to misrepresent such influence for a commercial purpose. One commenter indicated support for the example.[46] Another commenter asserted the purchase or creation of fake followers is inherently a misrepresentation and should be prohibited per se.[47] Although the use of fake followers may be inherently ''misleading'' as that term is colloquially used, the Commission's jurisdiction is limited to commercial speech and does not reach the use of fake followers for vanity or other non-commercial purposes. A third commenter was concerned the example suggested that the Commission would hold ad agencies liable when they recommend an influencer who, unbeknownst to the agencies, happens to be using fake indicators of social media influence.[48] Nothing in the Guides addresses holding ad agencies liable for merely recommending such an influencer.

B. Section 255.1 General Considerations

1. Quotation of Endorsers

As revised, proposed § 255.1(b) stated that an advertisement need not present an endorser's message in the exact words of the endorser unless the ad presents the endorsement as a quotation. One commenter said the reference to a ''quotation'' is confusing.[49] The Commission is modifying the example to say an ad must use an endorser's exact words only when the ad represents that it is presenting the endorser's exact words, such as by using quotation marks.

2. Liability of Advertisers

Section 255.1.(d) addresses the potential liability of advertisers. Among other things, the proposed revised subsection stated advertisers are subject to liability for misleading or unsubstantiated statements made through endorsements when there is a connection between the advertiser and the endorser.[50] Two commenters said they supported the proposed revised subsection.[51] Another commenter stated the reference to ''when there is a connection between the advertiser and the endorser'' is unnecessary because there has to be a sponsoring advertiser for there to be an endorsement.[52] The Commission is deleting that language because, as defined, an endorsement has to be an advertising, marketing, or promotional message. It is not correct, however, that a connection is needed for an advertiser to be liable for an endorsement. If, for example, an advertiser retweets a positive statement by an unrelated third party or republishes in an advertisement a positive review by an unrelated third party, that statement or review becomes an endorsement for which an advertiser is liable, despite the lack of any such connection.

One commenter asserted it is unreasonable to hold an advertiser liable for what endorsers say unless the endorsers had a contractual relationship to the advertiser and the advertiser either: (1) failed to properly instruct endorsers and take action when it became aware of failures to comply or (2) instructed the endorsers to make a false claim.[53] Another commenter said expecting advertisers to monitor their endorsers is unreasonable and unnecessary.[54] The Commission disagrees with both commenters and expects advertisers to be responsible for and monitor the actions of their endorsers. A different commenter asked the Commission to continue to allow flexibility in monitoring such as FTC staff business guidance currently provides,[55] and yet another commenter asked for more detailed guidance on effective oversight mechanisms.[56] Such detailed guidance is beyond the scope of these Guides but may be addressed in staff business guidance. The Commission is also changing a statement in the subsection that an advertiser may be liable ''for an endorser's deceptive statement'' even

[41] *Id.* at 6.

[42] *See FTC Policy Statement on Deception, appended to Cliffdale Assocs., Inc.,* 103 F.T.C. 110, 174, 179 (1983).

[43] ANA at 6.

[44] Consumer Reports at 8, NAIMA at 2, Tripadvisor at 3–4.

[45] Tripadvisor at 4.

[46] NAIMA at 2.

[47] Consumer Reports at 5–6, 8.

[48] AAAA at 8.

[49] ANA at 6–7.

[50] One commenter implied that § 255.1(d) may limit the liability faced by multi-level marketing companies (MLMs) and their participants for deceptive claims made by the participants. *See* BBB National Programs at 6–7. The Commission does not agree. Even when a person is talking about their own experience using a product or service, they could face liability for deceptive claims under section 5 based on being the advertiser, providing the means and instrumentalities to deceive, or other theories. And a principal is liable for its agents' violations.

[51] AOA at 2, Consumer Reports at 8.

[52] ANA at 7.

[53] RILA at 4–5.

[54] N/MA at 4.

[55] ESA at 3.

[56] BBB National Programs at 6–7.

when the endorser is not liable. The Commission is clarifying that the advertiser's liability may extend to ''deceptive endorsements'' and not just the narrower issue of whether an endorser's statement is true. For example, the advertiser could be held liable for disseminating a television ad including an endorser making a truthful statement that reflects atypical results of using the product.

3. Liability of Endorsers

Proposed new § 255.1.(e) addresses the liability of endorsers. Three commenters were supportive of this paragraph,[57] with one of them suggesting that it address the liability of reviewers who represent falsely that they personally used a product or experienced a service.[58] The Commission is adopting that suggestion.

4. Liability of Intermediaries

Proposed new § 255.1.(f) addresses the liability of intermediaries generally and listed several types of intermediaries. Four commenters supported the proposed paragraph as written,[59] and another commenter suggested specifically identifying review brokers as potentially liable.[60] A different commenter stated that the undefined term ''intermediaries'' could sweep in entities for which there is no agency relationship, privity, or participation in the misconduct.[61] To address this concern, the Commission is changing the language of the provision to refer to the specific entities that it intends to address (*i.e.,* advertising agencies, public relations firms, review brokers, reputation management companies, and ''other similar intermediaries''). The Commission is also revising the paragraph to state that such entities may also be liable for their roles in ''creating'' ads containing endorsements that they know or should know are deceptive. Another comment said that the Commission should not seek to hold liable ''an entity [that] merely provides production services but is not involved in developing content for an advertisement and does not have direct knowledge about the accuracy of statements in an endorsement or testimonial.'' [62] The Commission does not believe that entities that merely provide such production services are ''other similar intermediaries'' as described in the revised language.

5. Misuse of Images of Endorsers

Proposed new § 255.1.(g) says that the use of an endorsement with the image or likeness of a person other than the actual endorser is deceptive if it misrepresents an attribute of the endorser that would be material to consumers in the context of the endorsement, *e.g.,* an endorser's complexion in the context of an ad for an acne treatment. Three commenters supported this new paragraph.[63]

6. Examples

Example 1 of § 255.1 addresses whether an endorsement is still valid after a product has been reformulated. The Commission is making minor modifications to clarify the first subpart of the example. A proposed new second subpart addressed an endorsement in a social media post. It said that even if an endorser would no longer use or recommend a reformulated product, there is no obligation for the endorser to modify or delete a historic post as long as the date of the post is clear and conspicuous to viewers. One commenter supported the example [64] and another said that it is not clear from the example whether the advertiser, as opposed to the endorser, needs to change or delete historical posts.[65] The Commission is modifying the example to clarify that the advertiser is not under any more obligation to do so than the endorser. The proposed new subpart also addressed sharing or reposting of the original post after the product's reformulation. The Commission is clarifying the example and adding that, under such circumstances, the advertiser would need to confirm that the endorser holds the views expressed in the original post about the reformulated product.

Proposed new Example 2 involves an ad featuring a well-known DJ who implicitly communicates owning and regularly using an advertised coffee maker, but who only used it during a demonstration by the product's manufacturer. One commenter said that the example described was not clearly an ad.[66] The Commission is modifying the example to clarify that the DJ is speaking during a radio advertisement played during commercial breaks. Another commenter asked the Commission to consider clarifying that the DJ could have used the coffeemaker every weekday at the studio and that the endorsement could have made the context of such use clear and understandable.[67] The commenter is correct in that the DJ might have used the coffee maker regularly without owning it. The Commission is simplifying the example, focusing on the implied claim of regular use, and deleting the reference to ownership.

Example 5 addresses the potential liability of an influencer for making an unsubstantiated health claim, as well as the advertiser's potential liability for the influencer's endorsement. The Commission disagrees with a commenter who asserted the proposed revised example is too complicated and should not address potential liability.[68]

Proposed new Example 6 addresses two alternative scenarios in which the pictures accompanying endorsements featured on a marketer's website are not of the actual endorsers and misrepresent material attributes of the endorsers. Two commenters supported the example.[69] The Commission is clarifying in the first alternative that the pictures accompanying acne treatment testimonials were ''stock photos . . . purchased'' by the advertiser. The second alternative involves a testimonialist who says they lost 50 pounds using a weight-loss product. The subpart explains the testimonial on the marketer's website was accompanied by an ''after'' picture of a person who appears to weigh 100 pounds but the testimonial was from someone who weighed 250 pounds after the weight loss. One commenter sought to correct a statement about the endorser appearing to have lost ''one-third of their original body weight,'' thinking the Commission had made a mathematical error.[70] The example was correct as written, but the Commission is adding a parenthetical to the example explaining its calculation.

C. Section 255.2 Consumer Endorsements

1. Substantiation for Performance Claims

Section 255.2(a) says an advertiser must possess and rely upon adequate substantiation, including, when appropriate, competent and reliable scientific evidence, to support claims

[57] *Id.* at 7, Generation Patient at 2, Tripadvisor at 4.

[58] Tripadvisor at 4.

[59] BBB National Programs at 7, Generation Patient at 2, NAIMA 3.

[60] CDI at 2.

[61] CCIA at 2–3.

[62] N/MA at 4.

[63] BBB National Programs at 8, Consumer Reports at 9, NAIMA at 3.

[64] BBB National Programs at 8–9.

[65] Dudukovich at 5.

[66] *Id.* at 6.

[67] ANA at 7.

[68] ANA at 8.

[69] BBB National Programs at 9, Consumer Reports at 9. One of those commenters also supported proposed new Example 7 about a misleading picture of a child in an ad for a learn-to-read program. Consumer Reports at 9.

[70] Consumer Reports at 9.

made through endorsements in the same manner the advertiser would be required to do if it had made the representation directly. The Commission proposed clarifying this principle applies to both express and implied claims. One commenter said this clarification is helpful.[71]

2. Typicality Claims

Currently, § 255.2(b) says that, if an advertiser does not have substantiation that an endorser's experience is representative of what consumers will generally achieve, the advertisement should clearly and conspicuously disclose the generally expected performance in the depicted circumstances, and that the advertiser must possess and rely on adequate substantiation for the representation in such disclosure. One commenter supported this principle.[72] The Commission proposed adding a sentence that the disclosure of the generally expected performance should be presented in a manner that does not itself misrepresent what consumers can expect. One commenter supported that position.[73] The Commission is also adding a sentence to the paragraph explaining that, to be effective, a disclosure must alter the net impression of an advertisement so it is not misleading.

3. Consumer Reviews

The Commission proposed adding a new § 255.2(d) addressing advertisers procuring, suppressing, boosting, organizing, or editing consumer reviews of their products or services in a way that distorts or otherwise misrepresents what consumers think of their products. One commenter asked whether this guidance covered upvoting, publishing, or selectively publishing reviews.[74] The Commission is clarifying the new subsection by adding publishing, upvoting, downvoting, and reporting.

Four commenters supported the new paragraph.[75] A different commenter said the Commission was using the Guides in lieu of proper rulemaking in seeking to regulate the entire industry's use of customer reviews.[76] In the context of four subsequent examples illustrating the new principle, the same commenter stated the Commission was unnecessarily wading into an analysis of how moderation of user-generated reviews may negate immunity otherwise granted pursuant to section 230 of the Communications Decency Act (the ''CDA''), 47 U.S.C. 230, and the Commission's guidance may lead to inconsistencies with ''ongoing'' legal principles.[77] The commenter did not identify any actual or purported inconsistencies between the Commission's guidance and the CDA or other laws, and the Commission sees none. The Commission reiterates that the Guides are not regulations; as stated in § 255.0(a), the Guides are simply ''administrative interpretations of . . . section 5 of the FTC Act'' in order to ''provide the basis for voluntary compliance.'' The Commission need not engage in rulemaking to offer such guidance.

4. Examples

Example 2 of § 255.2 involves an ad for a heat pump featuring three testimonials about monetary savings that will likely be interpreted as conveying such savings are representative of what buyers can generally expect. The Commission proposed expanding the example to illustrate how disclosures of generally expected results could themselves be misleading if they apply only in limited circumstances not described in the advertisement. Two commenters supported the inclusion of the additional guidance.[78]

Example 4 addresses when an ad for a weight-loss product[79] requires and does not require a disclosure of generally expected results and what such a disclosure should say. The Commission proposed revising the example and expanding it from three to six subparts.

Paragraph (ii) of Example 4 said that if a woman says, ''I lost 50 pounds in 6 months with WeightAway,'' a disclosure such as ''Average weight loss is 1–2 pounds per week'' is inadequate and likely deceptive. Although no commenters addressed this subpart, the Commission is modifying this statement to better explain why such a disclosure is inadequate and likely deceptive.

Paragraph (iii) of Example 4 said a disclosure such as ''most women who use WeightAway lose between 10 and 50 pounds'' is inadequate because the range specified is so broad it does not sufficiently communicate what users can generally expect. One commenter asked the Commission to state the disclosure would be acceptable if the top of the range (*e.g.,* 50 pounds) had an appreciable number of incidences.[80] The Commission believes that, even if some appreciable number of consumers lost 50 pounds, the range would still not adequately communicate what users can generally expect. A marketer could instead disclose the generally expected result and also state what percentage of customers lose 50 pounds or more.

Paragraph (iv) of Example 4 illustrates how a disclosure of mean weight loss could be deceptive when the mean is substantially affected by outliers. One commenter said the new guidance was helpful.[81] Another commenter said it supports ''the allowance of 'mean computation' ''; [82] the Commission interprets that comment to refer to the fact that disclosures could use mean weight loss in a non-deceptive way.

Paragraph (v) of Example 4 says that, if a manufacturer procures a fake review that is published on a third-party review website, the review is a deceptive endorsement because it was not written by a bona fide user of the product. The subpart cross-references § 255.1(c). Two commenters supported the inclusion of this paragraph.[83] The Commission is adding that the review would also be deceptive because it does not reflect the honest opinions, findings, beliefs, or experience of the endorser, with a cross-reference to § 255.1(a).

Paragraph (vi) of Example 4 said the disclosure ''The typical weight loss of WeightAway users who stick with the program for 6 months is 35 pounds'' is inadequate if only one-fifth of those who start the weight-loss program stick with it for six months. One commenter supported the guidance[84] while another asserted the disclosure was, in fact, adequate.[85] The Commission continues to believe, as explained in the example, the disclosure is inadequate because it does not communicate what the typical outcome is for users who start the program.

One commenter suggested the Guides specifically state that selectively posting bona fide positive testimonials to third-party review sites would constitute a deceptive practice.[86] The Commission is adding a paragraph (vii) to Example 4, saying that if a manufacturer forwards

[71] BBB National Programs at 10.

[72] Generation Patient at 3.

[73] BBB National Programs at 10–11.

[74] Dudukovich at 6. Upvoting or downvoting a review is casting a vote in support of or in disapproval of it by clicking on an arrow or other icon, usually affecting the review's rank or position on a website or platform.

[75] BBB National Programs at 11, CCIA at 3–4, Consumer Reports at 9, Tripadvisor at 3.

[76] ANA at 8.

[77] *Id.* at 9–10.

[78] BBB National Programs at 11–12, NAIMA at 5.

[79] The Commission is changing the name of the product from WeightAway to QRS Weight-Loss in the Guides.

[80] ANA at 9.

[81] BBB National Programs at 14–15.

[82] NAIMA at 5.

[83] Consumer Reports at 9, NAIMA at 5.

[84] BBB National Programs at 15.

[85] ANA at 9.

[86] Consumer Reports at 9.

only favorable reviews for its product to a third-party review website or omits unfavorable reviews, it is engaging in a misleading practice.

Proposed new Example 8 addresses an online retailer that suppresses negative reviews on its website, stating that the resulting product pages would be misleading. The example also addresses fact patterns in which the retailer blocks reviews containing profanity or complaining about the owner's policy positions. Based upon the Consumer Review Fairness Act (the ''CRFA''), 15 U.S.C. 45b, the example says sellers are not required to display customer reviews that contain unlawful, harassing, abusive, obscene, vulgar, or sexually explicit content; content that is inappropriate with respect to race, gender, sexuality, or ethnicity; or reviews that the seller reasonably believes are fake, so long as a seller's criteria for not displaying such reviews are applied uniformly to all reviews submitted. The Commission also said sellers are not required to display reviews that are unrelated to their products or services, but customer service is related to the seller's products and services. One commenter suggested the Commission expand the exceptions listed to include other information that should not be published, such as sensitive personal information.[87] The CRFA also includes exceptions for reviews that ''contain[] the personal information or likeness of another person, or [are] libelous,'' [88] content ''that is clearly false or misleading,'' [89] or ''trade secrets or privileged or confidential commercial or financial information,'' [90] and the Commission is adding that language to the example. Another commenter said product reviews that are just about customer service should not be displayed when they are about the customer service of a different seller.[91] The Commission agrees and is modifying the example so it refers to ''a particular seller's customer service.'' One commenter took the view that all product reviews including those just about customer services should be displayed to allow consumers reading the reviews to decide for themselves how to interpret them,[92] while another one said product reviews about services should not need to be published when there are other mechanisms for customer service feedback.[93] The Commission responds that the purpose of publishing such reviews about customer service is to protect and inform potential purchasers of the products, rather than simply to provide a means for feedback. One commenter agreed with the example, saying that sellers should be able to elect not to display reviews that contain objectionable content, as long as the content moderation is done without improper consideration as to whether the review is negative, neutral, or positive.[94] The commenter also asked that the right of third-party review platforms to block similar content be noted.[95] The Commission agrees that third-party review platforms should be able to similarly block such content, but it does not see the need to address the rights of third-party review platforms in the Guides at this time.

In proposed new Example 10, a manufacturer uses unfair threats of legal action or physical threats to coerce consumers into deleting negative reviews of its products which the consumers had posted on third-party review websites. One commenter supports the example and would expand it beyond violence or litigation to other less drastic coercive measures.[96] The Commission is expanding the example to add threats to disclose embarrassing information. The Commission also notes the listed threats are intended as illustrative and not exhaustive. Another commenter expressed concerns that simply sending a letter attempting to correct false statements could be considered threatening.[97] The Commission would not consider simply notifying a reviewer of inaccuracies to be threatening. The Commission is also modifying the example to describe the circumstances in which threatened legal action would be considered unfair or deceptive. A third commenter suggested the Commission is improperly trying to expand the CRFA through a Guide-refreshing process when it should ask Congress to do so and said the Commission has not placed into the record any evidence that advertisers are frequently threatening reviewers.[98] The Commission is not attempting to expand the CRFA. It is interpreting section 5 of the FTC Act. Any enforcement actions based upon conduct inconsistent with the Guides would have to establish that the conduct violated section 5. The Commission need not establish that an action is prevalent in order to give guidance that it believes the action is unfair. The example is based upon Commission cases against Roca Labs and World Patent Marketing.[99] Finally, the Commission is clarifying how the use of such threats can be deceptive or unfair.

Although it was not addressed by the commenters, the Commission is adding an alternative scenario to Example 10 based upon the facts of a recent Commission case.[100] The new scenario involves a business abusing a third-party review platform's mechanism for reporting suspected fake reviews. A manufacturer routinely flags negative reviews of its products as fake without a reasonable basis for believing they are fake, which results in many truthful reviews being removed from the website. Such conduct is an unfair or deceptive practice.

Proposed new Example 11 addresses a marketer engaging in review gating, which involves asking past purchasers to provide feedback on a product and then inviting only those who give positive feedback to post online reviews on one or more websites. The example notes that the practice ''may be unfair or deceptive if it results in the posted reviews being substantially more positive than if the marketer had not engaged in the practice.'' Two commenters said that the example was helpful,[101] another suggested expanding it to address upvoting, downvoting, and selective publication,[102] and a third said that the Commission is unlawfully prohibiting advertisers from exercising their commercial speech rights by encouraging a happy customer to write a review.[103] The Commission added publishing, upvoting, downvoting, and reporting to the general principle expressed in § 255.2(d) and does not believe it needs to add them to this example. The Commission is not saying or suggesting that businesses cannot ask happy customers for reviews. As the example expressly states, the marketer could have simply invited all recent purchasers to post reviews, even if it had expressed its hope that the reviews would be positive. The example also states clearly that deception or unfairness occurs not in the selective

[87] Dudukovich at 6.

[88] See 15 U.S.C. 45b(b)(2)(C)(i).

[89] See 15 U.S.C. 45b(b)(2)(C)(iii).

[90] See 15 U.S.C. 45b(b)(3)(A).

[91] Bazaarvoice at 1–2.

[92] Trustpilot at 3–4.

[93] RILA at 5–6.

[94] Tripadvisor at 4.

[95] *Id.*

[96] Consumer Reports at 9.

[97] NAIMA at 5–6.

[98] ANA at 10.

[99] Complaint at 25, *FTC* v. *Roca Labs, Inc.,* No. 8:15–cv–02231 (M.D. Fla. Sept. 24, 2015); Complaint at 8–10, 12, *World Patent Mktg., Inc.,* No. 1:17–cv–20848 (S.D. Fla. Mar. 6, 2017).

[100] Complaint at 26, 32, *FTC* v. *DK* Automation *LLC,* No. 1:22–cv–23760 (S.D. Fla. Nov. 16, 2022).

[101] BBB National Programs at 15–16, Consumer Reports at 9.

[102] Dudukovich at 6.

[103] ANA at 10.

asking of customers for reviews but only when the posted reviews are substantially more positive as a result.

D. Section 255.3 Expert Endorsements

1. An Exercise of Expertise

The proposed revision of § 255.3(b) said that an expert endorsement must be supported by an actual exercise of the expertise in evaluating product features or characteristics ''with respect to which the endorser has expertise.'' In the context of Example 6 of § 255.3, two commenters suggested more clearly addressing an expert's purported expertise—that is, the level of expertise that an endorser is represented as possessing.[104] The Commission is modifying § 255.3(b) to make clear that the endorser must have exercised the expertise that they are ''represented'' as possessing.[105]

2. Examples

Example 2 of § 255.3 describes an endorser of a hearing aid who is simply referred to as a ''doctor'' during an ad. The example says the ad likely implies the endorser is a medical doctor with substantial experience in the area of hearing. As revised, the proposed example would have said a non-medical ''doctor'' (*e.g.,* an individual with a Ph.D. in audiology) or a physician without substantial experience in the area of hearing might be able to endorse the product, but at a minimum, the advertisement must make clear the nature and limits of the endorser's expertise. Two comments supported the proposed revised example,[106] two comments asked the Commission to clarify it is acceptable to describe an audiologist with a doctorate as ''Doctor of Audiology,'' ''Au.D., Audiologist'' or ''Ph.D., Audiologist,'' [107] and one comment asked why a doctor who clearly and conspicuously discloses the nature and limits of their expertise might not be able to endorse a product.[108] On reflection, the Commission recognizes that, in the absence of a white coat, a stethoscope, or other indicia of an endorser being a physician, consumers are likely to believe an endorser identified as a doctor has expertise in the area of hearing but might not expect the doctor to be a medical doctor. The Commission is revising the example such that either a medical doctor with substantial experience in audiology or a non-medical doctor with a Ph.D. or Au.D. in audiology could endorse the hearing aid as a ''doctor'' without any disclosure. Finally, the example will say a doctor without substantial experience in the area of hearing might be able to endorse the product if the ad clearly and conspicuously discloses the nature and limits of the endorser's expertise. Given the revision to the example, it is no longer necessary to address how a person with a doctorate in audiology should be identified. The example continues to say the doctor without substantial experience in the area of hearing might be able to endorse the product as a doctor if the advertisement clearly and conspicuously discloses the nature and limits of the endorser's expertise.

Example 3 refers to testing an automobile part's ''efficacy,'' which the Commission is changing to testing the part's ''performance.''

E. Section 255.4 Endorsements by Organizations

Section 255.4 addresses endorsements by organizations. The Commission proposed adding two new examples to this section.

Proposed new Example 2 describes a trampoline manufacturer that sets up and operates what appears to be an independent trampoline review website that reviews the manufacturer's trampolines, as well as those of competing manufacturers. The example says the claim of independence is false. Three commenters supported the example.[109] One commenter asked why the example is in the ''organizations'' section of the Guides, rather than the material connections section.[110] The Commission is rewording the example so the operator of the website appears to be an independent trampoline institute.

Proposed new Example 3 involves a review website operator that accepts money from manufacturers in exchange for higher rankings of their products. The example says a manufacturer who pays for a higher ranking on the website may be held liable for deception. Two commenters supported the example.[111] One of them suggested the Commission clarify that both the manufacturer who pays for a higher ranking and the site operator can be liable for misleading consumers and the Commission say that using a ranking methodology that results in higher rankings for products or services with a relationship to the rating site is misleading.[112] The Commission is making both of those changes. One commenter said it was unclear how the example related to the Guides.[113] The example belongs in the Guides because the review website is endorsing the products it is reviewing.

F. Section 255.5 Disclosure of Material Connections

1. Whether Connections Are Material

Section 255.5 addresses the need to disclose unexpected material connections between the endorser and seller of an advertised product. To be material, a connection must affect the weight or credibility the audience gives to the endorsement. The revised section gives examples of possible material connections. One commenter agreed with the general principle, as well as the specific examples described,[114] while another supported the broad scope of possible material connections addressed in the section.[115] Another commenter asked the Commission to add more examples of benefits to an endorser that are or could be material.[116] The examples of possible material connections listed in § 255.5 are meant to be illustrative rather than exhaustive, and the Commission does not believe it is necessary to expand the list.

As proposed, the revised section would also acknowledge some connections may be immaterial because they are too insignificant to affect the weight or credibility the audience gives to endorsements. Two commenters asked for examples of connections that are immaterial. Whether a connection is too insignificant to be material is such a fact-specific question that it is difficult to devise a useful example of a necessarily immaterial connection.

2. Whether Connections Are Unexpected

The most recent version of the Guides describes the type of connection that must be disclosed as one that ''is not reasonably expected by the audience.'' The Commission proposed restating this as ''material connections do not need to be disclosed when they are understood or expected by all but an insignificant portion of the audience for an endorsement.'' The Commission is now rewording the statement in the Guides to say a ''material connection needs to be disclosed when a significant minority of the audience for an endorsement does

[104] *Id.* at 11, BBB National Programs at 16–17.

[105] In Example 6 of § 255.3, the Commission is changing a reference to ''the purported degree of expertise'' to the ''represented degree of expertise.''

[106] BBB National Programs at 17, NAIMA at 6.

[107] Academy at 2–3, HIA at 1–2.

[108] ANA at 11.

[109] BBB National Programs at 18, Consumer Reports at 10, NAIMA at 6.

[110] ANA at 12.

[111] BBB National Programs at 19, Consumer Reports at 10.

[112] BBB NATIONAL PROGRAMS at 19–20.

[113] ANA at 12.

[114] Generation Patient at 3.

[115] Tripadvisor at 3.

[116] TINA.org at 8–9.

not understand or expect the connection.''

One commenter asserted this guidance was ambiguous and asked that the Commission give concrete examples or delete the new language.[117] Two other commenters similarly asked for examples.[118] It may be that certain, well-known influencers have become so closely identified with a particular brand that almost everyone knows of their connection. It may also be that followers of some well-known influencers have all come to expect that the influencers endorse products only when paid. The Commission is reluctant to identify real-world influencers who might fit these descriptions. Whether any particular connection is or is not expected by an audience is a factual question that might require empirical testing, and that testing might only be relevant to a particular endorser or to a narrow set of circumstances.[119]

Another commenter stated consumers are more likely to understand and expect that influencers have received some sort of incentive when the influencers are reviewing or showcasing certain types of products.[120] The commenter gave the example of video game influencers and asserted many video game players are aware influencers have access to games before those titles are made available to the public. The Commission recognizes this assertion may be true, but an audience knowing generally about such early access is not the same as knowing what a given influencer may have received—whether it's merely early access or a large monetary payment—in connection with a given game.

Two commenters were opposed to the proposed reworded principle.[121] One said all connections should always be disclosed and the Commission was weakening the Guides.[122] The Commission disagrees. As discussed above, the Guides already say the only connections that must be disclosed are ones not reasonably expected by the audience. If the audience *does* reasonably expect a connection, then it is not deceived by the lack of disclosure. Consistent with section 5 of the FTC Act, the Commission thus cannot require that every connection be disclosed. This position is also consistent with existing Example 2 of § 255.5, which says that, if a film star endorses a particular food product in a television commercial, a disclosure is unnecessary because it is ordinarily expected that celebrities are paid for such appearances.

The other commenter who opposed the revised guidance asked how one determines that a connection is understood by all but an insignificant portion of the audience.[123] As discussed above, the Commission has reworded its guidance in terms of a significant minority of the audience not understanding or expecting the connection. Again, the question of whether any particular connection is or is not expected by an audience is highly fact-specific and in some cases its resolution might require empirical testing. The Guides do contain multiple examples with scenarios in which the Commission is comfortable saying at least a significant minority of the audience does not or is unlikely to understand or expect the connection.

One commenter asked the Commission to require marketers to substantiate that a material connection need not be disclosed because it is understood or expected by the audience.[124] In a section 5 case, the Commission has the burden of proving a connection is material and is not able to shift the burden of proof to the marketer.

3. Details of Connections

The Commission proposed stating a disclosure of a material connection does not require the complete details of the connection but must clearly communicate the nature of the connection sufficiently for consumers to evaluate its significance.

One commenter said disclosures of material connections should not require the dollar amount of any payment[125] and another supported not having to disclose the details of a connection.[126] Another commenter said influencers should disclose how much they are being paid because the ''large scope and range of differing pay might impact what products influencers are pushing to their audience.'' [127] The Commission is not convinced consumers are generally misled by not knowing how much influencers are paid.

A different commenter asked if the new statement in the Guides meant a disclosure like ''#Ad'' is now insufficient.[128] That is not the Commission's intention. The Commission is adding a new example, drawn from staff business guidance, to illustrate when a disclosure does not adequately communicate the nature of the material connection. In new Example 13, an app developer gives a consumer a 99-cent game app for free in order to review it. A disclosure that the consumer was given the app for free suggests the consumer did not receive anything else for the review, which would be deceptive if the app developer also gave the consumer $50 for the review.

4. Examples[129]

Example 3 of § 255.5 involves a professional tennis player who has a contractual relationship with a laser vision correction clinic. The contract provides for payment to the athlete for speaking publicly about their vision correction surgery at the clinic. One commenter suggested noting that, if the surgery had been performed for free, and if consumers would not have expected that to have been the case, the free surgery is a material connection that would require disclosure.[130] The receipt of free surgery is already addressed in what the Commission proposed as subpart 2 of the example.

As proposed, new paragraph (ii) of Example 3 began by stating the player ''also'' touts the results of the surgery ''in a social media post.'' It said the relationship should be disclosed even if the relationship involves no payments but only the tennis player getting the laser correction surgery for free or at ''a reduced cost.'' One commenter raised three concerns with this subpart of the example. It said the use of ''also'' rather than ''instead'' might indicate the FTC intends that the hypothetical facts only in the aggregate produce the stated outcome.[131] The Commission will change ''also'' to ''instead.'' [132] The commenter also asked the Commission to articulate more clearly why the use of the tennis player's endorsement on the

[117] CDI at 2.

[118] Bazaarvoice at 2, Dudukovich at 7.

[119] Although the Commission is not quantifying a ''significant'' minority of an audience, it notes that in the context of net claim takeaway from an ad, it has stated that ''net takeaway of 10%—or even lower—supported finding that the ads communicated the claims at issue.'' *See Telebrands Corp.,* 140 F.T.C. 278, 325 & n.47 (2005), *aff'd,* 457 F.3d 354 (4th Cir. 2006).

[120] ESA at 2.

[121] Consumer Reports at 10, Generation Patient at 3.

[122] Consumer Reports at 10.

[123] Generation Patient at 3.

[124] TINA.org at 9.

[125] InfluenceLogic at 1.

[126] N/MA at 2.

[127] Generation Patient at 3.

[128] Dudukovich at 8.

[129] The Commission is deleting an unnecessary sentence introducing the examples to § 255.5.

[130] BBB NATIONAL PROGRAMS at 20.

[131] ANA at 14.

[132] The same commenter made a similar comment about the introduction to subpart 2 of Example 4 of § 255.5 (ANA at 15) and the Commission is making the same change to the subpart. In addition, the Commission is clarifying that the reference to ''more likely to expect'' in that subpart means more likely to expect than in a television commercial.

clinic's social media page would not reasonably be expected by the audience.[133] The example is intended to address a post by the tennis player and not by the clinic, so the Commission is changing ''in a social media post'' to ''in the player's social media post.'' An endorsement disseminated from the clinic's social media account is addressed in the example's third subpart. Finally, the commenter asked whether receipt of discounted products or services is always material or whether there is a threshold level of discount that makes it material.[134] A discount is not necessarily material, but there is not a clear line between a material discount and a non-material one. The Commission is changing the example so it refers to receiving the surgery at ''a significantly reduced cost.''

As proposed, new paragraph (iii) of Example 3 varies the example so that the clinic disseminates the tennis player's endorsement from its own social media account. One commenter asserted that, if the tennis player's post already has a disclosure, the clinic should not have to add a disclosure.[135] Another commenter stated the Commission failed to articulate why the audience would not reasonably expect the tennis player's endorsement on the clinic's social media page was compensated.[136] The commenter continued that, in many instances, an advertiser's use of a celebrity endorser on its own social media should not need a disclosure because one would expect that the celebrity was paid to provide the endorsement.[137] The commenter suggested (a) the example clarify that the clinic is reposting or sharing the tennis player's social media endorsement from the prior paragraph to the clinic's social media, (b) the advertiser needs to disclose the relationship because the tennis player did not clearly and conspicuously disclose it in the first place, and (c) given the nature of the endorsement (*i.e.,* a personally created statement from the tennis player versus a television commercial with an endorsement), and in the context of the clinic's social media, the viewing audience would likely not reasonably expect the tennis player is being compensated.[138] The Commission is adopting most of these commenters' suggestions and clarifying that the clinic's post is a repost. As modified, the example makes clear the original post either did not have a clear and conspicuous disclosure or had a disclosure that is not clear and conspicuous in the repost.

Example 5 involves a restaurant whose patrons are informed they will be interviewed by the advertiser as part of a television promotion of its new ''meat-alternative'' burger. The example said the advertisement should clearly and conspicuously inform viewers the patrons on screen knew in advance they might appear in a television advertisement ''if they gave the burger a good review.'' One commenter said the Commission should remove the language regarding appearance in a television advertisement ''if they gave the burger a good review.'' [139] The Commission agrees. The disclosure need not mention giving the burger a good review; it is implicit someone would know they would appear on television only if they gave the product a good review.

A new paragraph (ii) of Example 6 addresses incentivized reviews and says any review that fails to clearly and conspicuously disclose incentives provided to that reviewer is likely deceptive. Three commenters supported this guidance.[140] The example continues, noting that, even if adequate disclosures appear in each incentivized review, the practice could still be deceptive if the solicited reviews contain star ratings that are included in an average star rating for the product and if that inclusion materially increases that average star rating. One commenter did not disagree with the Commission's position but noted that, in its experience, including incentivized ratings generally does not materially affect a product's average star rating; it did acknowledge possible exceptions (for example, if the product has few reviews other than incentivized ones).[141] A second commenter said the Commission should not prohibit including incentivized reviews in the average star ratings and argued the Commission did not have evidence of a difference between aggregate star ratings containing and not containing incentivized reviews.[142] The Commission is not saying incentivized reviews materially inflate average star ratings; just that, if they do, then they could be deceptive. A third commenter suggested allowing the website operator to make a blanket disclosure regarding incentivized reviews.[143] A fourth commenter said prohibiting the inclusion of incentivized reviews (when incentives are provided fairly and are clearly and conspicuously disclosed) in aggregate star ratings could hurt competition and, as a practical matter, it may be infeasible for many advertisers to discern and calculate the average star rating without incentivized reviews.[144] The Commission is adding a statement to the example, stating that, if such a material increase occurs, the marketer likely would need to provide a clear and conspicuous disclosure to people who see the average star rating.

As rewritten, Example 7 discusses a woodworking influencer who received an expensive, full-size lathe from its manufacturer in the hope the influencer would post about it. The influencer posts videos containing favorable comments about the lathe. The example said, if a significant proportion of viewers are likely unaware the influencer received the lathe free of charge, the woodworker should clearly and conspicuously disclose receiving it for free. One commenter supported the guidance.[145] A different commenter said ad agencies are contracted to monitor compliance for a contracted period of time and should not be expected to conduct ''indefinite monitoring for decades.'' [146] A third commenter said the Commission missed an opportunity in the example to provide guidance on how long the woodworker might need to continue to make a disclosure.[147] The Commission recognizes a connection probably becomes less material over time but is not prepared to set a time frame that divides material from immaterial, a distinction that likely varies depending upon the scenario. The Commission agrees an ad agency should not have to monitor an influencer for decades based upon a single gift. A fourth commenter objected to the rewritten example, saying it had been weakened by adding language that a disclosure was necessary only if a significant proportion of viewers are likely unaware that the influencer received the lathe free of charge.[148] The Commission disagrees it is weakening the example. The additional language is a clarification consistent with the law and the Commission is changing a ''significant proportion'' to a

[133] ANA at 13.

[134] *Id.* at 14.

[135] Dudukovich at 8.

[136] ANA at 13–14.

[137] *Id.* at 13.

[138] *Id.* at 14.

[139] ANA at 15.

[140] Bazaarvoice at 2, BBB NATIONAL PROGRAMS at 20–21, Tripadvisor at 5.

[141] Bazaarvoice at 2.

[142] RILA at 2–4.

[143] Dudukovich at 8–9.

[144] ANA at 15.

[145] BBB NATIONAL PROGRAMS at 22.

[146] AAAA at 11.

[147] ANA at 16. That third commenter also asked the Commission ''what constitutes a 'significant' portion of an audience,'' ANA at 15–16, an issue addressed above. *See supra* n. 119.

[148] Consumer Reports at 10.

''significant minority,'' which is the language in the Commission's Deception Statement.[149]

New Example 8 addresses endorsements by employees. It says the employer described in the example can limit its own liability for such endorsements by engaging in appropriate training of employees and, if the employer has directed such endorsements or otherwise has reason to know about them, by monitoring them and taking other steps to ensure compliance. One commenter asked whether the guidance regarding employees applies to all employers, including large retailers who don't manufacture the products they sell, and said it would be unreasonable to expect an employer to review posts by thousands or millions of employees.[150] The Commission notes the connection between a retailer and its employees may be relevant to readers of the employees' reviews even when the reviews are of products the retailer sells but did not manufacture. As explained in the example, an employer would not have to monitor the reviews or other endorsements of employees unless the employer solicits the endorsements or otherwise has reason to know about them. Another commenter asked the Commission to rewrite the last sentence of the example to demonstrate the disclosure requirement does not change depending on the platform.[151] The Commission is adopting the commenter's proposed language.

New Example 10 says the use of an environmental seal of approval from a non-profit, third-party association that charges manufacturers a reasonable fee for the evaluation of their products does not necessitate a disclosure regarding the fee. One commenter asked about the relevance of the third party being a ''non-profit.'' [152] The fact the certifying entity is a non-profit might make it less likely the decision to award the seal of certification was impacted by payment. Three other commenters appeared to support the example,[153] and one of them suggested additional examples involving third-party seals or awards.[154] The Commission is adding new Example 14 illustrating a scenario in which a testing company has a relationship with the company that commissions an analysis, such that a disclosure of the relationship is necessary.

In new Example 11, the Commission discusses a blogger who writes product reviews and receives ''a small portion of the sale'' through paid affiliate links. The example says the reviews should clearly and conspicuously disclose the compensation. Two commenters supported the example [155] and a third commenter said the Commission should not state that the blogger receives a ''small'' portion of the sale unless it clarifies whether it is trying to communicate something about the nature or quantity of the compensation for purposes of finding ''materiality.'' [156] The Commission is striking the word ''small'' from the example. One of the commenters supporting the example asked the Commission to distinguish paid affiliate links from a display ad for a product appearing on the same page as an article reviewing the product.[157] Although the Commission does not consider a display ad appearing on the same page as a review to be inherently deceptive, it does not consider the issue sufficiently related to the example to add it to the Guides.

New Example 12 involves a podcast host beginning a podcast by reading what is obviously a commercial. The example states the host need not make a disclosure because, even without a statement identifying the advertiser as a sponsor, listeners would likely still expect the podcaster was compensated. Five commenters supported the example.[158] The example continues by stating the ad might communicate the host is expressing their own views, in which case the host would need to hold the views expressed.

Example 12 also states that, if the host mentions the product in a social media post, the fact no disclosure was required in the podcast is not relevant to whether one is needed in the post. One commenter said whether a material connection disclosure is required is a fact-specific analysis; the Commission agrees.[159]

G. Section 255.6 Endorsements Directed to Children

New § 255.6 says endorsements in advertisements directed to children may be of special concern because of the character of the audience; practices that would not ordinarily be questioned in ads directed to adults might be questioned when directed to children. Three comments supported this new section,[160] with one of them suggesting the section be supplemented with specific examples.[161] One commenter said the section was inadequate,[162] while another urged the Commission to issue guidance that addresses in greater detail which techniques and practices are impermissible,[163] and yet another asked the Commission to ban targeted and influencer advertising to children and teens.[164] A different commenter was concerned that ''any new standards for children may impose duplicative material disclosure requirements for ads'' and suggested the Commission defer to the Better Business Bureau's Children's Advertising Review Unit (''CARU'').[165] Finally, a commenter said the new section does not add any incremental benefit within the context of the Guides and, when appropriate, the Commission can provide additional guidance to marketers through other avenues, such as a report and other business guidance.[166]

The Commission continues to believe new § 255.6 is helpful in establishing a general principle and does not impose duplicative requirements on marketers. The types of specific guidance that appear to be desired involve the wording, appearance, and placement of disclosures of material connection in various contexts. As discussed above, the Commission does not believe that specifics of disclosures of material connections should be addressed in the Guides themselves. Research on children's cognitive development suggests disclosures will not work for younger children. Commission staff recently held an event to learn more about advertising to children in digital media, including endorsements directed to children, and is exploring next steps.

List of Subjects in 16 CFR Part 255

Advertising, Consumer protection, Trade practices.

■ For reasons stated in the preamble, the Federal Trade Commission revises 16 CFR part 255 of the Code of Federal Regulations to read as follows:

PART 255—GUIDES CONCERNING USE OF ENDORSEMENTS AND TESTIMONIALS IN ADVERTISING

Sec.

[149] *FTC Statement on Deception,* 103 F.T.C. 174, 177 n.20 (1984) (appended to *Cliffdale Assocs., Inc.,* 103 F.T.C. 110 (1984)).

[150] RILA at 6–7.

[151] ANA at 16.

[152] *Id.* at 16.

[153] BBB NATIONAL PROGRAMS at 22, Consumer Reports at 10, NAIMA at 6.

[154] BBB NATIONAL PROGRAMS at 22.

[155] Consumer Reports at 10, NAIMA at 6.

[156] ANA at 16.

[157] N/MA at 3.

[158] BBB NATIONAL PROGRAMS at 23, Consumer Reports at 10, InfluenceLogic at 2, NAIMA at 6, N/MA at 2.

[159] ANA 17.

[160] BBB NATIONAL PROGRAMS at 24, CCIA at 4–5, Generation Patient at 3.

[161] BBB NATIONAL PROGRAMS at 24.

[162] TINA.org at 9–10.

[163] Fairplay at 1.

[164] Common Sense at 1, 10.

[165] AAAA at 12–13.

[166] ANA at 16–17.

Authority: 38 Stat. 717, as amended; 15 U.S.C. 41–58.

§ 255.0 Purpose and definitions.

(a) The Guides in this part represent administrative interpretations of laws enforced by the Federal Trade Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. Specifically, the Guides address the application of section 5 of the FTC Act, 15 U.S.C. 45, to the use of endorsements and testimonials in advertising. The Guides provide the basis for voluntary compliance with the law by advertisers and endorsers. Practices inconsistent with these Guides may result in corrective action by the Commission under section 5 if, after investigation, the Commission has reason to believe that the practices fall within the scope of conduct declared unlawful by the statute. The Guides set forth the general principles that the Commission will use in evaluating endorsements and testimonials, together with examples illustrating the application of those principles. The examples in each section apply the principles of that section to particular factual scenarios but do not address every possible issue that the facts or principles might implicate. Nor do the Guides purport to cover every possible use of endorsements in advertising.[1] Whether a particular endorsement or testimonial is deceptive will depend on the specific factual circumstances of the advertisement at issue.

(b) For purposes of this part, an ''endorsement'' means any advertising, marketing, or promotional message for a product that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser. Verbal statements, tags in social media posts, demonstrations, depictions of the name, signature, likeness or other identifying personal characteristics of an individual, and the name or seal of an organization can be endorsements. The party whose opinions, beliefs, findings, or experience the message appears to reflect will be called the ''endorser'' and could be or appear to be an individual, group, or institution.

(c) The Commission intends to treat endorsements and testimonials identically in the context of its enforcement of the Federal Trade Commission Act and for purposes of this part. The term endorsements is therefore generally used hereinafter to cover both terms and situations.

(d) For purposes of this part, the term ''product'' includes any product, service, brand, company, or industry.

(e) For purposes of this part, an ''expert'' is an individual, group, or institution possessing, as a result of experience, study, or training, knowledge of a particular subject, which knowledge is superior to what ordinary individuals generally acquire.

(f) For purposes of this part, ''clear and conspicuous'' means that a disclosure is difficult to miss (*i.e.,* easily noticeable) and easily understandable by ordinary consumers. If a communication's representation necessitating a disclosure is made through visual means, the disclosure should be made in at least the communication's visual portion; if the representation is made through audible means, the disclosure should be made in at least the communication's audible portion; and if the representation is made through both visual and audible means, the disclosure should be made in the communication's visual and audible portions. A disclosure presented simultaneously in both the visual and audible portions of a communication is more likely to be clear and conspicuous. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, should stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood. An audible disclosure should be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it. In any communication using an interactive electronic medium, such as social media or the internet, the disclosure should be unavoidable. The disclosure should not be contradicted or mitigated by, or inconsistent with, anything else in the communication. When an endorsement targets a specific audience, such as older adults, ''ordinary consumers'' includes members of that group.

(g) Examples:

(1) *Example 1.* A film critic's review of a movie is excerpted in an advertisement placed by the film's producer. The critic's review is not an endorsement, but when the excerpt from the review is used in the producer's advertisement, the excerpt becomes an endorsement. Readers would view it as a statement of the critic's own opinions and not those of the producer. If the excerpt alters or quotes from the text of the review in a way that does not fairly reflect its substance, the advertisement would be deceptive because it distorts the endorser's opinion. (*See* § 255.1(b))

(2) *Example 2.* A television commercial depicts two unidentified shoppers in a supermarket buying a laundry detergent. One comments to the other how clean the advertised brand makes the shopper's clothes. The other shopper then replies, ''I will try it because I have not been fully satisfied with my own brand.'' This obviously fictional dramatization would not be an endorsement.

(3) *Example 3.* In an advertisement for a pain remedy, an announcer unfamiliar to consumers except as a spokesperson for the advertising drug company praises the drug's ability to deliver fast and lasting pain relief. The spokesperson does not purport to speak from personal experience, nor on the basis of their own opinions, but rather in the place of and on behalf of the drug company. The announcer's statements would not be considered an endorsement.

(4) *Example 4.* A manufacturer of automobile tires hires a well-known professional automobile racing driver to deliver its advertising message in television commercials. In these commercials, the driver speaks of the smooth ride, strength, and long life of the tires. Many consumers are likely to believe this message reflects the driver's personal views, even if the driver does not say so, because consumers recognize the speaker primarily as a racing driver and not merely as a product spokesperson. Accordingly, many consumers would likely believe the driver would not speak for an automotive product without actually believing in the product and having personal knowledge sufficient to form the beliefs expressed. The likely attribution of these beliefs to the driver makes this message an endorsement under the Guides.

(5) *Example 5.* (i) A television advertisement for a brand of golf balls includes a video of a prominent and well-recognized professional golfer practicing numerous drives off the tee. The video would be an endorsement even though the golfer makes no verbal statement in the advertisement.

(ii) The golfer is also hired to post the video to their social media account. The paid post is an endorsement if viewers

[1] Staff business guidance applying section 5 of the FTC Act to endorsements and testimonials in advertising is available on the FTC website. Such staff guidance addresses details not covered in these Guides and is updated periodically but is not approved by or binding upon the Commission.

can readily identify the golf ball brand, either because it is apparent from the video or because it is tagged or otherwise mentioned in the post.

(6) *Example 6.* (i) An infomercial for a home fitness system is hosted by a well-known actor. During the infomercial, the actor demonstrates the machine and states, ''This is the most effective and easy-to-use home exercise machine that I have ever tried.'' Even if the actor is reading from a script, the statement would be an endorsement, because consumers are likely to believe it reflects the actor's personal views.

(ii) Assume that, rather than speaking about their experience with or opinion of the machine, the actor says that the machine was designed by exercise physiologists at a leading university, that it isolates each of five major muscle groups, and that it is meant to be used for fifteen minutes a day. After demonstrating various exercises using the machine, the actor finally says how much the machine costs and how to order it. As the actor does not say or do anything during the infomercial that would lead viewers to believe that the actor is expressing their own views about the machine, there is no endorsement.

(7) *Example 7.* (i) A consumer who regularly purchases a particular brand of dog food decides one day to purchase a new, more expensive brand made by the same manufacturer with their own money. The purchaser posts to their social media account that the change in diet has made their dog's fur noticeably softer and shinier, and that in their opinion, the new dog food definitely is worth the extra money. Because the consumer has no connection to the manufacturer beyond being an ordinary purchaser, their message cannot be attributed to the manufacturer and the post would not be deemed an endorsement under the Guides. The same would be true if the purchaser writes a consumer product review on an independent review website. But, if the consumer submits the review to the review section of the manufacturer's website and the manufacturer chooses to highlight the review on the homepage of its website, then the review as featured is an endorsement even though there is no connection between the consumer and the manufacturer.

(ii) Assume that rather than purchase the dog food with their own money, the consumer receives it for free because the store routinely tracks purchases and the dog food manufacturer arranged for the store to provide a coupon for a free trial bag of its new brand to all purchasers of its existing brand. The manufacturer does not ask coupon recipients for product reviews and recipients likely would not assume that the manufacturer expects them to post reviews. The consumer's post would not be deemed an endorsement under the Guides because this unsolicited review cannot be attributed to the manufacturer.

(iii) Assume now that the consumer joins a marketing program under which participants agree to periodically receive free products from various manufacturers and write reviews of them. If the consumer receives a free bag of the new dog food through this program, their positive review would be considered an endorsement under the Guides because of their connection to the manufacturer through the marketing program.

(iv) Assume that the consumer is the owner of a ''dog influencer'' (a dog with a social media account and a large number of followers). If the manufacturer sends the consumer coupons for a year's worth of dog food and asks the consumer to feature the brand in their dog's social media feed, any resulting posts that feature the brand would be considered endorsements even though the owner could have chosen not to endorse the product.

(8) *Example 8.* A college student, who has earned a reputation as an excellent video game player, live streams their game play. The developer of a new video game pays the student to play and live stream its new game. The student plays the game and appears to enjoy it. Even though the college student does not expressly recommend the game, the game play is considered an endorsement because the apparent enjoyment is implicitly a recommendation.

(9) *Example 9.* (i) An influencer who is paid to endorse a vitamin product in their social media posts discloses their connection to the product's manufacturer only on the profile pages of their social media accounts. The disclosure is not clear and conspicuous because people seeing their paid posts could easily miss the disclosure.

(ii) Assume now that the influencer discloses their connection to the manufacturer but that, in order to see the disclosures, consumers have to click on a link in the posts labeled simply ''more.'' If the endorsement is visible without having to click on the link labeled ''more,'' but the disclosure is not visible without doing so, then the disclosure is not unavoidable and thus is not clear and conspicuous.

(iii) Assume now that the influencer relies solely upon a social media platform's built-in disclosure tool for one of these posts. The disclosure appears in small white text, it is set against the light background of the image that the influencer posted, it competes with unrelated text that the influencer superimposed on the image, and the post appears for only five seconds. The disclosure is easy to miss and thus not clear and conspicuous.

(10) *Example 10.* A television advertisement promotes a smartphone app that purportedly halts cognitive decline. The ad presents multiple endorsements by older senior citizens who are represented as actual consumers who used the app. The advertisement discloses via both audio and visual means that the persons featured are actors. Because the advertisement is targeted at older consumers, whether the disclosure is clear and conspicuous will be evaluated from the perspective of older consumers, including those with diminished auditory, visual, or cognitive processing abilities.

(11) *Example 11.* (i) A social media advertisement promoting a cholesterol-lowering product features a testimonialist who says by how much their serum cholesterol went down. The claimed reduction greatly exceeds what is typically experienced by users of the product and a disclosure of typical results is required. The marketer has been able to identify from online data collection individuals with high cholesterol levels who speak a particular foreign language and are unable to understand English. It microtargets a foreign-language version of the ad to them, disclosing users' typical results only in English. The adequacy of the disclosure will be evaluated from the perspective of the microtargeted individuals, and the disclosure must be in the same language as the ad.

(ii) Assume now that the ad has a disclosure that is clear and conspicuous when viewed on a computer browser but that it is not clear and conspicuous when the ad is rendered on a smartphone. Because some consumers will view the ad on their smartphones, the disclosure is inadequate.

(12) *Example 12.* An exterminator purchases fake negative reviews of competing exterminators. A paid or otherwise incentivized negative statement about a competitor's service is not an endorsement, as that term is used in the Guides. Nevertheless, such statements, *e.g.,* a paid negative review of a competing product, can be deceptive in violation of section 5. (*See* § 255.2.(e)(4)(v) regarding the purchase of a fake positive review for a product.) Fake positive reviews that are used to promote a product are ''endorsements.''

(13) *Example 13.* A motivational speaker buys fake social media followers to impress potential clients. The use by endorsers of fake indicators of social media influence, such as fake social media followers, is not itself an endorsement issue. The Commission notes, however, that it is a deceptive practice for users of social media platforms to purchase or create indicators of social media influence and then use them to misrepresent such influence to potential clients, purchasers, investors, partners, or employees or to anyone else for a commercial purpose. It is also a deceptive practice to sell or distribute such indicators to such users.

§ 255.1 General considerations.

(a) Endorsements must reflect the honest opinions, findings, beliefs, or experience of the endorser. Furthermore, an endorsement may not convey any express or implied representation that would be deceptive if made directly by the advertiser. (*See* § 255.2(a) and (b) regarding substantiation of representations conveyed by consumer endorsements.)

(b) An advertisement need not present an endorser's message in the exact words of the endorser unless the advertisement represents that it is presenting the endorser's exact words, such as through the use of quotation marks. However, the endorsement may not be presented out of context or reworded so as to distort in any way the endorser's opinion or experience with the product. An advertiser may use an endorsement of an expert or celebrity only so long as it has good reason to believe that the endorser continues to subscribe to the views presented. An advertiser may satisfy this obligation by securing the endorser's views at reasonable intervals where reasonableness will be determined by such factors as new information about the performance or effectiveness of the product, a material alteration in the product, changes in the performance of competitors' products, and the advertiser's contract commitments.

(c) When the advertisement represents that the endorser uses the endorsed product, the endorser must have been a bona fide user of it at the time the endorsement was given. Additionally, the advertiser may continue to run the advertisement only so long as it has good reason to believe that the endorser remains a bona fide user of the product. (*See* paragraph (b) of this section regarding the ''good reason to believe'' requirement.)

(d) Advertisers are subject to liability for misleading or unsubstantiated statements made through endorsements or for failing to disclose unexpected material connections between themselves and their endorsers. (*See* § 255.5.) An advertiser may be liable for a deceptive endorsement even when the endorser is not liable. Advertisers should:

(1) Provide guidance to their endorsers on the need to ensure that their statements are not misleading and to disclose unexpected material connections;

(2) Monitor their endorsers' compliance; and

(3) Take action sufficient to remedy non-compliance and prevent future non-compliance. While not a safe harbor, good faith and effective guidance, monitoring, and remedial action should reduce the incidence of deceptive claims and reduce an advertiser's odds of facing a Commission enforcement action.

(e) Endorsers may be liable for statements made in the course of their endorsements, such as when an endorser makes a representation that the endorser knows or should know to be deceptive, including when an endorser falsely represents that they personally used a product. Also, an endorser who is not an expert may be liable for misleading or unsubstantiated representations regarding a product's performance or effectiveness, such as when the representations are inconsistent with the endorser's personal experience or were not made or approved by the advertiser and go beyond the scope of the endorser's personal experience. (For the responsibilities of an endorser who is an expert, *see* § 255.3.) Endorsers may also be liable for failing to disclose unexpected material connections between themselves and an advertiser, such as when an endorser creates and disseminates endorsements without such disclosures.

(f) Advertising agencies, public relations firms, review brokers, reputation management companies, and other similar intermediaries may be liable for their roles in creating or disseminating endorsements containing representations that they know or should know are deceptive. They may also be liable for their roles with respect to endorsements that fail to disclose unexpected material connections, whether by disseminating advertisements without necessary disclosures or by hiring and directing endorsers who fail to make necessary disclosures.

(g) The use of an endorsement with the image or likeness of a person other than the actual endorser is deceptive if it misrepresents a material attribute of the endorser.

(h) Examples:

(1) *Example 1.* (i) A building contractor states in an advertisement disseminated by a paint manufacturer, ''I use XYZ exterior house paint because of its remarkable quick drying properties and durability.'' This endorsement must comply with the pertinent requirements of § 255.3. Subsequently, the advertiser reformulates its paint to enable it to cover exterior surfaces with only one coat. Prior to continued use of the contractor's endorsement, the advertiser must contact the contractor in order to determine whether the contractor would continue to use the paint as reformulated and to subscribe to the views presented previously.

(ii) Assume that, before the reformulation, the contractor had posted an endorsement of the paint to their social media account. Even if the contractor would not use or recommend the reformulated paint, there is no obligation for the contractor or the manufacturer to modify or delete a historic post containing the endorsement as long as the date of that post is clear and conspicuous to viewers. If the contractor reposts or the advertiser shares the contractor's original endorsement after the reformulation, consumers would expect that the contractor holds the views expressed in the original post with respect to the reformulated product and the advertiser would need to confirm that with the contractor.

(2) *Example 2.* In a radio advertisement played during commercial breaks, a well-known DJ talks about how much they enjoy making coffee with a particular coffee maker in the morning. The DJ's comments likely communicate that they regularly use the coffee maker. If, instead, they used it only during a demonstration by its manufacturer, the ad would be deceptive.

(3) *Example 3.* (i) A dermatologist is a paid advisor to a pharmaceutical company and is asked by the company to post about its products on their professional social media account. The dermatologist posts that the company's newest acne treatment product is ''clinically proven'' to work. Before giving the endorsement, the dermatologist received a write-up of the clinical study in question, which indicates flaws in the design and conduct of the study that are so serious that they preclude any conclusions about the efficacy of the product. Given their medical expertise, the dermatologist should have recognized

the study's flaws and is subject to liability for their false statements made in the advertisement. The advertiser is also liable for the misrepresentation made through the endorsement. (*See* § 255.3 regarding the product evaluation that an expert endorser must conduct.) Even if the study was sufficient to establish the product's proven efficacy, the pharmaceutical company and the dermatologist are both potentially liable if the endorser fails to disclose their relationship to the company. (*See* § 255.5 regarding the disclosure of unexpected material connections.)

(ii) Assume that the expert had asked the pharmaceutical company for the evidence supporting its claims and there were no apparent design or execution flaws in the study shown to the expert, but that the pharmaceutical company had withheld a larger and better controlled, non-published proprietary study of the acne treatment that failed to find any statistically significant improvement in acne. The expert's ''clinically proven'' to work claim would be deceptive and the company would be liable for the claim, but because the dermatologist did not have a reason to know that the claim was deceptive, the expert would not be liable.

(4) *Example 4.* A well-known celebrity appears in an infomercial for a hot air roaster that purportedly cooks a chicken perfectly in twenty minutes. During the shooting of the infomercial, the celebrity watches five attempts to cook chickens using the roaster. In each attempt, the chicken is undercooked after twenty minutes and requires forty-five minutes of cooking time. In the commercial, the celebrity places an uncooked chicken in the roaster. The celebrity then takes from a second roaster what appears to be a perfectly cooked chicken, tastes the chicken, and says that if you want perfect chicken every time, in just twenty minutes, this is the product you need. A significant percentage of consumers are likely to believe the statement represents the celebrity's own view and experience even though the celebrity is reading from a script. Because the celebrity knows that their statement is untrue, the endorser is subject to liability. The advertiser is also liable for misrepresentations made through the endorsement.

(5) *Example 5.* A skin care products advertiser hires an influencer to promote its products on the influencer's social media account. The advertiser requests that the influencer try a new body lotion and post a video review of it. The advertiser does not provide the influencer with any materials stating that the lotion cures skin conditions and the influencer does not ask the advertiser if it does. However, believing that the lotion cleared up their eczema, the influencer says in their review, ''This lotion cures eczema. All of my followers suffering from eczema should use it.'' The influencer, who did not limit their statements to their personal experience using the product and did not have a reasonable basis for their claim that the lotion cures eczema, is subject to liability for the misleading or unsubstantiated representation in the endorsement. If the advertiser lacked adequate substantiation for the implied claims that the lotion cures eczema, it would be liable regardless of the liability of the endorser. The influencer and the advertiser may also be liable if the influencer fails to disclose clearly and conspicuously being paid for the endorsement. (*See* § 255.5.) In order to limit its potential liability, the advertiser should provide guidance to its influencers concerning the need to ensure that statements they make are truthful and substantiated and the need to disclose unexpected material connections and take other steps to discourage or prevent non-compliance. The advertiser should also monitor its influencers' compliance and take steps necessary to remove and halt the continued publication of deceptive representations when they are discovered and to ensure the disclosure of unexpected material connections. (*See* paragraph (d) of this section and § 255.5.)

(6) *Example 6.* (i) The website for an acne treatment features accurate testimonials of users who say that the product improved their acne quickly and with no side effects. Instead of using images of the actual endorsers, the website accompanies the testimonials with stock photos the advertiser purchased of individuals with near perfect skin. The images misrepresent the improvements to the endorsers' complexions.

(ii) The same website also sells QRS Weight-Loss shakes and features a truthful testimonial from an individual who says, ''I lost 50 pounds by just drinking the shakes.'' Instead of accompanying the testimonial with a picture of the actual endorser, who went from 300 pounds to 250 pounds, the website shows a picture of an individual who appears to weigh about 100 pounds. By suggesting that QRS Weight-Loss shakes caused the endorser to lose one-third of their original body weight (going from 150 pounds to 100 pounds), the image misrepresents the product's effectiveness. Even if it is accompanied by a picture of the actual endorser, the testimonial could still communicate a deceptive typicality claim.

(7) *Example 7.* A learn-to-read program disseminates a sponsored social media post by a parent saying that the program helped their child learn to read. The picture accompanying the post is not of the endorser and their child. The testimonial is from the parent of a 7-year-old, but the post shows an image of a child who appears to be only 4 years old. By suggesting that the program taught a 4-year-old to read, the image misrepresents the effectiveness of the program.

§ 255.2 Consumer endorsements.

(a) An advertisement employing endorsements by one or more consumers about the performance of an advertised product will be interpreted as representing that the product is effective for the purpose depicted in the advertisement. Therefore, the advertiser must possess and rely upon adequate substantiation, including, when appropriate, competent and reliable scientific evidence, to support express and implied claims made through endorsements in the same manner the advertiser would be required to do if it had made the representation directly, *i.e.,* without using endorsements. Consumer endorsements themselves are not competent and reliable scientific evidence.

(b) An advertisement containing an endorsement relating the experience of one or more consumers on a central or key attribute of the product will likely be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve with the advertised product in actual, albeit variable, conditions of use. Therefore, an advertiser should possess and rely upon adequate substantiation for this representation. If the advertiser does not have substantiation that the endorser's experience is representative of what consumers will generally achieve, the advertisement should clearly and conspicuously disclose the generally expected performance in the depicted circumstances, and the advertiser must possess and rely on adequate substantiation for that representation. The disclosure of the generally expected performance should be presented in a manner that does not itself misrepresent what consumers can expect. To be effective, such disclosure must alter the net impression of the advertisement so that it is not misleading.

(c) Advertisements presenting endorsements by what are represented, expressly or by implication, to be ''actual consumers'' should utilize

actual consumers in both the audio and video, or clearly and conspicuously disclose that the persons in such advertisements are not actual consumers of the advertised product.

(d) In procuring, suppressing, boosting, organizing, publishing, upvoting, downvoting, reporting, or editing consumer reviews of their products, advertisers should not take actions that have the effect of distorting or otherwise misrepresenting what consumers think of their products, regardless of whether the reviews are considered endorsements under the Guides.

(e) Examples:

(1) *Example 1.* (i) A web page for a baldness treatment consists entirely of testimonials from satisfied customers who say that after using the product, they had amazing hair growth and their hair is as thick and strong as it was when they were teenagers. The advertiser must have competent and reliable scientific evidence that its product is effective in producing new hair growth.

(ii) The web page will also likely communicate that the endorsers' experiences are representative of what new users of the product can generally expect. Therefore, even if the advertiser includes a disclaimer such as, ''Notice: These testimonials do not prove our product works. You should not expect to have similar results,'' the ad is likely to be deceptive unless the advertiser has adequate substantiation that new users typically will experience results similar to those experienced by the testimonialists.

(2) *Example 2.* (i) An advertisement disseminated by a company that sells heat pumps presents endorsements from three individuals who state that after installing the company's heat pump in their homes, their monthly utility bills went down by $100, $125, and $150, respectively. The ad will likely be interpreted as conveying that such savings are representative of what consumers who buy the heat pump can generally expect. The advertiser does not have substantiation for that representation because, in fact, fewer than 20% of purchasers will save $100 or more. A disclosure such as, ''Results not typical'' or ''These testimonials are based on the experiences of a few people and you are not likely to have similar results'' is insufficient to prevent this ad from being deceptive because consumers will still interpret the ad as conveying that the specified savings are representative of what consumers can generally expect.

(A) In another context, the Commission tested the communication of advertisements containing testimonials that clearly and prominently disclosed either ''Results not typical'' or the stronger ''These testimonials are based on the experiences of a few people and you are not likely to have similar results.'' Neither disclosure adequately reduced the communication that the experiences depicted are generally representative. Based upon this research, the Commission believes that similar disclaimers regarding the limited applicability of an endorser's experience to what consumers may generally expect to achieve are unlikely to be effective. Although the Commission would have the burden of proof in a law enforcement action, the Commission notes that an advertiser possessing reliable empirical testing demonstrating that the net impression of its advertisement with such a disclaimer is non-deceptive will avoid the risk of the initiation of such an action in the first instance.

(B) The advertiser should clearly and conspicuously disclose the generally expected savings and have adequate substantiation that homeowners can achieve those results. There are multiple ways that such a disclosure could be phrased, *e.g.,* ''the average homeowner saves $35 per month,'' ''the typical family saves $50 per month during cold months and $20 per month in warm months,'' or ''most families save 10% on their utility bills.''

(ii) Disclosures like those in this *Example 2,* specifically paragraph (e)(2)(i)(B) of this section, could still be misleading, however, if they only apply to limited circumstances that are not described in the advertisement. For example, if the advertisement does not limit its claims by geography, it would be misleading if the disclosure of expected results in a nationally disseminated advertisement was based on the experiences of customers in a southern climate and the experiences of those customers was much better than could be expected by heat pump users in a northern climate.

(3) *Example 3.* An advertisement for a cholesterol-lowering product features individuals who claim that their serum cholesterol went down by 120 points and 130 points, respectively; the ad does not mention the endorsers having made any lifestyle changes. A well-conducted clinical study shows that the product reduces the cholesterol levels of individuals with elevated cholesterol by an average of 15% and the advertisement clearly and conspicuously discloses this fact. Despite the presence of this disclosure, the advertisement would be deceptive if the advertiser does not have competent and reliable scientific evidence that the product can produce the specific results claimed by the endorsers (*i.e.,* a 130-point drop in serum cholesterol without any lifestyle changes).

(4) *Example 4.* (i) An advertisement for a weight-loss product features an endorsement by a formerly obese person who says, ''Every day, I drank 2 QRS Weight-Loss shakes, ate only raw vegetables, and exercised vigorously for six hours at the gym. By the end of six months, I had gone from 250 pounds to 140 pounds.'' The advertisement accurately describes the endorser's experience, and such a result is within the range that would be generally experienced by an extremely overweight individual who consumed QRS Weight-Loss shakes, only ate raw vegetables, and exercised as the endorser did. Because the endorser clearly describes the limited and truly exceptional circumstances under which they achieved the claimed results, the ad is not likely to convey that consumers who weigh substantially less or use QRS Weight-Loss under less extreme circumstances will lose 110 pounds in six months. If the advertisement simply says that the endorser lost 110 pounds in six months using QRS Weight-Loss together with diet and exercise, however, this description would not adequately alert consumers to the truly remarkable circumstances leading to the endorser's weight loss. The advertiser must have substantiation, however, for any performance claims conveyed by the endorsement (*e.g.,* that QRS Weight-Loss is an effective weight-loss product and that the endorser's weight loss was not caused solely by their dietary restrictions and exercise regimen).

(ii) If, in the alternative, the advertisement simply features ''before'' and ''after'' pictures of a woman who says, ''I lost 50 pounds in 6 months with QRS Weight-Loss,'' the ad is likely to convey that the endorser's experience is representative of what consumers will generally achieve. Therefore, if consumers cannot generally expect to achieve such results, the ad would be deceptive. Instead, the ad should clearly and conspicuously disclose what they can expect to lose in the depicted circumstances (*e.g.,* ''women who use QRS Weight-Loss for six months typically lose 15 pounds''). A disclosure such as ''Average weight loss is 1–2 pounds per week'' is inadequate because it does not effectively communicate the expected weight loss over six months. Furthermore, that disclosure likely implies that weight loss continues at that rate over six months, which would not be true if, for

example, the average weekly weight loss over six months is .57 pounds.

(iii) If the ad features the same pictures but the testimonialist simply says, ''I lost 50 pounds with QRS Weight-Loss,'' and QRS Weight-Loss users generally do not lose 50 pounds, the ad should disclose what results they do generally achieve (*e.g.,* ''women who use QRS Weight-Loss lose 15 pounds on average''). A disclosure such as ''most women who use QRS Weight-Loss lose between 10 and 50 pounds'' is inadequate because the range specified is so broad that it does not sufficiently communicate what users can generally expect.

(iv) Assume that a QRS Weight-Loss advertisement contains a disclosure of generally expected results that is based upon the mean weight loss of users. If the mean is substantially affected by outliers, then the disclosure would be misleading. For example, if the mean weight loss is 15 pounds, but the median weight loss is 8 pounds, it would be misleading to say that the average weight loss was 15 pounds. In such cases, the disclosure's use of median weight loss instead could help avoid deception, *e.g.,* ''most users lose 8 pounds'' or ''the typical user loses 8 pounds.''

(v) Assume that QRS Weight-Loss's manufacturer procured a fake consumer review, reading ''I lost 50 pounds with QRS Weight-Loss,'' and had it published on a third-party review website. This endorsement is deceptive because it was not written by a bona fide user of the product (*see* § 255.1(c)) and because it does not reflect the honest opinions, findings, beliefs, or experience of the endorser (*see* § 255.1(a)). Moreover, the manufacturer would need competent and reliable scientific evidence that QRS Weight-Loss is capable of causing 50-pound weight loss.

(vi) Assume that QRS Weight-Loss is a diet and exercise program and a person appearing in a QRS Weight-Loss ad says, ''I lost 50 pounds in 6 months with QRS Weight-Loss.'' Very few QRS Weight-Loss users lose 50 pounds in 6 months and the ad truthfully discloses, ''The typical weight loss of QRS Weight-Loss users who stick with the program for 6 months is 35 pounds.'' In fact, only one-fifth of those who start the QRS Weight-Loss program stick with it for 6 months. The disclosure is inadequate because it does not communicate what the typical outcome is for users who start the program. In other words, even with the disclosure, the ad does not communicate what people who join the QRS Weight-Loss program can generally expect.

(vii) Assume that QRS Weight-Loss's manufacturer forwards reviews for its product to a third-party review website. If it forwards only favorable reviews or omits unfavorable reviews, it is engaging in a misleading practice.

(5) *Example 5.* An advertisement presents the results of a poll of consumers who have used the advertiser's cake mixes as well as their own recipes. The results purport to show that the majority believed that their families could not tell the difference between the advertised mix and their own cakes baked from scratch. Many of the consumers are pictured in the advertisement along with relevant, quoted portions of their statements endorsing the product. This use of the results of a poll or survey of consumers represents that this is the typical result that ordinary consumers can expect from the advertiser's cake mix.

(6) *Example 6.* An advertisement appears to show a ''hidden camera'' situation in a crowded cafeteria at breakfast time. A spokesperson for the advertiser asks a series of patrons of the cafeteria for their spontaneous, honest opinions of the advertiser's recently introduced breakfast cereal. Even though none of the patrons is specifically identified during the advertisement, the net impression conveyed to consumers may well be that these are actual customers. If actors have been employed, this fact should be clearly and conspicuously disclosed.

(7) *Example 7.* (i) An advertisement for a recently released motion picture shows three individuals coming out of a theater, each of whom gives a positive statement about the movie. These individuals are actual consumers expressing their personal views about the movie. The advertiser does not need to have substantiation that their views are representative of the opinions that most consumers will have about the movie. Because the consumers' statements would be understood to be the subjective opinions of only three people, this advertisement is not likely to convey a typicality message.

(ii) If the motion picture studio had approached these individuals outside the theater and offered them free tickets if they would talk about the movie on camera afterwards or post about it on social media, that arrangement should be clearly and conspicuously disclosed. (*See* § 255.5.)

(8) *Example 8.* (i) A camping goods retailer's website has various product pages. Each product page provides consumers with the opportunity to review the product and rate it on a five-star scale. Each such page displays the product's average star rating and a breakdown of the number of reviews with each star rating, followed by individual consumers' reviews and ratings. As such, the website is representing that it is providing an accurate reflection of the views of the purchasers who submitted product reviews to the website. If the retailer chose to suppress or otherwise not publish any reviews with fewer than four stars or reviews that contain negative sentiments, the product pages would be misleading as to purchasers' actual opinions of the products.

(ii) If the retailer chose not to post reviews containing profanity, that would not be unfair or deceptive even if reviews containing profanity tend to be negative reviews. However, it would be misleading if the retailer blocked negative reviews containing profanity, but posted positive reviews containing profanity. It would be acceptable for the retailer to have a policy against posting reviews unrelated to the product at issue or related services, for example reviews complaining about the owner's policy positions. But it would be misleading if the retailer chose to filter reviews based on other factors that are only a pretext for filtering them based on negativity. Sellers are not required to display customer reviews that contain unlawful, harassing, abusive, obscene, vulgar, or sexually explicit content; the personal information or likeness of another person; content that is inappropriate with respect to race, gender, sexuality, or ethnicity; or reviews that the seller reasonably believes are fake, so long as the criteria for withholding reviews are applied uniformly to all reviews submitted. Neither are sellers required to display reviews that are unrelated to their products or services. A particular seller's customer service, delivery, returns, and exchanges are related to its products and services.

(iii) Assume now that each product page starts with a glowing five-star review that is labeled as ''the most helpful review.'' Labeling the review as the most helpful suggests it was voted most helpful by consumers visiting the website. If the initial review on each such page was selected by the retailer and was not selected as the most helpful review by other consumers, labeling it as the most helpful would be deceptive.

(9) *Example 9.* A manufacturer offers to pay genuine purchasers $20 each to write positive reviews of its products on third-party review websites. Such reviews are deceptive even if the payment is disclosed because their positive nature is required by, rather than being merely influenced by, the payment. If, however, the manufacturer

did not require the reviews to be positive and the reviewers understood that there were no negative consequences from writing negative reviews, a clear and conspicuous disclosure of the material connection would be appropriate. (*See* Example 6).

(10) *Example 10.* (i) In an attempt to coerce them to delete their reviews, a manufacturer threatens consumers who post negative reviews of its products to third-party review websites, with physical threats, with the disclosure of embarrassing information, with baseless lawsuits (such as actions for defamation that challenge truthful speech or matters of opinion), or with lawsuits it actually does not intend to file. Such threats amount to an unfair or deceptive practice because other consumers would likely be deprived of information relevant to their decision to purchase or use the products, or be misled as to purchasers' actual opinions of the product.[2]

(ii) Assume now that one of the third-party review websites has a reporting mechanism that allows businesses to flag suspected fake reviews. The manufacturer routinely flags negative reviews of its products as fake without a reasonable basis for believing that they actually are fake, resulting in truthful reviews being removed from the website. This misuse of the reporting option is an unfair or deceptive practice.

(11) *Example 11.* A marketer contacts recent online, mail-order, and in-store purchasers of its products and asks them to provide feedback to the marketer. The marketer then invites purchasers who give very positive feedback to post online reviews of the products on third-party websites. Less pleased and unhappy purchasers are simply thanked for their feedback. Such a practice may be an unfair or deceptive practice if it results in the posted reviews being substantially more positive than if the marketer had not engaged in the practice. If, in the alternative, the marketer had simply invited all recent purchasers to provide feedback on third-party websites, the solicitation would not have been unfair or deceptive, even if it had expressed its hope for positive reviews.

§ 255.3 Expert endorsements.

(a) Whenever an advertisement represents, expressly or by implication, that the endorser is an expert with respect to the endorsement message, then the endorser's qualifications must in fact give the endorser the expertise that the endorser is represented as possessing with respect to the endorsement.

(b) Although an expert may, in endorsing a product, take into account factors not within the endorser's expertise (such as taste or price), the endorsement must be supported by an actual exercise of the expertise that the expert is represented as possessing in evaluating product features or characteristics which are relevant to an ordinary consumer's use of or experience with the product. This evaluation must have included an examination or testing of the product at least as extensive as someone with the same degree of represented expertise would normally need to conduct in order to support the conclusions presented in the endorsement. To the extent that the advertisement implies that the endorsement was based upon a comparison to another product or other products, such comparison must have been included in the expert's evaluation; and as a result of such comparison, the expert must have concluded that, with respect to those features on which the endorser is represented to be an expert and which are relevant and available to an ordinary consumer, the endorsed product is at least equal overall to the competitors' products. Moreover, where the net impression created by the endorsement is that the advertised product is superior to other products with respect to any such feature or features, then the expert must in fact have found such superiority. (*See* § 255.1(e) regarding the liability of endorsers.)

(c) Examples:

(1) *Example 1.* An endorsement of a particular automobile by one described as an ''engineer'' implies that the endorser's professional training and experience are such that the endorser is well acquainted with the design and performance of automobiles. If the endorser's field is, for example, chemical engineering, the endorsement would be deceptive.

(2) *Example 2.* An endorser of a hearing aid is simply referred to as a doctor during the course of an advertisement. The ad likely implies that the endorser has expertise in the area of hearing, as would be the case if the endorser is a medical doctor with substantial experience in audiology or a non-medical doctor with a Ph.D. or Au.D. in audiology. A doctor without substantial experience in the area of hearing might be able to endorse the product if the advertisement clearly and conspicuously discloses the nature and limits of the endorser's expertise.

(3) *Example 3.* A manufacturer of automobile parts advertises that its products are approved by the ''American Institute of Science.'' From its name, consumers would infer that the ''American Institute of Science'' is a bona fide independent testing organization with expertise in judging automobile parts and that, as such, it would not approve any automobile part without first testing its performance by means of valid scientific methods. If the American Institute of Science is not such a bona fide independent testing organization (*e.g.,* if it was established and operated by an automotive parts manufacturer), the endorsement would be deceptive. Even if the American Institute of Science is an independent bona fide expert testing organization, the endorsement may nevertheless be deceptive unless the Institute has conducted valid scientific tests of the advertised products and the test results support the endorsement message.

(4) *Example 4.* A manufacturer of a non-prescription drug product represents that its product has been selected over competing products by a large metropolitan hospital. The hospital has selected the product because the manufacturer, unlike its competitors, has packaged each dose of the product separately. This package form is not generally available to the public. Under the circumstances, the endorsement would be deceptive because the basis for the hospital's choice—convenience of packaging—is neither relevant nor available to consumers, and the basis for the hospital's decision is not disclosed to consumers.

(5) *Example 5.* A person who is identified as the president of a commercial ''home cleaning service'' states in a television advertisement for a particular brand of cleanser that the service uses that brand instead of its leading competitors because of its performance. Because cleaning services extensively use cleansers in the course of their business, the ad likely conveys that the president has knowledge superior to that of ordinary consumers. Accordingly, the president's statement will be deemed to be an expert endorsement. The service must, of course, actually use the endorsed cleanser. In addition, because the advertisement implies that the cleaning service has experience with a reasonable number of leading competitors' brands available to consumers, the service must, in fact, have such experience, and have determined, based on its expertise, that the endorsed product's cleaning ability is at least equal (or superior, if such is the net impression conveyed by

[2] The Consumer Review Fairness Act makes it illegal for companies to include standardized contract provisions that threaten or penalize people for posting honest reviews. 15 U.S.C. 45b.

the advertisement) to that of the leading competitors' products available to consumers. Because in this example the cleaning service's president makes no mention that the endorsed cleanser was ''chosen,'' ''selected,'' or otherwise evaluated in side-by-side comparisons against its competitors, it is sufficient if the service has relied solely upon its accumulated experience in evaluating cleansers without having performed side-by-side or scientific comparisons.

(6) *Example 6.* A medical doctor states in an advertisement for a drug that the product will safely allow consumers to lower their cholesterol by 50 points. If the materials the doctor reviewed were merely letters from satisfied consumers or the results of a rodent study, the endorsement would likely be deceptive because those materials are not the type of scientific evidence that others with the represented degree of expertise would consider adequate to support this conclusion about the product's safety and efficacy. Under such circumstances, both the advertiser and the doctor would be liable for the doctor's misleading representation. (*See* § 255.1(d) and (e))

§ 255.4 Endorsements by organizations.

(a) Endorsements by organizations, especially expert ones, are viewed as representing the judgment of a group whose collective experience exceeds that of any individual member, and whose judgments are generally free of the sort of subjective factors that vary from individual to individual. Therefore, an organization's endorsement must be reached by a process sufficient to ensure that the endorsement fairly reflects the collective judgment of the organization. Moreover, if an organization is represented as being expert, then, in conjunction with a proper exercise of its expertise in evaluating the product under § 255.3, it must utilize an expert or experts recognized as such by the organization or standards previously adopted by the organization and suitable for judging the relevant merits of such products. (*See* § 255.1(e) regarding the liability of endorsers.)

(b) Examples:

(1) *Example 1.* A mattress manufacturer advertises that its product is endorsed by a chiropractic association. Because the association would be regarded as expert with respect to judging mattresses, its endorsement must be supported by an evaluation by an expert or experts recognized as such by the organization, or by compliance with standards previously adopted by the organization and aimed at measuring the performance of mattresses in general and not designed with the unique features of the advertised mattress in mind.

(2) *Example 2.* A trampoline manufacturer sets up and operates what appears to be a trampoline review website operated by an independent trampoline institute. The site reviews the manufacturer's trampolines, as well as those of competing manufacturers. Because the website falsely appears to be independent, it is deceptive. (*See* § 255.5.)

(3) *Example 3.* (i) A third-party company operates a wireless headphone review website that provides rankings of different manufacturers' wireless headphones from most recommended to least recommended. The website operator accepts money from manufacturers in exchange for higher rankings of their products. Regardless of whether the website makes express claims of objectivity or independence, such paid-for rankings are deceptive and the website operator is liable for the deception. A headphone manufacturer who pays for a higher ranking on the website may also be held liable for the deception. A disclosure that the website operator receives payments from headphone manufacturers would be inadequate because the payments actually determine the headphones' relative rankings. If, however, the review website does not take payments for higher rankings, but receives payments from some of the headphone manufacturers, such as for affiliate link referrals, it should clearly and conspicuously disclose that it receives such payments. (*See* § 255.5(k)(11))

(ii) Assume that the headphone review website operator uses a ranking methodology that results in higher rankings for products whose sellers have a relationship to the operator because of those relationships. The use of such a methodology is also misleading.

§ 255.5 Disclosure of material connections.

(a) When there exists a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement, and that connection is not reasonably expected by the audience, such connection must be disclosed clearly and conspicuously. Material connections can include a business, family, or personal relationship. They can include monetary payment or the provision of free or discounted products (including products unrelated to the endorsed product) to an endorser, regardless of whether the advertiser requires an endorsement in return. Material connections can also include other benefits to the endorser, such as early access to a product or the possibility of being paid, of winning a prize, or of appearing on television or in other media promotions. Some connections may be immaterial because they are too insignificant to affect the weight or credibility given to endorsements. A material connection needs to be disclosed when a significant minority of the audience for an endorsement does not understand or expect the connection. A disclosure of a material connection does not require the complete details of the connection, but it must clearly communicate the nature of the connection sufficiently for consumers to evaluate its significance.

(b) Examples:

(1) *Example 1.* A drug company commissions research on its product by an outside organization. The drug company determines the overall subject of the research (*e.g.,* to test the efficacy of a newly developed product) and pays a substantial share of the expenses of the research project, but the research organization determines the protocol for the study and is responsible for conducting it. A subsequent advertisement by the drug company mentions the research results as the ''findings'' of that research organization. Although the design and conduct of the research project are controlled by the outside research organization, the weight consumers place on the reported results could be materially affected by knowing that the advertiser had funded the project. Therefore, the advertiser's payment of expenses to the research organization should be disclosed in the advertisement.

(2) *Example 2.* A film star endorses a particular food product in a television commercial. The endorsement regards only points of taste and individual preference. This endorsement must, of course, comply with § 255.1; but, regardless of whether the star's compensation for the commercial is a $1 million cash payment or a royalty for each product sold by the advertiser during the next year, no disclosure is required because such payments likely are ordinarily expected by viewers.

(3) *Example 3.* (i) During an appearance by a well-known professional tennis player on a television talk show, the host comments that the past few months have been the best of the player's career and during this time the player has risen to their highest level ever in the rankings. The player responds by attributing that

improvement to seeing the ball better ever since having laser vision correction surgery at a specific identified clinic. The athlete continues talking about the ease of the procedure, the kindness of the clinic's doctors, the short recovery time, and now being able to engage in a variety of activities without glasses, including driving at night. The athlete does not disclose having a contractual relationship with the clinic that includes payment for speaking publicly about the surgery. Consumers might not realize that a celebrity discussing a medical procedure in a television interview has been paid for doing so, and knowledge of such payments would likely affect the weight or credibility consumers give to the celebrity's endorsement. Without a clear and conspicuous disclosure during the interview that the athlete has been engaged as a spokesperson for the clinic, this endorsement is likely to be deceptive. A disclosure during the show's closing credits would not be clear and conspicuous. Furthermore, if consumers are likely to take away from the interview that the athlete's experience is typical of those who undergo the same procedure at the clinic, the advertiser must have substantiation for that claim.

(ii) Assume that the tennis player instead touts the results of the surgery—mentioning the clinic by name—in the player's social media post. Consumers might not realize that the athlete is a paid endorser, and because that information might affect the weight consumers give to the tennis player's endorsement, the relationship with the clinic should be disclosed—regardless of whether the clinic paid the athlete for that particular post. It should be disclosed even if the relationship involves no payments but only the tennis player getting the laser correction surgery for free or at a significantly reduced cost.

(iii)(A) Assume that the clinic reposts the tennis player's social media post to its own social media account and that the player's original post either—

(*1*) Did not have a clear and conspicuous disclosure, or

(*2*) Had such a disclosure that does not appear clearly and conspicuously in the repost.

(B) Given the nature of the endorsement (*i.e.,* a personally created statement from the tennis player's social media account), the viewing audience of the clinic's social media account would likely reasonably not expect the tennis player to be compensated. The clinic should clearly and conspicuously disclose its relationship to the athlete in its repost.

(iv) Assume that during the appearance on the television talk show, the tennis player is wearing clothes bearing the insignia of an athletic wear company with which the athlete also has an endorsement contract. Although this contract requires wearing the company's clothes not only on the court but also in public appearances, when possible, the athlete does not mention the clothes or the company during the appearance on the show. No disclosure is required because no representation is being made about the clothes in this context.

(4) *Example 4.* (i) A television ad for an anti-snoring product features a physician who says, ''I have seen dozens of products come on the market over the years, and in my opinion, this is the best ever.'' Consumers would expect the physician to be reasonably compensated for appearing in the ad. Consumers are unlikely, however, to expect that an expert endorser like the physician receives a percentage of gross product sales or owns part of the company, and either of these facts would likely materially affect the credibility that consumers attach to the endorsement. Accordingly, the advertisement should clearly and conspicuously disclose such a connection between the company and the physician.

(ii) Assume that the physician is instead paid to post about the product on social media. In that context, consumers might not expect that the physician was compensated and might be more likely than in a television ad to expect that the physician is expressing an independent, professional opinion. Accordingly, the post should clearly and conspicuously disclose the doctor's connection with the company.

(5) *Example 5.* (i) In a television advertisement, an actual patron of a restaurant, who is neither known to the public nor presented as an expert, is shown seated at the counter. The diner is asked for a ''spontaneous'' opinion of a new food product served in the restaurant. Assume, first, that the advertiser had posted a sign on the door of the restaurant informing all who entered that day that patrons would be interviewed by the advertiser as part of its television promotion of its new ''meat-alternative'' burger. A patron seeing such a sign might be more inclined to give a positive review of that item in order to appear on television. The advertisement should thus clearly and conspicuously inform viewers that the patrons on screen knew in advance that they might appear in a television advertisement because that information may materially affect the weight or credibility of the endorsement.

(ii) Assume, in the alternative, that the advertiser had not posted the sign and that patrons asked for their opinions about the burger did not know or have reason to believe until after their response that they were being recorded for use in an advertisement. No disclosure is required here, even if patrons were also told, after the interview, that they would be paid for allowing the use of their opinions in advertising.

(6) *Example 6.* (i) An infomercial producer wants to include consumer endorsements in an infomercial for an automotive additive product not yet on the market. The producer's staff selects several people who work as ''extras'' in commercials and asks them to use the product and report back, telling them that they will be paid a small amount if selected to endorse the product in the infomercial. Viewers would not expect that these ''consumer endorsers'' are actors who used the product in the hope of appearing in the commercial and receiving compensation. Because the advertisement fails to disclose these facts, it is deceptive.

(ii) Assume that the additive's marketer wants to have more consumer reviews appear on its retail website, which sells a variety of its automotive products. The marketer recruits ordinary consumers to get a free product (*e.g.,* a set of jumper cables or a portable air compressor for car tires) and a $30 payment in exchange for posting a consumer review of the free product on the marketer's website. The marketer makes clear and the reviewers understand that they are free to write negative reviews and that there are no negative consequences of doing so. Any resulting review that fails to clearly and conspicuously disclose the incentives provided to that reviewer is likely deceptive. When the resulting reviews must be positive or reviewers believe they might face negative consequences from posting negative reviews, a disclosure would be insufficient. (*See* §§ 255.2(d) and (e)(9).) Even if adequate disclosures appear in each incentivized review, the practice could still be deceptive if the solicited reviews contain star ratings that are included in an average star rating for the product and including the incentivized reviews materially increases that average star rating. If such a material increase occurs, the marketer likely would need to provide a clear and conspicuous disclosure to people who see the average star rating.

(7) *Example 7.* A woodworking influencer posts on-demand videos of

various projects. A tool manufacturer sends the influencer an expensive full-size lathe in the hope that the influencer would post about it. The woodworker uses the lathe for several products and comments favorably about it in videos. If a significant minority of viewers are likely unaware that the influencer received the lathe free of charge, the woodworker should clearly and conspicuously disclose receiving it for free, a fact that could affect the credibility that viewers attach to the endorsements. The manufacturer should advise the woodworker at the time it provides the lathe that this connection should be disclosed, and it should have reasonable procedures in place to monitor the influencer's postings for compliance and follow those procedures. (*See* § 255.1(d).)

(8) *Example 8.* An online community has a section dedicated to discussions of robotic products. Community members ask and answer questions and otherwise exchange information and opinions about robotic products and developments. Unbeknownst to this community, an employee of a leading home robot manufacturer has been posting messages on the discussion board promoting the manufacturer's new product. Knowledge of this poster's employment likely would affect the weight or credibility of the endorsements. Therefore, the poster should clearly and conspicuously disclose their relationship to the manufacturer. To limit its own liability for such posts, the employer should engage in appropriate training of employees. To the extent that the employer has directed such endorsements or otherwise has reason to know about them, it should also be monitoring them and taking other steps to ensure compliance. (*See* § 255.1(d).) The disclosure requirements in this example would apply equally to employees posting their own reviews of the product on retail websites or review platforms.

(9) *Example 9.* A college student signs up to be part of a program in which points are awarded each time a participant posts on social media about a particular advertiser's products. Participants can then exchange their points for prizes, such as concert tickets or electronics. These incentives would materially affect the weight or credibility of the college student's endorsements. They should be clearly and conspicuously disclosed, and the advertiser should take steps to ensure that these disclosures are being provided.

(10) *Example 10.* Great Paper Company sells photocopy paper with packaging that has a seal of approval from the No Chlorine Products Association, a non-profit third-party association. Great Paper Company paid the No Chlorine Products Association a reasonable fee for the evaluation of its product and its manufacturing process. Consumers would reasonably expect that marketers have to pay for this kind of certification. Therefore, there is no unexpected material connection between the company and the association, and the use of the seal without disclosure of the fee paid to the association would not be deceptive.

(11) *Example 11.* A coffee lover creates a blog that reviews coffee makers. The blogger writes the content independently of the marketers of the coffee makers but includes affiliate links to websites on which consumers can buy these products from their marketers. Whenever a consumer clicks on such a link and buys the product, the blogger receives a portion of the sale. Because knowledge of this compensation could affect the weight or credibility site visitors give to the blogger's reviews, the reviews should clearly and conspicuously disclose the compensation.

(12) *Example 12.* (i) Near the beginning of a podcast, the host reads what is obviously a commercial for a product. Even without a statement identifying the advertiser as a sponsor, listeners would likely still expect that the podcaster was compensated, so there is no need for a disclosure of payment for the commercial. Depending upon the language of the commercial, however, the audience may believe that the host is expressing their own views in the commercial, in which case the host would need to hold the views expressed. (*See* § 255.0(b).)

(ii) Assume that the host also mentions the product in a social media post. The fact that the host did not have to make a disclosure in the podcast has no bearing on whether there has to be a disclosure in the social media post.

(13) *Example 13.* An app developer gives a consumer a game app to review. The consumer clearly and conspicuously discloses in the review that they were given the app, which normally costs 99 cents, for free. That disclosure suggests that the consumer did not receive anything else for the review. If the app developer also gave the consumer $50 for the review, the mere disclosure that the app was free would be inadequate.

(14) *Example 14.* Speed Ways, an internet Service Provider, advertises that it has the ''Fastest ISP Service'' as determined by the ''Data Speed Testing Company.'' If Speed Ways commissioned and paid for the analysis of its and competing services, it should clearly and conspicuously disclose its relationship to the testing company because the relationship would likely be material to consumers in evaluating the claim. If the ''Data Speed Testing Company'' is not a bona fide independent testing organization with expertise in judging ISP speeds or it did not conduct valid tests that supported the endorsement message, the endorsement would also be deceptive. (*See* § 255.3(c)(3))

§ 255.6 Endorsements directed to children.

Endorsements in advertisements addressed to children may be of special concern because of the character of the audience. Practices that would not ordinarily be questioned in advertisements addressed to adults might be questioned in such cases.

By direction of the Commission.

April J. Tabor,

Secretary.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–989]

Schedules of Controlled Substances: Temporary Placement of Etizolam, Flualprazolam, Clonazolam, Flubromazolam, and Diclazepam in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Temporary amendment; temporary scheduling order.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this temporary order to schedule five synthetic benzodiazepine substances: etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam, in schedule I of the Controlled Substances Act. This action is based on a finding by the Administrator that the placement of these five substances in schedule I is necessary to avoid imminent hazard to the public safety. As a result of this order, the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances will be imposed on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical

analysis with, or possess) or propose to handle these five specified controlled substances.

DATES: This temporary scheduling order is effective July 26, 2023, until July 26, 2025. If this order is extended or made permanent, DEA will publish a document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Terrence L. Boos, Ph.D., Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION: The Drug Enforcement Administration (DEA) issues a temporary scheduling order [1] (in the form of a temporary amendment) to add the following five substances, including their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, to schedule I under the Controlled Substances Act (CSA):

- 4-(2-chlorophenyl)-2-ethyl-9-methyl-6*H*-thieno[3,2-*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine (commonly known as etizolam),
- 8-chloro-6-(2-fluorophenyl)-1-methyl-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine (commonly known as flualprazolam),
- 6-(2-chlorophenyl)-1-methyl-8-nitro-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine (commonly known as clonazolam),
- 8-bromo-6-(2-fluorophenyl)-1-methyl-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine (alternate chemical name: 8-bromo-6-(2-fluorophenyl)-1-methyl-4*H*-[1,2,4]triazolo[4,3-*a*][1,4]benzodiazepine and commonly known as, flubromazolam), and
- 7-chloro-5-(2-chlorophenyl)-1-methyl-1,3-dihydro-2*H*-benzo[*e*][1,4]diazepin-2-one (commonly known as diclazepam).

Legal Authority

The CSA provides the Attorney General, as delegated to the Administrator of DEA (Administrator) pursuant to 28 CFR 0.100, with the authority to temporarily place a substance in schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b), if the Administrator finds that such action is necessary to avoid an imminent hazard to public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1) while the substance is temporarily controlled under section 811(h), the Administrator may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under 21 U.S.C. 812, and if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355. 21 U.S.C. 811(h)(1); 21 CFR part 1308.

Background

The CSA requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of an intent to place a substance in schedule I of the CSA temporarily (*i.e.,* to issue a temporary scheduling order). 21 U.S.C. 811(h)(4). The Administrator transmitted the required notice to the Assistant Secretary for Health of HHS (Assistant Secretary),[2] by letter dated October 27, 2021, regarding etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam. The Assistant Secretary responded to this notice by letter dated January 3, 2022, and advised that, based on a review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications (INDs) or approved new drug applications (NDA) for etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam. The Assistant Secretary also stated that HHS had no objection to the temporary placement of these substances in schedule I.

DEA has taken into consideration the Assistant Secretary's comments as required by subsection 811(h)(4). DEA has found that the control of these five benzodiazepines in schedule I on a temporary basis is necessary to avoid an imminent hazard to the public safety. Etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam currently are not listed in any schedule under the CSA, and no exemptions or approvals under 21 U.S.C. 355 are in effect for these five benzodiazepine substances.

As required by 21 U.S.C. 811(h)(1)(A), DEA published a notice of intent (NOI) to temporarily schedule etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam on December 23, 2022. 87 FR 78887. That NOI discussed findings from DEA's three-factor analysis dated October 2022, which DEA made available on *www.regulations.gov.*

To find that temporarily placing a substance in schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator must consider three of the eight factors set forth in 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes any information indicating actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution of these substances. 21 U.S.C. 811(h)(3).

Substances meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1).

DEA's October 2022 three-factor analysis and the Assistant Secretary's January 3, 2022 letter are available in their entirety under the tab ''Supporting Documents'' of the public docket of this action at *www.regulations.gov.*

Five Benzodiazepine Substances: Etizolam, Flualprazolam, Clonazolam, Flubromazolam, and Diclazepam

The dramatic increase in trafficking and abuse associated with novel psychoactive substances (NPS) of the benzodiazepine class, also known as designer benzodiazepines, in the United States has become a national public health concern in recent years. The availability of NPS benzodiazepine substances in the illicit drug market continues to pose an imminent hazard to the public safety. The Centers for Disease Control and Prevention (CDC) highlights this issue in their Morbidity and Mortality Weekly Report (MMWR) published on August 27, 2021.[3] CDC indicated that from April 2019 to June 2020 prescription and illicit benzodiazepine-involved overdose deaths increased by 21.8 percent and 519.6 percent respectively. Additionally, benzodiazepines were involved in nearly 7,000 overdose

[1] Though DEA has used the term ''final order'' with respect to temporary scheduling orders in the past, this order adheres to the statutory language of 21 U.S.C. 811(h), which refers to a ''temporary scheduling order.'' No substantive change is intended.

[2] The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

[3] Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report: Trends in Nonfatal and Fatal Overdoses Involving Benzodiazepines—38 States and the District of Columbia, 2019–2020. Vol. 70, No. 34. August 27, 2021.

deaths in 23 states from January 2019 to June 2020, accounting for 17 percent of all drug overdose deaths. Adverse health effects associated with the abuse of such substances, their continued evolution, and increased popularity of these substances have been a serious concern in recent years.

The increase in the co-use of opioids with designer benzodiazepines has become a particular concern as the United States continues to experience an unprecedented epidemic of opioid misuse and abuse.[4] CDC's 2021 MMWR further states that between January and June 2020, 92.7 percent of benzodiazepine-involved deaths also involved opioids and 66.7 percent involved illicitly manufactured fentanyl. The combination of benzodiazepines with opioids substantially enhances the potential for lethality. Etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam are benzodiazepine substances recently identified on the illicit drug market in the United States.

The abuse of etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam has been associated with fatalities in recent years in the United States. The positive identification of these five substances in post-mortem cases is a serious concern to the public safety. Additionally, law enforcement data indicate that the substances at issue here have significant presence in the illicit drug market found in the United States. In light of the law enforcement encounters and fatalities associated with the abuse of etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam, these substances pose an imminent hazard to public safety.

Available data and information for etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam, summarized below, indicate that these substances have high potential for abuse, no currently accepted medical use in treatment in the United States, and lack of accepted safety for use under medical supervision. DEA's three-factor analysis is available in its entirety under ''Supporting and Related Material'' of the public docket for this action at *www.regulations.gov* under Docket Number DEA–989.

Factor 4. History and Current Pattern of Abuse

The chemical synthesis of etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam was previously reported in the scientific literature; however, the research did not lead to any medically approved products in the United States. Since 2012, synthetic drugs belonging to the benzodiazepine class have begun to emerge in the illicit drug market as evidenced by the identification of these drugs in forensic drug exhibits reported to the National Forensic Laboratory Information System (NFLIS-Drug)[5] and toxicology samples. Beginning in 2012, etizolam emerged on the illicit synthetic drug market as evidenced by its identification in drug seizures in the United States.

In recent years, there has been a rise in the recreational use of etizolam. As evidenced by their identification in NFLIS-Drug, diclazepam emerged in the United States' illicit drug market in 2014, flubromazolam and clonazolam in 2015, and flualprazolam in 2017. While these substances are not approved for medical use in the United States, etizolam is approved for medical use in Italy, India, and Japan.[6] In a letter dated January 3, 2022, the Assistant Secretary informed DEA that there are no INDs or FDA-approved NDAs for etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam in the United States. Hence, there are no legitimate channels for these substances as marketed drug products in the United States. These five benzodiazepine substances are likely to be abused in the same manner as other sedative hypnotics. They have been identified in tablet form, as white to beige powders, or in liquid forms, typically of unknown purity or concentration.

Based on data from NFLIS-Drug, law enforcement often encounters etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam in counterfeit pills, liquid, or powder form. Substances often found in combination with some of these benzodiazepines include substances of abuse such as heroin (schedule I), fentanyl (schedule II), substances structurally related to fentanyl, other benzodiazepines (both FDA-approved schedule IV benzodiazepines and other novel non-controlled benzodiazepines), and tramadol (schedule IV). Evidence suggests that individuals are using these substances to obtain ''legal highs''[7] or to self-medicate. Information gathered from case histories and autopsy findings shows that deaths involving etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam were predominantly associated with poly-drug use.

Factor 5. Scope, Duration, and Significance of Abuse

Etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam are novel benzodiazepines and evidence suggests they are abused for their sedative effects (see Factor 6). In death investigations involving polysubstance use, the co-appearance of benzodiazepines and opioids in toxicological analysis was common. Between August 2019 and January 2020, flualprazolam and etizolam were identified in seven and six postmortem blood specimens, respectively, out of 18 deaths associated with the abuse of isotonitazene, a schedule I opioid that was recently controlled.[8] These cases corresponded to four states—Illinois (9), Indiana (7), Minnesota (1), and Wisconsin (1). Most (12) of the decedents were male. The ages ranged from 24 to 66 years old with an average age of 41 years.[9]

In another recent publication, 20 forensic postmortem cases were reviewed and analyzed for the presence of metonitazine, NPS benzodiazepines, and opioids. Clonazolam was positively identified in four cases, etizolam in two cases, flualprazolam in two cases, and

[4] Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report: Trends in Nonfatal and Fatal Overdoses Involving Benzodiazepines—38 States and the District of Columbia, 2019–2020. Vol. 70, No. 34. August 27, 2021.

[5] NFLIS-Drug represents an important resource in monitoring illicit drug trafficking, including the diversion of legally manufactured pharmaceuticals into illegal markets. NFLIS-Drug is a comprehensive information system that includes data from forensic laboratories that handle more than 96 percent of an estimated 1.0 million distinct annual state and local drug analysis cases. NFLIS-Drug includes drug chemistry results from completed analyses only. While NFLIS-Drug data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. *See* 76 FR 77330, 77332, Dec. 12, 2011.

[6] Although there is no evidence suggesting that etizolam, flualprazolam, clonazolam, flubromazolam, or diclazepam has a currently accepted medical use in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by FDA, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated: i. The drug's chemistry must be known and reproducible; ii. there must be adequate safety studies; iii. there must be adequate and well-controlled studies proving efficacy; iv. the drug must be accepted by qualified experts; and v. the scientific evidence must be widely available. 57 FR 10499 (1992), pet. for rev. denied, *Alliance for Cannabis Therapeutics* v. *DEA,* 15 F.3d 1131, 1135 (D.C. Cir. 1994).

[7] Substances used as ''legal highs'' are psychoactive substances that are not controlled under the CSA, but can be used to obtain a desired psychoactive effect.

[8] 85 FR 51342 and 86 FR 60761.

[9] Krotulski AJ, Papsun DM, Kacinko SL, and Logan BK. Isotonitazene Quantitation and Metabolite Discovery in Authentic Forensic Casework. Journal of Analytical Toxicology, 2020, 44(6):521–530.

pyrazolam in one case.[10] Law enforcement encounters of etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam as reported to NFLIS-Drug include 34,781 drug reports since 2014 (queried 01/13/2022). NFLIS-Drug registered three encounters of etizolam in 2012 (first year of encounter) and 3,022 reports in 2021. Flualprazolam was first encountered in 2017 when one report was identified in NFLIS-Drug, and then in 2021, 1,305 encounters were reported. A similar trend was seen with clonazolam. During 2015 (its first year of encounter), 57 cases were reported in NFLIS-Drug, while 3,994 drug reports were identified in 2021. NFLIS-Drug registered five diclazepam encounters in 2014 (its first year of encounter) and 54 encounters in 2021. Flubromazolam encounters totaled 14 in 2015 (its first year of encounter) and 414 in 2021.

The population likely to abuse etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam appears to be the same as those abusing prescription benzodiazepines, barbiturates, and other sedative hypnotic substances. This is evidenced by drug user reports associated with these substances. Because abusers of etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam are likely to obtain these substances through unregulated sources, the identity, purity, and quantity of these substances are uncertain and inconsistent, thus posing significant adverse health risks to the end user.

The misuse and abuse of benzodiazepines have been demonstrated and are well-characterized.[11] According to the most recent data from the National Survey on Drug Use and Health (NSDUH),[12] as of 2020, an estimated 4.8 million people aged 12 years or older misused prescription benzodiazepines in the past year. This included 1.1 million young adults aged 18 to 25, 3.5 million adults aged 26 or older, and 157,000 adolescents aged 12 to 17. This population abusing prescription benzodiazepines is likely to be at risk of abusing etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam. Individuals who initiate use of these five substances (*i.e.,* use a drug for the first time) are likely to be at risk of developing substance use disorder, overdose, and death at rates similar to that of other sedative hypnotics (*e.g.,* alprazolam, etc.). Law enforcement or toxicology reports demonstrate that the five substances at issue are being distributed and abused.

Factor 6. What, if Any, Risk There Is to the Public Health

The increase in benzodiazepine-related overdose deaths in the United States has been exacerbated recently by the availability of NPS benzodiazepines in the illicit drug market. Etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam have been described as derivatives of other known benzodiazepines, each possessing various degrees of potency. Evidence suggests these substances are being abused for their sedative/hypnotic effects (see DEA 3-Factor Analysis). Public health risks associated with the five substances at issue here relate to their pharmacological similarities with known benzodiazepines. Thus, risk to the public health is associated with adverse reactions in humans, which are expected to include CNS depressant-like effects, such as slurred speech, ataxia, altered mental state, and respiratory depression.

Etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam have been increasingly identified in toxicology reports, death investigations, and driving under the influence of drugs (DUID) cases since their first appearance in law enforcement seizures. According to the Center for Forensic Science Research and Education (CFSRE), a non-profit organization in collaboration with the Department of Justice and CDC between 2020 and 2021, etizolam was the most identified NPS benzodiazepine accounting for 697 total toxicology cases in 2020, many of which were co-identified with fentanyl. In 2021, etizolam was identified in 1,012 toxicology cases, while flualprazolam, clonazolam, flubromazolam, and diclazepam were associated with 432, 331, 170, and four toxicology cases, respectively (CSFRE Quarterly Trend Reports: NPS Benzodiazepines in the United States).

Death investigations associated with four of the five NPS benzodiazepines at issue here have increased in recent years. In a 2021 publication by the Orange County Crime Lab in Santa Ana, California, flualprazolam was identified as serving a contributory role in the death of 13 of 24 cases analyzed in the study.[13] In another recently published study, between August 2019 and January 2020, flualprazolam and etizolam were identified in seven and six postmortem blood specimens respectively, out of 18 deaths associated with the abuse of isotonitazene, a schedule I opioid.[14] Then, a study published in 2021 which compiled data from 254 reports published between 2008 and 2021, identified: 33 deaths associated with etizolam, 20 flualprazolam-related deaths, six emergency department (ED) visits associated with clonazolam, 14 flubromazolam-related ED visits, and one death, 12 DUID cases, and four ED visits associated with diclazepam.[15] Additionally, in 2020, the European Monitoring Centre for Drugs and Drug Addiction reported 34 deaths associated with diclazepam use, which were determined through the analysis of biological samples.[16] Furthermore, the National Poison Data System reported that between January 2014 and December 2017, clonazolam was the second most common benzodiazepine associated with poison control center calls, accounting for 50 incidents.[17]

Impaired driving is another risk factor associated with the use and abuse of etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam. In a recent published report from the

[10] Krotulski AJ, Papsun DM, Walton SE, and Logan BK. Metonitazene in the United States-Forensic toxicology assessment of a potent new synthetic opioid using liquid chromatography mass spectrometry. Drug Testing Analysis, 2021, 13(10):1697–1711.

[11] Votaw VR, Geyer R, Rieselbach MM, and McHugh RK. The epidemiology of benzodiazepine misuse: A systematic review. Drug Alcohol Dependence, 2019, 200:95–114.

[12] The National Survey on Drug Use and Health (NSDUH), formerly known as the National Household Survey on Drug Abuse (NHSDA), is conducted annually by the Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA). It is the primary source of estimates of the prevalence and incidence of nonmedical use of pharmaceutical drugs, illicit drugs, alcohol, and tobacco use in the United States. The survey is based on a nationally representative sample of the civilian, non-institutionalized population 12 years of age and older. The survey excludes homeless people who do not use shelters, active military personnel, and residents of institutional group quarters such as jails and hospitals. The NSDUH provides yearly national and state level estimates of drug abuse, and includes prevalence estimates by lifetime (*i.e.,* ever used), past year, and past month abuse or dependence. The 2020 NSDUH annual report is available at *https://www.samhsa.gov/data/* (last accessed February 8, 2022).

[13] Ha HH and Mata DC. Flualprazolam distribution in postmortem samples. Journal of Forensic Sciences, 2022, 67(1): 297–308.

[14] Krotulski AJ, Papsun DM, Kacinko SL, and Logan BK. Isotonitazene Quantitation and Metabolite Discovery in Authentic Forensic Casework. Journal of Analytical Toxicology, 2020, 44(6): 521–530.

[15] Brunetti P, Giorgetti R, Tagliabracci A, Huestis MA, Busardò FP. Designer Benzodiazepines: A Review of Toxicology and Public Health Risks. Pharmaceuticals (Basel). 2021 Jun 11;14(6):560.

[16] EMCDDA (2020). EMCDDA response to WHO request for information on the new psychoactive substances, eutylone, α-PHiP, 4F-furanylfentanyl, 2-methyl-AP–237, and, diclazepam.

[17] Carpenter JE, Murray BP, Dunkley C, Kazzi ZN, Gittinger MH. Designer benzodiazepines: a report of exposures recorded in the National Poison Data System, 2014–2017. Clin Toxicol (Phila). 2019 Apr;57(4):282–286.

Sedgwick County Regional Forensic Science Center in Wichita, Kansas, 12 DUID case samples were analyzed. Etizolam was positively identified in three cases, while flubromazolam was identified in nine of these cases.[18] In a 2021 publication, similar involvement of flubromazolam in drug-impaired driving was reported in Canada where flubromazolam was detected in 10 percent of 113 case samples.[19] Diclazepam has also been implicated in DUID cases domestically and internationally. In a Norwegian study conducted between July 2013 and May 2016, diclazepam was identified in 15 of 77 analyzed samples taken from impaired drivers and individuals involved in other criminal offenses. Then, in 2019, a study of Norwegian drivers was conducted using 575 samples taken predominantly from intoxicated drivers and individuals who committed other criminal offenses.[20] Notably, 334 samples were found to contain diclazepam. Additionally, in a 2021 publication from Orange County Crime Laboratory in Santa Ana, California, researchers identified 22 samples that tested positive for flualprazolam in samples obtained from DUID investigations between August 2018 and September 2020.[21]

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information summarized above, the uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis, possession, and/or abuse of etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam pose imminent hazards to public safety. DEA is not aware of any currently accepted medical uses for these substances in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1), may only be placed in schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam indicate that these five synthetic benzodiazepine substances have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision.

As required by 21 U.S.C. 811(h)(4), the Administrator transmitted to the Assistant Secretary for Health, via a letter dated October 27 2021, notice of her intent to place etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam in schedule I on a temporary basis. HHS had no objection to the temporary placement of these substances in schedule I.

DEA subsequently published a NOI on December 23, 2022. 87 FR 78887.

Conclusion

In accordance with 21 U.S.C. 811(h)(1) and (3), the Administrator considered available data and information, herein set forth the grounds for her determination that it is necessary to temporarily place etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam in schedule I of the CSA and finds that such placement is necessary to avoid an imminent hazard to the public safety.

This temporary order scheduling these substances will be effective on the date the order is published in the **Federal Register** and remain in effect for two years, with a possible extension of one year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2).

The CSA sets forth specific criteria for scheduling drugs or other substances. Permanent scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done ''on the record after opportunity for a hearing'' conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The permanent scheduling process of formal rulemaking affords interested parties with an appropriate process and the government any additional relevant information needed to make determinations. Final decisions that conclude the permanent scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Requirements for Handling

Upon the effective date of this temporary order, etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam will be subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, possession of, and engagement in research and conduct of instructional activities or chemical analysis with, schedule I controlled substances, including the following:

1. *Registration.* Any person who handles (possesses, manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with) or desires to handle, etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam must be registered with DEA to conduct such activities, pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312, as of July 26, 2023. Any person who currently handles etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam and is not registered with DEA must submit an application for registration and may not continue to handle etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam as of July 26, 2023, unless DEA has approved that application for registration pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. Retail sales of schedule I controlled substances to the general public are not allowed under the CSA. Possession of any quantity of these substances in a manner not authorized by the CSA on or after July 26, 2023 is unlawful, and those in possession of any quantity of these substances may be subject to prosecution pursuant to the CSA.

2. *Disposal of stocks.* Any person who does not desire or is unable to obtain a schedule I registration to handle etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam must surrender all currently held quantities of these five substances.

3. *Security.* Etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam are subject to schedule I security requirements and must be handled in accordance with 21 CFR 1301.71–1301.93, as of July 26, 2023.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of etizolam, flualprazolam,

[18] Rohrig TP, Osawa KA, Baird TR, Youso KB. Driving Impairment Cases Involving Etizolam and Flubromazolam. J Anal Toxicol. 2021 Feb 6;45(1):93–98.

[19] Vaillancourt L, Viel E, Dombrowski C, Desharnais B, Mireault P. Drugs and driving prior to cannabis legalization: A 5-year review from DECP (DRE) cases in the province of Quebec, Canada. Accid Anal Prev. 2021 Jan;149:105832.

[20] Heide G, Høiseth G, Middelkoop G, and Øiestad ÅML. Blood concentrations of designer benzodiazepines: Relation to impairment and findings in forensic cases. Journal of Analytical Toxicology, 2020, 44(8): 905–914.

[21] Ha HH and Mata DC. Flualprazolam distribution in postmortem samples. Journal of Forensic Sciences, 2022, 67(1): 297–308.

clonazolam, flubromazolam, and diclazepam must comply with 21 U.S.C. 825 and 958(e) and 21 CFR part 1302. Current DEA registrants will have 30 calendar days from July 26, 2023 to comply with all labeling and packaging requirements.

5. *Inventory.* Every DEA registrant who possesses any quantity of etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam on the effective date of this order must take an inventory of all stocks of these substances on hand pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. Current DEA registrants will have 30 calendar days from the effective date of this order to comply with all inventory requirements. After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam) on hand on a biennial basis pursuant to 21 U.S.C. 827 and 958 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records.* All DEA registrants must maintain records with respect to etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam pursuant to 21 U.S.C. 827 and 958(e) and in accordance with 21 CFR parts 1304, 1312, and 1317, and section 1307.11. Current DEA registrants authorized to handle these five substances shall have 30 calendar days from the effective date of this order to comply with all recordkeeping requirements.

7. *Reports.* All DEA registrants must submit reports with respect to etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304, 1312, and 1317, and sections 1301.74(c) and 1301.76(b), as of July 26, 2023. Manufacturers and distributors must also submit reports regarding these five substances to the Automation of Reports and Consolidated Order System pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312.

8. *Order Forms.* All DEA registrants who distribute etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam must comply with order form requirements pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305 as of July 26, 2023.

9. *Importation and Exportation.* All importation and exportation of etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312 as of July 26, 2023.

10. *Quota.* Only DEA-registered manufacturers may manufacture etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303, as of July 26, 2023.

11. *Liability.* Any activity involving etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam not authorized by or in violation of the CSA, occurring as of July 26, 2023, is unlawful and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Matters

The CSA provides for expedited temporary scheduling actions where necessary to avoid imminent hazards to the public safety. Under 21 U.S.C. 811(h), the Administrator, as delegated by the Attorney General, may, by order, temporarily schedule substances in schedule I. Such orders may not be issued before the expiration of 30 days from: (1) The publication of a notice in the **Federal Register** of the intent to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary for Health of HHS, as delegated by the Secretary of HHS. 21 U.S.C. 811(h)(1).

Inasmuch as section 811(h) directs that temporary scheduling actions be issued by order (as distinct from a rule) and sets forth the procedures by which such orders are to be issued, including the requirement to publish in the **Federal Register** a notice of intent, the notice-and-comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, which are applicable to rulemaking, do not apply to this temporary scheduling order. The APA expressly differentiates between orders and rules, as it defines an ''order'' to mean a ''final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency *in a matter other than rule making.*'' 5 U.S.C. 551(6) (emphasis added). The specific language chosen by Congress indicates its intent that DEA issue *orders* instead of proceeding by rulemaking when temporarily scheduling substances. Given that Congress specifically requires the Administrator (as delegated by the Attorney General) to follow rulemaking procedures for *other* kinds of scheduling actions, *see* 21 U.S.C. 811(a), it is noteworthy that, in section 811(h), Congress authorized the issuance of temporary scheduling actions by order rather than by rule.

Alternatively, even if this action was subject to section 553 of the APA, the Administrator finds that there is good cause to forgo its notice-and-comment requirements, as any further delays in the process for issuing temporary scheduling orders would be impracticable and contrary to the public interest given the manifest urgency to avoid imminent hazards to public safety.

Although DEA believes this temporary scheduling order is not subject to the notice-and-comment requirements of section 553 of the APA, DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Administrator took into consideration comments submitted by the Assistant Secretary in response to the notice that DEA transmitted to the Assistant Secretary pursuant to such subsection.

Further, DEA believes that this temporary scheduling action is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act. The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

In accordance with the principles of Executive Orders (E.O.) 12866 and 13563, this action is not a significant regulatory action. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866. E.O. 12866 classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan

programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. Because this is not a rulemaking action, this is not a significant regulatory action as defined in section 3(f) of E.O. 12866.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132 (Federalism), it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Signing Authority

This document of the Drug Enforcement Administration was signed on July 18, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraphs (h)(57) through (h)(61) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *

(57) 4-(2-chlorophenyl)-2-ethyl-9-methyl-6*H*-thieno[3,2-*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine, its salts, isomers, and salts of isomers (Other name: etizolam) 2780

(58) 8-chloro-6-(2-fluorophenyl)-1-methyl-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine, its salts, isomers, and salts of isomers (Other name: flualprazolam) 2785

(59) 6-(2-chlorophenyl)-1-methyl-8-nitro-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine, its salts, isomers, and salts of isomers (Other name: clonazolam) 2786

(60) 8-bromo-6-(2-fluorophenyl)-1-methyl-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine, its salts, isomers, and salts of isomers (Other name: flubromazolam) 2788

(61) 7-chloro-5-(2-chlorophenyl)-1-methyl-1,3-dihydro-2*H*-benzo[*e*][1,4]diazepin-2-one, its salts, isomers, and salts of isomers (Other name: diclazepam) 2789

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–15748 Filed 7–25–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9978]

RIN 1545–BQ08

Recapture of Certain Excess Employment Tax Credits Under COVID–19 Legislation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document sets forth the final regulations under sections 3111, 3131, 3132, 3134, and 3221 of the Internal Revenue Code (Code) issued under the authority granted by the Families First Coronavirus Response Act, the Coronavirus Aid, Relief, and Economic Security Act, and the American Rescue Plan Act of 2021. These final regulations authorize the assessment of any erroneous refund of the tax credits paid under sections 7001 and 7003 of the Families First Coronavirus Response Act (including any increases in those credits under section 7005 thereof), and section 2301 of the Coronavirus Aid, Relief, and Economic Security Act, as well as under sections 3131, 3132 (including any increases in those credits under section 3133), and 3134 of the Code.

DATES:

Effective date: These final regulations are effective on July 24, 2023.

Applicability date: For date of applicability, *see* §§ 31.3111–6(e), 31.3131–1(d), 31.3132–1(d), 31.3134–1(d), and 31.3221–5(e).

FOR FURTHER INFORMATION CONTACT: NaLee Park at 202–317–6798 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document sets forth amendments to the Employment Tax Regulations (26 CFR part 31) under sections 3111, 3131, 3132, 3133, 3134, and 3221.

The Families First Coronavirus Response Act (Families First Act), Public Law 116–127, 134 Stat. 178 (March 18, 2020), as amended and extended by the COVID-related Tax Relief Act of 2020 (Tax Relief Act), enacted as Subtitle B of Title II of Division N of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat.1182 (December 27, 2020), and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, 134 Stat. 281 (March 27, 2020), as amended and extended by the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act), enacted as Division EE of the Consolidated Appropriations Act, 2021, provided relief to taxpayers from economic hardships resulting from the Coronavirus Disease 2019 (COVID–19), including paid sick and family leave credits to eligible employers with respect to qualified leave wages paid for a period of leave taken beginning April 1, 2020, and ending March 31, 2021, and an employee retention credit (ERC) with respect to qualified wages paid after March 12, 2020, and before July 1, 2021, respectively. The American Rescue Plan Act of 2021 (ARP), Public Law 117–2, 135 Stat. 4 (March 11, 2021), provided additional COVID–19 relief with similar paid leave credits under sections 3131 through 3133 of the Code, enacted by section 9641 of the ARP, with respect to qualified leave wages paid for a period of leave taken beginning April 1, 2021, and ending September 30, 2021, and a substantially similar ERC under section 3134 of the Code, enacted by section 9651 of the ARP, with respect to qualified wages paid after June 30, 2021, and before January 1, 2022.[1]

[1] Section 80604 of the Infrastructure Investment and Jobs Act (Infrastructure Act), Public Law 117–68, 135 Stat. 429 (November 15, 2021) amended section 3134(n) of the Code to provide that the ERC under section 3134 applies only to wages paid after June 30, 2021, and before October 1, 2021 (or, in the case of wages paid by an eligible employer which is a recovery startup business, January 1, 2022). Therefore, the only type of employer eligible for the ERC for wages paid after September 30, 2021, and before January 1, 2022, is an employer that meets the definition of a recovery startup business under section 3134(c)(5). *See* Notice 2021–

I. Paid Sick and Family Leave Credits [2]

A. Families First Act, as Amended and Extended by the Tax Relief Act

The Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA), enacted as Divisions E and C of the Families First Act, respectively, generally required certain employers with fewer than 500 employees to provide up to 80 hours of paid sick leave for the care of the employees themselves or for others for certain COVID-related reasons specified in the statute, at specified daily and aggregate rates of pay, and up to 10 weeks of paid family and medical leave at two-thirds the employee's regular rate of pay, up to $200 per day and $10,000 in the aggregate if the employee was unable to work or telework because the employee was caring for a son or daughter whose school or place of care was closed or whose child care provider was unavailable due to certain circumstances related to COVID–19.

Sections 7001 and 7003 of the Families First Act generally provide that non-governmental employers subject to the paid leave requirements under EPSLA and EFMLEA are entitled to fully refundable tax credits to cover the wages paid for leave taken for those periods of time between April 1, 2020, and December 31, 2020, during which employees were unable to work or telework for specified reasons related to COVID–19, plus allocable qualified health plan expenses. These paid sick leave credits and paid family leave credits (collectively, paid sick and family leave credits) are allowed against the taxes imposed on employers by section 3111(a) of the Code (the Old-Age, Survivors, and Disability Insurance tax (social security tax)), first reduced by any credits claimed under section 3111(e) and (f), and section 3221(a) (the Railroad Retirement Tax Act Tier 1 tax), on all wages and compensation paid to all employees. Under section 7005 of the Families First Act, the qualified leave wages for which the credits are claimed are not subject to the taxes imposed on employers by sections 3111(a) and 3221(a) of the Code. In addition, section 7005 provides that the credits under sections 7001 and 7003 of the Families First Act are increased by the amount of the tax imposed by section 3111(b) of the Code (employer's share of the Hospital Insurance tax (Medicare tax)) on qualified leave wages.[3]

Although the requirement to provide employees with paid leave under EPSLA and EFMLEA expired on December 31, 2020, the paid sick and family leave credits were extended by the Tax Relief Act for qualified leave wages paid for periods of leave taken through March 31, 2021, that would have satisfied the requirements of EPSLA and EFMLEA.

B. ARP

The ARP added sections 3131 through 3133 of the Code, which provide refundable paid sick and family leave credits similar to those provided under the Families First Act. Sections 3131 through 3133 extend the paid sick and family leave credits to non-governmental employers with fewer than 500 employees and certain governmental entities [4] without regard to the number of employees that provided paid sick and family leave for specified reasons related to COVID–19 with respect to periods of leave beginning on April 1, 2021, through September 30, 2021. The paid sick and family leave credits under sections 3131 through 3133 are available to eligible employers that provided employees with paid leave that would have satisfied the requirements of EPSLA and EFMLEA, with certain modifications made pursuant to the ARP.

Under section 3131, a credit is available to eligible employers that paid qualified sick leave wages to an employee for up to 80 hours of leave provided during the period beginning April 1, 2021, and ending September 30, 2021, if the employee was unable to work or telework due to any of the COVID-related reasons specified in the statute. Under section 3132, a credit is available to eligible employers that paid qualified family leave wages to an employee for up to 12 weeks of paid family leave provided during the period beginning April 1, 2021, and ending September 30, 2021, if the employee was unable to work or telework due to any of the conditions for which eligible employers may provide COVID-related paid sick leave. Qualified family leave wages are two-thirds of the wages paid at the employee's regular rate of pay, up to a maximum of $200 per day and $12,000 in the aggregate.

The paid sick and family leave credits under sections 3131 and 3132 are allowed against the taxes imposed on employers under section 3111(b) and against so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), as applicable, on all wages and compensation paid to all employees, and any credit amounts in excess of these taxes are treated as an overpayment to be refunded under sections 6402(a) and 6413(b). *See* sections 3131(b)(4)(A), 3131(f)(1), 3132(b)(3)(A), and 3132(f)(1).

II. Employee Retention Credit [5]

A. CARES, as Amended and Extended by the Relief Act

Section 2301 of the CARES Act, as originally enacted, provides for the ERC for eligible employers, including tax-exempt organizations, that paid qualified wages, including certain health plan expenses, to some or all of their employees after March 12, 2020, and before January 1, 2021. The ERC, as originally enacted, is a fully refundable tax credit for employers equal to 50 percent of qualified wages. Section 2301(b)(1) of the CARES Act limits the amount of qualified wages with respect to any employee that may be taken into account to $10,000 for all calendar quarters in 2020. Therefore, the maximum credit amount with respect to each employee for all four calendar quarters in 2020 is $5,000. For employers that averaged more than 100 full-time employees during 2019, qualified wages are wages and compensation (including allocable qualified health plan expenses) paid to employees who were not providing

65, 2021–51 IRB 880, for guidance for employers that received an advance payment of the ERC or reduced tax deposits in anticipation of the credit for the fourth quarter of 2021 prior to the amendments made by the Infrastructure Act.

[2] Detailed information on the paid sick leave credits and paid family leave credits under the Families First Act, as amended by the Tax Relief Act, and under the ARP is provided in TD 9904, 85 FR 45514, and TD 9953, 86 FR 50637, respectively. Also see the *IRS.gov* website at: *Coronavirus Tax Relief for Businesses and Tax-Exempt Entities √ Internal Revenue Service (irs.gov).*

[3] The credit for the employer's share of Medicare tax does not apply to eligible employers that are subject to the Railroad Retirement Tax Act (RRTA) because under section 7005(a) of the Families First Act, qualified leave wages are not subject to Medicare tax under RRTA due to that section's reference to section 3221(a) of the Code, that refers to both social security tax and Medicare tax.

[4] Section 9641 of the ARP added sections 3131(f)(5) and 3132(f)(5) to the Code that extends paid sick and family leave credits to certain governmental employers (without regard to the number of employees). However, the credits are not allowed for the government of the United States, or any agency or instrumentality of the United States Government, except for an organization described in section 501(c)(1) of the Code and exempt from tax under section 501(a).

[5] Detailed information about the ERC under the CARES Act, as amended by the Relief Act, and under the ARP is provided in TD 9904 and TD 9953, respectively. For more information, see Notice 2021–20, 2021–11 IRB 922, Notice 2021–23, 2021–16 IRB 1113, Notice 2021–24, 2021–18 IRB 1122, Notice 2021–49, 2021–34 IRB 316, and Rev. Proc. 2021–33, 2021–34 IRB 327. Also see the *IRS.gov* website at: *Coronavirus Tax Relief for Businesses and Tax-Exempt Entities/Internal Revenue Service (irs.gov).*

services because operations were fully or partially suspended due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID–19 or due to a significant decline in gross receipts. For employers that averaged 100 full-time employees or fewer during 2019, qualified wages are wages and compensation (including allocable qualified health plan expenses) paid to any employee during the period operations were fully or partially suspended due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID–19 or due to a significant decline in gross receipts, regardless of whether their employees were providing services.

The ERC available under section 2301 of the CARES Act for a calendar quarter is allowed against the taxes imposed on employers by section 3111(a) of the Code, first reduced by any credits allowed under section 3111(e) and (f) and sections 7001 and 7003 of the Families First Act, and the taxes imposed under section 3221(a) of the Code that are attributable to the rate in effect under section 3111(a), first reduced by any credits allowed under sections 7001 and 7003 of the Families First Act, on the wages and compensation paid with respect to the employment of all the employees of the eligible employer for that calendar quarter.

Section 2301 of the CARES Act was subsequently amended by sections 206 and 207 of the Relief Act. Section 206 of the Relief Act adopted retroactive amendments and technical changes to section 2301 of the CARES Act for qualified wages paid after March 12, 2020, and before January 1, 2021, primarily expanding eligibility for certain employers to claim the credit. Section 207 of the Relief Act further amended section 2301 of the CARES Act to extend the application of the ERC to qualified wages paid after December 31, 2020, and before July 1, 2021, to modify the gross receipts test for calendar quarters in 2021, and to modify the calculation of the credit amount for qualified wages paid during that time. Under section 2301 of the CARES Act, as amended by section 207 of the Relief Act, the ERC is equal to 70 percent of qualified wages. The Relief Act also increased the amount of qualified wages that could be taken into account per employee to $10,000 per employee per calendar quarter in 2021. Therefore, the maximum credit amount with respect to each employee for any calendar quarter in 2021 is $7,000. Additionally, the threshold distinguishing small employers from large employers for purposes of applying certain criteria to determine eligibility for the credit was increased from 100 employees to 500 employees.

B. ARP and Infrastructure Act

Section 9651 of the ARP enacted section 3134 of the Code, effective for calendar quarters beginning after June 30, 2021, to provide an ERC for qualified wages paid after June 30, 2021, and before January 1, 2022. The ERC under section 3134 is substantially similar to the ERC under section 2301 of the CARES Act, though the ARP made some modifications including expanding the definition of eligible employer and the definition of qualified wages.[6] Additionally, the ERC available under section 3134 of the Code for a calendar quarter is allowed against the taxes imposed on employers under section 3111(b), first reduced by any credits allowed under sections 3131 and 3132, and the taxes imposed under section 3221(a) that are attributable to the rate in effect under section 3111(b), first reduced by any credits allowed under sections 3131 and 3132, on the wages and compensation paid with respect to the employment of all the employees of the eligible employer for that calendar quarter. Any credit amounts in excess of these taxes are treated as an overpayment to be refunded under sections 6402(a) and 6413(b). *See* section 3134(b)(3), 3134(c)(1).

The ERC is available to any employer that carried on a trade or business during a calendar quarter between June 30, 2021, and January 1, 2022, that met the requirements to be an eligible employer under section 3134(c)(2), which include experiencing a full or partial suspension of business operations due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID–19, experiencing a decline in gross receipts, or qualifying as a recovery startup business. *See* Notice 2021–49. Section 80604 of the Infrastructure Act amended section 3134(n) to provide that the ERC applies only to wages paid after June 30, 2021, and before October 1, 2021 (or, in the case of wages paid by an eligible employer that was a recovery startup business in the fourth quarter of 2021, January 1, 2022).[7]

III. Refundability of Credits

Sections 7001(b)(4) and 7003(b)(3) of the Families First Act provide that if the amount of the paid sick and family leave credits under these sections (including any increases in the credits under section 7005) for the period of leave taken from April 1, 2020 through March 31, 2021, exceeds the taxes imposed by section 3111(a) of the Code, first reduced by any credits claimed under section 3111(e) and (f), or section 3221(a) for any calendar quarter, the excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b). For the period after March 12, 2020, and before July 1, 2021, section 2301(b)(3) of the CARES Act provides that if the amount of the ERC exceeds the applicable employment taxes[8] (first reduced by any credits allowed under section 3111(e) and (f) of the Code, sections 7001 and 7003 of the Families First Act, and section 303(d) of the Relief Act), the excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b) of the Code.

With respect to the paid sick and family leave credits and ERC enacted by the ARP, sections 3131(b)(4)(A), 3132(b)(3)(A), and 3134(b)(3) of the Code provide that if the amount of the paid sick and family leave credits under these sections (including any increases in the credits under section 3133(a)) and ERC exceeds the taxes imposed under section 3111(b) and so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), as applicable, for any calendar quarter, after application of the other credits previously applied, the excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b).

Section 6402(a) generally provides that, within the applicable period of limitations, overpayments may be credited against any liability in respect

[6] For more information on the changes made to the ERC when section 3134 was added to the Code, *see* Notice 2021–49.

[7] Employers that qualify because they are recovery startup businesses may claim the ERC for wages paid after September 30, 2021, and before January 1, 2022. For more information, see Notice 2021–65 *for* amendments made by the Infrastructure Act. Notice 2021–65 explains the retroactive termination of the ERC and provides instructions for employers that became ineligible and must repay any advance payment of ERC or seek to avoid failure to deposit penalties for the fourth quarter of 2021.

[8] ''Applicable employment taxes'' are defined in section 2301(c)(1) of the CARES Act as the taxes imposed by section 3111(a) of the Code or so much of the taxes imposed under section 3221(a) of the Code as are attributable to the rate in effect under section 3111(a) of the Code.

of an Internal Revenue tax on the part of the person who made the overpayment, and any remaining balance refunded to that person. Section 6413(b) provides that if more than the correct amount of employment tax imposed by sections 3101, 3111, 3201, 3221, or 3402 is paid or deducted and the overpayment cannot be adjusted under section 6413(a),[9] the amount of the overpayment shall be refunded (subject to the applicable statute of limitations) as the Secretary may prescribe in regulations.

The IRS revised Form 941, *Employer's Quarterly Federal Tax Return,* Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees,* Form 944, *Employer's Annual Federal Tax Return,* and Form CT–1, *Employer's Annual Railroad Retirement Tax Return,* several times in calendar years 2020 through 2022 so that employers could use these returns to claim the paid sick and family leave credits under the Families First Act and under sections 3131 through 3133 of the Code and the ERC under the CARES Act and under section 3134 of the Code (collectively, COVID–19 credits). The revised employment tax returns allowed for any of these credits in excess of the taxes imposed under section 3111(a) or 3111(b), as applicable, and so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(a) or 3111(b), as applicable, to be credited against other employment taxes and then for any remaining balance to be credited or refunded to the employer in accordance with section 6402(a) or section 6413(b). Form 941–X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund,* Form 943–X, *Adjusted Employer's Annual Federal Tax Return for Agricultural Employees or Claim for Refund,* Form 944, *Adjusted Employer's Annual Federal Tax Return or Claim for Refund,* and Form CT–1 X, *Adjusted Employer's Annual Railroad Retirement Tax Return or Claim for Refund* were also revised so that employers can use these returns to amend previous employment tax returns to adjust or claim COVID–19 credits for prior periods.

[9] Section 6413(a) addresses interest-free adjustments of overpayments. The section provides that if more than the correct amount of employment tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of remuneration, proper adjustments with respect to both the tax and the amount to be deducted, shall be made, without interest, in the manner and at the times as the Secretary may prescribe in regulations.

IV. Advance Payment of Credits and Erroneous Refunds

Section 3606 of the CARES Act amended sections 7001(b)(4) and 7003(b)(3) of the Families First Act to provide that, in anticipation of the paid sick and family leave credits under these sections, including any refundable portions (including any increases in the credits under section 7005), these credits may be advanced, according to forms and instructions provided by the Secretary, up to the total allowable amount and subject to applicable limits for the calendar quarter. Section 2301(l)(1) of the CARES Act provides that the Secretary shall issue such forms, instructions, regulations, and guidance as are necessary to allow the advance payment of the ERC under section 2301, subject to the limitations provided in section 2301 and based on such information as the Secretary shall require. Section 2301(j)(2)(A) of the CARES Act, as amended by section 207(g)(1) of the Relief Act, provides that, under rules provided by the Secretary, eligible employers for which the average number of full-time employees (within the meaning of section 4980H of the Code) employed by the eligible employer during 2019 was not greater than 500 may elect, for calendar quarters in 2021, to receive an advance payment of the ERC for the quarter in an amount not to exceed 70 percent of the average quarterly wages paid in calendar year 2019.

Similarly, sections 3131(b)(4)(B) and 3132(b)(3)(B) provide that, in anticipation of the paid sick and family leave credits under these sections (including any increases in the credits under section 3133(a)) and any refundable portions, these credits are to be advanced, according to forms and instructions provided by the Secretary, up to the total allowable amount of the credits and subject to applicable limits for the calendar quarter. Section 3134(j)(2)(A) provides that, under rules provided by the Secretary, eligible employers for which the average number of full-time employees (within the meaning of section 4980H) employed by the eligible employer during 2019 was not greater than 500 may elect, for calendar quarters in 2021, to receive an advance payment of the ERC for the quarter in an amount not to exceed 70 percent of the average quarterly wages paid in calendar year 2019.

To implement the advance payment provisions, employers that were eligible to receive an advance of the tax credits used IRS Form 7200, *Advance Payment of Employer Credits Due To COVID–19,* to request an advance of the COVID–19 credits.[10] Employers were required to reconcile any advance payments claimed on Form 7200 with total credits claimed and total taxes due on their employment tax returns, including amended tax returns.

A refund or credit of any portion of the COVID–19 credits, regardless of whether they were advanced, claimed by a taxpayer in excess of the amount to which the taxpayer is entitled is an erroneous refund that the employer must repay.

V. Assessment Authority

Section 6201 authorizes and requires the Secretary to determine and assess tax liabilities, including interest, additional amounts, additions to the tax, and assessable penalties. The Code or other statutory authority provides for the administrative recapture of certain erroneous refunds of the COVID–19 credits either by directly authorizing the assessment of the erroneous refunds or by authorizing the promulgation of regulations or other guidance to do so.

Specifically, with regard to paid sick and family leave credits, sections 7001(f) and 7003(f) of the Families First Act and sections 3131(g) and 3132(g) of the Code provide, in relevant part, that the Secretary will provide such regulations or other guidance as may be necessary to carry out the purposes of the credits, including regulations or other guidance to prevent the avoidance of the purposes of the limitations under these provisions and to recapture the benefit of the credit where there is a subsequent adjustment to the credit. See sections 7001(f) and 7003(f) of the Families First Act, and sections 3131(g)(1), 3131(g)(4), 3132(g)(1), and 3132(g)(4) of the Code.

With regard to the ERC, section 2301(l) of the CARES Act provides in relevant part that the Secretary shall issue such forms, instructions, regulations, and guidance as are necessary to reconcile an advance payment of the ERC with the amount determined at the time of filing the employment tax return for the applicable calendar quarter or taxable year. Section 2301(j)(3)(B) of the CARES Act, as amended by section 207 of the Relief Act, allows for the direct assessment of certain erroneous refunds of advanced portions of the ERC by providing that if a small eligible employer specified in section 2301(j)(2) of the CARES Act receives excess

[10] Employers are no longer able to request an advance payment of any credit on Form 7200. The advance payment of COVID–19 credits ended on January 31, 2022.

advance payments of the credit, then the taxes imposed by chapter 21 or 22 of the Code (whichever is applicable) for the calendar quarter are increased by the amount of the excess. Section 2301(l) of the CARES Act generally, as amended by sections 206 and 207 of the Relief Act, further provides that the Secretary shall issue such forms, instructions, regulations, and other guidance as are necessary to prevent the avoidance of the purposes of the limitations under section 2301 of the CARES Act. Correspondingly, section 3134(j)(3)(B) of the Code allows for the direct assessment of certain erroneous refunds of advanced portions of the credit by providing that if a small eligible employer specified in section 3134(j)(2) receives excess advance payments of the credit, then the taxes imposed under section 3111(b) or so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), as applicable, for the calendar quarter are increased by the amount of the excess. Section 3134(m)(3) further provides that the Secretary will issue such forms, instructions, regulations, and other guidance as are necessary to prevent the avoidance of the purposes of the limitations under section 3134.

VI. Temporary Regulations

On July 29, 2020, temporary regulations (TD 9904, 2020–34 IRB 413 (August 17, 2020)) amending the Employment Tax Regulations under sections 3111 and 3221 to provide for the recapture of erroneous refunds of the paid sick and family leave credits under the Families First Act and erroneous refunds of the ERC under the CARES Act, pursuant to the authority granted under these acts to prescribe those regulations, were published in the **Federal Register** (85 FR 45514). A notice of proposed rulemaking (REG–111879–20) cross-referencing the temporary regulations was published in the **Federal Register** on the same day (85 FR 45551). The text of the temporary regulations served as the text of the proposed regulations. No public hearing was requested or held. Two comments responding to the notice of proposed rulemaking were received. All comments were considered and are available for public inspection and copying at *https://www.regulations.gov* or upon request. After consideration of the comments, the proposed regulations are adopted by this Treasury decision with a minor modification, and the corresponding temporary regulations are removed. The public comments are discussed under ''Summary of Comments and Explanation of Provisions.''

On September 10, 2021, temporary regulations (TD 9953, 2021–39 IRB 430 (September 27, 2021)) amending the Employment Tax Regulations under sections 3131 through 3134 to provide for the recapture of erroneous refunds of the paid sick and family leave credits and ERC under the ARP, pursuant to the authority granted under that act to prescribe those regulations, were published in the **Federal Register** (86 FR 50637). A notice of proposed rulemaking (REG–109077–21) cross-referencing the temporary regulations was published in the **Federal Register** on the same day (86 FR 50687). The text of the temporary regulations served as the text of the proposed regulations. No public hearing was requested or held, and no comments were received on the proposed regulations. The proposed regulations are adopted by this Treasury decision with a minor modification, and the corresponding temporary regulations are removed.

Accordingly, this document amends the Employment Tax Regulations (26 CFR part 31) by finalizing the regulations under sections 3111, 3131, 3132, 3134, and 3221 of the Code.

Summary of Comments and Explanation of Revisions

The Department of the Treasury (Treasury Department) and the IRS received two comments in response to the proposed regulations under sections 3111 and 3221 but no comments in response to the proposed regulations under sections 3131 through 3134. Neither comment received addressed the assessment and recapture of erroneous refunds of credits under the Families First Act and the CARES Act. One commenter said that the CARES Act should not fund businesses that primarily or exclusively employ non-citizen and temporary visa workers. The second commenter requested that the Treasury Department and the IRS consider providing additional guidance on potential reporting issues, including for certain retirement-related provisions in the CARES Act. These issues are outside the scope of these regulations. For this reason, these final regulations do not address these comments and adopt the proposed regulations with a minor modification. The corresponding temporary regulations are removed.

These final regulations provide that erroneous refunds of COVID–19 credits are treated as underpayments of the taxes imposed under section 3111(a) or 3111(b), as applicable, and so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(a) or 3111(b), as applicable, and are, therefore, subject to assessment and administrative collection procedures. This allows the IRS to prevent the avoidance of the purposes of the limitations under the credit provisions and to recover the erroneous refund amounts efficiently while also preserving administrative protections afforded to taxpayers with respect to contesting their tax liabilities under the Code and avoiding unnecessary costs and burdens associated with litigation. These assessment and administrative collection procedures may apply both in the processing of employment tax returns and in examining returns for excess claimed credits. These assessment and administrative collection procedures are not intended to be exclusive and therefore do not replace the existing recapture methods but rather represent an alternative method available to the IRS. These final regulations also provide that the determination of any amount of credits erroneously refunded must take into account any credit amounts advanced to an employer under the process established by the IRS in accordance with sections 7001(b)(4)(A)(ii) and 7003(b)(3)(B) of the Families First Act, as modified by section 3606 of the CARES Act, and section 2301(l)(1) of the CARES Act.

In certain circumstances, third-party payors claim tax credits on behalf of their common law employer clients. These final regulations clarify that employers against which an erroneous refund of credits may be assessed as an underpayment include persons treated as the employer under sections 3401(d), 3504, and 3511, consistent with their liability for the employment taxes against which the credits applied. In addition, these final regulations clarify the proposed regulations by expressly stating that the common law employer clients of these third-party payors that remain subject to all provisions of law applicable to employers with respect to the payment of wages or compensation, as applicable, may also be assessed for an erroneous refund of credits. This clarification makes clear to employers what had been implicit in the proposed regulations, that the existing rules in sections 3504 and 3511(c) concerning the liability of common law employer clients of third-party payors remain applicable in this situation. Specifically, section 3504 provides that where a fiduciary, agent, or other person is acting for an employer in performing acts required of the employer under the Code, ''the employer for whom such

fiduciary, agent, or other person acts shall remain subject to the provisions of law (including penalties) applicable in respect of employers.'' *See* also §§ 31.3504–1(a) and 31.3504–2(c)(2). Similarly, section 3511(c) and § 31.3511–1(a)(3) provide that, for third-party payors that are Certified Professional Employer Organizations (CPEO), an employer client of a CPEO is treated as an employer (and therefore subject to all applicable provisions of law) for purposes of Federal employment taxes imposed on remuneration paid by the CPEO to *non-worksite* employees.[11] While sections 3504 and 3511 applied in the same manner as a matter of law under the proposed regulations, the final regulations expressly state these rules to avoid any confusion and help employers better understand their legal responsibilities stemming from sections 3504 and 3511.

Section 7805(b)(1)(A) and (B) of the Code generally provide that no temporary, proposed, or final regulation relating to the Internal Revenue laws may apply to any taxable period ending before the earliest of (A) the date on which the regulation is filed with the **Federal Register**, or (B) in the case of a final regulation, the date on which a proposed or temporary regulation to which the final regulation relates was filed with the **Federal Register**.

Consistent with the authority provided by section 7805(b)(1)(B), §§ 31.3111–6, 31.3131–1, 31.3132–1, 31.3134–1, and 31.3221–5 are applicable to credits paid on or after the date on which the related proposed and temporary regulations were filed with the **Federal Register**.

Special Analyses

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), the Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities because these final regulations impose no compliance burden on any business entities, including small entities. Although these final regulations will apply to all employers eligible for the employment tax credits under the Families First Act, the CARES Act, and sections 3131, 3132, and 3134 of the Code, including small businesses and tax-exempt organizations with fewer than 500 employees, and will therefore be likely to affect a substantial number of small entities, the economic impact will not be significant. These final regulations do not affect the employer's employment tax reporting or the necessary information to substantiate entitlement to the credits. Rather, these final regulations merely implement the statutory authority granted under sections 7001(f) and 7003(f) of the Families First Act, section 2301(l) of the CARES Act, and sections 3131(g), 3132(g), and 3134(m) of the Code that authorize the IRS to assess, reconcile, and recapture any portion of the credits erroneously credited, paid, or refunded in excess of the actual amount allowed as if the amounts were taxes imposed under section 3111(a) or 3111(b), whichever is applicable, and so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(a) or 3111(b), as applicable, subject to assessment and administrative collection procedures. Notwithstanding this certification, the Treasury Department and the IRS did not receive any comments on any impact these regulations would have on small entities.

Statement of Availability of IRS Documents

IRS notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal author of these final regulations is NaLee Park, Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Paragraph 1.** The authority citation for part 31 is amended by:
■ a. Removing the entry for § 31.3111–6T;
■ b. Adding an entry in numerical order for § 31.3111–6;
■ c. Removing the entries for §§ 31.3131–1T, 31.3132–1T, 31.3134–1T, and 31.3221–5T
■ d. Adding entries in numerical order for §§ 31.3131–1, 31.3132–1, 31.3134–1. and 31.3221–5.

The general authority and additions read, in part, as follows:

Authority: 26 U.S.C. 7805.

Section 31.3111–6 also issued under secs. 7001 and 7003, Public Law 116–127, 134 Stat. 178, and sec. 2301, Public Law 116–136, 134 Stat. 281.

* * * * *

Section 31.3131–1 also issued under 26 U.S.C. 3131(g).

Section 31.3132–1 also issued under 26 U.S.C. 3132(g).

Section 31.3134–1 also issued under 26 U.S.C. 3134(m)(3).

Section 31.3221–5 also issued under secs. 7001 and 7003, Public Law 116–127, 134 Stat. 178, and sec. 2301, Public Law 116–136, 134 Stat. 281.

* * * * *

■ **Par. 2.** Section 31.3111–6 is added to read as follows:

§ 31.3111–6 Recapture of credits under the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act.

(a) *Recapture of erroneously refunded credits under the Families First Coronavirus Response Act.* Any amount of credits for qualified sick leave wages or qualified family leave wages under sections 7001 and 7003, respectively, of the Families First Coronavirus Response Act (Families First Act), Public Law 116–127, 134 Stat. 178 (2020), as modified by section 3606 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, 134 Stat. 281 (2020), plus any amount of credits for qualified health plan expenses under sections 7001 and

[11] Section 3511(a) provides that the CPEO is treated as the sole employer (*i.e.,* solely subject to all provisions of law applicable to employers) for purposes of Federal employment taxes imposed on remuneration paid to *worksite employees,* as defined in section 7705(e). Therefore, for remuneration paid by a CPEO to worksite employees, the employer client is not subject to any provisions of law applicable to employers with respect to the payment of this remuneration. For this reason, the clarification in these final regulations concerning the assessment against employer clients of a third-party payor for an erroneous refund of credits does not apply to erroneous refunds of credits that were claimed based on remuneration paid by a CPEO to worksite employees.

7003, and including any increases in those credits under section 7005 of the Families First Act, that are treated as overpayments and refunded or credited to an employer under section 6402(a) or 6413(b) of the Internal Revenue Code (Code) and to which the employer is not entitled, resulting in an erroneous refund to the employer, shall be treated as an underpayment of the taxes imposed by section 3111(a) of the Code and may be assessed and collected by the Secretary in the same manner as the taxes.

(b) *Recapture of erroneously refunded credits under the Coronavirus Aid, Relief, and Economic Security Act.* Any amount of credits for qualified wages under section 2301 of the CARES Act that is treated as an overpayment and refunded or credited to an employer under section 6402(a) or 6413(b) of the Code and to which the employer is not entitled, resulting in an erroneous refund to the employer, shall be treated as an underpayment of the taxes imposed by section 3111(a) of the Code and may be assessed and collected by the Secretary in the same manner as the taxes.

(c) *Advance credit amounts erroneously refunded.* The determination of any amount of credits erroneously refunded as described in paragraphs (a) and (b) of this section must take into account any amount of credits advanced to an employer under the process established by the Internal Revenue Service in accordance with sections 7001(b)(4)(A)(ii) and 7003(b)(3)(B) of the Families First Act, as modified by section 3606 of the CARES Act, and section 2301(l)(1) of the CARES Act.

(d) *Third party payors.* For purposes of this section, employers against whom an erroneous refund of the credits under sections 7001 and 7003 of the Families First Act (including any increases in those credits under section 7005 of the Families First Act), as modified by section 3606 of the CARES Act, and the credits under section 2301 of the CARES Act can be assessed as an underpayment of the taxes imposed by section 3111(a) include persons treated as the employer under sections 3401(d), 3504, and 3511 of the Code, consistent with their liability for the section 3111(a) taxes against which the credit applied, and also include those persons' common law employer clients that remain subject to all provisions of law applicable to employers with respect to the payment of wages.

(e) *Applicability date.* This section applies to all credit refunds under sections 7001 and 7003 of the Families First Act (including any increases in those credits under section 7005 of the Families First Act), as modified by section 3606 of the CARES Act, advanced or paid on or after July 24, 2020, and all credit refunds under section 2301 of the CARES Act advanced or paid on or after July 24, 2020.

§ 31.3111–6T [Removed]

■ **Par. 3.** Section 31.3111–6T is removed.

■ **Par. 4.** Section 31.3131–1 is added to read as follows:

§ 31.3131–1 Recapture of credits.

(a) *Recapture of erroneously refunded credits.* Any amount of credits for qualified sick leave wages under section 3131(a), including any increase to the amount of the credits under sections 3131(d), 3131(e), and 3133, that are treated as overpayments and refunded or credited to an employer under section 6402(a) or 6413(b) and to which the employer is not entitled, resulting in an erroneous refund to the employer, shall be treated as an underpayment of the taxes imposed under section 3111(b) and so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), as applicable, and may be assessed and collected by the Secretary in the same manner as the taxes.

(b) *Advance credit amounts erroneously refunded.* The determination of any amount of credits erroneously refunded as described in paragraph (a) of this section must take into account any amount of credits advanced to an employer under the process established by the Internal Revenue Service in accordance with section 3131(b)(4)(B) and 3131(g)(6).

(c) *Third party payors.* For purposes of this section, employers against whom an erroneous refund of the credits under section 3131 (including any increases in those credits under section 3133) can be assessed as an underpayment of the taxes imposed under section 3111(b) and so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), as applicable, include persons treated as the employer under sections 3401(d), 3504, and 3511, consistent with their liability for the section 3111(b) or 3221(a) taxes against which the credit applied, and also include those persons' common law employer clients that remain subject to all provisions of law applicable to employers with respect to the payment of wages or compensation, as applicable.

(d) *Applicability date.* This section applies to all credit refunds under section 3131 (including any increases in those credits under section 3133), advanced or paid on or after September 8, 2021.

§ 31.3131–1T [Removed]

■ **Par. 5.** Section 31.3131–1T is removed.

■ **Par. 6.** Section 31.3132–1 is added to read as follows:

§ 31.3132–1 Recapture of credits.

(a) *Recapture of erroneously refunded credits.* Any amount of credits for qualified family leave wages under section 3132, including any increase to the amount of the credits under sections 3132(d), 3132(e), and 3133, that are treated as overpayments and refunded or credited to an employer under section 6402(a) or 6413(b) and to which the employer is not entitled, resulting in an erroneous refund to the employer, shall be treated as an underpayment of the taxes imposed under section 3111(b) and so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), as applicable, and may be assessed and collected by the Secretary in the same manner as the taxes.

(b) *Advance credit amounts erroneously refunded.* The determination of any amount of credits erroneously refunded as described in paragraph (a) of this section must take into account any amount of credits advanced to an employer under the process established by the Internal Revenue Service in accordance with section 3132(b)(3)(B) and 3132(g)(6).

(c) *Third party payors.* For purposes of this section, employers against whom an erroneous refund of the credits under section 3132 (including any increases in those credits under section 3133) can be assessed as an underpayment of the taxes imposed under section 3111(b) and so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), as applicable, include persons treated as the employer under sections 3401(d), 3504, and 3511, consistent with their liability for the section 3111(b) or 3221(a) taxes against which the credit applied, and also include those persons' common law employer clients that remain subject to all provisions of law applicable to employers with respect to the payment of wages or compensation, as applicable.

(d) *Applicability date.* This section applies to all credit refunds under section 3132 (including any increases in those credits under section 3133) advanced or paid on or after September 8, 2021.

§ 31.3132–1T [Removed]

■ **Par. 7.** Section 31.3132–1T is removed.

■ **Par. 8.** Section 31.3134–1 is added to read as follows:

§ 31.3134–1 Recapture of credits.

(a) *Recapture of erroneously refunded credits.* Any amount of credits for qualified wages under section 3134 of the Code that is treated as an overpayment and refunded or credited to an employer under section 6402(a) or 6413(b) of the Code and to which the employer is not entitled, resulting in an erroneous refund to the employer, shall be treated as an underpayment of the taxes imposed under section 3111(b) and so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), as applicable, and may be assessed and collected by the Secretary in the same manner as the taxes.

(b) *Advance credit amounts erroneously refunded.* The determination of any amount of credits erroneously refunded as described in paragraph (a) of this section must take into account any amount of credits advanced to an employer under the process established by the Internal Revenue Service in accordance with section 3134(j) and 3134(m).

(c) *Third party payors.* For purposes of this section, employers against whom an erroneous refund of the credits under section 3134 can be assessed as an underpayment of the taxes imposed under section 3111(b) and so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), as applicable, include persons treated as the employer under sections 3401(d), 3504, and 3511, consistent with their liability for the section 3111(b) or 3221(a) taxes against which the credit applied, and also include those persons' common law employer clients that remain subject to all provisions of law applicable to employers with respect to the payment of wages or compensation, as applicable.

(d) *Applicability date.* This section applies to all credit refunds under section 3134 advanced or paid on or after September 8, 2021.

§ 31.3134–1T [Removed]

■ **Par. 9.** Section 31.3134–1T is removed.

■ **Par. 10.** Section 31.3221–5 is added to read as follows:

§ 31.3221–5 Recapture of credits under the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act.

(a) *Recapture of erroneously refunded credits under the Families First Coronavirus Response Act.* Any amount of credits for qualified sick leave wages or qualified family leave wages under sections 7001 and 7003, respectively, of the Families First Coronavirus Response Act (Families First Act), Public Law 116–127, 134 Stat. 178 (2020), as modified by section 3606 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, 134 Stat. 281 (2020), plus any amount of credits for qualified health plan expenses under sections 7001 and 7003, that are treated as overpayments and refunded or credited to an employer under section 6402(a) or 6413(b) of the Internal Revenue Code (Code) and to which the employer is not entitled, resulting in an erroneous refund to the employer, shall be treated as an underpayment of the taxes imposed by section 3221(a) of the Code and may be assessed and collected by the Secretary in the same manner as the taxes.

(b) *Recapture of erroneously refunded credits under the Coronavirus Aid, Relief, and Economic Security Act.* Any amount of credits for qualified wages under section 2301 of the CARES Act that is treated as an overpayment and refunded or credited to an employer under section 6402(a) or 6413(b) of the Code and to which the employer is not entitled, resulting in an erroneous refund to the employer, shall be treated as an underpayment of the taxes imposed by section 3221(a) of the Code and may be assessed and collected by the Secretary in the same manner as the taxes.

(c) *Advance credit amounts erroneously refunded.* The determination of any amount of credits erroneously refunded as described in paragraphs (a) and (b) of this section must take into account any amount of credits advanced to an employer under the process established by the Internal Revenue Service in accordance with sections 7001(b)(4)(A)(ii) and 7003(b)(3)(B) of the Families First Act, as modified by section 3606 of the CARES Act, and section 2301(l)(1) of the CARES Act.

(d) *Third party payors.* For purposes of this section, employers against whom an erroneous refund of the credits under sections 7001 and 7003 of the Families First Act, as modified by section 3606 of the CARES Act, and the credits under section 2301 of the CARES Act can be assessed as an underpayment of the taxes imposed by section 3221(a) include persons treated as the employer under sections 3401(d), 3504, and 3511 of the Code, consistent with their liability for the section 3221(a) taxes against which the credit applied, and also include those persons' common law employer clients that remain subject to all provisions of law applicable to employers with respect to the payment of compensation.

(e) *Applicability date.* This section applies to all credit refunds under sections 7001 and 7003 of the Families First Act, as modified by section 3606 of the CARES Act, advanced or paid on or after July 24, 2020, and all credit refunds under section 2301 of the CARES Act advanced or paid on or after July 24, 2020.

§ 31.3221–5T [Removed]

■ **Par. 11.** Section 31.3221–5T is removed.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

Approved: July 10, 2023.

Lily L. Batchelder,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2023–15690 Filed 7–24–23; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2023–0308]

RIN 625–AA08

Special Local Regulation; Henderson Bay, Henderson Harbor, NY

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

ACTION: Final rule

SUMMARY: The Coast Guard is establishing a permanent special local regulation for certain waters of Henderson Bay in Henderson Harbor, NY, in support of the Christmas in July festival. This action is necessary to provide for the safety of life on these navigable waters near Henderson Bay, Henderson Harbor, NY, during a boat parade. This rulemaking will prohibit persons and vessels from entering, transiting through, anchoring, blocking, or loitering within the event area adjacent to the city of Henderson Harbor, unless authorized by the Captain of the Port Buffalo or a designated representative.

DATES: This rule is effective July 26, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0308 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 about this rulemaking, call or email MST2 Andrew Nevenner, Waterways Management Division MSD Massena, U.S. Coast Guard; telephone 315–769–5483, email *SMB-MSDMassena-WaterwaysManagement@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 March 16, 2023, the Henderson Business and Community Council notified the Coast Guard of an intention to conduct the ''Christmas in July'' boat parade in Henderson Bay on July 29, 2023. Christmas in July is an annual event in July occurring on or near the last weekend of July. The special local regulation area will occur from 5 p.m. through 9 p.m. and cover all waters within a moving zone that encompasses a 50-yard buffer zone ahead of the lead vessel, 50 yards astern of the last participating vessel, and 50 yards on each side of the parade vessels as it travels the parade route. The parade will start at Waterside Tavern dock at point 43°51′44″ N 76°12′07.3″ W and running north adjacent to the shore to point 43°52′12.2″ N 76°11′32.7″ W, continuing northwest to point 43°53′40.9″ N 76°12′40.6″ W and running south adjacent to the shore to point 43°51′47.2″ N 76°14′08.3″ W, ending at the starting position at point 43°51′44″ N 76°12′07.3″ W. In response, on June 7, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Special Local Regulation; Henderson Bay, Henderson Harbor, NY'' (88 FR 37194). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this boat parade. During the comment period that ended July 7, 2023, we received one comment that was in full support of the rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Sector Buffalo (COTP) has determined that this rule is necessary to ensure the safety of life and property of the participants within the regulated area before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we only received one comment on our NPRM published June 7, 2023, and it fully supported the proposed rule. There are no substantive changes in the regulatory text of this rule from the proposed rule in the NPRM. We did reform the text and corrected the authority citation for 33 CFR part 100.

This rule establishes a special local regulation from 5 p.m. through 9 p.m. on July 29, 2023. The special local regulation area will cover all waters within a moving zone that encompasses a 50-yard buffer zone ahead of the lead vessel, 50 yards astern of the last participating vessel, and 50 yards on each side of the parade vessels as it travels the parade route in Henderson Bay, Henderson Harbor, NY. The duration of the special local regulation is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 5 p.m. through 9 p.m. boat parade. No vessel or person will be permitted to enter the special local regulation area 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 size, location, duration, and time-of-day of the special local regulation. Vessel traffic will be able to safely transit around this regulated area which would impact a small-designated area of Henderson Bay. Moreover, the Coast Guard would issue a Local Notice to Mariners about the areas, and the rule would allow vessels to seek permission to enter the areas.

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 special local regulation 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 special local regulation lasting that will prohibit persons and vessels from transiting the regulated area during the parade. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for Record 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 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. In § 100.901, revise table 1 to read as follows:

§ 100.901 Great Lakes annual marine events.

* * * * *

TABLE 1 TO § 100.91

Event	Location		Date
Sector Buffalo, NY			
(1) Fireworks by Grucci ..... Sponsor: New York Power Authority.	Lake Ontario, Wright's Landing/Oswego Harbor, NY within an 800 foot radius of the fireworks launching platform located in approximate position 43°28′10″ N 076°31′04″ W.		Last weekend of July.
(2) Flagship International Kilo Speed Challenge. Sponsor: Presque Isle Powerboat Racing Association.	That portion of Lake Erie, Presque Isle Bay, south of a line drawn from 42°08′54″ N 080°05′42″ W; to 42°07′ N 080°21′ W will be a regulated area. That portion of Lake Erie, Presque Isle bay, north of a line drawn from 42°08′54″ N 080°05′42″ W; to 42°07′ N 080°21′ W will be a ''caution area''. All vessels transiting the caution area will be operated at bare steerageway, keeping the vessel's wake at a minimum, and will exercise a high degree of caution in the area. The bay entrance will not be effected.		3rd or 4th weekend of June.
(3) Flagship International Offshore Challenge. Sponsor: Presque Isle Powerboat Racing Association.	That portion of Lake Erie, Presque Isle Bay, Entrance Channel, and the enclosed area from Erie Harbor Pier Head Light (LLNR 3430) northeast to 42°12′48″ N 079°57′24″ W, thence south to shore just east of Shades Beach.		3rd or 4th weekend of June.
(4) Friendship Festival Airshow ..... Sponsor: Friendship Festival.	That portion of the Niagara River and Buffalo Harbor from:		4th of July holiday.
	Latitude	Longitude	
	42°54.4′ N	078°54.1′ W, thence to.	
	42°54.4′ N	078°54.4′ W, thence	

TABLE 1 TO § 100.91—CONTINUED

Event	Location		Date
	Latitude	Longitude	
	along the International Border to:		
	42°52.9′ N 42°52.5′ N 42°52.7′ N 42°52.8′ N 42°53.1′ N 42°53.2′ N 42°53.3′ N	078°54.9′ W, thence to 078°54.3′ W, thence to 078°53.9′ W, thence to 078°53.8′ W, thence to 078°53.6′ W, thence to 078°53.6′ W, thence to 078°53.7′ W, thence	
	along the breakwall to:		
	42°54.4′ N	078°54.1′ W	
(5) NFBRA Red Dog Kilo Time Trials. Sponsor: Niagara Frontier Boat Racing Association.	That portion of the Niagara River, Tonawanda Channel, between Tonawanda Channel Buoy 31 to approximately 1/2 mile southwest of Twomile Creek along a line drawn from 43°00′45″ N 078°55′06″ W to 43°00′28″ N 078°54′56″ W (Sipco Oil Company).		4th or 5th weekend of September.
(6) Sodus Bay 4th of July Fireworks. Sponsor: Sodus Bay Historical Society.	Lake Ontario, within a 500 foot radius around a barge anchored in approximate position 43°15.73′ N 076°58.23′ W, in Sodus Bay.		4th of July holiday.
(7) Tallship Erie Sponsor: Erie Maritime Programs, Inc.	That portion of Lake Erie, Presque Isle Bay.		1st or 2nd weekend of July.
	Entrance Channel and Presque Isle Bay from:		
	Latitude	Longitude	
	42°10′ N 42°08.1′ N 42°07.9′ N	080°03′ W, thence to 080°07′ W, thence to 080°06.8′ W, thence	
	east along the shoreline and structures to:		
	42°09.2′ N	080°02.6′ W, thence to	
	42°10′ N	080°03′ W	
(8) Thomas Graves Memorial Fireworks Display. Sponsor: Port Bay Improvement Association.	That portion of Lake Ontario, Port Bay Harbor, NY within a 500 ft radius surrounding a barge anchored in approximate position 43°17′46″ N 076°50′02″ W.		1st or 2nd weekend of July.
(9) Thunder Island Offshore Challenge. Sponsor: Thunder on the Water Inc.	That portion of Lake Ontario, Oswego Harbor from the West Pier Head Light (LLNR 2080) north to:		3rd or 4th weekend of June.
	Latitude	Longitude	
	43°29′02″ N 43°26′18″ N 43°24′55″ N	076°32′04″ W, thence to 076°39′30″ W, thence to 076°37′45″ W, thence	
	along the shoreline to the West Pier Head Light (LLNR 2080).		
(10) We Love Erie Days Fireworks Sponsor: We Love Erie Days Festival, Inc.	That portion of Lake Erie, Erie Harbor, within a 300 foot radius, surrounding the Erie Sand and Gravel Pier, located in position 42°08′16″ N 080°05′40″ W.		3rd weekend of August.

TABLE 1 TO § 100.91—CONTINUED

Event	Location		Date
(11) Christmas in July ..... Sponsor: Henderson Business and Community Council.	Location: The special local regulation area will cover ALL WATERS WITHIN A MOVING ZONE THAT ENCOMPASSES A 50 yard BUFFER ZONE ahead of the lead vessel, 50 yards astern of the last participating vessel, and 50 yards on each side of the parade vessels as it travels the parade route starting at point 43°51′44″ N 76°12′07.3″ W and running north adjacent to the shore to point 43°52′12.2″ N 76°11′32.7″ W, continuing northwest to point 43°53′40.9″ N 76°12′40.6″ W and running south adjacent to the shore to point 43°51′47.2″ N 76°14′08.3″ W, ending at the starting position at point 43°51′44.0″ N 76°12′07.3″ W.		Date: Final weekend of July.
	Latitude	Longitude	
	43°51′44″ N ..... 43°52′12.2″ N ..... 43°53′40.9″ N	076°12′07.3″ W, thence to 076°11′32.7″ W, thence to 076°14′08.3″ W, thence	
	along the shoreline to end at the starting position.		
Sector Sault Ste. Marie, MI			
(1) Bridgefest Regatta ..... Sponsor: Bridgefest Committee	Keweenaw Waterway, from the Houghton Hancock Lift Bridge to 1000 yards west of the bridge, near Houghton, MI.		2nd weekend of June.
(2) Duluth Fourth Fest Fireworks ... Sponsor: Office of the Mayor, Duluth, MN.	That portion of the Duluth Harbor Basin Northern Section bounded on the south by a line drawn on a bearing of 087° true from the Cargill Pier through Duluth Basin Lighted Buoy #5 (LLNR 15905) to the opposite shore on the north by the Duluth Aerial Bridge. That portion of Duluth Harbor Basin Northern Section within 600 yards of position 46°46′47″ N 092°06′10″ W.		4th of July weekend.
(3) July 4th Fireworks ..... Sponsor: City of Sault Ste Marie, MI.	That portion of the St. Mary's River, Sault Ste. Marie, MI within a 1000 foot radius of Brady Park, located on the south shore of the river. These waters are enclosed by the Locks to the west and to the east from a line drawn from the pier light of the east center pier to the U.S. Coast Guard Base to the southeast.		4th of July weekend.

[1] All coordinates listed in this table 1 reference North American Datum of 1983 (NAD 1983).
[2] As noted in the introductory text of this section, the enforcement dates and times for each of the listed events in this table are subject to change. In the event of a change, or for enforcement periods listed that do not allow a specific date or dates to be determined, the Captain of the Port will provide notice to the public by publishing a Notice of Enforcement in the **Federal Register**, as well as, issuing a Broadcast Notice to Mariner.

Dated: July 19, 2023.

Sean M. Murray,

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

[FR Doc. 2023–15797 Filed 7–25–23; 8:45 am]

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DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2023–OSERS–0057]

Final Priority and Requirements—Technical Assistance on State Data Collection—National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate IDEA Data To Address Significant Disproportionality

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priority and requirements.

SUMMARY: The Department of Education (Department) announces a priority and requirements for the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Data to Address Significant Disproportionality (Center) under the Technical Assistance on State Data Collection program, Assistance Listing Number 84.373E. The Department may use this priority and one or more of these requirements in fiscal year (FY) 2023 and later years. We will use the priority to award a cooperative agreement for a Center to focus attention on an identified national need to provide technical assistance (TA) to improve the capacity of States to meet the data collection and reporting requirements under Part B and Part C of the Individuals with Disabilities Education Act (IDEA). This Center will support States in collecting, reporting, and determining how to best analyze and use their data to address issues of significant disproportionality and will customize its TA to meet each State's specific needs.

DATES: The priority and requirements are effective August 25, 2023.

FOR FURTHER INFORMATION CONTACT: Richelle Davis, U.S. Department of Education, 400 Maryland Avenue SW, Room 5076, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–7401. Email: *Richelle.Davis@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary authority to reserve not more than ½ of 1 percent of the amounts appropriated under Part B for each fiscal year to provide TA activities, where needed, to improve the capacity of States to meet the data collection and

reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. In addition, the Consolidated Appropriations Act, 2023, Public Law 117–328, gives the Secretary authority to use funds reserved under section 611(c) of IDEA to ''administer and carry out other services and activities to improve data collection, coordination, quality, and use under Parts B and C of the IDEA.'' Consolidated Appropriations Act, 2023, Public Law 117–328, Div. H, Title III, 136 Stat. 4459, 4891 (2022).

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), 1418(d), 1442; Consolidated Appropriations Act, 2023, Public Law 117–328, Div. H, Title III, 136 Stat. 4459, 4891 (2022).

Applicable Program Regulations: 34 CFR 300.646–300.647, 300.702; as well as IDEA Part B State Performance Plan (SPP)/Annual Performance Report (APR) Indicators 9 and 10 regarding disproportionate representation resulting from inappropriate identification, under 20 U.S.C. 1416(a)(3)(C) and 34 CFR 300.600(d)(3); and IDEA Part B SPP/APR Indicator 4 regarding significant discrepancy in suspensions and expulsion rates, under 20 U.S.C. 1416(a)(3)(A) and 1412(a)(22) and 34 CFR 300.600(d)(1) and 300.170.

We published a notice of proposed priority and requirements (NPP) for this program in the **Federal Register** on March 28, 2023 (88 FR 18280). That document contained background information and our reasons for proposing the priority and requirements.

There are differences between the NPP and this notice of final priority and requirements (NFP) as discussed in the *Analysis of Comments and Changes* section of this document. The most significant change, as discussed below, is the addition of two expected outcomes for the Center.

Public Comment: In response to our invitation in the NPP, 20 parties submitted comments addressing the priority and requirements.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priority and requirements.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority and requirements since publication of the NPP follows. We received comments on a number of specific topics, including the topics for TA. Each topic is addressed below.

General Comments

Comments: Several commenters specifically expressed support for the proposed center.

Discussion: The Department appreciates the comments and agrees with the commenters that the Center funded under this program will provide necessary and valuable TA to States.

Changes: None.

Comments: Multiple commenters suggested that the Department revise the Center's expected outcomes to include outcomes related to the engagement of parents in the use of data to address disparities and the provision of data in accessible and understandable formats.

Discussion: The Department agrees with commenters that improving State capacity to engage parents in the use of IDEA data will enhance the State's ability to address disparities. Additionally, it is vitally important to provide data to stakeholders in accessible and understandable formats to support the use of the data to address disparities revealed in the data collected. For this reason, the Department will include additional expected outcomes to address the commenters' concerns.

Changes: The final priority includes two additional expected outcomes for the Center, expected outcome (h), focused on improved capacity of State educational agencies (SEAs) to assist local educational agencies (LEAs) to engage parents, families, advocates, and other stakeholders to use data to address disparities revealed in the data they collect and (i), related to improved capacity of SEAs, and LEAs through their work with SEAs, to provide data in timely, usable, accessible, and understandable formats for parents, families, advocates, and other stakeholders.

Comments: A number of commenters proposed that the Department expand the list of suggested Department-funded TA centers with which the Center may collaborate. Specifically, the commenters proposed including equity-related centers to the current list of data-related centers.

Discussion: The Department agrees with the commenters. The Center should collaborate with both equity- and data-related Department-funded TA centers, as appropriate.

Changes: We have revised paragraph (iv)(E) of the final requirements to require applicants to submit the proposed plan for collaborating and coordinating with Department-funded projects, including those providing data-related support to States (*e.g.*, the IDEA Data Center, the Center for IDEA Fiscal Reporting, and the National Center for Systemic Improvement) and equity-related support to States (*e.g.*, Center on Positive Behavioral Interventions and Supports (PBIS), and Regional Equity Assistance Centers), where appropriate, in order to align complementary work and jointly develop and implement products and services to meet the purposes of this priority.

Comments: Several commenters expressed interest in ensuring that the Center will assist SEAs to specifically work with both rural districts and charter schools that are considered LEAs for the purposes of the identification of significant disproportionality.

Discussion: The Department agrees that SEAs need to support all of their LEAs related to the identification of significant disproportionality. The proposed priority would require the proposed Center to provide TA to SEAs to improve their capacity to support all of their LEAs, which includes rural LEAs and charter schools that are considered LEAs, around issues related to significant disproportionality. Therefore, the priority is consistent with the commenters' suggestion and no change is necessary.

Changes: None.

Comments: A number of commenters expressed concerns that the development of an additional data center focused on significant disproportionality would be duplicative of and overlap with the Department's currently funded centers already providing TA related to significant disproportionality (*e.g.*, the IDEA Data Center, the Center for IDEA Fiscal Reporting, and the National Center for Systemic Improvement). The commenters noted that numerous TA opportunities and products have been developed by those existing centers and are in use by States.

Discussion: While we appreciate the commenters' concerns, the Center will not duplicate efforts of other centers, as

it will focus on improving the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of IDEA section 618(d) are collected, analyzed, and accurately reported to the Department. Additionally, the Center will build TA efforts already undertaken by Office of Special Education Programs (OSEP)-funded centers. Existing centers have been tasked with assisting States in their initial implementation of the significant disproportionality regulations. While there has been progress, States still struggle with implementing a robust methodology and assisting LEAs as they review and, as necessary, revise their policies, practices, and procedures in the area of the identified significant disproportionality. Additionally, a recent Office of the Inspector General report [1] noted concerns with the accuracy and reliability of State-reported data related to significant disproportionality. Therefore, there is a demonstrated need for a center with a singular focus on assisting States to collect, report, analyze, and use significant disproportionality data. The work of this Center is critical to meeting this Administration's priority to ensure States and LEAs address significant disproportionality in the identification, placement, or incidence and duration of disciplinary actions, including suspensions and expulsions of children with disabilities based on race and ethnicity. Consistent with the Administration's priorities, this Center will support SEAs, and LEAs through their work with SEAs, in conducting root cause analyses. With effective supports to identify the potential root causes and contributing factors of the significant disproportionality, LEAs can meaningfully address their identified significant disproportionality and set a path towards more equitable services for all students, regardless of their race and ethnicity. Finally, if there are any areas where there appears to be duplication or overlap, project officers for the currently funded centers will work together with the project officer for the new Center to develop a plan to ensure appropriate collaboration, rather than duplication, occurs across the impacted centers.

Changes: None.

Comments: One group of commenters provided responses to the Department's directed question about the supports States require in reviewing policies, practices, and procedures and understanding the expenditure requirements for comprehensive coordinated early intervening services (CCEIS). The commenters suggested that States need TA to better understand the components of policies, practices, and procedures that lead to significant disproportionality, as well as TA on the requirements around the expenditure of funds for CCEIS.

Discussion: The Department appreciates and agrees with the commenters' suggestions. Understanding the potential interaction between significant disproportionality and the policies, practices, and procedures of an LEA and understanding the expenditure requirements for CCEIS are both important, as they are fundamental requirements of the significant disproportionality regulation. The Department believes that proposed expected outcome paragraphs (c) and (d) adequately address the commenters' suggestions.

Changes: None.

Comments: One commenter responded to the first directed question about common challenges or barriers experienced by SEAs and LEAs when using IDEA data to address significant disproportionality and promote equity. The commenter identified the following State needs: addressing critical shortages of specialized instructional support personnel; reviewing and revising policies, practices, and procedures; and providing general guidance on best practices related to the evaluation of students with disabilities, the use of schoolwide approaches such as positive behavioral interventions and supports, and developing and enhancing a multi-tiered system of supports.

Discussion: The Department appreciates the commenter's suggestions. In regard to the commenter's first suggestion, while the Department agrees that securing highly skilled instructional staff is a critical need of LEAs, the Center's focus is on improving data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of IDEA are collected, analyzed, and accurately reported to the Department. The Department agrees with the commenter's second suggestion that SEAs require TA on reviewing and, as necessary, revising policies, practices, and procedures identified as contributing to significant disproportionality. The Department believes that proposed expected outcome paragraph (c) adequately addresses the commenter's suggestion. Finally, the Department agrees with the commenter's third suggestion that States would benefit from general guidance on best practices related to the evaluation of students with disabilities, the use of schoolwide approaches such as positive behavioral interventions and supports, and developing and enhancing a multi-tiered system of supports. To this end, OSEP funds other centers (*e.g.*, National Center on Educational Outcomes, Center on PBIS, and National Center on Intensive Intervention) that provide TA on these topics.

Changes: None.

Comments: Another group of commenters responded to all of the Department's directed questions by noting that existing OSEP centers have already developed resources to provide TA on the areas addressed in the directed questions. These commenters did, however, note that their biggest challenge was in understanding the differences in requirements between significant disproportionality and the IDEA Part B SPP/APR Indicators 4 (Suspension/Expulsion), and 9 and 10 (Disproportionate Representation).

Discussion: The Department appreciates the commenters' support of OSEP's currently funded centers. As stated in a response above, the Center will build upon the work that has already been completed. The Department believes that, through the implementation of proposed expected outcome paragraph (f), the Center will assist States and LEAs to improve capacity to distinguish SPP/APR Indicator 4 (Suspension/Expulsion) and SPP/APR Indicators 9 and 10 (Disproportionate Representation), which are collected under section 616 of IDEA, from significant disproportionality data, which are collected under section 618 of IDEA.

Changes: None.

Final Priority

National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate IDEA Data To Address Significant Disproportionality

Priority:

The purpose of the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Data to Address Significant Disproportionality (Center) is to promote equity by improving State capacity to accurately collect, report, analyze, and use section 618 data to address issues of significant disproportionality. The Center will also work to increase the capacity of SEAs, and LEAs through their work with SEAs, to use their data to conduct

[1] Please see *www.oversight.gov/sites/default/files/oig-reports/ED/equity-idea-final-inspection-report.pdf.*

robust root cause analyses and identify evidence-based strategies for effectively using funds reserved for CCEIS.

The Center must achieve, at a minimum, the following expected outcomes:

(a) Increased capacity of SEAs to analyze and use their data collected and reported under section 618 of IDEA to accurately identify significant disproportionality in the State and the LEAs of the State;

(b) Increased capacity of SEAs, and LEAs through their work with SEAs, to use data collected and reported under section 618 of IDEA, as well as other available data, to conduct root cause analyses in order to identify the potential causes and contributing factors of an LEA's significant disproportionality;

(c) Improved capacity of SEAs, and LEAs through their work with SEAs, to review and, as necessary, revise policies, practices, and procedures identified as contributing to significant disproportionality, and to address any other factors identified as contributing to the significant disproportionality;

(d) Improved capacity of SEAs to assist LEAs, as needed, in using data to drive decisions related to the use of funds reserved for CCEIS;

(e) Increased capacity of SEAs, and LEAs through their work with SEAs, to use data to address disparities revealed in the data they collect;

(f) Improved capacity of SEAs, and LEAs through their work with SEAs, to accurately collect, report, analyze, and use data related to significant disproportionality and apply the state methodology for identifying significant disproportionality, including distinguishing data collected under section 616 of IDEA (specifically, SPP/APR Indicator 4 (Suspension/Expulsion) and SPP/APR Indicators 9 and 10 (Disproportionate Representation));

(g) Increased capacity of SEAs to use data to evaluate their own methodology for identifying significant disproportionality;

(h) Improved capacity of SEAs to assist LEAs to engage parents, families, advocates, and other stakeholders to use data to address disparities revealed in the data they collect; and

(i) Improved capacity of SEAs, and LEAs through their work with SEAs, to provide data in timely, usable, accessible, and understandable formats for parents, families, advocates, and other stakeholders.

Types of Priorities: When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This document does not preclude us from proposing additional priorities or requirements, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use this priority and these requirements, we invite applications through a notice in the **Federal Register**.

Final Requirements

The Assistant Secretary establishes the following requirements for this program. We may apply these requirements in any year in which this program is in effect.

Requirements:

Applicants must—

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address State challenges in collecting, analyzing, reporting, and using their data collected under section 618 of IDEA to correctly identify and address significant disproportionality. To meet this requirement the applicant must—

(i) Demonstrate knowledge of IDEA data collections, including data required under sections 616 and 618 of IDEA, as well as the requirements related to significant disproportionality in section 618(d) of IDEA;

(ii) Present applicable national, State, and local data to demonstrate the capacity needs of SEAs, and LEAs through their work with SEAs, to analyze and use their data collected under section 618 of IDEA to identify and address significant disproportionality;

(iii) Describe how SEAs, and LEAs through their work with SEAs, are currently analyzing and using their data collected under section 618 of IDEA to identify and address significant disproportionality; and

(iv) Present information about the difficulties SEAs, and LEAs through their work with SEAs, including a variety of LEAs such as urban and rural LEAs and charter schools that are LEAs, have in collecting, reporting, analyzing, and using their IDEA section 618 data to address significant disproportionality; and

(2) Result in improved IDEA data collection, reporting, analysis, and use in identifying and addressing significant disproportionality.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients of TA and information; and

(ii) Ensure that products and services meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *https://osepideasthatwork.org/sites/default/files/2021-12/ConceptualFramework_Updated.pdf* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and make use of evidence-based practices

(EBPs).[2] To meet this requirement, the applicant must describe—

(i) The current capacity of SEAs to use IDEA section 618 data to correctly identify significant disproportionality and assist LEAs as they conduct root cause analyses and review LEA policies, practices, and procedures;

(ii) Current research on effective practices to address significant disproportionality, particularly through the provision of CCEIS; and

(iii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base on the capacity needs of SEAs, and LEAs through their work with SEAs, to collect, report, analyze, and use IDEA section 618 data in a manner that correctly identifies and addresses significant disproportionality in States and LEAs;

(ii) Its proposed approach to universal, general TA,[3] which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,[4] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA,[5] which must identify—-

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of SEA personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA level;

(C) Its proposed plan for assisting SEAs to build or enhance training systems related to the use of IDEA section 618 data to correctly identify and address significant disproportionality that include professional development based on adult learning principles and coaching;

(D) Its proposed plan for working with appropriate levels of the education system (*e.g.*, SEAs, regional TA providers, LEAs, schools, and families) to ensure that there is communication between each level and that there are systems in place to support the capacity needs of SEAs, and LEAs through their work with SEAs, to collect, report, analyze, and use IDEA section 618 data to correctly identify and address significant disproportionality; and

(E) Its proposed plan for collaborating and coordinating with Department-funded projects, including those providing data-related support to States (*e.g.*, the IDEA Data Center, the Center for IDEA Fiscal Reporting, and the National Center for Systemic Improvement) and equity-related support to States (*e.g.*, Center on PBIS, and Regional Equity Assistance Centers), where appropriate, in order to align complementary work and jointly develop and implement products and services to meet the purposes of this priority;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[6] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the APR and at the end of Year 2 for the review process; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources,'' how—

[2] For purposes of these requirements,''evidence-based practices'' (EBPs) means, at a minimum, demonstrating a rationale (as defined in 34 CFR 77.1) based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes.

[3] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[4] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[5] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

[6] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, or have any financial interest in the outcome of the evaluation.

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits, and funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements:

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one- and one-half day kick-off meeting in Washington, DC, or virtually, after receipt of the award, and an annual planning meeting in Washington, DC, or virtually, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: The project must reallocate unused travel funds no later than the end of the third quarter if the kick-off or planning meetings are conducted virtually.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two- and one-half day project directors' conference in Washington, DC, or virtually, during each year of the project period; and

Note: The project must reallocate unused travel funds no later than the end of the third quarter of each budget period if the conference is conducted virtually.

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility; and

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate.

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles stated in the Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866 (as amended by Executive Order 14094). Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or

provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing the final priority and requirements only on a reasoned determination that their benefits justify the costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Potential Costs and Benefits

The Department believes that this regulatory action does not impose significant costs on eligible entities, whose participation in this program is voluntary. While this action does impose some requirements on participating grantees that are cost-bearing, the Department expects that applicants for this program will include in their proposed budgets a request for funds to support compliance with such cost-bearing requirements. Therefore, costs associated with meeting these requirements are, in the Department's estimation, minimal.

The Department believes that these benefits to the Federal government outweigh the costs associated with this action.

Regulatory Alternatives Considered

The Department believes that the priority and requirements are needed to administer the program effectively.

Paperwork Reduction Act of 1995

The final priority, including requirements, contains information collection requirements that are approved by OMB under OMB control number 1820–0028; the final priority, including requirements, does not affect the currently approved data collection.

Regulatory Flexibility Act Certification: The Secretary certifies that this final regulatory action will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this final regulatory action will affect are LEAs, including charter schools that operate as LEAs under State law; institutions of higher education; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant by this final priority, including requirements, will be limited to paperwork burden related to preparing an application and that the benefits of this final priority will outweigh any costs incurred by the applicant.

Participation in the Technical Assistance on State Data Collection program is voluntary. For this reason, the final priority and requirements, imposes no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance on State Data Collection program funds, an eligible entity will evaluate the requirements of preparing an application and any associated costs and weigh them against the benefits likely to be achieved by receiving a Technical Assistance on State Data Collection program grant. An eligible entity will most likely apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the final priority and requirements will not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of this final regulatory action and the time needed to prepare an application will likely be the same.

This final regulatory action will not have a significant economic impact on a small entity once it receives a grant because it will be able to meet the costs of compliance using the funds provided under this program.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, Braille, large print, audiotape, or compact disc, or other accessible format.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Glenna Wright-Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2023–15852 Filed 7–24–23; 11:15 am]

BILLING CODE 4000–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220523–0119; RTID 0648–XD185]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Harpoon Category Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring 10.8 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the Harpoon category. With this transfer, the adjusted Harpoon category quota for the 2023 fishing season is 70 mt. The 2023 Harpoon category fishery is open until November 15, 2023, or until the Harpoon category quota is reached, whichever comes first. This action is intended to provide further opportunities for Harpoon category fishermen, based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic Tunas Harpoon category (commercial) permitted vessels.

DATES: Effective July 21, 2023, through November 15, 2023.

FOR FURTHER INFORMATION CONTACT: Becky Curtis, *becky.curtis@noaa.gov,* 301–427–8503, Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503, and Ann Williamson, *ann.williamson@noaa.gov,* 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic highly migratory species (HMS) fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

The baseline quotas for the Harpoon and Reserve categories are 59.2 mt and 38.2 mt, respectively. The 2023 Harpoon category fishery opened June 1, and is open through November 15, 2023, or until the Harpoon category quota is reached, whichever comes first. In this action, NMFS is transferring 10.8 mt from the Reserve category to the Harpoon category. This transfer results in 70.0 mt (59.2 mt + 10.8 mt = 70.0 mt) being available for the Harpoon category through November 15, 2023, or until the Harpoon category quota is reached, whichever comes first. This transfer also results in 27.4 mt (38.2 mt − 10.8 mt = 27.4 mt) being available in the Reserve category through the remainder of the 2023 fishing year.

Transfer of 10.8 mt From the Reserve Category to the Harpoon Category

Under § 635.27(a)(8), NMFS has the authority to transfer quota among fishing categories or subcategories after considering the determination criteria provided under § 635.27(a)(7). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer. These criteria include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(7)(i)), biological samples collected from BFT landed by Harpoon category fishermen and provided by BFT dealers continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the Harpoon category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS considered the catches of the Harpoon category quota to date and the likelihood of closure of the Harpoon category if no adjustment is made (§ 635.27(a)(7)(ii) and (ix)). To date, preliminary landings data indicate that the Harpoon category has landed approximately 55 mt. Without a quota transfer at this time, NMFS would likely need to close the Harpoon category fishery and participants would have to stop BFT fishing activities while commercial-sized BFT remain available in the areas where Harpoon category permitted vessels operate. A quota transfer of 10.8 mt would provide limited additional opportunities to harvest the U.S. BFT quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the Harpoon category to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(7)(iii)), NMFS considered Harpoon category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. NMFS anticipates that the Harpoon category could harvest the transferred 10.8 mt prior to the end of the Harpoon category season, subject to weather conditions and BFT availability. NMFS may transfer unused Harpoon category quota to other quota categories, inseason, based on consideration of the determination criteria, as NMFS did in late 2022. Thus, this quota transfer would allow fishermen to take advantage of the availability of BFT on the fishing grounds and provide a reasonable opportunity to harvest the available U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(7)(iv)) and the ability to account for all 2023 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. While NMFS does not yet have final estimates of 2022 landings and dead discards, NMFS anticipates having sufficient quota to account for landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the FMP (§ 635.27(a)(7)(v) and (vi)). This transfer would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT Recommendation 22–10, ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. This quota transfer is in line with the established management measures and

stock status determinations. Another principal consideration is the objective of providing opportunities to harvest the available Harpoon category quota without exceeding the annual quota. This consideration is based on the objectives of the 2006 Consolidated HMS FMP and its amendments, and includes achieving optimum yield on a continuing basis and optimizing the ability of all permit categories to harvest available BFT quota allocations (related to § 635.27(a)(7)(x)).

Given these considerations, NMFS is transferring 10.8 mt of the available 38.2 mt of Reserve category quota to the Harpoon category. Therefore, NMFS adjusts the Harpoon category quota to 70 mt for the 2023 Harpoon category fishing season (*i.e.,* through November 15, 2023, or until the Harpoon category quota is reached, whichever comes first), and adjusts the Reserve category quota to 27.4 mt for the remainder of the 2023 fishing year.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, Harpoon category vessel owners are required to report their own catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *https://www.hmspermits.noaa.gov* or by using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may access *https://www.hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 533(b)(B), there is good cause to waive prior notice and opportunity to provide comment on this action, as notice and comment would be impracticable and contrary to this action for the following reasons. Specifically, the regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Providing prior notice and opportunity for public comment on this quota transfer to the Harpoon category for the remainder of 2023 is impracticable and contrary to the public interest as the Harpoon category fishery is currently underway. Based on Harpoon category catch rates, a delay in this action would likely result in closure of the Harpoon fishery when the baseline quota is met and the need to re-open the fishery, with attendant administrative costs and costs to the fishery. NMFS could not have proposed this action earlier, as it needed to consider and respond to updated landings data, in deciding to transfer a portion of the Reserve category quota to the Harpoon category quota. A delay in implementing this quota transfer would preclude the fishery from harvesting BFT that are available on the fishing grounds and that might otherwise become unavailable during a delay. This action does not raise conservation and management concerns. Transferring quota from the Reserve category to the Harpoon category does not affect the overall U.S. BFT quota, and available data show the adjustment would have a minimal risk of exceeding the ICCAT-allocated quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria.

For all of the above reasons, the AA finds that pursuant to 5 U.S.C. 553(d), there is good cause to waive the 30-day delay in effective date.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: July 21, 2023.

Jennifer M. Wallace,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230720–0171]

RIN 0648–BM18

Pacific Halibut Fisheries; Catch Sharing Plan; Rulemaking To Modify the 2023–2027 Halibut Individual Fishing Quota (IFQ) Vessel Harvest Limitations in IFQ Regulatory Areas 4A, 4B, 4C, and 4D

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to revise regulations for the commercial individual fishing quota (IFQ) Pacific halibut (halibut) fisheries for 2023 through 2027. This rule removes limits on the maximum amount of halibut IFQ that may be harvested by a vessel, commonly known as vessel use caps, in IFQ Regulatory Areas 4A (Eastern Aleutian Islands), 4B (Central and Western Aleutian Islands), 4C (Central Bering Sea), and 4D (Eastern Bering Sea). This action provides additional flexibility and stability to IFQ participants in Areas 4A, 4B, 4C, and 4D while a longer term modification of vessel use caps is considered. This action is intended to promote the goals and objectives of the IFQ Program, the Northern Pacific Halibut Act of 1982 (Halibut Act), and other applicable laws.

DATES: Effective July 26, 2023.

ADDRESSES: Electronic copies of the Categorical Exclusion and the Regulatory Impact Review (RIR) (herein referred to as the ''Analysis'') prepared for this action are available from *https://www.regulations.gov* identified by docket number NOAA–NMFS–2023–0055 or from the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska.*

FOR FURTHER INFORMATION CONTACT: Alicia M. Miller, 907–586–7228 or *Alicia.m.miller@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS published a proposed rule in the **Federal Register** on May 11, 2023 (88 FR 30272), with public comments invited through June 12, 2023. NMFS received two comment letters on the proposed rule. A summary of the comments and NMFS' responses are provided under the heading Comments and Responses below. The following

background sections describe the IFQ Program, the halibut IFQ vessel use caps, and this final rule. Detailed descriptions of the IFQ Program and the rationale and effects of this action are included in the preamble to the proposed rule and in the Analysis prepared for this action and are not repeated here (see **ADDRESSES**).

Background

This rule implements regulations to temporarily remove vessel use caps in Areas 4A, 4B, 4C, and 4D for 2023 through 2027. Vessel use caps were recommended by the North Pacific Fishery Management Council (Council) and implemented by NMFS as part of the IFQ Program (58 FR 59375, November 9, 1993) as regulations that were in addition to, and not in conflict with, those adopted by the International Pacific Halibut Commission (IPHC) and consistent with the Halibut Act (16 U.S.C. 773c(c)).

IFQ Program

Commercial halibut and sablefish fisheries in Alaska are subject to regulation under the IFQ Program and the Community Development Quota (CDQ) Program (50 CFR part 679). A key objective of the IFQ Program is to support the social and economic character of the fisheries and the coastal fishing communities where many of these fisheries are based. For more information about the IFQ Program, please refer to section 2.3 of the Analysis. Because this rule is specific to the halibut IFQ fishery, reference to the IFQ Program in this preamble is specific to halibut unless otherwise noted.

Under the IFQ Program, access to the commercial halibut fisheries is limited to those persons holding quota share (QS), which is the limited access permit NMFS uses to calculate a person's IFQ each year. Halibut QS is designated for a specific geographic area of harvest, a specific vessel operation type (catcher vessel (C/V) or catcher/processor), and for a specific range of vessel sizes that may be used to harvest the halibut (vessel category). Out of the four vessel categories of halibut QS, category A shares are designated for catcher/processors that process their catch at sea (*e.g.,* freezer longline vessels) and do not have a vessel length designation, whereas category B, category C, and category D shares are designated to be fished on C/Vs that meet specific length designations (§ 679.40(a)(5)).

NMFS annually issues IFQ permits to each QS holder. IFQ permits authorize permit holders to harvest a specified amount of a particular IFQ species in an area from a specific operation type and vessel category, consistent with the QS they hold. IFQ is expressed in pounds (lb) and is based on the amount of QS held by the permit holder in relation to the total QS pool for each area with an assigned catch.

The IFQ Program also establishes: (1) limits on the maximum amount of QS that a person could use (*i.e.,* be used to receive annual IFQ) (§ 679.42(f)); (2) limits on the number of small amounts of indivisible QS units, known as QS blocks, that a person can hold (§ 679.42(g)); (3) limits on the ability of IFQ assigned to one C/V vessel category (vessel category B, C, or D IFQ) to be fished on a different (larger) vessel category with some limited exceptions (§ 679.42(a)(2)); and (4) limits on the maximum amount of halibut IFQ that may be harvested by a vessel during an IFQ fishing year (§ 679.42(h)). Only qualified individuals and initial recipients of QS are eligible to hold C/V QS, and they are required to be on the vessel when the IFQ is being fished, with a few limited exceptions (§ 679.41(h)(2)). All of these limitations were established to retain the owner-operator nature of the C/V halibut IFQ fisheries, limit consolidation of QS, and ensure the annual IFQ is not harvested on a small number of larger vessels.

Halibut IFQ Vessel Use Caps

The IFQ Program vessel use caps limit the maximum amount of halibut that can be harvested on any one vessel in any fishing year. The limits are intended to help ensure that a minimum number of vessels are engaged in the halibut IFQ fishery and to address concerns about the socio-economic impacts of fleet consolidation and reduction of crew jobs under the IFQ Program. For additional detail on vessel use caps, see the preamble to the proposed rule for the IFQ Program (57 FR 57130, December 3, 1992).

This preamble refers to halibut catch limits, commercial halibut allocations, and vessel use caps in pounds (lb) and metric tons (mt). Net pounds and net metric tons are defined as the weight of halibut from which the gills, entrails, head, and ice and slime have been removed.

This rule does not modify the vessel use caps for Areas 2C, 3A, 3B, and 4E. Vessels in these areas cannot be used to harvest more halibut IFQ than one-half percent of the combined total catch limits of halibut (§ 679.42(h)(1)). Applying this regulation to 2023 yields a vessel use cap of 89,030 lb (40.4 mt) in all areas. This final rule provides flexibility to vessels harvesting halibut IFQ in Areas 4A, 4B, 4C, and 4D by removing the vessel use cap for 2023 through 2027. Vessels harvesting halibut IFQ in these areas are therefore not limited to a maximum proportion of annual halibut IFQ that may be harvested on a vessel. Halibut harvested in Area 4E is currently entirely allocated under the CDQ Program and CDQ is not subject to vessel use caps. For that reason, the vessel use cap applicable to Area 4E is not modified by this rule.

This rule also removes the vessel use cap applicable to a Community Quota Entity (CQE) in Area 4B from 2023 through 2027. In Area 4B, a CQE is authorized to hold halibut QS in Area 4B on behalf of the community of Adak, Alaska (79 FR 8870, February 14, 2014). A CQE is a NMFS-approved non-profit organization that represents small, remote, coastal communities that meet specific criteria to purchase and hold C/V halibut QS on behalf of an eligible community. The CQE holds QS and leases the IFQ derived from the underlying QS. Any vessel harvesting halibut IFQ derived from the QS held by the CQE representing the community of Adak is not subject to the vessel use cap regulations at § 679.42(h)(1)(ii) from the effective date of this final rule through 2027. Unless modified by a subsequent rulemaking, any vessel harvesting halibut IFQ derived from the QS held by the CQE representing the community of Adak after 2027 will be limited to harvest no more than 50,000 lb (22.7 mt).

This rule does not modify other elements of the IFQ Program, nor IPHC actions related to the program. Specifically, this rule does not do any of the following:

- Increase or otherwise modify the annual halibut catch limits adopted by the IPHC and implemented by NMFS (88 FR 14066, March 7, 2023);
- Modify any other conservation measures recommended by the IPHC and implemented by NMFS, nor any other conservation measures implemented by NMFS independent of the IPHC; or
- Modify other limitations on the use of QS and IFQ described in the previous sections of this preamble.

Final Regulations

This rule adds a provision at § 679.42(h)(1)(iii) to remove vessel use caps for vessels harvesting IFQ halibut in Areas 4A, 4B, 4C, and 4D from 2023 through 2027 fishing years. Because vessel use caps are applied under existing regulations at the fishery level, including harvest in all areas, the regulations clarify that harvest of IFQ halibut in regulatory Areas 4A, 4B, 4C, and 4D is excluded from the calculation of vessel use caps in Area 2C, 3A, or 3B

from 2023 through 2027. Unless modified by a subsequent rulemaking, after 2027, no vessel in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E can be used to harvest more halibut IFQ than one-half percent of the combined total catch limits of halibut (§ 679.42(h)(1)).

Changes From Proposed to Final Rule

NMFS did not make changes to the regulatory text in this final rule from the regulatory text in the proposed rule.

Comments and Responses

NMFS received two comment letters during the public comment period for the proposed rule (88 FR 30272, May 11, 2023). One letter was from a CQE authorized to hold QS in Area 4B and the other was from an individual on a topic outside the scope of this action. Below, NMFS summarizes and responds to the three unique relevant comments.

Comment 1: We support the proposed action to suspend the halibut IFQ vessel use caps in Area 4B for 2023 through 2027.

Response: NMFS acknowledges this comment.

Comment 2: The proposed regulatory language at § 679.42(h)(1)(iii) does not explicitly mention a ''CQE'' but it is clearly inclusive of all vessels harvesting IFQ halibut in Area 4B and this includes IFQ derived from QS held by the CQE in Area 4B.

Response: NMFS agrees. This rule removes the vessel use cap applicable to a vessel harvesting IFQ derived from QS held by a CQE in Area 4B for 2023 through 2027.

Comment 3: This action provides additional flexibility to the CQE authorized to hold QS in Area 4B by removing the 50,000 lb vessel use cap that would otherwise be applicable to harvesting vessels. Removing this vessel use cap will allow more of the CQE-held QS to be harvested and support the local economy.

Response: NMFS acknowledges this comment.

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Halibut Act (16 U.S.C. 773c) allows the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the allocation and catch of halibut in the United States portion of Convention waters, provided those regulations do not conflict with IPHC regulations. This action is consistent with the Council's authority to allocate halibut catch among fishery participants in Convention waters off Alaska.

Under 5 U.S.C. 553(d)(1), NMFS waives the 30-day delay in effective date of this final rule, which relieves a restriction on vessels by removing the use cap. It is important that this final rule is implemented in a timely manner before fishing vessels reach their use caps. An expedited implementation provides much needed flexibility and prevents unnecessary limits on fishing activity.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A Regulatory Impact Review was prepared to assess costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). Specific aspects of the economic analysis are discussed below in the *Final Regulatory Flexibility Analysis* section.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by any public comments in response to the IRFA, NMFS' responses to any such comments, and a summary of the analyses completed to support the action.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as ''small entity compliance guides.'' Copies of the proposed rule, this final rule, and the small entity compliance guide are available on the Alaska Region's website at: *https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/pacific-halibut-and-sablefish-individual-fishing-quota-ifq-program.*

Final Regulatory Flexibility Analysis

This FRFA incorporates the IRFA and the analyses completed to support this action. Section 604 of the Regulatory Flexibility Act (RFA) requires that when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA. Section 604 describes the required contents of a FRFA: (1) A statement of the need for and objectives of the rule; (2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in this final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

A description of this final rule and the need for and objectives of this rule are contained in the preamble to this final rule and the preamble to the proposed rule (88 FR 30272, May 11, 2023). That description is not repeated here.

Public and Chief Counsel for Advocacy Comments on the IRFA

NMFS published the proposed rule on May 11, 2023 (88 FR 30272). An IRFA was prepared and included in the Classification section of the preamble to the proposed rule. The comment period for the proposed rule closed on June 12, 2023. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule. NMFS received no comments specifically on the IRFA; therefore, no changes were made to this rule as a result of comments on the IRFA.

Number and Description of Small Entities Regulated by This Final Rule

This final rule directly regulates the owners and operators of vessels that harvest halibut IFQ in IFQ Area 4A, 4B, 4C, or 4D. As of 2021 (the most recent

year of gross revenue data), there were 98 unique vessels that harvested halibut IFQ in Area 4A, 4B, 4C, or 4D. Based on average annual gross revenue data, including affiliations, all but one of these vessels that landed halibut in 2021 are considered small entities based on the applicable $11 million threshold. Additional details are included in section 2.6 in the Analysis prepared for the proposed rule (see **ADDRESSES**).

Recordkeeping, Reporting, and Other Compliance Requirements

This action does not contain additional recordkeeping, reporting, or other compliance requirements.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

The RFA requires identification of any significant alternatives that accomplish the stated objectives of the action, consistent with applicable statutes, and that would minimize any significant economic impact of the action on small entities. No alternatives to the action were considered. This action is the same as the action implemented in 2022 and 2021 and similar to the action implemented in 2020, which did not include Area 4A.

The status quo alternative would retain the existing vessel use cap restrictions as defined under § 679.42(h). It is possible that such restrictions would increase the likelihood that some of the annual halibut allocation is left unharvested in Area 4.

The action alternative would remove limits on the maximum amount of halibut IFQ that may be harvested by a vessel in IFQ regulatory Areas 4A, 4B, 4C, and 4D. The action alternative and the regulations contained in this action provide flexibility to IFQ participants in 2023 through 2027 to ensure allocations of halibut IFQ can be harvested by the limited number of vessels operating in these Areas. However, this action could result in a reduction in existing operating vessels (and the associated crew jobs) and opportunities for new entrants in Areas 4A, 4B, 4C, and 4D, due to inability to compete with larger, more efficient operations. Additionally, if there are fewer participants in the fishery, it is possible that landings could consolidate to fewer processors and communities depending on landing location and historic harvester-processor relationships.

Collection-of-Information Requirements

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 21, 2023.

Kimberly Damon-Randall,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.42, add paragraph (h)(1)(iii) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(h) * * *

(1) * * *

(iii) Notwithstanding the vessel use caps specified in paragraphs (h)(1) introductory text and (h)(1)(ii) of this section, vessel use caps do not apply to vessels harvesting IFQ halibut in IFQ regulatory Areas 4A, 4B, 4C, and 4D during the 2023 through 2027 fishing years. IFQ halibut harvested in regulatory Areas 4A, 4B, 4C, and 4D is excluded from the calculation of vessel use caps for IFQ regulatory Area 2C, 3A, or 3B during the 2023 through 2027 fishing years.

* * * * *

[FR Doc. 2023–15816 Filed 7–25–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 142
Wednesday, July 26, 2023

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1222

[Doc. No. AMS–SC–23–0013]

Paper and Paper-Based Packaging Promotion, Research, and Information Order; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notification of referendum.

SUMMARY: This document directs that a referendum be conducted among eligible domestic manufacturers and importers of paper and paper-based packaging to determine whether they favor continuance of the Agricultural Marketing Service's (AMS) regulations regarding a national paper and paper-based packaging research and promotion program.

DATES: This referendum will be conducted by express mail and electronic ballot from October 6, 2023, through October 20, 2023. To be eligible to vote, persons who are currently domestic manufacturers and importers and who domestically manufactured and imported 100,000 short tons or more of paper and paper-based packaging during the representative period from January 1 through December 31, 2022, are eligible to vote in the referendum. Ballots delivered to AMS via express mail or electronic ballot must show proof of delivery by no later than 11:59 p.m. Eastern Time on October 20, 2023.

ADDRESSES: Copies of the Paper and Paper-Based Packaging Promotion, Research, and Information Order may be obtained from: Referendum Agent, Market Development Division, Specialty Crops Program (SCP), AMS, USDA, 1400 Independence Avenue SW, Room 1406–S, Stop 0244, Washington, DC 20250–0244, telephone: (202) 720–8085 or contact Marlene Betts at (202) 494–6633 or via electronic mail: *Marlene.Betts@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Marlene Betts, Marketing Specialist, Market Development Division, SCP, AMS, USDA, 1400 Independence Avenue SW, Room 1406–S, Stop 0244, Washington, DC 20250–0244; Marlene Betts (202) 494–6633 or via electronic mail: *Marlene.Betts@usda.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425) (Act), it is hereby directed that a referendum be conducted to ascertain whether continuance of the Paper and Paper-Based Packaging Promotion, Research and Information Order (Order) (7 CFR part 1222) is favored by eligible domestic manufacturers and importers of paper and paper-based packaging covered under the program. The Order is authorized under the Act.

The representative period for establishing voter eligibility for the referendum shall be the period from January 1 through December 31, 2022. Persons who are currently domestic manufacturers and have domestically manufactured 100,000 short tons or more of paper and paper-based packaging and persons who are currently importers and have imported 100,000 short tons or more of paper and paper-based packaging, during the representative period are eligible to vote in the referendum. Persons who received an exemption from assessments pursuant to § 1222.53 for the entire representative period are ineligible to vote. The U.S. Department of Agriculture will provide the option for electronic balloting. The referendum will be conducted by express mail and electronic ballot from October 6 through October 20, 2023. Further details will be provided in the ballot instructions.

Section 518 of the Act (7 U.S.C. 7411–7425) authorizes continuance referenda. Under § 1222.81(b) of the Order, USDA must conduct a referendum no later than seven years after the program became effective and every seven years thereafter; at the request of the Board established in this Order; at the request of 10 percent or more of the number of persons eligible to vote in a referendum as set forth under the Order; or at any time as determined by the Secretary to determine if persons subject to assessment favor continuance of the program. The program was established in 2014 and the last referendum was held in September 2020. The Paper and Packaging Board (Board) unanimously voted at its November 2022 meeting to conduct a referendum in October 2023. Therefore, at the Board's request, a continuance referendum is being conducted before the next scheduled referendum. USDA would continue the Order if continuance is favored by a majority of domestic manufacturers and importers of paper and paper-based packaging voting in the referendum who also represent a majority of the volume of paper and paper-based packaging represented in the referendum and who, during the period of January 1 through December 31, 2022, have been engaged in the manufacturing and importation of paper and paper-based packaging.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the referendum ballot has been approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0093. It has been estimated that approximately 40 entities will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot.

Referendum Order

Marlene Betts, Marketing Specialist, and Alexandra Caryl, Branch Chief, Mid-Atlantic Region Branch, Market Development Division, Specialty Crops Program, AMS, are hereby designated as the referendum agents to conduct this referendum. The referendum procedures at 7 CFR 1222.100 through 1222.108, which were issued pursuant to the Act, shall be used to conduct the referendum.

The referendum agents will express mail or provide electronically the ballots to be cast in the referendum and voting instructions to all known, eligible domestic manufacturers and importers prior to the first day of the voting period. Persons who are currently domestic manufacturers and importers and who domestically manufactured and imported 100,000 short tons or more of paper and paper-based packaging during the representative period are eligible to vote. Persons who received an exemption from assessments pursuant to § 1222.53 during the entire representative period from January 1 through December 31, 2022, are ineligible to vote. Any eligible

domestic manufacturer or importer who does not receive a ballot should contact a referendum agent no later than three days before the end of the voting period. Ballots delivered via express mail or electronic ballot show proof of delivery by no later than 11:59 p.m. Eastern Time on October 20, 2023.

List of Subjects in 7 CFR Part 1222

Administrative practice and procedure, Advertising, Labeling, Marketing agreements, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–15826 Filed 7–25–23; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. FAA–2023–1463]

Draft Notice Regarding Submittal and Disclosure of Safety Critical Information by Applicants for Transport Category Airplane Type Certificates

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This draft Notice, as part of the FAA's implementation of the Aircraft Certification, Safety, and Accountability Act, would provide additional guidance regarding the process for applying for a new or amended type certificate (TC) for a transport category airplane. This guidance would facilitate the provision of safety critical information about the applicant's proposed design to the FAA.

DATES: Comments on the draft Notice must be received on or before August 25, 2023.

ADDRESSES: Send comments with the subject line, ''Submittal and Disclosure of Safety Critical Information by Applicants for Transport Category Airplane Type Certificates'' identified by docket number FAA–2023–1463, using the following method:

• *Federal eRegulations Portal:* Go to *https://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In addition to the final Notice, the FAA will post all comments it receives, without change, to *https://www.regulations.gov/,* including any personal information the commenter provides. DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *https://DocketsInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sue McCormick, Product Policy Management: Systems Standards Section, AIR–63A, Organization and Systems Policy Branch, Policy and Standards Division, Aircraft Certification Service, by email at *susan.mccormick@faa.gov,* or by phone at (206) 231–3242.

SUPPLEMENTARY INFORMATION:

Discussion

Section 105(a) of the Aircraft Certification, Safety, and Accountability Act, Public Law 116–260 (the Act), mandates that the Administrator require the submittal and disclosure of safety critical information by applicants for, or holders of, TCs for transport category airplanes covered under title 14, Code of Federal Regulations (14 CFR) part 25. As detailed in the draft Notice, the Act defines safety critical information.

Applicants for transport airplane type certificates currently submit safety critical information with their initial certification plan, and throughout their project. However, it may not be clearly demarcated as safety critical. Therefore, as part of its interim implementation of Section 105(a), the FAA plans to issue a Notice to supplement its application processes to provide guidance for applicants to delineate safety critical information. A draft of the Notice may be examined in the docket and at *https://www.faa.gov/aircraft/draft_docs.*

Comments Invited

The FAA invites the public to submit comments on the draft Notice, as specified in the **ADDRESSES** section of this notification. Commenters should include the subject line, ''Submittal and Disclosure of Safety Critical Information by Applicants for Transport Category Airplane Type Certificates'' and the docket number on all comments submitted to the FAA. The most helpful comments will reference a specific recommendation, explain the reason for any recommended change, and include supporting information. The FAA will consider all comments received on or before the closing date, before issuing the final Notice. The FAA will also consider late-filed comments if it is possible to do so without incurring expense or delay.

Issued in Washington, DC, on July 21, 2023.

Brian Cable,

Manager, Organization and Systems Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2023–15821 Filed 7–25–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. FAA–2023–1383]

Draft Policy Statement Regarding Classification of Type Design Changes That Would Materially Alter Safety Critical Information as Major Type Design Changes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notification of availability; request for comments.

SUMMARY: A draft policy statement would state that proposed type design changes that would materially alter safety critical information have the potential to affect airworthiness, and therefore do not qualify as minor design changes.

DATES: Comments on the draft policy statement must be received on or before August 25, 2023.

ADDRESSES: Send comments with the subject line, ''Classification of Type Design Changes That Would Materially Alter Safety Critical Information as Major Type Design Changes'' identified by docket number FAA–2023–1383, using the following method:

• *Federal eRegulations Portal:* Go to *https://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In addition to the final policy statement, the FAA will post all comments it receives, without change, to *https://www.regulations.gov/,* including any personal information the commenter provides. DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *https://DocketsInfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Sue McCormick, Product Policy Management: Systems Standards Section, AIR–63A, Organization and Systems Policy Branch, Policy and Standards Division, Aircraft Certification Service, by email at *susan.mccormick@faa.gov,* or by phone at (206) 231–3242.

SUPPLEMENTARY INFORMATION:

Discussion

Section 105(a) of the Aircraft Certification, Safety, and Accountability Act, Public Law 116–260 (the Act), defines five categories of ''safety critical information'' and instructs the FAA to take a variety of actions related to the submittal of such information by applicants for, or holders of, type certificates for transport category airplanes. These five categories of information all relate to the airplane's airworthiness characteristics. A proposed design change that would have an appreciable effect on an airworthiness characteristic of a product must be evaluated as a major, rather than minor, change. 14 CFR 21.93, 21.95, and 21.97. Therefore, the FAA plans to issue a policy statement stating that a proposed design change to a transport category airplane that would materially alter safety critical information would have an appreciable affect on the airplane's airworthiness, and therefore would not qualify as a minor change. A draft of the policy statement may be examined in the docket and at *https://www.faa.gov/aircraft/draft_docs*.

Comments Invited

The FAA invites the public to submit comments on the draft policy statement, as specified in the **ADDRESSES** section of this notification. Commenters should include the subject line, ''Classification of Type Design Changes That Would Materially Alter Safety Critical Information as Major Type Design Changes'' and the docket number on all comments submitted to the FAA. The most helpful comments will reference a specific recommendation, explain the reason for any recommended change, and include supporting information. The FAA will consider all comments received on or before the closing date, before issuing the final policy statement. The FAA will also consider late-filed comments if it is possible to do so without incurring expense or delay.

Issued in Washington, DC.

Brian Cable,

Manager, Organization and Systems Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2023–15853 Filed 7–25–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Parts 50, 51, and 71

[Public Notice: 11999]

RIN 1400–AF54

Third-Party Attendance at Appointments for Passport, Consular Report of Birth Abroad (CRBA), and Certain Other Services

AGENCY: Department of State.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department proposes a rule to provide that private attorneys, interpreters, and other third parties may attend certain appointments at passport agencies and centers and at U.S. embassies and consulates abroad to assist the person requesting services (the applicant/requester). This rulemaking permitting third-party attendance will apply only to appointments in support of an application for a U.S. passport, either domestically or overseas; to appointments related to a request for a Consular Report of Birth Abroad or a Certificate of Loss of Nationality of the United States (CLN); and to other appointments for certain other services offered by American Citizens Services (ACS) units at U.S. embassies and consulates overseas (posts). In addition, the Department is proposing technical corrections to clarify who may act as a consular officer for purposes of the Protection and Welfare of Citizens and their Property.

DATES: The Department of State will accept comments until September 25, 2023.

ADDRESSES: Interested parties may submit comments to the Department by any of the following methods:

• *Visit the Regulations.gov website at: https://www.regulations.gov* and search for the docket number DOS–2023–0008.

• *Email: PassportOfficeofAdjudicationGeneral@state.gov.* You must include AF54 in the subject line of your message.

• All comments should include the commenter's name, the organization the commenter represents, if applicable, and the commenter's address. If the Department is unable to read your comment for any reason, and cannot contact you for clarification, the Department may not be able to consider your comment. After the conclusion of the comment period, the Department will publish a Final Rule (in which it will address relevant comments) as expeditiously as possible.

FOR FURTHER INFORMATION CONTACT: Jennifer Tinianow, Office of Adjudication, Passport Services, (202) 485–8800, or email *PassportOfficeofAdjudicationGeneral@state.gov.*

SUPPLEMENTARY INFORMATION:

Applicants appearing for passport and/or Consular Reports of Birth Abroad (CRBA) appointments or seeking certain other services as described below at an American Citizens Services (ACS) unit overseas, occasionally request that a private attorney, interpreter, and/or other third party physically accompany them to the appointment. In order to clarify worldwide guidelines for third-party attendance at appointments for a passport (either at a U.S. domestic agency or center or overseas), CRBA, or certain other services offered by the ACS Unit at an overseas post, the Department proposes to amend 22 CFR parts 50, 51, and 71 to address when attorneys and/or other third parties may attend an appointment for a U.S. passport, CRBA, Certificate of Loss of Nationality of the United States (CLN), or for certain other U.S. citizen services offered at post by the ACS unit overseas. Although Department guidance has permitted third-party attendance at such appointments in the past, the Department has not promulgated a regulation regarding third-party attendance. Based on our determination that domestic passport agencies and centers and ACS units at U.S. embassies and consulates overseas generally have the capacity to accommodate third-party attendance at such appointments under existing policy, the Department proposes to publish regulations not only to provide greater transparency to the public but also an explicit framework through which the Department, including the Diplomatic Security Service and Chiefs of Mission, may

facilitate such third-party attendance. The proposed rule specifically addresses attendance of a private attorney, interpreter, and/or other third party to assist a U.S. citizen or a person with a claim to U.S. citizenship appearing for a passport appointment at a passport agency or center domestically or U.S. embassy or consulate overseas, or for a CRBA or CLN appointment at a U.S. embassy or consulate overseas. The proposed rule also applies to the three types of U.S. citizen services offered at an ACS unit at post, as described in 7 FAM 020 Appendix B (routine American Citizens Services, Special Consular Services, and consular crisis preparedness and response).

While the Department believes that the assistance of a third party is not needed to obtain a U.S. passport, CBRA, or to receive other U.S. citizen services, it recognizes that U.S. citizens or persons may wish to be accompanied by a private attorney, interpreter, and/or other third party to their appointment(s) to provide assistance. This proposed rule pertains to third parties who may physically accompany an individual to a covered appointment. It further confirms that all regulations related to passport and CRBA applications in this chapter continue to apply including, but not limited to, regulations placing the burden of proving eligibility for the requested service or document on the applicant. Individuals will bear any cost associated with the attendance of an attorney, interpreter, and/or other third party. Attendees must follow all security policies of the facility in which the appointment takes place and may not be permitted to attend an appointment if they engage in any conduct that in the view of the Diplomatic Security Service or Chief of Mission (or designee), in their sole discretion, disrupts the appointment. Entry to U.S. embassies and consulates is pursuant to Department, Chief of Mission, and/or Diplomatic Security policies, security directives, and communicated guidelines.

Lastly, the Department is proposing technical amendments to 22 CFR part 71 to clarify that appropriately designated Department employees, in addition to officers of the Foreign Service, may assist U.S. citizens seeking assistance at overseas posts. This change is consistent with Federal law and regulations which were amended after 22 CFR part 71 was published in 1957.

Regulatory Findings

Administrative Procedure Act

The Department of State is publishing this rulemaking as a proposed rule and is providing 60 days for public comment.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Only individuals, and no small entities, apply for passports or CRBAs or other services offered by the American Citizens Services (ACS) units at U.S. embassies and consulates overseas.

Unfunded Mandates Act of 1995

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

Executive Order 12866

The Department has reviewed this proposed regulation to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866, as amended by Executive Order 14094. Applicants appearing for passport and/or CRBA appointments or seeking certain other services from an ACS unit overseas occasionally request that a private attorney, interpreter, and/or other third party physically accompany them to the appointment; however, Department regulations currently do not address third party attendance in these contexts. The Department finds that the cost of this rulemaking to the public is expected to be minimal and provides a potential benefit to individuals who wish an attorney, interpreter, and/or other third party to accompany them to a passport, CRBA, or other appointment at an ACS unit overseas. At the same time, those who wish to appear without being accompanied by such individuals may do so; this proposed rulemaking does not mandate any change in the public's behavior. Additionally, the Department does not anticipate that demand for passport, CRBA, or other services at ACS units overseas will change as a result of this rulemaking. In summary, the Department anticipates no substantive impact on the public from this rulemaking.

Executive Order 13563—Improving Regulation and Regulatory Review

The Department of State has considered this proposed rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Orders 12372 and 13132—Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this proposed rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Executive Order 13175—Consultation With Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of E.O. 13175 do not apply to this proposed rule.

Paperwork Reduction Act

This rulemaking does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects

22 CFR Part 50

Citizenship and naturalization.

22 CFR Part 51

Passports.

22 CFR Part 71

Protection of U.S. citizens abroad.

Accordingly, for the reasons set forth in the preamble, the Department of State proposes to amend 22 CFR parts 50, 51, and 71 as follows:

PART 50—NATIONALITY PROCEDURES

■ 1. The authority for part 50 continues to read as follows:

Authority: 22 U.S.C. 2651a; 8 U.S.C. 1104 and 1401 through 1504.

■ 2. Amend § 50.40 by adding paragraph (f) to read as follows:

§ 50.40 Certification of loss of U.S. nationality.

* * * * *

(f) Attorney and/or Other Third-Party Presence at In-Person Certificate of Loss of Nationality (CLN) appointments. Individuals may, at their own expense, have a private attorney, interpreter, and/or other third party of their own choice physically present during any in-person appointment, including interview appointments, at a U.S. embassy or consulate abroad related to a request for a CLN; provided that:

(1) The individual or the attorney and/or other third party shall provide advance notice of the attorney's and/or other third party's intent to attend the CLN appointment in the manner specified by the Department of State and/or the specific U.S. embassy or consulate where the appointment is to take place.

(2) The individual requesting the CLN must appear in person for the mandatory in-person interview appointment(s); attendance by an attorney and/or other third party shall not be in lieu of the individual's in-person appearance.

(3) The diplomatic or consular officer will direct all interview questions to the individual requesting the CLN, and the individual must personally respond to the consular officer.

(4) The diplomatic or consular officer conducting the interview shall have the discretion to interview the individual alone, without an attorney and/or other third-party present, when necessary to evaluate whether the individual has performed a potentially expatriating act independently, free from duress or coercion, and with intent to relinquish U.S. nationality.

(5) Nothing in this section abrogates any policies, security directives, and guidelines from the Department, Chief of Mission, or Diplomatic Security Service regarding admission to or conduct in the U.S. embassy or consulate. All persons entering a U.S. embassy or consulate shall comply with all policies, security directives, guidelines, and protocols, including but not limited to those regarding security, identification, screening, electronic devices, recording, health, and conduct. Individuals may be refused entry or directed to leave the U.S. embassy or consulate for noncompliance with such policies, directives, guidelines, and protocols.

■ 3. Add subpart D to part 50 to read as follows:

Subpart D—Third-Party Attendance at Passport and Consular Report of Birth Abroad (CRBA) Appointments

Sec.

50.52. Attorney or Other Third-Party Assistance.

§ 50.52. Attorney or other third-party assistance.

(a) A person appearing for a passport appointment at a passport agency or center domestically or a U.S. embassy or consulate overseas or for a Consular Report of Birth Abroad (CRBA) appointment overseas may be physically accompanied by a private attorney, interpreter, and/or other third party of their own choice at their own expense to provide assistance. All regulations related to passport and CRBA applications in this chapter continue to apply including, but not limited to, regulations placing the burden of proving eligibility for the requested service or document on the applicant/requester.

(1) An applicant and/or their attorney, and/or other third-party attendee may, at their own expense, bring their own interpreter to any passport and/or CRBA appointment, provided the applicant and/or their attorney and/or third-party attendee provides advance notice of such attendance pursuant to guidance issued by the Department.

(2) Attendance by an attorney and/or other third party at the appointment does not excuse the in-person appearance of the applicant as outlined by §§ 51.21 and 51.28 of this chapter.

(3) Nothing in this section abrogates any policies, security directives, and guidelines from the Department, Chief of Mission, or Diplomatic Security Service regarding admission to or conduct in a domestic passport agency or center or at a U.S. embassy or consulate overseas. All persons entering a domestic passport agency or center or a U.S. embassy or consulate overseas shall comply with all policies, security directives, guidelines, and protocols, including but not limited to those regarding security, identification, screening, electronic devices, recording, health, and conduct. Individuals may be refused entry or directed to leave the U.S. embassy or consulate for noncompliance with such policies, directives, guidelines, and protocols.

PART 51—PASSPORTS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 8 U.S.C. 1504; 18 U.S.C. 1621; 22 U.S.C. 211a, 212, 212b, 213, 213n (Pub. L. 106–113 Div. B, Sec. 1000(a)(7) [Div. A, Title II, Sec. 236], 113 Stat. 1536, 1501A–430); 214, 214a, 217a, 218, 2651a, 2671(d)(3), 2705, 2714, 2714a, 2721, & 3926; 26 U.S.C. 6039E; 31 U.S.C. 9701; 42 U.S.C. 652(k) [Div. B, Title V of Pub. L. 103–317, 108 Stat. 1760]; E.O. 11295, Aug. 6, 1966, FR 10603, 3 CFR, 1966–1970 Comp., p. 570; Pub. L. 114–119, 130 Stat. 15; Sec. 1 of Pub. L. 109–210, 120 Stat. 319; Sec. 2 of Pub. L. 109–167, 119 Stat. 3578; Sec. 5 of Pub. L. 109–472, 120 Stat. 3554; Pub. L. 108–447, Div. B, Title IV, Dec. 8, 2004, 118 Stat. 2809; Pub. L. 108–458, 118 Stat. 3638, 3823 (Dec. 17, 2004).

■ 2. Add § 51.29 to read as follows:

§ 51.29 Attorney or other third-party assistance.

A person seeking passport services may be physically accompanied by an attorney, interpreter, and/or other third party of their own choice at their own expense in accordance with § 50.52 of this chapter.

PART 71—PROTECTION AND WELFARE OF CITIZENS AND THEIR PROPERTY

■ 1. The Authority citation for Part 71 is amended to read as follows:

Authority: 22 U.S.C. 3904; 22 U.S.C. 2715; 22 U.S.C. 2715a; 22 U.S.C. 2715b; 22 U.S.C. 2715c; 22 U.S.C. 2671(b)(2); 22 U.S.C. 2671(d); 22 U.S.C. 2670(j); 22 U.S.C. 4196; 22 U.S.C. 4197

■ 2. In subpart A of part 71, remove the words ''officer[s] of the Foreign Service'' and replace them with the words ''diplomatic or consular officer[s] of the United States'', wherever they appear.

■ 3. Revise § 71.1 to read as follows:

§ 71.1 Protection of Americans abroad.

(a) Consular officers shall perform such duties in connection with the protection of U.S. nationals abroad as may be required by regulations prescribed by the Secretary of State.

(b) U.S. citizens seeking protection, welfare, or other routine American Citizen Services, Special Consular Services, and consular crisis preparedness and response from an American Citizens Services Unit at a U.S. embassy or consulate may be assisted in related proceedings by a third party of their own choice at their own expense in accordance with § 50.52 of this chapter.

(c) For purposes of this part, *consular officer* includes any United States citizen employee of the Department of State who is designated by the Deputy Assistant Secretary of State for Overseas Citizens Services to perform consular services overseas.

Rena Bitter,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2023–15744 Filed 7–25–23; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 60, 70, 71, 72, 75, and 90

[Docket No. MSHA–2023–0001]

RIN 1219–AB36

Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; notice of public hearings.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold three public hearings on the proposed rule, *Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection.* The proposed rule was published on July 13, 2023 and is available at *https://www.regulations.gov* and MSHA's website at *www.MSHA.gov.* The proposed rule would amend MSHA's existing standards to better protect miners against occupational exposure to respirable crystalline silica, a carcinogenic hazard, and to improve respiratory protection for all airborne hazards.

DATES: Hearings will be held on the following dates: August 3, 2023, August 10, 2023, and August 21, 2023. The locations are listed in the **SUPPLEMENTARY INFORMATION** section of this document. Post-hearing comments must be received or postmarked by midnight (Eastern Time) on August 28, 2023.

ADDRESSES: All submissions must include RIN 1219–AB36 or Docket No. MSHA–2023–0001. You should not include personal or proprietary information that you do not wish to disclose publicly. If you mark parts of a comment as ''business confidential'' information, MSHA will not post those parts of the comment. Otherwise, MSHA will post all comments without change, including any personal information provided. MSHA cautions against submitting personal information.

You may submit comments and informational materials, clearly identified by RIN 1219–AB36 or Docket Id. No. MSHA–2023–0001, by any of the following methods:

- *Federal E-Rulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: zzMSHA-comments@dol.gov.* Include ''RIN 1219–AB36'' in the subject line of the message.
- *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5450.
- *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Before visiting MSHA in person, call 202–693–9440 to make an appointment. Special health precautions may be required.
- *Facsimile:* 202–693–9441. Include ''RIN 1219–AB36'' in the subject line of the message.

Information Collection Requirements. Comments concerning the information collection requirements of this proposed rule must be clearly identified with ''RIN 1219–AB36'' or ''Docket No. MSHA–2023–0001,'' and sent to MSHA by one of the methods previously explained.

Docket. For access to the docket to read comments and background documents, go to *https://www.regulations.gov.* The docket can also be reviewed in person at MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, Virginia, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays. Before visiting MSHA in person, call 202–693–9440 to make an appointment. Special health precautions may be required.

Email Notification. To subscribe to receive an email notification when MSHA publishes rulemaking documents in the **Federal Register**, go to *https://public.govdelivery.com/accounts/USDOL/subscriber/new.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at: *silicanprm@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The public hearings provide industry, labor, and other interested parties with an opportunity to present oral statements, written comments, and other information on the proposed rule published on July 13, 2023 (88 FR 44852). In response to requests from the public, MSHA will hold a third public hearing on the Silica proposed rule, in addition to the two public hearings announced in the notice of proposed rulemaking. The Agency believes that the public would benefit from a third hearing which would allow the public an additional opportunity to present their views in a location accessible to miners, mine operators, and other members of the public.

Each of the three public hearings will begin at 9 a.m. local time and end after the last presenter speaks on the following dates:

Date	Location	Contact No.
August 3, 2023	Mine Safety and Health Administration, 201 12th Street South (Room 7W202), Arlington, VA 22202.	202–693–9440
August 10, 2023	National Mine Health and Safety Academy, Auditorium (Room B102), 1301 Airport Road, Beckley, WV 25813.	202–693–9440
August 21, 2023	Denver Federal Center, Building 25, Lecture Hall (Room 1866), West 6th Avenue and Kipling Street, Denver, CO 80225.	202–693–9440

The public hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. Speakers and other attendees may present information to MSHA for inclusion in the rulemaking record. The hearings will be conducted in an informal manner. Formal rules of evidence and cross examination will not apply.

A verbatim transcript of each of the proceedings will be prepared and made a part of the rulemaking record. Copies of the transcripts will be available to the public. MSHA will make the transcript of the hearings available at *https://www.regulations.gov* and on MSHA's website at *https://arlweb.msha.gov/currentcomments.asp.*

MSHA will accept post-hearing written comments and other appropriate information for the rulemaking record from any interested party, including those not presenting oral statements, received by midnight (Eastern Time) on August 28, 2023.

Pre-registration is not required to attend the hearings. Interested parties may attend the hearings virtually or in person. Additional information on how to attend the public hearings virtually or in-person will be available at *https://www.msha.gov/regulations/rulemaking/silica*. Interested parties who intend to present testimony at the hearings are asked to register in advance on MSHA's website at *https://www.msha.gov/form/silica-hearings-registration*. Speakers will be called in the order in which they are registered. Those who do not register in advance will have an opportunity to speak after all those who pre-registered have spoken. You may submit hearing testimony and documentary evidence, identified by docket number (MSHA–2023–0001), by any of the methods previously identified.

(Authority: 30 U.S.C. 811)

Dated: July 17, 2023.

Christopher J. Williamson,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2023–15592 Filed 7–25–23; 8:45 am]

BILLING CODE 4520–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2021–0752; FRL–9203–01–R10]

Air Plan Approval; WA; Yakima County Outdoor and Agricultural Burning Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve into the Washington State Implementation Plan (SIP) the Yakima Regional Clean Air Agency's (YRCAA) revised outdoor and agricultural burning rule submitted by the State of Washington (Washington or the State) on October 14, 2021. The submitted revisions improve stringency, clarity and enforceability of the rule. The EPA is proposing to approve the SIP submission as consistent with Clean Air Act (Act or CAA) requirements.

DATES: Comments must be received on or before August 25, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2021–0752, at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *https://www.regulations.gov*. The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Claudia Vaupel, (206) 553–6121, *vauepl.claudia@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA.

I. Background for This Action

Section 110 of the CAA requires states to develop and submit to the EPA a SIP to ensure that state air quality meets National Ambient Air Quality Standards (NAAQS). These ambient standards address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. The EPA-approved SIP provisions and control strategies are federally enforceable. States revise the SIP as needed and submit revisions to the EPA for review and approval.

The EPA approved YRCAA's outdoor burning rules into the Washington SIP in 1998 as part of the Yakima area attainment plan for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) [1] On October 14, 2021, Washington submitted a SIP revision to the EPA that repeals and replaces the 1998 SIP-approved outdoor burning rules for the Yakima area.

II. The State's Submission

Washington's October 14, 2021, SIP submission significantly revised the SIP-approved outdoor burning rules for the Yakima area. Specifically, the SIP revision repeals and replaces the following rules from *Regulation 1 of the Yakima Regional Clean Air Agency, Article 5,* that were federally approved into the Washington SIP in 1998: *5.01 Outdoor Burning; 5.02 Regulations Applicable to All Outdoor Burning; 5.03 Regulations Applicable to All Outdoor Burning within the Jurisdiction of the Yakima County Clean Air Authority, Local Cities, Towns, Fire Protection Districts and Conservation Districts; 5.04 Regulations Applicable to Permits Issued by the Yakima County Clean Air Authority for All Other Outdoor Burning*; and *5.05 Additional Restrictions on Outdoor Burning*. The SIP revision replaces the repealed outdoor burning rules in *Regulation 1, Article 5,* with *Regulation 1, Article 3, 3.03 Outdoor and Agricultural Burning,* that was adopted by YRCAA on October 8, 2020 and became state effective on November 9, 2020.

III. The EPA's Evaluation

As mentioned previously, the October 2021 SIP submission replaces the outdoor burning rules in *Regulation 1, Article 5,* with outdoor and agricultural burning rules in *Regulation 1, Article 3, Section 3.03*. The revision includes renumbering as well as updates to the rules.

Applicability

The revised rules continue to apply within YRCAA's jurisdiction. *Section 3.03* of the revised rules applies to burning requiring a permit and to burning that is exempt from permitting. *Section 3.03* also applies to agricultural burning at agricultural operations and government operations, and to certain firefighting training fires. Consistent with the current SIP-approved rules, the revised rules do not apply to silvicultural burning and contain clarification that silvicultural burning is regulated by chapter 70A.15.RCW, chapter 332–24 WAC, and the Department of Natural Resources Washington State Smoke Management Plan (3.03.B). The revised rules also contain exemptions for certain fire training fires at enclosed fire training facilities that meet specific rule requirements. Overall, the scope and applicability of outdoor burning subject to the revised rules appears at least equivalent to, if not more stringent than, the current SIP-approved rules.

General Prohibitions and Requirements for All Burning

Under the revised rules, residential and land clearing burning is prohibited

[1] We note that the Yakima area has since been redesignated to attainment for PM_{10}. (See 70 FR 6591, February 8, 2005).

at all times in the 10 urban growth areas (UGAs) in Yakima County (3.03.C). In contrast, the SIP-approved rules prohibit open burning in all UGAs and in cities with populations greater than 10,000, but only when the NAAQS are threatened, and alternative disposal practices are not reasonably available. Both the SIP-approved rules and the revised rules prohibit burning during a burn ban, however, to improve compliance and enforcement of this prohibition, the revised rules require confirmation of daily burning status (3.03.C.1.b and 3.03.C.2.a). The revised rules improve enforceability by including a clear requirement to extinguish fires when burning is prohibited. Specifically, in addition to the requirement that there be no visible flame, the revised rules add that no visible smoke must come from the fire and that the material being burned can be handled with bare hands. The revised rules also shorten the maximum time allowed for larger fires to be extinguished by 2 hours, from 10 to 8 hours (3.03.C.2.e).

Furthermore, the revised rules establish that land clearing, storm and flood debris, and orchard removal burns shall be extinguished within 8 hours of notification of a burn ban and that all other burns shall be extinguished within 3 hours of the notification (3.03.C.2.e). The revised rules also define storm and flood debris burning as ''natural vegetation proposed for burning that was deposited by a storm or flood from a declared emergency by a governmental authority'' and establish that storm and flood debris can only be burned within 2 years of the event or date of the emergency proclamation. (3.03.D.2.c).

Like the SIP-approved rules, the revised rules require that persons conduct burning during daylight hours, with limited exceptions. The revised rules also add specific requirements for the supervision of fires, location of fires, size of fires, distance requirements from buildings, fences, other combustible materials, and other fires, and the requirement to burn on a noncombustible surface (3.03.C.2 and 3.03.D.2). The revised rules continue to list materials that are prohibited from being burned (3.03.D.1). This list is broader than the list in the existing SIP-approved rules. In addition to these general requirements applicable to all burning, the revised rules contain specific requirements for firefighting training fires and agricultural burning (3.03.E and 3.03.F). These revisions improve the stringency, clarity and enforceability of the outdoor burning rules as compared to the current SIP-approved rules.

Permit Requirements

As with the SIP-approved rules, burning is not allowed without a permit, unless exempted (3.03.C.1.e and Table 3.03–1). The revised rules now require permits for Indian ceremonial fires and for firefighting training. The revised rules also establish three types of permits that YRCAA may issue depending on the type of burning, including individual permits, annual permits, and general rule permits (3.03.J). The revised rules also allow YRCAA to add specific conditions to permits as necessary before or after permit issuance (3.03.J.6). Regarding general permits, the revised rules include several permits with standard conditions, including for training fires and large recreational fires. In general, these revisions make the outdoor burning rules more stringent. The EPA specifically notes that the permit requirement in the revised rules for ceremonial fires and firefighting training strengthen the rules.

Permit Limited Exemptions

The revised rules include specific, narrow exemptions from the permitting requirements. Importantly, burns exempt from permitting are still subject to the general restrictions and prohibitions in 3.03.C as modified by Table 3.03–1. Specific limited exemptions are detailed in Table 3.03–1. Certain limited exemptions include incidental quantities of fence rows and windblown vegetation, irrigation or drainage ditches, and orchard prunings (Table 3.03–1). The revised rules also allow nonprofit organizations to be granted limited exemptions for large recreational fires in prohibited areas and for burning outside daylight hours (Table 3.03–1 and General Rule Permit No. 3.03–5). Overall, these limited exemptions appear equivalent to or more stringent than the current SIP-approved rules.

Program Delegation

The revised rules include provisions for partnering with local, county, state, and Federal agencies to administer the open burning program (3.03.I and Table 3.03–2). The revised rules allow for other entities to administer the permitting program provided the entity meets certain requirements. The revised rules also allow YRCAA to delegate authority to issue permits on behalf of YRCAA to other entities. On May 19, 2023, YRCAA submitted a clarification letter to the EPA explaining that Indian ceremonial fires, residential/tumbleweed, and weed abatement are the only types of burning with permitting programs available for delegation pursuant to subsection 3.03.I. YRCAA also clarified that YRCAA and the Washington Department of Ecology interpret subsection 3.03.B, subsection 3.03.I and Table 3.03–2 as establishing a delegation program such that persons conducting outdoor and agricultural burning subject to Rule 3.03 must comply with Rule 3.03 irrespective of whether program implementation is delegated pursuant to subsection 3.03.I and Table 3.03–2. Also, YRCAA and the Washington Department of Ecology acknowledge that once the EPA approves Rule 3.03 and incorporates the rule into 40 CFR part 52, any change to the scope or stringency of *Regulation 1,* including through deferral of the outdoor and agricultural program to another agency, must be submitted by the State for approval by the EPA in accordance with CAA section 110 and 40 CFR part 51.

Provisions the EPA Is Not Approving

The revised rules include some provisions that the EPA cannot approve. These include provisions related to nuisance, asbestos, fees, and requirements of other agencies. The EPA's authority to approve SIPs extends to provisions related to attainment and maintenance of the NAAQS and carrying out other specific requirements of section 110 of the CAA. Therefore, the EPA is not approving the following provisions and no further EPA action on these rules is required.

Nuisance provisions: Rule 3.03.E.2.c., General Rule Permit No. 3.03–1.E.2.b, General Rule Permit No. 3.03–2.E.2.b, General Rule Permit No. 3.03–3.E.2.b, General Rule Permit No. 3.03–4.E.2.c, and General Rule Permit No. 3.03–5.E.2.d.

Asbestos provisions: Rule 3.03.E.3.d, General Rule Permit No. 3.03–1.E.2.d, General Rule Permit No. 3.03–1.E.2.e.

Fee provisions: Rule 3.03.K.

Requirements of other agencies: Rule 3.03.C.2.g, Rule 3.03.E.2a., General Rule Permit No. 3.03–1.G, General Rule Permit No. 3.03–2.G, General Rule Permit No. 3.03–3.G, General Rule Permit No. 3.03–4.G, and General Rule Permit No. 3.03–5.G.

Conclusion of EPA Analysis

Based on our review, the EPA is proposing to conclude that the revised open and agricultural burning rules will not interfere with any applicable requirement concerning attainment or maintenance of the NAAQS. The EPA proposes to determine that the revisions result in an overall strengthening of the requirements for open and agricultural burning.

IV. Proposed Action

The EPA is proposing to approve the SIP revisions for outdoor and agricultural burning submitted by Washington on October 14, 2021, because they meet Clean Air Act requirements. We are proposing to approve *Regulation 1, Article 3, Section 3.03* into the federally-approved SIP, except the following rules: 3.03.C.2.g, 3.03.E.2a, 3.03.E.2.c, 3.03.E.3.d, 3.03.K; and the following provisions in General Rule Permit No.: 3.03–1.E.2.b, 3.03–1.E.2.e, 3.03–1.G, 3.03–2.E.2.b, 3.03–1.E.2.d, 3.03–2.G, 3.03–3.E.2.b, 3.03–3.G, 3.03–4.E.2.c, 3.03–4.G, 3.03–5.E.2.d, and 3.03–5.G. We are also proposing to remove from the federally-approved SIP the outdated *Regulation 1, Article 5* provisions, *Sections 5.01–5.05,* that are replaced by *Section 3.03*.

V. Environmental Justice Considerations

To provide additional context and information to the public on potential environmental burdens and susceptible populations in underserved communities in Yakima County, we conducted a screening-level analysis using the EPA's environmental justice (EJ) screening and mapping tool, EJScreen, version 2.1.[2] We note, however, that this screening analysis does not serve as a basis for this proposed action. As detailed in section II of this preamble, the EPA's proposed action is based on its determination that the SIP revision submitted by Washington meets Clean Air Act requirements.

EJScreen includes 12 EJ indexes, each of which combines demographic factors with a single environmental factor.[3] EJScreen also includes a demographic index that combines low income, race and ethnicity data for an area.[4] Additionally, there are 7 socioeconomic indicators in EJScreen: people of color; low income; unemployment rate; limited English speaking households; less than high school education; low life expectancy; under age 5; over age 64.[5] The EPA has determined that the use of an initial data filter in EJScreen promotes consistency and provides a pragmatic first step for EPA programs and regions when interpreting screening results. For early applications of EJScreen, the EPA has identified the 80th percentile filter as that initial starting point. For more information on percentiles, please see the EJScreen technical documentation.[6]

There are 6 EJ indexes in Yakima County that are higher than the state or national 80th percentile. These are the EJ Index for: Particulate Matter 2.5 (94th state percentile, 86th U.S. percentile); ozone (95th state percentile, 70th U.S. percentile); air toxics cancer risk (91st state percentile, 83rd percentile); air toxics respiratory health (91st state percentile, 87th percentile U.S.), and risk management plan facility proximity (92nd state percentile, 82nd percentile).

For the demographic index, Yakima County is in the 90th percentile for the state and in the 75th percentile for the U.S. Additionally, there are 4 socioeconomic indicators in Yakima County that are higher than the state or national 80th percentile. These are people of color (86th state percentile, 71st U.S. percentile); low income (84th state percentile, 72nd U.S. percentile); limited English speaking households (84th state percentile, 81st U.S. percentile); less than high school education (94th state percentile, 87th U.S. percentile).

This proposed action would approve the revised YRCAA outdoor and agricultural burning rules submitted by Washington. We expect that this action and resulting requirements will generally be neutral or contribute to reduced environmental and health impacts on all populations in Yakima County, including people of color and low-income populations. At a minimum, this action would not worsen any existing air quality and is expected to ensure the area is meeting requirements to attain and/or maintain air quality standards. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

VI. Incorporation by Reference

In this document, the EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the *Regulation 1, Article 3, Section 3.03* provisions described in sections II and III of this preamble. Also, in this document, the EPA is proposing to remove, in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to remove the incorporation by reference of the *Regulation 1, Article 5, Sections 5.01–5.05,* as described in sections II and III of this preamble. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under

[2] EJScreen provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJScreen is available at *https://www.epa.gov/ejscreen/what-ejscreen*.

[3] The 12 EJ indexes in EJScreen are: fine particulate matter (annual average of fine particulate matter in ambient air); ozone (summer seasonal ozone averages); diesel particulate matter (diesel particulate matter level in air); air toxics cancer risk (lifetime cancer risk of inhalation of air toxics); air toxics respiratory hazard index; traffic proximity (count of vehicles per day at major roads divided by distance); lead paint (housing built before 1960, as index of potential exposure to lead paint); superfund proximity (count of proposed and listed Superfund national priority list sites divided by distance); risk management plan facility proximity (count of risk management plan facilities divided by distance); hazardous waste proximity (count of waste transfer, storage and disposal facilities and large quantity generators divided by distance); underground storage tanks (count of leaking underground storage tanks and tanks within a buffered block group); wastewater discharge (risk screening environmental indicators modeled toxic concentrations at stream segments divided by distance).

[4] The demographic index in EJScreen combines the average of the number of individuals whose household income is less than twice the poverty level and the number of individuals who list their racial status as a race other than white alone and/or list their ethnicity as Hispanic or Latino.

[5] The unemployment indicator is based on the number of individuals who did not have a job at all during the reporting period made at least one specific active effort to find a job during the prior 4 weeks and were available for work (unless temporarily ill). The less than high school education indicator is based on the number of individuals age 25 and older with less than a high school degree. The limited English-speaking indicator is based on the percent of households in which all members age 14 years and over speak a non-English language and also speak English less than 'very well'. The low life expectancy indicator is based on the average life expectancy ranked as percentiles. The under age 5 indicator is based on the percent of individuals under age 5. The over age 64 indicator is based on the percent of individuals over age 64.

[6] EJScreen Technical Documentation, available at *https://www.epa.gov/sites/default/files/2021-04/documents/ejscreen_technical_document.pdf*.

Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

YRCAA did not evaluate environmental justice considerations as part of its SIP submission; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is described above in the section titled, ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: July 20, 2023.

Casey Sixkiller,

Regional Administrator, Region 10.

[FR Doc. 2023–15751 Filed 7–25–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0157]; FRL–10778–01–R9

Air Plan Approval; California; San Diego County Air Pollution Control District; Oxides of Nitrogen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Diego County Air Pollution Control District (SDCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_X) from small boilers, process heaters, steam generators, and large water heaters. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the ''Act''). The California Air Resources Board (CARB) submitted the rule, on behalf of SDCAPCD, to the EPA as part of the requirement to implement reasonably available control technology (RACT) for major sources of NO_X for the San Diego County ozone nonattainment area. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before August 25, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2023–0157 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Alina Batool, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3345 or by email at *batool.alina@epa.gov.*

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

Table of Contents

I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the SDCAPCD and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
SDCAPCD	69.2.1	Small Boilers, Process Heaters, Steam Generators, and Large Water Heaters	[a] 07/08/20	09/21/20

[a] SDCAPCD locally adopted Rule 69.2.1 on March 25, 2009, and locally amended the rule on July 8, 2020. CARB submitted the version of the rule that SDCAPCD amended on July 8, 2020, for inclusion in the California SIP.

Pursuant to CAA section 110(k)(1)(B) and 40 CFR part 51, appendix V, the EPA determined that the submittal for SDCAPCD Rule 69.2.1 met the completeness criteria on March 21, 2021.

B. Are there other versions of this rule?

There are no previous versions of Rule 69.2.1 in the SIP. The SDCAPCD locally adopted Rule 69.2.1 on March 25, 2009, and an amended version of the rule (amendment date of July 8, 2020) was submitted by CARB to the EPA on September 21, 2020, as an attachment to a letter dated September 18, 2020.

C. What is the purpose of the submitted rule?

Emissions of NO_X contribute to the production of ground-level ozone and smog, which harms human health and the environment. Section 110(a) of the CAA requires states to submit plans that provide for implementation, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS). Rule 69.2.1 is a new rule that controls NO_X emissions from new units that are manufactured, sold, offered for sale or distribution, or installed for use within San Diego County with a heat input rating from 75,000 British thermal units (Btu) per hour to 2 million Btu per hour. Units of this size are commonly used at commercial facilities such as restaurants, laundromats, hotels, apartment buildings, and dry cleaners. The emissions from the use of these units can result in the formation of ozone. When inhaled, ozone and NO_X adversely affect people's health. Symptoms can include chest pain, shortness of breath, worsening of bronchitis and asthma, and nausea.

Rule 69.2.1 requires new units that operate on natural gas at a heat input rating from 75,000 to 400,000 Btu per hour or from 400,000 to 2,000,000 Btu per hour to meet a NO_X emission limit of 20 parts per million by volume (ppmv). New pool heaters that operate on natural gas at a heat input rating from 75,000 to 400,000 Btu per hour have a NO_X emission limit of 55 ppmv. New units that operate on non-public utility commission (PUC) gas or liquid fuel at a heat input rating from 75,000 to 400,000 Btu per hour have a NO_X emission limit of 77 ppmv, and units with a heat input rating greater than 400,000 to 2,000,000 Btu per hour have a NO_X emission limit of 30 ppmv. All emission limits are calculated at three percent oxygen (O_2). Test methods are provided in Rule 69.2.1 for new unit compliance testing and certification for sale in San Diego County. Test methods are also provided for new natural gas-fired units to ensure compliance with the NO_X emissions limits. The EPA's technical support document (TSD) has more information about this rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (CAA section 110(a)(2)) and must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (CAA section 110(l)).

Generally, SIP rules must require RACT for sources subject to the Control Techniques Guidelines (CTGs) as well as each major source of VOCs and NO_X in ozone nonattainment areas classified as moderate or above (CAA section 182(b)(2)). The SDCAPCD regulates an ozone nonattainment area classified as Severe for both the 2008 and 2015 8-hour ozone NAAQS (40 CFR 81.305; 86 FR 29522 (June 2, 2021)). Rule 69.2.1 regulates equipment operating at major NO_X sources in the San Diego County ozone nonattainment area.[1] Because the State submitted the rule to fulfill the obligation to implement RACT in a nonattainment area for the 2008 and 2015 ozone NAAQS, the EPA's evaluation focused on whether the rule implements RACT.

Guidance and policy documents that we used to evaluate enforceability, revision or relaxation, and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA Office of Air Quality Planning and Standards, May 25, 1988 (''the Bluebook,'' revised January 11, 1990).

2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region IX, August 21, 2001 (''the Little Bluebook'').

3. ''NO_X Emissions from Industrial/Commercial/Institutional (ICI) Boilers,'' EPA Region V, March 1994.

4. ''Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters,'' CARB, July 18, 1991.

B. Does the rule meet the evaluation criteria?

Rule 69.2.1 establishes stringent emission limits for NO_X and includes testing, certification, labeling, and recordkeeping requirements to assist in ensuring compliance with emissions standards. Rule 69.2.1 is a new rule that regulates units that are not currently regulated in the SDCAPCD portion of the California SIP, thereby strengthening it. The rule is consistent with CAA requirements and relevant guidance regarding enforceability, RACT, and SIP revisions. Additionally, all test records for oxides of nitrogen and carbon monoxide emissions and certification records must be retained for as long as the new unit model is sold, or for three calendar years after the date of manufacture. The rule requirements are discussed in greater detail in the TSD, which is available in the docket for this action.

Rule 69.2.1 is at least as stringent as the EPA's 1994 Alternative Control Technology (ACT) document and CARB's RACT/BARCT guidance. The EPA also evaluated the stringency of the rule's emission limits compared to other California SIP-approved rules that regulate NO_X emissions from small boilers, process heaters, steam generators, and large water heaters, including Ventura County Air Pollution Control District Rule 74.11.1, South Coast Air Quality Management District Rule 1146.2, and San Joaquin Valley Unified Air Pollution Control District Rule 4308. As described in further detail in the TSD, the EPA's analysis shows that the submitted rule is as stringent as analogous SIP-approved California air district rules. As a result of our evaluation, we are proposing to

[1] SDCAPCD, ''2020 Reasonably Available Control Technology Demonstration for the National Ambient Air Quality Standards for Ozone in San Diego County,'' (''2020 RACT SIP''). Adopted by the SDCAPCD on October 14, 2020.

determine that the rule limits implement RACT.

C. The EPA's Recommendations To Further Improve the Rule

The TSD includes a recommendation to clarify a testing requirement for the next time SDCAPCD modifies the rule.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until August 25, 2023. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the San Diego County Air Pollution Control District Rule 69.2.1, ''Small Boilers, Process Heaters, Steam Generators, and Large Water Heaters,'' locally amended on July 8, 2020, which regulates NO_X and CO from small boilers, process heaters, steam generators, and large water heaters, as described in Table 1 of this document. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

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

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples. In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: July 17, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2023–15490 Filed 7–25–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2014–0754; FRL–10412–01–R6]

Disapproval and Promulgation of Air Quality Implementation Plans; Texas and Oklahoma; Regional Haze State Implementation Plans; Federal Implementation Plan for Regional Haze; Completion of Remand

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or Act), the

Environmental Protection Agency (EPA) is proposing this action to address the voluntary remand of portions of a final rulemaking published in the **Federal Register** on January 5, 2016, addressing regional haze obligations for the first planning period in Texas and Oklahoma. Specifically, we are revisiting and again proposing disapproval of portions of the Texas Regional Haze State Implementation Plan (SIP) submission and portions of the Oklahoma Regional Haze SIP submission that relate to reasonable progress requirements for the first planning period from 2008 through 2018. We are also proposing to rescind the sulfur dioxide (SO_2) emission limitations we promulgated as part of the Federal Implementation Plan (FIP) in the January 2016 Final Rule for 15 Texas electric generating units (EGUs) at eight facilities. We are proposing to determine that no additional controls are required for Texas or Oklahoma sources under these States' long-term strategies for making reasonable progress for the first planning period. We are leaving the portions of the Texas and Oklahoma Regional Haze SIPs that we approved in the January 2016 Final Rule in place and not reopening those determinations in this action.

DATES:

Comments: Comments must be received on or before September 25, 2023.

Virtual Public hearing: The EPA will hold a virtual public hearing to solicit comments on August 10, 2023. The last day to pre-register to speak at the hearing will be on August 8, 2023. On August 9, 2023, the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at *https://www.epa.gov/tx/texas-and-oklahoma-regional-haze-sip-disapproval-and-revision-regional-haze-federal.* If you require the services of a translator or a special accommodation such as audio description/closed captioning, please pre-register for the hearing and describe your needs by August 2, 2023.

For more information on the virtual public hearing, *see* **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2014–0754 to the Federal eRulemaking Portal: *https://www.regulations.gov/* (our preferred method). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided.

Docket: The docket for this action is available electronically at *https://www.regulations.gov/.* Some information in the docket may not be publicly available via the online docket due to docket file size restrictions, or content (*e.g.,* CBI). For questions about a document in the docket please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section.

CBI: Do not submit information containing CBI to the EPA through *https://www.regulations.gov/.* To submit information claimed as CBI, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. Clearly mark the part or all of the information that you claim to be CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* earlier. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

To pre-register to attend or speak at the virtual public hearing, please use the online registration form available at *https://www.epa.gov/tx/texas-and-oklahoma-regional-haze-sip-disapproval-and-revision-regional-haze-federal* or contact us via email at *R6TXRHReasonableProgress@epa.gov.* For more information on the virtual public hearing, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Michael Feldman, Air and Radiation Division, SO_2 and Regional Haze Section (ARSH), Environmental Protection Agency, 1201 Elm Street, Suite 500, Dallas, Texas 75270; telephone number: 214–665–9793; or via email: *R6TXRHReasonableProgress@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Virtual Public Hearing

The EPA is holding a virtual public hearing to provide interested parties the opportunity to present data, views, or arguments concerning the proposal. The EPA will hold a virtual public hearing to solicit comments on August 10, 2023. The hearing will convene at 3:00 p.m. Central Time (CT) with a 15-minute break from 5:00 to 5:15 p.m. CT. The hearing will conclude at 7:00 p.m. CT, or 15 minutes after the last pre-registered presenter in attendance has presented if there are no additional presenters. The EPA will announce further details, including information on how to register for the virtual public hearing, on the virtual public hearing website at *https://www.epa.gov/tx/texas-and-oklahoma-regional-haze-sip-disapproval-and-revision-regional-haze-federal.* The EPA will begin pre-registering speakers and attendees for the hearing upon publication of this document in the **Federal Register**. To pre-register to attend or speak at the virtual public hearing, please use the online registration form available at *https://www.epa.gov/tx/texas-and-oklahoma-regional-haze-sip-disapproval-and-revision-regional-haze-federal* or contact us via email at *R6TXRHReasonableProgress@epa.gov.* The last day to pre-register to speak at the hearing will be on August 8, 2023. On August 9, 2023, the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at *https://www.epa.gov/tx/texas-and-oklahoma-regional-haze-sip-disapproval-and-revision-regional-haze-federal.* Additionally, requests to speak will be taken on the day of the hearing as time allows.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule. Each commenter will have approximately 3 to 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically by including it in the registration form or emailing it to *R6TXRHReasonableProgress@epa.gov.* The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the virtual public hearing. A transcript of the virtual public hearing, as well as

copies of oral presentations submitted to the EPA, will be included in the docket for this action.

The EPA is asking all hearing attendees to pre-register, even those who do not intend to speak. The EPA will send information on how to join the public hearing to pre-registered attendees and speakers.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/tx/texas-and-oklahoma-regional-haze-sip-disapproval-and-revision-regional-haze-federal.* While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact us via email at *R6TXRHReasonableProgress@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or a special accommodation such as audio description/closed captioning, please pre-register for the hearing and describe your needs by August 2, 2023. The EPA may not be able to arrange accommodations without advance notice.

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I. Executive Summary

The CAA's visibility protection program was created in response to a national goal set by Congress in 1977 to remedy and prevent visibility impairment in certain national parks, such as Big Bend, and national wilderness areas, such as the Wichita Mountains Wilderness. Vistas in these areas (referred to as Class I areas) are often obscured by visibility impairment such as regional haze, which is caused by emissions from numerous sources located over a wide geographic area.

In response to this Congressional directive, the EPA promulgated regulations to address visibility impairment in 1999. These regulations, which are commonly referred to as the Regional Haze Rule (RHR), established an iterative process for achieving Congress's national goal by providing for multiple, approximately 10-year ''planning periods'' in which state air agencies must submit to EPA plans that address sources of visibility-impairing pollution in their states. The first state plans were due in 2007 for the planning period that ended in 2018. The second state plans were due in 2021 for the period that ends in 2028. This proposal focuses on obligations from the first planning period of the regional haze program.

The CAA and RHR require States to submit a long-term strategy that includes such measures as are necessary to achieve reasonable progress for each Class I area. A central element of the long-term strategy for the first planning period state plans was the requirement for certain older stationary sources to install the Best Available Retrofit Technology (BART) for the purpose of making reasonable progress towards Congress's national goal of eliminating visibility impairment within our nation's most treasured lands. The other central element of a state's long-term strategy is the requirement to include any additional control measures that are necessary to make ''reasonable progress'' towards the national goal. To determine what control measures are necessary to make reasonable progress and therefore must be included in the long-term strategy, states must consider four statutory factors: (1) the costs of compliance, (2) the time necessary for compliance, (3) the energy and nonair quality environmental impacts of compliance, and (4) the remaining useful life of any existing source subject to such requirements. This statutory requirement is often referred to as a ''four-factor analysis.'' Additionally, when visibility-impairing emissions from multiple states impact the same national park or wilderness area, the RHR requires those states to coordinate and consult with one another to ensure that each state is making reasonable progress toward the national goal.

Texas is home to numerous power plants and industrial sources, many of which operate without modern pollution controls. As a result, several of these plants are among the highest emitters of visibility-impairing pollutants, such as sulfur dioxide (SO_2), in the nation. These emissions cause or contribute to visibility impairment in such iconic places as Big Bend National Park (Big Bend) and Guadalupe Mountains National Park (Guadalupe Mountains) in Texas, and Wichita Mountains Wilderness Area (Wichita Mountains) in Oklahoma. To address this visibility impairment, Texas submitted its first regional haze state implementation plan (SIP) in 2009. After reviewing the SIP, the EPA determined that Texas did not analyze and weigh the four statutory factors in a reasonable way such that the SIP did not provide for reasonable progress towards eliminating visibility-impairing pollutants at these national parks and wilderness areas. Additionally, the EPA determined that Oklahoma and Texas did not adequately justify why additional reductions from Texas's sources were not necessary to address impacts at the Wichita Mountains as part of the consultation process required under the RHR despite information showing that impacts from Texas's sources were several times greater than the impact from Oklahoma's own sources. Therefore, in 2016, the EPA promulgated a final rule disapproving these portions of Texas's SIP and Oklahoma's SIP (while approving other aspects of both SIPs). The partial disapprovals triggered the requirement under the CAA for the EPA to promulgate a federal implementation plan (FIP) to remedy the deficiencies in the SIPs. Consequently, in the same action, EPA finalized a FIP that required

cost-effective emissions control technologies that would have resulted in improved visibility at the Class I areas impacted by sources in Texas. However, Texas and several industry groups filed a petition for review challenging the final rule in the Fifth Circuit where they obtained a stay that prevented the rule from taking effect.

In response to the Fifth Circuit motion panel's non-binding stay opinion, the EPA sought and received a voluntary remand of portions of the final rule to reconsider its action. After considering the non-binding stay opinion and other relevant facts, the EPA is again proposing to disapprove the portions of the Texas and Oklahoma Regional Haze SIPs that the Agency disapproved in 2016. The EPA is also proposing to amend the FIP to account for recent developments, such as the retirements of previously covered sources and the EPA's recently proposed action to address the BART requirements for Texas's power plants, which, if finalized as proposed, would reduce SO_2 emissions in Texas by more than 80,000 tons per year (tpy), improving visibility across a wide range of scenic vistas in both Texas and nearby states. Based on these developments, the EPA proposes to determine that no additional controls are necessary to make reasonable progress for the first planning period, which ended in 2018.

It has been 14 years since Texas submitted its first planning period Regional Haze SIP to EPA for review. Since that time, the first planning period ended, the second planning period began, and Texas submitted its Regional Haze SIP for the second planning period. Texas remains one of the few states in the nation that does not have a complete first planning period regional haze plan in place to protect the national parks and wilderness areas impacted by sources within the state. With this action, while also taking into consideration various power plant shutdowns in Texas and the recently proposed BART action, the EPA is proposing to find that the requirements for the first planning period are fulfilled. In a separate future action, EPA will evaluate Texas's second planning period Regional Haze SIP to determine whether that SIP satisfies the relevant statutory and regulatory requirements.

II. Background

A. Regional Haze

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area. These sources and activities emit fine particulate matter ($PM_{2.5}$) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and its precursors (*e.g.,* SO_2, nitrogen oxides (NO_X), and, in some cases, ammonia (NH_3) and volatile organic compounds (VOCs)). Fine particle precursors react in the atmosphere to form $PM_{2.5}$, which, in addition to direct sources of $PM_{2.5}$, impairs visibility by scattering and absorbing light. Visibility impairment (*i.e.,* light scattering) reduces the clarity, color, and visible distance that one can see.

In section 169A of the 1977 Amendments to the Clean Air Act (CAA), Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the prevention of any future, and the remedying of any existing, anthropogenic (manmade) impairment of visibility in 156 national parks and wilderness areas designated as mandatory Class I areas.[1] Congress added section 169B to the CAA in 1990 to address regional haze issues, and the EPA promulgated the Regional Haze Rule (RHR), codified at 40 CFR 51.308,[2] on July 1, 1999.[3] The RHR established a requirement for all States to submit a regional haze SIP, including the District of Columbia, and the Virgin Islands.[4]

To address regional haze visibility impairment, the RHR established an iterative planning process that requires States to periodically submit SIP revisions (each periodic revision referred to as a ''planning period'') to address regional haze visibility impairment at Class I areas.[5] Under the CAA, each SIP submission must contain ''a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal,'' and the initial round of SIP submissions also had to address the statutory requirement that certain older, larger sources of visibility-impairing pollutants install and operate Best Available Retrofit Technology (BART).[6] States' first regional haze SIPs were due by December 17, 2007, with subsequent SIP submissions containing revised long-term strategies originally due July 31, 2018, and every ten years thereafter.[7] This action addresses first planning period reasonable progress requirements.[8]

1. Determination of Baseline, Natural, and Current Visibility Conditions

The Regional Haze Rule establishes the deciview (dv) as the principal metric for measuring visibility.[9] This visibility metric expresses uniform changes in the degree of haze in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility is also sometimes expressed in terms of the visual range or light extinction. Visual range is the greatest distance, in kilometers or miles, at which a dark object can just be distinguished against the sky. Light extinction, expressed in units of inverse megameters (Mm^{-1}), is the amount of light lost as it travels over distance. The haze index, in units of deciviews (dv), is calculated directly from the total light extinction. The deciview is a useful measure for tracking progress in improving

[1] Areas designated as mandatory Class I areas consist of National Parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[2] In addition to the generally applicable regional haze provisions at 40 CFR 51.308, EPA also promulgated regulations specific to addressing regional haze visibility impairment in Class I areas on the Colorado Plateau at 40 CFR 51.309. The latter regulations are not relevant here.

[3] *See* 64 FR 35714 (July 1, 1999). On January 10, 2017, EPA promulgated revisions to the Regional Haze Rule that apply for the second and subsequent implementation periods. *See* 82 FR 3078 (Jan. 10, 2017).

[4] 40 CFR 51.300(b).

[5] *See* 42 U.S.C. 7491(b)(2); 40 CFR 51.308(b) and (f); *see also* 64 FR at 35768. EPA established in the Regional Haze Rule that all states either have Class I areas within their borders or ''contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area;'' therefore, all states must submit regional haze SIPs. *See* 64 FR at 35721. In addition to each of the 50 states, EPA also concluded that the Virgin Islands and District of Columbia contain a Class I area and/or contain sources whose emissions are reasonably anticipated to contribute regional haze in a Class I area. *See* 40 CFR 51.300(b) and (d)(3).

[6] *See* 42 U.S.C. 7491(b)(2)(A); 40 CFR 51.308(d) and (e).

[7] *See* 40 CFR 51.308(b). The 2017 Regional Haze Rule revisions changed the second period SIP due date from July 31, 2018, to July 31, 2021, and maintained the existing schedules for the subsequent implementation periods. *See* 40 CFR 51.308(f).

[8] In a separate action, we proposed to withdraw the Texas SO_2 Trading Program and proposed to address the SO_2 and PM BART requirements for Texas BART eligible sources with source-specific SO_2 and PM emission limits. *See generally* 88 FR 28918 (May 4, 2023).

[9] *See* 64 FR 35714, 35725–27 (July 1, 1999).

visibility, because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility of one deciview.[10]

The deciview is used in expressing Reasonable Progress Goals (RPGs) (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by manmade air pollution by reducing anthropogenic emissions that cause regional haze.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP submittal and periodically review progress every five years midway through each 10-year implementation period. To do this, the RHR requirements for the first planning period [11] provide that states must determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. We have provided guidance to states regarding how to calculate baseline, natural, and current visibility conditions in the first planning period.[12]

For the regional haze SIPs for the first planning period, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area on the 20 percent least and most impaired days, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured in the first planning period.

2. Reasonable Progress Requirements

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the States that include a long-term strategy, as discussed in the subsection that follows, and establish two RPGs (*i.e.,* one for the ''best'' and one for the ''worst'' days) for each Class I area within the State for each (approximately) 10-year planning period.[13] The Regional Haze Rule does not mandate specific milestones or rates of progress, but instead calls for States to establish goals that provide for ''reasonable progress'' toward achieving natural visibility conditions. In establishing RPGs, States must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP and ensure no degradation in visibility for the least impaired days over the same period.[14]

States have discretion in establishing RPGs for their Class I areas, but in doing so must consider the following factors established in section 169A of the CAA and in our Regional Haze Rule at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how they considered these four factors when establishing the RPGs for the best and worst days for each of their Class I areas. As noted in our Reasonable Progress Guidance for the first planning period, States have flexibility in how they take these factors into consideration, but must exercise that discretion in a manner consistent with the CAA and the Regional Haze Rule.[15] In establishing the RPGs, States must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to hereafter as the ''Uniform Rate of Progress (URP)'') and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress, which States are to use for analytical comparison to the amount of progress they expect to achieve. In establishing RPGs, each State with one or more Class I areas must also consult with potentially ''contributing states,'' *i.e.,* other nearby states with emission sources that may be affecting visibility impairment at Class I areas.[16]

3. Long-Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that States include in their regional haze SIP a 10-to-15-year strategy for making reasonable progress, section 51.308(d)(3) of the Regional Haze Rule requires that States include a LTS that addresses regional haze visibility impairment for each mandatory Class I area within the State and for each mandatory Class I area located outside the State which may be affected by emissions from the State. The LTS in each implementation period is the compilation of all control measures a State has determined are necessary to make reasonable progress towards achieving natural visibility conditions. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the state.[17]

When a State's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another State, the Regional Haze Rule requires the

[10] The preamble to the Regional Haze Rule provides additional details about the deciview. 64 FR at 35725.

[11] The applicable requirements of the Regional Haze Rule for the first planning period are found in 40 CFR 51.308(d).

[12] *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, EPA–454/B–03–005, available at *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20030901_oaqps_epa-454_b-03-005_estimating_natural%20_visibility_regional_haze.pdf* (hereinafter referred to as ''our 2003 Natural Visibility Guidance''); and *Guidance for Tracking Progress Under the Regional Haze Rule,* EPA–454/B–03–004, September 2003, available at *https://www.epa.gov/sites/default/files/2021-03/documents/tracking.pdf* (hereinafter referred to as our ''2003 Tracking Progress Guidance'').

[13] *See* 64 FR at 35730–37.

[14] *Id.*

[15] *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* June 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1).

[16] 40 CFR 51.308(d)(1)(iv).

[17] 40 CFR 51.308(d)(3).

impacted state to coordinate with the contributing States in order to develop coordinated emissions management strategies.[18] In such cases, the contributing State must demonstrate that it has included in its SIP submission all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. A State must also consult with any State having emissions that are reasonably anticipated to contribute to visibility impairment in any of its mandatory Class I areas.[19] Where other States cause or contribute to impairment in a mandatory Class I area, the State must demonstrate that it has included in its implementation plan all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for the area.[20] The State must document the technical basis on which the State is relying to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I area it affects.[21] Regional planning organizations (RPOs) have provided forums for significant interstate consultation, but additional consultations between States may be required to sufficiently address interstate visibility issues. This is especially true where two States belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources.[22] At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address ''reasonably attributable visibility impairment'' (RAVI); (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the State for these purposes; (6) enforceability of emissions limitations and control measures; (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS.[23]

B. Previous Actions Related to Texas and Oklahoma Regional Haze Reasonable Progress Requirements for the First Planning Period

On March 31, 2009, Texas submitted a regional haze SIP (the 2009 Regional Haze SIP) to the EPA to address regional haze requirements for the first planning period. On December 16, 2014, we proposed an action to partially approve this SIP revision as meeting certain requirements of the regional haze program (2014 Proposed Rule).[24] We also proposed to partially disapprove the Texas SIP revision for not adequately addressing other requirements of the regional haze program related to reasonable progress, the long-term strategy, and the calculation of natural visibility conditions. Given the large visibility impairment at Oklahoma's Class I area [25] due to emissions from Texas and the requirements to develop emission control strategies in consultation with impacting States,[26] we proposed in the same action to partially disapprove a revision to the Oklahoma SIP submitted on February 19, 2010, which also addressed regional haze for the first planning period.[27] We proposed a FIP for Texas and Oklahoma to remedy the deficiencies we identified in the SIPs.

In January 2016, we took final action to partially approve and partially disapprove portions of Texas's 2009 Regional Haze SIP and Oklahoma's 2010 Regional Haze SIP (2016 Final Rule).[28] We approved the Texas SIP revision as meeting certain requirements of the regional haze program, including BART requirements for facilities other than Electric Generating Units (EGUs).[29] We disapproved Texas's RPGs for Big Bend and the Guadalupe Mountains and found that Texas did not satisfy several of the requirements of the Regional Haze Rule at 40 CFR 51.308(d)(1) with regard to establishing RPGs, most notably the four-factor analysis required under section 51.308(d)(1)(i)(A) and the requirement to adequately justify RPGs that are less stringent than the URP under section 51.308(d)(1)(ii). We disapproved Texas's calculation of natural visibility conditions for Big Bend and Guadalupe Mountains under section 51.308(d)(2)(iii) and other calculations that are dependent on the calculation of natural visibility conditions, including the calculation of the emission reductions needed to achieve the URP for these Class I areas under section 51.308(d)(1)(i)(B) and the calculation of the number of deciviews by which baseline conditions exceed natural visibility conditions under section 51.308(d)(2)(iv)(A). We also disapproved a majority of the portions of Texas's 2009 Regional Haze SIP that address the long-term strategy requirements under section 51.308(d)(3), including the long-term strategy consultations with Oklahoma. In the 2016 Final Rule, we also disapproved Oklahoma's RPGs for the Wichita Mountains and disapproved the portions of the Oklahoma SIP addressing the requirements of section 51.308(d)(1) with regard to setting RPGs, with the exception of section 51.308(d)(1)(vi), which we approved.

We also finalized a FIP for Texas and Oklahoma to remedy the deficiencies we identified in their SIPs (2016 FIP).[30] The FIP included our own four factor analysis for Texas and implemented SO_2 emission limits on fifteen Texas EGUs at eight different facilities as part of a long-term strategy for making reasonable progress at the Class I areas in Texas and Oklahoma; [31] established revised natural conditions on the 20 percent best and worst days for the Guadalupe Mountains and Big Bend Class I areas; recalculated the number of deciviews by which baseline visibility conditions exceed natural visibility conditions for the Guadalupe Mountains and Big Bend Class I areas; and established new RPGs for the Big Bend, the Guadalupe Mountains, and Wichita Mountains Class I areas.[32] The FIP did not establish any additional requirements on sources within Oklahoma.

[18] 40 CFR 51.308(d)(3)(i).

[19] 40 CFR 51.308(d)(3)(i).

[20] 40 CFR 51.308(d)(3)(ii).

[21] 40 CFR 51.308(d)(3)(iii).

[22] 40 CFR 51.308(d)(3)(iv).

[23] 40 CFR 51.308(d)(3)(v).

[24] 79 FR 74818 (Dec. 16, 2014).

[25] Wichita Mountains is the only Class I area in Oklahoma. 40 CFR 81.424.

[26] 79 FR at 74821–74822.

[27] Specifically, we proposed to disapprove the portion of the Oklahoma Regional Haze SIP that addresses the requirements of section 51.308(d)(1), except for section 51.308(d)(1)(vi). 79 FR 74818 (Dec. 16, 2014).

[28] 81 FR 296 (Jan. 5, 2016).

[29] For EGU facilities, we addressed the BART requirements in a separate rulemaking in 2017 (and affirmed in 2020), which, in part, created the Texas SO_2 Trading Program. *See* 82 FR 48324 (October 17, 2017) and 85 FR 49170 (Aug.12, 2020). We recently proposed to withdraw the Texas SO_2 Trading Program and proposed to replace the program with source-specific SO_2 emission limits for BART eligible sources. *See generally* 88 FR 28918 (May 4, 2023). We are not addressing BART for Texas EGUs in this proposed rule.

[30] *See* 81 FR at 346–47.

[31] The Class I areas in Texas are Big Bend and Guadalupe Mountains. The Class I area in Oklahoma is Wichita Mountains.

[32] 81 FR at 346–47.

C. Litigation, Stay Order, and EPA's Motion for Voluntary Remand

On March 1, 2016, the State of Texas, the Public Utility Commission of Texas, and the Texas Commission on Environmental Quality (Texas) filed a petition for review of the 2016 Final Rule in the United States Court of Appeals for the Fifth Circuit. Additional parties added as petitioners include Luminant Generation Company, L.L.C., and other Utilities.[33] On March 28, 2016, the Court granted motions to intervene filed by IBEW Local Union 2337 in support of petitioners and by Sierra Club and National Parks Conservation Association (NPCA) in support of the EPA.[34]

On March 3, 2016, and March 17, 2016, the Utilities and Texas respectively filed motions to stay the 2016 Final Rule in the Fifth Circuit. The EPA filed a response to these motions on April 7, 2016, and the Utilities and Texas filed separate reply briefs on April 18, 2016. The motions panel rendered a non-binding opinion on July 15, 2016 (2016 stay opinion), granting the stay and concluding, in part, that the Petitioners had demonstrated a strong likelihood of success on the merits.[35]

Regarding the EPA's disapproval of Texas's RPGs, the motions panel held that ''Petitioners are likely to establish that EPA improperly failed to defer to Texas's application of the statutory factors and improperly required a source-specific analysis not found in the Act or Regional Haze Rule.'' [36] As to EPA's disapproval of the consultation between Texas and Oklahoma, the panel stated that ''EPA's disapproval seems to stem in large part from its assertion that Texas had to conduct a source-specific analysis and provide Oklahoma with that source-specific analysis.'' [37] The panel found that, ''given the absence of a regulation or statute requiring source-specific consultations'' (among other things), the ''Petitioners have a strong likelihood of success in showing that EPA's disapproval of the consultation between Oklahoma and Texas was arbitrary and capricious.'' [38]

Regarding the FIP, the panel found that Petitioners had a strong likelihood of showing that EPA acted in excess of its statutory power when it imposed emission controls that would not be installed until after the period of time covered by the first planning period.[39] The panel found that ''EPA bound states (and accordingly bound itself) to a ten-year window when it promulgated the Regional Haze Rule,'' and that the EPA does not have the authority to require actions that would take place after the particular period.[40] Finally, the panel held that the ''EPA's truncated discussion of [electric power] grid reliability indicates that the agency may not have fulfilled its statutory obligation to consider the energy impacts of the FIP.'' [41]

The panel further found that petitioners had demonstrated that they would suffer irreparable injury if the effect of the 2016 Final Rule was not stayed pending litigation of the petition for review.[42] Moreover, the panel found that a stay would not injure EPA or Intervenor-Respondents, and that ''the public's interest in ready access to affordable electricity outweighs the inconsequential visibility differences that the federal implementation plan would achieve in the near future.'' [43] As such, the panel stayed the 2016 Final Rule in its entirety, ''including the emissions control requirements, pending the outcome of this petition for review.'' [44]

In addition to the panel's ruling, one of the petitioners, Luminant, submitted a request for administrative reconsideration of the 2016 Final Rule pursuant to CAA section 307(d)(7)(B) on March 2, 2016.[45] Among other things, Luminant argued that reconsideration is appropriate because EPA did not finalize its proposal to rely on the Cross-State Air Pollution Rule (CSAPR) to satisfy BART for Texas EGUs, but nonetheless finalized the Agency's proposed long-term strategy and RPGs for Texas. Luminant argued that, ''by deferring this action, EPA is fundamentally changing the manner in which it will evaluate BART controls for Texas and how reasonable progress is evaluated.'' [46]

On December 2, 2016, the EPA filed a motion for a partial voluntary remand of the portions of the 2016 Final Rule disapproving the Texas and Oklahoma SIPs and imposing FIPs.[47] We stated that our concerns leading to our request for a voluntary remand are ''substantial and legitimate,'' as the court's order demonstrated that the 2016 Final Rule could be found arbitrary and capricious or contrary to law.[48] We also stated that it was ''appropriate to reconsider the Final Rule, provide interested parties with a new opportunity to provide comment, including with respect to the views expressed in the Court's Order, and issue a new rule that takes into account the comments received on any factual circumstances that could warrant different outcomes.'' [49] In response to the EPA's motion for partial voluntary remand, on March 22, 2017, the court remanded the action to the EPA.

Therefore, in this proposal, the EPA is revisiting its prior regional haze SIP disapprovals and FIPs on remand. This is more fully described in sections V and VI. Because the EPA's motion for remand was specific to the prior regional haze SIP disapprovals and FIPs, we are leaving our prior approvals in place and not reopening those determinations in this action.[50] Additionally, while the EPA has not acted on Luminant's administrative

[33] Other parties include: Big Brown Power Company, L.L.C.; Luminant Mining Company, L.L.C.; Big Brown Lignite Company, L.L.C.; Luminant Big Brown Mining Company, L.L.C.; Southwestern Public Service Company; Utility Air Regulatory Group; Coleto Creek Power, L.P.; NRG Texas Power, L.L.C.; and Nucor Corporation (Utilities).

[34] The Court combined all petitions under Case No. 16–60118.

[35] *Texas* v. *EPA,* 829 F.3d 405, 411 (5th Cir. 2016).

[36] *Texas,* 829 F. 3d at 428. Additionally, the Court noted that ''other grounds for disapproval were asserted in the proposed rule but were not finalized in the Final Rule.''

[37] *Texas,* 829 F. 3d at 428.

[38] *Texas,* 829 F. 3d at 429.

[39] *Texas,* 829 F. 3d at 430.

[40] *Texas,* 829 F. 3d at 430.

[41] *Texas,* 829 F. 3d at 433. Additionally, the court stated it did not need to consider whether EPA improperly used a dollars per ton of reduced pollution metric versus a dollars per deciview improvement metric ''or whether the costs imposed are unreasonable as a whole in light of the minimal visibility benefits the FIP would achieve in the relevant period,'' because petitioners have a strong likelihood of establishing other flaws in the FIP. *Texas,* 829 F. 3d at 431.

[42] *Texas,* 829 F. 3d at 433–434.

[43] *Texas,* 829 F. 3d at 434–435.

[44] *Texas,* 829 F. 3d at 435.

[45] Luminant Reconsideration (Exhibit A w/ Remand Motion).

[46] Luminant Reconsideration (Exhibit A w/ Remand Motion) at 2.

[47] Respondent's Motion for Partial Voluntary Remand, *Texas* v. *EPA,* Case No. 16–60118 (Dec. 2, 2016) (hereinafter referred to as ''Remand Motion'').

[48] *Citizens Against Pellissippi Parkway Extension, Inc.* v. *Mineta,* 375 F.3d 412, 417 (6th Cir. 2004). Also, Remand Motion at 21.

[49] Remand Motion at 21.

[50] The 2016 Final Rule also disapproved portions of the following Texas SIP submittals intended to address CAA provisions under section 110(a)(2)(D)(i)(II) that prohibit air pollutant emissions from interfering with measures required to protect visibility in any other state: April 4, 2008: 1997 8-hour Ozone and 1997 $PM_{2.5}$ (24-hour and annual); May 1, 2008: 1997 8-hour Ozone and 1997 $PM_{2.5}$ (24-hour and annual); November 23, 2009: 2006 24-hour $PM_{2.5}$; December 7, 2012: 2010 NO_2; December 13, 2012: 2008 8-hour Ozone; and May 6, 2013: 2010 1-hour SO_2 National Ambient Air Quality Standards (NAAQS). In a proposed rule published on January 4, 2017 (82 FR 912), we proposed to reconsider the basis of our prior disapproval and re-proposed disapproval of these portions of these Texas SIP submittals and our final disapproval was published on October 17, 2017 (82 FR 48324, 48332). We are not further addressing our disapproval of the interstate visibility transport portions of these Texas SIP submittals.

petition for reconsideration, at this time, we need not take a position on the issue Luminant raised in its petition. In the separate 2023 Texas BART action, the EPA proposed BART controls for Texas EGUs, which we anticipate finalizing before finalizing this reasonable progress action.[51] Once finalized, the Texas BART action should address Luminant's concern.

D. Federal Land Manager (FLM) Consultation

The RHR requires that a state, or the EPA if promulgating a FIP, consult with FLMs before adopting and submitting a required SIP or SIP revision or a required FIP or FIP revision. Under 40 CFR 51.308(i)(2), a state, or the EPA if promulgating a FIP, must provide an opportunity for consultation no less than 60 days prior to holding any public hearing or other public comment opportunity on a SIP or SIP revision, or FIP or FIP revision, for regional haze. The EPA must include a description of how it addressed comments provided by the FLMs when considering a FIP or FIP revision. We consulted with the FLMs (specifically, U.S. Fish and Wildlife Service, U.S. Forest Service, and the National Park Service) on April 12, 2023. During the consultation we provided an overview of our proposed actions. The FLMs signaled general support for our proposed action and did not provide any written comments.[52]

III. Overview of Proposed Actions

To address the voluntary remand, we are proposing to disapprove the same portions of the Texas and Oklahoma SIPs we previously disapproved in 2016. For certain portions of these disapprovals, we are supplementing and clarifying our rationale for disapproval. For others, we are incorporating our original bases for disapproval as detailed in our 2014 Proposed Rule and 2016 Final Rule.

We are proposing to supplement and clarify our disapproval of the portions of the Texas Regional Haze SIP that address several of the requirements at section 51.308(d)(1) related to establishing RPGs, most notably the four-factor analysis required under section 51.308(d)(1)(i)(A) and the requirement to adequately justify RPGs that are less stringent than the URP under section 51.308(d)(1)(ii) based on the consideration of the four statutory factors in section 51.308(d)(1)(i)(A). Additionally, we are proposing to supplement and clarify our disapprovals of the Texas Regional Haze SIP regarding natural visibility conditions and proposing to supplement and clarify our disapprovals of the consultation portions in the Regional Haze SIPs for Texas and Oklahoma.[53]

For the remaining portions of the Texas Regional Haze SIP that we are proposing to disapprove, we are relying on the bases for disapproval that were discussed in the preambles of our 2014 Proposed Rule and 2016 Final Rule. Similarly, for those portions of the Oklahoma Regional Haze SIP that we are proposing to disapprove, we are relying on the bases for disapproval that were discussed in the preambles of our 2014 Proposed Rule and 2016 Final Rule. We do not reiterate in detail the bases for these disapprovals in this notice but rather refer the reader to the preambles of those prior rulemakings. See section V.A. for a detailed list of the portions of the Texas and Oklahoma Regional Haze SIPs for which we are proposing disapproval and incorporating our original bases for disapproval in this action.[54]

We are proposing to amend the 2016 FIP to find that no further federal action is needed to remedy the proposed disapprovals of portions of the Texas and Oklahoma Regional Haze SIPs. Therefore, we are proposing to rescind the SO_2 emission limits established in the 2016 Final Rule. Our proposal to rescind the SO_2 emission limitations and the associated monitoring, reporting, and recordkeeping requirements we established in the 2016 FIP is based on developments that occurred during the period between the 2016 Final Rule and this proposal, including the shutdown of several of the same units for which we promulgated emission limits in the 2016 Final Rule, our recently proposed SO_2 BART emission limits on several of the same units for which we required controls in the 2016 Final Rule, and the portion of the Fifth Circuit's stay opinion pertaining to the imposition of controls beyond the end of the planning period. We also acknowledge the EPA's ability to consider the remaining units during our forthcoming review of Texas's Regional Haze SIP for the second planning period. We are also proposing to find that our rescission of the SO_2 emission limitations and the associated monitoring, reporting, and recordkeeping requirements we established in the 2016 FIP is consistent with CAA section 110(l). Specifically, we are proposing to find that our proposed rescission of the FIP would not interfere with any applicable requirement concerning attainment or reasonable further progress (as defined in section 7501 of this title), or any other applicable requirements of the CAA.

IV. Legal Authority for This Action

The EPA has the authority to revisit its prior actions on SIPs and FIPs on remand. As previously stated, in light of the discussion regarding the likelihood of success on the merits set forth in the Fifth Circuit's 2016 stay order, EPA moved for partial voluntary remand of the SIP disapprovals and FIPs, without admitting error. The Fifth Circuit granted the motion and remanded the action to EPA on March 22, 2017. Thus, EPA has an obligation to complete its action on remand.

On remand, EPA is taking this action pursuant to CAA sections 110(c)(1), 110(k)(3) and 169A(b)(2). CAA section 169A(b)(2) requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the national visibility goal. Additionally, CAA section 110(k)(3) authorizes EPA to approve, disapprove, or partially approve and partially disapprove a SIP or SIP revision, and CAA section 110(c)(1) authorizes EPA to promulgate a FIP where ''the Administrator . . . disapproves a State implementation plan submission in whole or in part.'' EPA's authority to take such actions under the CAA necessarily provides it the inherent authority to revisit and amend such actions as necessary. *See Trujillo* v. *Gen Elec. Co.,* 621 F.2d 1084, 1086 (10th Cir. 1980). It is well established that agencies have inherent authority to revisit past decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009); *Motor Vehicle Manufacturers Ass'n of the United States, Inc.* v. *State Farm Mutual Automobile Insurance Co.,* 463 U.S. 29, 42 (1983); *see also Encino Motorcars, LLC* v. *Navarro,* 579 U.S. 211, 221–22 (2016). Further, the Fifth Circuit granted EPA's request for a voluntary remand and this action responds to that remand.

[51] *See,* Revision and Promulgation of Air Quality Implementation Plans; Texas; Regional Haze Federal Implementation Plan; Disapproval and Need for Error Correction; Denial of Reconsideration of Provisions Governing Alternative to Source-Specific Best Available Retrofit Technology (BART) Determinations 88 FR 28918 (May 4, 2023), Docket No. EPA–R06–OAR–2016–0611; EPA–HQ–OAR–2016–0598.

[52] *See* ''Texas Regional Haze FLM Consultation 4_12_23.xls'' in the docket for this action.

[53] *See* Section 51.308(d)(2)(iii) for requirements regarding natural visibility conditions; Sections 51.308(d)(3)(i) and 51.308(d)(1)(iv) for the consultation requirements.

[54] *See* 79 FR 74818 (2014 Proposed Rule) and 81 FR 296 (2016 Final Rule).

V. EPA's Review of the 2016 Prior Disapprovals on Remand

In the 2016 Final Rule, we finalized our disapprovals of several portions of the Texas and Oklahoma Regional Haze SIPs. In this action, we are revisiting those prior disapprovals, and we are again proposing to disapprove those portions of the SIPs and provide supplemental rationale, where necessary, to support the proposed disapprovals.

A. Proposal To Incorporate Our Prior Bases for Disapprovals

The specific portions of the Texas Regional Haze SIP we disapproved in the 2016 Final Rule are:

- Section 51.308(d)(1) regarding the RPGs for the Guadalupe Mountains and Big Bend;
- Section 51.308(d)(1)(i)(A) regarding the requirement to conduct a four-factor analysis;
- Section 51.308(d)(1)(i)(B) regarding the requirement to calculate the emission reduction measures needed to achieve the URP for the Guadalupe Mountains and Big Bend for the period covered by the SIP;
- Section 51.308(d)(1)(ii) regarding the requirement to demonstrate, based on the factors in Section 51.308(d)(1)(i)(A), that the progress goals adopted by Texas are reasonable;
- Section 51.308(d)(2)(iii) regarding the calculation of natural visibility conditions for the Guadalupe Mountains and Big Bend for the most impaired and least impaired days;
- Section 51.308(d)(2)(iv) regarding the calculation of the number of deciviews by which baseline conditions exceed natural visibility conditions for the Guadalupe Mountains and Big Bend for the most impaired and least impaired days;
- Section 51.308(d)(3)(i) regarding Texas's long-term strategy consultation with Oklahoma in order to develop coordinated emission management strategies to address visibility impacts at the Wichita Mountains;
- Section 51.308(d)(3)(ii) regarding the requirement for Texas to secure its share of reductions necessary to achieve the RPGs for the Guadalupe Mountains, Big Bend, and the Wichita Mountains;
- Section 51.308(d)(3)(iii) regarding the requirement for Texas to document the technical basis for its long-term strategy for the Guadalupe Mountains, Big Bend, and the Wichita Mountains;
- Section 51.308(d)(3)(v)(C) regarding Texas's emission limitations and schedules for compliance to achieve the RPGs for the Guadalupe Mountains, Big Bend, and the Wichita Mountains;
- 30 Texas Administrative Code (TAC) 116.1510(d), which was incorporated into the Texas Regional Haze SIP and relied on the now defunct CAIR.

The specific portions of the Oklahoma Regional Haze SIP we disapproved in the January 5, 2016 rulemaking are:

- Section 51.308(d)(1) regarding the RPGs for the Wichita Mountains;
- Section 51.308(d)(1)(i)(A) regarding the requirement to conduct a four-factor analysis;
- Section 51.308(d)(1)(i)(B) regarding the requirement to consider the URP for the Wichita Mountains and the emission reduction measures needed to achieve it for the period covered by the SIP;
- Section 51.308(d)(1)(ii) regarding the requirement to demonstrate, based on the factors in Section 51.308(d)(1)(i)(A), that the rate of progress for the SIP to attain natural conditions by 2064 is not reasonable and that the progress goal adopted by Oklahoma is reasonable;
- Section 51.308(d)(1)(iv) regarding the requirement for Oklahoma to consult with Texas with respect to the visibility impact of Texas sources at the Wichita Mountains.

Upon revisiting the 2016 disapprovals, we are again proposing to disapprove these portions of the Texas and Oklahoma Regional Haze SIPs. As we discuss in sections V.B—V.D, we are proposing to clarify and supplement the basis of our proposed disapproval of certain elements of the SIP submissions where the Fifth Circuit motion panel's 2016 stay opinion appears to reflect a misunderstanding or disagreement with the bases of our disapprovals. The portions for which we are proposing to clarify and supplement the bases of our proposed disapprovals are as follows:

- Texas's four-factor analysis required under section 51.308(d)(1)(i) and (ii);
- Texas's calculation of the natural visibility conditions at the Guadalupe Mountains and Big Bend required under section 51.308(d)(2)(iii);
- The portion of the Texas Regional Haze SIP that is intended to address the requirement in section 51.308(d)(3)(i) to consult with other States with Class I areas where Texas emissions are reasonably anticipated to contribute to visibility impairment in order to develop coordinated emission management strategies;
- The portion of the Texas Regional Haze SIP that is intended to address the requirement in section 51.308(d)(3)(ii) to demonstrate that the state has included in its regional haze SIP all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for any Class I area in another state where its emissions cause or contribute to visibility impairment;
- The portion of the Texas Regional Haze SIP that is intended to address the requirement in section 51.308(d)(3)(iii) to document the technical basis on which the state is relying to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress at the Guadalupe Mountains, Big Bend, and the Wichita Mountains;
- The portion of the Oklahoma Regional Haze SIP that is intended to address the requirement in section 51.308(d)(1)(iv) to consult with those States which may reasonably be anticipated to cause or contribute to visibility impairment in the Wichita Mountains.

For the remaining portions of the Texas and Oklahoma Regional Haze SIPs that we are again proposing to disapprove, the bases for our disapproval were previously discussed in the preamble of our proposed rule published on December 16, 2014, and the preamble of our final rule published on January 5, 2016. We are relying on the same bases for disapproval previously discussed in those proposed and final rulemakings and will not repeat the rationales in this notice but rather refer the reader to the preamble of those prior rulemakings,[55] and we incorporate those rationales by reference in this action. Those remaining portions we are proposing to disapprove and for which we are incorporating our original bases for disapproval in this action are as follows:

- Texas's RPGs for the Guadalupe Mountains and Big Bend under section 51.308(d)(1);[56]
- Texas's calculation of the emission reductions needed to achieve the uniform rates of progress for the Guadalupe Mountains and Big Bend under section 51.308(d)(1)(i)(B);[57]
- Texas's calculation of the number of deciviews by which baseline conditions exceed natural conditions for the best and worst visibility days at the Texas Class I areas under section 51.308(d)(2)(iv) given that this calculation relies on the determination of natural visibility conditions, which we are proposing to disapprove;[58]
- The portion of the Texas Regional Haze SIP intended to address paragraph (C) of section 51.308(d)(3)(v), which is

[55] *See* 79 FR 74818 (2014 Proposed Rule) and 81 FR 296 (2016 Final Rule).

[56] 79 FR at 74833–74843 (2014 Proposed Rule) and 81 FR 298–299, 338, 339–343 (2016 Final Rule).

[57] 79 FR at 74832–74833 (2014 Proposed Rule) and 81 FR at 299 (2016 Final Rule).

[58] 79 FR at 74832 (2014 Proposed Rule) and 81 FR at 299–300 (2016 Final Rule).

the requirement to consider emissions limitations and schedules for compliance to achieve the reasonable progress goals; [59]

- 30 TAC 116.1510(d), which was incorporated into the Texas Regional Haze SIP and relies on the now defunct CAIR; [60]
- Oklahoma's RPGs for the Wichita Mountains under section 51.308(d)(1) and the portions of Oklahoma's Regional Haze SIP that are intended to address the requirements of section 51.308(d)(1)(i)(A), (i)(B), and (ii) with respect to Oklahoma's establishment of its RPGs for the Wichita Mountains given that these portions of Oklahoma's Regional Haze SIP relied on and were informed by the analysis and results of Texas's reasonable progress analysis required under section 51.308(d)(1).[61]

B. Supplemental Bases for Our Disapproval of Texas's Four-Factor Analysis

In establishing a RPG for each of its Class I areas, Texas is required by CAA section 169A(g)(1) and section 51.308(d)(1)(i)(A) to ''[c]onsider the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources, and include a demonstration showing how these factors were taken into consideration in selecting the goal.'' This requirement is often referred to as the reasonable progress ''four-factor analysis.'' In addition, section 51.308(d)(1)(ii) provides that for the period of the SIP, if a state establishes an RPG that provides for a slower rate of improvement in visibility than the rate that would be needed to attain natural conditions by 2064, it must demonstrate based on the factors in section 51.308(d)(1)(i)(A) that the rate of progress for the SIP to attain natural conditions by 2064 is not reasonable; and that the progress goal it adopted is reasonable. This requirement under section 51.308(d)(1)(ii) applies to Texas because its RPGs for the 20 percent worst days establish a slower rate of progress than the URP for Big Bend and the Guadalupe Mountains.

We provided a detailed discussion of the basis for our disapproval of Texas's four-factor analysis in the preamble of our 2014 Proposed Rule and provided a more abbreviated discussion of the basis for our disapproval in the preamble of our 2016 Final Rule.[62] However, statements made by the Fifth Circuit motions panel in the 2016 stay opinion appear to reflect a misunderstanding of the basis of our disapproval of Texas's four-factor analysis. Specifically, the opinion indicated that the EPA disapproved the Texas SIP for failing to evaluate the four factors on a source-specific basis. The panel's opinion stated that:

> EPA argues that it had several grounds for disapproving the Texas and Oklahoma goals and suggests each alone provides a sufficient basis for the disapproval. Most of these 'independent' grounds boil down to EPA's insistence that Texas should have conducted a source-specific requirement. Other grounds for disapproval were asserted in the proposed rule but were not finalized in the Final Rule. *Compare 79* FR at 74,842–43 (proposing disapproval because of Texas's cost threshold, weighing of factors for individual sources, reliance on CAIR reductions, assumptions about efficiency of SO_2 scrubbers, evaluation of potential improvements, order of magnitude estimate, and scrubber upgrade estimates), *with* 81 FR at 298–300 (finalizing disapproval because of lack of source-specific analysis and estimation of natural visibility conditions).[63]

The panel's characterization is incorrect. First, as we discuss in the paragraphs and subsections that follow, the basis for our disapproval of Texas's four-factor analysis was not, and is not, tied to the lack of a source-specific analysis. Second, our 2016 disapproval included these other grounds for disapproval. Here, the panel refers to a subsection of the preamble of our 2016 Final Rule where we state that we ''present a summary of the major points of our final decision regarding the Texas regional haze SIP. . . and those parts of the Oklahoma regional haze SIP that we have not previously acted upon.'' [64] Since this was intended to be a summary, this subsection of the 2016 Final Rule did not identify and discuss in detail each of the ''other grounds for disapproval'' in the same way our 2014 Proposed Rule did. However, these ''other grounds for disapproval'' were discussed elsewhere in our 2016 Final Rule and in our Response to Comments document associated with that final rule, and our disapproval was based on consideration of all those deficiencies.[65] In this notice, we provide our evaluation of Texas's four-factor analysis and again identify the deficiencies with this analysis. To address concerns raised in the 2016 stay opinion, and where appropriate, we are presenting additional analysis of the SIP to more fully explain the deficiencies with Texas's four-factor analysis.

The Regional Haze Rule does not require states to conduct four-factor analyses on a source-specific basis. CAA section 169A(b)(2) requires states to include in their SIPs ''emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress.'' While these emission limits must apply to individual sources or units, CAA section 169A(g)(1) does not explicitly require states to consider the four factors on a source-specific basis when determining what amount of emission reductions (and corresponding visibility improvement) constitutes ''reasonable progress.'' The EPA has consistently interpreted the CAA to provide states with the flexibility to conduct four-factor analyses for specific sources, groups of sources, or even entire source categories, depending on state policy preferences and the specific circumstances of each state. While the CAA and the Regional Haze Rule provide states with flexibility in evaluating the four reasonable progress factors, states must exercise reasoned judgment when choosing which sources, groups of sources, or source categories to analyze. Consistent with the state's obligation to exercise reasoned judgment in its analysis, EPA's role in reviewing a SIP is not limited to accepting at face value a state's analysis in its own SIP submission and its

[59] 79 FR at 74862 (2014 Proposed Rule) and 81 FR at 301 (2016 Final Rule).

[60] While the EPA finalized a limited disapproval of the regional haze SIPs submitted by Texas and thirteen other states in a final rule published on June 7, 2012 (77 FR 33642) because these states relied on requirements of CAIR to satisfy certain regional haze requirements, the EPA did not specifically take action in that final rule on Texas's BART Rules at 30 TAC section 116 that were incorporated in the Texas Regional Haze SIP. The EPA took final action on Texas's BART Rules at 30 TAC section 116 in the 2016 Final Rule (81 FR at 301, 312–313, 350). *See also* 79 FR at 74853–74854 (2014 Proposed Rule).

[61] Thus, Oklahoma did not have adequate information from Texas, nor did it request further investigation or reductions from those sources in Texas with the greatest potential to impact visibility in the Wichita Mountains to properly address these requirements under section 51.308(d)(1)(i) through (v) related to the establishment of its RPGs. *See* 79 FR 74818, 74864–74872 (2014 Proposed Rule) and 81 FR 302–303, 312–313, 338, 339–343 (2016 Final Rule).

[62] 79 FR 74818, 74830–74838 and 74841–74843 (Dec. 16, 2014); 81 FR 296, 298–299, 308–311, 313–314, 318–319, 323–324, 327 (Jan. 5, 2016).

[63] *Texas,* 829 F. 3d at 427–428.

[64] *See* 81 FR at 298.

[65] *See* for instance 81 FR at 299, footnote 11, where we identify the lack of consideration of scrubber upgrade as part of the basis for our disapproval. *See* 81 FR at 318 where we state that Texas's cost threshold of $2,700/ton was unreasonable and point to the 2014 proposed rule that discussed the issue in detail. *See* also the Response to Comments Document (RTC) for the Texas-Oklahoma Reasonable Progress SIP and FIP, page 857 and 909, where we discuss Texas's reliance on CAIR reductions and assumptions about control efficiency of SO_2 scrubbers. The RTC for the Texas-Oklahoma Reasonable Progress SIP and FIP is available in the docket for this action at Document ID EPA–R06–OAR–2014–0754–0087.

determination that it has fully satisfied the requirements of the CAA.

Rather, Congress tasked EPA with the responsibility of ensuring that a SIP submission satisfies the requirements of the CAA. Abundant case law reflects an understanding that the EPA must evaluate SIP submissions under CAA section 110(k)(2) and (3).[66] If a SIP submission is deficient in whole or in part, the EPA must so find, and if not corrected, implement the relevant requirements through a FIP under CAA section 110(c). Courts have held that EPA's ability to ensure that a SIP submission satisfies the requirements of the CAA includes the ability to review a state's analysis to ensure that it is ''reasonably moored to the Act's provisions and . . . based on reasoned analysis.'' [67] Thus, EPA's oversight role is ''more than the ministerial task of routinely approving SIP submissions.'' [68] If EPA's role were otherwise, Congress would not have expressly tasked the agency with both reviewing SIPs for completeness (CAA section 110(k)(1)(B)) and reviewing the substance of SIPs (CAA section 110(k)(2)–(4)).

As an initial matter, Texas followed a source-specific approach in selecting sources for evaluation in the four-factor analysis and in analyzing the cost of controls for individual sources, as we discussed in the 2014 Proposed Rule.[69] However, as stated earlier in this section, we disapproved Texas's four-factor analysis not because Texas did not perform its four-factor analysis on a source-specific basis, but because the manner in which Texas analyzed and weighed the four reasonable progress factors was flawed and unreasonable in a number of key areas. First, Texas's overall approach in the selection of a set of sources and controls for evaluation was unreasonable and led to numerous potentially cost-effective controls being dismissed or overlooked altogether. Second, in considering the costs of compliance, which is one of the statutory factors States must consider under section 51.308(d)(1)(i)(A), Texas made unreasonable assumptions that resulted in the overestimation of the cost-effectiveness of controls and a failure to assess costs of available controls for some sources. Finally, in addressing the requirement under section 51.308(d)(1)(i)(A) to include a demonstration showing how the statutory factors were taken into consideration in establishing the RPGs, Texas unreasonably weighed the costs of compliance and the visibility benefits of controls, which resulted in unreasonable conclusions. We discuss these flaws in Texas's four-factor analysis and its weighing of the four factors in more detail in the subsections that follow.

1. Selection of Sources for Evaluation in Four-Factor Analysis

The Reasonable Progress Guidance for the first planning period provides an overview of the process for developing RPGs, potential methods for identifying which source categories should be evaluated for controls, and suggestions for evaluating the four statutory factors with respect to potentially affected stationary sources.[70] The process begins with the identification of key pollutants and sources and/or source categories that are contributing to visibility impairment at each Class I area.[71] A set of sources should be reasonably selected for the four factor analysis based on the sources and source categories that have been identified to contribute to visibility impairment at the applicable Class I areas. The Reasonable Progress Guidance recommends that states ''[i]dentify the control measures and associated emission reductions that are expected to result from compliance with existing rules and other available measures for the sources and source categories.'' [72] States should then determine what additional control measures would be reasonable based on the statutory factors and other relevant factors for the sources and/or sources categories that have been identified.[73]

After identification of key pollutants and source categories, Texas narrowed the scope of the control analysis to point sources of NO_X and SO_2 and developed a list of sources and potential controls and costs associated with those controls. It used the control strategy analysis developed by the Central Regional Air Planning Association (CenRAP) as the starting point for this analysis.[74] Texas also included additional sources from source types not included in the CenRAP dataset. This work resulted in a list of sources and potential controls for reducing SO_2 and NO_X, an estimate of the costs associated with each control, and identification of the Area of Influences (AOIs) for each Class I area.

However, in selecting sources for the four-factor analysis, Texas began by eliminating certain sources purely on the basis of cost before the four statutory factors and the visibility benefit of controls were considered and weighed. Moreover, Texas failed to evaluate potentially cost-effective scrubber upgrades for sources with existing scrubbers despite the potential for large emission reductions and visibility benefits. Texas's overall approach in the selection of a set of sources and controls for evaluation was unreasonable, which led to numerous potentially cost-effective controls being dismissed or overlooked altogether. This led to the selection of a control set that was not appropriately refined, targeted, or focused on those sources that have been identified as contributing to visibility impairment and have cost-effective controls that could result in potentially significant visibility benefits at the Class I areas impacted by Texas sources.

a. Texas's Cost-Effectiveness Threshold

Texas's approach in establishing and applying a cost-threshold was unreasonable. Given the multitude of sources located within the State with the potential to impact visibility, Texas narrowed down its list of potential sources for which to conduct a four-factor analysis. While we agree that it is appropriate for a State to narrow down the list of sources for which to conduct a four-factor analysis, a State's rationale in so doing must be reasonable. When selecting the sources to conduct a four-factor analysis, Texas unreasonably eliminated sources for which the cost of controls exceeded $2,700/ton. Texas's use of a $2,700/ton threshold was unreasonable for several reasons including its reliance on the Clean Air

[66] *See e.g., Oklahoma* v. *EPA*, 723 F.3d 1201, 1209 (10th Cir. 2013) (upholding EPA's disapproval of ''best available retrofit technology'' (BART) SIP, noting BART ''does not differ from other parts of the CAA—states have the ability to create SIPs, but they are subject to EPA review''); see also *Westar Energy* v. *EPA*, 608 Fed. App'x 1, 3 (D.C. Cir. 2015) (''EPA acted well within the bounds of its delegated authority when it disapproved of Kansas's proposed [good neighbor] SIP.'').

[67] *North Dakota* v *EPA*, 730 F.3d 750, 761 (8th Cir. 2013).

[68] *North Dakota* v *EPA*, 730 F.3d 750, 761 (8th Cir. 2013). *See also Alaska Department of Environmental Conservation* v. *EPA*, 540 U.S. 461, (2004) (concluding that EPA was not limited to verifying that a BACT determination had been made, but rather EPA could examine the substance of the BACT determination).

[69] 79 FR at 74834–74838.

[70] *See generally* ''Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program,'' dated June 1, 2007 (hereafter ''Reasonable Progress Guidance'').

[71] Reasonable Progress Guidance at 3–1.

[72] Reasonable Progress Guidance at 2–3.

[73] Reasonable Progress Guidance at 2–3.

[74] The Central States Air Resource Agencies (CenSARA) is a regional planning organization (RPO) that was created in 1995 and currently includes as members the states of Texas, Oklahoma, Louisiana, Arkansas, Missouri, Kansas, Nebraska, and Iowa, as well as the federally recognized tribes within the boundaries of these states. CenSARA created CenRAP to coordinate activities associated with the management of regional haze issues within the member states and tribes. However, CenRAP has since been abolished and CenSARA currently conducts regional haze and other air quality planning activities for the CenSARA states.

Interstate Rule (CAIR) as a justification, its failure to consider the four factors or take into consideration contributions to visibility impairment in setting the threshold, and its failure to consider the range of costs found reasonable by CenRAP. We discuss these points in turn in the following paragraphs.

Texas used the analysis of potential cost of controls developed by CenRAP as the starting point for the selection of sources to evaluate in the four-factor analysis. CenRAP contracted with Alpine Geophysics to conduct an evaluation of possible additional point-source add-on controls for sources in CenRAP states with a Q/d >5.[75] Alpine Geophysics prepared cost estimates for potential add-on controls for NO_X and SO_2 reductions in 2005 dollars for point sources in CenRAP states using AirControlNET,[76] a database tool the EPA released in 2006 to enable cost-benefit analyses of potential emissions control measures and strategies. To narrow the list of potential controls and sources, Texas eliminated controls with an estimated cost-efficiency greater than $2,700/ton from any further analysis and did so regardless of their potential visibility benefits. Texas's justification for the selection of this value was a reference to the fact that the cost associated with implementing CAIR was up to $2,700/ton.[77] However, EPA promulgated CAIR to address an entirely different issue—the interstate transport of emissions from states that contributed to unhealthy levels of ozone and particulate matter in certain downwind states.[78] The interstate transport program under CAA section 110(a)(2)(D)(i)(I) is an entirely separate program from regional haze, serving a different statutory purpose and involving the consideration of a different set of factors.[79] Thus, the costs associated with CAIR were not developed with consideration of the four statutory factors used to determine reasonable progress, or visibility impairment in general, and therefore, shouldn't be relied upon to eliminate sources from evaluation for potential visibility benefits. To the extent a state relied on a cost threshold as part of its reasonable progress analysis, such a cost threshold must be justified in a manner consistent with the CAA's expressly stated goal of addressing sources of visibility impairment to Class I areas.[80] Because Texas's SIP justified its selection of $2,700/ton by referencing costs associated with a program developed to address issues unrelated to regional haze, it failed to adequately justify why such a threshold is reasonable in the context of addressing sources of visibility impairment to Class I areas in Texas.

Texas's application of the $2,700/ton cost threshold unreasonably eliminated sources from consideration without evaluating the statutory factors or taking into consideration whether requiring controls on those sources could result in meaningful visibility improvement in Class I areas. In the Texas Regional Haze SIP, the State's use of a $2,700/ton threshold resulted in the state unreasonably overlooking potentially cost-effective controls that would have had a meaningful visibility improvement at the affected Class I areas. Given the large number of Texas sources and their large geographic distribution, Texas's failure to consider location and emissions data in applying a cost threshold to eliminate controls from further analysis was unreasonable. This is especially true for Texas, as its two Class I areas (Guadalupe Mountains National Park and Big Bend National Park) are located in far West Texas. In applying the $2,700/ton threshold, Texas screened out all EGUs (the largest point sources) in West Texas from consideration in a four-factor analysis. These EGUs in West Texas also impact visibility in the Class I areas located in eastern New Mexico (Salt Creek Wilderness Area, Carlsbad Caverns National Park, White Mountain Wilderness Area, and Pecos Wilderness Area) and the Class I area in Oklahoma (Wichita Mountains Wilderness Area). For example, potential SO_2 controls for the Tolk Station located in West Texas were estimated in the Alpine Geophysics analysis to cost an average of approximately $3,100/ton and result in nearly 20,000 tpy reduced across the two units.[81] The Tolk facility is located northwest of Lubbock and is in relatively close proximity to Class I areas in Texas, New Mexico, and Oklahoma.[82] The Tolk units were found in the Alpine Geophysics analysis to each have a high Q/d [83] for SO_2 at multiple Class I areas,[84] in particular at the Guadalupe Mountains in Texas where the Q/d is 34.4 for Unit 171B and 31.4 for Unit 172B.

Beyond prematurely eliminating EGUs in West Texas, Texas's use of the $2,700/ton threshold also unreasonably eliminated potentially cost-effective SO_2 controls for other sources located in close proximity to Arkansas and Oklahoma Class I areas with a high SO_2 Q/d. This includes the Welsh Power Plant Unit 1,[85] which was found in the Alpine Geophysics analysis to have a Q/d of 69.6 at Caney Creek and 34.2 at Upper Buffalo in Arkansas, 29.1 at the Wichita Mountains in Oklahoma, and 27.1 at Hercules Glades in Missouri. SO_2 wet scrubber controls for Welsh Unit 1 were estimated to cost $2,852/ton and anticipated to result in approximately 10,500 tpy reduced. As a result of the application of this $2,700/ton threshold, potentially cost-effective controls were not evaluated at these and other sources that may result in meaningful visibility benefits at Texas's own Class I areas and Class I areas in surrounding states.

Finally, we note that CenRAP conducted a sensitivity analysis which evaluated controls for sources with a Q/d>5 and cost-effectiveness up to $10,000/ton. Based on that analysis, CenRAP suggested that a range from $4,000 to $5,000/ton would be a reasonable threshold for controls

[75] Q/d is the ratio of annual emissions of a given pollutant over distance to a Class I area and can be used to identify those sources with the largest potential to impact visibility.

[76] Lists of NO_X and SO_2 controls meeting cost thresholds ranging from $1,500/ton to $10,000/ton developed by Alpine Geophysics are available in the docket for this action (See spreadsheets titled ''nox_cost_ton__2_'' and ''so2_cost_ton'') under Document ID EPA–R06–OAR–2014–0754–0013, Attachments 11 and 13.

[77] See Texas Regional Haze SIP at 10–7. The SIP submittal is available in the docket for this action under Document ID EPA–R06–OAR–2014–0754–0002.

[78] *See generally* 70 FR 25161 (May 12, 2005).

[79] While CAIR, and its predecessor CSAPR, were evaluated for BART alternatives under 40 CFR 51.308(e)(2), they were not designed to address visibility impairment caused by regional haze. Furthermore, the evaluation of CAIR and CSAPR as a BART alternative did not consider costs or cost thresholds.

[80] *See, e.g., North Dakota* v. *EPA,* 730 F.3d 750, 766 (8th Cir. 2013).

[81] Lists of SO_2 controls meeting cost thresholds ranging from $1,500/ton to $10,000/ton developed by Alpine Geophysics are available in the docket to this action (See spreadsheet titled ''so2_cost_ton'') under Document ID EPA–R06–OAR–2014–0754–0013, Attachment 13.

[82] The Tolk facility is located approximately 546 km from Big Bend (Texas), approximately 320 km from the Guadalupe Mountains (Texas), approximately 178 km from Salt Creek (New Mexico), approximately 277 km from the Carlsbad Caverns (New Mexico), approximately 298 km from the White Mountains (New Mexico), approximately 309 km from the Pecos Wilderness (New Mexico), and approximately 354 km from the Wichita Mountains (Oklahoma).

[83] Texas identified sources as ''high priority'' if they had an emissions over distance equal to or greater than five (Q/d ≥ 5) for one or more Class I areas. *See* Texas Regional Haze SIP at 4–3 and 10–7.

[84] Based on the Alpine Geophysics Analysis, the Q/d for SO_2 for the Tolk units is 32 for Unit 171B and 29.1 for Unit 172B at the Wichita Mountains in Oklahoma; 21.1 for Unit 171B and 19.2 for Unit 172B at Big Bend in Texas; 34.4 for Unit 171B and 31.4 for Unit 172B at the Guadalupe Mountains in Texas; and 14.9 for Unit 171B and 13.5 for Unit 172B at Caney Creek in Arkansas.

[85] The Welsh facility is located approximately 161 km from Caney Creek and 332 km from Upper Buffalo (Arkansas) and approximately 400 km from Wichita Mountains (Oklahoma).

because of diminishing emission reductions as costs increase beyond that range.[86] While Texas otherwise relied heavily on analyses performed by CenRAP, it is unclear from Texas's submission why it then opted not to consider CenRAP's analysis when selecting their $2,700/ton cost threshold, nor did Texas consider the specific impact of how their selected threshold may have prematurely eliminated sources with potential cost-effective and large visibility benefits.

b. Scrubber Upgrades

The EPA's guidance for setting reasonable progress goals instructs that States should focus on those sources that may have the greatest impact on visibility at Class I areas. This is consistent with the national goal established by Congress of remedying any existing impairment of visibility in Class I areas due to manmade air pollution. As part of its source selection, Texas also failed to consider evaluating EGUs with existing SO_2 scrubbers for potential SO_2 reductions in the four-factor analysis. Such failure to consider these sources in the four-factor analysis was unreasonable given the large projected emissions as shown in Table 1.

TABLE 1—SO_2 EMISSIONS AT TEXAS EGUS WITH EXISTING SCRUBBERS

Facility name	Unit ID	CAMD/NEEDS/EIA verified scrubber	Scrubber online year	Scrubber bypass	SO_2 emissions (tpy)*		
					2002	2018 CenRAP projection	Change
Oklaunion Power	1	Wet Scrubber	1986	Y	3,751	7,101	3,350
Limestone	LIM1	Wet Scrubber	1985	Y	16,293	12,715	−3,578
Limestone	LIM2	Wet Scrubber	1986	Y	12,974	4,983	−7,991
W.A. Parish	WAP8	Wet Scrubber	1982	Y	3,948	4,512	564
Martin Lake	1	Wet Scrubber	1977	Y	24,832	11,351	−13,481
Martin Lake	2	Wet Scrubber	1978	Y	22,538	11,984	−10,554
Martin Lake	3	Wet Scrubber	1979	Y	19,024	12,396	−6,628
Monticello	3	Wet Scrubber	1978	Y	22,889	11,882	−11,007
San Miguel	SM–1	Wet Scrubber	1982	Y	13,167	6,550	−6,617
H.W. Pirkey Power	1	Wet Scrubber	1985	Y	19,476	19,478	2
Sandow	4	Wet Scrubber	1981	Y	23,305	8,409	−14,896
Gibbons Creek	1	Wet Scrubber	1983	Y	10,816	2,652	−8,164
Total					193,013	114,013	−79,000

*Emissions data from Texas Regional Haze SIP, Appendix 10.4b.

We note that the AirControlNET database does not include general information for the cost and effectiveness of scrubber upgrades as the cost and reductions from these potential upgrades are typically very specific to the existing equipment and site-specific conditions. The cost of scrubber upgrades at coal-fired power plants has been evaluated in many other instances in both the context of BART and reasonable progress for both the first and second planning periods for regional haze. Based on what we have seen in other regional haze actions, upgrading an underperforming SO_2 scrubber is generally very cost-effective.[87] At the time Texas conducted its analysis, many EGUs were equipped with older vintage scrubbers and/or had scrubber bypasses that divert a portion of the exhaust gas around the control equipment. In some cases, excess scrubbing capacity is simply not being utilized. Texas included many of these types of sources in the maps showing AOIs and ''high priority'' sources for other state's Class I areas, as well as in the table of sources within the Class I areas AOI, in their correspondence with other states (see Appendix 4.2 of the Texas Regional Haze SIP). However, Texas omitted these sources from their source selection of SO_2 point sources and thus did not consider them as part of the four-factor analysis without providing a reasonable justification.

Furthermore, even with these existing SO_2 controls, some of these EGUs are still among the largest SO_2 emitting sources in the State and have large Q/d's. For example, the Martin Lake facility had a Q/d for Guadalupe Mountains (958 km away) greater than 37 using the projected 2018 SO_2 emissions. Emissions at Martin Lake unit 1 in the CenRAP emission inventory were projected to decrease from 24,832 tpy in 2002 to 11,351 tpy in 2018. This is because the 2018 projected emissions include predicted emission reductions due to CAIR at many of these controlled facilities, suggesting some increase in control efficiency, decreased bypass, and/or burning fuels with a lower average sulfur content is already included in the 2018 projections. Thus, even starting with this conservatively lower figure, upgrading the existing scrubber to 95 percent control efficiency would result in an approximate emission reduction of an additional 7,000 tpy beyond those reductions that were projected to occur due to CAIR.[88] Scrubber upgrades across all three Martin Lake units could result in emission reductions of approximately 21,000 tpy beyond the level of control assumed in the 2018 projections. The EGUs Texas omitted from consideration in its four-factor analysis represent approximately one-third of the total

[86] *See* ''Sensitivity Run Specifications for CenRAP Consultation,'' available in the docket for this action under Document ID EPA–R06–OAR–2014–0754–0013. See also ''so2_cost_ton.xls'' and ''nox_cost_ton_2_.xls,'' also available in the docket for this action under Document ID EPA–R06–OAR–2014–0754–0013.

[87] *See,* for instance, the North Dakota Regional Haze SIP: scrubber upgrades for the Milton R. Young Station Unit 2 were evaluated under BART and were found to cost $522/ton and scrubber upgrades with coal drying for the Coal Creek Station Units 1 and 2 were evaluated under BART and found to cost $555/ton at each unit. See the EPA's final action approving the SO_2 BART determinations for the Coal Creek Station Units 1 and 2 and for the Milton R. Young Station Unit 2 at 77 FR 20894 (April 6, 2012). *See* also the Wyoming Regional Haze SIP: scrubber upgrades for Wyodak Unit 1 were evaluated to address the RHR requirements under 40 CFR 51.309 and found to cost $1,167/ton. The EPA approved this portion of the Wyoming Regional Haze SIP at 77 FR 73926 (December 12, 2012).

[88] Based on EPA Clean Air Markets Division (CAMD) annual SO_2 emissions data and U.S. Energy Information Administration (EIA) data on reported sulfur content and tonnages of the fuels burned at Martin Lake Unit 1 in 2009–2013, scrubber upgrades achieving SO_2 removal efficiency of 95 percent are estimated to reduce SO_2 emissions to 3,706 tpy. The difference between the CenRAP 2018 projected SO_2 emissions for Martin Lake Unit 1 (11,351 tpy) and the estimated SO_2 emissions resulting from scrubber upgrades (3,706 tpy) is 7,645 tpy. *See* the Excel file ''Coal vs CEM data 2009–2013.xlsx,'' ''charts'' tab, cell ''N15'' found in our docket under Document ID EPA–R06–OAR–2014–0754–0007, Attachment 17.

projected Texas EGU SO_2 emissions in 2018.[89] This is a significant fraction of Texas EGU emissions that were not analyzed for potential emission reductions without a reasonable justification. Additionally, SO_2 scrubber upgrade controls are typically very cost-effective. This is because a scrubber can be upgraded by reusing as many structural components and equipment in the existing unit as possible, such as existing structural steel and absorber shells, ducts, pumps, and compressors. A scrubber can be upgraded by applying new scrubbing technology to improve its removal efficiency, decrease operating costs, and improve operations and reliability for much less than it would cost to replace it with a new scrubber. In some cases, the overall removal efficiency of an existing scrubber can be increased by simply decreasing or eliminating the amount of emissions that bypass the scrubber[90] and/or increasing the amount of reagent used in the scrubber, which are relatively inexpensive ways to improve the removal efficiency of a scrubber compared to installing a new scrubber. Given the projected emissions of the sources shown in Table 1, the size of the impact from Texas emissions, and the source apportionment data indicating the large impact from SO_2 emissions from EGUs, we propose to find it was unreasonable for Texas to not perform any analysis on these sources or at least request additional information from the facilities concerning potential scrubber upgrades.

2. Consideration of the Four Factors

As stated previously, in establishing a RPG for each Class I area located within the state, Texas is required by CAA section 169A(g)(1) and section 51.308(d)(1)(i)(A) to ''[c]onsider the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources, and include a demonstration showing how these factors were taken into consideration in selecting the goal.'' This requirement is often referred to as the reasonable progress four-factor analysis. In considering the costs of compliance, Texas made unreasonable assumptions that resulted in the overestimation of the cost-effectiveness of controls and a failure to assess costs of available controls.

a. Texas's Assumptions of SO_2 Control Efficiency of Scrubbers

Pursuant to CAA section 169A(g)(1) and section 51.308(d)(1)(i)(A), States must consider the costs of compliance. Texas's assumptions of the control efficiency of controls led to an overestimation of the cost of scrubber retrofits. The control efficiency of new scrubbers evaluated by CenRAP and Texas, based on the data from AirControlNET, was assumed to be 90 percent. SO_2 scrubber retrofits are capable of achieving emission reductions of at least 95 percent for dry scrubbers and 98 percent for wet scrubbers.[91] Texas's assumption of 90 percent control efficiency materially affected its analysis due to the large visibility impact of Texas point sources, and EGUs in particular. For instance, the difference in emission reductions assuming 90 percent control efficiency compared to 98 percent is 1,851 tons for Unit 1 and 1,891 tons for Unit 2 at Big Brown. These additional reductions would have further reduced the estimated costs of the controls to approximately $1,400/ton and increased the visibility benefit anticipated due to controls. At Monticello Units 1 and 2, the higher control efficiency would have resulted in an additional 1,500 tons reduced at a cost of $1,700/ton. Assuming 98 percent control efficiency compared to 90 percent control efficiency at all the EGUs Texas evaluated in the four-factor analysis would have resulted in an additional 9,800 tons reduced. Therefore, Texas's assumptions of the emission reductions due to controls and their consideration of cost led to an overestimation of the costs of controls.[92]

b. Texas's Cost of Compliance Analysis Assumed Future CAIR Reductions as a Baseline

Texas failed to consider how reliance on the 2018 emission projections under CAIR impacted their source selection, estimated costs of controls, and estimated visibility benefits of controls. A critical decision point in performing the cost analysis for potential controls is the determination of an emission baseline. Texas and CenRAP relied on the IPM predictions to estimate 2018 emission levels for EGUs. Texas identified that the majority of the emission reductions underlying the predicted visibility improvements in 2018 resulting from controls already in effect or scheduled to become effective will result from the CAIR program in particular. The Integrated Planning Model (IPM) analysis used by CenRAP predicted that due to CAIR compliance, by 2018, EGUs in Texas would purchase approximately 125,000 tpy of emissions allowances from out of state.[93] IPM predicted that many EGUs in Texas would reduce their emissions either through changes in coal, increased efficiency of existing controls, or installation of new controls. Texas also noted that there is uncertainty in the size and distribution in emissions in the future projections and that no EGUs made an enforceable commitment to any particular pollution control strategy and preferred to retain the flexibility offered by the CAIR program.[94] The CAIR program allows interstate trading of allowances and does not put specific emission limits on specific sources. Texas notes that because emission allowances can be purchased by EGUs, visibility improvement may be less or more that that predicted by the CenRAP's modeling. Nevertheless, Texas unreasonably utilized this future projection of 2018 emissions as the starting point for its estimation of emission reductions and the associated costs of additional controls in its four-factor analysis.[95] Although we acknowledge that CAIR is now defunct and has been replaced by CSAPR, Texas presumed that those results would be comparable under any program to replace CAIR.

The 2018 emission projections under CAIR that Texas relied on for source selection assumed that sources such as W. A. Parish Units WAP5, WAP6, and WAP7 and Welsh Units 2 and 3 would install SO_2 controls to significantly reduce their annual SO_2 emissions by 2018. However, it was unreasonable for Texas to rely on these projected CAIR reductions for the baseline in their analysis because there were no enforceable requirements to accompany these SO_2 reductions. In assuming the

[89] *See* Texas Regional Haze SIP, Appendix 10.4b.

[90] Ways in which scrubber bypass can be decreased or eliminated include adding fan capacity, upgrading the electrical distribution system, and conversion to a wet stack.

[91] *See* the Oklahoma Regional Haze FIP at 76 FR 81728, 81742 (Dec. 28, 2011).

[92] Underestimation of emission reductions also resulted in an underestimation of the visibility benefits.

[93] CenRAP used the IPM (Version 2.19) that the EPA employed to predict the emissions reductions expected from CAIR in 2018 and Texas used the CenRAP analysis as their starting point in the four-factor analysis. The IPM model predicts the effect of emission trading programs considering economics, logistics, and the specific regulatory environment for each EGU. The EPA released the results and documentation for the IPM Version 2.19 in 2005.

[94] See Texas Regional Haze SIP at section 10.5.

[95] *See* Texas Regional Haze SIP at 10–7, 10–8, and 10–9. While Texas relied on CAIR to satisfy the BART requirements for EGUs, BART is only one component of a long-term strategy to make reasonable progress for the first regional haze planing period. A state should look beyond BART for additional reductions when assessing reasonable progress.

2018 emission projections under CAIR as the baseline in their analysis, Texas assumed a starting point where scrubbers were already installed and the only potential control measure considered for these units was to ''repower'' at an extremely high cost that far exceeded the $2,700/ton threshold Texas applied, leading Texas to omit the W. A. Parish and Welsh units from their selection of sources to evaluate in the four-factor analysis. However, similar to Big Brown and Monticello, scrubbers were likely cost-effective for these units and should have been considered for the units at Parish and Welsh. As shown in Table 2, the emission baseline Texas used assumed that SO_2 emission reductions under CAIR would be 45,447 tpy across the three W. A. Parish units (approximately 80 percent reduction) and 21,129 tpy across the two Welsh units (approximately 90 percent reduction). It was unreasonable for Texas to omit consideration of scrubbers for Welsh and Parish units simply because the 2018 emission projections used as their baseline assumed scrubbers would already be in place in 2018 due to CAIR. The use of this baseline resulted in large sources being left out of the control set Texas evaluated in their four-factor analysis even though the emission reductions were not enforceable and were based on SO_2 controls that have never been installed. In its SIP, Texas even acknowledged the uncertainties in its 2018 emissions projections by its in depth review of an updated emission projection, available at the time Texas was developing its SIP revision, that did not predict scrubber upgrades or large emission reductions at the Parish and Welsh Units.[96] This highlights the uncertainty of projections for specific units and the sensitivity of emission projections to inputs in the projections, for instance, higher natural gas prices. Texas should have recognized the flexibility in the CAIR trading program and the resulting uncertainty in the projected emissions and projected controls. In other words, it was unreasonable for Texas to rely on unenforceable projected controls, and not to have recognized that implementation of reasonable controls under the Regional Haze Rule would likely not be in addition to anticipated reductions due to CAIR predicted by IPM but would replace or complement any controls predicted by IPM.

TABLE 2—2002 SO_2 EMISSIONS VS. 2018 PROJECTED SO_2 EMISSIONS UNDER CAIR[97]

Facility name	Unit ID	2002 SO_2 emissions (tpy)*	2018 SO_2 emissions projections under CAIR (Texas baseline) (tpy)*	Projected SO_2 emissions reductions under CAIR (tpy)
W.A. Parish	WAP5	20,523	3,733	16,790
W.A. Parish	WAP6	17,863	3,809	14,054
W.A. Parish	WAP7	17,900	3,297	14,603
Welsh	2	11,995	1,223	10,772
Welsh	3	11,584	1,227	10,357

* Emissions data from Texas Regional Haze SIP, Appendix 10.4b.

Texas's use of 2018 projections also impacted the potential emission reductions and cost of available controls for EGUs. For example, Big Brown Unit 1's SO_2 emissions in 2002 were 43,413 tpy. The IPM predictions that were incorporated into the 2018 emission level assume that a greater than ⅓ reduction in these emissions will occur in response to CAIR by switching to a coal with a lower sulfur content, resulting in a 2018 SO_2 emission level of 23,142 tpy. Texas's cost-effectiveness calculation for post-combustion controls on Big Brown Unit 1 was based on reducing that projected 2018 SO_2 emission level of 23,142 tpy by 90 percent, resulting in a reduction of 20,828 tpy. This results in a cost of $32,766,310/yr, or a cost-effectiveness calculation of $1,573/ton. However, the installation of a scrubber would allow Big Brown flexibility in fuel choice thus allowing the unit to continue to burn the higher average sulfur fuel it currently burns, instead of moving to the low sulfur coal predicted by IPM. There was no enforceable commitment for these emission reductions at Big Brown with the company preferring the flexibility afforded under CAIR and thus it was unreasonable for Texas to rely on these projected reductions as a starting point for evaluating controls for this and other EGUs without consideration of how the uncertainty in 2018 IPM projections may impact their analysis.

Big Brown Unit 1 SO_2 emissions in 2006 were 49,777 tons.[98] The issue of scrubber efficiency aside, a reduction of 90 percent from these actual emission levels would result in an SO_2 reduction of approximately 44,800 tpy. While the numerator ($) in the cost-effectiveness metric of $/ton will increase slightly beyond what was estimated by Alpine Geophysics due to an increased sulfur loading to the scrubber, the denominator (tons) would increase by more than 100 percent, thus improving (lowering) the overall cost-effectiveness of controlling Big Brown Unit 1 significantly. Estimates for scrubbers at Monticello are similarly impacted by the cost methodology used by Texas in estimating cost-effectiveness on a cost-per-ton basis. Similarly, the visibility benefits of controls estimated by Texas were based only on the estimated additional emission reductions beyond what was already estimated to occur under CAIR in 2018. Accounting for the full reductions that would result from installation of the scrubbers based on historical emissions at the time would result in larger emission reductions and therefore, larger estimated visibility benefits from controls.

[96] The 2018 emission projections Texas used as its baseline were based on the Integrated Planning Model (IPM) Version 2.19; however, there was also an updated version of IPM available for review at the time Texas was developing its SIP (Version 3.0). Texas provided an in-depth comparison of the two IPM runs in Appendix 7–2 of their SIP submittal. While the IPM 3.0 results estimated very similar overall SO_2 emissions, IPM 3.0 estimated larger reductions at Big Brown and Monticello and did not predict scrubber installations or large emission reductions at the Parish and Welsh units. *See* Texas Regional Haze SIP, at pg. 10–9 and Appendix 7–2, at pg. 8.

[97] We note that the difference in projected emissions for W.A. Parish facility between IPM Versions 2.19 and 3.0 is 29,407 tons, and the difference in projected emissions for the Welsh facility is 21,354 tons. *See* Texas Regional Haze SIP, Appendix 7–2, at pg.8.

[98] 2006 was the most recent year for which complete annual emissions data was available prior to Texas issuing the draft Regional Haze SIP for public comment.

For these reasons, it was unreasonable for Texas to rely on the 2018 projections without consideration of uncertainty and how these assumptions may impact their analysis. Texas should have recognized that implementation of reasonable controls under the Regional Haze Rule would likely not be in addition to anticipated reductions due to CAIR predicted by IPM but would replace or complement any controls predicted by IPM.

3. Weighing of the Four Statutory Factors and Visibility Benefits

After consideration of the four statutory factors and other applicable factors, States must weigh the factors and include a demonstration showing how these factors were taken into consideration in establishing the goal as required under Section 51.308(d)(1)(i)(A) and (d)(1)(ii). Texas unreasonably weighed the costs of compliance and the visibility benefits of controls, which resulted in unreasonable conclusions.

a. Cost of Compliance

Texas's use of annualized aggregate costs in determining whether controls were necessary to make reasonable progress for the first planning period was unreasonable and inconsistent with the CAA. In looking at the costs of compliance as part of its four-factor analysis, Texas stated that the total annualized aggregate cost of $324,300,000 was too high in light of the imperceptible visibility benefits of controls.[99] For reasons explained in section V.B.3.c, we find that Texas's characterization and consideration of visibility benefits was both flawed and unreasonable. Focusing on costs, the figure of approximately $324 million reflects the annualized cost of controls on the entire group of sources that Texas selected for analysis under the four factors. As stated previously, states have flexibility in how they consider the four factors; however, such flexibility must be exercised in a reasonable manner. While determining that a total cost of $324 million was too high, Texas provided no context or support as to why that figure is too high, and importantly, what range of costs would be reasonable. This is especially problematic when considering that Texas already applied a cost-effectiveness threshold of $2,700/ton to ''limit the proposed controls group to cost effective measures'' [100] and thus eliminate sources for which they deemed controls as too costly. Thus, pointing to the $324 million total annual cost as too expensive seemingly contradicts Texas's determination that controls on these sources are cost-effective. Rather, all that can be determined from Texas's use of the aggregate annualized cost is that it represents the sum total of the costs of controls for 45 units that impact one or more Class I areas in Texas or nearby States and that Texas had previously determined were cost effective as they were below its $2,700/ton cost-threshold. As such, the way Texas relied on the annual aggregate cost of controls was irrational and did not constitute a reasonable consideration of the costs of compliance as required by the CAA and the RHR.

b. Texas's Approach in Grouping Sources

The way Texas grouped sources led to unreasonable results when weighing the factors—namely it included multiple sources that inflated the total cost of controls without providing a corresponding reduction in visibility impairment. Texas constructed a potential control set consisting of a mix of large and small sources, located at various distances from Class I areas, with a large geographical distribution. While on its face, this selection of controls and sources appears broad and comprehensive, in analyzing how Texas constructed its control set and mixture of sources, we find several flaws and therefore find the analysis unreasonable. Because of the variation in size, type, and location of these sources, the potential to impact visibility and potential visibility benefit from controls at a given Class I area can vary greatly between the identified sources. This potential control set identified by Texas included controls on sources that would likely result in significant visibility benefits at several Class I areas (such as sources with high emissions and tall stacks), but also included controls on many sources with much less anticipated visibility benefits (such as sources with lower emissions and shorter stacks, located at greater distances to the Class I areas). Because Texas only estimated the visibility benefit by grouping all the controls together, it was not able to appropriately assess the potential benefit of controlling a more refined grouping of sources with significant, and potentially cost-effective, visibility benefits. While we are not suggesting that Texas was required to weigh the four factors and visibility benefits on a source-specific basis, the grouping of sources like the Bryans Mill Plant and the Celanese Chemical Manufacturing Plant together with sources like Big Brown unreasonably inflated the total cost of controls without providing a corresponding reduction in visibility impairment. Thus, Texas failed to adequately justify why including sources with very dissimilar potential visibility benefits in the same group was reasonable.

The significant visibility benefits of controls on some sources being grouped together with controls on other sources that provided little visibility benefit only served to increase the total annual cost figures for the entire potential control set. For example, Texas identified SO_2 controls at the two Big Brown units to be approximately $1,500/ton, significantly less than its $2,700/ton threshold. These controls were estimated to achieve greater than 40,000 tpy SO_2 emission reductions and would result in important visibility benefits given that the Big Brown units have tall stacks and a Q/d greater than 50 at surrounding Class I areas.[101] Big Brown and the other EGUs included in Texas's evaluated control set have Q/d values greater than 5 at all ten Class I areas evaluated in Texas's estimation of visibility benefits, and these emission reductions were included in the estimation of potential visibility benefits at all ten areas. In the same potential control set, Texas included SO_2 controls at other sources with estimated costs similar or more expensive than those at Big Brown, but with considerably lower SO_2 emissions reductions and lower Q/d. For instance, in the same control set Texas identified SO_2 controls at the Bryans Mill Plant estimated to cost approximately $1,425/ton (similar to the Big Brown units), but with estimated SO_2 emission reductions of only approximately 1,330 tpy. The Bryans Mill Plant has a Q/d less than 10 at any given surrounding Class I areas and thus the visibility benefits of SO_2 controls on this source are anticipated to be much lower than the visibility benefits of SO_2 controls on Big Brown. In Texas's estimation of visibility benefits, emission reductions at Bryans Mills Plant were only included in the estimation of visibility benefits at Caney Creek (Q/d = 8.2). The Q/d values for all other Class I areas were so low (less than 5) that Texas assumed that no visibility benefit would result at these Class I areas from reductions at the Bryans Mills Plant. Texas also included in the same potential control set SO_2 controls at the Celanese Chemical

[99] See Texas Regional Haze SIP, Table 10–5.

[100] See Texas Regional Haze SIP at 10–7.

[101] The Big Brown units have a Q/d of 67.6 for Unit 1 and 69 for Unit 2 at Caney Creek in Arkansas and a Q/d of 56.9 for Unit 1 and 58.1 for Unit 2 at Wichita Mountains in Oklahoma.

Manufacturing Plant that were estimated to be approximately $2,658/ton, but with estimated SO_2 emission reductions of only approximately 1,760 tpy. The Celanese Chemical Manufacturing Plant has a Q/d less than 9 at any given surrounding Class I area and thus the visibility benefits of this SO_2 control are anticipated to be much lower than the visibility benefits of SO_2 controls on Big Brown. In Texas's estimation of visibility benefits, emission reductions at Celanese were only included in the estimation of visibility benefits at Salt Creek (Q/d = 5.3) and Wichita Mountains (Q/d = 8.8). The Q/d values for all other Class I areas were so low (less than 5) that Texas assumed that no visibility benefit would result at these Class I areas from reductions at the Celanese Chemical Manufacturing Plant. Despite this evidence in the record of identified cost-effective controls that result in large emission reductions and large potential visibility benefits at multiple Class I areas, in addition to source apportionment modeling identifying large impacts from EGU sources, and in particular EGUs in northeast Texas, the unreasonable manner in which the State grouped sources in weighing the four factors resulted in controls at sources such as Big Brown, an EGU in northeast Texas, being dismissed.

Additionally, the total annualized aggregate cost of $324,300,000 includes $53,500,000 associated with the cost of NO_X controls. However, visibility improvement due to reductions in nitrate extinction are much less than the sulfate reductions at each Class I area as shown in Table 3.

TABLE 3—TEXAS ESTIMATED REDUCTION IN EXTINCTION

Class I area	Estimated reduction in extinction (Mm–1)	
	Sulfate	Nitrate
Big Bend	0.847	0.032
Breton	0.465	0.005
Caney Creek	3.232	0.054
Carlsbad Caverns	1.014	0.023
Guadalupe Mountains	1.014	0.023
Salt Creek	1.069	−0.081
Upper Buffalo	1.583	0.016
Wheeler Peak	0.121	0.000
White Mountain	0.850	0.014
Wichita Mountains	2.722	0.408

The reduction in nitrate extinction is less than 4 percent of the sulfate reduction at each Class I area with the exception of Wichita Mountains (15 percent). Despite this very small incremental reduction in light extinction, Texas included costs of NO_X emission reductions, $53,500,000, in the aggregate costs for controls of which represents more than 16 percent of the total aggregated cost of controls. Thus, the inclusion of the costs associated with NO_X controls serves to increase the total aggregate cost but does not result in significant visibility benefits compared to the benefits that result for the SO_2 controls.

c. Texas's Evaluation of Potential Visibility Improvements

In considering whether compliance costs for sources were reasonable, Texas weighed the total aggregated annual costs to the emission reductions and estimated visibility improvement those sources would achieve. While visibility is not an explicitly listed factor to consider when determining whether additional controls are reasonable, the purpose of the four-factor analysis is to determine what degree of progress toward natural visibility conditions is reasonable. Therefore, the EPA has interpreted the CAA and the RHR as allowing States to consider visibility alongside the four statutory factors when determining the emission reduction measures that are necessary to make reasonable progress. However, while it is reasonable for a State to consider visibility benefits, it is not free to do so in a manner that is unreasonable or inconsistent with the requirements of the CAA. For the reasons explained in the following paragraphs, we find that Texas's consideration of visibility improvements was unreasonable and inconsistent with the requirements of the CAA.

i. Texas's Use of Visibility Thresholds

The visibility thresholds selected by Texas to dismiss otherwise meaningful visibility improvement provided for by the sources it analyzed are inconsistent with the CAA. In evaluating and dismissing the estimated visibility benefit from the entire control set it identified, Texas states that the estimated benefit is not perceptible (less than 1 dv) and that it is less than 0.5 dv, the screening threshold used under BART requirements used to determine if a facility contributes to visibility impairment. However, this 0.5 dv is not an appropriate visibility threshold to use for the reasonable progress analysis, given that the modeling inputs and metrics for determining the visibility benefits for reasonable progress differ significantly from modeling conducted for purposes of BART. For example, modeling conducted for purposes of BART focused on the maximum anticipated visibility impact from the source on a single day due to the short-term maximum actual baseline emissions from a single facility, compared to clean background conditions. On the other hand, the reasonable progress analysis presented by Texas contemplates the visibility benefit to degraded background conditions anticipated for an average tpy emission reduction (as opposed to the impact from the total short-term maximum emissions from the sources) averaged across the 20 percent worst days at the Class I area(s) (which may not be the same days that are most impacted by any particular source). By looking at average impacts over an averaged number of days, the visibility benefits projected for a reasonable progress analysis would be anticipated to be significantly lower compared to maximum day impact metrics. Thus, using a 0.5 dv threshold developed for evaluating the maximum impacts under BART as a basis for dismissing potential controls in a reasonable progress analysis is unreasonable. The FIP TSD associated with the 2014 Proposed Rule provides a detailed discussion of the different metrics and modeling typically used for BART and reasonable progress analyses.[102] Furthermore, even in the context of BART we have stated that even though the installation of BART may not result in a perceptible improvement in visibility, the visibility benefit may still be significant, as explained by the Regional Haze Rule:

> Even though the visibility improvement from an individual source may not be perceptible, it should still be considered in setting BART because the contribution to haze may be significant relative to other source contributions in the Class I area. Thus, we disagree that the degree of improvement should be contingent upon perceptibility.[103]

As we stated in our final rule partially approving and partially disapproving a portion of the Oklahoma Regional Haze SIP and promulgating an SO_2 BART FIP for Oklahoma sources:

> Given that sources are subject to BART based on a contribution threshold of no greater than 0.5 deciviews, it would be inconsistent to automatically rule out additional controls where the improvement in visibility may be less than 1.0 deciview or even 0.5 deciviews. A perceptible visibility improvement is not a requirement of the BART determination because visibility improvements that are not perceptible may still be determined to be significant.[104]

Thus, Texas's use of both perceptibility and the 0.5 dv threshold developed for use in evaluating BART, as a basis for dismissing potential

[102] *See* Texas-Oklahoma Regional Haze FIP TSD, Appendix A, pages A–35–A–39, A–75.

[103] 70 FR 39104, 39130 (July 6, 2005).

[104] 76 FR 81728, 81739 (Dec. 28, 2011).

controls in a reasonable progress analysis is unreasonable.

ii. Visibility Benefits of Texas's Estimated Control Set

Texas's conclusions regarding the visibility benefits of their control set at Big Bend and Guadalupe Mountains, and its determination that those benefits were not significant enough to justify the cost of controls, were unreasonable.

Texas estimated that their control set would result in 0.16 dv visibility improvement at Big Bend. In estimating these deciview improvements, Texas estimated that the evaluated control set would result in a reduction in sulfate and nitrate extinction of 0.85 Mm–1 and 0.03 Mm–1, respectively.[105] Texas only evaluated potential controls to reduce NO_X and SO_2 emissions from point sources in their four-factor analysis and Texas determined that point sources make up over 90 percent of the projected 2018 statewide SO_2 emissions. Given the large reduction in extinction of sulfate compared to nitrate, we focus our analysis on the projected visibility benefits of SO_2 controls. All U.S. point sources combined were projected by CenRAP to contribute 7.19 Mm–1 in sulfate extinction at Big Bend. Of this 7.19 Mm–1 in extinction, CenRAP projected that Texas point sources alone would be responsible for 3.24 Mm–1, or 45 percent of the U.S. point source sulfate extinction in 2018. The next largest contribution from a State to sulfate extinction at Big Bend is 1.10 Mm–1 from all Louisiana point sources. Thus, the estimated visibility benefits for the Texas control set represent a 26 percent reduction in visibility impairment from sulfate due to all Texas point sources, and a 12 percent reduction in sulfate due to all U.S. point sources. This is a significant reduction in visibility impairment and represents significant progress towards the national goal of eliminating manmade visibility impairment. As we discuss elsewhere, these potential visibility benefits of controls are impacted by the emission baseline assumption, control efficiency assumptions, and other factors that lead to an underestimation in the visibility benefits due to the applied controls.

For Guadalupe Mountains, Texas estimated that the evaluated control set would result in 0.22 dv visibility improvement by securing a reduction in sulfate and nitrate extinction of 1.01 Mm–1 and 0.02 Mm–1, respectively. All U.S. point sources combined were projected by CenRAP to contribute 6.78 Mm–1 in sulfate extinction at Guadalupe Mountains. Of this 6.78 Mm–1 in extinction, CenRAP projected that Texas point sources alone would be responsible for 3.08 Mm–1, or 45 percent of the U.S. point source sulfate extinction in 2018. The next largest contribution from a State to sulfate extinction at GUMO is 0.47 Mm–1 from all Louisiana point sources. The estimated visibility benefits for the Texas control set represent a 33 percent reduction in visibility impairment from sulfate due to all Texas point sources, and a 15 percent reduction in sulfate due to all U.S. point sources.

Evaluating potential visibility benefits in Class I areas in nearby States, Texas estimated that the evaluated control set would result in 0.36 dv visibility improvement at Wichita Mountains in Oklahoma. Texas estimated that the evaluated control set would result in a reduction in sulfate and nitrate extinction of 2.72 Mm–1 and 0.41 Mm–1, respectively at Wichita Mountains. All U.S. point sources combined were projected by CenRAP to contribute 21.74 Mm–1 in sulfate extinction, including 7.83 Mm–1 from Texas point sources, or 36 percent of the U.S. point source sulfate extinction in 2018. The next largest contribution from a State to sulfate extinction at WIMO is 2.16 Mm–1 from all Louisiana point sources. The estimated visibility benefits for the Texas control set represent a 35 percent reduction in visibility impairment from sulfate due to all Texas point sources, and a 12.5 percent reduction in sulfate due to all U.S. point sources. Similarly, the estimated visibility benefits for the Texas control set represent a 19 percent reduction in visibility impairment from nitrate due to all Texas point sources, and a 7 percent reduction in nitrate due to all U.S. point sources.

Texas failed to provide a reasonable justification for why it did not require the control measures other than to point to the aggregate annual cost of controls and state that the visibility benefit would not be perceptible. However, as discussed in the previous section, Texas's consideration of the costs was also flawed. Based on the large percentage of contribution from Texas point sources and the amount of visibility impairment that would be addressed under Texas's proposed control strategy, Texas failed to adequately demonstrate that it is not reasonable to impose control measures on those sources.

iii. Texas's Use of Degraded Background Conditions

Texas estimated the visibility improvement of potential controls by making comparisons to degraded background conditions instead of to natural background conditions. However, this approach is not reasonable, and the EPA has previously disapproved a regional haze SIP submission for utilizing the same flawed approach. For example, North Dakota's SIP used degraded, rather than natural background results in what we determined to be a flawed analysis because it greatly underestimates the visibility benefits of potential control options. As we explained in the North Dakota SIP disapproval, this is true because of the nonlinear nature of visibility impairment. In other words, as a Class I area becomes more polluted, a source's contribution to changes in impairment becomes geometrically less.[106] In challenges to the SIP disapproval, the 8th Circuit upheld EPA's decision to disapprove the SIP because the SIP made comparisons to degraded background conditions to assess visibility benefits. Specifically, the Court noted that ''the goal of § 169A is to attain natural visibility conditions in mandatory Class I Federal areas, *see* 42 U.S.C. 7491(a)(1), and EPA has demonstrated that the visibility model used by the State would serve instead to maintain current degraded conditions.'' [107] Because the analysis Texas relied upon to evaluate visibility improvement uses degraded background conditions, we propose to find Texas's consideration and use of visibility improvement unreasonable and inconsistent with the requirements of the CAA.

d. Texas's ''Order of Magnitude Estimate'' for Visibility Improvement

Texas produced an ''order of magnitude estimate'' of the visibility improvements resulting from the level of aggregate emission reductions that would result from its point source control strategy using Particulate Matter Source Apportionment Technology (PSAT) results and effectiveness ratios.[108] Texas did not model the potential emission reductions to estimate visibility benefits, but rather estimated the benefits based on the results on the 2018 basecase CenRAP modeling and a sensitivity run developed by CenRAP that included a large set of emission reductions on sources throughout the CenRAP

[105] Texas RH SIP Appendix 10–4b, *see* ''Means'' tab.

[106] 77 FR 20894, 20912 (quoting 70 FR 39124).

[107] *North Dakota* v. *EPA,* 730 F.3d 750, 765–66 (8th Cir. 2013).

[108] The Comprehensive Air Quality Model with extensions (CAMx) with PSAT is a tool used to provide source apportionment of particulate matter species from primary sources to defined receptor locations by geographic region and major source category.

states.[109] This methodology assumes that all emission reductions within a PSAT region and source category (EGU or non-EGU) have the same effectiveness in reducing visibility impairment.[110] For example, emission reductions at non-EGU sources in the West Texas PSAT region would be estimated to have the same effect on visibility, regardless of location, like the Big Spring facility (330 km to Guadalupe Mountains) and the Borger facility (524 km to Guadalupe Mountains). The estimated effectiveness factor applied equally to all emission reductions at EGUs located in the East Texas source region, including Sommers Deely Spruce (440 km from Big Bend and 680 km from Guadalupe Mountains) and Monticello (850 km from Big Bend and 920 km from Guadalupe Mountains). Given the large difference in distances between these two facilities and the Class I areas, it is reasonable to expect that the effectiveness of emission reductions could vary greatly between the two. We propose to find that given the variability in the distances between sources and Class I areas, it was unreasonable for Texas not to consider how its assumptions could result in underestimation of the visibility benefit of controlling the sources it selected for consideration in its four-factor analysis.

C. Clarification of Our Basis for Disapproval of Texas's Calculation of Natural Visibility Conditions

We are proposing to disapprove Texas's calculation of natural visibility conditions. Section 51.308(d)(2)(iii) requires States to calculate the natural visibility conditions for each Class I area located within the State by estimating the degree of visibility impairment existing under natural conditions for the most impaired and least impaired days, based on available monitoring information and appropriate data analysis techniques.

We explained the basis for our disapproval of Texas's calculation of the natural visibility conditions for the Guadalupe Mountains and Big Bend in the preamble of our 2014 Proposed Rule and in the preamble of our 2016 Final Rule.[111] While not specifically addressed in the 2016 stay opinion, statements made by the Fifth Circuit motions panel appear to indicate disagreement with the EPA's disapproval of Texas's calculation of natural visibility conditions at the Guadalupe Mountains and Big Bend. Specifically, the court's opinion stated that the RHR grants States considerable flexibility when they estimate natural conditions and that EPA's natural visibility guidance expressly permits States to use refined approaches for the calculation of natural visibility and to identify other approaches that are more appropriate for their own situations. We agree that our guidance and the RHR allow states to develop an alternative approach to estimate natural visibility conditions.[112] The fact that States have the option of calculating their own natural visibility conditions instead of using the default natural conditions provided in the guidance is not at issue. However, any such alternative approach must be supported and documented. As we state in our guidance, States are ''free to develop alternative approaches that will provide natural visibility conditions estimates that are technically and scientifically supportable. Any refined approach should be based on accurate, complete, and unbiased information and should be developed using a high degree of scientific rigor.'' [113] Texas did not provide a technically and scientifically supportable approach, specifically by not adequately supporting the assumptions used in calculating ''refined'' estimates of natural visibility conditions.

One alternative approach available to States is to develop and justify the use of alternative estimates of natural concentrations of fine particle components. Another option available to States is to use the ''new IMPROVE equation'' that was adopted for use by the IMPROVE Steering Committee in December 2005.[114] This refined version of the IMPROVE equation provided more accurate estimates (as compared to the ''old IMPROVE equation'') of some of the factors that affect the calculation of light extinction. The default natural conditions in our guidance [115] were updated by the Natural Haze Levels II Committee utilizing the new IMPROVE equation and included some refinements to the estimates for the PM components.[116] [117] These estimates are referred to as the ''NCII'' default natural visibility conditions.

Texas chose to derive a ''refined'' estimate of natural visibility conditions rather than using the default NCII values.[118] In calculating natural visibility conditions, Texas used the new IMPROVE equation and PM concentration estimates (*i.e.,* the NCII values) for most components, but assumed that 100 percent of the fine soil and coarse mass concentrations in the baseline period is attributed to natural causes and that the corresponding estimates in the NCII values should be replaced. Texas did so without adequately demonstrating that all fine soil and coarse mass measured in the baseline period can be attributed to 100 percent natural sources. Anthropogenic sources of coarse mass and fine soil in the baseline period could have included emissions associated with paved and unpaved roads, agricultural activity, and construction activities as well. We also note that the impact from dust at Big Bend is less certain than at the Guadalupe Mountains and a different assumption may be appropriate in estimating natural conditions there. Furthermore, Texas itself concluded that it cannot verify its own assumption that all fine soil and coarse mass measured in the baseline period can be attributed to 100 percent natural sources. Texas acknowledged that the information it cites to in the Texas Regional Haze SIP does not quantify the percentage of anthropogenic or natural

[109] See Texas RH SIP Appendix 10–2 and 10–4.

[110] For PSAT modeling and control analysis, Texas was divided into 3 regions (East Texas, West Texas, and Texas Gulf Coast). *See* Figure 5–8 of Technical Support Document for CenRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans (CenRAP TSD), available in the docket for this action under Document ID EPA–R06–OAR–2014–0754–0014.

[111] 79 FR at 74830–74832 (2014 Proposed Rule) and 81 FR at 299–300, 325–326 (2016 Final Rule).

[112] Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule, EPA–454/B–03–005, September 2003. *See* also 51.308(d)(2)(iii).

[113] Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule, EPA, September 2003, at 1–11.

[114] The IMPROVE program is a cooperative measurement effort governed by a steering committee composed of representatives from Federal agencies (including representatives from EPA and the federal land managers) and regional planning organizations. The IMPROVE monitoring program was established in 1985 to aid the creation of Federal and State implementation plans for the protection of visibility in Class I areas. One of the objectives of IMPROVE is to identify chemical species and emission sources responsible for existing anthropogenic visibility impairment. The IMPROVE program has also been a key participant in visibility-related research, including the advancement of monitoring instrumentation, analysis techniques, visibility modeling, policy formulation and source attribution field studies.

[115] Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule, EPA–454/B–03–005, September 2003.

[116] Pitchford, Marc, 2006, Natural Haze Levels II: Application of the New IMPROVE Algorithm to Natural Species Concentrations Estimates. Final Report of the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup. September 2006, available at: *https://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt.*

[117] The second version of the natural haze level II estimates based on the work of the Natural Haze Levels II Committee is available at: *https://vista.cira.colostate.edu/Docs/IMPROVE/Aerosol/NaturalConditions/NaturalConditionsII_Format2_v2.xls.*

[118] See Chapter 5 and Appendix 5–2 of the Texas Regional Haze SIP.

contributions to total coarse mass and fine dust, and that some portion must be from human activity.[119] We are proposing to disapprove Texas's calculation of natural visibility conditions for the Guadalupe Mountains and Big Bend because those calculations are based on the technically indefensible assumption that there is 0 percent dust (CM and soil) from human activity when Texas rightly concedes that some impairment ''must be from some human activity.'' [120]

D. Clarification of Our Basis for Disapproval of Consultation Between Texas and Oklahoma

In finalizing the RHR, we stated that ''successful implementation of the regional haze program will involve long term regional coordination among States,'' and that ''States will need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction to air quality in another.'' [121] We also noted that RPGs and long-term strategies are intricately linked.[122] The regulations bear this out. Section 51.308(d)(3)(i) requires that States (in this case Texas) consult with other States if its emissions are reasonably anticipated to contribute to visibility impairment at that State's Class I area(s), and that Texas consult with other States if those States' emissions are reasonably anticipated to contribute to visibility impairment at the Guadalupe Mountains and Big Bend. We commonly refer to this as the long-term strategy consultation. Similarly, in developing the RPGs for its Class I area(s), Section 51.308(d)(1)(iv) requires that States (in this case Oklahoma) consult with those States which may reasonably be anticipated to cause or contribute to visibility impairment at their Class I area(s) (in this case Wichita Mountains). We commonly refer to this as the reasonable progress consultation. Section 51.308(d)(3)(ii) requires that if a State's emissions (in this case Texas's emissions) cause or contribute to impairment in another State's Class I area, it must demonstrate that it has included in its regional haze SIP all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for that Class I area. Section 51.308(d)(3)(iii) requires that States (in this case Texas) document the technical basis, including modeling, monitoring and emissions information, on which it is relying to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I area it affects. This documentation is necessary so that the interstate consultation process can proceed on an informed basis, and so that downwind states can properly assess whether any additional upwind emission reductions are necessary to achieve reasonable progress at their Class I area(s).

We explained the basis for our disapproval of Texas's consultation with Oklahoma to address visibility impairment in the Wichita Mountains, as required under section 51.308(d)(3)(i), in the preamble of our 2014 Proposed Rule and in the preamble of our 2016 Final Rule.[123] We also explained the basis for our disapproval of Oklahoma's consultation with Texas to address visibility impairment in the Wichita Mountains, as required under section 51.308(d)(1)(iv), in the preamble of our 2014 Proposed Rule and in the preamble of our 2016 Final Rule.[124] As to EPA's disapproval of the consultation between Texas and Oklahoma, the Fifth Circuit motions panel in the 2016 stay opinion stated that ''EPA's disapproval seems to stem in large part from its assertion that Texas had to conduct a source-specific analysis and provide Oklahoma with that source-specific analysis.'' [125] This is incorrect. The basis for our disapproval of Texas's long-term strategy consultation with Oklahoma was not, and is not, tied to whether Texas conducted a source-specific analysis and provided Oklahoma with that source-specific analysis. Rather, we are proposing to disapprove Texas's long-term strategy consultation with Oklahoma because it relied on and was informed by a flawed four-factor analysis in which Texas analyzed and weighed the four reasonable progress factors in a manner that is unreasonable and inconsistent with the requirements of the CAA and the RHR. Similarly, we are proposing to disapprove Oklahoma's reasonable progress consultation with Texas and the RPG Oklahoma established for the Wichita Mountains. Oklahoma unreasonably relied on and was informed by Texas's flawed four-factor analysis that concluded no additional control measures were necessary even though both States acknowledged Wichita Mountains suffers from ''significant anthropogenic impacts from Texas'' [126] and cost-effective controls were available. Given that impacts from Texas point sources were several times greater than the impact from Oklahoma's own point sources, Oklahoma and Texas did not adequately justify why additional reductions from Texas sources were not necessary to address impacts at the Wichita Mountains as part of the consultation process required under the RHR.

In determining its long-term strategy under section 51.308(d)(3)(iii), we believe that Texas had an obligation to conduct an appropriate technical analysis and demonstrate through that technical analysis (required under section 51.308(d)(3)(ii)), that it provided its fair share of emission reductions to Oklahoma. Texas used its flawed four-factor analysis to determine its ''share of the emission reductions needed to meet the progress goal'' for the Wichita Mountains and to inform its decision not to control any additional sources, including those that impact visibility at the Wichita Mountains. To the extent that Texas relied on its flawed four-factor analysis to address the requirements of section 51.308(d)(3)(ii) and 51.308(d)(3)(iii), it did not develop and provide the information necessary to determine the reasonableness of controls at those sources in Texas that impact visibility at the Wichita Mountains or other Class I areas. For the same reasons discussed in this section regarding the bases for our disapproval of Texas's four-factor analysis, we are proposing to find that Texas's demonstration failed to satisfy the requirements under section 51.308(d)(3)(ii) and section 51.308(d)(3)(iii).

CenRAP source apportionment modeling results indicated that Texas is a significant contributor to visibility impairment at the Wichita Mountains.[127] Point sources are the most significant contributors to haze at the Wichita Mountains, and the largest contributing point sources are Texas

[119] Appendix 5–2 of the Texas Regional Haze SIP at page 4 Texas states in its SIP that ''while some dust (CM and Soil) at both of Texas' Class I areas must be from some human activity, the times when human caused dust is likely to be more important at these sites are on days with less visibility impairment than on the worst dust impaired days.'' Texas goes on to conclude that ''for the sake of the most and least impaired natural visibility estimates, to treat 100 percent of the CM and Soil concentrations measured at each of its Class I areas as natural.'' *See id.*

[120] *See* Appendix 5–2 of the Texas Regional Haze SIP at page 4.

[121] 64 FR 35714, 35728 (July 1, 1999).

[122] 64 FR at 35735 (July 1, 1999).

[123] 79 FR at 74854–74856 (2014 Proposed Rule) and 81 FR at 300–301, 312–313 (2016 Final Rule).

[124] 79 FR 74818, 74864–74872 (2014 Proposed Rule) and 81 FR 302–303, 312–313, 338, 339–343 (2016 Final Rule).

[125] *Texas,* 829 F. 3d at 428.

[126] *See* August 3, 2007 letter from ODEQ Executive Director Steven Thompson to TCEQ Executive Director Glenn Shankle included in Appendix 4–2 of Texas Regional Haze SIP.

[127] *See* Appendix E of the *Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze SIP,* included as Appendix 8–1 of the Texas Regional Haze SIP.

EGUs. Texas SO_2 emissions were projected in 2018 to have the largest visibility impacts, in terms of both absolute contribution to extinction and percent contribution to total extinction, at the Wichita Mountains in Oklahoma. Table 4 summarizes the percent of visibility impairment at the Wichita Mountains from Oklahoma and nearby states projected in 2018 based on the CenRAP modeling results.[128]

TABLE 4—PERCENT CONTRIBUTION TO TOTAL VISIBILITY IMPAIRMENT AT WICHITA MOUNTAINS IN 2018

	Texas (%)	Oklahoma (%)	Louisiana (%)	Kansas (%)	Arkansas (%)	Missouri (%)	Eastern U.S. (%)
Percent Total Contribution, All Pollutants	27.5	16.3	4.8	3.8	2.3	2.8	4.2
Percent Point Source Contribution, All Pollutants	14.0	3.9	3.4	1.4	1.3	1.7	3.2

Texas (all sources and pollutants) is projected to contribute 27.5 percent of the visibility impairment at the Wichita Mountains, compared to 16.3 percent for Oklahoma sources, 4.8 percent from Louisiana sources and 4.2 percent from sources in the Eastern U.S. Point sources in Texas are projected to account for 14 percent of all visibility impairment projected in 2018 at Wichita Mountains, compared to 3.9 percent from Oklahoma point sources, 3.4 percent from Louisiana point sources and 3.2 percent from point sources in the Eastern U.S.

Oklahoma and Texas mutually acknowledged that Texas sources significantly impact visibility at the Wichita Mountains in Oklahoma, and that the impacts from point sources in Texas are several times greater than the impact from Oklahoma point sources.[129] Furthermore, Oklahoma asserted in its consultations with Texas, and elsewhere in the Oklahoma Regional Haze SIP, that the Wichita Mountains would remain above the URP without additional reductions from Texas sources. During consultation calls with Texas and other states, Oklahoma specifically requested additional information on feasibility and cost of controls for those facilities identified through the CenRAP process as having available controls estimated to cost less than $5,000/ton and with the potential to result in visibility improvements in the Wichita Mountains due to their location and emissions.[130] The cost-effectiveness of all the Texas point sources identified by Oklahoma except one was below $3,000/ton. Texas relied on the cost estimates developed by CenRAP and shared with Oklahoma with respect to feasibility and costs of potential controls for which Oklahoma specifically requested information. Texas also identified that there is uncertainty in the size and distribution in emissions in the future projections and that no EGUs made an enforceable commitment to any particular pollution control strategy and preferred to retain the flexibility offered by the CAIR program.[131]

In addition, Texas provided Oklahoma with information that other sources with existing controls still have a large potential to impact visibility and should be analyzed for control upgrades. Specifically, Texas provided Oklahoma a letter on March 25, 2008, which included a table that listed sources of ''particular interest to Wichita Mountains due to their emissions and their positions within the area of influence.'' [132] However, Texas did not analyze the costs of controls or corresponding visibility benefits of several of these sources even though they identified them as a source of interest. Some of these sources include EGUs at Martin Lake and Pirkey. In the case of Martin Lake, the three units combined were projected to emit over 35,000 tpy of SO_2. SO_2 emissions from the Pirkey facility were projected to be over 19,000 tpy. Given Texas's identification of these sources, it was unreasonable for Texas not to provide any further analysis and Texas and Oklahoma did not adequately justify why additional reductions from these sources were not necessary to address impacts at the Wichita Mountains as part of the consultation process required under the RHR.

Ultimately, Texas determined that no additional controls at its sources were warranted during the first planning period to help achieve reasonable progress at the Wichita Mountains, and Oklahoma did not specifically request any additional reductions from Texas sources. As a result, Oklahoma established RPGs for the Wichita Mountains that do not reflect any reasonable emission reductions from Texas beyond those that will be achieved by compliance with other requirements of the CAA. We are proposing to disapprove Texas's long-term strategy consultation with Oklahoma required under Section 51.308(d)(3)(i) because it relied on and was informed by Texas's flawed four-factor analysis, as discussed in Section V.B. Similarly, Oklahoma's reasonable progress consultation with Texas required under Section 51.308(d)(1)(iv) and the RPG Oklahoma established for the Wichita Mountains relied on Texas's flawed four-factor analysis. We are proposing to disapprove those portions of Oklahoma's Regional Haze SIP because they relied on and were informed by Texas's flawed four-factor analysis, as discussed in Section V.B. For the same reasons, we are proposing to find that Texas's demonstration failed to satisfy the requirements under section 51.308(d)(3)(ii) and section 51.308(d)(3)(iii).

VI. Amending the FIP on Remand

We are proposing to amend the 2016 FIP by proposing to find that no further federal action is needed to remedy the disapprovals of portions of the Texas and Oklahoma Regional Haze SIPs. We are proposing to not make changes to our recalculation in the 2016 FIP of the natural visibility conditions on the 20 percent best and worst days for the Guadalupe Mountains and Big Bend. We are also proposing to not make

[128] These model results include estimated reductions due to the implementation of CAIR, other on-the-book federal and State rules, and some assumptions for BART reductions in Oklahoma and other states.

[129] *See e.g.,* March 25, 2008 letter from TCEQ Air Quality Division Director Susana M. Hildebrand, P.E., to ODEQ Air Quality Division Director Eddie Terrill included in Appendix 4–2 of Texas Regional Haze SIP.

[130] *See* document entitled, ODEQ Wichita Mountains consultation (Aug. 16, 2007), available in the docket for this action under Document ID EPA–R06–OAR–2014–0754–0030.

[131] *See* Texas Regional Haze SIP at section 10.5.

[132] March 25, 2008 letter from TCEQ Air Quality Division Director Susana M. Hildebrand, P.E., to ODEQ Air Quality Division Director Eddie Terrill included in Appendix 4–2 of Texas Regional Haze SIP.

changes to our recalculation in the 2016 FIP of the following metrics that are dependent on the calculation of the natural visibility conditions: the number of deciviews by which baseline visibility conditions exceed natural visibility conditions for the Guadalupe Mountains and Big Bend (*i.e.,* our calculation of visibility impairment) pursuant to section 51.308(d)(2)(iv)(A) and our recalculation of the URPs for the 20 percent worst days for these Class I areas.

We are proposing to rescind the SO_2 emission limits established in the 2016 FIP. Our 2016 FIP required SO_2 emission limits for 15 coal-fired EGUs at eight power plants that affect visibility at the Wichita Mountains Wilderness, Big Bend National Park, and Guadalupe Mountains National Park. We required emission limits consistent with scrubber upgrades and a compliance date three years from the effective date of the 2016 Final Rule on the following units: (1) Monticello 3; (2) Sandow 4; (3) Martin Lake Units 1, 2, and 3; and (4) Limestone Units 1 and 2. We further required emission limits consistent with scrubber retrofits and a compliance date five years from the effective date of the 2016 Final Rule on the following units: (1) Big Brown Units 1 and 2; (2) Monticello Units 1 and 2; (3) Coleto Creek Unit 1; and (4) Tolk Units 171B and 172B. Finally, we required an SO_2 emission limit for the San Miguel unit based on the continued operation of scrubber upgrades it had already installed, which the facility needed to comply with within one year from the effective date of the 2016 Final Rule.

On remand, we revisited whether, in light of the Fifth Circuit's 2016 stay opinion, as well as several changes in circumstances, the FIP should remain or be amended. In the interim period between the 2016 Final Rule and this proposal, several units for which we promulgated emission limits in the 2016 Final Rule have shut down. These units are: Sandow 4;[133] Monticello Units 1, 2, and 3;[134] and Big Brown Units 1 and 2.[135] These shutdowns are permanent and enforceable because the CAA permits for these units have been voided. These units may not return to operation without going through CAA new source review permitting and Title V operating permitting requirements. Therefore, the EPA is proposing to rescind the SO_2 emission limits for these units.

Furthermore, several units, including Martin Lake Units 1, 2, and 3, and Coleto Creek Unit 1 may be subject to emission limits under our proposed BART FIP for Texas EGUs.[136] If finalized, these emission limits will provide for similar emission reductions and visibility improvement that would have been achieved by the emission limits for these units in the 2016 FIP. Therefore, we propose to find that no further controls beyond BART should be required for Martin Lake Units 1, 2, and 3, and Coleto Creek Unit 1, and we propose to rescind the SO_2 emission limits for these units.

After taking into account the Texas EGUs that have permanently shut down in the intervening period and those that are subject to proposed controls under our recently proposed Texas BART FIP, the remaining units for which we required SO_2 limits in the 2016 FIP are Limestone Units 1 and 2; Tolk Units 171B and 172B; and San Miguel Unit 1. With respect to these units, the EPA is proposing to rescind the SO_2 emission limits. As explained above, several units in Texas have shut down and the EPA recently proposed BART emission limits for 12 units in Texas. Additionally, we took a voluntary remand on the 2016 Final Rule, in part, due to the motion panel's finding in its stay opinion of the petitioners' likelihood of success on the merits. As to the SO_2 emission limits imposed by the FIP portion of the 2016 Final Rule, the panel found that the EPA likely did not have the authority to impose controls that could not be installed until after the end of the planning period (in this case, beyond the end of the first planning period, or 2018). We strongly disagree with the panel's view that the RHR somehow constrains States or the EPA from imposing controls that cannot be installed until after the end of the planning period. Nevertheless, in response to the panel's opinion, we revised the Regional Haze Rule in 2017 to clarify that for the second and subsequent planning periods, states or the EPA can require controls even if they cannot be installed until after the end of the planning period.[137] In addition, we previously found that San Miguel upgraded its SO_2 scrubber system in 2010, 2011, 2012, and 2014 to perform at the reasonably highest level that can be expected (approximately 94 percent SO_2 removal efficiency) based on the extremely high sulfur content of the coal being burned and the technology available.[138] In the 2016 FIP, we finalized an SO_2 emission limit based on the continued operation of the scrubber upgrades the facility had already performed and consistent with recent monitoring data.[139] As a result, we did not anticipate that San Miguel would have to install any additional controls in order to comply with the SO_2 emission limit we finalized.[140] The scrubber upgrades at San Miguel remain in place, and we do not anticipate any increase in visibility impacts from the unit.

We propose to find that for these reasons, no additional emission limits are necessary to make reasonable progress for the first planning period. The EPA will also have an opportunity to evaluate Texas's analyses and determinations for the Texas second planning period SIP,[141] including with respect to Limestone, Tolk, and San Miguel. Because we are proposing to rescind the emission limits promulgated in the 2016 FIP for the reasons explained in the preceding paragraphs, we are proposing that it is not necessary to revise our four-factor analysis.

While we are proposing to rescind the SO_2 emission limits established in the 2016 FIP, we are proposing that it is not necessary to revise the 2018 RPGs we calculated in the 2016 FIP. Section 169B(e)(1) of the CAA directed EPA to promulgate regulations that ''include[e] criteria for measuring 'reasonable progress' toward the national goal.'' Consequently, the regional haze regulations for the first planning period direct states to develop RPGs for the most and least impaired days to ''measure'' the progress that will be achieved by the control measures in the

[133] *See* letter dated February 14, 2018, from Kim Mireles of Luminant to the TCEQ requesting to cancel certain air permits and registrations for Sandow Steam Electric Station available in the docket for this action.

[134] *See* letter dated February 8, 2018, from Kim Mireles of Luminant to the TCEQ requesting to cancel certain air permits and registrations for Monticello available in the docket for this action.

[135] *See* letter dated March 27, 2018, from Kim Mireles of Luminant to the TCEQ requesting to cancel certain air permits and registrations for Big Brown available in the docket for this action.

[136] *See* 88 FR 28918, 28977 (May 4, 2023). In addition to the units listed at Martin Lake and Coleto Creek, the 2023 Texas BART action proposed emission limits for three units at the W.A. Parish facility, two units at the Harrington facility, two units at the Fayette facility, and one unit at the Welsh facility. We anticipate finalizing the proposed 2023 Texas BART action before finalizing this proposed Reasonable Progress action.

[137] *See* 40 CFR 51.308(f)(2)(i).

[138] *See* ''Technical Support Document for the Cost of Controls Calculations for the Texas Regional Haze Federal Implementation Plan (Cost TSD)'' dated November 2014, pages 56–61. This is the Cost TSD for the 2016 Texas-Oklahoma RP FIP and is available in the docket for this action under Document ID EPA–R06–OAR–2014–0754–0008.

[139] 79 FR at 74823 (footnote 26) and 81 FR at 332 (footnote 161).

[140] 81 FR at 305.

[141] On July 20, 2021, Texas submitted its second planning period Regional Haze SIP to the EPA. *See* ''2021 Regional Haze SIP Revision'' at *https://www.tceq.texas.gov/airquality/sip/bart/haze_sip.html.*

state's long-term strategy ''over the period of the implementation plan.'' [142] The RPGs represent the best estimate of the degree of visibility improvement that is anticipated to result in the Class I area at the end of the planning period taking into account the measures included in the long-term strategy over the period of the SIP for that planning period. For the first planning period, the RPGs allow for comparisons between the progress that will be achieved by the state's long-term strategy and the URP,[143] and provide a benchmark for assessing the adequacy of a state's SIP in 5-year periodic reports.[144] In the 2016 FIP, we calculated new 2018 RPGs for the 20 percent worst days and the 20 percent best days for the Guadalupe Mountains, Big Bend, and the Wichita Mountains based on our technical analysis in that FIP.[145] However, it is now five years past the end of the first planning period. Given the timing of this action, revising the RPGs for 2018 would not further the purpose or intent behind establishing the RPGs for the first planning period. Furthermore, as we discussed in the preceding paragraphs, in a separate proposed rule recently published in the **Federal Register**,[146] we proposed SO_2 emission limits for 12 Texas EGUs under the BART requirements, some of which are the same EGUs for which we promulgated SO_2 emission limits in the 2016 FIP. Additionally, several Texas EGUs have shut down including some of the same units addressed in the 2016 FIP. In evaluating the Texas and Oklahoma Regional Haze SIPs for the second planning period,[147] we will have an opportunity to evaluate these States' four-factor analyses for the second planning period, including the 2028 RPGs adopted by the States. For these reasons, we are proposing to find that it is not necessary or practical at this point in time for the EPA to make further changes to the 2018 RPGs.

As described in further detail below, we find that the EPA's proposed revision to the FIP would not result in interference with any applicable CAA requirements and would be consistent with CAA section 110(l). We note that, on the face of this action, the rescission of the emission limits could lead to increases in emissions of SO_2 over what was anticipated in the 2016 Final Rule. The 2016 FIP imposed emission limits on 15 EGUs located at eight different facilities. However, since that action was promulgated, six of the EGUs covered by the 2016 FIP have permanently shut down and retired. Due to these shutdowns, there are no longer emissions from these six EGUs. As a result, the proposed rescission of these SO_2 emission limits will have no effect, and the emissions from these sources will be lower than anticipated in the 2016 FIP. In addition, the EPA recently proposed source-specific BART limits for four of these EGUs that, if finalized, would impose similar limitations on SO_2 emissions.

For the remaining five EGUs (two EGUs located at the Limestone facility, two EGUs located at the Tolk facility, and one EGU located at San Miguel facility),[148] the proposed rescission of the emission limits, which were judicially stayed from taking effect, is not anticipated to interfere with any applicable requirements under the CAA. First, the geographic areas where the five EGUs are located are not part of a nonattainment area for any National Ambient Air Quality Standards (NAAQS).[149] The Limestone facility is located in a county adjacent to the Freestone/Anderson SO_2 nonattainment area. However, at the time the EPA designated this area as nonattainment, we used dispersion modeling to identify nearby areas that contributed to the violation of the NAAQS.[150] Based on this evaluation, we found that emissions from the Limestone facility did not contribute to the violation of the SO_2 NAAQS. Additionally, since that time, the Big Brown facility, which was the primary source causing the NAAQS violations in the Freestone/Anderson SO_2 nonattainment area, has shut down, and the EPA made a Clean Data Determination in 2021 finding that the area is currently attaining the 1-hour SO_2 NAAQS.[151]

Second, there are no approved attainment demonstrations in other areas of the State or outside of the state that rely on the SO_2 emission limits for these five EGUs to achieve attainment of any of the NAAQS. At this time, the areas that may be potentially impacted by our rescission of the SO_2 emission limits for Limestone, Tolk, and San Miguel are all attaining the 2010 1-hour SO_2 NAAQS, 2006 $PM_{2.5}$ NAAQS, and 2012 $PM_{2.5}$ NAAQS.[152] [153] Additionally, rescinding the emission limits will not alter how these sources have been operating and thus the EPA does not anticipate that emission levels from these sources will increase such that we would expect exceedances of, or interference with, the SO_2 and $PM_{2.5}$ NAAQS to occur in the future in the areas where these sources are located.

Finally, the proposed rescission of the FIP provisions would not interfere with the ''applicable requirements'' of the regional haze program. This section explains how the proposed FIP revision will comply with applicable regional haze requirements and general implementation plan requirements. As such, our rescission of these FIP provisions will not interfere with the CAA requirements for regional haze, including the reasonable progress and long-term strategy provisions of the regional haze program.

VII. Proposed Action

We are proposing disapproval of the portions of the Texas Regional Haze SIP and Oklahoma Regional Haze SIP we previously disapproved in our 2016 Final Rule.

With respect to the Texas Regional Haze SIP, we are proposing disapproval of the portions of the Texas Regional Haze SIP addressing the following Regional Haze Rule requirements contained in 40 CFR part 51: [154]

- Section 51.308(d)(1) regarding the RPGs for the Guadalupe Mountains and Big Bend;
- Section 51.308(d)(1)(i)(A) regarding the four-factor analysis;

[142] 40 CFR 51.308(d)(1).

[143] 40 CFR 51.308(d)(1)(ii).

[144] 40 CFR 51.308(g)–(h).

[145] 81 FR at 347, *see* Table 9.

[146] *See* 88 FR 28918 (May 4, 2023).

[147] Texas submitted its Regional Haze SIP for the second planning period to EPA on July 20, 2021, and Oklahoma submitted its Regional Haze SIP for the second planning on August 9, 2022.

[148] The SO_2 emission limit we are proposing to rescind for the San Miguel facility is based on SO_2 scrubber system upgrades that the facility had already installed prior to the promulgation of the 2016 FIP. The SO_2 emission limit we required for San Miguel was based on the emission rate the facility was already meeting and thus we do not expect that our proposed rescission of this emission limit would result in an increase in SO_2 emissions from this facility.

[149] The Limestone facility is located in Limestone County, the Tolk facility is located in Lamb County, and the San Miguel facility is located in Atascosa County. None of these counties are part of a nonattainment area for any NAAQS.

[150] See Technical Support Document for the Designation Recommendations for the 2010 Sulfur Dioxide National Ambient Air Quality Standards (NAAQS)—Supplement for Four Areas in Texas Not Addressed in June 30, 2016, Version, Docket No EPA–HQ–OAR–2014–0464, at pg. 15–16 (Nov. 29, 2016), available in the docket for this action.

[151] 86 FR 26401 (May 14, 2021).

[152] Since SO_2 is a precursor pollutant for fine particulate matter ($PM_{2.5}$), we also address whether withdrawal of the FIP emission limits would interfere with attainment of the $PM_{2.5}$ NAAQS.

[153] As we noted in the final rule promulgating the 2010 1-hour SO_2 NAAQS, a significant fact for ambient SO_2 concentrations is that stationary sources are the predominant emission sources of SO_2 and the peak, maximum SO_2 concentrations that may occur are most likely to occur nearer the parent stationary source. 75 FR 35520, 35557 (June 22, 2010).

[154] We are also proposing disapproval of 30 TAC 116.1510(d).

• Section 51.308(d)(1)(i)(B) regarding the requirement to calculate the emission reduction measures needed to achieve the URP for the Guadalupe Mountains and Big Bend for the period covered by the SIP;
• Section 51.308(d)(1)(ii) regarding the requirement to demonstrate, based on the factors in Section 51.308(d)(1)(i)(A), that the progress goal adopted by Texas is reasonable;
• Section 51.308(d)(2)(iii) regarding the calculation of natural visibility conditions for the Guadalupe Mountains and Big Bend for the most impaired and least impaired days;
• Section 51.308(d)(2)(iv)(A) regarding the calculation of the number of deciviews by which baseline conditions exceed natural visibility conditions for the Guadalupe Mountains and Big Bend for the most impaired and least impaired days;
• Section 51.308(d)(3)(i) regarding Texas's long-term strategy consultations with Oklahoma in order to develop coordinated emission management strategies to address visibility impacts at the Wichita Mountains;
• Section 51.308(d)(3)(ii) regarding the requirement for Texas to secure its share of reductions necessary to achieve the RPGs for the Guadalupe Mountains, Big Bend, and the Wichita Mountains;
• Section 51.308(d)(3)(iii) regarding the requirement for Texas to document the technical basis for its long-term strategy for the Guadalupe Mountains, Big Bend, and the Wichita Mountains;
• Section 51.308(d)(3)(v)(C) regarding Texas's emission limitations and schedules for compliance to achieve the RPGs for the Guadalupe Mountains, Big Bend, and the Wichita Mountains.

We are also proposing disapproval of the portions of the Oklahoma Regional Haze SIP addressing the following Regional Haze Rule requirements contained in 40 CFR part 51:

• Section 51.308(d)(1) regarding the RPGs for the Wichita Mountains;
• Section 51.308(d)(1)(i)(A) regarding the four-factor analysis;
• Section 51.308(d)(1)(i)(B) regarding the requirement to consider the URP for the Wichita Mountains and the emission reduction measures needed to achieve it for the period covered by the SIP;
• Section 51.308(d)(1)(ii) regarding the requirement to demonstrate, based on the factors in Section 51.308(d)(1)(i)(A), that the rate of progress for the SIP to attain natural conditions by 2064 is not reasonable and that the progress goal adopted by Oklahoma is reasonable;
• Section 51.308(d)(1)(iv) regarding the requirement for Oklahoma to consult with Texas with respect to the visibility impact of Texas sources at the Wichita Mountains.

We are proposing to find that no further federal action is needed to remedy the proposed disapprovals of these portions of the Texas and Oklahoma Regional Haze SIPs. We are proposing to rescind the SO_2 emission limitations and the associated monitoring, reporting, and recordkeeping requirements we established in the 2016 FIP for Texas EGUs. We are also proposing that it is not necessary to revise the four-factor analysis or the numeric 2018 RPGs we established in the 2016 FIP for the Guadalupe Mountains, Big Bend, and the Wichita Mountains. Finally, we are proposing to find that our amendments to the 2016 FIP are consistent with CAA section 110(l) because they will not interfere with any applicable requirement concerning attainment or reasonable further progress (as defined in section 7501 of this title), or any other applicable requirements of the CAA.

VIII. Environmental Justice Considerations

The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' [155] The EPA further defines the term ''fair treatment'' to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' [156] Recognizing the importance of these considerations to local communities, the EPA conducted an environmental justice screening analysis around the location of the facilities associated with this action to identify potential environmental stressors on these communities and the potential impacts of this action. However, the EPA is providing the information associated with this analysis for informational purposes only. The information provided herein is not a basis of the proposed action.

The EPA conducted the screening analyses using EJScreen, an EJ mapping and screening tool that provides the EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators.[157] The EJScreen tool presents these indicators at a Census block group (CBG) level or a larger user-specified ''buffer'' area that covers multiple CBGs.[158] An individual CBG is a cluster of contiguous blocks within the same census tract and generally contains between 600 and 3,000 people. EJScreen is not a tool for performing in-depth risk analysis, but is instead a screening tool that provides an initial representation of indicators related to EJ and is subject to uncertainty in some underlying data (*e.g.,* some environmental indicators are based on monitoring data which are not uniformly available; others are based on self-reported data).[159] For informational purposes, we have summarized EJScreen data within larger ''buffer'' areas covering multiple block groups and representing the average resident within the buffer areas surrounding the eight facilities for which we are proposing to rescind emission limits. EJScreen environmental indicators help screen for locations where residents may experience a higher overall pollution burden than would be expected for a block group with the same total population in the U.S. These indicators of overall pollution burden include estimates of ambient particulate matter ($PM_{2.5}$) and ozone concentration, a score for traffic proximity and volume, percentage of pre-1960 housing units (lead paint indicator), and scores for proximity to Superfund sites, risk management plan (RMP) sites, and hazardous waste facilities.[160] EJScreen also provides information on demographic indicators, including percent low-income, communities of color, linguistic isolation, and less than high school education.

The EPA prepared EJScreen reports covering buffer areas of approximately 6-mile radii around the 8 facilities

[155] See *https://www.epa.gov/environmentaljustice/learn-about-environmental-justice.*

[156] *Id.*

[157] The EJSCREEN tool is available at *https://www.epa.gov/ejscreen.*

[158] *See https://www.census.gov/programs-surveys/geography/about/glossary.html.*

[159] In addition, EJSCREEN relies on the five-year block group estimates from the U.S. Census American Community Survey. The advantage of using five-year over single-year estimates is increased statistical reliability of the data (*i.e.,* lower sampling error), particularly for small geographic areas and population groups. For more information, see *https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf.*

[160] For additional information on environmental indicators and proximity scores in EJSCREEN, *see* ''EJSCREEN Environmental Justice Mapping and Screening Tool: EJSCREEN Technical Documentation,'' Chapter 3 and Appendix C (September 2019) at *https://www.epa.gov/sites/default/files/2021-04/documents/ejscreen_technical_document.pdf.*

covered by the 2016 Final Rule. From those reports, two facilities, Tolk and Monticello, showed EJ indices greater than the 80th national percentiles.[161] For Tolk, the EJ indices greater than the 80th national percentiles were for ozone and lead paint, which are not affected by this proposed action. For Monticello, the EJ indices greater than the 80th national percentiles were for $PM_{2.5}$, air toxics cancer risk, air toxics respiratory hazard index, RMP facility proximity, and wastewater discharge. However, the Monticello facility permanently shut down in 2018.[162] No currently operating facility for which we are proposing to rescind emission limits showed an EJ index greater than the 80th national percentile for $PM_{2.5,}$ diesel particulate matter, air toxics cancer risk, air toxics respiratory hazard index, traffic proximity, Superfund site proximity, RMP facility proximity, hazardous waste site proximity, underground storage tanks, or wastewater discharge. The full, detailed EJScreen reports are provided in the docket for this rulemaking.

This action proposes to again disapprove portions of the Texas and Oklahoma Regional Haze SIPs for the first planning period but proposes to make the determination that no further federal action is necessary to address the proposed SIP disapprovals. As a result, this action also proposes to rescind SO_2 emission limitations for 8 facilities in Texas. Exposure to SO_2 is associated with significant public health effects. Short-term exposures to SO_2 can harm the human respiratory system and make breathing difficult. People with asthma, particularly children, are sensitive to these effects of SO_2.[163] However, the 2016 Final Rule was stayed by the Fifth Circuit on July 15, 2016, and the emission limitations have not gone into effect and therefore have never been implemented. Therefore, we expect that this action will not change potential impacts to communities. There is nothing in the record that indicates that this proposed action, if finalized, would have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

IX. Impact on Areas of Indian Country

Following the U.S. Supreme Court decision in *McGirt* v. *Oklahoma,* 140 S. Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Public Law 109–59, 119 Stat. 1144, 1937 (August 10, 2005) (''SAFETEA''), to administer in certain areas of Indian country (as defined at 18 U.S.C. 1151) the State's environmental regulatory programs that were previously approved by the EPA for areas outside of Indian country. The State's request excluded certain areas of Indian country further described below. In addition, the State only sought approval to the extent that such approval is necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality* v. *EPA,* 740 F.3d 185 (D.C. Cir. 2014).[164]

On October 1, 2020, the EPA approved Oklahoma's SAFETEA request to administer all the State's EPA-approved environmental regulatory programs, including the Oklahoma SIP, in the requested areas of Indian country. As requested by Oklahoma, the EPA's approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively ''excluded Indian country lands'').

EPA's approval under SAFETEA expressly provided that to the extent EPA's prior approvals of Oklahoma's environmental programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA's approval of Oklahoma's SAFETEA request.[165] The approval also provided that future revisions or amendments to Oklahoma's approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).[166]

As explained earlier in this action, the EPA is proposing to again address regional haze obligations for the first planning period in Texas and Oklahoma. More specifically, we are proposing again to disapprove portions of the Oklahoma Regional Haze SIP and Texas Regional Haze SIP submissions that relate to reasonable progress for the first planning period from 2008–2018. Consistent with the D.C. Circuit's decision in *ODEQ* v. *EPA* and with EPA's October 1, 2020, SAFETEA approval, if this disapproval is finalized as proposed, this disapproval will apply to all Indian country within Oklahoma, other than the excluded Indian country lands, as described earlier. Because—per the State's request under SAFETEA—EPA's October 1, 2020, SAFETEA approval does not displace any SIP authority previously exercised by the State under the CAA as interpreted in *ODEQ* v. *EPA,* the SIP disapproval will also apply to any Indian allotments or dependent Indian communities located outside of an Indian reservation over which there has been no demonstration of tribal authority.

[161] For a place at the 80th percentile nationwide, that means 20 percent of the U.S. population has a higher value. EPA identified the 80th percentile filter as an initial starting point for interpreting EJScreen results. The use of an initial filter promotes consistency for EPA programs and regions when interpreting screening results.

[162] *See* letter dated February 8, 2018, from Kim Mireles of Luminant to the TCEQ requesting to cancel certain air permits and registrations for Monticello available in the docket for this action.

[163] *See https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects.*

[164] In *ODEQ* v. *EPA,* the D.C. Circuit held that under the CAA, a state has the authority to implement a SIP in non-reservation areas of Indian country in the state, where there has been no demonstration of tribal jurisdiction. Under the D.C. Circuit's decision, the CAA does not provide authority to states to implement SIPs in Indian reservations. *ODEQ* did not, however, substantively address the separate authority in Indian country provided specifically to Oklahoma under SAFETEA. That separate authority was not invoked until the State submitted its request under SAFETEA, and was not approved until EPA's decision, described in this section, on October 1, 2020.

[165] The EPA's prior actions relating to Oklahoma's SIP frequently noted that the SIP was not approved to apply in areas of Indian country (consistent with the D.C. Circuit's decision in *ODEQ* v. *EPA*) located in the state. *See, e.g.,* 76 FR 81728, 81756 (Dec. 28, 2011); 81 FR 296, 348 (Jan. 5, 2016). Such prior expressed limitations are superseded by the EPA's approval of Oklahoma's SAFETEA request.

[166] On December 22, 2021, EPA proposed to withdraw and reconsider the October 1, 2020 SAFETEA approval. *See https://www.epa.gov/ok/proposed-withdrawal-and-reconsideration-and-supporting-information.* EPA expects to have further discussions with tribal governments and State of Oklahoma as part of this reconsideration. EPA also notes that the October 1, 2020 approval is the subject of a pending challenge in federal court. *Pawnee Nation of Oklahoma* v. *Regan,* No. 20–9635 (10th Cir.). EPA may make further changes to the approval of Oklahoma's program to reflect the outcome of the proposed withdrawal and reconsideration of the October 1, 2020 SAFETEA approval. To the extent any change occurs in the scope of Oklahoma's SIP authority in Indian country before the finalization of this proposed rule, such a change may affect the scope of the EPA's final action on the proposed rule.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Overview and Executive Order 14094: Modernizing Regulatory Review

This action is exempt from review by the Office of Management and Budget (OMB) under Executive Order 12866, as amended by Executive Order 14094, because the proposed FIP, if finalized, would constitute a rule of particular applicability, as it proposes to rescind source specific requirements for electric generating units at eight different facilities located only in Texas.

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the PRA. Because the proposed rescission of source specific emission limits applies to only eight different facilities, the Paperwork Reduction Act does not apply. *See* 5 CFR 1320.3(c).

C. Regulatory Flexibility Act

I certify that this action will not have a significant impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The proposed action, if finalized, will rescind source specific requirements for electric generating units s at eight different facilities, none of which are small entities as defined by the RFA.

D. Unfunded Mandates Reform Act

The EPA has determined that Title II of UMRA does not apply to this proposed rule. In 2 U.S.C. 1502(1) all terms in Title II of UMRA have the meanings set forth in 2 U.S.C. 658, which further provides that the terms ''regulation'' and ''rule'' have the meanings set forth in 5 U.S.C. 601(2). Under 5 U.S.C. 601(2), ''the term 'rule' does not include a rule of particular applicability relating to . . . facilities.'' Because this proposed rule is a rule of particular applicability relating to specific EGUs located at eight named facilities, the EPA has determined that it is not a ''rule'' for the purposes of Title II of UMRA.

E. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed disapproval of a portion of the Oklahoma Regional Haze SIP submission that relates to reasonable progress for the first planning period (2008–2018) will apply, if finalized as proposed, to certain areas in Oklahoma with a nexus to Indian country as discussed in the preamble, and therefore has tribal implications as specified in E.O. 13175 (65 FR 67249, November 9, 2000). However, this action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws. The EPA will offer consultation with tribal officials to allow them to provide meaningful input on this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA's Policy on Children's Health also does not apply.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on communities with environmental justice concerns.

The EPA believes that the human health or environmental conditions that exist prior to this action have the potential to result in disproportionate and adverse human health or environmental effects on communities with environmental concerns. As explained further in section VIII, the EPA's screening analysis provides an assessment of indicators related to environmental justice and overall pollution burden around the location of the facilities associated with this action and demonstrates the potential for disproportionate and adverse effects on the areas located near at least two of the facilities subject to this action; however, one of these facilities permanently shut down in 2018. The other facility demonstrated EJ indices greater than the 80th national percentiles for ozone and lead paint, which are potential health and environmental stressors not affected by this proposed action.

The EPA believes that this action, if finalized, is not likely to change the human health or environmental conditions that exist prior to this action and that have the potential to result in disproportionate and adverse human health or environmental effects on communities with environmental concerns. This action is not expected to change potential community impacts associated with these indexes or add disproportional human health or environmental burden to these communities with the recission of SO_2 emission limits that have never gone into effect. The analyses and proposed requirements included in this proposed rulemaking are consistent with and commensurate with the Regional Haze Rule and how that rule functions. Additionally, the EPA conducted these analyses for informational purposes only, and in a manner consistent with both the CAA and E.O. 12898.

The EPA intends to promote fair treatment and provide meaningful involvement in developing the final action through the public notice and comment process. This will include a

virtual public hearing and public comment period, as well as additional outreach to promote public engagement. Information related to this action will be available on the EPA's website as well as in the docket for this action.

The information supporting this Executive Order review is contained in section VIII of this Preamble as well as throughout the Preamble, and all supporting documents have been placed in the public docket for this action.

K. Determinations Under CAA Section 307(d)

This proposed action is subject to the provisions of section 307(d). CAA section 307(d)(1)(B) provides that section 307(d) applies to, among other things, ''the promulgation or revision of an implementation plan by the Administrator under [CAA section 110(c)].'' 42 U.S.C. 7407(d)(1)(B). If finalized, this proposed action would, among other things, revise a federal implementation plan pursuant to the authority of section 110(c). To the extent any portion of this proposed action is not expressly identified under section 307(d)(1)(B), the Administrator determines that the provisions of section 307(d) apply to this proposed action. *See* CAA section 307(d)(1)(V) (the provisions of section 307(d) apply to ''such other actions as the Administrator may determine'').

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility.

Michael S. Regan,

Administrator.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart LL—Oklahoma

■ 2. Section 52.1928 is amended by revising paragraph (a)(5) to read as follows:

§ 52.1928 Visibility protection.

(a) * * *

(5) The reasonable progress goals for the first planning period and the reasonable progress consultation with Texas for the Wichita Mountains Class I area.

* * * * *

Subpart SS—Texas

■ 3. Section 52.2270 is amended by revising in paragraph (e) the ''Texas Regional Haze SIP'' entry under the table titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
*	* *	*	* *	* *
Texas Regional Haze SIP.	Statewide	3/19/2009	1/5/2016, 81 FR 350	The following sections are not approved as part of the SIP: The reasonable progress goals, the reasonable progress four-factor analysis; and the calculation of the emission reductions needed to achieve the uniform rates of progress for the Guadalupe Mountains and Big Bend; the demonstration that the rate of progress for the implementation plan to attain natural conditions by 2064 is not reasonable and that the progress goal adopted by the State is reasonable; calculation of natural visibility conditions; calculation of the number of deciviews by which baseline conditions exceed natural visibility conditions; long-term strategy consultations with Oklahoma; Texas securing its share of reductions necessary to achieve the reasonable progress goals at Big Bend, the Guadalupe Mountains, and the Wichita Mountains; technical basis for its long-term strategy and emission limitations and schedules for compliance to achieve the RPGs for Big Bend, the Guadalupe Mountains and Wichita Mountains.
*	* *	*	* *	* *

§ 52.2302 [Removed and Reserved]

■ 4. Remove and reserve § 52.2302.

■ 5. Section 52.2304 is amended by revising paragraph (e) to read as follows:

§ 52.2304 Visibility protection.

* * * * *

(e) The following portions of the Texas Regional Haze SIP submitted March 19, 2009 are disapproved: The reasonable progress goals, the reasonable progress four-factor analysis; and the calculation of the emission reductions needed to achieve the uniform rates of progress for the Guadalupe Mountains and Big Bend; the demonstration that the rate of progress

for the implementation plan to attain natural conditions by 2064 is not reasonable and that the progress goal adopted by the State is reasonable; calculation of natural visibility conditions; calculation of the number of deciviews by which baseline conditions exceed natural visibility conditions; long-term strategy consultations with Oklahoma; Texas securing its share of reductions necessary to achieve the reasonable progress goals at Big Bend, the Guadalupe Mountains, and the Wichita Mountains; technical basis for its long-term strategy and emission limitations and schedules for compliance to achieve the reasonable progress goals for Big Bend, the Guadalupe Mountains and Wichita Mountains.

* * * * *

[FR Doc. 2023–15338 Filed 7–25–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2023–0069; FRL–10579–06–OCSPP]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities (June 2023)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before August 25, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0069, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Madison Le, Biopesticides and Pollution Prevention Division (BPPD) (7511M), main telephone number: (202) 566–1400, email address: *BPPDFRNotices@epa.gov;* or Charles Smith, Registration Division (RD) (7505T), main telephone number: (202) 566–2427, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at *https://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

A. Notice of Filing—Amended Tolerances for Non-Inerts

PP 2E9041. EPA–HQ–OPP–2023–0078. Interregional Research Project Number 4 (IR–4), IR–4 Project Headquarters, North Carolina State University, 1730 Varsity Drive, Venture

IV, Suite 210, Raleigh, NC 27606, requests to amend 40 CFR 180.672 by removing the established tolerances for residues of the insecticide cyantraniliprole, 3-bromo-1-(3-chloro-2-pyridinyl)-N-[4-cyano-2-methyl-6-[((methylamino)carbonyl]phenyl]-1H-pyrazole-5-carboxamide, including its metabolites and degradates, in or on the following commodities: Vegetable, legume, dried shelled, except soybean, subgroup 6C at 1.0 parts per million (ppm); vegetable, legume, edible podded, subgroup 6A at 2.0 ppm; vegetable, legume, succulent shelled, subgroup 6B at 0.20 ppm; vegetable, foliage of legume, except soybean, group 7A at 40 ppm; corn, field, grain at 0.01 ppm; corn, pop, grain, at 0.01 ppm; corn, sweet, kernel plus cob with husks removed at 0.01 ppm; and rice, grain at 0.02 ppm. *Contact:* RD.

B. New Tolerance Exemptions for Inerts (Except PIPs)

PP IN–11782. EPA–HQ–OPP–2023–0347. SciReg, Inc., 12733 Director's Loop, Woodbridge, VA, 22192 on behalf of Bi-PA NV, requests to establish an exemption from the requirement of a tolerance for residues of cocamidopropyl betaine (CAS Reg. No. 61789–40–0) when used as an inert ingredient in pesticide formulations applied under 40 CFR 180.920 at levels up to 10% w/w in pesticide formulations. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

C. New Tolerance Exemptions for Non-Inerts (Except PIPs)

1. *PP 2F8989.* EPA–HQ–OPP–2023–0149. UPL NA Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the plant growth regulator *ascophyllum nodosum* concentrated extract when used as a plant growth regulator in or on all raw agricultural commodities. The petitioner believes no analytical method is needed because of the lack of toxicity and pathogenicity demonstrated in the available toxicological data. *Contact:* BPPD.

2. *PP 2F9034.* EPA–HQ–OPP–2023–0291. Nufarm Americas, Inc., AGT Division. 11901 S. Austin Avenue, Alsip, IL 60803, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the nematicide, cis-jasmone (2-Cyclopenten-1-one, 3-methyl-2-(2Z)-2-pentenyl) in or on all food commodities. The petitioner believes no analytical method is needed because it is expected that when used as proposed, cis-jasmone would not result in residues of toxicological concern. *Contact:* BPPD.

D. New Tolerances for Non-Inerts

1. *PP 0E8879.* EPA–HQ–OPP–2023–0106. Bayer Crop Science P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide triadimenol in or on coffee, green bean at 0.5 ppm. The gas chromatography with mass spectrometry detection (GC/MS) methods I and II are used to measure and evaluate the chemical triadimenol. *Contact:* RD.

2. *PP 2E9041.* EPA–HQ–OPP–2023–0078. Interregional Research Project Number 4 (IR–4), IR–4 Project Headquarters, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606 requests to establish tolerances in 40 CFR 180.672 for residues of the insecticide cyantraniliprole, 3-bromo-1-(3-chloro-2-pyridinyl)-N-[4-cyano-2-methyl-6-[((methylamino)carbonyl]phenyl]-1H-pyrazole-5-carboxamide, including its metabolites and degradates, in or on the following commodities: Edible podded bean subgroup 6–22A at 2 ppm; edible podded pea subgroup 6–22B at 2 ppm; field corn subgroup 15–22C at 0.01 ppm; forage and hay of legume vegetables (except soybeans) subgroup 7–22A at 40 ppm; herb fresh leaves subgroup 25A at 40 ppm; herb dried leaves subgroup 25B at 150 ppm; hops, dried cones at 70 ppm; papaya at 1.5 ppm; pulses, dried shelled bean, except soybean, subgroup 6–22E at 1 ppm; pulses, dried shelled pea subgroup 6–22F at 1 ppm; rice subgroup 15–22F at 0.02 ppm; spices crop group 26 at 80 ppm; succulent shelled bean subgroup 6–22C at 0.3 ppm; succulent shelled pea subgroup 6–22D at 0.3 ppm; and sweet corn subgroup 15–22D at 0.01 ppm. LC/MS/MS methods are available for the enforcement of tolerances for cyantraniliprole residues of concern. *Contact:* RD.

3. *PP 2F9038.* EPA–HQ–OPP–2023–0308. BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 2770, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide pendimethalin in or on the tropical and subtropical fruit, medium to large fruit, edible peel subgroup 23B at 0.1 ppm; fig, dried fruit at 3.0 ppm; and an inadvertent tolerance on cilantro, fresh leaves at 0.1 ppm. The method of aqueous organic solvent extraction, column clean up, and quantitation by GC is used to measure and evaluate the chemical pendimethalin and its 3,5-dinitrobenzyl alcohol metabolite. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: July 18, 2023.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2023–15801 Filed 7–25–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 230718–0170]

RIN 0648–BM29

Fisheries Off West Coast States; West Coast Groundfish Electronic Monitoring Program; Service Provider Revisions

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulatory amendments that would apply to Pacific Coast Groundfish Trawl Rationalization Program participants and electronic monitoring (EM) service providers that participate in the EM program. This rulemaking proposes to modify submission deadlines in Federal regulations specific to vessel feedback reports, summary reports, and logbook submissions by EM service providers. In addition, this rulemaking proposes to clarify regulations on how EM discard data should be estimated via the video review process. This action is necessary because the current regulatory deadlines for EM service providers may be too restrictive. This action is expected to provide more flexibility, while still meeting the data collection and data quality requirements of the EM program. This action would also update and revise obsolete regulations, correct terminology, correct web addresses, and remove obsolete administrative requirements in the Pacific groundfish fishery. Some aspects of this action remove duplicative requirements for mail notifications or mail-based record-keeping and reporting, which are also undertaken electronically. During the COVID–19 pandemic, many

administrative notifications and reporting requirements were moved to electronic methods; this action would revise the regulations to be consistent with current practice. This action is intended to support the overarching goal to continually monitor the Groundfish Trawl Rationalization Program for compliance with existing regulations in an economical and flexible manner while meeting the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; MSA), the Pacific Coast Groundfish Fishery Management Plan, and other applicable laws.

DATES: Comments must be received by Friday, August 25, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0062 by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0062 in the Search box, click the ''Comment'' icon, complete the required fields, and enter or attach your comments.

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

Electronic Access

This proposed rule is accessible at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and analytical documents (Analysis) are available at the NMFS West Coast Region website at: *https://www.fisheries.noaa.gov/region/west-coast-groundfish.html* and at the Pacific Fishery Management Council's website at *https://www.pcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Abbie Moyer, phone: 206–305–9601, or email: *abbie.moyer@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS and the Pacific Fishery Management Council (Council) manage the groundfish fisheries in the exclusive economic zone seaward of California, Oregon, and Washington under the Pacific Coast Groundfish Fishery Management Plan (FMP). The Council prepared the FMP under the authority of the MSA (16 U.S.C. 1801 *et seq.*). Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR part 660.

Background

Through Amendment 18 to the FMP (71 FR 66122, December 13, 2006), electronic monitoring was authorized in the FMP as an alternative to human data collection systems, where appropriate (see Section 6.4.1.1 of the FMP). On June 28, 2019 (84 FR 31146), at the recommendation of the Pacific Fishery Management Council (Council), NMFS published a final rule that authorized the use of EM in place of human observers to meet requirements for 100-percent at-sea monitoring for catcher vessels in the Pacific whiting fishery and fixed gear vessels in the shorebased Individual Fishing Quota (IFQ) fishery. EM video systems are used to record catch and discards by the vessel crew while at sea. Vessel operators are responsible for recording catch and discards in a logbook, which is then used to debit IFQ accounts and cooperative allocations. After an EM vessel completes a fishing trip, the vessel operator submits the video to their third-party EM service provider for analysis to be used to audit the vessel operator's self-reported discard logbooks. The June 2019 final rule also established requirements for vessel owners and operators and EM service providers participating in the EM program, and for first receivers receiving catch from EM trips. For more information see 84 FR 31146 (June 28, 2019).

At its June 2020 meeting, the Council recommended a delay in program implementation until January 1, 2022. The Council wanted to provide more time for industry and the Pacific States Marine Fisheries Commission (PSMFC) to develop a model for industry to fund PSMFC for review of video from their fishing trips. NMFS published a subsequent proposed rule (85 FR 53313, August 28, 2020) and final rule (85 FR 74614, November 23, 2020) that delayed implementation of the EM program until January 1, 2022 to provide additional time for industry and prospective service providers to prepare for implementation.

At its September 2021 meeting, the Council made a final recommendation that the EM program be further delayed until January 2024 at the earliest. NMFS published an interim final rule on October 6, 2021 (86 FR 55525) that changed effective dates in regulations in order to delay implementation of the EM program for the West Coast groundfish trawl rationalization program until at least January 1, 2024, and only after NMFS issues a public notice at least 90 calendar days before it will begin accepting applications for EM Authorizations for the first year of the program. To fulfill the requirements at 50 CFR 660.603(b) and 660.604(e), NMFS issued the 90-day notice on March 1, 2023, at *https://www.fisheries.noaa.gov/bulletin/advance-notice-electronic-monitoring-regulatory-program.* For full rationale see 86 FR 55525 (October 6, 2021).

During the delay in implementation of the EM program, NMFS published a final rule on October 3, 2022, (87 FR 59705) to allow the use of EM on trips with bottom-trawl and non-whiting midwater trawl gear. Consistent with the October 6, 2021 interim final rule (86 FR 55525) and the subsequently issued public notice identified above, the EM program for these trip types will be effective on January 1, 2024. In addition, the October 3, 2022 final rule made minor regulatory changes to existing EM program regulations implemented under the June 2019 final rule. The regulatory changes were intended to clarify and streamline EM program requirements, including the addition of submission deadlines for EM service providers to provide feedback reports to fishing vessels, and video review data summary reports as well as logbook data to NMFS. The full rationale for the Council's recommendation is detailed in the March 1, 2022 proposed rule for that action (87 FR 11382), and is not repeated here.

Under regulations at 50 CFR 660.603, EM service providers are responsible for providing various feedback reports to vessel operators and field services staff and data summaries to NMFS. These reports include logbook data, technical assistance, vessel operator feedback, EM summary data, and compliance reports. Generally, catch discards are initially debited from vessel accounts in the IFQ database using logbook data, and discards in logbooks are audited using EM data. IFQ vessel accounts are adjusted based on comparison/adjustment protocols that utilize the most accurate estimate.

Currently, the fishery continues under Exempted Fishing Permits (EFPs) with PSMFC conducting the video review process for the industry and following the video review protocols and submission deadlines outlined in the

current EM manual (or other written and oral instructions provided by the EM program, and such that the EM program achieves its purpose as defined at § 660.600(b)). However, timely review and submission of the data has been challenging for PSMFC, and the delay in submissions has caused concern among the industry regarding the potential increase in costs associated with increasing the amount of personnel that may be needed to meet the video review workload and deadlines. Therefore, the Council examined the EM program and this issue in particular to reduce costs to the industry and ensure the overall program is effective and efficient for all participants.

Starting in February of 2022, the Council began scoping several issues brought forth by the industry via the Council's Ad Hoc Groundfish Electronic Monitoring Policy Advisory and Technical Advisory Committees (GEMPAC/TAC). The GEMPAC/TAC identified regulatory changes that may provide some cost savings and more efficiencies to the program. At the November 2022 Council meeting, the Council adopted a range of alternatives for consideration, and took final action at its March 2023 meeting. Consistent with MSA Section 303(c)(2), on July 5, 2023, the Council deemed the proposed regulations necessary and appropriate to implement the FMP provision authorizing the use of EM.

Regulatory Changes To Refine Existing EM Program

The regulatory changes described below were developed through Council discussion with NMFS, the GEMPAC/TAC, and members of industry. The Council's intent in developing these regulatory changes is to refine and clarify certain EM program requirements, reduce costs, and improve the effectiveness of the EM program overall in meeting its intended monitoring goals for the Trawl Rationalization Program. This would be achieved by increasing the allowable turnaround times and clarifying that different service providers may follow different video review protocols (as long as they are approved by NMFS and meet the EM program purpose as defined at § 660.600(b)) rather than a protocol that is standardized across service providers.

Reporting Deadlines for EM Service Providers

The following proposed regulatory changes would modify deadlines for various reports that EM service providers are required to submit under current regulations. These submission deadlines are for reports of logbook data, vessel operator feedback, and EM summary and data compliance reports. Submission of this information by EM service providers has been required in regulations as of June 2019; however, deadlines for the submission of these reports were not originally included. Under the final rule that was effective November 2, 2022 (87 FR 59705), NMFS established submission deadlines for these required EM service provider reports. This proposed rule, if adopted, would modify some of the established submission deadlines that have been identified as being too restrictive, in order to create possible cost savings and more efficiencies in the program.

A. Discard Logbooks

Under current regulations at 50 CFR 660.603(m)(5), EM service providers are required to submit the initial logbook data to NMFS within 2 days of receipt from vessel operators. This proposed regulatory change would require EM service providers to submit logbook data to NMFS within 7 days of receipt from vessel operators. EM participants and their EM service providers must submit logbooks to document fishing trips and ensure all fish that are legally discarded are accounted for under the IFQ program. The data is used initially to debit quota share accounts before it is corroborated with the EM review. This deadline would still help to ensure timely debiting of discards from vessel IFQ accounts.

The 2-day timeline for the data to be entered, verified as accurate, and then submitted to NMFS has been challenging to meet when several vessels submit logbooks at one time. According to PSMFC, however, logbook data submissions have rarely exceeded 7 days. Therefore, this proposed rule was recommended by the Council to provide more flexibility to EM service providers to be able to meet the deadline while still ensuring timely debiting of discards from vessel IFQ accounts. The frequency of vessel account updates is not expected to measurably change due to the additional 5 business days that EM service providers would be allowed to submit logbook data to NMFS. Actual logbook submission timeframes are expected to generally stay the same, with only occasional delays when a provider may happen to receive several logbooks at the same time.

B. Vessel Feedback Reports

Under current regulations at 50 CFR 660.603(m)(4), EM service providers are required to provide feedback reports to vessel operators and field services staff within 3 weeks of the date EM data is received from the vessel operator. Feedback is required on EM systems, crew responsibilities, and any other information that would improve the quality and effectiveness of data collection on the vessel. This proposed regulatory change would require EM service provider feedback to be submitted to vessels within 60 days of the date EM data is received from the vessel operator.

Timely feedback to vessels helps ensure EM data is being collected and that the data is reliable in meeting the EM program monitoring goals under the Trawl Rationalization Program. When the original deadline was developed, it was thought that 3 weeks was a reasonable timeframe to complete video review. However, as the program developed and more vessels joined the EFP program, video coming in for review increased. With the increase in video requiring review, over time vessel feedback turnaround time increased beyond the targeted 3-week turnaround time, up to 90 days in recent years. As the Analysis (see **ADDRESSES**) shows, reporting timelines have ranged from less than 21 days after receipt of the hard drive in 2015 through 2017, to 1 to 2 months and even greater during periods of higher fishing activity in 2019 to 2020. Despite these delays, there were no observable impacts to the EM program monitoring goals under the Trawl Rationalization Program.

Under this proposed rule, EM program participants could experience longer timelines between video submission and receipt of vessel feedback reports. Longer time frames may cause a delay in corrective actions when data collection issues arise and are not known by the vessel operator (*i.e.,* sensor or video data gaps, camera blocked/clouded, poor camera position, *etc.*) resulting in loss of data. However, data gaps resulting from system malfunctions, non-compliance, or other issues are rare. As shown in the Analysis, in 2015–2017 (when turnaround times were 3 weeks), approximately 5, 3, and 4 percent of trips per year, respectively, had loss in video imagery. The majority of these were small interruptions of a few minutes caused by short power interruptions and generally did not disrupt monitoring of catch sorting. A total of four trips each year (less than 0.01 percent of all trips) were missing video imagery from a complete haul, and one, four, and seven trips each year, respectively, had no imagery at all.

Extending the timeline for submission is expected to provide more flexibility to handle times when hard drive submissions to EM service providers

come in all at once, especially during increased fishing activity in the summer and early fall. Additionally, a 60-day turnaround time is expected to help EM service providers to provide more reliable reports because they will not be rushed into meeting challenging deadlines.

C. EM Summary Data and Compliance Reports

Current regulations at 50 CFR 660.603(m)(5) require EM service providers to submit EM summary data and compliance reports to NMFS following completion of video review within 3 weeks from the date the vessel operator submits EM data. EM summary data includes discard estimates, fishing activity information, and trip metadata. This proposed regulatory change would require these summary and compliance reports to be submitted to NMFS within 60 days from the date the vessel operator submits EM data for processing. EM summary data and compliance reports are used by NMFS to debit vessel accounts, monitor program and vessel performance, and enforce requirements of the EM program. Trip metadata is an essential record of when and where EM data were created by the vessel, submission time, date and location of review, and points of contact for reviewers. Trip metadata ensures fishing data can be accurately corroborated with logbook data and is necessary for a complete chain of custody and accountability between the vessel, EM service provider, and NMFS. Catch discards are initially debited from vessel accounts in the IFQ database using logbook data and audited using EM data. If there are large discrepancies between the logbook and EM summary data, then a longer reporting timeline could lead to vessel account owners experiencing unexpected debits or being unable to ''close-out'' an account for a fishing trip until the EM data are received.

As discussed above, when the original deadline was developed, it was thought that 3 weeks was a reasonable timeframe to complete video review. However, as the program developed and more vessels joined the EFP program, the amount of video coming in for review increased. As hard drive submissions increased each year, it became challenging to conduct 100 percent of the reviews within a 3-week timeframe under the current number of staff, with higher volumes of hard drives to review in late spring through fall. If the current requirements are to be met without increasing costs to handle peaks and pulses of hard drive submission, more time for EM service providers to process the EM data may be needed. Extending the timeline for submission is expected to provide more flexibility to handle times when hard drive submissions to EM service providers come in all at once. This could also allow EM service providers to provide more accurate estimated costs to potential EM participants via estimating video review workload (*i.e.,* number of employees needed to provide timely review). Additionally, a 60-day turnaround time is expected to help EM service providers to provide more reliable reports because they will not be rushed into meeting challenging deadlines.

Part of the goal of the Trawl Rationalization Program under Amendment 20 to the FMP (75 FR 78344, December 15, 2010) is to achieve individual accountability of catch and bycatch. The proposed rule is not expected to interfere with this goal. Under the proposed rule, the EM program would continue to provide estimates of discards of IFQ species, which is necessary for maintaining accountability for total mortality of these species, as well as individual IFQ and cooperative allocations. Under the Trawl Rationalization Program, vessels are required to have IFQ or quota pounds (QPs) in an account to cover all IFQ landings and discards incurred while fishing under this program. The proposed rule would not change this requirement. Fishermen would still be accountable for covering QPs. NMFS assumes fishermen would continue to closely monitor their catch to prevent any surprise overages or deficits, which could shorten their fishing season or increase their costs if they had to buy additional quota from other quota holders. Additionally, overages and carryover provisions as outlined in Amendment 20 would still exist. So although an overage may occur as a result of delayed data, the vessel would still be responsible to cover that QP, creating an even greater incentive to closely monitor catch.

Revise EM Discard Data Review Language

The language in current regulations at 50 CFR 660.603(m)(1) reads: ''The EM service provider must process vessels' EM data and logbooks according to a prescribed coverage level or sampling scheme, as specified by NMFS in consultation with the Council, and determine an estimate of discards for each trip using standardized estimation methods specified by NMFS. NMFS will maintain manuals for EM and logbook data processing protocols on its website.'' This proposed regulatory change would remove the paragraph. The relevant information is already provided in 660.603(m) introductory paragraph and 50 CFR 660.603(m)(5). The intent of the structure of the EM Program is that the requirements to submit logbook data, EM summary reports, including discard estimates, fishing activity information, and meta data (*e.g.,* image quality, reviewer name), and incident reports of compliance issues according to a NMFS-accepted EM Service Plan are required in the regulations. The submission must meet the program purpose, as defined in the regulations at 50 CFR 660.600(b). However, the details of how that data is processed, viewed, and evaluated are left to the EM Manual and EM Service Provider Guidelines or other written and oral instructions provided by the EM program.

The intent of the existing regulatory language was to guide each qualified provider to develop a method for discard estimation using general protocols outlined in the EM Manual that provides NMFS the desired data and for NMFS to determine if the data is collected consistently and appropriately by each EM service provider such that it meets the purpose of the EM program. However, the existing regulatory language could be interpreted that only one method must be used by all EM providers to ''determine an estimate of discards for each trip.'' In addition, the current regulatory language is incorrect since it specifies EM service providers need to determine an estimate of discards for each trip. Rather, the estimation method outlined in the EM Manual requires sampling percentages to be based on the hauls for each trip. Given the potential for confusion, and because the introductory paragraph of 50 CFR 660.603(m) and 50 CFR 660.603(m)(5) already identify submission requirements, we believe that removal, rather than revision, of 660.603(m)(1) is preferable.

Under the proposed rule, EM service providers would still be required to operate under a NMFS approved service plan (50 CFR 660.603(b)(1)(vii)) that shows how their methodology meets the requirements in the regulations. This proposed rule, if adopted, would also ensure performance standards provide the flexibility that allows for innovation and improvements that can potentially result in lower costs and greater benefits while still maintaining data quality and meeting the requirements in regulation and the overall purpose of the EM program.

The EM program was set up to maintain high quality information on discards of IFQ species for management

decisions, while minimizing the costs of data collection requirements, consistent with National Standards 2 and 7 of the MSA. While EM cannot collect all the information collected by human observers, NMFS and the Council made every effort to ensure consistent protocols between the human observer and EM programs, to ensure comparable quality, and allow their integration for management. To ensure that the EM Program continues to provide NMFS with the best scientific information available for management, NMFS and the Council established strict performance standards in the regulations for EM units, vessels, and providers. This proposed rule, if issued, would not change those performance standards established via rulemakings.

Administrative Revisions

This proposed rule, if adopted, would also update and revise obsolete regulations, correct terminology, correct web addresses, and remove obsolete administrative requirements for the groundfish fishery. Some aspects of this action remove duplicative requirements for mail notifications or mail-based record-keeping and reporting, which are also undertaken electronically. During the COVID–19 pandemic, many administrative notifications and reporting requirements were moved to electronic methods; this action would revise the regulations to be consistent with current practice.

This proposed rule, if issued, would also remove the requirement at § 660.140(f)(3) for NMFS to issue an initial agency determination (IAD) for both approvals and disapprovals of applications. In all other application procedures described in regulation, IADs are only issued in the case of a disapproval. IADs are unnecessary for approvals since the confirmation of the approval is the issuance of the permit that was applied for. Additionally, IADs can be appealed. There is no reason to appeal an IAD approving an application.

This proposed rule, if adopted, would remove the requirement for cease-fishing reports for both the Mothership (MS) and Catcher/Processor (C/P) cooperatives. Amendment 21–4 to the FMP (42 FR 68799, December 17, 2019) completed the removal of the allocations of non-whiting groundfish species made as part of Amendment 21 to the FMP (75 FR 60867, October 1, 2010) and instead created set-asides in the at-sea sectors (the MS and C/P cooperatives). With the removal of allocations for non-whiting groundfish to the at-sea sectors, procedures for reapportionment of non-whiting groundfish species allocations between the MS and C/P cooperatives were removed. Erroneously, a record-keeping and reporting requirement only necessary for this reapportionment was not removed.

This proposed rule, if adopted, would modify the current requirements under the Trawl Rationalization Program for NMFS to mail out annual reminders to fishery participants to renew their quota share permits, their vessel accounts, and their first receiver site licenses. During the COVID–19 global pandemic, we transitioned these reminders to an electronic format. This proposed rule would revise the regulations to be consistent with current practice.

Finally, this proposed rule, if adopted, would make a number of minor clarifying corrections. In many places in the regulations governing the Pacific Coast groundfish fisheries, the term 'cooperative' is abbreviated to 'coop', rather than 'co-op'. This proposed rule would correct the abbreviation throughout this Part. This proposed rule would also correct obsolete web addresses and outdated references to the NMFS 'Northwest Region', which, as of 2013, is now the West Coast Region.

Classification

Pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish Fishery Management Plan, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. Please see **ADDRESSES** for more information on the ways to submit comments on this proposed rule.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule is expected to provide more flexibility and minor cost savings, while still meeting the data collection and data quality requirements of the EM program. This proposed rule would mainly impact EM service providers participating in the EM program when full implementation of the EM program begins on January 1, 2024. Based on past EM service provider applications submitted to NMFS, NMFS estimates that one to seven EM service provider companies may participate in the EM program. Assuming EM service provider cost savings trickle down to fishery participants, this proposed rule also has the potential to impact commercial harvesting entities engaged in the groundfish limited entry trawl fishery. Vessels deploying EM are likely to be a subset of the overall trawl fleet, as some vessels would likely choose to continue to use observers. However, as all trawl vessels could potentially use EM in the future, NMFS analyzed impacts to the entire trawl fleet.

The total number of vessels that may be eligible to use EM is 175, the total number of limited entry trawl permits in 2022. Of the 165 limited entry trawl endorsed permits (excluding those 10 with a catcher/processor (CP) endorsement), 110 permit owners holding 129 permits classified themselves as small entities. The average small entity owns 1.17 permits with 15 entities owning more than 1 permit. For those with CP endorsements, all 3 permit owners (owning the collective 10 C/P endorsed permits) self-reported as large entities. One entity owns five permits, one owns three, and the last owns two. The economic effects would depend on how widely EM is adopted by vessel owners participating in the Trawl Rationalization Program.

NMFS considers two criteria in determining the significance of adverse regulatory effects, namely, disproportionality and profitability. Disproportionality compares the effect of the regulatory action between small and large entities. Taking into consideration disproportionality and profitability, this action provides flexibility that may enable all participating EM service providers to reduce costs. Additionally, vessel operating costs may be reduced to the degree that (1) there is a reduction in video reviewer costs, and (2) those cost reductions are passed along to vessels, which would apply to all vessels participating in the EM program, regardless of size. Economic effects are expected to be minimal. Therefore, we do not expect significant or disproportionate adverse economic effects from this action.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule revises existing requirements for the collection of information approved under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The proposed rule would extend EM service provider submission deadlines for: (1) Vessel operator feedback: 60 day from the date

of receipt of EM data for processing from the vessel operator; (2) EM summary and data compliance reports: 60 days from the date of receipt of EM data for processing from the vessel operator; and (3) Logbook data: submit logbook data to NMFS within 7 days of receipt from vessel operators.

Extending the submission deadlines is not expected to increase the public reporting burden for the information collection. The current collection of information requirements would continue to apply under the existing OMB Control Number 0648–0785: West Coast Region Groundfish Trawl Fishery Electronic Monitoring Program.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: July 18, 2023.

Kimberly Damon-Randall,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 773 *et seq.;* and 16 U.S.C. 7001 *et seq.*

■ 2. Amend part 660 by removing the word ''coop'' and adding in its place the word ''co-op'' wherever it appears.
■ 3. Amend part 660 by removing the word ''Coop'' and adding in its place the word ''Co-op'' wherever it appears.
■ 4. Amend part 660 by removing all instances of ''*https://www.nwr.noaa.gov*'' and ''*https://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm*'' and adding in their place ''*https://www.fisheries.noaa.gov/region/west-coast*'' wherever they appear.
■ 5. Amend part 660 by removing the phrase ''NMFS NWR'' and adding in its place the phrase ''NMFS WCR'' wherever it appears.
■ 6. Amend part 660 by removing the phrase ''NMFS Northwest Region'' and adding in its place the phrase ''NMFS West Coast Region'' wherever it appears.
■ 7. Amend § 660.18 by revising paragraph (d)(1) to read as follows:

§ 660.18 Observer and catch monitor provider permits and endorsements.

* * * * *

(d) * * *

(1) *Initial administrative determination.* For all complete applications, NMFS will issue an IAD if it disapproves the application. An approved application will result in issuance of the permit. If disapproved, the IAD will provide the reasons for this determination. If the applicant does not appeal the IAD within 30 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

* * * * *

■ 8. Amend § 660.25 by revising paragraph (b)(3)(iv)(C)(*2*) and (b)(4)(ix) to read as follows:

§ 660.25 Permits.

* * * * *

(b) * * *

(3) * * *

(iv) * * *

(C) * * *

(*2*) *Application and issuance process for an ownership limitation exemption.* The SFD will make the qualifying criteria and application instructions available online at *https://www.fisheries.noaa.gov/region/west-coast.* A vessel owner who believes that they may qualify for the ownership limitation exemption must submit evidence with their application showing how their vessel has met the qualifying criteria described at paragraph (b)(3)(iv)(C)(*1*) of this section. The vessel owner must also submit a Sablefish Permit Ownership Limitation Exemption Identification of Ownership Interest form that includes disclosure of percentage of ownership in the vessel and disclosure of individual shareholders in any entity. Paragraph (i) of this section sets out the relevant evidentiary standards and burden of proof. Applications may be submitted at any time to NMFS at: NMFS West Coast Region, Sustainable Fisheries Division, ATTN: Fisheries Permit Office—Sablefish Ownership Limitation Exemption, 7600 Sand Point Way NE, Seattle, WA 98115. After receipt of a complete application, the SFD will issue an IAD in writing to the applicant determining whether the applicant qualifies for the exemption. If an applicant chooses to file an appeal of the IAD, the applicant must follow the appeals process outlined at paragraph (g) of this section and, for the timing of the appeals, at paragraph (g)(4)(ii) of this section.

* * * * *

(4) * * *

(ix) *Application forms available.* Application forms for a change in vessel registration, permit owner, or vessel owner are available at: NMFS West Coast Region, Sustainable Fisheries Division, ATTN: Fisheries Permit Office, 7600 Sand Point Way NE, Seattle, WA 98115; or *https://www.fisheries.noaa.gov/region/west-coast.* Contents of the application, and required supporting documentation, are also specified in the application form. Only complete applications will be processed.

* * * * *

■ 9. Amend § 660.60 by revising paragraph (d)(2) to read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(d) * * *

(2) Automatic actions are effective when actual notice is sent by NMFS identifying the effective time and date. Actual notice to fishers and processors will be by email, internet (*https://www.fisheries.noaa.gov/region/west-coast*), phone, letter, or press release. Allocation reapportionments will be followed by publication in the **Federal Register**, in which public comment will be sought for a reasonable period of time thereafter.

* * * * *

■ 10. Amend § 660.113 by removing and reserving paragraphs (c)(4) and (d)(4).
■ 11. Amend § 660.140 by revising paragraphs (d)(2)(iii)(A), (d)(3)(i)(B), (e)(2)(ii), (e)(3)(i)(B), (f)(3) introductory text, (f)(4), and (f)(6)(i) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(d) * * *

(2) * * *

(iii) * * *

(A) *Initial administrative determination.* For all complete applications, NMFS will issue an IAD if it disapproves the application. If approved, the QS permit serves as the IAD. If disapproved, the IAD will provide the reasons for this determination. If the applicant does not appeal the IAD within 30 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

* * * * *

(3) * * *

(i) * * *

(B) Notification to renew QS permits will be sent by SFD by September 15 each year to the QS permit owner's most recent email address in the SFD record. The QS permit owner shall provide SFD with notice of any email address change within 15 days of the change.

* * * * *

(e) * * *

(2) * * *

(ii) *Registration.* A vessel account must be registered with the NMFS SFD

Permits Office. A vessel account may be established at any time during the year. An eligible vessel owner must submit a request in writing to NMFS to establish a vessel account. The request must include the vessel name; USCG vessel registration number (as given on USCG Form 1270) or state registration number, if no USCG documentation; all vessel owner names (as given on USCG Form 1270, or on state registration, as applicable); and business contact information, including: Address, phone number, fax number, and email. Requests for a vessel account must also include the following information: A complete economic data collection form as required under § 660.113(b), (c) and (d), and a complete Trawl Identification of Ownership Interest Form as required under paragraph (e)(4)(ii) of this section. The request for a vessel account will be considered incomplete until the required information is submitted. Any change specified at paragraph (e)(3)(ii) of this section, including a change in the legal name of the vessel owner(s), will require the new owner to register with NMFS for a vessel account. A participant must have access to a computer with internet access and must set up online access to their vessel account to participate. NMFS will provide vessel account owners instructions to set up online access to their vessel account. NMFS will use the vessel account to send messages to vessel owners in the Shorebased IFQ Program; it is important for vessel owners to monitor their online vessel account and all associated messages.

* * * * *

(3) * * *

(i) * * *

(B) Notification to renew vessel accounts will be issued by SFD by September 15 each year to the vessel account owner's most recent email address in the SFD record. The vessel account owner shall provide SFD with notice of any email address change within 15 days of the change.

* * * * *

(f) * * *

(3) *Application process.* Persons interested in being licensed as an IFQ first receiver for a specific physical location must submit a complete application for a first receiver site license through the web form submission available at *https://www.noaa.gov/fisheries.* First receiver site license holders may request a paper application by contacting SFD. NMFS will only consider complete applications for approval. A complete application includes:

* * * * *

(4) *Initial administrative determination.* For all complete applications, NMFS will issue an IAD if the application is disapproved. The IAD will provide the reasons for this determination. NMFS will not reissue a first receiver site license until the required cost recovery program fees, as specified at § 660.115, have been paid. The IAD, appeals, and final decision process for the cost recovery program is specified at § 660.115(d)(3)(ii).

* * * * *

(6) * * *

(i) First receiver site license applications will be accessible through an online application on or about February 1 each year.

* * * * *

■ 12. Amend § 660.150 by revising paragraph (d)(2) to read as follows:

§ 660.150 Mothership (MS) Co-op Program.

* * * * *

(d) * * *

(2) *Initial administrative determination.* For all complete applications, NMFS will issue an IAD if the application is disapproved. An approved application will result in issuance of the permit. If disapproved, the IAD will provide the reasons for this determination. The IAD for a MS co-op permit follows the same requirement as specified for limited entry permits at § 660.25(g)(4)(ii); if the applicant does not appeal the IAD within the 30 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

* * * * *

■ 13. Amend § 660.160 by revising paragraph (d)(2) to read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

* * * * *

(d) * * *

(2) *Initial administrative determination.* For all complete applications, NMFS will issue an IAD if the application is disapproved. An approved application will result in issuance of the permit. If disapproved, the IAD will provide the reasons for this determination. The IAD for a C/P co-op permit follows the same requirement as specified for limited entry permits at § 660.25(g)(4)(ii), if the applicant does not appeal the IAD within the 30 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

■ 14. Amend § 660.603 by removing and reserving paragraph (m)(1), and revising paragraphs (m)(4) introductory text, and (5) to read as follows:

§ 660.603 Electronic monitoring provider permits and responsibilities.

* * * * *

(m) * * *

(1) [Reserved]

* * * * *

(4) The EM service provider must communicate with vessel operators and NMFS to coordinate data service needs, resolve specific program issues, and provide feedback on program operations. No later than 60 days from the date of receipt of EM data for processing from the vessel operator, the EM service provider must provide feedback to vessel representatives, field services staff, and NMFS regarding:

* * * * *

(5) *Submission of data and reports.* On behalf of vessels with which it has a contract (see § 660.604(k)), the EM service provider must submit to NMFS logbook data, EM summary reports, including discard estimates, fishing activity information, and meta data (*e.g.,* image quality, reviewer name), and incident reports of compliance issues according to a NMFS-accepted EM Service Plan, which is required under paragraph (b)(1)(vii) of this section, and as described in the EM Program Manual or other written and oral instructions provided by the EM program, such that the EM program achieves its purpose as defined at § 660.600(b). Logbook data must be submitted to NMFS within 7 business days of receipt from the vessel operator. EM summary reports must be submitted within 60 days of the date the EM data was received by the EM service provider from the vessel operator. If NMFS determines that the information does not meet these standards, NMFS may require the EM service provider to correct and resubmit the datasets and reports.

* * * * *

[FR Doc. 2023–15574 Filed 7–25–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 88, No. 142
Wednesday, July 26, 2023

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

AGENCY FOR INTERNATIONAL DEVELOPMENT

Paperwork Reduction Act 30-Day Notice; Request for Comments; USAID Information Collection Activities; Submission for OMB Review, Private Sector Engagement (PSE) Hub in the Bureau for Development, Democracy, and Innovation (DDI)

AGENCY: U.S. Agency for International Development.

ACTION: Notice of information collection; request for comment.

SUMMARY: USAID Bureau for Development, Democracy, and Innovation's (DDI) Private Sector Engagement Hub will conduct a survey regarding perception of 30 external organizations assigned a Global Relationship Manager. The goal of this survey is to understand their experience when engaging with USAID. The data collected will include email addresses to allow for follow-up inquiries. USAID DDI invites the general public and other Federal agencies to take this opportunity to comment on the following new information collection, as required by the Paperwork Reduction Act of 1995. The purpose of this notice is to allow 30 days for public comment preceding submission of the collection to OMB.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please access the survey questionnaire at *https://drive.google.com/file/d/1cXheUIuYVIt2qrAcwtAe60SM5Ys JR13s/view?usp=sharing.* Comments submitted in response to this notice should be submitted electronically through the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Matthew Weinmann at *mweinmann@usaid.gov* or 202–712–5016.

SUPPLEMENTARY INFORMATION:

Title of Information Collection: USAID Bureau for Democracy, Development and Innovation Relationship Management Survey.

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

Originating Office: USAID Bureau for Development, Democracy, and Innovation (DDI).

Respondents: Key points of contact from thirty private sector organizations that have an assigned USAID Global Relationship Manager.

Respondent's Obligation To Respond: Voluntary.

Estimated Number of Respondents: 30 (one from each company).

Average Time per Response: 15 minutes for survey respondents.

Frequency of Response: Approximately once per year.

Total Estimated Burden: 7.5 hours.

Total Estimated Cost: $750.

We are soliciting public comments to permit USAID to:

- Enhance the quality, utility, and clarity of the information to be collected.

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

Mandeep Singh Jangi,

Managing Director, External Influence, USAID Private Sector Engagement Hub.

[FR Doc. 2023–15794 Filed 7–25–23; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. USDA–2023–0010]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: National Appeals Division, Department of Agriculture.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the U.S. Department of Agriculture, National Appeals Division's request for an extension and revision to a currently approved information collection for the Customer Service Survey.

DATES: Comments on this notice must be received by September 25, 2023 to be assured of consideration.

ADDRESSES: The National Appeals Division invites interested persons to submit comments on this notice. Comments may be submitted by the following method:

☐ *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Dr. Angela Parham, U.S. Department of Agriculture, National Appeals Division, 1320 Braddock Place, Fourth Floor, Alexandria, Virginia 22314, 703.305.2588.

SUPPLEMENTARY INFORMATION:

Title: National Appeals Division Customer Service Survey.

OMB Number: 0503–0007.

Expiration Date of Approval: January 31, 2024.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Executive Order 12862, requires Federal Agencies to identify the customers who are or should be served by the Agency and survey those customers to determine the kind and quality of services they want and level of satisfaction with existing services. Therefore, NAD proposes to extend its currently approved information collection survey.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .17 hours per response.

Respondents: Appellants and producers.

Estimated Number of Respondents: 1,200.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 272.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Dr. Angela Parham, U.S. Department of Agriculture, National Appeals Division, 1320 Braddock Place, Fourth Floor, Alexandria, Virginia 22314. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Frank Wood,

Director, National Appeals Division.

[FR Doc. 2023–15792 Filed 7–25–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information 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.

Comments regarding this information collection received by August 25, 2023 will be considered. 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.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: School Meals Operations Study: Evaluation of the School-based Child Nutrition Programs.

OMB Control Number: 0584–0607.

Summary of Collection: FNS administers the school-based Child Nutrition (CN) Programs (*i.e.,* the school meal programs) in partnership with States and local SFAs. Section 28(a) of the Richard B. Russell National School Lunch Act authorizes the USDA Secretary to conduct annual national performance assessments of the school meal programs. FNS plans to conduct this annual assessment through the SMO Study in SY 2023–2024. This notice covers the fourth year of the SMO Study, which will collect data from State and local agencies on the CN COVID–19 waivers as well as data on state and local CN Program operations during SY 2022–2023. Data collection will occur in SY 2023–2024.

Need and Use of the Information: The goal of data collection for the SMO Study is to respond to annual research questions on the following topics: (1) school participation, (2) student participation, (3) meal counting, (4) financial management, and (5) program integrity. This revision covers data collection for one school year, with revisions of surveys and administrative data collection instruments from previous years.

1. General descriptive data on the characteristics of CN Programs to inform the budget process and answer questions about topics of current policy interest;

2. Data on Program operations to identify potential topics for training and technical assistance for SFAs and State agencies (SAs) responsible for administering the CN Programs;

3. Administrative data to identify program trends and predictors;

4. Information on the use and effectiveness of the CN COVID–19 waivers.

Description of Respondents: State, local, and Tribal government.

Number of Respondents: 1,342.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,031.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–15813 Filed 7–25–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Business Trends and Outlook Survey

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 November 9, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: Business Trends and Outlook Survey.

OMB Control Number: 0607–1022.

Form Number(s): This online survey has no form number.

Type of Request: Regular submission, Request for a Revision of a Currently Approved Collection.

Number of Respondents: 858,000 annually.

Average Hours per Response: 8 minutes.

Burden Hours: 111,540.

Needs and Uses: The mission of the U.S. Census Bureau (Census Bureau) is to serve as the leading source of quality data about the nation's people and economy; in order to fulfill this mission, it is necessary to innovate to produce more detailed, more frequent, and more timely data products. The Coronavirus pandemic was an impetus for the creation of new data products by the Census Bureau to measure the

pandemic's impact on the economy: the Small Business Pulse Survey (SBPS) and the weekly Business Formation Statistics. Policymakers and other federal agency officials, media outlets, and academia commended the Census Bureau's rapid response to their data needs during the largest economic crisis in recent American history. The Census Bureau capitalized on the successes that underlaid the high frequency data collection and near real time data dissemination engineered for the SBPS by creating the Business Trends and Outlook Survey (BTOS).

BTOS uses ongoing data collection to produce high frequency, timely, and granular information about current economic conditions and trends. BTOS is the only biweekly business tendency survey produced by the federal statistical system, providing unique and detailed data during times of economic or other emergencies. The BTOS initial target population is all nonfarm, single-location employer businesses with receipts of $1,000 or more in the United States, the District of Columbia, and Puerto Rico. The current sample consists of approximately 1.2 million single-unit businesses split into six panels. Data collection occurs every two weeks, and businesses in each panel are asked to report once every 12 weeks for one year. Current data from BTOS are representative of all single location employer businesses (excluding farms) in the U.S. economy and are published every two weeks. The data are available at the national and state levels, in addition to the 25 most-populous Metropolitan Statistical Areas (MSAs). North American Industry Classification System (NAICS) sector, subsector, and state by sector are also published, as are employment size class, and sector by employment size class data, according to the same timeline.

Data from BTOS are currently used to provide timely data to understand the economic conditions being experienced by single unit businesses; BTOS provides near real time data on key items such as revenue, paid employees, hours worked as well as inventories which is being added in for the second collection cycle. BTOS also provides high level information on the changing share of businesses facing difficulties stemming from supply chain issues, interest rate changes, or weather events. Previously, there had been few data sources available to policymakers, media outlets, and academia that delivered near real-time insights into economic trends and outlooks. BTOS data has been used by the Small Business Administration to evaluate the impact of regulatory changes. Use of the BTOS data (or additional requirements) is being determined by the Economic Development Agency (EDA) to understand the impact of natural disasters on U.S. businesses for the EDA to then guide the Federal Emergency Management Agency (FEMA) and/or policymakers in assisting in economic recovery support missions.

In the approved OMB package for BTOS, the Census Bureau proposed an incremental path to reach the full scope of BTOS. This request is the first scope expansion to propose adding multi-unit businesses (those with more than one location or establishment) to BTOS. BTOS is currently limited in scope to include only single-unit businesses. Despite comprising a relatively small share of the total number of businesses, multi-unit (MU) businesses are responsible for most of the employment, payroll, and revenue/sales in the United States and contribute disproportionately to economic activity. In addition, MU businesses are on average larger than single-unit businesses. Adding these businesses would help ensure that BTOS results are representative of the full economy. The Census Bureau still proposes an incremental path to the final scope of BTOS in order to learn at each implemented stage and to allow for modifications based on lessons learned or internal/external stakeholder feedback in prior iterations.

For the first year of BTOS, the content remained unchanged at 26 questions. After two rounds of cognitive testing and guidance from data users, the Census Bureau will move to a set of core questions and supplemental content, when needed. In addition to adding multi-unit businesses, the Census Bureau also proposes to change the content for the second year of BTOS collection. The majority of the content will be referred to as the core content and comprises most questions included on the BTOS instrument during the first year of collection. Core content includes measures of economic activity that are broadly applicable across non-farm sectors and are important across the business cycle and during economic or other emergencies. Core content is also complementary to key items found on other Economic surveys, such as revenues, employees, hours, and inventories. Core items may also include concepts that may become core topics. The core content remains an at approximately six minutes of burden. A skip pattern will be added for the new core concept of inventories to avoid additional burden if a business does not carry inventories.

Supplemental content will be included on the instrument as needed and with a regular periodicity. It will be designed to provide urgently needed data on an emerging or current issue. The supplement will include a set of questions that perform a deeper dive into a focused topic that requires timely data. The Census Bureau estimates the supplemental questions will impose an additional 2 minutes of burden.

Consideration for core and supplemental concepts will be based on data consistency, how the questions performed on the current BTOS, the results of cognitive testing, stakeholder feedback, and the ability to collect complementary items on monthly, quarterly, annual, or census programs to provide context and benchmarking. Thus, the Census Bureau is requesting three years of approval from OMB to expand the scope of BTOS to include multi-unit businesses and adjust the core and include supplemental content.

The Census Bureau will submit a request to OMB including 30 days of public comment announced in the **Federal Register** to receive approval to make any substantive revisions to the content or methods of the proposed survey, including incremental scope changes. It is likely new supplemental content will be chosen for each year and an updated instrument will be submitted to OMB for review along with a 30-day **Federal Register** Notice.

The BTOS is a survey with bi-weekly data collection and publication; estimates produced from the BTOS are released as experimental data products. The SBPS demonstrated the ability of the Census Bureau to collect and publish high frequency, timely data during a national economic emergency. The BTOS capitalizes on this success and provides regularly occurring high frequency data products and measures of quality based on national and subnational representative samples using transparent methodology. The BTOS produces data continuously, in part as a response to feedback on the SBPS that longer time series would have been useful to contextualize the pandemic impact. Continuous data allows for the measurement of economic trends during all phases of the business cycle as well as during times of economic and other emergencies. The BTOS uniquely provides the ability to produce these data and associated measures of quality.

The Census Bureau proposes to add multi-unit businesses to the target population of the BTOS beginning in the second year of data collection starting on September 11, 2023. Adding these businesses would help ensure that BTOS results are representative of the full economy. BTOS will continue to

publish data using standard business size class categories and will research the expansion of additional size classes for publication, thus continuing to be responsive to stakeholders whose missions include supporting small business research, analysis and advocacy and reflecting numerous requests from data users to monitor economic trends impacting small businesses. As with other Census Bureau data products, detailed methodology and measures of quality will be published for BTOS data products. BTOS products will be based on representative samples drawn from the full universe of businesses, making them unique and the results reliable when compared to other high frequency business survey data such as those produced in the private sector.

Core content on the BTOS is used to create high frequency economic measures including inputs (for example, employment and hours), outcomes (for example, output prices) and conditions faced by businesses (for example, demand). Survey responses are used to create national level as well as industry and geographically detailed diffusions indexes which are easily interpretable as measures of change over time for these core measures. No other federal statistical data products exist which provide high frequency measures such as those produced by BTOS.

Frequency: Bi-weekly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., sections 131 and 182.

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 0607–1022.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–15812 Filed 7–25–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2147]

Reorganization of Foreign-Trade Zone 84 (Expansion of Service Area) Under Alternative Site Framework; Houston, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Port of Houston Authority, grantee of Foreign-Trade Zone 84, submitted an application to the Board (FTZ Docket B–8–2023, docketed January 23, 2023) for authority to expand the service area of the zone to include Wharton County, Texas, as described in the application, adjacent to the Houston Customs and Border Protection port of entry;

Whereas, notice inviting public comment was given in the **Federal Register** (88 FR 4969, January 26, 2023) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiners' report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 84 to expand the service area under the ASF is approved, subject to the FTZ Act and the Board's regulations, including section 400.13, and to the Board's standard 2,000-acre activation limit for the zone.

Dated: July 21, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2023–15804 Filed 7–25–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2146]

Reorganization of Foreign-Trade Zone 84 (Expansion of Service Area) Under Alternative Site Framework; Houston, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Port of Houston Authority, grantee of Foreign-Trade Zone 84, submitted an application to the Board (FTZ Docket B–4–2023, docketed January 11, 2023) for authority to expand the service area of the zone to include Waller County, Texas, as described in the application, adjacent to the Houston Customs and Border Protection port of entry;

Whereas, notice inviting public comment was given in the **Federal Register** (88 FR 2602, January 17, 2023) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiners' report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 84 to expand the service area under the ASF is approved, subject to the FTZ Act and the Board's regulations, including section 400.13, and to the Board's standard 2,000-acre activation limit for the zone.

Dated: July 21, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2023–15803 Filed 7–25–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD137]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to In-Water Construction on Bainbridge Island, Washington

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

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization (IHA).

SUMMARY: NMFS received a request from Washington State Department of Transportation (WSDOT) Ferries Division for the renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to the Bainbridge Island Ferry Terminal Overhead Loading Replacement Project on Bainbridge Island, Washington within the Puget Sound. These activities consist of activities that are covered by the current authorization but will not be completed prior to its expiration. Pursuant to the Marine Mammal Protection Act, prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than August 10, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to *ITP.Wachtendonk@noaa.gov.* Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed below.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection*-act without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Rachel Wachtendonk, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA);

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than

minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.* Any comments received on the potential renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA renewal) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has preliminarily determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

History of Request

On September 16, 2022, NMFS issued an IHA to WSDOT to take marine mammals incidental to two in-water construction projects on Bainbridge Island, Washington, in the Puget Sound: the Bainbridge Island Ferry Terminal Overhead Loading Replacement Project and Eagle Harbor Maintenance Facility Slip F Improvement Project (87 FR 58313), effective from September 16, 2022 through September 15, 2023. On February 15, 2023, NMFS received an application for the renewal of that initial IHA. As described in the application for renewal IHA, the activities for which incidental take is requested, consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

Description of the Specified Activities and Anticipated Impacts

The WSDOT construction project consists of the Eagle Harbor Slip F Project (the Eagle Harbor Project) and the Bainbridge Ferry Overhead Loading Replacement Project (the Bainbridge Project). The Bainbridge Project consists of replacing the timber trestle and fixed steel portions of the overhead loading structure. This will require the installation of temporary work platforms, installation of a temporary walkway, installation of a new permanent walkway, the removal of the existing overhead loading walkway, and removal of all temporary work platforms and walkways. The Eagle Harbor Project consists of improving the maintenance efficiency of the facility. This will require replacing the existing gangplank system with a pile supported trestle, replacing the existing pair of timber dolphins with a pair of steel wingwalls and two fixed dolphins, and the removal of the existing timber walkway/trestle, four timber pile dolphins, and a U-float.

In total, the initial Bainbridge Project included the installation and removal of 39 24-inch (in) diameter temporary steel pipe piles, the installation of 26 permanent piles (14 30-in and 12 36-in steel pipe piles), and the removal of 76 12-in timber piles. All temporary and permanent piles would be installed first using a vibratory hammer to within 5 feet (ft; 1.5 meter (m)) of tip elevation, and then driven with an impact hammer to verify bearing capacity. The existing timber piles would be removed using a vibratory hammer. The vibratory and impact installation and vibratory extraction of the piles were expected to take up to 57 days of in-water work. The initial Eagle Harbor Project expected the installation of a new trestle supported by 9 24-in and 2 36-in steel pipe piles, the installation of the pair of steel wingwalls which would consist of 4 36-in steel reaction piles and 2 36-in fender piles, the installation of two fixed dolphins which would consist of 4 30-in diameter steel reaction piles and 1 36-inch diameter fender pile, and the removal of 186 12-in timber piles and 4 18-in steel piles. The piles supporting the trestle would be installed first using a vibratory hammer to within 5 ft (1.5 m) of tip elevation, and then driven with an impact hammer to verify bearing capacity. The installation of the wingwall and dolphin piles and the removal of the steel and timber piles would use a vibratory hammer only. The vibratory and impact installation and vibratory extraction of the piles was expected to take up to 31 days of in-water work.

Under the initial IHA, all work associated with the Eagle Harbor Slip F Project was completed over a 22-day period with use of a vibratory and impact hammer. For the Bainbridge Ferry Terminal Overhead Loading Replacement Project, all project related pile installation activities were completed over a 33-day period with use of a vibratory and impact hammer.

This renewal request is to cover the subset of the activities described for the initial IHA that will not be completed during the effective IHA period. WSDOT plans to remove all 45 12-inch steel pipe and timber piles through vibratory means between September 2023 and September 2024. WSDOT estimates it will take 30 minutes to remove a single pile, with up to 10 piles removed per day.

The likely or possible impacts of the WSDOT's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors and is unchanged from the impacts described in the initial IHA. Potential non-acoustic stressors could result from the physical presence of the equipment, vessels, and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile removal. The effects of underwater noise from the WSDOT's proposed activities have the potential to result in Level B harassment of marine mammals in the action area

Detailed Description of the Activity

A detailed description of the construction activities for which take is proposed here may be found in the notices of the proposed and final IHAs for the initial authorization (87 FR 48623, August 10, 2022; 87 FR 58313,

November 16, 2022). As previously mentioned, this request is for a subset of the activities anticipated in the initial IHA that would not be completed prior to its expiration. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notice for the initial IHA. WSDOT is requesting a renewal IHA for the vibratory removal of 45 12-in timber and steel pipe piles. The proposed renewal would be effective for a period not exceeding one year from the date of expiration of the initial IHA. The proposed renewal IHA would be effective from September 16, 2023 through September 15, 2024.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the notice of the proposed IHA for the initial authorization (87 FR 48623, August 10, 2022). NMFS has reviewed the monitoring data from the initial IHA, recent draft stock assessment reports, information on relevant unusual mortality events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the description of the marine mammals in the area of specified activities contained in the supporting documents for the initial IHA (87 FR 48623, August 10, 2022).

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which the authorization of take is proposed here may be found in the notice of the proposed IHA for the initial authorization (87 FR 48623, August 10, 2022). NMFS has reviewed the monitoring data from the initial IHA, recent draft stock assessment reports, information on relevant unusual mortality events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notices of the proposed and final IHAs for the initial authorization (87 FR 48623, August 10, 2022; 87 FR 58313, November 16, 2022). Specifically, days of operation, area or space within which harassment is likely to occur, and marine mammal occurrence data applicable to this authorization remain unchanged from the initial IHA. Similarly, the stocks taken, methods of take, daily take estimates and types of take remain unchanged from the initial IHA. The number of takes proposed for authorization in this renewal are a subset of the initial authorized takes that represent the amount of activity left to complete. These takes, which reflect the lower number of remaining days of work, are indicated below in Table 1.

TABLE 1—PROPOSED AMOUNT OF TAKING, BY LEVEL B HARASSMENT, BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Species	Stock	Proposed take	Percent of stock
Harbor seal	Washington Northern Inland Waters	60	0.5
California sea lion	U.S	3	<0.1
Steller sea lion	Eastern	1	<0.1
Killer whale	West Coast Transient	[1] 6	1.7
Harbor porpoise	Washington Inland Waters	9	<0.1

[1] Modeled take of 1 increased to typical group size (Ford *et al.* 2013).

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in the proposed renewal authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA, and the discussion of the least practicable adverse impact included in that document and the notice of the proposed IHA remains accurate. The following measures are proposed for this renewal:

- WSDOT must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction;
- Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead Protected Species Observer (PSO) to determine the shutdown zones clear of marine mammals. Construction may commence when the determination is made;
- Pile driving/removal activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone;
- WSDOT will establish and implement the shutdown zones. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones typically vary based on the activity type and marine mammal hearing group. Since the Level A harassment threshold is under 10 m for all hearing groups, the shutdown zone for all hearing groups will be 10 m;
- WSDOT must also implement shutdown measures for Southern Resident killer whales and humpback whales. If Southern Resident killer whales or humpback whales are sighted within the vicinity of the project areas and are approaching the Level B harassment zone, WSDOT must shut down the pile driving equipment to avoid possible take of these species. If a killer whale approaches the Level B harassment zone during pile driving, and it is unknown whether it is a Southern Resident killer whale or a transient killer whale, it must be assumed to be a Southern Resident killer whale and WSDOT would implement the shutdown measure. The shutdown zone for Southern Resident

killer whales, humpback whales, and other unauthorized species is 2,175 m;

- Prior to the start of pile driving for the day, the PSOs must contact the Orca Network to find out the location of the nearest marine mammal sightings;
- WSDOT must submit a draft report detailing all monitoring within 90 calendar days of the completion of marine mammal monitoring or 60 days prior to the issuance of any subsequent IHA for this project, whichever comes first;
- WSDOT must prepare and submit final report within 30 days following resolution of comments on the draft report from NMFS;
- WSDOT must submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above); and
- WSDOT must report injured or dead marine mammals.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (87 FR 48623, August 10, 2022) and solicited public comments on both our proposal to issue the initial IHA for the Bainbridge Island Ferry Terminal Overhead Loading Replacement Project and Eagle Harbor Maintenance Facility Slip F Improvement Project and on the potential for a renewal IHA, should certain requirements be met. During the 30-day public comment period, the United States Geological Survey provided a letter stating that it had no comment. No other comments were received on either the proposal to issue the initial IHA for the WSDOT's construction activities or on the potential for a renewal IHA.

Preliminary Determinations

The proposed renewal request consists of a subset of activities analyzed through the initial authorization described above. In analyzing the effects of the activities for the initial IHA, NMFS determined that the WSDOT's activities would have a negligible impact on the affected species or stocks and that authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third the abundance of all stocks). The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) WSDOT's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to WSDOT for conducting Bainbridge Island Ferry Terminal Overhead Loading Replacement Project (the Bainbridge Project) in Bainbridge Island, Washington, from September 16, 2023 through September 15 2024, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* We request comment on our analyses, the proposed renewal IHA, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: July 20, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–15755 Filed 7–25–23; 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; Processed Products Family of Forms

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 September 25, 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 0648–0018 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 Veronica Pereira, NOAA Fisheries Office of Science and Technology, 1315 East West Highway, Silver Spring, MD 20910, (301) 427–8117, *Veronica.Pereira@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for revision and extension of a current information collection. The National Oceanic and Atmospheric Administration (NOAA) Fisheries Service annually collects information from seafood and industrial fishing processing plants on the volume and value of their processed fishery products and their monthly employment figures. NOAA also collects monthly production volume of fish meal, oil, and solubles. The information gathered is used by NOAA

in the economic and social analyses developed when proposing and evaluating fishery management actions. The data are also used in annual reports such as Fisheries of the United States and is provided to other agencies, academia, and industry members as needed and allowed through the Magnuson Stevens Act.

This year, we are proposing to modify the survey to allow respondents to mark themselves as more than one type of operation (*i.e.,* Processor, wholesaler, cold storage, and/or other) and we are asking them to specify the number of processing line workers they have, if they are a processor.

II. Method of Collection

Responses are submitted by mail, via postage-paid envelopes provided by NOAA Fisheries. If preferred by the processor, an electronically fillable pdf can also be provided and transmitted via encrypted messaging. Lastly, as an alternative option, interested processors can request an online account to our Fisheries One Stop Shop (FOSS) portal and enter and submit data electronically.

III. Data

OMB Control Number: 0648–0018.

Form Number(s): NOAA Forms 88–13, 88–13C.

Type of Review: Regular submission, revision of a current information collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 620.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 310 hours.

Estimated Total Annual Cost to Public: $0.

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. 2023–15851 Filed 7–25–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD186]

International Affairs; Northwest Atlantic Fisheries Organization Consultative Committee Meeting

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a public meeting of the Northwest Atlantic Fisheries Organization Consultative Committee. This meeting will help to ensure that the interests of U.S. stakeholders in the fisheries of the Northwest Atlantic Ocean are adequately represented at the Annual Meeting of the Organization. Northwest Atlantic Fisheries Organization Consultative Committee members and all other interested U.S. stakeholders are invited to attend.

DATES: The meeting will be held August 16, 2023, from 1:30 p.m. to 3 p.m. EST.

ADDRESSES: The meeting will be held at National Marine Fisheries Service's Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Please notify Shannah Jaburek (see **FOR FURTHER INFORMATION CONTACT**) by August 16, 2023, if you plan to attend the meeting in person or remotely. The meeting will be accessible by webinar—instructions will be emailed to meeting participants who provide notice.

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, *Shannah.jaburek@noaa.gov,* (978) 282–8456.

SUPPLEMENTARY INFORMATION: The Northwest Atlantic Fisheries Organization (NAFO) is a regional fisheries management organization that coordinates scientific study and cooperative management of the fisheries resources of the Northwest Atlantic Ocean, excluding salmon, tunas/marlins, whales and sedentary species. NAFO was established in 1979 by the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries. The United States acceded to the Convention in 1995, and has participated actively in NAFO since that time. In 2005, NAFO launched a reform effort to amend the Convention in order to bring the Organization more in line with the principles of modern fisheries management. As a result of these efforts, the Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries entered into force in May 2017.

NAFO currently has 13 Contracting Parties, including Canada, Cuba, Denmark (in respect of Faroe Islands and Greenland), European Union, France (in respect of St. Pierre and Miquelon), Iceland, Japan, Norway, Republic of Korea, Russian Federation, Ukraine, the United Kingdom, and the United States.

16 U.S.C. 5607 provides that the Secretaries of Commerce and State shall jointly establish a NAFO Consultative Committee (NCC) to advise the Secretaries on issues related to the NAFO Convention. Membership in the NCC is open to representatives from the New England and Mid-Atlantic Fishery Management Councils, the States represented on those Councils, the Atlantic States Marine Fisheries Commission, the fishing industry, the seafood processing industry, and others knowledgeable and experienced in the conservation and management of fisheries in the Northwest Atlantic Ocean. NMFS, and the U.S. government more generally, are committed to advancing diversity, equity, inclusion, and accessibility at all levels, including within the communities we serve and protect. Consistent with this commitment, NMFS is taking steps aimed at increasing the diversity of stakeholder voices that represent the United States in our international fisheries engagements, including by promoting greater diversity and representation of underserved communities in the pool of potential candidates for appointment as NCC members. Through this notice, NMFS is

also taking steps to advance a transparent process that promotes equity, inclusion, and accessibility when seeking nominees to serve in these important roles. As such, NMFS encourages nominations for women and for individuals from underserved communities that meet the knowledge, experience, and other legal requirements of the positions described in this notice. *See* Executive Order (E.O.) 13985 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government) § 2 (defining ''underserved communities'' as ''populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life,'' ''such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.''). E.O. 13985 is available at *https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government.*

Members shall be appointed to a 2-year term and are eligible for reappointment. The NCC is exempted from the Federal Advisory Committee Act. NCC members are invited to attend all non-executive meetings of the U.S. Commissioners and at such meetings, and unless information at those meetings is otherwise protected, NCC members are given an opportunity to examine and to be heard on all proposed programs of study and investigation, reports, recommendations, and regulations of issues relating NAFO fisheries. In addition, NCC members may attend all public meetings of the NAFO Commission and any other meetings to which they are invited.

If you are interested in becoming a member of the NCC, please contact Shannah Jaburek (see **FOR FURTHER INFORMATION CONTACT**) for additional details. The NAFO Annual Meeting will be held September 22–28, 2023, in Vigo, Spain. Additional information about the meeting can be found at: *https://www.nafo.int/Meetings/AM.*

Special Accommodations

The meeting location is physically accessible to people with disabilities.

Dated: July 20, 2023.

Alexa Cole,

Director, NOAA Fisheries Office of International, Affairs, Trade, and Commerce.

[FR Doc. 2023–15756 Filed 7–25–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD163]

Takes of Marine Mammals Incidental To Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Offshore of New Jersey

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Ocean Wind II, LLC (Ocean Wind II) to incidentally harass marine mammals during marine characterization surveys off New Jersey.

DATES: This Authorization is effective from July 31, 2023, through July 30, 2024.

ADDRESSES: Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Carter Esch, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

History of Request

On October 1, 2021, NMFS received a request from Ocean Wind II for an IHA to take marine mammals incidental to high-resolution geophysical (HRG) marine site characterization surveys offshore of New Jersey in the area of the Bureau of Ocean Energy Management's (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Area (OCS–A) 0532 and associated Export Cable Route (ECR) area. Ocean Wind II requested authorization to take small numbers of 16 species (comprising 17 stocks) of marine mammals by Level B harassment only. NMFS published a notice of the proposed IHA in the **Federal Register** on March 16, 2022 (87 FR 14823). After a 30-day public comment period and consideration of all public comments received, we subsequently issued the IHA on May 19, 2022 (87 FR 30453), which was effective from May 10, 2022 through May 9, 2023.

Ocean Wind II conducted the required marine mammal mitigation and monitoring and did not exceed the authorized levels of take under previous IHAs issued for surveys offshore of New Jersey (see 87 FR 30452, May 19, 2022). These previous monitoring results are available to the public on our website: *https://www.fisheries.noaa.gov/action/*

incidental-take-authorization-ocean-wind-ii-llc-marine-site-characterization-surveys-new.

On March 3, 2023, NMFS received a request from Ocean Wind II for an IHA to take marine mammals incidental to HRG marine site characterization surveys offshore of New Jersey in BOEM Lease Area OCS–A 0532 and associated ECR area. Following NMFS' review of the application, Ocean Wind II submitted a revised request on April 30, 2023. The application (the 2023 request) was deemed adequate and complete on May 2, 2023. Ocean Wind II's request is for take of 16 species (comprising 17 stocks) of marine mammals, by Level B harassment only. Neither Ocean Wind II nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

The activities described in Ocean Wind II's 2023 IHA request, the overall survey duration, the project location, and the acoustic sources Ocean Wind II will use are identical to what was previously analyzed in support of the previously issued 2022 IHA. All mitigation, monitoring, and reporting requirements remain the same. However, NMFS determined a renewal of the 2022 IHA is not appropriate in this case because, after issuance of the 2022 IHA, Duke University's Marine Geospatial Ecology Laboratory released updated marine mammal density information (June 20, 2022) for all species in the project area (*https://seamap.env.duke.edu/models/Duke/EC*), which NMFS determined represents the best available scientific data. In evaluating the 2023 request, which incorporates the updated density information, and to the extent deemed appropriate, NMFS relied substantially on the information presented in notices associated with issuance of the 2022 IHA (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022).

No changes were made from the proposed to the final IHA.

Description of the Activity and Anticipated Impacts

Overview

Ocean Wind II will conduct HRG marine site characterization surveys in the BOEM Lease Area OCS–A 0532 and along potential submarine ECRs to landfall locations in New Jersey. As compared to the 2022 IHA (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022), Ocean Wind II revised their project area map (see Figure 1 in 88 FR 38491, June 13, 2023) to be more representative of the actual area in which HRG surveys will occur. The Lease Area is approximately 344 square kilometers (km^2) and is within the New Jersey Wind Energy Area (WEA) of BOEM's Mid-Atlantic planning area. The total survey area depicted encompasses 3,801 km^2. Water depths in the Lease Area range from 14 meters (m) to 38 m, and the potential ECRs extend from the shoreline to approximately 30 m depth.

The purpose of these surveys is to support the site characterization, siting, and engineering design of offshore wind project facilities, including wind turbine generators, offshore substations, and submarine cables within the Lease Areas and along the ECRs. Survey equipment will be deployed from multiple vessels or remotely operated vehicles (ROVs) during site characterization activities in the project area; however, only one vessel will operate at a time in the Lease Area and ECR area (two vessels total). During survey effort, vessels will operate at a maximum speed of 4 knots (4.6 miles or 7.4 km per hour). Up to 275 survey days will occur, where a ''survey day'' is defined as a 24-hour activity period in which active HRG acoustic sound sources with expected potential to result in take of marine mammals are used.

Underwater sound resulting from Ocean Wind II's survey activities during use of specific active acoustic sources has the potential to result in incidental take of marine mammals in the form of behavioral harassment (Level B harassment). Geophysical activities were discussed previously for 2022 IHA NMFS issued to Ocean Wind II (see 87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022) and, as no new information has been presented that changed our determinations on these activities, this information will not be reiterated here. The mitigation, monitoring, and reporting measures are described in more detail later in this document (please see Mitigation and Monitoring and Reporting).

A detailed description of Ocean Wind II's planned surveys is provided in the **Federal Register** notice of the proposed IHA (88 FR 38491, June 13, 2023) and the 2022 IHA **Federal Register** notice (87 FR 14823, March 16, 2022). Since that time, no changes have been made to the survey activities. Therefore, a detailed description is not provided here. Please refer to those **Federal Register** notices for the description of the specified activities.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to Ocean Wind II was published in the **Federal Register** on June 13, 2023 (88 FR 38491), beginning a 30-day comment period. That notice described Ocean Wind II's proposed activities, the marine mammal species that may be affected by these activities, and the anticipated effects on marine mammals. We requested public input on the request for authorization described therein, our analyses, and the proposed authorization, and requested that interested persons submit relevant information, suggestions, and comments.

NMFS received 144 comment letters. Three of these comment letters were from non-governmental organizations: the Responsible Offshore Development Alliance (RODA), Clean Ocean Action (COA), and Green Oceans, and one was from Warwick Group Consultants on behalf of Cape May County in New Jersey. The remaining 140 comment letters were from private citizens. The majority of these expressed general opposition to issuance of the IHA or to the underlying associated activities, but without providing specific information relevant to NMFS' request for public comment. Seven of the letters from private citizens provided substantive comments that are addressed below.

We reiterate here that NMFS' action concerns only the authorization of marine mammal take incidental to the planned surveys—NMFS' authority under the MMPA does not extend to the surveys themselves or to wind energy development more generally. Many of the comments requested that NMFS not issue any IHAs related to wind energy development and/or expressed opposition for wind energy development generally without providing information relevant to NMFS' decision to authorize take incidental to Ocean Wind II's survey activities. We do not specifically address comments expressing general opposition to activities related to wind energy development or respond to comments not relevant to the scope of the proposed IHA (88 FR 38491; June 13, 2023), such as comments on other Federal agency processes and activities not authorized under this IHA (*e.g.,* seismic surveys, offshore wind construction, installation of wind turbines, other marine site characterization surveys).

All substantive comments and NMFS' responses are provided below, and all substantive comments are available online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* Please see the comment letters for full details regarding the comments and associated rationale.

Comment: Green Oceans claims that the proposed IHA did not address how

increasing ocean noise will impact masking of ''interspecies cooperation and communication,'' and their ''survival,'' as a result.

Response: NMFS agrees that noise pollution in marine waters is an issue with the potential to affect marine mammals, including their ability to communicate when noise reaches certain thresholds. NMFS disagrees that the potential impacts of masking were not properly considered. NMFS acknowledges our understanding of the scientific literature that Green Oceans cited but, fundamentally, the masking effects to any one individual whale from one survey are expected to be minimal. Masking is referred to as a chronic effect because one of the key harmful components of masking is its duration—the fact that an animal would have reduced ability to hear or interpret critical cues becomes much more likely to cause a problem the longer it is occurring. Also, inherent in the concept of masking is the fact that the potential for the effect is only present during the times that the animal and the source are in close enough proximity for the effect to occur (and further this time period would need to coincide with a time that the animal was utilizing sounds at the masked frequency) and, as our analysis (both quantitative and qualitative components) indicates, because of the relative movement of whales and vessels, we do not expect these exposures with the potential for masking to be of a long duration within a given day. Further, because of the relatively low density of mysticetes, and relatively large area over which the vessels travel, we do not expect any individual whales to be exposed to potentially masking levels from these surveys for more than a few days in a year.

As noted above, any masking effects of this survey are expected to be limited and brief, if present. Given the likelihood of significantly reduced received levels beyond even short distances from the survey vessel, combined with the short duration of potential masking and the lower likelihood of extensive additional contributors to background noise offshore and within these short exposure periods, we believe that the incremental addition of the survey vessel is unlikely to result in more than minor and short-term masking effects, likely occurring to some small number of the same individuals captured in the estimate of behavioral harassment.

Comment: Multiple commenters expressed concern that negative impacts to the local fishing industry and coastal communities as a result of a potentially adverse impact to marine mammals (*e.g.,* vessel strike resulting in death or severe injury) were not mentioned or evaluated in this IHA. RODA specifically noted concern regarding existing fishery restrictions as a result of other North Atlantic right whale (NARW) protections.

Response: Neither the MMPA nor our implementing regulations require NMFS to analyze impacts to other industries (*e.g.,* fisheries) or coastal communities from issuance of an incidental take authorization (ITA). Moreover, NMFS has determined that no serious injury or mortality is anticipated to result from Ocean Wind II's specified activities and as discussed in the Negligible Impact Analysis and Determination section in this notice, only low-level behavioral harassment is expected for any affected species. For NARW in particular, it is considered unlikely, as a result of the required precautionary shutdown zone (*i.e.,* 500 m versus the estimated maximum Level B harassment zone of 141 m), that the authorized take would occur at all.

Comment: Two commenters asserted that NMFS must deny all actions until the cumulative impacts of every incidental take authorization on marine mammals are considered. COA asserted that NMFS must fully consider the discrete effects of each activity and the cumulative effects of the suite of approved, proposed, and potential OSW activities on marine mammals and NARW, in particular, and ensure that the cumulative effects are not excessive before issuing or renewing an IHA. Green Oceans claims that NMFS failed to accurately define the environmental baseline, provides a ''deficient accounting of relevant ongoing stressors,'' and does not ''properly consider the cumulative and interaction effects of this project with other projects in the area,'' including cumulative incidental take across projects. In addition, Green Oceans claims that NMFS failed to consider the ''additive and adverse synergistic effects'' of the potential exposure of marine mammals to multiple wind development activities in the same region.

Response: NMFS is required to authorize the requested incidental take if it finds the incidental take by harassment of small numbers of marine mammals by U.S. citizens ''*while engaging in that [specified] activity*'' within a specified geographic region will have a negligible impact on such species or stock and where appropriate, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. 16 U.S.C. 1371(a)(5)(D). Negligible impact is defined as ''an impact *resulting from the specified activity* that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effect on annual rates of recruitment or survival. 50 CFR 216.103. Neither the MMPA nor NMFS' implementing regulations require consideration of other unrelated activities and their impacts on marine mammal populations in the negligible impact determination. In this case, this IHA, as well as other IHAs currently in effect or proposed within the specified geographic region, are appropriately considered an unrelated activity relative to the others. The IHAs are unrelated in the sense that they are discrete actions under section 101(a)(5)(D), issued to discrete applicants. Additionally, NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. 50 CFR 216.104(a)(1). Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, Ocean Wind II was the applicant for the IHA, and we are responding to the specified activity as described in that application and making the necessary findings on that basis. Consistent with the preamble of NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are factored into the baseline, which is used in the negligible impact analysis. Here, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline (*e.g.,* as reflected in the density, distribution and status of the species, population size and growth rate, and other relevant stressors).

The preamble of NMFS' implementing regulations (54 FR 40338, September 29, 1989) also addresses cumulative effects from future, unrelated activities. Such effects are not considered in making the negligible impact determination under MMPA section 101(a)(5). NMFS considers 1) cumulative effects that are reasonably foreseeable when preparing a National Environmental Policy Act (NEPA) analysis, and (2) reasonably foreseeable cumulative effects under section 7 of the ESA for ESA-listed species, as appropriate. Accordingly, NMFS has written Environmental Assessments (EA) that addressed cumulative impacts related to substantially similar activities

in similar locations (*e.g.,* the 2019 Avangrid EA for survey activities offshore North Carolina and Virginia; the 2017 Ocean Wind, LLC EA for site characterization surveys off New Jersey; and the 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island). Cumulative impacts regarding issuance of IHAs for site characterization survey activities such as those planned by Ocean Wind II have been adequately addressed under NEPA in prior environmental analyses that support NMFS' determination that this action is appropriately categorically excluded from further NEPA analysis. NMFS independently evaluated the use of a categorical exclusion (CE) for issuance of Ocean Wind II's IHA, which included consideration of extraordinary circumstances.

Separately, the cumulative effects of substantially similar activities in the northwest Atlantic Ocean have been analyzed in the past under section 7 of the ESA when NMFS has engaged in formal intra-agency consultation, such as the 2013 programmatic Biological Opinion for BOEM Lease and Site Assessment Rhode Island, Massachusetts, New York, and New Jersey Wind Energy Areas (*https://repository.library.noaa.gov/view/noaa/29291*). Analyzed activities include those for which NMFS issued previous IHAs (82 FR 31562, July 7, 2017; 83 FR 28808, June 21, 2018; 83 FR 36539, July 30, 2018; and 86 FR 26465, May 10, 2021), which are similar to those planned by Ocean Wind II under this current IHA request. This Biological Opinion (BiOp) determined that NMFS' issuance of IHAs for site characterization survey activities associated with leasing, individually and cumulatively, are not likely to adversely affect listed marine mammals. NMFS notes that, while issuance of this IHA is covered under a different consultation, this BiOp remains valid.

Comment: Multiple commenters urged NMFS to deny the proposed project and/or postpone any offshore wind (OSW) activities until NMFS determines effects of all OSW activities on marine mammals in the region and determines that the recent whale deaths are not related to OSW activities. Similarly, some commenters provided general concerns regarding recent whale stranding events on the Atlantic Coast, including speculation that the strandings may be related to wind energy development-related activities and that Ocean Wind II's surveys could lead to marine mammal mortalities. However, the commenters did not provide any specific information supporting these concerns.

Green Oceans suggests that the surveys may result in acute injury of whales as a result of rectified diffusion, *i.e.,* bubble growth caused by acoustic exposure.

Response: NMFS authorizes take of marine mammals incidental to marine site characterization surveys but does not authorize the surveys themselves. Therefore, while NMFS has the authority to modify, suspend, or revoke an IHA if the IHA holder fails to abide by the conditions prescribed therein (including, but not limited to, failure to comply with monitoring or reporting requirements), or if NMFS determines that (1) the authorized taking is having or is likely to have more than a negligible impact on the species or stocks of affected marine mammals, or (2) the prescribed measures are likely not or are not effecting the least practicable adverse impact on the affected species or stocks and their habitat, it is not within NMFS' jurisdiction to impose a moratorium on offshore wind development or to require surveys to cease on the basis of unsupported speculation.

NMFS reiterates that there is no evidence that noise resulting from offshore wind development-related site characterization surveys could potentially cause marine mammal strandings, and there is no evidence linking recent large whale mortalities and currently ongoing surveys. The commenters offer no such evidence. NMFS will continue to gather data to help us determine the cause of death for these stranded whales. We note the Marine Mammal Commission's recent statement: ''There continues to be no evidence to link these large whale strandings to offshore wind energy development, including no evidence to link them to sound emitted during wind development-related site characterization surveys, known as HRG surveys. Although HRG surveys have been occurring off New England and the mid-Atlantic coast, HRG devices have never been implicated or causatively-associated with baleen whale strandings.'' (Marine Mammal Commission Newsletter, Spring 2023).

There is an ongoing Unusual Mortality Event (UME) for humpback whales along the Atlantic coast from Maine to Florida, which includes animals stranded since 2016. Partial or full necropsy examinations were conducted on approximately half of the whales. Necropsies were not conducted on other carcasses because they were too decomposed, not brought to land, or stranded on protected lands (*e.g.,* national and state parks) with limited or no access. Of the whales examined (roughly 90), about 40 percent had evidence of human interaction, either ship strike or entanglement. Vessel strikes and entanglement in fishing gear are the greatest human threats to large whales. The remaining 50 necropsied whales either had an undetermined cause of death (due to a limited examination or decomposition of the carcass), or had other causes of death including parasite-caused organ damage and starvation.

With regard to Green Oceans' suggestion that acute injury of whales could occur as a result of bubble formation, this effect is extremely unlikely to occur in the circumstances considered here, *i.e.,* relatively low-level sound exposure in shallow waters. We acknowledge that non-auditory physiological effects or injuries can theoretically occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound. These include neurological effects, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007). The bubble formation, or rectified diffusion, referenced by Green Oceans is another such effect (*e.g.,* Houser *et al.,* 2001; Tal *et al.,* 2015). However, the survey activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that produce the high-intensity sounds that are associated with these types of effects. While these bubble formation effects remain a theoretical potential cause of marine mammal stranding, it is important to note that theoretical analysis of this potential considers as necessary precedent the condition of deep diving and slow ascent/descent speed, which contributes to increased gas-tissue saturation, prior to high-intensity sound exposure. The survey conditions here, aside from the absence of the high-intensity sound that would be expected to be necessary to cause this effect, preclude the deep diving conditions in which gas supersaturation and the potential for bubble growth might occur—as noted previously, the maximum survey depth is 38 m. Houser *et al.* (2001) emphasize the importance of dive depth to the rectified diffusion concept in marine mammals, stating that beaked whales and sperm whales (species not expected to be impacted by the proposed survey) may be at greatest risk, with other odontocete species at

lesser potential risk. Green Oceans focused its concern on ''whales,'' which we presume to mean mysticete species, which would be at even lower risk due to typically shallow dive patterns. In summary, the concern raised by Green Oceans regarding potential injury resulting from rectified diffusion is unwarranted due to the shallow survey depths, which preclude the gas-tissue saturation conditions necessary to potentially lead to bubble formation, and the lack of high-intensity sounds necessary to cause bubble expansion.

Acoustic sources used in these HRG surveys are very different from seismic airguns used in oil and gas surveys and produce much smaller impact zones because, in general, they have lower source levels and produce output at higher frequencies. The area within which HRG sources might behaviorally disturb a marine mammal is orders of magnitude smaller than the impact areas for seismic airguns or military sonar. Any marine mammal exposure would be at significantly lower levels and shorter duration, which is associated with less severe impacts to marine mammals.

The best available science indicates that only Level B harassment, or disruption of behavioral patterns (*e.g.,* avoidance), may occur as a result of Ocean Wind II's HRG surveys. NMFS emphasizes that there is no credible scientific evidence available suggesting that mortality and/or serious injury is a potential outcome of the planned survey activity. Additionally, NMFS cannot authorize mortality or serious injury via an IHA, and such taking is prohibited under Condition 3(c) of the IHA and may result in modification, suspension, or revocation of the IHA. NMFS notes there has never been a report of any serious injuries or mortalities of a marine mammal associated with site characterization surveys.

We also refer to the Greater Atlantic Regional Fisheries Office (GARFO) 2021 Programmatic Consultation, which finds that these survey activities are in general not likely to adversely affect ESA-listed marine mammal species (*i.e.,* GARFO's analysis conducted pursuant to the ESA finds that marine mammals are not likely to be taken at all (as that term is defined under the ESA), much less be taken by serious injury or mortality). That document is found at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation.*

Comment: Green Oceans claims that the proposed IHA does not properly value biodiversity in its assessment of harm and that ''impacts to the abundance or distribution of marine mammals can disrupt vital systems that regulate the ocean and the climate.''

Response: Green Oceans provides no further development of this comment, *e.g.,* in what way it believes that the MMPA requires that ''biodiversity'' be accounted for in the analyses required under the MMPA, how it believes that these surveys would be likely to impact the abundance or distribution of marine mammals, or how such impacts might be likely to disrupt unspecified ''vital systems.'' However, we reiterate that the magnitude of behavioral harassment authorized is very low and the severity of any behavioral responses are expected to be primarily limited to temporary displacement and avoidance of the area when some activities that have the potential to result in harassment are occurring (see Negligible Impact Determinations section for our full analysis). NMFS does not anticipate that marine mammals would be permanently displaced or displaced for extended periods of time from the area where Ocean Wind II marine site characterization surveys would occur, and commenters do not provide evidence that this effect should be a reasonably anticipated outcome of the specified activity. We expect temporary avoidance to occur, at worst, but that is distinctly different from displacement, which suggests longer-term, reduced usage of habitat. Similarly, NMFS is not aware of any scientific information suggesting that the survey activity would cause meaningful shifts in abundance and distribution of marine mammals and disagrees that this would be a reasonably anticipated effect of the specified activities. The authorized take of NARWs by Level B harassment is precautionary but considered unlikely as NMFS' take estimation analysis does not account for the use of mitigation and monitoring measures (*e.g.,* the requirement for Ocean Wind II to implement a shutdown zone for NARWs (500 m) that is more than three times as large as the estimated harassment zone (141 m)). These requirements are expected to largely eliminate the actual occurrence of Level B harassment events and to the extent that harassment does occur, would minimize the duration and severity of any such events. Level B harassment authorized by this IHA is not expected to negatively impact abundance or distribution of other marine mammal species particularly given that it does not account for the suite of mitigation and monitoring measures NMFS has prescribed, and would be comprised of temporary low severity impacts, with no lasting biological consequences. Therefore, even if marine mammals are in the area of the specified activities, a displacement impact is not anticipated.

Comment: RODA expressed concern regarding increased vessel traffic associated with OSW development generally and asserted that vessel speed restrictions are not ''fully mandated or enforced for OSW vessels.''

Response: NMFS appreciates the commenter's concern regarding the potential for an overall increase in vessel traffic at the regional scale. However, we also note that concerns regarding the potential impacts of wind energy development in general are outside the scope of this specific action (*i.e.,* issuance of an IHA associated with a specific HRG survey). NMFS takes seriously the risk of vessel strike and has prescribed measures to avoid the potential for vessel strike, despite a very low likelihood, to the extent practicable. The full list of mitigation measures can be found in Condition 4(m) of the IHA and in the Mitigation section of this notice. In addition, vessels towing survey gear travel at very slow speeds (4 kn) (4.6 miles or 7.4 km per hour) (reducing the already low likelihood of strike), and vessels associated with the survey activity will add a discountable amount of vessel traffic to the specific geographic region. We have determined that the IHA's vessel strike avoidance measures are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. Furthermore, NMFS is unaware of any vessel strikes related to marine site characterization surveys.

RODA's reference to vessel speed restrictions being ''not fully mandated'' is unclear. NMFS refers again to its required vessel strike avoidance measures (see Condition 4(m)(ii) of the issued IHA), which requires that all vessels, regardless of size, observe a 10-knot (11.5 miles or 18.5 km per hour) speed restriction in Seasonal Management Areas (SMAs), Dynamic Management Areas (DMAs), and Slow Zones. Similarly, RODA does not provide a rationale for its suggestion that vessel speed restrictions are not enforced. We note that NMFS maintains an Enforcement Hotline for members of the public to report violations of vessel speed restrictions. Further, the IHA states that the IHA may be modified, suspended, or revoked if the holder fails to abide by the conditions prescribed therein.

Comment: Commenters stated that NMFS was not utilizing the best available science when assessing

impacts to marine mammals. Green Oceans asserted that NMFS had not fully considered the effect of the project on NARWs, claiming that ''90% of the population could be affected'' by the proposed survey.

Response: NMFS relied upon the best scientific evidence available, including, but not limited to, the most recent Stock Assessment Report (SAR) data, scientific literature, and Duke University's density models (Roberts *et al.,* 2022), in analyzing the impacts of Ocean Wind II's specified activities on marine mammals. While commenters suggest generally that NMFS consider the best scientific evidence available, none of the commenters provided additional relevant scientific information for NMFS to consider.

NMFS determined that Ocean Wind II's surveys have the potential to take marine mammals by Level B harassment and does not anticipate or authorize mortality (death), serious injury, or Level A harassment of any marine mammal species, including NARW. Ocean Wind II requested and NMFS is authorizing only two takes of NARWs by Level B harassment, which is less than 1 percent of the population. Further, NMFS does not expect that the generally short-term, intermittent, and transitory nature of Ocean Wind II' s marine site characterization survey activities will create conditions of acute or chronic acoustic exposure leading to long-term physiological stress responses in marine mammals.

Comment: RODA stated that, to their knowledge, there are no resources easily accessible to the public to understand what authorizations are required for each of these activities (pre-construction surveys, construction, operations, monitoring surveys, *etc.*). RODA recommends that NMFS improve the transparency of this process, and both RODA and Green Oceans recommend that NMFS move away from what it refers to as a ''segmented phase-by-phase and project-by-project approach to IHAs,'' which then leads to a ''segmented understanding'' of overall impacts. In addition, Green Oceans asserts that NMFS must conduct a programmatic analysis of the impacts of offshore wind development. RODA also requested a ''comprehensive list/table of all Level A and Level B takes under currently approved authorizations per project, as well as Level A and Level B takes per project being requested in all authorization applications currently under review.''

Response: The MMPA and its implementing regulations allow for the authorization, upon request, of incidental take of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographic region. NMFS authorizes the requested incidental take of marine mammals if it finds that the taking would be of small numbers, have no more than a ''negligible impact'' on the marine mammal species or stock, and not have an ''unmitigable adverse impact'' on the availability of the species or stock for subsistence use. NMFS refers RODA to its website for more information on the marine mammal incidental take authorization process and timelines: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

NMFS emphasizes that an IHA does not authorize the activity itself but authorizes the take of marine mammals incidental to the ''specified activity'' for which incidental take coverage is being sought. In this case, NMFS is responding to Ocean Wind II's request to incidentally take marine mammals while engaged in marine site characterization surveys and determining whether the necessary findings can be made based on Ocean Wind II's application. Green Ocean's assertion that NMFS must conduct a programmatic analysis of the impacts of offshore wind development is outside the scope of this IHA. The authorization of Ocean Wind II's survey activities is not within NMFS' jurisdiction. NMFS refers RODA to BOEM's website: *https://www.boem.gov/renewable-energy.*

A list of all proposed and issued IHAs for renewable energy activities, such as Ocean Wind II's marine site characterization surveys, including the requested, proposed, and/or authorized take is available on the agency website at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.*

Comment: Green Oceans states that the ''precautionary principle'' does not allow NMFS to authorize the ''introduction of stressors'' to populations undergoing an Unusual Mortality Event (UME), that authorization of take for such species ''violates the spirit and intent of the MMPA,'' and that NMFS is ''precluded from authorizing wind energy development'' in habitat utilized by relevant species for which there are active UMEs (*i.e.,* humpback, minke, and North Atlantic right whales).

Response: Green Oceans refers to supposed standards that do not exist in the MMPA, *e.g.,* the MMPA contains no reference to the ''precautionary principle,'' and fails to adequately explain its supposition that NMFS has violated the ''spirit and intent'' of the MMPA. As described previously, an IHA does not authorize or allow the activity itself but authorizes the take of marine mammals incidental to the ''specified activity'' for which incidental take coverage is being sought. In this case, NMFS is responding to Ocean Wind II's request to incidentally take marine mammals while engaged in marine site characterization surveys and determining whether the necessary findings can be made based on Ocean Wind II's application. The authorization of Ocean Wind II' s survey activities, or any other activities that introduce stressors, is not within NMFS' jurisdiction.

Regarding UMEs, the MMPA does not preclude authorization of take for species or stocks with ongoing UMEs. Rather, NMFS considers the ongoing UME as part of the environmental baseline for the affected species or stock as part of its negligible impact analyses. Elevated NARW mortalities began in June 2017 and there is an active UME. Overall, preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of NARWs. As noted previously, the survey area overlaps a migratory corridor for NARWs. Due to the fact that the survey activities are temporary and the spatial extent of sound produced by the survey would be very small relative to the spatial extent of the available migratory habitat in the BIA, NARW migration is not expected to be impacted by the survey. Given the relatively small size of the ensonified area, it is unlikely that prey availability would be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of ship strike during migration; no ship strike is expected to occur during Ocean Wind II's planned activities. Additionally, only very limited take by Level B harassment of NARWs has been requested and has been authorized by NMFS as HRG survey operations are required to maintain a 500 m EZ and shutdown if a NARW is sighted at or within the EZ. The 500 m shutdown zone for NARWs is conservative, considering the Level B harassment isopleth for the most impactful acoustic source (*i.e.,* sparker) is estimated to be 141 m, and thereby minimizes the potential for behavioral harassment of this species. As noted previously, Level A harassment is not expected due to the small PTS zones associated with HRG equipment types proposed for use. NMFS does not anticipate NARWs takes

that would result from Ocean Wind II's activities would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales. The minke whale UME is currently non-active, with closure pending.

The required mitigation measures are expected to reduce the number and/or severity of takes for all species in Table 2, including those with active UMEs, to the level of least practicable adverse impact. In particular they would provide animals the opportunity to move away from the sound source throughout the survey area before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury (Level A harassment) or more severe Level B harassment. No Level A harassment is anticipated, even in the absence of mitigation measures, or authorized.

NMFS expects that takes would be in the form of short-term Level B behavioral harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals would only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures would further reduce exposure to sound that could result in more severe behavioral harassment.

Comment: RODA expressed concern regarding the potential for increased uncertainty in estimates of marine mammal abundance resulting from wind turbine presence during aerial surveys and potential effects on NMFS' ability to continue using current aerial survey methods to fulfill its mission of precisely and accurately assessing protected species.

Response: NMFS has determined that OSW development projects may impact several Northeast Fisheries Science Center (NEFSC) surveys, including aerial surveys for protected species. NEFSC has developed a Federal survey mitigation program to mitigate the impacts to these surveys and is in the early stages of implementing this program. However, this impact is outside the scope of analysis related to the authorization of take incidental to Ocean Wind II's specified activity under the MMPA.

Comment: RODA commented that additional clarification should be added to the IHA that explicitly states if weather or other conditions that limit the range of observation occurs, shutdown will be initiated. RODA also questioned the feasibility of the shutdown mitigation requirements in real-world conditions and what would occur if the authorized take levels were exceeded.

Response: In regards to a scenario where Ocean Wind II exceeds their authorized take levels, any further take would be unauthorized and, therefore, prohibited under the MMPA. All mitigation measures stated in this notice and in the issued IHA are considered feasible. NMFS works with each ITA applicant, including Ocean Wind II, to ensure that project-specific mitigation measures are possible in real-world conditions. This includes shutdown zones when there is reduced visibility. As stated in the IHA condition 5(d), Ocean Wind II must ensure certain equipment is provided to protected species observers (PSOs), such as thermal (infrared) cameras, to allow PSOs to adequately complete their duties, including in reduced-visibility conditions. NMFS does not agree that additional wording is necessary within the IHA to further describe the requirement and implementation of shutdown zones. If NMFS determines during the effective period of the IHA that the prescribed measures are likely not or are not effecting the least practicable adverse impact on the affected species or stocks and their habitat, NMFS may modify, suspend, or revoke the IHA. NMFS disagrees that the IHA's mitigation measures are insufficient.

NMFS reviews required reporting (see Monitoring and Reporting) and uses the information to evaluate the mitigation measures' effectiveness. Additionally, the mitigation measures included in Ocean Wind II's IHA are not unique, and data from prior IHAs support the effectiveness of these mitigation measures. NMFS finds the level of reporting currently required is sufficient for managing the issued IHA and monitoring the affected stocks of marine mammals.

Comment: Some commenters objected to NMFS' ''small numbers'' determination for the numbers of marine mammals, particularly NARWs, taken by Level B harassment under Ocean Wind II's planned activities. Green Oceans claims that NMFS' determination is ''arbitrary and capricious,'' in part because it fails to account for the total amount of take for a given species across all current wind development activities for which NMFS has issued ITAs. Green Oceans also claims that, for Ocean Wind II, NMFS is violating the ''intent of the MMPA'' by proposing to authorize incidental take for ''over 12 percent of the stock for over 8 species.'' Green Oceans also states that NMFS' small numbers finding ''fails to consider the conservation status of the [NARW].''

Response: NMFS disagrees with the commenters' arguments on the topic of small numbers. Ocean Wind II requested, and NMFS proposed to authorize, incidental take that amounts to less than 22 percent for Western North Atlantic, Northern Migratory Coastal stock of bottlenose dolphins, less than 3 percent for the Western North Atlantic Offshore stock of bottlenose dolphins, and less than 1 percent of all other stocks (including the NARW), values which do not align with those presented by Green Oceans—which do not appear to relate to the proposed action.

Although there is limited legislative history available to guide NMFS and an apparent lack of biological underpinning to the concept, we have worked to develop a reasoned approach to small numbers. NMFS explains the concept of ''small numbers'' in recognition that there could also be quantities of individuals taken that would correspond with ''medium'' and ''large'' numbers. As such, for an individual incidental take authorization, NMFS considers that one-third of the most appropriate population abundance number—as compared with the assumed number of individuals taken—is an appropriate limit with regard to ''small numbers.'' This relative approach is consistent with the statement from the legislative history that ''[small numbers] is not capable of being expressed in absolute numerical

limits'' (H.R. Rep. No. 97–228, at 19 (September 16, 1981)), and relevant case law (*Center for Biological Diversity* v. *Salazar,* 695 F.3d 893, 907 (9th Cir. 2012) (holding that the U.S. Fish and Wildlife Service reasonably interpreted ''small numbers'' by analyzing take in relative or proportional terms)). As noted above, there is no biological significance associated with ''small numbers'' and, as such, NMFS appropriately does not consider ''conservation status'' or other issues related to the status of a species or stock in making its small numbers finding. Instead, these concepts are appropriately considered as part of the negligible impact analysis—consideration of ''conservation status'' as part of the small numbers finding, as Green Oceans suggests, would inappropriately conflate these two independent findings. NMFS has made the necessary small numbers finding for all affected species and stocks specifically for the issuance of the Ocean Wind II IHA.

Comment: Green Oceans noted that chronic stressors, including anthropogenic noise, are an emerging concern for NARW conservation and recovery, and stated that chronic stress may result in energetic effects for NARWs. Green Oceans suggested that NMFS has not fully considered both the use of the area and the effects of acute and chronic stressors from all offshore wind development activities on the health and fitness of NARWs, as disturbance responses in NARWs could lead to chronic stress or habitat displacement and/or abandonment, leading to an overall decline in their health and fitness.

Response: NMFS agrees with Green Oceans that both acute and chronic stressors are of concern for NARW conservation and recovery. We recognize that acute stress from acoustic exposure is one potential impact of these surveys, and that chronic stress can have fitness, reproductive, *etc.* impacts at the population-level scale. NMFS has carefully reviewed the best available scientific information in assessing impacts to marine mammals, and recognizes that Ocean Wind II's surveys have the potential to impact marine mammals through behavioral effects, stress responses, and auditory masking. However, NMFS does not expect that the generally short-term, intermittent, and transitory marine site characterization survey activities planned by Ocean Wind II will create conditions of acute or chronic acoustic exposure leading to long-term physiological stress responses in marine mammals. NMFS has prescribed a robust suite of mitigation measures, including extended distance shutdowns for NARW, that are expected to further reduce the duration and intensity of acoustic exposure, while limiting the potential severity of any possible behavioral disruption. The potential for chronic stress was evaluated in making the determinations presented in NMFS' negligible impact analyses. Although Green Oceans correctly states that Ocean Wind II's surveys would occur in the NARW migratory corridor, they incorrectly claim that the project area is a known feeding habitat for NARWs and that any displacement would have ''devastating effects on the species.'' NMFS does not anticipate that NARWs would be displaced from the area where Ocean Wind II's marine site characterization surveys would occur, and Green Oceans does not provide evidence that this effect should be a reasonably anticipated outcome of the specified activity.

Similarly, NMFS is not aware of any scientific information suggesting that the survey activity would drive marine mammals out of the survey area, and disagrees that this would be a reasonably anticipated effect of the specified activities. The take by Level B harassment authorized by NMFS is precautionary and also considered unlikely to actually occur, as NMFS' take estimation process does not account for the use of extremely precautionary mitigation measures, *e.g.,* the requirement for Ocean Wind II to implement a Shutdown Zone that is more than 3 times as large as the estimated harassment zone. These requirements are expected to largely eliminate the actual occurrence of Level B harassment events and, to the extent that harassment does occur, would minimize the duration and severity of any such events. Therefore, even if a NARW was in the area of Ocean Wind II's surveys, a displacement impact is not anticipated.

Because NARW generally use this location in a transitory manner, specifically for migration, any potential impacts from these surveys are lessened for other behaviors due to the brief periods where exposure is possible. Thus, the transitory nature of occurrence of NARWs as they migrate means it is unlikely for any exposure to cause chronic effects, as Ocean Wind II's planned survey area and ensonified zones are small relative to the overall migratory corridor. As such, NMFS does not expect acute or cumulative stress to be a detrimental factor to NARWs from Ocean Wind II's described survey activities. The potential for impacts related to an overall increase in the amount of other OSW development activities is separate from the aforementioned analysis of potential for impacts from the specified survey activities and is not discussed further as it is outside the scope of this specific action.

Comment: RODA expressed interest in understanding the outcome if the number of actual takes exceed the number authorized during construction of an offshore wind project (*i.e.,* would the project be stopped mid-construction or operation), and how offshore wind developers will be held accountable for impacts to protected species such that impacts are not inadvertently assigned to fishermen, should they occur. Lastly, RODA maintains that the OSW industry must be accountable for incidental takes from construction and operations separately from the take authorizations for managed commercial fish stocks.

Response: NMFS reiterates that the IHA authorizes incidental take of marine mammals during marine site characterization survey activities and not offshore wind project construction and operation activities. Therefore, these comments are outside the scope of the proposed IHA. Fishing impacts generally center on entanglement in fishing gear, which is a very acute, visible, and severe impact. In contrast, the impacts incidental to Ocean Wind II's site characterization survey activities are primarily acoustic in nature resulting in behavioral disturbance. Because of the difference in potential impacts (*i.e.,* physical versus auditory), any impacts resulting from Ocean Wind II's survey activities would not be assigned to fishermen. The impacts of commercial fisheries on marine mammals and incidental take for said fishing activities are managed separately from those of non-commercial fishing activities such as offshore wind site characterization surveys, under MMPA section 118.

Comment: Warwick Group Consultants, on behalf of Cape May County in New Jersey, expressed concern regarding ocean noise and the interference it has on communication between whales. Green Oceans claims that NMFS failed to ''meaningfully consider'' the potential for Ocean Wind II's HRG survey activities to mask marine mammal communication.

Response: NMFS has carefully reviewed the best available scientific information in assessing impacts to marine mammals and determined that the surveys have the potential to impact marine mammals through behavioral effects and auditory masking. NMFS agrees that noise pollution in marine waters is an issue and is affecting

marine mammals, including their ability to communicate when noise reaches certain thresholds.

Fundamentally, the masking effects to any one individual whale from one survey are expected to be minimal. Masking is referred to as a chronic effect because one of the key harmful components of masking is its duration—the fact that an animal would have reduced ability to hear or interpret critical cues becomes much more likely to cause a problem the longer it is occurring. Also, inherent in the concept of masking is the fact that the potential for the effect is only present during the times that the animal and the source are in close enough proximity for the effect to occur (and further this time period would need to coincide with a time that the animal was utilizing sounds at the masked frequency) and, as our analysis (both quantitative and qualitative components) indicates, because of the relative movement of whales and vessels, we do not expect these exposures with the potential for masking to be of a long duration within a given day. Further, because of the relatively low density of mysticetes, and relatively large area over which the vessels travel, we do not expect any individual whales to be exposed to potentially masking levels from these surveys for more than a few days in a year.

As noted above, any masking effects of this survey are expected to be limited and brief, if present. Given the likelihood of significantly reduced received levels beyond even short distances from the survey vessel, combined with the short duration of potential masking and the lower likelihood of extensive additional contributors to background noise offshore and within these short exposure periods, we believe that the incremental addition of the survey vessel is unlikely to result in more than minor and short-term masking effects, likely occurring to some small number of the same individuals captured in the estimate of behavioral harassment.

NMFS does not expect that the generally short-term, intermittent, and transitory marine site characterization survey activities planned by Ocean Wind II will create conditions of acute or chronic acoustic exposure leading to long-term physiological impacts in marine mammals. NMFS' prescribed mitigation measures are expected to further reduce the duration and intensity of acoustic exposure, while limiting the potential severity of any possible behavioral disruption.

Comment: Green Oceans criticized NMFS's use of the 160-dB rms Level B harassment threshold, stating that the threshold is based on outdated information and that the best available science shows that behavioral impacts can occur at levels below the threshold. Criticism of our use of this threshold also focused on its nature as a step function, *i.e.,* it assumes animals don't respond to received noise levels below the threshold but always do respond at higher received levels. Green Oceans also suggests that reliance on this threshold results in consistent underestimation of impacts because it is ''not sufficiently conservative'' and that any determination that relies on this threshold is ''arbitrary and capricious.'' Green Oceans implied that NMFS should revise its generalized behavioral take thresholds to mirror linear risk functions to account for intraspecific and contextual variability, and potential impacts at lower received levels (particularly for baleen whales).

Response: NMFS acknowledges that the 160-dB rms step-function approach is simplistic, and that an approach reflecting a more complex probabilistic function may more effectively represent the known variation in responses at different levels due to differences in the receivers, the context of the exposure, and other factors. Green Oceans suggested that our use of the 160-dB threshold implies that we do not recognize the science indicating that animals may react in ways constituting behavioral harassment when exposed to lower received levels. However, we do recognize the potential for Level B harassment at exposures to received levels below 160 dB rms, in addition to the potential that animals exposed to received levels above 160 dB rms will not respond in ways constituting behavioral harassment. These comments appear to evidence a misconception regarding the concept of the 160-dB threshold. While it is correct that in practice it works as a step-function, *i.e.,* animals exposed to received levels above the threshold are considered to be ''taken'' and those exposed to levels below the threshold are not, it is in fact intended as a sort of mid-point of likely behavioral responses (which are extremely complex depending on many factors including species, noise source, individual experience, and behavioral context). What this means is that, conceptually, the function recognizes that some animals exposed to levels below the threshold will in fact react in ways that are appropriately considered take, while others that are exposed to levels above the threshold will not. Use of the 160-dB threshold allows for a simple quantitative estimate of take, while we can qualitatively address the variation in responses across different received levels in our discussion and analysis.

We also note Green Oceans' statement that the 160-dB threshold is ''not sufficiently conservative.'' Green Oceans does not further describe the standard of conservatism that it believes NMFS must attain, or how that standard relates to the legal requirements of the MMPA. Green Oceans goes on to imply that use of the 160-dB threshold is inappropriate because it addresses only exposures that cause disturbance, versus those exposures that present the potential to disturb through disruption of behavioral patterns. Green Oceans does not further develop this comment or offer any justification for this contention. NMFS affirms that use of the 160-dB criterion is expected to be inclusive of acoustic exposures presenting the potential to disturb through disruption of behavioral patterns, as required through the MMPA's definition.

Green Oceans cites reports of changes in vocalization, typically for baleen whales, as evidence in support of a lower threshold than the 160-dB threshold currently in use. A mere reaction to noise exposure does not, however, mean that a take by Level B harassment, as defined by the MMPA, has occurred. For a take to occur requires that an act have ''the potential to disturb by causing disruption of behavioral patterns,'' not simply result in a detectable change in motion or vocalization. Even a moderate cessation or modification of vocalization might not appropriately be considered as being of sufficient severity to result in take (Ellison *et al.,* 2012). Green Oceans claims these reactions result in biological consequences indicating that the reaction was indeed a take but does not provide a well-supported link between the reported reactions at lower received levels and the claimed consequences.

Overall, there is a lack of scientific consensus regarding what criteria might be more appropriate. Defining sound levels that disrupt behavioral patterns is difficult because responses depend on the context in which the animal receives the sound, including an animal's behavioral mode when it hears sounds (*e.g.,* feeding, resting, or migrating), prior experience, and biological factors (*e.g.,* age and sex). Other contextual factors, such as signal characteristics, distance from the source, and signal to noise ratio, may also help determine response to a given received level of sound. Therefore, levels at which responses occur are not necessarily

consistent and can be difficult to predict (Southall *et al.,* 2007, 2019; Ellison *et al.,* 2012; Bain and Williams, 2006; Gomez *et al.,* 2016).

Green Ocean references linear risk functions developed for use specifically in evaluating the potential impacts of Navy tactical sonar. However, Green Oceans provides no suggestion regarding a risk function that it believes would be appropriate for use in this case. There is currently no agreement on these complex issues, and this threshold has remained in use in part because of the practical need to use a relatively simple threshold based on available information that is both predictable and measurable for most activities.

Comment: Multiple commenters alleged that incidental take authorizations are in direct violation of the MMPA because they have not been demonstrated to do no harm and asserted that ''numerous studies'' or ''the scientific consensus'' exist that indicate survey activities are harmful.

Response: The MMPA directs NMFS to authorize the incidental, but not intentional, taking by harassment of small numbers of marine mammals by U.S. citizens engaged in a specified activity within a specific geographic region if NMFS finds, based on the best scientific evidence available, that the taking by harassment will have a negligible impact on species or stock of marine mammal(s) and where applicable, will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses. We refer the reader to our findings below in the Negligible Impact Analysis and Determination section.

Detailed Description of Marine Mammals in the Area of Specified Activities

A description of the marine mammals in the area of the activities can be found in the previous documents and notices for the 2022 IHA (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022), which remains applicable to this IHA. NMFS reviewed the most recent draft SARS (found on NMFS' website at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*), up-to-date information on relevant UMEs (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-unusual-mortality-events*), and recent scientific literature and determined that no new information affects our original analysis of impacts under the 2022 IHA. More general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

NMFS notes that, since issuance of the 2022 IHA, a new SAR was made available with new information presented for the NARW (see *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*). We note that the estimated abundance for the species declined from 368 to 338. However, this change does not affect our analysis of impacts, as described under the 2022 IHA.

Additionally, on August 1, 2022, NMFS announced proposed changes to the existing NARW vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered NARWs from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing UME (87 FR 46921). Should a final vessel speed rule be issued and become effective during the effective period of this IHA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. The responsibility to comply with the applicable requirements of any vessel speed rule would become effective immediately upon the effective date of any final vessel speed rule and, when notice is published of the effective date, NMFS would also notify Ocean Wind II if the measures in the speed rule were to supersede any of the measures in the MMPA authorization such that they were no longer applicable.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat can be found in the documents supporting the 2022 IHA (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022). At present, there is no new information on potential effects that influenced our analysis.

Estimated Take

A detailed description of the methods used to estimate take anticipated to occur incidental to the project is found in the previous **Federal Register** notices (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022). The methods of estimating take are identical to those used in the 2022 IHA. Ocean Wind II updated the marine mammal densities based on new information (Roberts *et al.,* 2016; Roberts and Halpin, 2022), available online at: *https://seamap.env.duke.edu/models/Duke/EC.* We refer the reader to Table 2 in Ocean Wind II's 2023 IHA request for the specific density values used in the analysis. The IHA request is available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.*

The take that NMFS has authorized can be found in Table 1 below, which presents the results of Ocean Wind II's density-based calculations for the survey area. For comparative purposes, we have provided the 2022 IHA authorized Level B harassment take (87 FR 30453, May 19, 2022). NMFS notes that take by Level A harassment was not requested, nor does NMFS anticipate that it could occur. Therefore, NMFS has not authorized any take by Level A harassment. Mortality or serious injury is neither anticipated to occur nor authorized.

TABLE 1—TOTAL AUTHORIZED TAKE, BY LEVEL B HARASSMENT ONLY, RELATIVE TO POPULATION SIZE

Species	Scientific name	Stock	Abundance	2022 IHA authorized take [1]	2023 IHA	
					Authorized take [1]	Max percent population
North Atlantic right whale	*Eubalaena glacialis*	Western North Atlantic	338	11	2	<1
Fin whale	*Balaenoptera physalus*	Western North Atlantic	6,802	4	4	<1
Sei whale	*Balaenoptera borealis*	Nova Scotia	6,292	0 (1)	1	<1
Minke whale	*Balaenoptera acutorostrata*	Canadian East Coast	21,968	1	8	<1
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	1,396	2	4	<1

TABLE 1—TOTAL AUTHORIZED TAKE, BY LEVEL B HARASSMENT ONLY, RELATIVE TO POPULATION SIZE—Continued

Species	Scientific name	Stock	Abundance	2022 IHA authorized take [1]	2023 IHA	
					Authorized take [1]	Max percent population
Sperm whale	*Physeter macrocephalus*	North Atlantic	4,349	0 (3)	0 (3)	<1
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	Western North Atlantic	93,233	6 (50)	12 (50)	<1
Atlantic spotted dolphin	*Stenella frontalis*	Western North Atlantic	39,921	2 (15)	1 (15)	<1
Common bottlenose dolphin [2]	*Tursiops truncatus*	Western North Atlantic, Offshore.	62,851	1,842	2,221	2.3
		Western North Atlantic, Northern Migratory Coastal.	6,639			21.4
Long-finned pilot whale [3]	*Globicephala melas*	Western North Atlantic	39,215	1 (20)	1 (20)	<1
Risso's dolphin	*Grampu griseus*	Western North Atlantic	35,215	0 (30)	1 (30)	<1
Common dolphin	*Delphinu delphis*	Western North Atlantic	172,974	54 (400)	67 (400)	<1
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	95,543	90	72	<1
Seals: [4]						
Gray seal	*Halichoerus grypus*	Western North Atlantic	[5] 27,300	25	13	<1
Harbor seal	*Phoca vitulina*	Western North Atlantic	61,336	25	13	<1

[1] Parentheses denote authorized take where different from calculated take estimates. Increases from calculated values are based on average group size for the following species: sei whale and pilot whales, Kenney and Vigness-Raposa, 2010; sperm whale and Risso's dolphin, Barkaszi and Kelly, 2018; Atlantic white-sided dolphins, NMFS 2022a; and Atlantic spotted dolphins, NMFS 2022b.The amount of common dolphin take is based on the number of individuals observed in previous HRG surveys in the area, and is identical to the amount of take authorized in the 2022 IHA.

[2] At this time, Ocean Wind II is not able to identify how much work will occur inshore and offshore of the 20 m isobaths, a common delineation between offshore and coastal bottlenose dolphin stocks. Because Roberts *et al.,* (2018) does not provide density estimates for individual stocks of common bottlenose dolphins, the take presented here is the total estimated take for both stocks. Although unlikely, for our analysis, we assume all takes could be allocated to either stock.

[3] Roberts *et al.* (2018) only provides density estimates for pilot whales as a guild. Given the project's location, NMFS assumes that all take will be of long-finned pilot whales.

[4] Roberts *et al.* (2018) only provides density estimates for seals without differentiating by species. Harbor seals and gray seals are assumed to occur equally in the survey area; therefore, density values were split evenly between the 2 species, *i.e.,* total authorized take for ''seals'' is 24.

[5] NMFS' stock abundance estimate applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,600.

Description of Mitigation, Monitoring, and Reporting Measures

The required mitigation measures are identical to those included in the **Federal Register** notice announcing the final 2022 IHA (87 FR 30453, May 19, 2022) and the discussion of the least practicable adverse impact included in that document remains accurate. The measures are found below.

Ocean Wind II must also abide by all the marine mammal relevant conditions in the GARFO programmatic consultation (specifically Project Design Criteria (PDC) 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (NOAA GARFO, 2021; *https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation*), pursuant to Section 7 of the Endangered Species Act.

Marine Mammal Shutdown Zones and Level B Harassment Zones

Establishment of Shutdown Zones (SZ)—Marine mammal SZs must be established around the HRG survey equipment and monitored by NMFS-approved PSOs. Based upon the acoustic source in use (impulsive: sparkers; non-impulsive: non-parametric sub-bottom profilers), a minimum of one PSO must be on duty, per source vessel, during daylight hours and two PSOs must be on duty, per source vessel, during nighttime hours. These PSO will monitor SZs based upon the radial distance from the acoustic source rather than being based around the vessel itself. The SZs distances are as follows:

- 500-m SZ for NARWs during use of specified acoustic sources (impulsive: sparkers and boomers; non-impulsive: non-parametric sub-bottom profilers); and,
- 100-m SZ for all other marine mammals (excluding NARWs) during operation of the sparker and boomer. The only exception to this is for pinnipeds (seals) and small delphinids (*i.e.,* those from the genera *Delphinus, Lagenorhynchus, Stenella* or *Tursiops*).

If a marine mammal is detected approaching or entering the SZs during the HRG survey, the vessel operator must adhere to the shutdown procedures described below to minimize noise impacts on the animals. During use of acoustic sources with the potential to result in marine mammal harassment (sparkers, boomers, and non-parametric sub-bottom profilers; *i.e.,* anytime the acoustic source is active, including ramp-up), occurrences of marine mammals within the monitoring zone (but outside the SZs) must be communicated to the vessel operator to prepare for potential shutdown of the acoustic source.

Visual Monitoring—Monitoring must be conducted by qualified PSOs who are trained biologists, with minimum qualifications described in the **Federal Register** notices for the 2022 project (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022). Ocean Wind II must have one PSO on duty during the day and a minimum of two NMFS-approved PSOs must be on duty and conducting visual observations when HRG equipment is in use at night. Visual monitoring must begin no less than 30 minutes prior to ramp-up of HRG equipment and continue until 30 minutes after use of the acoustic source. PSOs must establish and monitor the applicable clearance zones, SZs, and vessel separation distances as described in the 2022 IHA (87 FR 30453, May 19, 2022). PSOs must coordinate to ensure 360-degree visual coverage around the vessel from the most appropriate observation posts, and must conduct observations while free from distractions and in a consistent, systematic, and diligent manner. PSOs are required to estimate distances to observed marine mammals. It is the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

Pre-Start Clearance—Marine mammal clearance zones (CZs) must be established around the HRG survey equipment and monitored by NMFS-approved PSOs prior to use of boomers, sparkers, and non-parametric sib-bottom profilers as follow:

- 500-m CZ for all ESA-listed species; and,

• 100-m CZ for all other marine mammals.

Prior to initiating HRG survey activities, Ocean Wind II must implement a 30-minute pre-start clearance period. The operator must notify a designated PSO of the planned start of ramp-up where the notification time should not be less than 60 minutes prior to the planned ramp-up to allow the PSOs to monitor the CZs for 30 minutes prior to the initiation of ramp-up. Prior to ramp-up beginning, Ocean Wind II must receive confirmation from the PSO that the CZs are clear prior to preceding. Any PSO on duty has the authority to delay the start of survey operations if a marine mammal is detected within the applicable pre-start clearance zones.

During this 30-minute period, the entire CZ must be visible. The exception to this will be in situations where ramp-up must occur during periods of poor visibility (inclusive of nighttime) as long as appropriate visual monitoring has occurred with no detections of marine mammals in 30 minutes prior to the beginning of ramp-up. Acoustic source activation must only occur at night where operational planning cannot reasonably avoid such circumstances.

If a marine mammal is observed within the relevant CZs during the pre-start clearance period, initiation of HRG survey equipment must not begin until the animal(s) has been observed exiting the respective CZ, or, until an additional period has elapsed with no further sighting (*i.e.,* minimum 15 minutes for small odontocetes and seals; 30 minutes for all other species). The pre-start clearance requirement includes small delphinids. PSOs must also continue to monitor the zone for 30 minutes after survey equipment is shut down or survey activity has concluded.

• *Ramp-Up of Survey Equipment*—When technically feasible, a ramp-up procedure must be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities. The ramp-up procedure must be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the project area by allowing them to detect the presence of the survey and vacate the area prior to the commencement of survey equipment operation at full power. Ramp-up of the survey equipment must not begin until the relevant SZs has been cleared by the PSOs, as described above. HRG equipment operators must ramp up acoustic sources to half power for 5 minutes and then proceed to full power. If any marine mammals are detected within the SZs prior to or during ramp-up, the HRG equipment must be shut down (as described below).

• *Shutdown Procedures*—If an HRG source is active and a marine mammal is observed within or entering a relevant SZ (as described above), an immediate shutdown of the HRG survey equipment is required. When shutdown is called for by a PSO, the acoustic source must be immediately deactivated and any dispute resolved only following deactivation. Any PSO on duty has the authority to delay the start of survey operations or to call for shutdown of the acoustic source if a marine mammal is detected within the applicable SZ. The vessel operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. Subsequent restart of the HRG equipment may only occur after the marine mammal has been observed exiting the relevant SZ, or, until an additional period has elapsed with no further sighting of the animal within the relevant SZ.

Upon implementation of shutdown, the HRG source may be reactivated after the marine mammal that triggered the shutdown has been observed exiting the applicable SZ or, following a clearance period of 15 minutes for small odontocetes (*i.e.,* harbor porpoise) and 30 minutes for all other species with no further observation of the marine mammal(s) within the relevant SZ. If the HRG equipment is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than mitigation (*e.g.,* mechanical or electronic failure) the equipment may be re-activated as soon as is practicable at full operational level, without 30 minutes of pre-clearance, only if PSOs have maintained constant visual observation during the shutdown and no visual detections of marine mammals occurred within the applicable SZs during that time. For a shutdown of 30 minutes or longer, or if visual observation was not continued diligently during the pause, pre-clearance observation is required, as described above.

The shutdown requirement is waived for pinnipeds (seals) and certain genera of small delphinids (*i.e., Delphinus, Lagenorhynchus, Stenella,* or *Tursiops*) under certain circumstances. If a delphinid(s) from these genera is visually detected within the SZ, shutdown will not be required. If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best professional judgment in making the decision to call for a shutdown.

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the area encompassing the Level B harassment isopleth (141 m), shutdown must occur.

• *Vessel Strike Avoidance*—Ocean Wind II must comply with vessel strike avoidance measures as described in the **Federal Register** notice for the 2022 IHA (87 FR 30453, May 19, 2022). This includes speed restrictions (10 knots (11.5 miles or 18.5 km per hour) or less) when mother/calf pairs, pods, or large assemblages of cetaceans are spotted near a vessel; species-specific vessel separation distances; appropriate vessel actions when a marine mammal is sighted (*e.g.,* avoid excessive speed, remain parallel to animal's course, etc.); and monitoring of the NMFS North Atlantic Right Whale reporting system and WhaleAlert daily.

• *Seasonal Operating Requirements*—Ocean Wind II will conduct HRG survey activities in the vicinity of a North Atlantic right whale Mid-Atlantic SMA. Activities must comply with the seasonal mandatory speed restriction period for this SMA (November 1 through April 30) for any survey work or transit within this area.

Throughout all phases of the survey activities, Ocean Wind II must monitor NOAA Fisheries North Atlantic right whale reporting systems for the establishment of a DMA. If NMFS establishes a DMA in the surrounding area, including the project area or export cable routes being surveyed, Ocean Wind II is required to abide by the 10-knot (4.6 miles or 7.4 km per hour) speed restriction.

• *Training*—Project-specific training is required for all vessel crew and personnel prior to the start of survey activities.

• *Reporting*—PSOs must record specific information as described in the **Federal Register** notice of the issuance of the 2022 IHA (87 FR 30453, May 19, 2022). Within 90 days after completion of survey activities, Ocean Wind II must provide NMFS with a monitoring report, which must include summaries of recorded takes and estimates of the number of marine mammals that may have been harassed.

In the event of a vessel strike or discovery of an injured or dead marine mammal, Ocean Wind II must report the incident to the Office of Protected Resources (OPR), NMFS and to the New England/Mid-Atlantic Regional

Stranding Coordinator as soon as feasible. The report must include the information listed in the **Federal Register** notice of the issuance of the 2022 (initial) IHA (87 FR 30453, May 19, 2022).

Determinations

When issuing the 2022 IHA (87 FR 30453, May 19, 2022), NMFS found Ocean Wind II's HRG surveys would have a negligible impact to species or stocks annual rates of recruitment and survival and the amount of taking would be small relative to the population size of such species or stocks (less than 22 percent for the northern coastal migratory stock of bottlenose dolphins, less than 3 percent for the NARW, and less than 1 percent for all other species and stocks). Ocean Wind II's 2023 HRG survey activities are identical to those analyzed in support of the 2022 IHA. Additionally, the potential effects of the activity, taking into consideration the mitigation and related monitoring measures, are identical to those evaluated in support of the 2022 IHA, regardless of the minor increases (based on updated densities) in estimated take numbers for some marine mammal species and/or stocks. However, the total amount of takes authorized is small relative to the best available population size of each species or stock (less than 22 percent for the Western North Atlantic Migratory Coastal stock of bottlenose dolphins; less than 3 percent for the Western North Atlantic Migratory Offshore stock of bottlenose dolphins; and less than 1 percent for all other species and stocks).

NMFS expects that all potential takes would be short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). In addition to being temporary, the maximum expected harassment zone around a survey vessel is 141 m. Although this distance is assumed for all survey activity evaluated here and in estimating take numbers for authorization, in reality, much of the survey activity will involve use of non-impulsive acoustic sources with a reduced acoustic harassment zone of up to 48 m, producing expected effects of particularly low severity. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and the available habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. Even considering the increased estimated take for some species, the impacts of these lower severity exposures are not expected to accrue to a degree that the fitness of any individuals will be impacted and, therefore, no impacts on the annual rates of recruitment or survival will result.

As previously discussed in the 2022 IHA (87 FR 30453, May 19, 2022), impacts from the survey are expected to be localized to the specific area of activity and only during periods when Ocean Wind II's acoustic sources are active. There are no rookeries, mating or calving grounds, or any feeding areas known to be biologically important to marine mammals within the survey area. There is no designated critical habitat for any ESA-listed marine mammals in the survey area.

While areas of importance to fin whales, humpback whales, and harbor seals can be found off the coast of New Jersey, there are no Biologically Important Areas (BIAs) as defined by Van Parjis *et al.,* 2015. All of these BIAs for the species that might be impacted by Ocean Wind II's activities are located outside of the range of the survey area and, therefore, they are not expected to be impacted by Ocean Wind II's 2023 survey activities. There are three major harbor seal haulout sites along New Jersey's coast, including at Great Bay, Sandy Hook, and Barnegat Inlet (CWFNJ, 2015). As hauled out seals would be out of the water, no in-water effects resulting from Ocean Wind II's survey activities are expected.

Ocean Wind II's project will occur in a small fraction of the NARW migratory corridor. As noted for the 2022 IHA (87 FR 30453, May 19, 2022), impacts are expected to be limited to low levels of behavioral harassment, resulting in temporary and minor behavioral changes during any brief period of exposure.

Because the survey activities are temporary and the spatial extent of sound produced by the survey will be very small relative to the spatial extent of the available migratory habitat in the BIA (269,448 km^2), NMFS does not expect NARW migration to be impacted by the survey. Due to the transitory nature of NARWs in this area and the lack of ''core'' NARW foraging habitat (Oleson *et al.,* 2020) (such habitat is located much further north in the southern area of Martha's Vineyard and Nantucket Islands where both visual and acoustic detections of NARWs indicate a nearly year-round presence), it is unlikely for any exposure in the survey area to cause chronic effects, as any exposure will be brief and intermittent. Given the relatively small size of the ensonified area, it is unlikely that marine mammal prey availability will be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of vessel strike during NARW migration; no vessel strike is expected to occur during Ocean Wind II's planned activities. Additionally, Ocean Wind II requested and NMFS has authorized only two takes by Level B harassment of NARWs. This amount is reduced from the 11 Level B harassment takes authorized in the 2022 IHA due to the revised Duke University density data (Roberts and Halpin, 2022). HRG survey operations are required to maintain a 500-m SZ, and shutdown if a NARW is sighted at or within the SZ. The 500-m SZ for NARWs is conservative, considering the Level B harassment isopleth for the most impactful acoustic source (*i.e.,* sparker) is estimated to be 141 m, and thereby minimizes the potential for behavioral harassment of this species. As noted previously, Level A harassment is not expected due to the small permanent threshold shift (PTS) zones associated with the specified HRG equipment types. NMFS does not anticipate NARW takes that could result from Ocean Wind II's activities would impact annual rates of recruitment or survival. Thus, any takes that occur will not result in population level impacts.

We also note that our findings for other species with active UMEs that were previously described for the 2022 IHA remain applicable to this project. There is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes

represent small numbers of marine mammals relative to the affected stock abundances; (4) Ocean Wind II's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act (ESA)

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS OPR consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS OPR is authorizing the incidental take of four species of marine mammals which are listed under the ESA, including the North Atlantic right, fin, sei, and sperm whale and has determined that these activities fall within the scope of activities analyzed in GARFO's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021). The consultation concluded that NMFS' issuance of incidental take authorization related to these activities is not likely to adversely affect ESA-listed marine mammals.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the final IHA qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued an IHA to Ocean Wind II for the potential harassment of small numbers of 16 marine mammal species incidental to marine site characterization surveys offshore of New Jersey, provided the previously mentioned mitigation, monitoring, and reporting requirements are followed.

Dated: July 21, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–15817 Filed 7–25–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD170]

Pacific Whiting; Joint Management Committee; Reopening of Solicitation for Nominations

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

ACTION: Notice; reopening a call for nominations.

SUMMARY: NMFS published a notice in the **Federal Register** on June 7, 2023 soliciting nominations for appointments to the Joint Management Committee (JMC) established in the Agreement between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting (Pacific Whiting Treaty). The nomination period ended on July 7, 2023. This notice reopens the nomination period for one position on the JMC for 15 days.

DATES: Nominations must be received by August 10, 2023.

ADDRESSES: You may submit nominations by the following method:

- *Email: frank.lockhart@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Frank Lockhart, (206) 526–6142, or Colin Sayre (206) 526–4656, *colin.sayre@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS published a **Federal Register** notice on June 7, 2023 (88 FR 37209) to announce a nomination period of 30 days, closing on July 7, 2023. That notice solicited nominations for the United States Advisory Panel (AP) and the Joint Management Committee established under the Pacific Whiting Treaty. Through this announcement, NMFS is reopening nominations for the representative of the commercial whiting sector (16 U.S.C. 7002 (a)(1)) to serve on the JMC. Nominations received during the prior nomination period that closed on July 7, 2023 will be considered, resubmission of nomination packages is not required.

Refer to the **Federal Register** notice of June 7, 2023 (88 FR 37209) for JMC member responsibilities, nominee qualifications, and the items that are required parts of the nomination package. Additional information on the NOAA website for the Pacific Whiting Treaty, including current committee members, can be found at: *https://www.fisheries.noaa.gov/west-coast/laws-and-policies/pacific-hake-whiting-treaty#committees-and-panels.*

Authority: 16 U.S.C. 7001 *et seq.*

Dated: July 20, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–15754 Filed 7–25–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Global Intellectual Property Academy (GIPA) Surveys

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the extension of an existing information collection: 0651–0065 Global Intellectual Property Academy (GIPA) Surveys. The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before September 25, 2023.

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Email: InformationCollection@uspto.gov.* Include ''0651–0065

comment'' in the subject line of the message.

- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Request for additional information should be directed to J. David Binstead, Program Manager, Global Intellectual Property Academy, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–1500; or by email at *james.binstead@uspto.gov* with ''0651–0065 comment'' in the subject line. Additional information about this information collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

The Global Intellectual Property Academy (GIPA) was established in 2006 to offer training programs on enforcement of intellectual property rights, patents, trademarks, and copyrights. GIPA's training programs are designed to meet the specific needs of foreign government officials concerning various intellectual property topics. By attending these programs, foreign government officials learn about global intellectual property rights protection and enforcement and discuss strategies to handle the protection and enforcement issues in their respective countries. The GIPA training programs are an important instrument that USPTO uses to achieve its objectives of halting intellectual property theft and advancing intellectual property right policies.

The surveys in this information collection are conducted in an effort to provide additional details on ''who'' participants are, what kind of positions they hold, length of time working in an intellectual property area, type of organizations where respondents work, type of intellectual property functions, and the effect of the GIPA program on their professional work and their country's intellectual property efforts. This information is being collected to improve the services that the USPTO provides in its missions of serving the international IP community. The data captured will also be used to help meet organizational performance and accountability goals through the following legislative mandates and performance guidance:

- Government Performance and Results Act of 1993 (GPRA); [1]
- Government Performance and Results Modernization Act of 2010 (GPRMA); [2]
- President's Management Agenda (PMA); [3] and
- Foundations for Evidence Based Policy Making Act of 2018.[4]

Evaluation and measurement efforts provide methodologically rigorous data activity and analyses in place of more subjective, ad hoc, non-standardized anecdotal material.

These voluntary surveys support various business goals developed by the USPTO to fulfill customer service and performance goals, to assist the USPTO in strategic planning for future initiatives, to verify existing service standards, and to establish new ones. The USPTO also uses these surveys to implement Executive Order 12862 of September 11, 1993, *Setting Customer Service Standards,* published in the **Federal Register** on September 14, 1993 (58 FR 48257).[5] The USPTO does not intend to collect any personally identifying data from the participants and intends to maintain the contact information for the participants in a separate file for the quantitative data.

II. Method of Collection

Items in this information collection may be submitted via online electronic submissions, and occasional in-person surveys.

III. Data

OMB Control Number: 0651–0065.

Forms: None.

Type of Review: Extension of a currently approved information collection.

Affected Public: Individuals or households.

Respondent's Obligation: Voluntary.

Estimated Number of Annual Respondents: 750 respondents.

Estimated Number of Annual Responses: 750 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately 15 minutes (0.25 hours) to complete. This includes the time to gather the necessary information, create the document, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 188 hours.

Estimated Total Annual Respondent Hourly Cost Burden: $13,690.

TABLE 1—TOTAL BURDEN HOURS AND HOURLY COSTS TO INDIVIDUAL OR HOUSEHOLD RESPONDENTS

Item No.	Item	Estimated annual respondents (a)	Responses per respondent (b)	Estimated annual responses (a) × (b) = (c)	Estimated time for response (hours) (d)	Estimated annual burden hours (c) × (d) = (e)	Rate [6] ($/hour) (f)	Estimated annual burden (e) × (f) = (g)
1	Overseas-Program Survey (or equivalent).	225	1	225	0.25	56	$72.82	$4,078
2	Post-Program Survey (or equivalent).	150	1	150	0.25	38	72.82	2,767
3	Alumni Survey (or equivalent).	375	1	375	0.25	94	72.82	6,845
	Totals	750	.....	750	.....	188	.....	13,690

[1] *https://www.congress.gov/103/statute/STATUTE-107/STATUTE-107-Pg285.pdf.*

[2] *https://www.congress.gov/111/plaws/publ352/PLAW-111publ352.pdf.*

[3] *https://www.performance.gov/pma/.*

[4] *https://www.congress.gov/115/plaws/publ435/PLAW-115publ435.pdf.*

[5] *https://tile.loc.gov/storage-services/service/ll/fedreg/fr058/fr058176/fr058176.pdf.*

[6] USPTO uses the Bureau of Labor Statistics (BLS) Occupation Employment Statistics wage category 23–1021 (Administrative Law Judges: Federal Executive Branch) to represent an estimated wage of program attendees. USPTO estimates that the hourly wage will be in the 90th percentile, as respondents will likely be senior officials living in metropolitan areas; *https://www.bls.gov/oes/current/oes231021.htm.*

Estimated Total Annual Respondent Non-hourly Cost Burden: $0. There are no capital start-up, maintenance costs, recordkeeping costs, filing fees, or postage costs associated with this information collection.

IV. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the Agency's estimate of the burden of the 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; and

(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.

All comments submitted in response to this notice are a matter of public record. USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII) in a comment, be aware that the entire comment—including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, USPTO cannot guarantee that it will be able to do so.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2023–15788 Filed 7–25–23; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2023–HQ–0008]

Submission for OMB Review; Comment Request

AGENCY: Department of the Air Force, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 25, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Intercontinental Ballistic Missile Hardened Intersite Cable Right-of-Way Landowner Questionnaire; AF Form 3951; OMB Control Number 0701–0141.

Type of Request: Extension.

Number of Respondents: 2,834.

Responses per Respondent: 1.

Annual Responses: 2,834.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 709.

Needs and Uses: This form collects updated landowner/tenant information as well as data on local property conditions which could adversely affect the Hardened Intersite Cable System (HICS) such as soil erosion, projected/building projects, evacuation plans, etc. This information also aids in notifying landowners/tenants when HCIS preventative or corrective maintenance becomes necessary to ensure uninterrupted Intercontinental Ballistic Missile command and control capability. The information collection requirement is necessary to report changes in ownership/lease information, conditions of missile cable route and associated appurtenances, and projected building/excavation projects. The information collected is used to ensure system integrity and to maintain a close contact public relations program with involved personnel and agencies.

Affected Public: Business or other for-profit; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–15790 Filed 7–25–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following virtual Federal advisory committee meeting of the Advisory Committee on Arlington National Cemetery (ACANC), The Honor Subcommittee, and the Remember and Explore Subcommittee. These meetings are open to the public.

DATES: The Remember and Explore Subcommittee will meet on Friday, August 11, 2023, from 8:30 a.m. to 10:30 a.m., Eastern Daylight Time. The Honor Subcommittee will meet on Friday, August 11, 2023, from 11:00 a.m. to 12:15 p.m., Eastern Daylight Time. The full ACANC will meet on Friday, August 11, 2023, from 1:00 p.m. to 3:30 p.m., Eastern Daylight Time.

FOR FURTHER INFORMATION CONTACT: For more information, please visit: *http://www.arlingtoncemetery.mil/About/Advisory-Committee-on-Arlington-National-Cemetery/ACANC-Meetings,* Ms. Renea Yates; Designated Federal Official or Mr. Matthew Davis; Alternate Designated Federal Official (DFO) for the ACANC, in writing at Arlington National Cemetery (ANC), Arlington VA

22211, or by email at *matthew.r.davis.civ@army.mil,* or by phone at 1–877–907–8585.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10, 5 U.S.C. (commonly known as the Federal Advisory Committee Act or FACA), the Sunshine in the Government Act of 1976 (U.S.C. 552b) and 41 Code of the Federal Regulations (CFR 102–3.150).

Purpose of the Meeting: The primary purpose of the Remember & Explore Subcommittee is to recommend methods to maintain the Tomb of the Unknown Soldier Monument, including the cracks in the large marble sarcophagus, the adjacent marble slabs, and the potential replacement marble stone for the sarcophagus already gifted to the Army; accomplish an independent assessment of requests to place commemorative monuments within ANC; and identify means to capture and convey ANC's history, and improve the quality of visitors' experiences now and for generations to come.

The primary purpose of the Honor Subcommittee is to accomplish an independent assessment of methods to address the long-term future of the Army national cemeteries, including how best to extend the active burials and what ANC should focus on once all available space is used.

The ACANC provides independent advice and recommendations to the Secretary of the Army on ANC, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the ACANC's advice and recommendations.

Agenda: The Remember and Explore Subcommittee will receive an update to the requested changes to the Chaplain Memorials; and receive an update on Road Naming at Arlington National Cemetery.

The Honor Subcommittee will receive an update on the status of the Caisson at Arlington National Cemetery; and receive a briefing on Public Engagement efforts at Arlington National Cemetery.

The ACANC will receive briefings from each subcommittee chair; receive an operational update from the National Cemeteries Administration; receive an update on Education Modules at ANC; receive a briefing on the Master Area Plan for ANC; and receive an update on Southern Expansion efforts at ANC.

Public's Accessibility to the Meeting: Pursuant to FACA and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public.

Procedures for Attendance and Public Comment: Contact Mr. Matthew Davis via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section to register to attend any of these virtual meetings. Public attendance will be via virtual attendance only. To attend any of these events, submit your full name, organization, email address, and phone number, and which meeting you would like to attend. Upon receipt of this information, a link will be sent to the email address provided which will allow virtual attendance to the event. Requests to attend the meetings must be received by 5:00 p.m. Eastern Daylight Time, on Friday, 4 August 2023. (ANC will be unable to provide technical assistance to any user experiencing technical difficulties.)

For additional information about public access procedures, contact Mr. Matthew Davis, the Alternate DFO, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and 5 U.S.C. 1009(a)(3), the public or interested organizations may submit written comments or statements to the Subcommittees and/or the ACANC in response to the stated agenda of the open meeting or in regard to the ACANC's Committee's mission in general. Written comments or statements should be submitted to Mr. Matthew Davis, the Alternate DFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the ACANC's DFO at least seven business days prior to the meeting to be considered by the ACANC. The ACANC's DFO will review all timely submitted written comments or statements with the ACANC's Chairperson, and ensure the comments are provided to all members of the ACANC before the meeting. Written comments or statements received after this date may not be provided to the ACANC until its next meeting. Pursuant to 41 CFR 102–3.140d, the ACANC is not obligated to allow any member of the public to speak or otherwise address the ACANC during the meeting. Members of the public may be permitted to make verbal comments during these meetings, and if allowed only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the ACANC's Alternate DFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The ACANC's DFO will log each request, in the order received, and in consultation with the appropriate Chair determine whether the subject matter of each comment is relevant to the missions and/or the topics to be addressed in these public meeting. Members of the public who have requested to make a comment and whose comments have been deemed relevant under the process described above, will be invited to speak in the order in which their requests were received by the ACANC's DFO. The appropriate Chair may allot a specific amount of time for comments.

James W. Satterwhite Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2023–15778 Filed 7–25–23; 8:45 am]

BILLING CODE 3711–02–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2023–0027; OMB Control Number 0704–0332]

Information Collection Requirement; DoD Pilot Mentor-Protégé Program

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of DoD's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on

respondents, including through the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use under Control Number 0704–0332 through November 30, 2023. DoD proposes that OMB approve an extension of the information collection requirement, to expire three years after the approval date.

DATES: DoD will consider all comments received by September 25, 2023.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0332, using any of the following methods:

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

○ *Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0332 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette Snyder, 703–508–7524.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Appendix I; OMB Control Number 0704–0332.

Type of Request: Extension.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 105.

Responses per Respondent: 2, approximately.

Annual Responses: 212.

Average Burden per Response: 2.41 hours, approximately.

Annual Burden Hours: 512.

Needs and Uses: Section 831 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1991 (Pub. L. 101–510, 10 U.S.C. 2302 Note, redesignated as 10 U.S.C. 4902) required DoD to establish the DoD Pilot Mentor-Protégé Program (the ''Program''). Congress requires DoD to collect certain information from program participants in section 861, paragraph (b)(2), of Public Law 114–92. Thus, the need for this information collection is to comply with existing laws. DoD has incorporated these information collection requirements into the DFARS in section I–112 of Appendix I. Program participants agree to comply with these information collection requirements when they execute their mentor-protégé agreements, receiving the program's benefits in consideration.

This information is necessary to ensure that participants are fulfilling their obligations under the mentor-protégé agreements and furthering the purpose of the Mentor-Protégé Program as required by section 18(d)(7) of the Small Business Act (15 U.S.C. 637(d)(7). In accordance with 10 U.S.C. 4902, DoD uses the information to decide whether to approve continuation of the agreement. In addition, the information is necessary for program managers to direct developmental assistance to the most appropriate small business concerns and to ensure the program meets the Congressionally-mandated goal of enhancing the defense industrial base.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–15839 Filed 7–25–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0124]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the DoD announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 25, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Defense Organizational Climate Pulse (DOCP)—Version 1.0; OMB Control Number 0704–DOCP.

Type of Request: New.

Number of Respondents: 158,910.

Responses per Respondent: 1.

Annual Responses: 158,910.

Average Burden per Response: 7 minutes.

Annual Burden Hours: 18,539.5.

Needs and Uses: The Defense Organizational Climate Pulse (DOCP) is fielded in compliance with a DoD Instruction (DoDI) 6400.11. The information gathered from the DOCP will be used by commanders, prevention workforce personnel, equal opportunity officers (EOAs), survey administrators, and other leaders to assess changes in the unit's command climate, gather additional information related to risk and protective factors measured on the DEOCS and/or other outcomes of interest (*e.g.,* sexual assault, sexual harassment, racial/ethnic discrimination, suicide, readiness, retention, retaliation, and various forms of abuse). At the direction of President Biden, the Secretary of Defense ordered a 90-Day Independent Review Commission (IRC) on Sexual Assault in the Military. In recommendation 3.7a, the IRC suggested the Department of Defense establish ''pulse survey'' tool that would enable unit-level commanders to collect real-time climate data from Service members in their units between required administrations of the Defense Organizational Climate Survey (DEOCS), the command climate assessment tool used by the DoD (IRC–FULL–REPORT–FINAL–1923–7–1–21.PDF (*defense.gov*). In response to IRC recommendation 3.7a, the Office of the Under Secretary of Defense for Personnel and Readiness issued a DoD Instruction (DoDI) 6400.11 (DoD Instruction 6400.11, ''DoD Integrated Primary Prevention Policy for Prevention Workforce and Leaders,'' December 20, 2022 (*whs.mil*)) that established the Defense Organizational Climate Pulse (DOCP) as a new survey tool intended to provide insight into targeted topics that are relevant to specific units.

A DOCP provides DoD leaders in active duty and Reserve component DoD

units and DoD civilian personnel organizations a means to assess concerns identified in the DEOCS on an as-needed annual basis. Also included in the DOCP population are active duty and Reserve component members of the Coast Guard and foreign national employees working for the DoD. The survey is web-based and is a census of the commander's unit. The survey includes core demographic questions and a pool of survey items that include topics related to (1) unit experiences, (2) ratings of leadership, and (3) personal experiences and/or behaviors.

The DOCP requirements (as noted in DoDI 6400.11), specifies that unit commanders may field only one DOCP annually. Based on the DOCP results, commanders, leaders, and their survey administrators will refine the action plans developed after the administration of a DEOCS to positively impact their organization's leadership climate. The survey results are provided to the commander/leader and their survey administrator. Survey responses could also be used in future analyses. Unit commanders and organizational leaders may choose to administer a DOCP 90 days after their most recent DEOCS. The DOCP is a voluntary data collection unit commanders may request. The annual population frame for the DOCP is anticipated to be a share of units/organizations that complete a DEOCS. Specifically, we anticipate a roughly 10% of DEOCS participants to take a DOCP. We estimate that 158,910 participants will complete a DOCP survey annually. Additionally, we anticipate a response rate of around 40% as seen with the DEOCS collection. The DOCP will be a confidential data collection.

Affected Public: Individuals or households.

Frequency: As required.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–15809 Filed 7–25–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0038]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 25, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Data for Payment of Retired Personnel; DD Form 2656; OMB Control Number 0704–0569.

Type of Request: Extension.

Number of Respondents: 127,950.

Responses per Respondent: 1.

Annual Responses: 127,950.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 31,988.

Needs and Uses: The information collection requirement is necessary to obtain applicable retirement information from Uniformed Service members and allow those members to make certain retired pay and survivor annuity elections prior to retirement from service or prior to reaching eligibility to receive retired pay. The form will also allow eligible members covered by the Blended Retirement System to make a voluntary election of a partial lump sum of retired pay, as required by Section 1415 of title 10, United States Code. Every member of the Uniformed Services who retires or reaches the age of eligibility to begin receiving retired pay, in the case of members of the Reserves and National Guard, will voluntarily complete this form to request retired pay, designate beneficiaries, and make a Survivor Benefit Plan election. In an average calendar year, approximately 127,950 members of the Uniformed Service will complete this form. The spouses of retiring members of the Uniformed Services are only required to complete Part V of this form if the Service member declines or reduces his or her level of under the Survivor Benefit Plan.

Affected Public: Individuals or households.

Frequency: As required.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–15798 Filed 7–25–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0040]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 25, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Request for Verification of Birth; DD Form 372; OMB Control Number 0704–0006.

Type of Request: Extension.

Number of Respondents: 150,000.

Responses per Respondent: 1.

Annual Responses: 150,000.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 12,500.

Needs and Uses: Title 10, U.S.C. 505, 532, 3253, and 8253, require applicants meet minimum and maximum age and citizenship requirements for enlistment into the Armed Forces (including the Coast Guard). If an applicant is unable to provide a birth certificate, the recruiter will forward a DD Form 372, ''Request for Verification of Birth,'' to a state or local agency requesting verification of the applicant's birth date. This verification of the birth date ensures that the applicant does not fall outside the age limitations, and the applicant's place of birth supports the citizenship status claimed by the applicant.

Affected Public: State, local, or tribal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–15796 Filed 7–25–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0125]

Submission for OMB Review; Comment Request

AGENCY: United States Central Command (USCENTCOM), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 25, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Joint Contingency and Expeditionary Services (JCXS); OMB Control Number 0704–0589.

Type of Request: Extension.

Number of Respondents: 5,500.

Responses per Respondent: 1.

Annual Responses: 5,500.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 2,750.

Needs and Uses: The information collection necessary to maintain the safety of contractors and U.S. Armed Forces while ensuring that the U.S. Government is not doing business with entities at odds with American interests. Joint Contingency and Expeditionary Services (JCXS) contains two modules. The Joint Contingency Contracting System (JCCS) evaluates vendors for possible approval or acceptance to do business with and have access to U.S. military installations around the world. The Civilian Arming Authorization Management System (CAAMS) provides a standardized and automated process for the submission, review, approval, and compliance management of the contractor arming process. JCXS is the DoD's agile, responsive, and global provider of Joint expeditionary acquisition business solutions that fulfill mission-critical requirements while supporting interagency collaboration—to include, but not limited to, contracting, finance, spend analysis, contract close-out, staffing, strategic sourcing, and reporting.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 18, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–15806 Filed 7–25–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0108]

Submission for OMB Review; Comment Request

AGENCY: Cost Assessment and Program Evaluation (CAPE), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 25, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Cost and Software Data Report; Forms DD Form 1921, DD Form 1921–1, DD Form 1921–2, DD Form 1921–3, DD Form 1921–5, DD Form 2794; OMB Control Number: 0704–CSDR.

Contractor Work Breakdown Structure

Annual Burden Hours: 30,552.
Number of Respondents: 228.
Responses per Respondent: 4.
Annual Responses: 912.
Average Burden per Response: 33.5 hours.

Cost Data Summary Report DD–1921

Annual Burden Hours: 17,753.1.
Number of Respondents: 228.
Responses per Respondent: 4.4.
Annual Responses: 1,003.
Average Burden per Response: 17.7 hours.

Functional Cost and Hours Report DD–1921–1

Annual Burden Hours: 44,198.
Number of Respondents: 228.
Responses per Respondent: 3.6.
Annual Responses: 820.
Average Burden per Response: 53.9 hours.

Progress Curve Report DD–1921–2

Annual Burden Hours: 56,088.
Number of Respondents: 228.
Responses per Respondent: 1.
Annual Responses: 228.
Average Burden per Response: 246 hours.

Contractor Business Data Report DD–1921–3

Annual Burden Hours: 16,330.
Number of Respondents: 115.
Responses per Respondent: 1.
Annual Responses: 115.
Average Burden per Response: 142 hours.

Sustainment Functional Cost-Hour Report DD–1921–5

Annual Burden Hours: 5,676.
Number of Respondents: 40.
Responses per Respondent: 2.2.
Annual Responses: 88.
Average Burden per Response: 64.5 hours.

Cost and Software Data Reporting DD–2794

Annual Burden Hours: 23,712.
Number of Respondents: 228.
Responses per Respondent: 1.
Annual Responses: 228.
Average Burden per Response: 104 hours.

Total Burden

Annual Burden Hours: 194,309.
Annual Responses: 3,394.

Needs and Uses: CAPE is statutorily required by Title 10, United Stated Code in Section 2334(g), to ''develop policies, procedures, guidance and a collection method to ensure that quality acquisition cost data are collected to facilitate cost estimation and comparison across acquisition programs.'' Section 2334(g) also contains a 100-million-dollar threshold statutory requirement for providing cost data from each acquisition program that exceeds this amount.

Affected Public: Businesses or other for-profit; Not-for-profit Institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–15807 Filed 7–25–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0064]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the OUSD(P&R) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use

of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 25, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Ms. Angela Duncan at the Department of Defense, Washington Headquarters Services, ATTN: Executive Services Directorate, Directives Division, 4800 Mark Center Drive, Suite 03F09–09, Alexandria, VA 22350–3100 or call 571–372–7574.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Service Academy Gender Relations Survey; OMB Control Number 0704–0623.

Needs and Uses: The legal requirements for the Service Academy Gender Relations (SAGR) surveys can be found in the following:

- 10 United States Code (U.S.C.), section 4361, as amended by John Warner National Defense Authorization Act NDAA for Fiscal Year (FY) 2007, Section 532
- 10 United States Code (U.S.C.), section 481
- Department of Defense Instruction (DoDI) 6495.02

These legal requirements mandate that the SAGR surveys solicit information relating to sexual assault, sexual harassment, and gender discrimination in the Military Service Academies (MSAs), as well as the climate at the MSAs and social perspectives. MSAs include the U.S. Military Service Academy (USMA), the U.S. Naval Academy (USNA), and U.S. Air Force Academy (USAFA). The requirements state that the assessment cycle consists of surveys and focus groups during alternate years. They also give the Department authority to conduct such surveys under the guidance of the Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)). The U.S. Coast Guard Academy (USCGA), the only Federal Military Academy within the Department of Homeland Security (DHS), is not required to participate in the assessments codified by U.S.C. 10. However, USCGA officials requested the Coast Guard be included beginning in 2008 to evaluate and improve their programs addressing sexual assault and sexual harassment. Similarly, the U.S. Merchant Marine Academy (USMMA), under the Department of Transportation (DOT), requested their inclusion beginning in 2012. USCGA and USMMA will continue to participate in the assessments. Surveys of USCGA and USMMA are not covered under this DoD licensure and will not be mentioned further.

The Office of People Analytics (OPA) administers both web-based and paper-and-pen surveys to support the personnel information needs of the OUSD(P&R). The SAGR surveys expand a series of surveys that began in 2004 with the DoD Inspector General's first survey, subsequently transferred to OPA. OPA conducted the SAGR survey at the MSAs in 2005, 2006, 2008, 2010, 2012, 2014, 2016, 2018, and 2022. The 2020 administration of the survey was postponed due to the COVID–19 pandemic. The 2024 survey would be the tenth iteration of the SAGR survey. The first focus group assessment was conducted in 2007, with subsequent focus groups in 2009, 2011, 2013, 2015, 2017, 2019, 2021, and 2023. Information from the SAGR surveys will be used by DoD policy offices, the Military Departments, the MSAS, and Congress for program evaluation and, specifically, to assess and improve policies, programs, practices, and training related to gender relations at the MSAs. OPA will provide reports to DoD policy offices, each Military Department, the MSAs, the Joint Chiefs of Staff (JCS), and Congress.

Affected Public: Individuals or households.

Annual Burden Hours: 5,000.

Number of Respondents: 10,000.

Responses per Respondent: 1.

Annual Responses: 10,000.

Average Burden per Response: 30 minutes.

Frequency: Biennially.

The target population of the 2024 SAGR will consist of all students at the Military Service Academies (MSAs): U.S. Military Academy (USMA), U.S. Naval Academy (USNA), and U.S. Air Force Academy (USAFA), including the Preparatory Schools. Excluded are Service Academy Students who are (1) non-citizens and (2) are visiting from another MSA. Students under 18 years of age are also excluded. Working with the MSAs, we estimate the approximate numbers of cadets and midshipmen to be 14,200. The survey will be administered to all cadets/midshipmen (*i.e.,* a census). Based on the 2022 SAGR survey that had an 81% response rate, we estimate a 75% response rate. To achieve sufficient statistical analytical power, we will include a census of the population of interest in the study to achieve sufficient coverage. Each Academy notifies students about the survey with an electronic message explaining the overall survey process and providing them instructions on how to select a session for administration of the survey. OPA staff is on location during the survey week to brief students and administer the survey in person using a paper survey. Sessions are typically scheduled from 0700 through 1500 and follow the Academy's class periods. Attendance is checked when a student arrives for their session (attendance is only for purposes of following up and not for identifying survey responses by individuals). Academy officials follow up with students who do not appear at their designation session and reschedule accordingly. OPA staff provides an overview briefing on the purpose for the survey. Students are advised they may leave at any time after the briefing if they choose not to complete the survey.

Data will be weighted using an industry standard process to reflect each Academy's population as of the time of the survey. Weighting produces survey estimates of population totals, proportions, and means (as well as other statistics) that are representative of their respective populations. OPA creates variance strata so precision measures can be associated with each estimate. We produce precision measures for reporting categories using 95% confidence intervals with the goal of achieving a precision of 5% or less (*e.g.*, 80% (+/− 5%) of cadets/midshipmen are satisfied with their training).

Dated: July 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–15786 Filed 7–25–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0036]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 25, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: DoD DLA Desktop Browse Survey; OMB Control Number 0704–DDBS.

Type of Request: New.

Number of Respondents: 1,600.

Responses per Respondent: 1.

Annual Responses: 1,600.

Average Burden per Response: 6 Minutes.

Annual Burden Hours: 160.

Needs and Uses: The Defense Logistics Agency is an organization with a public-facing website used to inform and work with its customers in the military services; federal, state, and local governments; industry and small business; and the general public. Measurement and feedback through surveying is needed to better meet the needs of the agency's audiences and provide both overall goals for improvement and to address specific issues presented by website visitors. DLA Public Affairs uses the feedback to address immediate concerns and set both short and long-term goals for improving the agency's website. Actionable survey comments are addressed with DLA offices who manage the corresponding website content for quick, specific, and direct content improvements. Short-term actions include fixing broken links, adding or updating page content, restructuring, or altering page layouts to make content easier to browse, and creating new resources to meet previously unknown customer needs. Combined data and trends inform DLA Public Affairs strategy for larger-scale website improvement projects and are summarized for DLA senior leader awareness and long-term planning. Larger efforts include changes to sitewide navigation, homepage redesigns, and aggregating previously dispersed similar sitewide resources to central, prominent places.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–15802 Filed 7–25–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0033]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 25, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Navy Child and Youth Programs Forms; OPNAV Forms 1700/1–1700/3, 1700/5, 1700/7–1700/9, 1700/11–1700/15, and 1700/17–1700/23; OMB Control Number 0703–NCYP.

Type of Request: Existing collection in use without an OMB Control Number.

Registration Forms

Number of Respondents: 17,152.

Responses per Respondent: 5.25.

Annual Responses: 90,059.

Average Burden per Response: 43.57 minutes.

Annual Burden Hours: 65,395.

Medical Forms

Number of Respondents: 19,054.

Responses per Respondent: 1.

Annual Responses: 19,054.

Average Burden per Response: 44.86 minutes.

Annual Burden Hours: 14,246.

Family Child Care Forms

Number of Respondents: 325.

Responses per Respondent: 1.

Annual Responses: 325.

Average Burden per Response: 62.4 minutes.

Annual Burden Hours: 338.

Fee Assistance Forms

Number of Respondents: 11,750.

Responses per Respondent: 1.

Annual Responses: 11,750.

Average Burden per Response: 45 minutes.

Annual Burden Hours: 8,813.

Total

Annual Burden Hours: 88,792.

Number of Respondents: 48,281.

Annual Responses: 121,188.

Needs and Uses: Navy Child and Youth Programs (CYP) collects information in order to facilitate accurate and efficient operation of all programs and activities as part of fulfilling CYP's mission to provide services to eligible patrons. Numerous forms are used by patrons to complete the enrollment/registration process to enroll children and youths into CYP programs and activities, establish patron fees, determine the general health status of CYP participants and ensure that all their needs are documented. Information is also collected to allow for the application and certification of family childcare providers, as well as to determine patron and provider eligibility for participation in Navy CYP fee assistance programs.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–15795 Filed 7–25–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2023–HQ–0015]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the United States Naval Research Laboratory announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 25, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the U.S. Naval Research Laboratory South, 1005 Balch Blvd., Stennis Space Center, MS 39529, ATTN: Chris J. Michael, or call 228–688–4955.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Generic Clearance for U.S. Naval Research Laboratory Cognitive Geospatial Systems Research; OMB Control Number 0703–NRLG.

Needs and Uses: The Cognitive Geospatial Systems Section of the U.S. Naval Research Laboratory (NRL) is funded to conduct geospatial human-machine teams research. As part of the research, it is crucial that human subjects be surveyed in order to understand perception, cognition, and behavior as it pertains to digital maps, visual geospatial analytics, and spatialized audio. The research will be used to create and improve general-purpose digital map products, geospatial analytics, and workflows for situational awareness associated with the geospatial analysts. The subject matter of stimuli will relate to map features (including label styles, label placement, fonts, icons and symbols, color, saturation, opacity, size, scaling, clutter or density), base map features (including orthogonal photographic imagery and terrain), and audio features (including spectrograms of audio, sound quality, and audio generated from environmental scenarios with multiple sound sources). Research tasks will relate to the identification of landmarks, finding points of interest, route planning, distance and elevation estimation, use of a legend, providing preference judgements, identification of audio sources, and localization of audio sources. All surveys within this research program will consist of anonymous (*i.e.,* no collection of Personally Identifiable Information (PII) as defined by the Office of Management and Budget) questionnaires lasting no longer than an estimate of 60 minutes. For prudent comparative science and replication, respondents will be asked to provide demographic information such as age, gender, native language, ethnicity, color blindness, known hearing loss, frequency/ability of casual map use. Preferences for and performance with the stimuli (geographic map, geospatial analytic, or audio) will be collected and evaluated via open-ended questions, close-ended questions, multiple-choice questions, rating scales, mouse-click counts, mouse-click positions, and eye behavior captured by eye tracking hardware. Results will provide insight into participant's task performance, perception, attention, and cognitive load when exposed to or interacting with the research stimuli. Each survey will only be conducted after full approval of the

NRL Institutional Review Board to assure that the procedure abides by The Federal Policy for the Protection of Human Subjects, a.k.a. The Common Rule. As such, Stimuli presented will represent participants' everyday occurrences with digital maps, geospatial analytics, and spatialized audio.

Affected Public: Individuals or households.

Annual Burden Hours: 2,000.

Number of Respondents: 2,000.

Responses per Respondent: 1.

Annual Responses: 2,000.

Average Burden per Response: 60 minutes.

Frequency: Once.

Dated: July 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–15789 Filed 7–25–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2023–HQ–0008]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 25, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Navy Insider Threat Report Form; OPNAV Form 5510/423; OMB Control Number 0703–ISTF.

Type of Request: New.

Number of Respondents: 100.

Responses per Respondent: 1.

Annual Responses: 100.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 25.

Needs and Uses: The U.S. Navy Insider Threat Program/Navy Analytic Hub (Navy Hub) is requiring information collection in accordance with Executive Order 13587, ''Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information,'' which directs U.S. government executive branch departments and agencies to establish, implement, monitor, and report on the effectiveness of insider threat programs to protect classified national security information, and requires the development of an executive branch program for the deterrence, detection, and mitigation of insider threats or other unauthorized disclosure. Accordingly, the Navy Hub is soliciting standardized information via OPNAV Form 5510/423, ''Navy Insider Threat Report.'' The use of this form allows the Navy to collect the required information by means of a single vehicle, rather than through repeated communication. Hence, Navy Hub's mission is to prevent, detect, deter, and mitigate insider threat risks from potential malicious or unwitting Navy insiders by gathering, integrating, reviewing, assessing, and responding to information about potential insider threats. The OPNAVINST 5510.165B, ''Navy Insider Threat Program,'' which prescribes this new form, provides instruction to all U.S. Navy commands, activities and field offices with responsibilities as it pertains to Insider Threat.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–15793 Filed 7–25–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Postsecondary Student Success Grant Program (PSSG)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications (NIA) for fiscal year (FY) 2023 for the Postsecondary Student Success Grant Program (PSSG), Assistance Listing Number 84.116M. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: July 26, 2023.

Deadline for Transmittal of Applications: September 25, 2023.

Deadline for Intergovernmental Review: November 24, 2023.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *www.federalregister.gov/d/2022-26554.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Nemeka Mason-Clercin, U.S. Department of Education, 400 Maryland Avenue SW, 5th Floor, Washington, DC 20202–4260. Telephone: (202) 987–1340. Nalini Lamba-Nieves, U.S. Department of Education, 400 Maryland Avenue SW, Room 5C127, Washington, DC 20202–4260. Telephone: (202) 453–7953. Email: *PSSG@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to equitably improve postsecondary student outcomes, including retention, transfer (including successful transfer of completed credits), credit accumulation, and completion, by leveraging data and implementing, scaling, and rigorously evaluating evidence-based activities to support data-driven decisions and actions by institutional leaders committed to inclusive student success.

Background: In today's economy, more than 60 percent of U.S. jobs require a postsecondary credential.[1] Data show that as educational attainment increases, median earnings steadily increase.[2] It is critical for institutions of higher education (IHEs) to provide support systems to improve retention, progression, and completion rates to decrease economic and social equity gaps for students of color and low-income students.

Students of color and low-income students still face barriers to successfully enrolling in and completing college. Between 2019 and 2021, there have been decreases in undergraduate enrollment for Native American students (7.9 percent decrease), Black students (7.3 percent decrease), and Hispanic students (5 percent decrease).[3] From 2019 to 2022, there has been a decrease in enrollment for Pell grant recipients (9.9 percent).[4] In addition, while graduation rates have increased in four-year institutions overall by 4.6 percentage points since 2015, double-digit graduation rate gaps between underrepresented students of color and white students remain, and there is a 9-percentage point gap in graduation rates between Pell and non-Pell students.[5] The same is occurring in two-year institutions, with an overall graduation rate increase of 2.8 percentage points since 2012, but a declining rate for Hispanic and Black students, leading to increasing gaps between white students and underrepresented students of color.[6]

Furthermore, as more ''non-traditional'' students attend college, additional and different supports are required to enable them to successfully complete their credentials. Today, 25 percent of postsecondary students are age 25 or older,[7] about 70 percent of students work while enrolled,[8] and 22 percent of students are parents.[9] At community colleges,31 percent of students enrolled are age 25 or older,[10] and 42 percent of all student parents attend community colleges.[11] Research has found that IHEs should employ a multifaceted and integrated approach in mitigating barriers that hinder students in their educational trajectories, addressing academic, financial and other barriers.[12] Moreover, IHEs that have improved completion rates use timely, disaggregated, actionable data to identify institutional barriers to student success, implement interventions, and evaluate impact on an on-going basis.[13] Institutional leadership has been found to be critical to ensuring that the student experience is intentionally designed to increase student retention, persistence, and completion rates.[14]

This grant program seeks to fund evidence-based (as defined in this notice) strategies that result in improved student outcomes for underserved students (as defined in this notice). The program has two absolute priorities that correspond to varying evidence standards. This multi-tiered competition invites applicants that are in the ''early phase'' or ''mid-phase/expansion'' of their evidence-based work to support students through degree completion. This grant also supports the evaluation, dissemination, scaling, and sustainability efforts of the activities funded under this grant.

In this competition, eligibility is limited to institutions that are designated as eligible under the HEA titles III and V programs, nonprofits that are not IHEs or associated with an IHE in partnership with institutions that are designated as eligible under the HEA titles III and V programs, States in partnerships with institutions that are designated as eligible under the HEA titles III and V programs, and public systems of institutions. Institutions designated as eligible under titles III and V include Historically Black Colleges or Universities (HBCUs), Tribally Controlled Colleges or Universities (TCCUs), Minority-Serving Institutions (MSIs) and other institutions with high enrollment of needy students and below average full-time equivalent (FTE) expenditures—including community colleges. The Department believes that targeting funding to these IHEs is the best use of the available funding because these institutions disproportionately enroll students from groups who are underrepresented among college completers, such as low-income students. Supporting retention and completion strategies at these institutions offers the greatest potential to close gaps in postsecondary outcomes. Additionally, these under resourced institutions are most in need of Federal assistance to implement and evaluate evidence-based postsecondary college retention and completion interventions.

Early-Phase

Early-phase grants provide funding to IHEs to develop, implement, and test the feasibility of a program that prior research suggests is likely to improve relevant outcomes, for the purpose of determining whether an initiative improves student retention and completion of postsecondary students. Early-phase grants must ''demonstrate a rationale'' (as defined in this notice) and include a logic model (as defined in this notice), theory of action, or another conceptual framework that includes the goals, objectives, outcomes, and key project components (as defined in this notice) of the project, and that demonstrates the relationship between such proposed activities and the relevant outcomes the project is designed to achieve. The evaluation design will be assessed on the extent to which it would meet What Works Clearinghouse (WWC) Evidence Standards with or without reservations. The evaluation of an Early-phase project should be an experimental or quasi-experimental design study (both as defined in this notice) that can determine whether the program can successfully improve postsecondary student success outcomes for underserved students.

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[1] *https://cew.georgetown.edu/wp-content/uploads/2014/11/Recovery2020.FR_.Web_.pdf.*

[2] *www.bls.gov/emp/chart-unemployment-earnings-education.htm.*

[3] *https://nces.ed.gov/programs/digest/d22/tables/dt22_306.10.asp?current=yes.*

[4] *https://research.collegeboard.org/media/pdf/trends-in-student-aid-presentation-2022.pdf.*

[5] *https://nces.ed.gov/ipeds/Search?query=&query2=&resultType=all&page=1&sortBy=date_desc&overlayTableId=32473.*

[6] *https://nces.ed.gov/programs/digest/d21/tables/dt21_326.10.asp, https://nces.ed.gov/programs/digest/d21/tables/dt21_326.20.asp?current=yes, https://nces.ed.gov/ipeds/Search?query=&query2=&resultType=all&page=1&sortBy=date_desc&overlayTableId=32473.*

[7] *https://nces.ed.gov/programs/digest/d22/tables/dt22_303.50.asp?current=yes.*

[8] *https://cew.georgetown.edu/wp-content/uploads/Working-Learners-Report.pdf.*

[9] *https://files.eric.ed.gov/fulltext/ED612580.pdf.*

[10] *https://nces.ed.gov/programs/digest/d22/tables/dt22_303.50.asp?current=yes.*

[11] *https://files.eric.ed.gov/fulltext/ED612580.pdf.*

[12] *www.mdrc.org/sites/default/files/doubling_graduation_rates_fr.pdf.*

[13] Phillips, B.C., & Horowitz, J.E. (2013). Maximizing data use: A focus on the completion agenda. In *Special Issue: The College Completion Agenda-Practical Approaches for Reaching the Big Goal.* New Directions for Community Colleges, 2013(164), 17–25.

[14] McNair, T.B., Albertine, S., McDonald, N., Major Jr, T., & Cooper, M.A. (2022). Becoming a student-ready college: A new culture of leadership for student success. John Wiley & Sons.

Early-phase grantees during their grant period are encouraged to make continuous and iterative improvements in project design and implementation before conducting a full-scale evaluation of effectiveness. Grantees should consider how easily others could implement the proposed practice, and how its implementation could potentially be improved. Additionally, grantees should consider using data from early indicators to gauge initial impact and to consider possible changes in implementation that could increase student outcomes.

Mid-Phase/Expansion

Mid-phase/Expansion grants are supported by moderate evidence (as defined in this notice) or strong evidence (as defined in this notice), respectively. These grants provide funding to IHEs to improve and/or expand initiatives and practices that have been proven to be effective in increasing postsecondary student retention and completion. Mid-phase/Expansion projects should provide vital insight about an intervention's effectiveness, such as for whom and in which contexts a practice/intervention is most effective. Mid-phase grantees should also measure the cost-effectiveness of their practices using administrative or other readily available data.

Mid-phase/Expansion grant projects are distinctly situated to provide insight on scaling an initiative to a larger population of students or across multiple campuses.

These grants must be implemented at a multi-site sample (as defined in this notice) with more than one campus or in one campus that includes at least 2,000 students. Project evaluations must evaluate the effectiveness of the project at each site.

Mid-phase/Expansion grants must meet the ''moderate evidence'' threshold or ''strong evidence'' standard and include a logic model that demonstrates the relationship between the key project components and the relevant outcomes the project is designed to achieve. Mid-phase/Expansion grants are also required to submit an evaluation design that will be assessed on the extent to which it would meet WWC Evidence Standards without reservations.

Note that all research that meets the strong evidence standard also meets the moderate evidence standard. As such, the effective evidence standard for Absolute Priority 2 is moderate evidence. However, we encourage applicants to propose projects based on strong evidence and to expand services even beyond the scale requirements under Absolute Priority 2. We have combined the two types of grants into a single tier given funding limitations and the fact that this is the first year of implementing a tiered evidence structure in this program.

All Grant Tiers

PSSG applicants should consider how these evidence-based practices are implemented and the impact these practices have on their student population given their context. PSSG applicants seek to explore the effectiveness of practices/strategies that can improve student persistence and retention, leading to degree completion.

The evaluation of a PSSG project should be designed to determine whether the program can successfully improve postsecondary student persistence, retention, and completion. As previously stated, the evaluation design for early phase applications will be assessed on the extent to which it could meet WWC Evidence Standards with or without reservations while the evaluation design for mid phase/expansion applications will be assessed on the extent to which it could meet WWC Evidence Standards without reservations.

The Department intends to provide grantees and their independent evaluators with technical assistance in their evaluation, dissemination, scaling, and sustainability efforts. This could include grantees and their evaluators providing to the Department or its contractor updated comprehensive evaluation plans in a format as requested by the technical assistance provider and using such tools as the Department may request. Grantees will be encouraged to update this evaluation plan at least annually to reflect any changes to the evaluation. Updates must be consistent with the scope and objectives of the approved application.

PSSG applicants should consider their organizational capacity and the funding needed to sustain their projects and continue implementation and adaptation after Federal funding ends.

Priorities: This notice contains two absolute priorities and one competitive preference priority. We are establishing the absolute priorities and competitive preference priority for the FY 2023 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1). Applicants have the option of addressing the competitive preference priority and may opt to do so regardless of the absolute priority they select.

Absolute Priorities: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one of these priorities.

These Priorities are:

Absolute Priority 1 (AP1)—Applications that Demonstrate a Rationale. ''*Early-phase*''.

Under this priority, an applicant proposes a project that demonstrates a rationale to improve postsecondary success for underserved students, including retention and completion.

Absolute Priority 2 (AP2)—Applicants that Demonstrate Moderate Evidence, ''*Mid-phase*'' *or Strong Evidence,* ''*Expansion*''.

Under this priority, an applicant proposes a project supported by evidence that meets the conditions in the definition of ''Moderate Evidence'' or ''Strong Evidence,'' to improve postsecondary success for underserved students, including retention and completion. Projects under this priority must be implemented at a multi-site sample or include at least 2,000 students.

(a) Applicants addressing this priority must:

(1) identify up to two studies to be reviewed against the WWC Handbooks (as defined in this notice) for the purposes of meeting the definition of moderate evidence or strong evidence;

(2) clearly identify the citations and relevant findings for each study in the Evidence form; and

(3) ensure that all cited studies are available to the Department from publicly available sources and provide links or other guidance indicating where each is available.

Note: The studies may have been conducted by the applicant or by a third party. The Department may not review a study that an applicant fails to clearly identify for review.

(b) In addition to including up to two study citations, an applicant must provide in the Evidence form the following information:

(1) the positive student outcomes the applicant intends to replicate under its Mid-phase/Expansion grant and how these outcomes correspond to the positive student outcomes in the cited studies;

(2) the characteristics of the population or setting to be served under its Mid-phase/Expansion grant and how these characteristics correspond to the characteristics of the population or setting in the cited studies; and

(3) the practice(s) the applicant plans to implement under its Mid-phase/Expansion grant and how the practice(s) correspond with the practice(s) in the cited studies.

Note: If the Department determines that an applicant has provided insufficient information, the applicant will not have an opportunity to provide additional information. However, if the WWC team reviewing evidence determines that a study does not provide enough information on key aspects of the study design, such as sample attrition or equivalence of intervention and comparison groups, the WWC may submit a query to the study author(s) to gather information for use in determining a study rating. Authors would be asked to respond to queries within 10 business days. Should the author query remain incomplete within 14 days of the initial contact to the study author(s), the study may be deemed ineligible under the grant competition. After the grant competition closes, the WWC will, for purposes of its own curation of studies, continue to include responses to author queries and make updates to study reviews as necessary. However, no additional information will be considered after the competition closes and the initial timeline established for response to an author query passes.

Competitive Preference Priority: For FY 2023, and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 6 points to an application, depending on how well the application meets the competitive preference priority.

This priority is:

Applicants that have made progress towards or can demonstrate they have a plan to improve student outcomes for underserved students by using data to continually assess and improve the effectiveness of funded activities and sustain data-driven continuous improvement processes at the institution after the grant period (up to 6 points).

Applicants addressing this priority must:

(a) Identify or describe how they will develop the performance and outcome measures they will use to monitor and evaluate implementation of the intervention(s), including baseline data, intermediate and annual targets, and disaggregation by student subgroups (up to 2 points); (b) Describe how they will assess and address gaps in current data systems, tools, and capacity and how they will monitor and respond to performance and outcome data to improve implementation of the intervention on an ongoing basis and as part of formative and summative evaluation of the intervention(s)(up to 2 points); and (c) Describe how institutional leadership will be involved with and supportive of project leadership and how the project relates to the institution's broader student success priorities and improvement processes (up to 2 points).

Definitions: In accordance with section 437(d)(1) of GEPA, we are establishing definitions for ''Students with disabilities,'' ''English learner,'' ''Minority-serving institution,'' ''multi-site sample'' and ''underserved student'' [15] for the FY 2023 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition. The remaining definitions are from 34 CFR 77.1.

Baseline means the starting point from which performance is measured and targets are set.

Demonstrates a Rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

English learner means an individual who is an English learner as defined in Section 8101(2) of the Elementary and Secondary Education Act of 1965, as amended, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

Evidence-based means the proposed project component is supported by one or more of strong evidence, moderate evidence, promising evidence,[16] or evidence that demonstrates a rationale.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet WWC standards without reservations as described in the WWC Handbooks:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Note: In developing logic models, applicants may want to use resources such as the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application, available at *https://ies.ed.gov/ncee/rel/regions/pacific/pdf/ELMUserGuideJune2014.pdf.* Other sources include: *https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014025.pdf,* and *https://ies.ed.gov/ncee/edlabs/regions/northeast/pdf/REL_2015057.pdf.*

Minority-serving institution means an institution that is eligible to receive assistance under sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA.

Moderate Evidence means that there is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''strong evidence base'' or ''moderate

[15] The definitions of ''Students with disabilities,'' ''English learner,'' and ''underserved student,'' for the purposes of this competition, align with the definitions of these terms in the Secretary's Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

[16] The definition of ''promising evidence'' is from 34 CFR 77.1.

evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study or quasi-experimental design study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the WWC Handbooks, as appropriate, and that—(A) Meets WWC standards with or without reservations; (B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome; (C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and (D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii) (A), (B), and (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

Multi-site sample means at least two campuses of a single institution or multiple IHEs, including multiple IHEs within one public system of higher education.

Nonprofit, as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

Note: For purposes of this competition, this definition of Nonprofit does not apply to institutions of higher education or nonprofits that are a part of an IHE.

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance.

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbooks.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Strong Evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''strong evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the WWC Handbooks, as appropriate, and that

(A) Meets WWC standards without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

Students with disabilities means students with disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401(3) and 34 CFR 300.8, or students with disabilities, as defined in the Rehabilitation Act of 1973 (29 U.S.C. 705(37), 705(202)(B)).

Underserved student means a student in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) A student who is a member of a federally recognized Indian Tribe.

(d) An English learner.

(e) A student with a disability.

(f) A lesbian, gay, bisexual, transgender, queer or questioning, or intersex (LGBTQI+) student.

(g) A pregnant, parenting, or caregiving student.

(h) A student who is the first in their family to attend postsecondary education.

(i) A student enrolling in or seeking to enroll in postsecondary education for the first time at the age of 20 or older.

(j) A student who is working full-time while enrolled in postsecondary education.

(k) A student who is enrolled in, or is seeking to enroll in, postsecondary education who is eligible for a Pell Grant.

(l) An adult student in need of improving their basic skills or an adult student with limited English proficiency.

WWC Handbooks means the standards and procedures set forth in the WWC Standards Handbook, Versions 4.0 or 4.1, and WWC Procedures Handbook, Versions 4.0 or 4.1, or in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference, see § 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

Note: The WWC Procedures and Standards Handbook (Version 4.1), as well as the more recent WWC Handbooks released in August 2022 (Version 5.0), are available at *https://ies.ed.gov/ncee/wwc/Handbooks.*

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities, definitions, and requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This program, as a substantially revised program, qualifies for this exemption. To ensure timely grant awards, the Secretary has decided to forgo public comment on the priorities, definitions, and requirements under section 437(d)(1) of GEPA. These priorities, definitions, and requirements will apply to the FY 2023 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Program Authority: 20 U.S.C. 1138–1138d; House Report 117–403 and the Explanatory Statement accompanying Division H of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in the Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $44,550,000.

These estimated available funds are the total available for new awards for both types of grants under PSSG (Early-phase and Mid-phase/Expansion grants).

Early-phase—$22,275,000 for AP1.

Mid-phase/Expansion—$22,275,000 for AP2.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards:

Early-phase (AP1)—$2,000,000–$4,000,000 for 48 months.

Mid-phase/Expansion (AP2)—$6,000,000–$8,000,000 for 48 months.

Estimated Average Size of Awards:

Early-phase (AP1)—$3,000,000 for 48 months.

Mid-phase/Expansion (AP2)—$7,000,000 for 48 months.

Maximum Awards: We will not make awards exceeding the following amounts for a 48-month budget period.

Early-phase (AP1)—$4,000,000.

Mid-phase/Expansion (AP2)—$8,000,000.

Estimated Number of Awards:

Early-phase (AP1)—5–8.

Mid-phase/Expansion (AP2)—3–4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions designated as eligible to apply under Title III/V (which includes HBCUs, TCCUs, MSIs and SIP); nonprofits that are not an IHE or part of an IHE, in partnership with at least one eligible Title III/V IHE; a State, in partnership with at least one eligible Title III/V IHE; or a public system of higher education institutions.

Note: The notice announcing the FY 2023 process for designation of eligible institutions, and inviting applications for waiver of eligibility requirements, was published in the **Federal Register** on January 17, 2023 (88 FR 2611). Only institutions that the Department determines are eligible, or which are granted a waiver under the process described in the January 17, 2023, notice, and that meet the other eligibility requirements described in this notice, may apply for a grant under this program. To determine if your institution is eligible for this grant program please visit, *https://www2.ed.gov/about/offices/list/ope/idues/eligibility.html.*

Institutions must include their FY 2023 Eligibility Letter in their application packet under other attachments. To retrieve the letter, please visit *https://hepis.ed.gov/main.*

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2. a. *Cost Sharing or Matching:* Each grant recipient must provide, from Federal, State, local, or private sources, an amount equal to or exceeding 10 percent of funds requested under the grant, which may be provided in cash or through in-kind contributions, to carry out activities supported by the grant. Applicants must include a budget showing their matching contributions to the budget amount requested of PSSG funds.

The Secretary may waive the matching requirement on a case-by-case basis, upon a showing of exceptional circumstances, such as:

(i) The difficulty of raising matching funds for a program to serve a high poverty area defined as a Census tract, a set of contiguous Census tracts, an American Indian Reservation, Oklahoma Tribal Statistical Area (as defined by the U.S. Census Bureau), Alaska Native Village Statistical Area or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area, or other tribal land as defined by the Secretary in guidance or county that has a poverty rate of at least 25 percent as set every 5 years using American Community Survey 5-Year data;

(ii) Serving a significant population of low-income students defined as at least 50 percent (or meet the *eligibility threshold* [17] for the appropriate institutional sector) of degree-seeking enrolled students receiving need-based grant aid under Title IV; or

(iii) Showing significant economic hardship as demonstrated by low average educational and general expenditures per full-time equivalent undergraduate student, in comparison

[17] Request for Designation as an Eligible Institution and Waiver of the Non-Federal Cost Share Requirement.

with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction.

Note: Institutions seeking to waive the matching requirement must provide the outlined waiver request information within their application.

b. *Supplement-Not-Supplant:* This competition involves supplement-not-supplant funding requirements. This program uses the waiver authority of section 437(d)(1) of GEPA to establish this as a supplement-not-supplant program. Grant funds must be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds.

c. *Indirect Cost Rate Information:* This program limits a grantee's indirect cost reimbursement to eight percent of a modified total direct cost base. We are establishing this indirect cost limit for the FY 2023 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition in accordance with section 437(d)(1) of GEPA. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may award subgrants to entities to directly carry out project activities described in its application. The grantee may award subgrants to entities it has identified in an approved application.

4. *Evaluation:* This program uses the waiver authority of section 437(d)(1) of GEPA to require a grantee to conduct an independent evaluation of the effectiveness of its project.

5. *Other Requirements:* Applicants may only apply to one absolute priority ''tier''. One application per applicant.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *www.federalregister.gov/d/2022-26554,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 30 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended 30-page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract. However, the recommended page limit does apply to all of the application narrative.

Note: The Budget Information-Non-Construction Programs Form (ED 524) Sections A–C are not the same as the narrative response to the Budget section of the selection criteria.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. The points assigned to each criterion are indicated in the parentheses next to the criterion. An applicant may earn up to a total of 100 points based on the selection criteria for the application. An applicant that also chooses to address the competitive preference priority can earn up to 106 total points.

1.1 Absolute Priority One—Early-Phase Selection Criteria

(a) *Significance.* (up to 20 points)

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(b) *Quality of the Project Design.* (up to 30 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework. (up to 10 points)

(ii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (up to 5 points)

(iii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (up to 15 points)

(c) *Quality of Project Personnel.* (up to 10 points)

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (up to 5 points)

(3) In addition, the Secretary considers the qualifications, including relevant training and experience, of key project personnel. (up to 5 points)

(d) *Quality of the Management Plan.* (up to 10 points)

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including

clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (up to 10 points)

(e) *Quality of the Project Evaluation.* (up to 30 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation will, if well implemented, produce evidence about the project's effectiveness that would meet the WWC standards with or without reservations as described in the WWC Handbook. (up to 20 points)

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (up to 5 points)

(iii) The extent to which the evaluation plan clearly articulates the key project components, mediators, and outcomes, as well as a measurable threshold for acceptable implementation. (up to 5 points)

1.2 Absolute Priority Two—Mid-Phase/Expansion Selection Criteria

(a) *Significance.* (up to 15 points)

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The national significance of the proposed project. (up to 5 points)

(ii) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies. (up to 5 points)

(iii) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies. (up to 5 points)

(b) *Strategy to Scale.* (up to 35 points)

(1) The Secretary considers the applicant's strategy to scale the proposed project.

(2) In determining the applicant's capacity to scale the proposed project, the Secretary considers the following factors:

(i) The extent to which the applicant identifies a specific strategy or strategies that address a particular barrier or barriers that prevented the applicant, in the past, from reaching the level of scale that is proposed in the application. (up to 15 points)

(ii) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (up to 5 points)

(iii) The mechanisms the applicant will use to broadly disseminate information on its project so as to support further development or replication. (up to 15 points)

(c) *Quality of the Project Design.* (up to 15 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework. (up to 5 points)

(ii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (up to 5 points)

(iii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (up to 5 points)

(d) *Quality of the Project Evaluation.* (up to 35 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation will, if well implemented, produce evidence about the project's effectiveness that would meet the WWC standards without reservations as described in the WWC Handbook. (up to 20 points)

(ii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings. (up to 5 points)

(iii) The extent to which the evaluation plan clearly articulates the key project components, mediators, and outcomes, as well as a measurable threshold for acceptable implementation. (up to 5 points)

(iv) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (up to 5 points)

Note: Applicants may wish to review the following technical assistance resources on evaluation: (1) WWC Procedures and Standards Handbooks: *https://ies.ed.gov/ncee/wwc/Handbooks;* (2) ''Technical Assistance Materials for Conducting Rigorous Impact Evaluations'': *https://ies.ed.gov/ncee/projects/evaluationTA.asp;* and (3) IES/NCEE Technical Methods papers: *https://ies.ed.gov/ncee/tech_methods/.* In addition, applicants may view an optional webinar recording that was hosted by the Institute of Education Sciences. The webinar focused on more rigorous evaluation designs, discussing strategies for designing and executing experimental studies that meet WWC evidence standards without reservations. This webinar is available at: *https://ies.ed.gov/ncee/wwc/Multimedia/18.*

2. *Review and Selection Process:* Potential applicants are reminded that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

A panel of non-Federal reviewers will review and score each application in accordance with the selection criteria. The Department will prepare a rank order of applications for each Absolute Priority based solely on the evaluation of their quality according to the selection criteria and competitive preference priority points. Awards will be made in rank order according to the average score received from the peer review. The rank order of applications for each Absolute Priority will be used to create two slates.

Before making awards, we will screen applications submitted in accordance with the requirements in this notice to determine whether applications have met eligibility and other requirements. This screening process may occur at various stages of the process; applicants that are determined to be ineligible will not receive a grant, regardless of peer reviewer scores or comments.

Tiebreaker: Within each slate, if there is more than one application with the same score and insufficient funds to fund all the applications with the same ranking, the Department will apply the

following procedure to determine which application or applications will receive an award:

First Tiebreaker: The first tiebreaker will be the applicant with the highest percentage of undergraduate students who are Pell grant recipients. If a tie remains, the second tiebreaker will be utilized.

Second Tiebreaker: The second tiebreaker will be the highest average score for the selection criterion titled ''Significance.''

3. *Risk Assessment and Specific Conditions:*

Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We also may notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:*

We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements, please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* For the purpose of Department reporting under 34 CFR 75.110, the Department has established a set of required performance measures (as defined in this notice):

(1) First-year credit accumulation.

(2) Annual retention (at initial institution) and persistence (at any institution) rates.

(3) Success rates including graduation and upward transfer for two-year institutions.

(4) Time to credential.

(5) Number of credentials conferred.

Note: All measures should be disaggregated by race/ethnicity and Pell grant recipient status and should be inclusive of all credential-seeking students (*e.g.,* full-time and part-time, first-time and transfer-in.)

Project-Specific Performance Measures: Applicants must propose project-specific performance measures and performance targets (both as defined in this notice) consistent with the objectives of the proposed project.

Applications must provide the following information as directed under 34 CFR 75.110(b):

(1) Performance measures. How each proposed performance measure would accurately measure the performance of

the project and how the proposed performance measure would be consistent with the performance measures established for the program funding the competition.

(2) Baseline (as defined in this notice) data. (i) Why each proposed baseline is valid; or (ii) if the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) Performance targets. Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

Applications must also provide the following information as directed under 34 CFR 75.110(c):

(1) Data collection and reporting. (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

Depending on the nature of the intervention proposed in the application, common metrics may include the following: college-level math and English course completion in the first year (developmental education); unmet financial need (financial aid); program of study selection in the first year (advising); post-transfer completion (transfer); and re-enrollment (degree reclamation).

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for an award under this program to consider the operationalization of the measures in conceptualizing the approach and evaluation for its proposed project.

If funded, you will be required to collect and report data in your project's annual performance report (34 CFR 75.590).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2023–15780 Filed 7–25–23; 8:45 am]

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DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0141]

Agency Information Collection Activities; Comment Request; Measures and Methods for the National Reporting System for Adult Education

AGENCY: Office of Career, Technical, and Adult Education (OCTAE), 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 September 25, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *https://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0141. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact John Lemaster, (202) 245–6218.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Measures and Methods for the National Reporting System for Adult Education.

OMB Control Number: 1830–0027.

Type of Review: 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: 5,700.

Abstract: The respondents are the 57 states/outlying areas that receive adult education state grant funds under the Adult Education and Family Literacy Act (AEFLA). The information collected is the states' annual performance report. OCTAE will use the data to ensure that states meet the performance accountability requirements of AEFLA.

Dated: July 20, 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. 2023–15761 Filed 7–25–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Technical Assistance on State Data Collection—National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate IDEA Data To Address Significant Disproportionality

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2023 for Technical Assistance on State Data Collection—National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Data to Address Significant Disproportionality, Assistance Listing Number 84.373E. This notice relates to the approved information collection under OMB control number 1820–0028.

DATES:

Applications Available: July 26, 2023.

Deadline for Transmittal of Applications: September 11, 2023.

Pre-Application Webinar Information: No later than July 31, 2023, the Office of Special Education and Rehabilitative Services will post details on pre-recorded informational webinars designed to provide technical assistance to interested applicants. Links to the webinars may be found at *https://www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *www.federalregister.gov/d/2022-26554.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Richelle Davis, U.S. Department of Education, 400 Maryland Avenue SW, Room 5076, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: 202–245–7401. Email: *Richelle.Davis@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet the Individuals with Disabilities Education Act (IDEA) data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary authority to reserve not more than ½ of 1 percent of the amounts appropriated under Part B for each fiscal year to provide technical assistance (TA) activities, where needed, to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. In addition, the Consolidated Appropriations Act, 2023, Public Law 117–328, gives the Secretary authority to use funds reserved under section 611(c) of IDEA to ''administer and carry out other services and activities to improve data collection, coordination, quality, and use under Parts B and C of the IDEA.'' Consolidated Appropriations Act, 2023, Public Law 117–328, Div. H, Title III, 136 Stat. 4459, 4891 (2022).

Priority: This competition includes one absolute priority. This priority is from the notice of final priority and requirements (NFP) for this program published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate IDEA Data To Address Significant Disproportionality

Background:

Under sections 616 and 618 of IDEA, States are required to collect, report, analyze, and use data regarding students with disabilities. These activities are intended to support improved educational results and functional outcomes for all children with disabilities, and to ensure that States meet IDEA requirements, with an emphasis on those requirements most closely related to improving educational results for children with disabilities. Additionally, IDEA section 618(d) requires States and the Department of the Interior to collect and examine data to determine if significant disproportionality on the basis of race and ethnicity is occurring in the State and the local educational agencies (LEAs) of the State with respect to (1) identification of children as children with disabilities, including by disability category; (2) placement of children with disabilities by educational settings; and (3) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. There are 98 separate factors for determining whether significant disproportionality exists in an LEA (*i.e.,* 14 categories of analysis with respect to identification, placement, and disciplinary removal, cross-tabulated with seven racial and ethnic groups).

In December 2016, the Department published a final rule [1] on significant disproportionality in special education to further clarify the statute. The final rule established a standard methodology that State educational agencies (SEAs) must use to determine whether significant disproportionality on the

[1] The full text of the final rule can be found at 81 FR 92376 (*https://www.federalregister.gov/documents/2016/12/19/2016-30190/assistance-to-states-for-the-education-of-children-with-disabilities-preschool-grants-for-children*). Please also see Significant Disproportionality Essential Questions and Answers at *https://sites.ed.gov/idea/files/significant-disproportionality-qa-03-08-17.pdf* for additional information on significant disproportionality requirements.

basis of race and ethnicity is occurring in the State and its LEAs. The final rule also clarified the requirements for the review of policies, practices, and procedures when significant disproportionality is identified, and it requires LEAs to identify the factors contributing to the significant disproportionality and address them, including by reserving 15 percent of their IDEA Part B funds for comprehensive coordinated early intervening services (CCEIS). SEAs were required to begin implementing the regulation by reporting on significant disproportionality beginning in 2020 for the 2018–2019 school year.[2]

Since that time, the IDEA section 618 data reported by SEAs in the Maintenance of Effort Reduction and Coordinating Early Intervening Services collection (which include the number of LEAs required to reserve 15 percent of their IDEA Part B funds due to being identified as having significant disproportionality)[3] reflected the following: For school year (SY) 2018–2019 (reported by SEAs in May 2020), SEAs reported that 417 LEAs, across 31 States, were required to reserve 15 percent of their IDEA Part B funds due to significant disproportionality. Over the following two school years, the IDEA section 618 data submitted by SEAs reflected an increase in both the number of LEAs identified with significant disproportionality and the overall number of States that identified LEAs. For SY 2020–2021 (the most recent IDEA section 618 data available, reported by SEAs in May 2022), SEAs identified 825 LEAs, across 39 States, with significant disproportionality. While this number represents only 5 percent of all LEAs in the country, it is a significant increase from the number of LEAs identified in SY 2018–2019. Of the 825 LEAs identified in SY 2020–2021, 648 LEAs had not been identified with significant disproportionality in the previous two school years and 99 LEAs had been repeatedly identified in all three reporting years.

The Department's analysis of the above data—*i.e.,* the simultaneous increase in the number of LEAs identified by the State for the first time and the number of LEAs that have continued to be identified with significant disproportionality—is that SEAs have varying needs for TA to correctly use their IDEA data to both identify and address significant disproportionality in their LEAs. In particular, SEAs with LEAs that have been identified as having significant disproportionality in multiple years may require additional TA to assist LEAs in conducting more robust root cause analyses, including using various data to identify and address the factors contributing to the significant disproportionality. In addition, SEAs with LEAs newly identified as having significant disproportionality may require additional TA on how to support LEAs, whether in reviewing their policies, practices, and procedures in the area in which the significant disproportionality was identified, or in conducting a robust root cause analysis to identify and address factors contributing to the significant disproportionality.

Additionally, based on a review of IDEA Part B State Performance Plans (SPPs)/Annual Performance Reports (APRs) submitted by SEAs since 2016, the Office of Special Education Programs (OSEP) has found multiple instances of States confusing the methodologies used to calculate significant disproportionality with those used to calculate data under SPP/APR Indicator 4 (Suspension/Expulsion) and SPP/APR Indicators 9 and 10 (Disproportionate Representation). While there may be some similarities in these data sets and methodologies, the data analysis required for each is different and based on separate, distinct provisions of IDEA. The significant disproportionality provision in IDEA section 618(d) requires SEAs to determine whether significant disproportionality on the basis of race and ethnicity is occurring in the State and its LEAs, as it relates to identification, placement, and discipline. In contrast, the reporting under SPP/APR Indicator 4 is based on IDEA section 612(a)(22), which requires SEAs to identify significant discrepancies, including by race and ethnicity, in the rates of long-term suspensions and expulsions of children with disabilities among the LEAs in the State or compared to rates for nondisabled children in those LEAs. SPP/APR Indicator 9 is based on IDEA section 616(a)(3)(C) and requires SEAs to identify LEAs with disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification. SPP/APR Indicator 10, also based on IDEA section 616(a)(3)(C), requires SEAs to identify LEAs with disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification. In addition to providing data that is not valid and reliable to the Department, SEA confusion with implementing the methodologies for significant disproportionality and Indicators 4, 9, and 10, may lead to incorrect identification or non-identification of significant disproportionality, significant discrepancy, and disproportionate representation. OSEP has determined that SEAs, and LEAs through their work with SEAs, require additional assistance and resources to help them (1) collect high-quality data and analyze it according to the SEA's standard methodology; (2) understand what their significant disproportionality data mean in relation to data collected under IDEA, section 616; (3) conduct root cause analysis of the data to identify the potential causes and contributing factors of the significant disproportionality; (4) evaluate policies, practices, and procedures that may be contributing to the significant disproportionality; (5) make changes, including through the expenditure of IDEA funds for CCEIS, in any policy, practice, or procedure, and address any other factors, identified as contributing to the significant disproportionality; and (6) to provide data in timely, usable, accessible, and understandable formats for parents, families, advocates, and other stakeholders.

To meet the array of complex challenges regarding the collection, reporting, analysis, and use of data by States, OSEP published an NFP elsewhere in this issue of the **Federal Register** to establish and operate the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Data to Address Significant Disproportionality.

Priority:

The purpose of the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Data to Address Significant Disproportionality (Center) is to promote equity by improving State capacity to accurately collect, report, analyze, and use section 618 data to address issues of significant disproportionality. The Center will also work to increase the capacity of SEAs, and LEAs through their work with

[2] On July 3, 2018, the Department postponed the date for States to comply with these regulations until July 1, 2020. On March 7, 2019, the United States District Court for the District of Columbia vacated the Department's delay. *Council of Parent Attorneys and Advocates, Inc.* v. *DeVos,* 365 F. Supp. 3d 28 (D.D.C. 2019). The regulations took effect immediately after that judicial decision.

[3] An LEA that is identified as having significant disproportionality must reserve 15 percent of its IDEA, Part B funds to provide CCEIS. Please see questions C–3–1 to C–3–10 in Significant Disproportionality Essential Questions and Answers at *https://sites.ed.gov/idea/files/significant-disproportionality-qa-03-08-17.pdf* for more information on CCEIS.

SEAs, to use their data to conduct robust root cause analyses and identify evidence-based strategies for effectively using funds reserved for CCEIS.

The Center must achieve, at a minimum, the following expected outcomes:

(a) Increased capacity of SEAs to analyze and use their data collected and reported under section 618 of IDEA to accurately identify significant disproportionality in the State and the LEAs of the State;

(b) Increased capacity of SEAs, and LEAs through their work with SEAs, to use data collected and reported under section 618 of IDEA, as well as other available data, to conduct root cause analyses in order to identify the potential causes and contributing factors of an LEA's significant disproportionality;

(c) Improved capacity of SEAs, and LEAs through their work with SEAs, to review and, as necessary, revise policies, practices, and procedures identified as contributing to significant disproportionality, and to address any other factors identified as contributing to the significant disproportionality;

(d) Improved capacity of SEAs to assist LEAs, as needed, in using data to drive decisions related to the use of funds reserved for CCEIS;

(e) Increased capacity of SEAs, and LEAs through their work with SEAs, to use data to address disparities revealed in the data they collect;

(f) Improved capacity of SEAs, and LEAs through their work with SEAs, to accurately collect, report, analyze, and use data related to significant disproportionality and apply the State methodology for identifying significant disproportionality, including distinguishing data collected under section 616 of IDEA (specifically, SPP/APR Indicator 4 (Suspension/Expulsion) and SPP/APR Indicators 9 and 10 (Disproportionate Representation);

(g) Increased capacity of SEAs to use data to evaluate their own methodology for identifying significant disproportionality;

(h) Improved capacity of SEAs to assist LEAs to engage parents, families, advocates, and other stakeholders to use data to address disparities revealed in the data they collect; and

(i) Improved capacity of SEAs, and LEAs through their work with SEAs, to provide data in timely, usable, accessible, and understandable formats for parents, families, advocates, and other stakeholders.

In addition, to be considered for funding under this competition, applicants must meet the following requirements:

Applicants must—

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address State challenges in collecting, analyzing, reporting, and using their data collected under section 618 of IDEA to correctly identify and address significant disproportionality. To meet this requirement the applicant must—

(i) Demonstrate knowledge of IDEA data collections, including data required under sections 616 and 618 of IDEA, as well as the requirements related to significant disproportionality in section 618(d) of IDEA;

(ii) Present applicable national, State, and local data to demonstrate the capacity needs of SEAs, and LEAs through their work with SEAs, to analyze and use their data collected under section 618 of IDEA to identify and address significant disproportionality;

(iii) Describe how SEAs, and LEAs through their work with SEAs, are currently analyzing and using their data collected under section 618 of IDEA to identify and address significant disproportionality; and

(iv) Present information about the difficulties SEAs, and LEAs through their work with SEAs, including a variety of LEAs such as urban and rural LEAs and charter schools that are LEAs, have in collecting, reporting, analyzing, and using their IDEA section 618 data to address significant disproportionality; and

(2) Result in improved IDEA data collection, reporting, analysis, and use in identifying and addressing significant disproportionality.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that products and services meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *https://osepideasthatwork.org/sites/default/files/2021-12/ConceptualFramework_Updated.pdf* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and make use of evidence-based practices (EBPs).[4] To meet this requirement, the applicant must describe—

(i) The current capacity of SEAs to use IDEA section 618 data to correctly identify significant disproportionality and assist LEAs as they conduct root cause analyses and review LEA policies, practices, and procedures;

(ii) Current research on effective practices to address disproportionality, particularly through the provision of CCEIS; and

(iii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base on the capacity needs of SEAs, and LEAs through their work with SEAs, to collect, report, analyze, and use IDEA section 618 data in a manner that correctly identifies and addresses significant disproportionality in States and LEAs;

(ii) Its proposed approach to universal, general TA,[5] which must

[4] For purposes of these requirements, ''evidence-based practices'' (EBPs) means, at a minimum, demonstrating a rationale (as defined in 34 CFR 77.1) based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes.

[5] ''Universal, general TA'' means TA and information provided to independent users through

identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,[6] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA,[7] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of SEA personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA level;

(C) Its proposed plan for assisting SEAs to build or enhance training systems related to the use of IDEA section 618 data to correctly identify and address significant disproportionality that include professional development based on adult learning principles and coaching;

(D) Its proposed plan for working with appropriate levels of the education system (*e.g.,* SEAs, regional TA providers, LEAs, schools, and families) to ensure that there is communication between each level and that there are systems in place to support the capacity needs of SEAs, and LEAs through their work with SEAs, to collect, report, analyze, and use IDEA section 618 data to correctly identify and address significant disproportionality; and

(E) Its proposed plan for collaborating and coordinating with Department-funded projects, including those providing data-related support to States (*e.g.,* the IDEA Data Center, the Center for IDEA Fiscal Reporting, the National Center for Systemic Improvement) and equity-related support to States (*e.g.,* Center on Positive Behavioral Interventions and Supports, Regional Equity Assistance Centers), where appropriate, in order to align complementary work and jointly develop and implement products and services to meet the purposes of this priority;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[8] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the APR and at the end of Year 2 for the review process; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits, and funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are

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their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[6] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[7] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

[8] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, or have any financial interest in the outcome of the evaluation.

appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements:

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one- and one-half day kick-off meeting in Washington, DC, or virtually, after receipt of the award, and an annual planning meeting in Washington, DC, or virtually, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: The project must reallocate unused travel funds no later than the end of the third quarter if the kick-off or planning meetings are conducted virtually.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two- and one-half day project directors' conference in Washington, DC, or virtually, during each year of the project period; and

Note: The project must reallocate unused travel funds no later than the end of the third quarter of each budget period if the conference is conducted virtually.

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility; and

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate.

Fourth and Fifth Years of the Project:

In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), including—

(a) The recommendations of a 3+2 review team consisting of experts with knowledge and experience in data collection and significant disproportionality. This review will be conducted during a one-day intensive meeting that will be held during the last half of the second year of the project period;

(b) The timeliness with which, and how well, the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's products and services and the extent to which the project's products and services are aligned with the project's objectives and likely to result in the project achieving its intended outcomes.

Under 34 CFR 75.253, the Secretary may reduce continuation awards or discontinue awards in any year of the project period for excessive carryover balances or a failure to make substantial progress. The Department intends to closely monitor unobligated balances and substantial progress under this program and may reduce or discontinue funding accordingly.

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), 1418(d), 1442; Consolidated Appropriations Act, 2023, Public Law 117–328, Div. H, Title III, 136 Stat. 4459, 4891 (2022).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The NFP. (e) The regulations for this program in 34 CFR part 300.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative Agreement.

Estimated Available Funds: $1,500,000 in year one, $2,500,000 in year two, and $3,500,000 in years three through five.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2024 from the list of unfunded applications from this competition.

Maximum Award: We will not make an award exceeding $1,500,000 for a single budget period of 12 months in year one, $2,500,000 for a single budget period of 12 months in year two, and $3,500,000 for a single budget period of 12 months in years three through five.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; State lead agencies under Part C of IDEA; LEAs, including public charter schools that are considered LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200, subpart E, of the Uniform Guidance.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c), a grantee under this competition may award subgrants—to directly carry out project activities

described in its application—to the following types of entities: IHEs, nonprofit organizations suitable to carry out the activities proposed in the application, and public agencies. The grantee may award subgrants to entities it has identified in an approved application or that it selects through a competition under procedures established by the grantee, consistent with 34 CFR 75.708(b)(2).

4. *Other General Requirements:*

(a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, on December 7, 2022 (87 FR 75045), and available at *www.federalregister.gov/d/2022-26554,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make an award by the end of FY 2023.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 70 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed below:

(a) *Significance (10 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

(b) *Quality of project services (35 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(iv) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(v) The extent to which the TA services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(vi) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(c) *Quality of the project evaluation (15 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(iv) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(d) *Adequacy of resources and quality of project personnel (15 points).*

(1) The Secretary considers the adequacy of resources for the proposed project and the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(iv) The qualifications, including relevant training, experience, and independence, of the evaluator.

(v) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(vi) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(vii) The extent to which the budget is adequate to support the proposed project.

(viii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) *Quality of the management plan (25 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions, and under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

6. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify

administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* For the purpose of Department reporting under 34 CFR 75.110, the Department has established a set of performance measures that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance on State Data Collection program. These measures are:

- *Program Performance Measure #1:* The percentage of TA and dissemination products and services deemed to be of high quality by an independent review panel of experts qualified or individuals with appropriate expertise to review the substantive content of the products and services.
- *Program Performance Measure #2:* The percentage of TA and dissemination products and services deemed by an independent review panel of qualified experts or members of the target audiences to be of high relevance to educational and early intervention policy or practice.
- *Program Performance Measure #3:* The percentage of TA and dissemination products and services deemed by an independent review panel of qualified experts or members of the target audiences to be useful in improving educational or early intervention policy or practice.
- *Program Performance Measure #4:* The cost efficiency of the Technical Assistance on State Data Collection Program includes the percentage of milestones achieved in the current annual performance report period and the percentage of funds spent during the current fiscal year.

The measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual and final performance reports to the Department (34 CFR 75.590).

The Department will also closely monitor the extent to which the products and services provided by the Center meet the needs identified by stakeholders and may require the Center to report on such alignment in their annual and final performance reports.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Glenna Wright-Gallo,

Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2023–15849 Filed 7–24–23; 11:15 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–111–000

Applicants: Idaho Power Company, PacifiCorp

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Idaho Power Company, et al.

Filed Date: 7/20/23.

Accession Number: 20230720–5124.

Comment Date: 5 p.m. ET 8/10/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–1500–003.
Applicants: Sunflower Electric Power Corporation, Southwest Power Pool, Inc.
Description: Compliance filing: Southwest Power Pool, Inc. submits tariff filing per 35: Settlement Compliance Filing of Sunflower in Response to June 21 Order to be effective 6/1/2022.
Filed Date: 7/20/23.
Accession Number: 20230720–5098.
Comment Date: 5 p.m. ET 8/10/23.

Docket Numbers: ER23–2001–000.
Applicants: Sagebrush ESS II, LLC.
Description: Supplement to May 30, 2023 Sagebrush ESS II, LLC tariff filing.
Filed Date: 7/17/23.
Accession Number: 20230717–5187.
Comment Date: 5 p.m. ET 7/27/23.

Docket Numbers: ER23–2066–000.
Applicants: Antelope Valley BESS, LLC.
Description: Supplement to June 2, 2023 Antelope Valley BESS, LLC tariff filing.
Filed Date: 7/20/23.
Accession Number: 20230720–5103.
Comment Date: 5 p.m. ET 7/31/23.

Docket Numbers: ER23–2438–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: Second Amended and Restated Midpoint-Meridian Agreement (RS No. 369) to be effective 12/31/9998.
Filed Date: 7/19/23.
Accession Number: 20230719–5157.
Comment Date: 5 p.m. ET 8/9/23.

Docket Numbers: ER23–2439–000.
Applicants: Cavalier Solar A2, LLC.
Description: Baseline eTariff Filing: Cavalier Solar A2, LLC MBR Tariff to be effective 8/1/2023.
Filed Date: 7/20/23.
Accession Number: 20230720–5001.
Comment Date: 5 p.m. ET 8/10/23.

Docket Numbers: ER23–2440–000.
Applicants: McFarland Solar B, LLC.
Description: Baseline eTariff Filing: McFarland Solar B, LLC MBR Tariff to be effective 8/1/2023.
Filed Date: 7/20/23.
Accession Number: 20230720–5002.
Comment Date: 5 p.m. ET 8/10/23.

Docket Numbers: ER23–2441–000.
Applicants: Chevelon Butte RE II LLC.
Description: Baseline eTariff Filing: Chevelon Butte RE II LLC MBR Tariff to be effective 9/1/2023.
Filed Date: 7/20/23.
Accession Number: 20230720–5003.
Comment Date: 5 p.m. ET 8/10/23.

Docket Numbers: ER23–2442–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 7022; Queue No. AG1–478 to be effective 9/15/2023.
Filed Date: 7/20/23.
Accession Number: 20230720–5009.
Comment Date: 5 p.m. ET 8/10/23.

Docket Numbers: ER23–2443–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2023–07–20_SA 4126 METC-Wolverine-MPPA-Eagle Creek Solar Park GIA (J1389) to be effective 9/19/2023.
Filed Date: 7/20/23.
Accession Number: 20230720–5012.
Comment Date: 5 p.m. ET 8/10/23.

Docket Numbers: ER23–2444–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of WMPA, Service Agreement No. 6356; Queue No. AG2–205 to be effective 9/15/2023.
Filed Date: 7/20/23.
Accession Number: 20230720–5019.
Comment Date: 5 p.m. ET 8/10/23.

Docket Numbers: ER23–2445–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2023–07–20_Ameren Illinois Depreciation Rates to be effective 12/31/9998.
Filed Date: 7/20/23.
Accession Number: 20230720–5020.
Comment Date: 5 p.m. ET 8/10/23.

Docket Numbers: ER23–2446–000.
Applicants: GridLiance West LLC.
Description: GridLiance West LLC Request for Abandoned Plant Incentive and Expedited Action for GridLiance West LLC.
Filed Date: 7/19/23.
Accession Number: 20230719–5203.
Comment Date: 5 p.m. ET 8/9/23.

Docket Numbers: ER23–2447–000.
Applicants: Desert Peak Energy Center, LLC.
Description: Baseline eTariff Filing: Desert Peak Energy Center, LLC Filing of Shared Facilities Agreement to be effective 7/21/2023.
Filed Date: 7/20/23.
Accession Number: 20230720–5061.
Comment Date: 5 p.m. ET 8/10/23.

Docket Numbers: ER23–2448–000.
Applicants: Tunica Windpower LLC.
Description: Baseline eTariff Filing: Tunica Windpower LLC MBR Tariff to be effective 9/18/2023.
Filed Date: 7/20/23.
Accession Number: 20230720–5064.
Comment Date: 5 p.m. ET 8/10/23.

Docket Numbers: ER23–2449–000.
Applicants: Lyons Solar, LLC.
Description: Baseline eTariff Filing: Reactive Power Tariff Application to be effective 10/1/2023.
Filed Date: 7/20/23.
Accession Number: 20230720–5068.
Comment Date: 5 p.m. ET 8/10/23.

Docket Numbers: ER23–2450–000.
Applicants: Great Cove Solar LLC.
Description: Baseline eTariff Filing: Great Cove Solar LLC MBR Tariff to be effective 9/18/2023.
Filed Date: 7/20/23.
Accession Number: 20230720–5071.
Comment Date: 5 p.m. ET 8/10/23.

Docket Numbers: ER23–2451–000.
Applicants: Great Cove Solar II LLC.
Description: Baseline eTariff Filing: Great Cove Solar II LLC MBR Tariff to be effective 9/18/2023.
Filed Date: 7/20/23.
Accession Number: 20230720–5079.
Comment Date: 5 p.m. ET 8/10/23.

Docket Numbers: ER23–2452–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ISA, Original SA No. 6984; Queue No. AF1–226 to be effective 6/20/2023.
Filed Date: 7/20/23.
Accession Number: 20230720–5093.
Comment Date: 5 p.m. ET 8/10/23.

Docket Numbers: ER23–2453–000.
Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.
Description: § 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: NYISO-National Grid Joint 205: SGIA Flat Hill Solar Project SA 2777 to be effective 7/6/2023.
Filed Date: 7/20/23.
Accession Number: 20230720–5094.
Comment Date: 5 p.m. ET 8/10/23.

Docket Numbers: ER23–2454–000.
Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.
Description: § 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: NYISO-National Grid Joint 205: SGIA Grassy Knoll Solar Project SA2778 to be effective 7/6/2023.
Filed Date: 7/20/23.
Accession Number: 20230720–5102.
Comment Date: 5 p.m. ET 8/10/23.

Docket Numbers: ER23–2455–000.
Applicants: Hecate Grid Swiftsure, LLC.
Description: Hecate Grid Swiftsure, LLC requests a limited waiver of the requirements in Sections 25.6.2.3.2 and 25.6.2.3.3 of Attachment S of the New York Independent System Operator, Inc.'s Open Access Transmission Tariff.

Filed Date: 7/19/23.
Accession Number: 20230719–5224.
Comment Date: 5 p.m. ET 7/31/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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: July 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15842 Filed 7–25–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2439–000]

Cavalier Solar A2, 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 Cavalier Solar A2, 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 August 9, 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: July 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15834 Filed 7–25–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2373–016; Project No. 2347–064I; Project No. 2348–050; Project No. 2446–052]

Midwest Hydro, LLC; STS Hydropower, LLC; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric applications have been filed with the Commission and is available for public inspection.

a. *Type of Applications:* Subsequent Minor, Subsequent Minor, Subsequent Minor, New License.

b. *Project Nos.:* P–2373–016, P–2347–064, P–2348–050, and P–2446–052.

c. *Date Filed:* August 30, 2022.

d. *Applicants:* Midwest Hydro, LLC and STS Hydropower, LLC.

e. *Names of Projects:* Janesville Hydroelectric Project, Beloit Hydroelectric Project, Rockton Hydroelectric Project, and Dixon Hydroelectric Project.

f. *Locations:* The Janesville Project is on the Rock River near the city of Janesville in Rock County, Wisconsin. The Beloit Project is located on the Rock River near the City of Beloit in Rock County, Wisconsin. The Rockton Project is located on the Rock River in the City of Rockton in Winnebago County, Illinois. The Dixon Project is located on the Rock River in the City of Dixon in Lee and Ogle Counties, Illinois.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David Fox, Senior Director of Regulatory Affairs, Midwest Hydro, LLC c/o Eagle Creek RE Management, LLC, 7315 Wisconsin Avenue, Suite 1100W, Bethesda, Maryland 2081; Phone at (240) 482–2707 or email at *David.Fox@eaglecreekre.com.*

i. *FERC Contact:* Laura Washington at (202) 502–6072; or email at *laura.washington@ferc.gov.*

j. *Deadline for filing scoping comments:* August 19, 2023.[1]

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: The Janesville Project (P–2347–064), and/or the Beloit Project (P–2348–050), and/or Rockton Project (P–2373–016), and/or the Dixon Project (P–2446–052).

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 applications are not ready for environmental analysis at this time.

l. *Project Descriptions:* The Janesville Project consists of: (1) a 131-acre reservoir with a gross storage capacity of 655 acre-feet at a maximum reservoir surface elevation of 769.8 feet National Geodetic Vertical Datum of 1929 (NGVD 29); (2) a 65-foot-wide, 8.25-foot-deep forebay structure located on the upstream side of the powerhouse; (3) a 321.6-foot-long dam including three sections from left to right looking downstream: (i) a 207-foot-long overflow spillway topped with 22-inch flashboards; (ii) a 38.3-foot-long gated spillway; and (iii) a 76.3-foot-long powerhouse integral with the dam that contains 76.25-foot-wide by 9-foot-high trashracks with 4.0-inch clear spacing; (4) two vertical-shaft turbine-generating units, each with a maximum hydraulic capacity of 600 cubic feet per second (cfs), and a total installed capacity of 500 kilowatts (kW); (5) a 330-foot-long by 480-foot-wide tailrace; (6) a 55-foot-long, 312.5-kilovolt (kV) transmission line connecting the powerhouse to the point of interconnection via a 4.1-kV/12.4-kV step-up transformer; and (7) appurtenant facilities. The Janesville Project had an average annual generation of 2,285 megawatt-hours (MWh) for the five-year period ending in 2021.

The Beloit Project consists of: (1) a 606.47-acre reservoir with a gross storage capacity of 3,032 acre-feet at a maximum reservoir surface elevation of 745.0 feet NGVD 29; (2) a 315.9-foot-long dam including four sections from left to right looking downstream: (i) a 42-foot-long non-overflow section; (ii) a 91.1-foot-long Tainter-type gate and stoplog section; (iii) an 81.2-foot-long needle section; and (iv) a 101.6-foot-long slide gate section; (3) a 37-foot-long, 34.5-foot-wide concrete powerhouse with 32-foot-wide by 9-foot-high trashracks with 5.5-inch clear spacing; (4) one vertical-shaft turbine-generator unit with a maximum hydraulic capacity of 725 cfs and an installed capacity of 480 kW; (5) a 375-foot-wide by 400-foot-long tailrace; (6) a 60-foot-long, 68-kV transmission line connecting the powerhouse to the point of interconnection via a 4.1-kV/12.4-kV step-up transformer; and (7) appurtenant facilities. The Beloit Project had an average annual generation of 3,035 MWh for the five-year period ending in 2021.

The Rockton Project consists of: (1) a 40.67-acre reservoir with a gross storage capacity of 207.4 acre-feet at a maximum reservoir surface elevation of 725.48 feet NGVD 29; (2) a succession of dam structures including, from left to right looking downstream: (i) an 84-foot-long gated headworks structure located upstream of the power canal; (ii) a 1,000-foot-long concrete overflow dam located about 300 feet upstream of the headworks structure that creates a bypassed reach (*i.e.,* Rockton bypassed reach); (iii) a 1,600-foot-long earthen dike extending north from the east abutment of the concrete overflow dam; and (iv) a 5,000-foot-long power canal dike; (3) a 5,000-foot-long power canal running from the gated headworks structure to the powerhouse; (4) an intake structure consisting of 64-foot-wide by 15-foot-high trash racks with 3.5-inch clear spacing; (5) a 64.25-foot-long, 33.25-foot-wide powerhouse; (6) two vertical-shaft turbine-generator units, each with a maximum hydraulic capacity of 810 cfs, for a total installed capacity of 1,100 kW; (7) a 85-foot-wide tailrace that extends downstream for 215 feet where it meets the Rockton bypassed reach; (8) three 4.1-kV/12.4-kV step-up transformers; and (9) appurtenant facilities. The project interconnects with the electrical grid via 4.1-kV bus cables and the three step-up transformers. The Rockton Project had an average annual generation of 5,076 MWh for the five-year period ending in 2021

The Dixon Project consists of: (1) a 305.9-acre reservoir with a gross storage capacity of 1,530 acre-feet at a maximum reservoir surface elevation of 647.08 feet NGVD 29; (2) a 130-foot-wide by 18-foot-deep forebay located immediately upstream of the powerhouse; (3) a succession of dam structures including, from left to right looking downstream: (i) a 250-foot-long powerhouse integral with the dam equipped with 200-foot-wide by 15-foot-high trash racks with 5-inch clear spacing; (ii) a 114-foot-long by 24-foot-high forebay wall set perpendicular to the dam that ties the powerhouse and fender wall to the dam; (iii) a 286-foot-long fender wall located upstream of the project forebay extending from the upstream end of the fender wall to the south riverbank; and (iv) a 610-foot-long north overflow dam extending from the forebay wall to the north riverbank, topped with 16-inch flashboards; (4) five vertical-shaft turbine-generating units, each with a maximum hydraulic capacity of 1,100 cfs, for a total installed capacity of 3,200 kW; (5) a 30-foot-long, 34.5-kV transmission line conveying project power to the point of interconnection via two 2.3-kV transformers; and (7) appurtenant facilities. The Dixon Project had an average annual generation of 14,995 MWh for the five-year period ending in 2021.

As required by their current licenses, the Janesville, Beloit, Rockton, and Dixon Projects all operate in a run-of-river mode, such that outflow approximates inflow to each project.

Janesville Project—Midwest Hydro maintains the elevation of the Janesville Reservoir between 769.1 feet NGVD 29 and 769.8 feet NGVD 29 under normal operating conditions. Midwest Hydro provides a minimum flow of 35 cfs or inflow, whichever is less, over the spillway by maintaining a minimum elevation of 769.1 feet NGVD 29 in the

[1] The Commission's Rules of Practice and Procedure provide that if a filing deadline falls on a Saturday, Sunday, holiday, or other day when the Commission is closed for business, the filing deadline does not end until the close of business on the next business day. 18 CFR 385.2007(a)(2) (2022).

Janesville Reservoir. The Janesville Project is operated manually.

Beloit Project—Midwest Hydro maintains the elevation of the Beloit Reservoir between 744.4 feet NGVD 29 and 745.0 feet NGVD 29 under normal operating conditions. There is no minimum flow requirement at the Beloit Project. However, when inflow to the project is less than the turbine's minimum hydraulic capacity of 500 cfs, all flow is passed downstream. The Beloit Project is equipped with an auto-gate that operates based on reservoir elevation levels.

Rockton Project—Midwest Hydro maintains the elevation of the Rockton Reservoir at 725.48 feet NGVD 29 under normal operating conditions and provides a minimum flow of 300 cfs or inflow, whichever is less, into the Rockton bypassed reach. The Rockton Project is operated manually.

Dixon Project—STS Hydro maintains a minimum one-inch veiling flow (*i.e.,* no less than 50 cfs) over the Dixon overflow dam or, when in place, the flashboards. The Dixon Project is operated manually or via a programmable logic controller (PLC), which maintains water levels in Dixon Reservoir.

Midwest Hydro and STS Hydro propose to continue operating the Janesville, Beloit, Rockton, and Dixon Projects with the following environmental measures: (1) operate each project in a run-of-river mode, such that outflow at each project approximates inflow to each project impoundment; (2) develop an operations monitoring plan for each project to document compliance with the operational requirements of any subsequent or new license, including reservoir elevations and minimum flow requirements; (3) provide a 35 cfs minimum flow or inflow, whichever is less, over the Janesville spillway to protect downstream aquatic resources in the Rock River; (4) provide a 300 cfs minimum flow or inflow, whichever is less, over the Rockton spillway to protect downstream aquatic resources in the Rock River; (5) provide a 1-inch veiling flow (*i.e.,* no less than 50 cfs) or inflow, whichever is less, over the Dixon spillway or, when in place, the flashboards to protect downstream aquatic resources in the Rock River; (6) develop a rapid response aquatic invasive species monitoring plan for the Rockton Project; (7) avoid tree removal (greater than 3-inch diameter at breast height from April 1 to October 15, which is the active season for the Indiana and northern long-eared bats), unless the tree poses a significant human health safety hazard, for the protection of the Indiana and northern long-eared bats; (8) maintain existing recreation facilities; and (9) develop and implement a Historic Properties Management Plan and Programmatic Agreement to protect and mitigate effects to historic properties.

m. Copies of the applications 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. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

You may also register at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to these or other pending projects. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov.*

n. *Scoping Process*

Commission staff will prepare either a multi-project environmental assessment (EA) or an environmental impact statement (EIS) that describes and evaluates the probable effects, if any, of the applicants' proposed action and alternatives. The EA or EIS will consider environmental impacts and reasonable alternatives to the proposed action. The Commission's scoping process will help determine the required level of analysis and satisfy the National Environmental Policy Act (NEPA) scoping requirements, irrespective of whether the Commission prepares an EA or an EIS. At this time, we do not anticipate holding on-site public or agency scoping meetings. 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 July 20, 2023.

Copies of SD1 outlining the subject areas to be addressed in the NEPA document were distributed to the parties on the Commission's mailing lists and the applicants' distribution lists. Copies of SD1 may be viewed on the web at *https://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: July 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15844 Filed 7–25–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2406–000]

Arica Solar, 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 Arica Solar, 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 August 9, 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: July 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15837 Filed 7–25–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2407–000]

Strauss Wind, 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 Strauss Wind, 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 August 9, 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: July 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15836 Filed 7–25–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2440–000]

McFarland Solar B, 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 McFarland Solar B, 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 August 9, 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: July 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15833 Filed 7–25–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2432–000]

Misenheimer Solar 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 Misenheimer Solar 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 August 9, 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: July 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15835 Filed 7–25–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1744–054]

PacifiCorp; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Application for Non-Capacity Amendment of License.

b. *Project No:* 1744–054.

c. *Date Filed:* April 18, 2023, supplemented June 23, 2023.

d. *Applicant:* PacifiCorp (licensee).

e. *Name of Project:* Weber Hydroelectric Project.

f. *Location:* The project is located on the Weber River in Davis, Morgan and Weber counties, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Eve Davies, Weber License Project Manager; PacifiCorp; 1407 West North Temple Suite 210; Salt Lake City, UT 84116; Phone: (801) 232–1704.

i. *FERC Contact:* Jeffrey V. Ojala, (202) 502–8206, *Jeffrey.Ojala@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* August 21, 2023.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions

sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–1744–054. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee proposes to amend its license to modernize intake components at the Weber Dam. Additionally, the licensee proposes the construction of three new auxiliary spillways sections to accommodate recently recalculated 100-year flood flows. The new intake and spillway equipment would require the destruction and replacement of the current gatehouse and the original, non-functional, fish ladder to accommodate new screens/trashracks. All components will be installed on previously disturbed ground, within the project boundary. Staging for the proposed actions would be partially located on lands administered by the U.S. Department of Agriculture's Forest Service. The proposed action would require temporary closure of some recreational facilities, closest to the work area, during the construction.

l. *Location of the Application:* The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. Agencies may obtain copies of the application directly from the applicant. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll free, (866) 208–3676 or TTY, (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: July 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15831 Filed 7–25–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–906–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rates—UGI to Colonial 8984456 eff 7–20–23 to be effective 7/20/2023.

Filed Date: 7/20/23.

Accession Number: 20230720–5010.

Comment Date: 5 p.m. ET 8/1/23.

Docket Numbers: RP23–907–000.

Applicants: Transwestern Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Filing—Portales to be effective 8/1/2023.

Filed Date: 7/20/23.

Accession Number: 20230720–5025.

Comment Date: 5 p.m. ET 8/1/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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: July 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15841 Filed 7–25–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2403–000]

Victory Pass I, 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 Victory Pass I, 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 August 9, 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: July 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15838 Filed 7–25–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 13404–007, 13405–007, 13406–007, 13407–008, 13408–007, and 13411–007]

Clean River Power MR–3, LLC; Clean River Power MR–1, LLC; Clean River Power MR–5, LLC; Clean River Power MR–2, LLC; Clean River Power MR–7, LLC; Clean River Power MR–6, LLC; Notice of Application for Surrender of License Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of License.

b. *Project Nos:* P–13404–007, P–13405–007, P–13406–007, P–13407–008, P–13408–007, P–13411–007.

c. *Date Filed:* June 30, 2023.

d. *Applicants:* Clean River Power MR–3, LLC, Clean River Power MR–1 LLC, Clean River Power MR–5, LLC, Clean River Power MR–2, LLC, Clean River Power MR–7, LLC, Clean River Power MR–6, LLC.

e. *Names of Projects:* Beverly Lock and Dam Water Project (P–13404), Devola Lock and Dam Water Project (P–13405), Malta//McConnelsville Lock and Dam Water Project. (P–13406), Lowell Lock and Dam Water Project (P–13407), Philo Lock and Dam Water Project (P–13408), and Rokeby Lock and Dam Water Project (P–13411).

f. *Location:* The six unconstructed projects were to be located on Ohio Department of Natural Resources' existing lock and dams on the Muskingum River, in Washington, Morgan, and Muskingum counties, Ohio. The projects do not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Erik Steimle, Vice President, Project Development, Rye Development, 100 S Olive Avenue, West Palm Beach, Florida, (503) 998–0230, *erik@ryedevelopment.com.*

i. *FERC Contact:* Diana Shannon, (202) 502–6136, *diana.shannon@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* August 21, 2023.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket numbers (P–13404–007, P–13405–007, P–13406–007, P–13407–008, P–13408–007, P–13411–007). Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on

each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Due to the licensees' inability to obtain lease agreements from the Ohio Department of Natural Resources that are necessary for project construction, operation, and maintenance, the licensees propose to surrender the licenses for these unconstructed projects.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

p. 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: July 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15840 Filed 7–25–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2441–000]

Chevelon Butte RE 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 Chevelon Butte RE 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 August 9, 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: July 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15832 Filed 7–25–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2082–071]

PacifiCorp; Notice of Application for Non-Capacity Amendment of License Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.

b. *Project No:* P–2082–071.

c. *Date Filed:* July 5, 2023.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Klamath Hydroelectric Project.

f. *Location:* The project is located on the Klamath River and on Fall Creek The project includes Federal lands managed by the U.S. Department of Interior's Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Tim Hemstreet, Vice President, Renewable Energy Development, PacifiCorp, 825 NE Multnomah St., Suite 1800, Portland, Oregon 97232, (503) 813–6170, *tim.hemstreet@pacificorp.com*.

i. *FERC Contact:* Diana Shannon, (202) 502–6136, *diana.shannon@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* August 21, 2023.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2082–071. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant proposes to remove the Keno development from the project license to facilitate its conveyance to the U.S. Department of Interior (Interior) consistent with the Klamath Hydroelectric Settlement Agreement. The applicant states that the Keno development has no power-generating equipment, is not part of the project's complete unit of development, and therefore no longer serves any project function. The applicant proposes to modify the project description, exhibits K, L, M, and R, and delete and/or modify license articles 35, 38, 55, 56, 57, 60, 66, and 67, consistent with removal of the Keno development from the authorized project. The applicant requests that the amendment become effective upon Interior's taking title to the Keno development, anticipated in January 2024. The applicant provided documentation of consultation with resource agencies and Tribes.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

p. 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: July 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15830 Filed 7–25–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2023–0351; FRL–11152–02–OCSPP]

Definition of Lead-Based Paint Joint Virtual Workshop; Notice of Public Meeting Date Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the **Federal Register** of July 12, 2023, the Environmental Protection Agency (EPA) announced that it is co-hosting a virtual workshop with the Department of Housing and Urban Development (HUD) to hear stakeholder perspectives on specific topics related to detection of and exposure to potential lead hazards from existing residential lead-based paint. EPA and HUD have subsequently identified that many stakeholders have a conflict with the original planned dates for the virtual workshop that was planned to be held on October 17 and 18, 2023. As such, EPA and HUD have determined to change the dates for the virtual workshop to November 1 and 2, 2023. In addition, the deadline for abstract submissions is changed to August 11, and the deadline for registration and special accommodation requests is now October 13.

DATES:

Presenter Abstracts: Submit an abstract for your presentation on or before August 11, 2023.

Special accommodations: Requests for special accommodations should be submitted on or before October 13, 2023.

Public Meeting: Will be held virtually on November 1 and 2, 2023, from 10:00 a.m. to approximately 5:00 p.m. (EDT) each day.

Comments: Submit your written comments on or before December 31, 2023.

ADDRESSES:

Public Meeting: You must register online to receive the webcast meeting link and audio teleconference information. Please follow the registration instructions that will be announced on the lead program website at: *https://www.epa.gov/lead/2023-lead-based-paint-technical-workshop* by October 13, 2023.

Comments: Submit comments, identified by docket identification (ID) number EPA–HQ–OPPT–2023–0351, through *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional information on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

Special accommodations: For information on access or services for individuals with disabilities, and to request accommodation for a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Catherine Taylor, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20004; telephone number: (202) 566–3008; email address: *taylor.catherine@epa.gov.* Individuals who have speech or other communication disabilities may use a relay service to reach the contact phone number provided. To learn more about how to make an accessible telephone call, visit the web page for the Federal Communications Commission's Telecommunications Relay Service, *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: This document corrects the specific meeting dates and the other dates announced in the **Federal Register** of July 12, 2023 (88 FR 44297; FRL–11152–01–OCSPP). To accommodate the many stakeholders that have a conflict with the original planned dates for the virtual workshop, EPA and HUD have changed the dates for the virtual workshop to November 1 and 2, 2023. For additional details about the public meeting and request for comment, please refer to the instructions and information provided in the **Federal Register** of July 12, 2023.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: July 20, 2023.

Denise Keehner,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 2023–15753 Filed 7–25–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0075; FRL–11149–01–OCSPP]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw its requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been cancelled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before January 22, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0075, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Christopher Green, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2707; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/comments.html.*

II. What action is the Agency taking?

This notice announces receipt by the Agency of requests from registrants to cancel certain pesticide products registered under FIFRA section 3 (7 U.S.C. 136a) or 24(c) (7 U.S.C. 136v(c)). These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue an order in the **Federal Register** canceling all of the affected registrations.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredients
10163–171	10163	Imidan 1–E Insecticide	Phosmet (059201/732–11–6)—(11.7%).
10163–215	10163	Imidan 2.5–EC	Phosmet (059201/732–11–6)—(27.5%).
10163–313	10163	Imidan 60 WDG	Phosmet (059201/732–11–6)—(60%).

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA company No.	Company name and address
10163	Gowan Company, LLC, 370 S Main St., Yuma, AZ 85366.

III. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 2 of Unit II, have not requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 180-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of the products identified in Table 1 of Unit II, EPA anticipates allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the Cancellation Order in the **Federal Register**.

Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 19, 2023.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2023–15815 Filed 7–25–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2016–0723; FRL–7918–02–OCSPP]

1,4-Dioxane; Draft Revision to Toxic Substances Control Act (TSCA) Risk Determination; Notice of Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of and requesting public comment on a draft revision to the risk determination for 1,4-dioxane following a risk evaluation issued under TSCA. EPA published a risk evaluation for 1,4-dioxane in December 2020 and a draft supplement to the risk evaluation in July 2023. This draft revision to the 1,4-dioxane risk determination reflects policy changes announced in June 2021, to ensure the public is protected from unreasonable risks from chemicals in a way that is supported by science and the law, as well as information from the 2023 Draft Supplement to the risk evaluation. In this draft revision to the risk determination EPA has preliminarily determined that 1,4-dioxane, as a whole chemical substance, presents an unreasonable risk of injury to health when evaluated under its conditions of use. This draft risk

determination considers the occupational and consumer exposures from the December 2020 Risk Evaluation, as well as the occupational, general population, and fenceline community exposures in the draft supplement to the risk evaluation, including exposures that result from conditions of use where 1,4-dioxane is present due to production as a byproduct and the risks from general population and fenceline communities' exposures to 1,4-dioxane released under the conditions of use to drinking water sourced from surface and ground water and ambient air. In addition, this revised risk determination does not reflect an assumption that all workers always appropriately wear personal protective equipment (PPE). EPA understands that there could be adequate occupational safety protections in place at certain workplace locations; however, not assuming use of PPE reflects EPA's recognition that unreasonable risk may exist for subpopulations of workers that may be highly exposed because they are not covered by Occupational Safety and Health Administration (OSHA) standards, or their employers are out of compliance with OSHA standards, or because many of OSHA's chemical-specific permissible exposure limits largely adopted in the 1970's are described by OSHA as being ''outdated and inadequate for ensuring protection of worker health,'' or because EPA finds unreasonable risk for purposes of TSCA notwithstanding OSHA requirements. This revision, when final, would supersede the condition of use-specific no unreasonable risk determinations in the December 2020 1,4-dioxane risk evaluation (and withdraw the associated order) and would make a revised determination of unreasonable risk for 1,4-dioxane as a whole chemical substance.

DATES: Comments must be received on or before September 8, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA—EPA–HQ–OPPT–2016–0723, through *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Cindy Wheeler, Office of Pollution Prevention and Toxics (7404M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0484; email address: *dioxane.TSCA@EPA.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to those involved in the manufacture, processing, distribution, use, disposal, and/or the assessment of risks involving chemical substances and mixtures. You may be potentially affected by this action if you manufacture (defined under TSCA to include import), process (including recycling), distribute in commerce, use, or dispose of 1,4-dioxane, including 1,4-dioxane in products and including processes that produce 1,4-dioxane as a byproduct. Since other entities may also be interested in this draft revision to the risk determination, EPA has not attempted to describe all the specific entities that may be affected by this action.

B. What is EPA's authority for taking this action?

TSCA section 6, 15 U.S.C. 2605, requires EPA to conduct risk evaluations to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation (PESS) identified as relevant to the risk evaluation by the Administrator, under the conditions of use. 15 U.S.C. 2605(b)(4)(A). TSCA sections 6(b)(4)(A) through (H) enumerate the deadlines and minimum requirements applicable to this process, including provisions that provide instruction on chemical substances that must undergo evaluation, the minimum components of a TSCA risk evaluation, and the timelines for public comment and completion of the risk evaluation. TSCA also requires that EPA operate in a manner that is consistent with the best available science, make decisions based on the weight of the scientific evidence, and consider reasonably available information. 15 U.S.C. 2625(h), (i), and (k).

The statute identifies the minimum components for all chemical substance risk evaluations. For each risk evaluation, EPA must publish a document that outlines the scope of the risk evaluation to be conducted, which includes the hazards, exposures, conditions of use, and the potentially exposed or susceptible subpopulations that EPA expects to consider. 15 U.S.C. 2605(b)(4)(D). The statute further provides that each risk evaluation must also: (1) integrate and assess available information on hazards and exposures for the conditions of use of the chemical substance, including information that is relevant to specific risks of injury to health or the environment and information on relevant potentially exposed or susceptible subpopulations; (2) describe whether aggregate or sentinel exposures were considered and the basis for that consideration; (3) take into account, where relevant, the likely duration, intensity, frequency, and number of exposures under the conditions of use; and (4) describe the weight of the scientific evidence for the identified hazards and exposures. 15 U.S.C. 2605(b)(4)(F)(i) through (ii) and (iv) through (v). Each risk evaluation must not consider costs or other non-risk factors. 15 U.S.C. 2605(b)(4)(F)(iii).

EPA has inherent authority to reconsider previous decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by reasoned explanation. *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009); *see also Motor Vehicle Mfrs. Ass'n* v. *State Farm Mutual Auto. Ins. Co.,* 463 U.S. 29, 42 (1983). Pursuant to such authority, EPA is reconsidering the risk determinations in the December 2020 1,4-Dioxane Risk Evaluation and issuing a 2023 draft risk determination that encompasses the information in the 2023 Draft Supplement to the risk evaluation.

C. What action is EPA taking?

EPA is announcing the availability of and seeking public comment on a 2023 draft revision to the risk determination for the 2020 1,4-Dioxane Risk Evaluation under TSCA (Ref. 1). This includes revision to the risk determination initially published in December 2020 (Ref. 2) and addition of information from the 2023 Draft Supplement to the risk evaluation (Ref. 3), which includes evaluation of additional conditions of use of 1,4-dioxane and critical exposure pathways not included in the 2020 1,4-Dioxane Risk Evaluation. EPA has announced the availability of the 2023 Draft

Supplement to the risk evaluation in a separate **Federal Register** notice, which also describes the requests for public comment and the peer review process for the 2023 Draft Supplement (88 FR 43562, July 10, 2023) (FRL–10798–02–OCSPP).

EPA is seeking public comment on the draft revision to the risk determination for the risk evaluation where the agency preliminarily intends to determine that 1,4-dioxane, as a whole chemical, presents an unreasonable risk of injury to health when evaluated under its conditions of use. The Agency has preliminarily determined that the risk determination for 1,4-dioxane is better characterized as a whole chemical risk determination rather than condition-of-use-specific risk determinations. Accordingly, EPA would revise and replace section 5 of the 2020 Risk Evaluation for 1,4-dioxane where the findings of unreasonable risk to health were previously made for the individual conditions of use evaluated. EPA would also withdraw the order issued previously for two conditions of use previously determined not to present unreasonable risk. However, before finalization of the risk determination, EPA is specifically seeking public comment on several aspects of the 2023 draft unreasonable risk determination, including EPA's finding that general population and fenceline community exposure to 1,4-dioxane in drinking water contributes to the determination that 1,4-dioxane presents an unreasonable risk and whether the risks to the general population and fenceline communities from drinking water exposure can be attributed to specific conditions of use of 1,4-dioxane. A more robust description of the request for comment is in Unit II.D.

This proposed revision to the 2020 unreasonable risk determination would be consistent with EPA's plans to revise specific aspects of the first ten TSCA chemical risk evaluations in order to ensure that the risk evaluations better align with TSCA's objective of protecting health and the environment. EPA proposes that the 2023 draft revision would include several changes. First, EPA would make an unreasonable risk determination for 1,4-dioxane as a whole chemical substance, rather than making unreasonable risk determinations separately on each individual condition of use evaluated in the risk evaluation. EPA proposes that this is the most appropriate approach to 1,4-dioxane under the statute and implementing regulations, with more explanation provided in Unit II.C.1. Second, EPA would remove the assumption that workers always and appropriately wear PPE (see Unit II.C.) in making the whole chemical risk determination for 1,4-dioxane. The impacts of this change are described in detail in Unit II.C.2. Third, based on the 2023 Draft Supplement to the risk evaluation, several additional conditions of use would also contribute to the unreasonable risk determination due to worker inhalation and dermal risks; these are described in more detail in Unit II.C.3. Fourth, EPA proposes to include risks to the general population and fenceline communities from drinking water sourced from surface water contaminated with 1,4-dioxane that is discharged from industrial facilities (including where it is produced as a byproduct) as contributing to the unreasonable risk from 1,4-dioxane and is seeking public comment on several issues. These risks are described in more detail in Unit II.C.4 and a description of the request for comment is in Unit II.D. The list of the conditions of use evaluated for the 1,4-dioxane TSCA risk evaluation is in Table 6–1 of the draft revised unreasonable risk determination (Ref. 1) and in Table D–1 of the 2023 Draft Supplement to the Risk Evaluation for 1,4-Dioxane (Ref. 3)).

D. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

A. What is 1,4-dioxane and what did EPA evaluate in 2020?

1,4-Dioxane is primarily used as a solvent in commercial and industrial applications. It can also be produced as a byproduct of several common manufacturing processes, including but not limited to ethoxylation processes used in the production of surfactants used in soaps and detergents and production of polyethylene terephthalate (PET) plastics. 1,4-Dioxane produced as a byproduct may remain present in consumer and commercial products, including soaps and detergents, cleaning products, antifreeze, textile dyes, and paints/lacquers. 1,4-Dioxane is released to the environment from industrial and commercial releases and from consumer and commercial products that are washed down the drain or disposed of in landfills. People may be exposed to 1,4-dioxane through occupational exposure, consumer products, or contact with water, land, or air where 1,4-dioxane has been released to the environment. Health effects of 1,4-dioxane include risks of liver toxicity, adverse effects in the olfactory epithelium, and cancer.

1,4-Dioxane is one of the first 10 chemical substances undergoing the TSCA risk evaluation process under TSCA section 6(b). In 2019, EPA released the draft 1,4-dioxane risk evaluation, which assessed risk from occupational exposures and surface water exposures to environmental organisms. This assessment, which included the physical and chemical properties, lifecycle information, environmental fate and transport information, and hazard identification and dose-response analysis received public comment, was reviewed by the Science Advisory Committee on Chemicals (SACC). The Agency considered the SACC feedback and is not seeking additional review of that information at this time as this information has not changed.

A 2020 supplement to the draft 1,4-dioxane risk evaluation assessed an additional eight additional conditions of use of 1,4-dioxane present in consumer products and general population exposure to 1,4-dioxane from incidental contact with surface water. Both assessments were incorporated into the 2020 Risk Evaluation, which was released in December 2020.

The December 2020 Risk Evaluation assessed a total of 24 conditions of use. In December 2020, EPA determined that 13 conditions of use presented unreasonable risks due to exposure to workers or occupational non-users, and that 11 conditions of use did not present an unreasonable risk (of those 11, 3 were industrial/commercial uses, and 8 were consumer uses). EPA found that none of the conditions of use present an unreasonable risk to the environment.

B. Why is EPA re-issuing the risk determination for the 2023 1,4-dioxane risk evaluation conducted under TSCA?

In 2016, as directed by TSCA section 6(b)(2)(A), EPA chose the first ten chemical substances to undergo risk evaluations under the amended TSCA. These chemical substances are asbestos, 1-bromopropane, carbon tetrachloride, C.I. Pigment Violet (PV 29), cyclic aliphatic bromide cluster (HBCD), 1,4-dioxane, methylene chloride, n-methylpyrrolidone (NMP), perchloroethylene (PCE), and trichloroethylene (TCE).

From June 2020 to January 2021, EPA published risk evaluations on the first ten chemical substances, including for 1,4-dioxane in December 2020. The risk evaluations included individual unreasonable risk determinations for each condition of use evaluated. EPA issued determinations that particular conditions of use did not present an unreasonable risk by order under TSCA section 6(i)(1).

In accordance with Executive Order 13990 (Ref. 4) and other Administration priorities (Refs. 5, 6, and 7), EPA reviewed the risk evaluations for the first ten chemical substances, including 1,4-dioxane, to ensure that they meet the requirements of TSCA, including conducting decision making in a manner that is consistent with the best available science.

As a result of this review, EPA announced plans to revise specific aspects of the first ten risk evaluations in order to ensure that the risk evaluations appropriately identify unreasonable risks and thereby help ensure the protection of human health and the environment (Ref. 8). EPA also announced plans, in response to public comments and peer review, to supplement the 2020 Risk Evaluation for 1,4-Dioxane to assess critical human exposure pathways not previously considered in the 2020 Risk Evaluation, and to consider occupational exposures to conditions of use where 1,4-dioxane is present due to production as a byproduct. EPA has now developed the 2023 Draft Supplement to the risk evaluation and has announced its availability and request for public comment in a separate **Federal Register** notice, which also describes the peer review process (88 FR 43562, July 10, 2023) (FRL–10798–02–OCSPP). In the 2023 Draft Supplement, EPA assessed the risks from 8 industrial/commercial uses of 1,4-dioxane as a byproduct, from processing 1,4-dioxane as a byproduct, and from the general population exposures to 1,4-dioxane in ambient air and drinking water. This 2023 draft revised risk determination is for 1,4-dioxane as a whole chemical—and thus includes not only information from the 2023 Draft Supplement to the 1,4-dioxane risk evaluation but also proposes revisions to the 2020 risk determination based on the 2020 Risk Evaluation. EPA is releasing this 2023 draft revised unreasonable risk determination separately from the draft supplement to the risk evaluation but is aligning the comment period for the two documents so that the final unreasonable risk determination can be released concurrently with the final supplemental risk evaluation.

This action pertains only to the risk determination for 1,4-dioxane. While EPA has taken additional similar actions on other of the first ten chemicals, EPA is taking a chemical-specific approach to reviewing the risk evaluations and is incorporating new policy direction in a surgical manner, while being mindful of the Congressional direction on the need to complete risk evaluations and move toward any associated risk management activities in accordance with statutory deadlines.

C. What are EPA's considerations in the draft revised unreasonable risk determination for 1,4-dioxane?

In this draft revised unreasonable risk determination for 1,4-dioxane, EPA is reconsidering two key aspects of the risk determinations for 1,4-dioxane published in December 2020, proposing several additional changes and updates, and highlighting specific requests for comment.

First, following a review of specific aspects of the December 2020 1,4-dioxane risk evaluation, EPA proposes that making an unreasonable risk determination for 1,4-dioxane as a whole chemical substance, rather than making unreasonable risk determinations separately on each individual condition of use evaluated in the risk evaluation, is the most appropriate approach to 1,4-dioxane under the statute and implementing regulations. Second, EPA proposes that the risk determination should be explicit that it does not rely on assumptions regarding the use of personal protective equipment (PPE) in making the unreasonable risk determination under TSCA section 6, even though some facilities might be using PPE as one means to reduce workers' exposures; rather, the use of PPE as a means of addressing unreasonable risk will be considered during risk management, as appropriate. As a result, EPA preliminarily identifies two additional conditions of use from the 2020 Risk Evaluation as contributing to the determination that 1,4-dioxane presents unreasonable risk. Additionally, for some of the conditions of use in the 2020 Risk Evaluation that were identified as ''presenting'' an unreasonable risk to workers due to cancer, eliminating the PPE assumption means that acute and chronic non-cancer effects from inhalation exposure now also contribute to the unreasonable risk. Third, based on the 2023 supplement to the risk evaluation, EPA proposes to identify several additional conditions of use as contributing to the unreasonable risk determination due to worker inhalation and dermal risks. Fourth, EPA proposes that the risks to the general population and fenceline communities from exposures to 1,4-dioxane in drinking water sourced from surface water contaminated with industrial discharges of 1,4-dioxane (including when it is generated as a byproduct) contributes to the determination that 1,4-dioxane presents an unreasonable risk, and is seeking public comment on several issues related to this proposed determination, as described in Unit II.D.

1. *What is a whole chemical view of the unreasonable risk determination for the 1,4-dioxane risk evaluation?*

TSCA section 6 repeatedly refers to determining whether a chemical *substance* presents unreasonable risk under its conditions of use. Stakeholders have disagreed over whether a chemical substance should receive: A single determination that is comprehensive for the chemical substance after considering the conditions of use, referred to as a whole-chemical determination; or multiple determinations, each of which is specific to a condition of use, referred to as condition-of-use-specific determinations.

The proposed risk evaluation procedural rule was premised on the whole chemical approach to making an unreasonable risk determination (Ref. 9). In that proposed rule, EPA acknowledged a lack of specificity in statutory text that might lead to different views about whether the statute compelled EPA's risk evaluations to address all conditions of use of a chemical substance or whether EPA had discretion to evaluate some subset of conditions of use (*i.e.,* to scope out some manufacturing, processing, distribution in commerce, use, or disposal activities), but also stated that ''EPA believes the word 'the' [in TSCA section 6(b)(4)(A)] is best interpreted as calling for evaluation that considers all conditions of use.'' (Ref. 9).

The proposed rule, however, was unambiguous on the point that an

unreasonable risk determination would be for the chemical substance as a whole, even if based on a subset of uses. (See Ref. 9 at pgs. 7565–66: ''TSCA section 6(b)(4)(A) specifies that a risk evaluation must determine whether 'a chemical substance' presents an unreasonable risk of injury to health or the environment 'under the conditions of use.' The evaluation is on the chemical substance—not individual conditions of use—and it must be based on 'the conditions of use.' In this context, EPA believes the word 'the' is best interpreted as calling for evaluation that considers all conditions of use.''). In the proposed regulatory text, EPA proposed to determine whether the chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use (Ref. 9 at pg. 7480).

The final risk evaluation procedural rule stated (82 FR 33726, July 20, 2017) (FRL–9964–38) (Ref. 10): ''As part of the risk evaluation, EPA will determine whether the chemical substance presents an unreasonable risk of injury to health or the environment under each condition of uses [sic] within the scope of the risk evaluation, either in a single decision document or in multiple decision documents.'' (See also 40 CFR 702.47). For the unreasonable risk determinations in the first ten risk evaluations, EPA applied this provision by making individual risk determinations for each condition of use evaluated in each risk evaluation (*i.e.,* the condition-of-use-specific approach to risk determinations). That approach was based on one particular passage in the preamble to the final risk evaluation procedural rule, which stated that EPA will make individual risk determinations for all conditions of use identified in the scope. (Ref. 10 at pg. 33744).

In contrast to this portion of the preamble of the final risk evaluation procedural rule, the regulatory text itself and other statements in the preamble reference a risk determination *for the chemical substance* under its conditions of use, rather than separate risk determinations for each of the conditions of use of a chemical substance. In the key regulatory provision excerpted earlier from 40 CFR 702.47, the text explains that ''[a]s part of the risk evaluation, EPA will determine whether *the chemical substance* presents an unreasonable risk of injury to health or the environment under each condition of uses [sic] within the scope of the risk evaluation, either in a single decision document or in multiple decision documents'' (Ref. 10, emphasis added). Other language reiterates this perspective. For example, 40 CFR 702.31(a) states that the purpose of the rule is to establish the EPA process for conducting a risk evaluation to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment as required under TSCA section 6(b)(4)(B). Likewise, there are recurring references to whether the chemical substance presents an unreasonable risk in 40 CFR 702.41(a). See, for example, 40 CFR 702.41(a)(6), which explains that the extent to which EPA will refine its evaluations for one or more condition of use in any risk evaluation will vary as necessary to determine whether a chemical substance presents an unreasonable risk. Notwithstanding the one preambular statement about condition-of-use-specific risk determinations, the preamble to the final rule also contains support for a risk determination on the chemical substance as a whole. In discussing the identification of the conditions of use of a chemical substance, the preamble notes that this task inevitably involves the exercise of discretion on EPA's part, and ''as EPA interprets the statute, the Agency is to exercise that discretion consistent with the objective of conducting a technically sound, manageable evaluation to determine whether a chemical substance—not just individual uses or activities—presents an unreasonable risk.'' (Ref. 9 at pg. 33729).

Therefore, notwithstanding EPA's choice to issue condition-of-use-specific risk determinations to date, EPA interprets its risk evaluation regulation to also allow the Agency to issue whole-chemical risk determinations. Either approach is permissible under the regulation. A panel of the Ninth Circuit Court of Appeals also recognized the ambiguity of the regulation on this point. *Safer Chemicals* v. *EPA, 943 F.3d 397, 413* (9th Cir. 2019) (holding a challenge about ''use-by-use risk evaluations [was] not justiciable because it is not clear, due to the ambiguous text of the Risk Evaluation Rule, whether the Agency will actually conduct risk evaluations in the manner Petitioners fear'').

EPA plans to consider the appropriate approach for each chemical substance risk evaluation on a case-by-case basis, taking into account considerations relevant to the specific chemical substance in light of the Agency's obligations under TSCA. The Agency expects that this case-by-case approach will provide greater flexibility in the Agency's ability to evaluate and manage unreasonable risk from individual chemical substances. EPA believes this is a reasonable approach under TSCA and the Agency's implementing regulations.

With regard to the specific circumstances of 1,4-dioxane, as further explained in this notice, EPA proposes that a whole chemical approach is appropriate for 1,4-dioxane in order to protect health and the environment. The whole chemical approach is appropriate for 1,4-dioxane because there are benchmark exceedances for multiple conditions of use (spanning across most aspects of the chemical lifecycle—from manufacturing (including import), processing, industrial and commercial use, and disposal) for health of workers, occupational non-users, and fenceline communities and the general population, and the understanding that the health effects (specifically liver toxicity, olfactory epithelium effects, and cancer) associated with 1,4-dioxane exposures are irreversible. Because these chemical-specific properties cut across the conditions of use within the scope of the risk evaluation, it is appropriate for the Agency to make a determination for 1,4-dioxane that the whole chemical presents an unreasonable risk.

As explained later in this document, the revisions to the unreasonable risk determination (section 5 of the 2020 Risk Evaluation) would be based on the existing risk characterization section of the 2020 Risk Evaluation (section 4 of the 2020 Risk Evaluation) and the 2023 Draft Supplement to the Risk Evaluation for 1,4-Dioxane. The discussion of the issues presented in this **Federal Register** notice and in the accompanying draft revision to the risk determination would supersede any conflicting statements in the prior 2020 1,4-dioxane risk evaluation and the response to comments document (Ref. 11). With respect to the 1,4-dioxane risk evaluation, while EPA intends to change the risk determination to a whole chemical approach without considering the use of PPE, EPA is basing the 2023 draft unreasonable risk determination on the underlying scientific analysis from the 2020 Risk Evaluation and 2023 Draft Supplement to the Risk Evaluation. EPA does not intend to amend, nor does a whole chemical approach require amending, the underlying scientific analysis of the risk evaluation in the risk characterization section of the 2020 Risk Evaluation. EPA also notes the Correction of Dermal Acute and Chronic Non-Cancer Hazard Values Used to Evaluate Risks from Occupational Exposures that explained, while the corrections slightly alter occupational dermal risk estimates, they do not appreciably impact the overall

risk conclusions (Ref. 12). Because updates are not necessary for the 2020 publication, EPA views the peer reviewed hazard and exposure assessments and associated risk characterization as robust and upholding the standards of best available science and weight of the scientific evidence per TSCA sections 26(h) and (i).

EPA is announcing the availability of and seeking public comment on the 2023 draft unreasonable risk determination for 1,4-dioxane, including a description of the risks contributing to the unreasonable risk determination under the conditions of use for the chemical substance as a whole. For purposes of TSCA section 6(i), EPA is making a draft risk determination on 1,4-dioxane as a whole chemical. Under the proposed revised approach, the ''whole chemical'' risk determination for 1,4-dioxane would supersede the no unreasonable risk determinations (and withdraw the associated order) for 1,4-dioxane that were premised on a condition-of-use-specific approach to determining unreasonable risk. When finalized, EPA's revised unreasonable risk determination would also contain an order withdrawing the TSCA section 6(i)(1) order in section 5.4.1 of the December 2020 1,4-Dioxane Risk Evaluation.

2. *What revision does EPA propose about the use of PPE for the 1,4-dioxane risk evaluation?*

In the risk evaluations for the first ten chemical substances, as part of the unreasonable risk determination, EPA assumed for several conditions of use that workers were provided and always used PPE in a manner that achieves the stated assigned protection factor (APF) for respiratory protection, or used impervious gloves for dermal protection. In support of this assumption, EPA used reasonably available information such as public comments indicating that some employers, particularly in the industrial setting, provide PPE to their employees and follow established worker protection standards (*e.g.,* Occupational Safety and Health Administration (OSHA) requirements for protection of workers).

For the December 2020 1,4-Dioxane Risk Evaluation, EPA assumed, based on reasonably available information, that workers use PPE—specifically respirators with an APF ranging from 10 to 50 and gloves with PF 10 or 20—for 15 occupational conditions of use. However, in the December 2020 Risk Evaluation, EPA determined that there is unreasonable risk for 13 of those 15 occupational conditions of use even with assumed PPE.

EPA is revising the assumption for 1,4-dioxane that workers always or properly use PPE. However, this does not mean that EPA questions the veracity of public comments which describe occupational safety practices often followed by industry. EPA believes it is appropriate when conducting risk evaluations under TSCA to evaluate the levels of risk present in baseline scenarios where PPE is not assumed to be used by workers. This approach of not assuming PPE use by workers considers the risk to potentially exposed or susceptible subpopulations (workers and occupational non-users) who may not be covered by OSHA standards, such as self-employed individuals and public sector workers who are not covered by a State Plan. It should be noted that, in some cases, baseline conditions may reflect certain mitigation measures, such as engineering controls, in instances where exposure estimates are based on monitoring data at facilities that have engineering controls in place.

In addition, EPA believes it is appropriate to evaluate the levels of risk present in scenarios considering applicable OSHA requirements (*e.g.,* chemical-specific permissible exposure limits (PELs) and/or chemical-specific PELs with additional substance-specific standards) as well as scenarios considering industry or sector best practices for industrial hygiene that are clearly articulated to the Agency. Consistent with this approach, the December 2020 1,4-dioxane risk evaluation (Ref. 2) characterized risk to workers both with and without the use of PPE. By characterizing risks using scenarios that reflect different levels of mitigation, EPA risk evaluations can help inform potential risk management actions by providing information that could be used during risk management to tailor risk mitigation appropriately to address any unreasonable risk identified, or to ensure that applicable OSHA requirements or industry or sector best practices that address the unreasonable risk are required for all potentially exposed or susceptible subpopulations (including self-employed individuals and public sector workers who are not covered by an OSHA State Plan). Similarly, for the occupational exposures assessed as part of the added conditions of use in the 2023 Draft Supplement to the 1,4-Dioxane Risk Evaluation, EPA characterizes risks to workers with and without the use of PPE (Complete risk calculations and results for occupational conditions of use from the 2020 Risk Evaluation and the 2023 Draft Supplement are in the Draft Supplement to the Risk Evaluation for 1,4-Dioxane—Supplemental Information File: Occupational Exposure and Risk Estimates (Ref. 13)).

When undertaking unreasonable risk determinations as part of TSCA risk evaluations, however, EPA does not believe it is appropriate to assume as a general matter that an applicable OSHA requirement or industry practices related to PPE use is consistently and always properly applied. Mitigation scenarios included in the EPA risk evaluation (*e.g.,* scenarios considering use of various PPE) likely represent what is happening already in some facilities. However, the Agency cannot assume that all facilities have adopted these practices for the purposes of making the TSCA risk determination (Ref. 14).

Therefore, EPA proposes to make a determination of unreasonable risk for 1,4-dioxane from a baseline scenario that does not assume compliance with OSHA standards, including any applicable exposure limits or requirements for use of respiratory protection or other PPE. Making unreasonable risk determinations based on the baseline scenario should not be viewed as an indication that EPA believes there are no occupational safety protections in place at any location, or that there is widespread non-compliance with applicable OSHA standards. Rather, it reflects EPA's recognition that unreasonable risk may exist for subpopulations of workers that may be highly exposed because they are not covered by OSHA standards, such as self-employed individuals and public sector workers who are not covered by a State Plan, or because their employer is out of compliance with OSHA standards, or because many of OSHA's chemical-specific permissible exposure limits largely adopted in the 1970's are described by OSHA as being ''outdated and inadequate for ensuring protection of worker health,'' (Ref. 15) or because EPA finds unreasonable risk for purposes of TSCA notwithstanding OSHA requirements.

In accordance with this approach, EPA is proposing the draft revision to the 1,4-dioxane risk determination without relying on assumptions regarding the occupational use of PPE in making the unreasonable risk determination under TSCA section 6; rather, information on the use of PPE as a means of mitigating risk (including information received from industry respondents about occupational safety practices in use) would be considered during the risk management phase as

appropriate. This would represent a change from the approach taken in the 2020 Risk Evaluation for 1,4-dioxane and EPA invites comments on this 2023 draft change to the 1,4-dioxane risk determination. As a general matter, when undertaking risk management actions, EPA intends to strive for consistency with applicable OSHA requirements and industry best practices, including appropriate application of the hierarchy of controls, when those measures would address an identified unreasonable risk, including unreasonable risk to potentially exposed or susceptible subpopulations. Consistent with TSCA section 9(d), EPA will consult and coordinate TSCA activities with OSHA and other relevant Federal agencies for the purpose of achieving the maximum applicability of TSCA while avoiding the imposition of duplicative requirements. Informed by the mitigation scenarios and information gathered during the risk evaluation and risk management process, the Agency might propose rules that require risk management practices that may be already common practice in many or most facilities. Adopting clear, comprehensive regulatory standards will foster compliance across all facilities (ensuring a level playing field) and assure protections for all affected workers, especially in cases where current OSHA standards may not apply or be sufficient to address the unreasonable risk.

Removing the assumption that workers always and appropriately wear PPE in making the whole chemical risk determination for 1,4-dioxane would mean that for the conditions of use evaluated in the 2020 Risk Evaluation, two conditions of use in addition to the original 13 conditions of use would contribute to the unreasonable risk determination for 1,4-dioxane; an additional route of exposure (*i.e.,* inhalation) would also be identified as contributing to the unreasonable risk to workers in five of those 13 conditions of use; and additional risks for acute and chronic non-cancer effects from inhalation exposures would also contribute to the unreasonable risk determination from seven of those 13 conditions of use (where previously those conditions of use were identified as presenting unreasonable risk from inhalation exposures only from cancer). The draft revision to the risk determination would clarify that EPA does not rely on the assumed use of PPE when making the risk determination for the whole substance. EPA is requesting comment on this potential change.

3. *What conditions of use is EPA adding to the 2023 draft revised unreasonable risk determination?*

1,4-Dioxane produced as a byproduct of manufacturing processes can result in occupational exposures in industrial settings and may be present in consumer and commercial products. It also may be released to the environment through direct and indirect industrial and commercial releases. While the 2020 Risk Evaluation considered risks to consumers and bystanders from 1,4-dioxane present in consumer products due to its production as a byproduct, it did not evaluate other exposures to 1,4-dioxane produced as a byproduct. The 2023 Draft Supplement to the risk evaluation considers occupational, fenceline community, and general population exposures that result from conditions of use where 1,4-dioxane is present, including as a result of production as a byproduct. These exposures include 1,4-dioxane present in drinking water sourced from surface water as a result of direct and indirect industrial releases and down-the-drain releases of consumer and commercial products; 1,4-dioxane present in drinking water sourced from groundwater contaminated as a result of disposals; and 1,4-dioxane released to air from industrial and commercial sources.

The following conditions of use are added to the 2023 Draft Supplement:

- Processing as a byproduct (including polyethylene terephthalate (PET) byproduct and ethoxylation process byproduct);
- Industrial/commercial use: Other uses: Hydraulic fracturing;
- Industrial/commercial use: Arts, crafts, and hobby materials: Textile dye;
- Industrial/commercial use: Automotive care products: Antifreeze;
- Industrial/commercial use: Cleaning and furniture care products: Surface cleaner;
- Industrial/commercial use: Laundry and dishwashing products: Dish soap;
- Industrial/commercial use: Laundry and dishwashing products: Dishwasher detergent;
- Industrial/commercial use: Laundry and dishwashing products: Laundry detergent; and
- Industrial/commercial use: Paints and coatings: Paint and floor lacquer;

For each of these conditions of use, EPA evaluated risks of non-cancer and cancer effects due to acute or chronic inhalation or dermal exposure. For the 2023 draft supplement, EPA relied on the physical and chemical properties information, as well as lifecycle information, environmental fate and transport information, and hazard identification and dose-response analyses presented in the 2020 Risk Evaluation (Ref. 2).

4. *Which exposure pathways are being added to EPA's 2023 revised unreasonable risk determination?*

The 2020–2021 risk evaluations for several of the first 10 chemicals, including 1,4-dioxane, excluded exposure pathways that were or could be regulated under another EPA-administered statute. For 1,4-dioxane, the air and drinking water exposure pathways were excluded from the 2020 Risk Evaluation and were not assessed. The 2023 Draft Supplement evaluates risks from general population and fenceline community exposures to 1,4-dioxane released to surface and groundwater, air, and land. The risks EPA evaluated to fenceline communities and the general population (using reasonably available monitoring and modeling data for inhalation, dermal, and ingestion exposures) include risks from the conditions of use assessed in the 2020 Risk Evaluation as well as the conditions of use assessed in the 2023 Draft Supplement, including conditions of use where 1,4-dioxane is manufactured, or where it is present due to production as a byproduct. These exposures to 1,4-dioxane include releases to air and water from polyethylene terephthalate (PET) plastic manufacturing, ethoxylation processes, hydraulic fracturing operations, and use of a range of consumer and commercial products.

D. What conclusions is EPA proposing to reach in the 2023 draft revised unreasonable risk determination and on what is EPA seeking public comment?

In the 2020 Risk Evaluation, EPA determined that 1,4-dioxane presents an unreasonable risk to health under the following 13 conditions of use, based on risks to workers:

- Manufacturing (domestic manufacture);
- Manufacturing (import/repackaging);
- Processing: Repackaging;
- Processing: Recycling;
- Processing: Non-incorporative;
- Processing: Processing as a reactant;
- Industrial/commercial use: Intermediate;
- Industrial/commercial use: Processing aid;
- Industrial/commercial use: Laboratory chemicals;
- Industrial/commercial use: Adhesives and sealants;
- Industrial/commercial use: Printing and printing compositions;
- Industrial/commercial use: Dry film lubricant; and

• Disposal.

Under the proposed whole chemical approach to the 1,4-dioxane risk determination, those same conditions of use would continue to contribute to the unreasonable risk from 1,4-dioxane. In addition, by removing the assumption of PPE use in making the whole chemical risk determination for 1,4-dioxane, two conditions of use (in addition to the original 13 conditions of use in the 2020 Risk Evaluation found to contribute to the unreasonable risk) would contribute to the unreasonable risk:

• Industrial/commercial use: Functional fluids (open and closed system): Metalworking fluid, cutting and tapping fluid, polyalkylene glycol fluid; and

• Industrial/commercial use: Other uses: Spray polyurethane foam.

Of the conditions of use that have been added in the 2023 Draft Supplement, EPA has preliminarily determined that the following would contribute to the unreasonable risk determination, based on risks to workers:

• Processing as a byproduct (including polyethylene terephthalate (PET) byproduct and ethoxylation process byproduct);

• Industrial/commercial use: Other uses: Hydraulic fracturing;

• Industrial/commercial use: Arts, crafts, and hobby materials: Textile dye;

• Industrial/commercial use: Laundry and dishwashing products: Dish soap;

• Industrial/commercial use: Laundry and dishwashing products: Dishwasher detergent; and

• Industrial/commercial use: Paints and coatings: Paint and floor lacquer.

Based on the occupational risk estimates and EPA's confidence in them, EPA finds that the worker exposure to 1,4-dioxane from all but four occupational conditions of use (Ref. 1) contributes to the unreasonable risk from 1,4-dioxane.

In the 2020 Risk Evaluation, EPA evaluated risks to consumers from eight conditions of use and found that they did not present an unreasonable risk to consumers or bystanders. In the 2023 draft revised unreasonable risk determination, EPA does not propose to identify the consumer conditions of use as contributing to the unreasonable risk determination from 1,4-dioxane. However, EPA notes that the generation of 1,4-dioxane as an ethoxylation process byproduct—*i.e.,* the upstream processing of many of these the consumer products—does contribute to the unreasonable risk determination, due to worker risks of cancer and non-cancer effects from inhalation and dermal exposures during those processes and risk to the general population and fenceline communities from exposures to drinking water sourced from surface water contaminated with 1,4-dioxane discharged from industrial facilities.

Regarding ambient air exposures, EPA estimated risks from fenceline community exposures to 1,4-dioxane released to air. Risks were evaluated for air releases from industrial conditions of use, hydraulic fracturing operations, and industrial and institutional laundry facilities. EPA's modeling methodologies, risk estimates, and confidence in those estimates is described in Section 5 of the draft supplemental risk evaluation (Ref. 3). Standard cancer benchmarks used by EPA and other regulatory agencies are an increased cancer risk above benchmarks ranging from 1 in 1,000,000 to 1 in 10,000 (*i.e.,* $1x10^{-6}$ to $1x10^{-4}$) depending on the subpopulation exposed. Based on the risk estimates for cancer, non-cancer acute effects, and non-cancer chronic effects, the fact that the risk estimates are within the applicable benchmark range, and EPA's confidence in the risk estimates, EPA preliminarily finds that fenceline community exposure to 1,4-dioxane in ambient air from releases from industrial conditions of use, including hydraulic fracturing, industrial laundry facilities, and institutional laundry facilities does not contribute to EPA's unreasonable risk determination. More details on EPA's preliminary determination regarding fenceline communities' exposure to 1,4-dioxane in ambient air is in the 2023 draft revised risk determination (Ref. 1).

Regarding drinking water exposures, in the 2023 Draft Supplement, EPA evaluated oral exposures via ingestion of drinking water sourced from surface water or groundwater contaminated with 1,4-dioxane from facility-specific releases, down-the-drain releases of consumer and commercial products that contain 1,4-dioxane as a byproduct, hydraulic fracturing releases, and leaching from landfills. 1,4-Dioxane is not readily removed through typical wastewater or drinking water treatment processes. Sources of 1,4-dioxane in surface water include direct and indirect industrial releases from COUs where 1,4-dioxane is manufactured, processed, or used, industrial COUs where 1,4-dioxane is present due to production as a byproduct (including PET manufacturing, ethoxylation processes, and hydraulic fracturing operations), and down-the-drain releases of 1,4-dioxane present in consumer and commercial products. EPA considered risks from these sources individually and in aggregate. The relative contribution from different sources varies under different conditions and is likely to be driven by site-specific factors including the amounts released from each source, flow rates of receiving water bodies, and proximity of releases to drinking water intakes. Drinking water exposure and risk estimates for surface water are highly dependent on the amount of 1,4-dioxane released and the flow of the receiving water body. Exposure and risk estimates are also influenced by whether there is a drinking water intake downstream of a release and the degree of dilution that occurs between the point of release and the drinking water intake. Available surface water monitoring datasets are not designed to reflect source water impacts of direct and indirect releases into water bodies. Therefore, EPA estimated concentrations using modeling for a range of specific release scenarios. Similarly, for groundwater, EPA estimated cancer and non-cancer risks for a range of general population and fenceline community exposures to groundwater used as drinking water; sources of 1,4-dioxane in groundwater may include leachate from landfills and disposal of hydraulic fracturing waste.

Based on information in the 2023 Draft Supplement to the risk evaluation, several conditions of use of 1,4-dioxane could result in exposures to the general population and fenceline communities from 1,4-dioxane in drinking water after it is discharged from facilities engaging in one of several conditions of use. EPA also notes that many of the conditions of use assessed in the 2023 Draft Supplement contribute to more than one exposure pathway. For example, 1,4-dioxane present as a byproduct of PET manufacturing may contribute to occupational exposures during manufacturing as well as exposures to the general population and fenceline communities through releases to water. In addition, for many of the exposure pathways assessed, multiple conditions of use contribute to 1,4-dioxane exposure. For example, many conditions of use can contribute to general population and fenceline communities' exposures to 1,4-dioxane in surface water, including industrial releases from a range of conditions of use and down-the-drain releases of consumer and commercial products.

EPA proposes to include the risks to the general population and fenceline communities from drinking water sourced from surface water contaminated with 1,4-dioxane that is discharged from industrial facilities (including where it is produced as a

byproduct) as contributing to the unreasonable risk determination. However, due to the uncertainties described in this Unit, in more detail in section 6.2.4 of the 2023 draft revised unreasonable risk determination, and throughout the 2023 Draft Supplement, EPA has outlined several specific requests for comment regarding this draft risk determination, in this Unit.

As described in the 2023 draft revised unreasonable risk determination, EPA's proposed unreasonable risk determination for 1,4-dioxane as a whole chemical is based on cancer and non-cancer risks to workers from inhalation and dermal exposures, and cancer risks to the general population and fenceline communities from exposures to 1,4-dioxane in drinking water sourced from surface water contaminated by industrial discharges of 1,4-dioxane (including when it is generated as a byproduct). EPA proposes to identify the following conditions of use, from both the 2020 Risk Evaluation and the 2023 Draft Supplement, as contributing to the unreasonable risk from 1,4-dioxane:

- Manufacture (including domestic manufacture and import);
- Processing (including repackaging, recycling, non-incorporative, as a reactant, and as a byproduct);
- Industrial/commercial use: Functional fluids (open and closed system): Metalworking fluid, cutting and tapping fluid, polyalkylene glycol fluid, hydraulic fluid;
- Industrial/commercial use: Intermediate;
- Industrial/commercial use: Processing aid;
- Industrial/commercial use: Laboratory chemicals;
- Industrial/commercial use: Adhesives and sealants;
- Industrial/commercial use: Other uses: Printing and printing compositions;
- Industrial/commercial use: Other uses: Dry film lubricant;
- Industrial/commercial use: Other uses: Spray polyurethane foam;
- Industrial/commercial use: Other uses: Hydraulic fracturing;
- Industrial/commercial use: Arts, crafts, and hobby materials: Textile dye;
- Industrial/commercial use: Laundry and dishwashing products: Dish soap;
- Industrial/commercial use: Laundry and dishwashing products: Dishwasher detergent;
- Industrial/commercial use: Paints and coatings: Paint and floor lacquer; and
- Disposal.

Because the risk estimates for all processing COUs identified and evaluated in the 2020 Risk Evaluation and the 2023 Draft Supplement (including those where 1,4-dioxane is processed as a byproduct) contribute to the unreasonable risk, EPA believes that it is appropriate to conclude that any processing of 1,4-dioxane contributes to the unreasonable risk. This would include circumstances described but not necessarily individually quantified in the 2020 Risk Evaluation or the 2023 Draft Supplement, such as when 1,4-dioxane is generated as a byproduct during sulfonation, sulfation, and esterification processes. EPA also emphasizes that this determination identifies any manufacturing, processing, or disposal of 1,4-dioxane—including as a byproduct—as contributing to the unreasonable risk if the 1,4-dioxane contaminates surface water that is the source of drinking water.

EPA is seeking public comment for certain considerations for determining unreasonable risk to the general population or fenceline communities from 1,4-dioxane in drinking water. EPA notes that the agency has preliminarily determined that the worker risks identified provide sufficient basis for the determination that 1,4-dioxane as a whole chemical presents unreasonable risk. Nonetheless, for the purposes of transparency, clear public communication on unreasonable risk, and to inform future risk management activities, EPA is seeking comment on the following:

- *Industrial discharges of 1,4-dioxane to surface water.* EPA is able to provide risk estimates for drinking water contaminated with 1,4-dioxane from surface water discharges from some facility-specific releases of 1,4-dioxane, including from some facilities that manufacture, process, or use 1,4-dioxane (including as a byproduct). Several high-end risk estimates exceed the range of applicable benchmarks for increased cancer risk (*i.e.,* $1x10^{-4}$ to $1x10^{-6}$), and EPA has higher confidence in the facility-specific risk estimates for discharges to surface water compared to other drinking water risk estimates (*i.e.,* groundwater, down-the-drain releases from commercial and consumer products). In general, the aggregate analysis for drinking water sourced from surface water indicates that the high-end risk analysis may be driven primarily by high-end industrial releases, under certain conditions. EPA has preliminarily determined that exposures to surface water containing 1,4-dioxane from industrial discharges contribute to the unreasonable risk.

EPA seeks comment on whether EPA's evaluation of facilities that discharge 1,4-dioxane in processes that manufacture 1,4-dioxane or generate 1,4-dioxane as a byproduct (*e.g.,* PET manufacturing, and ethoxylation processes), can reasonably be assumed to represent the spectrum of facilities or sectors producing 1,4-dioxane as a byproduct for the purposes of risk determination and, if necessary, any risk management action.

Because multiple sources may contribute to 1,4-dioxane concentrations in drinking water sourced from surface water in a single location, EPA estimated aggregate general population exposures and risks that could occur from combined contributions from multiple sources. EPA seeks comment on whether an unreasonable risk determination is supported in instances where EPA is unable to attribute exposures to specific COUs as specific sources of risk, but rather is able to attribute exposures to sources of the chemical covering many COUs as an aggregate contributor to unreasonable risk.

- *Down-the-drain releases of 1,4-dioxane from consumer and commercial products.* EPA evaluated the potential contribution of down-the-drain releases of consumer and commercial products that contain 1,4-dioxane as a byproduct to drinking water exposure and risk. EPA's drinking water exposure estimates correspond to surface water concentrations estimated by probabilistic modeling of down-the-drain releases under varying population sizes and stream flows. With some combinations of factors, exposures to down-the-drain releases of 1,4-dioxane in drinking water alone result in increased cancer risks within EPA's benchmark range of $1x10^{-6}$ to $1x10^{-4}$ in some instances. Assuming no dilution between the point of release and the drinking water intake, the estimated risks range from 2.04×10^{-11} to 6.11×10^{-5} with the risks increasing as population increases and stream flow decreases. Based on the conservative analysis of no assumed dilution, confidence in risk estimates, and consideration of uncertainties, EPA has preliminarily determined that down-the-drain releases of 1,4-dioxane do not contribute to the unreasonable risk determination.

EPA seeks comment regarding to what extent factors such as stream flow and population size should be factored into the unreasonable risk determination, or whether consideration of those factors is more appropriate for the risk management stage.

EPA seeks comment on its draft determination that down-the-drain releases of 1,4-dioxane do not contribute

to the unreasonable risk determination due to the uncertainties identified in the risk characterization regarding consumer and commercial products that contain 1,4-dioxane as a byproduct (*i.e.,* soaps, dishwashing detergents, and laundry detergent).

• *Groundwater and potential 1,4-dioxane exposure in drinking water.* EPA estimated risks from exposures that could occur if groundwater containing 1,4-dioxane is used as a source of drinking water. These risk estimates are not tied to known releases at specific locations. Rather, the analysis defines the conditions under which 1,4-dioxane disposal to landfills or from hydraulic fracturing operations could result in varying levels of risk from groundwater concentrations of 1,4-dioxane. EPA's drinking water exposure scenario relies on the assumption that modeled groundwater concentrations reflect the actual groundwater concentrations that occur at well locations. While the modeling methodology is robust and the release information relied on as model input data is supported by moderate evidence, no monitoring data are available to confirm detection of 1,4-dioxane in groundwater, specifically near hydraulic fracturing operations. EPA has preliminarily determined that groundwater containing 1,4-dioxane does not contribute to the unreasonable risk determination. EPA seeks comment on its draft determination that groundwater exposures from 1,4-dioxane do not contribute to the unreasonable risk determination due to the uncertainties identified in the risk characterization regarding releases of 1,4-dioxane from landfill leachate and hydraulic fracturing operations.

• *Determination of general population and fenceline community risks.* As described in the 2023 Draft Supplement (Ref. 3), fenceline communities are members of the general population that are in proximity to air-emitting facilities or a receiving waterbody, and who therefore may be disproportionately exposed to a chemical undergoing risk evaluation under TSCA section 6. For the air pathway, proximity goes out to 10,000 meters from an air emitting source. For the water pathway, proximity does not refer to a specific distance measured from a receiving waterbody, but rather to those members of the general population that may interact with the receiving waterbody and thus may be exposed. EPA seeks comment, for the purposes of drinking water, on what parameters EPA should consider in identifying whether exposures to the general populations contribute to an unreasonable risk determination. Specifically, EPA seeks comment on whether and how to incorporate exposures to the general population from multiple sources that cannot be attributed to COUs, is dependent on site-specific circumstances, variable across the country, or dependent on stream flow, population size, or population density. EPA also seeks comment on whether other parameters should be considered, and, if so, how they should be incorporated.

As noted in Unit II.C.1., EPA is also seeking comment on the draft superseding unreasonable risk determination for 1,4-dioxane, including a description of the risks that contribute to the unreasonable risk determination under the conditions of use for the chemical substance as a whole. Additionally, as noted in Unit II.C.2, EPA is also seeking comment on EPA's 2023 draft revision to the 1,4-dioxane risk determination without relying on assumptions regarding the occupational use of PPE in making the unreasonable risk determination under TSCA section 6.

III. Revision of the December 2020 Risk Evaluation

A. Why is EPA proposing to revise the risk determination for the 1,4-dioxane risk evaluation?

EPA is proposing to revise the risk determination for the 1,4-dioxane risk evaluation pursuant to TSCA section 6(b) and consistent with Executive Order 13990, (''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis'') and other Administration priorities (Refs. 4, 5, and 7). EPA is revising specific aspects of the first ten TSCA existing chemical risk evaluations in order to ensure that the risk evaluations better align with TSCA's objective of protecting health and the environment.

For the 1,4-dioxane risk evaluation, this includes the draft revisions: (1) making the risk determination in this instance based on the whole chemical substance instead of by individual conditions of use, (2) emphasizing that EPA does not rely on the assumed use of PPE when making the risk determination and identifying which conditions of use in the 2020 Risk Evaluation would contribute to the unreasonable risk determination based on worker exposure without assuming use of PPE, (3) identifying which of the additional conditions evaluated in the 2023 Draft Supplement contribute to the unreasonable risk determination based on worker exposure, and (4) proposing that the risks to fenceline communities from exposure to 1,4-dioxane in drinking water sourced from surface water contaminated by industrial discharges of 1,4-dioxane (including when it is generated as a byproduct) and (5) seeking public comment on several issues, as listed in Unit II.D.

B. What are the draft revisions?

EPA is releasing a draft revision of the risk determination for the 1,4-dioxane risk evaluation pursuant to TSCA section 6(b). Under the revised determination, EPA proposes to conclude that 1,4-dioxane, as evaluated in the risk evaluation as a whole, presents an unreasonable risk of injury to health under its conditions of use. This revision would replace the previous unreasonable risk determinations made for 1,4-dioxane by individual conditions of use, supersede the determinations (and withdraw the associated order) of no unreasonable risk for the conditions of use identified in the TSCA section 6(i)(1) no unreasonable risk order, clarify the lack of reliance on assumed use of PPE as part of the risk determination, and incorporate information (including the addition of conditions of use and exposure pathways) assessed in the 2023 Draft Supplement to the Risk Evaluation for 1,4-Dioxane.

These draft revisions do not alter any of the underlying technical or scientific information that informs the risk characterization in the 2020 Risk Evaluation, and as such the hazard, exposure, and risk characterization sections in the 2020 Risk Evaluation are not changed except to the extent that statements about PPE assumptions in the executive summary and including sections 4.2.2.6 (Occupational Risk Estimation for Cancer Effects), 4.6.2.1 (Summary of Risk for Workers and ONUs), and section 5.1.1.3 (Determining Unreasonable Risk of Injury to Health) of the 1,4-dioxane risk evaluation would be superseded and the 2023 draft risk determination also reflects the 2023 supplemental risk evaluation. The discussion of the issues in this notice and in the accompanying draft revision to the risk determination would supersede any conflicting statements in the prior executive summary, including sections 4.2.2.6, 4.6.2.1, and section 5.1.1.3 from the 1,4-dioxane risk evaluation and the response to comments document (Refs. 2 and 11).

C. Will the draft revised risk determination be peer reviewed?

The risk determination (section 5 in the December 2020 Risk Evaluation) was not part of the scope of the peer review of the 1,4-dioxane risk evaluation by the SACC. Thus, consistent with that

approach, EPA is not seeking peer review of the 2023 draft revised unreasonable risk determination for the 1,4-dioxane risk evaluation. EPA is, however, seeking peer review as well as public comment on the 2023 Draft Supplement to the 1,4-Dioxane Risk Evaluation, as described in a separate **Federal Register** notice (88 FR 43562, July 10, 2023) (FRL–10798–02–OCSPP). EPA will consider changes made to the risk evaluation in response to peer review and public comment on that supplement when developing the final risk determination.

D. What are the next steps for finalizing revisions to the risk determination?

EPA will review and consider public comment received on the draft revised risk determination for the 1,4-dioxane risk evaluation and will review and consider public comment and peer review on the 2023 Draft Supplement to the 1,4-Dioxane Risk Evaluation. After considering those public comments, EPA will issue the revised final 1,4-dioxane risk determination. If finalized as drafted, EPA would also issue a new order to withdraw the TSCA section 6(i)(1) no unreasonable risk order issued in Section 5.4.1 of the 2020 1,4-dioxane risk evaluation. This final revised risk determination would supersede the December 2020 risk determinations of no unreasonable risk. Consistent with the statutory requirements of TSCA, EPA would initiate risk management for 1,4-dioxane either by applying one or more of the requirements under TSCA section 6(a) to the extent necessary so that 1,4-dioxane no longer presents an unreasonable risk or determining pursuant to TSCA sections 9(a) and/or 9(b) that other Federal laws can eliminate or reduce to a sufficient extent the unreasonable risk.

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA Draft Revised Unreasonable Risk Determination for 1,4-Dioxane, July 2023.
2. EPA. Risk Evaluation for 1,4-Dioxane. December 2020. EPA Document #EPA–740–R1–8007. *https://www.regulations.gov/document/EPA-HQ-OPPT-2019-0238-0092.*
3. EPA. Draft Supplemental Risk Evaluation for 1,4-Dioxane. July 2023. EPA Document #EPA–740–D–23–001. *https://www.regulations.gov/document/EPA-HQ-OPPT-2022-0905-0027.*
4. Executive Order 13990. Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. **Federal Register**. 86 FR 7037, January 25, 2021.
5. Executive Order 13985. Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. **Federal Register**. 86 FR 7009, January 25, 2021.
6. Executive Order 14008. Tackling the Climate Crisis at Home and Abroad. **Federal Register**. 86 FR 7619, February 1, 2021.
7. Presidential Memorandum. Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking. **Federal Register**. 86 FR 8845, February 10, 2021.
8. EPA Press Release. EPA Announces Path Forward for TSCA Chemical Risk Evaluations. June 2021. *https://www.epa.gov/newsreleases/epa-announces-path-forward-tsca-chemical-risk-evaluations.*
9. EPA. Proposed Rule; Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act. **Federal Register**. 82 FR 7562, January 19, 2017 (FRL–9957–75).
10. EPA. Final Rule; Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act. **Federal Register**. 82 FR 33726, July 20, 2017 (FRL–9964–38).
11. EPA. Summary of External Peer Review and Public Comments and Disposition for 1,4-Dioxane. December 2020. *https://www.regulations.gov/document/EPA-HQ-OPPT-2019-0238-0093.*
12. EPA. Correction of Dermal Acute and Chronic Non-Cancer Hazard Values Used to Evaluate Risks from Occupational Exposures in the Final Risk Evaluation for 1,4-dioxane. June 26, 2023.
13. EPA. Draft Supplement to the Risk Evaluation for 1,4-Dioxane—Supplemental Information File: Occupational Exposure and Risk Estimates. July 2023.
14. Occupational Safety and Health Administration (OSHA). Top 10 Most Frequently Cited Standards for Fiscal Year 2021 (Oct. 1, 2020, to Sept. 30, 2021). Accessed October 13, 2022. *https://www.osha.gov/top10citedstandards.*
15. Occupational Safety and Health Administration. Permissible Exposure Limits—Annotated Tables. Accessed June 13, 2022. *https://www.osha.gov/annotated-pels.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: July 21, 2023.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2023–15846 Filed 7–25–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS23–10]

Appraisal Subcommittee; Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of special closed meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) met for a Special Closed Meeting on this date.

Location: Virtual meeting via Webex.
Date: July 12, 2023
Time: 11:00 a.m. ET

Action and Discussion Item

Personnel Matter

The ASC convened a Special Closed Meeting to discuss a personnel matter. No action was taken by the ASC.

James R. Park,

Executive Director.

[FR Doc. 2023–15787 Filed 7–25–23; 8:45 am]

BILLING CODE 6700–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7071–N–16]

60-Day Notice of Proposed Information Collection: Comment Request; FHA Insured Title I Property Improvement and Manufactured Home Loan Programs; OMB Control No.: 2502–0328

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 25, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed

information collection can be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. HUD welcomes. and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Title I Property Improvement and Manufactured Home Loan Programs.

OMB Control Number, if applicable: 2502–0328.

Type of Request: Extension of currently approved collection.

Description of the need for the information and proposed use: Title I loans are made by private sector lenders and insured by HUD against loss from default. HUD uses information about Title I loan borrowers to evaluate individual loans on their overall program performance. The information collected is used to determine insurance eligibility and claim eligibility. HUD proposes adopting the URLA and amending forms 56001 and 56001–MH to capture Title I Loan program specific information which will simplify the form, avoid unnecessary duplication, and reduce the burden to the public. This information is necessary for HUD to capture information effective in determining overall program performance, insurance and claim eligibility and risk management.

Agency form numbers, if applicable: HUD–637, 27030, 55013, 55014, 56001, 56001–MH, 56002, 56002–MH, & SF 3881.

Respondents: The respondents are lenders.

Estimation of the total numbers of hours needed to prepare the information collection:

Estimated Number of Respondents: 510.

Estimated Number of Responses: 38,515.

Frequency of Response: On occasion, periodic.

Average Hours per Response: 10.01.

Total Estimated Burdens: 23,180.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) This extension recommends adopting the URLA form, an industry standard for loan applications. This will allow use of revised 56001 and 56001 MH forms, which reduces the public burden. The public burden hours have been adjusted to reflect this change. HUD encourages interested parties to submit comment in response to these questions.

C. Authority

The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Jeffrey D. Little,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2023–15820 Filed 7–25–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–ES–2023–0097; FF07CAMM00.FX.ES111607MRG02; OMB Control Number 1018–0066]

Agency Information Collection Activities; Marine Mammal Marking, Tagging, and Reporting Certificates, and Registration of Certain Dead Marine Mammal Hard Parts

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection without change.

DATES: Interested persons are invited to submit comments on or before September 25, 2023.

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods (reference ''1018–0066'' in the subject line of your comment):

- *Internet (preferred): https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R7–ES–2023–0097.
- *Email: Info_Coll@fws.gov.*
- *U.S. mail:* Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's

reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

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

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Under section 101(b) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361–1407), Alaska Natives residing in Alaska and dwelling on the coast of the North Pacific or Arctic Oceans may harvest polar bears, northern sea otters, and Pacific walruses for subsistence or handicraft purposes. Section 109(i) of the MMPA authorizes the Secretary of the Interior to prescribe marking, tagging, and reporting regulations applicable to the Alaska Native subsistence and handicraft take.

On behalf of the Secretary, we implemented regulations at 50 CFR 18.23(f) for Alaska Natives harvesting polar bears, northern sea otters, and Pacific walruses. These regulations enable us to gather data on the Alaska Native subsistence and handicraft harvest and on the biology of polar bears, northern sea otters, and Pacific walruses in Alaska to determine what effect such take may be having on these populations. The regulations also provide us with a means of monitoring the disposition of the harvest to ensure that any commercial use of products created from these species meets the criteria set forth in section 101(b) of the MMPA.

We collect harvest information related to Alaska Native harvest to provide a chronology of the harvest in population modeling, determining which cohorts are being killed, determining the status of populations, and predicting population trends. We will use the collected information to gain insight into the distribution and relative abundance of the three species, the level and intensity of the harvest, and the harvest impacts on the species and their subpopulations. We use three Service forms to collect the following information from Alaska Natives as part of the harvest reporting requirement:

A. *Form 3–2414, ''Polar Bear Tagging Certificates'':* Form 3–2414 collects the following information:

- Date and location of tagging;
- Hide and skull tag number;
- Village hunted from (if different from tagging location);
- Age class and sex;
- Whether sex could be verified by tagger and, if yes, sex identification information;
- Skull measurements (length, width, or not provided);
- Whether cubs were present with sow and, if yes, how many cubs;
- Bear condition (obese, average, skinny);
- Specimens collected (tooth, hair, skin, liver, fat, muscle, skin/muscle, baculum/penis bone, or other);
- Research marks/tags (collar, ear tag number, lip tattoo, or other);
- Date and location of kill (to include latitude/longitude);
- Whether it was a conflict or problem bear and whether it was taken in defense of life;
- Additional remarks; and
- Whether hunter is available for post-hunt interview and, if yes, phone number, with the following post-hunt interview questions for problem bear situations:

a. Was there a food source/attractant that the bear was interested in? What was the attractant?

b. Was there any attempt to haze the bear to get it to leave?

c. Was it believed that the bear could be a threat to people?

Note: We would only ask these typical post-hunt questions if the biologist needed information on a bear that was marked as a problem bear. There is no standardized questioning.

B. *Form 3–2415, ''Walrus Tagging Certificates'':* Form 3–2415 collects the following information:

- Date and location of tagging;
- Village hunted from (if different than tagging location);
- Marine Mammals Management Marking, Tagging, and Reporting Program (MTRP) tag number of plastic-headed wire tag used for left or right tusk;
- Type of take for walrus (LK = live killed, BF = beach found)—This information increases the accuracy of the known mortality and harvest data by discriminating between a walrus killed for subsistence purposes or found dead and salvaged. Requiring all ivory that has been taken or collected (pursuant to the Alaska Native exemption) to be marked, tagged, and reported simplifies Service enforcement efforts.
- Date and location killed/found;
- Age and sex;
- Walrus tusk length and circumference;
- Number of walrus harvested without tusks; and
- Additional remarks.

C. *Form 3–2416, ''Sea Otter Tagging Certificates'':* Form 3–2416 collects the following information:

- Date and location of tagging;
- Hide and skull tag number;
- FWS permit number;
- Age class and sex;
- Details identification information;
- Specimens collected (tooth, muscle vial, whisker, carcass, or other);
- Number of otters present in pod and number harvested from pod;
- Date and location of kill (to include latitude and longitude); and
- Additional remarks.

We also require non-Native collectors to use *Form 3–2406, ''Non-Native Marine Mammal Certificates.''* The collection of information via Form 3–2406 allows the Service to track individuals who register (within 30 days) beach-found hard parts to determine whether the take of marine mammal hard parts is legal. We use the below listed information collected via Form 3–2406 to verify whether it is legal for the individual to retain them:

- Date and location of tagging;
- MTRP tag number of plastic-headed wire tag used for left or right tusk;
- Date found;
- Age and sex;
- Tusk circumference at gum line and tusk length from gum line to tip along front side following the curve of the tusk;
- Exact location of kill or find;

- Tag number for skull (polar bear or sea otter) or other part;
- Any information of interest about the beach-found hard part collected;
- Other remarks; and
- Name, address, phone number, and date of birth of the person who collected the hard part.

You may request copies of all forms in this information collection by submitting a request to the Service Information Collection Clearance Officer, using one of the methods identified in the **ADDRESSES** section of this notice.

Title of Collection: Marine Mammal Marking, Tagging, and Reporting Certificates, and Registration of Certain Dead Marine Mammal Hard Parts, 50 CFR 18.23(f) and 18.26.

OMB Control Number: 1018–0066.

Form Number: Forms 3–2406, 3–2414, 3–2415, and 3–2416.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals and households.

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

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response	Estimated annual burden hours *
Form 3–2406, ''Non-Native Marine Mammal Tagging Certificate'' (Individuals)	200	1	200	15 minutes	50
Form 3–2414, ''Polar Bear Tagging Certificate'' (Individuals)	20	1.5	30	15 minutes	8
Form 3–2415, ''Walrus Tagging Certificate'' (Individuals)	90	3.3	300	15 minutes	75
Form 3–2416, ''Sea Otter Tagging Certificate'' (Individuals)	60	25	1,500	15 minutes	375
Totals	370		2,030		508

* Rounded.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–15829 Filed 7–25–23; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1318]

Certain Graphics Systems, Components Thereof, and Digital Televisions Containing the Same; Notice of Request for Submissions on the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on July 7, 2023, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of section 337. The ALJ also issued a Recommended Determination on remedy and bond should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. (19 U.S.C. 1337(d)(1)). A similar provision applies to cease and desist orders. (19 U.S.C. 1337(f)(1)).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: a limited exclusion order directed to certain graphics systems, components thereof, and digital televisions containing the same imported, sold for importation, and/or sold after importation by respondents TCL Industries Holdings Co., Ltd. of Guangdong, China; TCL Industries Holdings (H.K.) Co. Limited of Hong Kong, China; TCL Electronics Holdings Ltd. f/k/a TCL Multimedia Technology Holdings, Ltd. of Hong Kong, China; TCL Technology Group Corporation of Guangdong, China; TTE Corporation of Hong Kong, China; TCL Holdings (BVI) Ltd. of Hong Kong, China; TCL King Electrical Appliances (Huizhou) Co. Ltd. of Guangdong, China; Shenzhen TCL New Technology Co., Ltd. of Guangdong, China; TCL MOKA International Ltd. of Hong Kong, China; TCL Smart Device (Vietnam) Co., Ltd. of Binh Duong Province, Vietnam; Manufacturas Avanzadas SA de CV of Chihuahua, Mexico; TCL Electronics Mexico, S de RL de CV of Benito Juarez, Mexico; TCL Overseas Marketing Ltd. of Hong Kong, China; TTE Technology, Inc. of Corona, California (collectively, the ''TCL Respondents''); and Realtek Semiconductor Corporation of Hsinchu, Taiwan; and cease and desist orders directed to the TCL Respondents except for TTE Technology, Inc. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are

invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bond issued in this investigation on July 7, 2023. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, 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 recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended 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 recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on August 14, 2023.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1318'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 20, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–15757 Filed 7–25–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0064]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Annual Surveys of Probation and Parole

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Justice Statistics, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on May 1, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until August 25, 2023.

FOR FURTHER INFORMATION CONTACT: If you have 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: Danielle Kaeble, Bureau of Justice Statistics, 810 Seventh St NW, Washington, DC 20531 (email: *Danielle.Kaeble@usdoj.gov;* telephone: 202–598–1024).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this 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 information collection or the OMB Control Number 1121–0064. This

information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *Title of the Form/Collection:* Annual Surveys of Probation and Parole.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The Annual Surveys of Probation and Parole (ASPP) contain three forms: CJ–7: Annual Parole Survey CJ–8: Annual Probation Survey and CJ–8M: Annual Probation Survey (Misdemeanor Supervision Only). The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs. The ASPP is fielded annually. BJS requests clearance for the 2023, 2024, and 2025 ASPP under OMB Control No. 1121–0064. The ASPP was last approved under OMB Control No. 1121–0064 (exp. date 09/30/2023).

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected Public: State departments of corrections or state probation and parole authorities, the Federal Bureau of Prisons, city and county courts and probation offices for which a central reporting authority does not exist.

Abstract: For the CJ–7 form, the affected public consists of 54 respondents including 50 central reporters, the District of Columbia, and the Federal Bureau of Prisons responsible for keeping records of adult on parole supervision. For the CJ–8 form, the affected public includes 250 reporters including central state respondents, the District of Columbia, the Federal Bureau of Prisons, and local authorities responsible for keeping records on individuals on probation supervision. For the CJ–8M form, the affected public includes 610 reporters who are all local authorities responsible for keeping records on individuals on probation supervision for a misdemeanor offense. These reporters indicated they do not supervise any individual on probation for a felony offense and will answer a short survey on population totals. The Annual Parole Survey and Annual Probation surveys have been used since 1977 to collect annual yearend counts and yearly movements of community corrections populations; characteristics of the community supervision population, such as gender, racial composition, ethnicity, conviction status, offense, and supervision status.

5. *Obligation to Respond:* Voluntary.

6. *Total Estimated Number of Respondents:* 912.

7. *Estimated Time per Respondent:* averaged 72 minutes.

8. *Frequency:* Once a year.

9. *Total Estimated Annual Time Burden:* 1,090 hours; please note that burden hours differ from information previously published in the 60 day notice due to more detailed estimates of time by survey type.

10. *Total Estimated Annual Other Costs Burden:* $31,300.

TABLE 1—ESTIMATED ANNUALIZED RESPONDENT COST AND HOUR BURDEN

Form	Number of respondents	Freq	Total annual response	Time to gather data	Time per survey	Time for follow-up (mins)	Total time (mins)	Total annual burden (hrs)
CJ–7	54	1	54	0	95	15	5,940	99 hours (5,994 min/60 mins).
CJ–8	250	1	250	30	120	15	41,250	687 hours (41,250 min/60 mins).
CJ–8M	608	1	608	15	10	5	18,240	304 hours (18,240 min/60 mins).
Totals	912	.....	.....	.....	.....	.....	.....	1,090.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: July 20, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–15800 Filed 7–25–23; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0064]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Annual Surveys of Probation and Parole

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Justice Statistics, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on May 1, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until August 25, 2023.

FOR FURTHER INFORMATION CONTACT: If you have 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: Danielle Kaeble, Bureau of Justice Statistics, 810 Seventh St. NW, Washington, DC 20531 (email: *Danielle.Kaeble@usdoj.gov;* telephone: 202–598–1024).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information

are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and/or
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this 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 information collection or the OMB Control Number 1121–0064. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *Title of the Form/Collection:* Annual Surveys of Probation and Parole

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The Annual Surveys of Probation and Parole (ASPP) contain three forms: CJ–7: Annual Parole Survey CJ–8: Annual Probation Survey and CJ–8M: Annual Probation Survey (Misdemeanor Supervision Only). The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs. The ASPP is fielded annually. BJS requests clearance for the 2023, 2024, and 2025 ASPP under OMB Control No. 1121–0064. The ASPP was last approved under OMB Control No. 1121–0064 (exp. date 09/30/2023).

4. *Affected public who will be asked or required to respond, as well as a brief abstract: Affected Public:* State departments of corrections or state probation and parole authorities, the Federal Bureau of Prisons, city and county courts and probation offices for which a central reporting authority does not exist.

Abstract: For the CJ–7 form, the affected public consists of 54 respondents including 50 central reporters, the District of Columbia, and the Federal Bureau of Prisons responsible for keeping records of adult on parole supervision. For the CJ–8 form, the affected public includes 250 reporters including central state respondents, the District of Columbia, the Federal Bureau of Prisons, and local authorities responsible for keeping records on individuals on probation supervision. For the CJ–8M form, the affected public includes 610 reporters who are all local authorities responsible for keeping records on individuals on probation supervision for a misdemeanor offense. These reporters indicated they do not supervise any individual on probation for a felony offense and will answer a short survey on population totals. The Annual Parole Survey and Annual Probation surveys have been used since 1977 to collect annual yearend counts and yearly movements of community corrections populations; characteristics of the community supervision population, such as gender, racial composition, ethnicity, conviction status, offense, and supervision status.

5. *Obligation to Respond:* Voluntary.

6. *Total Estimated Number of Respondents:* 912.

7. *Estimated Time per Respondent:* averaged 72 minutes.

8. *Frequency:* Once a year.

9. *Total Estimated Annual Time Burden:* 1,090 hours; please note that burden hours differ from information previously published in the 60 day notice due to more detailed estimates of time by survey type.

10. *Total Estimated Annual Other Costs Burden:* $31,300.

TABLE 1—ESTIMATED ANNUALIZED RESPONDENT COST AND HOUR BURDEN

Activity	Number of respondents	Freq	Total annual responses	Time to gather data	Time per survey (mins)	Time for follow-up (mins)	Total time (mins)	Total annual burden (hrs)
CJ–7	54	1	54	0	95	15	5,940	99 hours (5,994 min/60 mins).
CJ–8	250	1	250	30	120	15	41,250	687 hours (41,250 min/60 mins).
CJ–8M	608	1	608	15	10	5	18,240	304 hours (18,240 min/60 mins).
Totals	912							1,090.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: July 20, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–15785 Filed 7–25–23; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

[OMB Control No. 1225–0088]

Proposed Extension of Information Collection; Department of Labor Generic Clearance for the Collection of Feedback on Agency Service Delivery

AGENCY: Office of the Assistant Secretary for Administration and Management, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of the Assistant Secretary for Administration and Management (OASAM) is soliciting comments on the information collection for the Department of Labor Generic Clearance for the Collection of Feedback on Agency Service Delivery.

DATES: All comments must be received on or before September 25, 2023.

ADDRESSES: Electronic submission: You may submit comments and attachments electronically at *http://www.regulations.gov*. Follow the online instructions for submitting comments. A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Nicole Bouchet by telephone at (202) 693–0213 (this is not a toll-free number), or by email at *DOL_PRA_PUBLIC@dol.gov*. Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; by email: *DOL_PRA_PUBLIC@dol.gov*.

All submissions received must include the agency name and OMB Control Number 1225–0088.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet, Acting Departmental Clearance Officer by telephone at 202–693–0213 (this is not a toll-free number), or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

This information collection activity will be used to garner customer and stakeholder feedback in accordance with the Administration's commitment to improving service delivery. The feedback sought is information that provides useful insights on perceptions and opinions, but are not used as statistical surveys that yield quantitative results that can be generalized to the population of study. These collections will:

Provide insights into customer or stakeholder perceptions, experiences, and expectations; provide an early warning of issues with service; focus attention on areas where communication, training, or changes, in operations might improve delivery of products or services; provide ongoing, collaborative, and actionable communications between the DOL and its customers and stakeholders.

These collections will also allow feedback to contribute directly to the improvement of program management. Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population.

This type of generic clearance for feedback information will not be designed to yield reliably actionable results such as, for example, monitoring trends over time or documenting program performance. Those sorts of data usages require more rigorous designs that address: The target population to which generalizations will be made; the sampling frame; the sample design (including stratification and clustering); the precision requirements or power calculations that justify the proposed sample size; the expected response rate; methods for assessing potential nonresponse bias; the protocols for data collection; and any testing procedures that were or will be undertaken prior fielding the study.

Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative result.

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.

II. Desired Focus of Comments

OASAM is soliciting comments concerning the proposed information collection. OASAM is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of OASAM's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection 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.

Background documents related to this information collection request are available at *https://regulations.gov* and at DOL–OASAM, located at Office of the Assistant Secretary for Administration and Management, Room N1301, Washington, DC 20210. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This information collection request concerns the Department of Labor's Generic Clearance for the Collection of Feedback on Agency Service Delivery. OASAM has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension.

Agency: DOL—OASAM.

Title of Collection: Department of Labor Generic Clearance for the Collection of Feedback on Agency Service Delivery.

OMB Number: 1225–0088.

Affected Public: Individuals or Households; Business or other for-profit; Not-for-profit Institutions; State, Local or Tribal Government.

Number of Respondents: 400,000.

Number of Responses: 400,000.

Annual Burden Hours: 40,000 hours.

Annual Respondent or Recordkeeper Cost: $0.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov*.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Acting Departmental Clearance Officer.

[FR Doc. 2023–15779 Filed 7–25–23; 8:45 am]

BILLING CODE 4510–23–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2023–035]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed extension request.

SUMMARY: We are proposing to request an extension from the Office of Management and Budget (OMB) of an approved information collection, Facility Access Media (FAM) Request, NA Form 6006, used by all individuals requesting recurring access to non-public areas of NARA's facilities and IT network. We invite you to comment on these proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: We must receive written comments on or before September 25, 2023.

ADDRESSES: Send comments to Paperwork Reduction Act Comments (MP), Room 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, or email them to *tamee.fechhelm@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Tamee Fechhelm, Paperwork Reduction Act Officer, by email at *tamee.fechhelm@nara.gov* or by telephone at 301.837.1694 with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite the public and other Federal agencies to comment on proposed information collections. If you have comments or suggestions, they should address one or more of the following points: (a) whether the proposed information collection is necessary for NARA to properly perform its functions; (b) our estimate of the burden of the proposed information collection and its accuracy; (c) ways we could enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether the collection affects small businesses.

We will summarize any comments you submit and include the summary in our request for OMB approval. All comments will become a matter of public record.

In this notice, we solicit comments concerning the following information collection:

Title: Facility Access Media (FAM) Request.

OMB number: 3095–0057.

Agency form number: NA Form 6006.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 1,500.

Estimated time per response: 3 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 75 hours.

Abstract: The Facility Access Media (FAM) Request, NA Form 6006, is completed by all individuals requiring recurring access to non-public areas of NARA's facilities and IT network (such as NARA employees, contractors, volunteers, NARA-related foundation employees, volunteers, interns, and other non-NARA federal employees, such as federal agency reviewers) herein referred to as ''applicants,'' in order to obtain NARA Facility Access Media (FAM). After approval of the request, the applicant is given a FAM, if approved, and is then able to access non-public areas of NARA facilities and IT network. The collection of information is necessary to comply with Homeland Security Presidential Directive (HSPD) 12 requirements for secure and reliable forms of personal identification issued by federal agencies to their employees, contractors, and other individuals requiring recurring access to non-public areas of government facilities and information services. This form was developed to comply with this requirement.

Sheena Burrell,

Executive for Information Services/CIO.

[FR Doc. 2023–15749 Filed 7–25–23; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

[NCUA–2023–0072]

Request for Comment Regarding National Credit Union Administration Operating Fee Schedule Methodology

In notice document 2023–14201 beginning on page 43149 in the issue of Thursday, July 6, 2023, make the following corrections:

On page 43149, in the second column, under **DATES**, in the sixteenth line from the bottom of the page ''August 7, 2023'' should read ''September 5, 2023''.

[FR Doc. C1–2023–14201 Filed 7–25–23; 8:45 am]

BILLING CODE 0099–10–D

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Meeting of the President's Committee on the Arts and the Humanities

AGENCY: Institute of Museum and Library Services (IMLS).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the President's Committee on the Arts and the Humanities will meet to carry out administrative functions and to consider preliminary recommendations for agency action.

DATES: The meeting will be held on July 27, 2023, at 8 p.m. EST until 9:30 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Jasmine Jennings, Assistant General Counsel and Alternate Designated Federal Officer, Institute of Museum and Library Services, Suite 4000, 955 L'Enfant Plaza North SW, Washington, DC 20024; (202) 653–4653; *jjennings@imls.gov*.

SUPPLEMENTARY INFORMATION: The President's Committee on the Arts and the Humanities is meeting pursuant Executive Order 14084 and the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. This meeting of the President's Committee on the Arts and Humanities, will convene at 8 p.m. EST on July 27, 2023. The meeting will convene in a virtual format. Scheduling logistics and attendee availability precluded earlier notification. This meeting will be an executive Session (closed to the public and agency personnel).

Agenda: To carry out administrative functions and to consider preliminary recommendations for agency action.

As identified above, the meeting of the President's Committee on the Arts and the Humanities will be closed to the public and personnel pursuant to subsections (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code, as amended. The closed session will consider information of a personal nature where disclosure would constitute a clearly unwarranted invasion of privacy and will consider information which if prematurely disclosed would be likely to significantly frustrate implementation of proposed agency action.

Dated: July 21, 2023.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2023–15858 Filed 7–24–23; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Astronomy and Astrophysics Advisory Committee (#13883) (Hybrid).

Date and Time: September 18, 2023; 9:00 a.m.–4:00 p.m.; September 19, 2023, 9:00 a.m.–4:00 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, Room E 3410.

Type of Meeting: Open.

Attendance information for the meeting will be forthcoming on the AAAC website at: *https://www.nsf.gov/mps/ast/aaac.jsp.*

Contact Person: Dr. Carrie Black, Program Director, Division of Astronomical Sciences, Suite W 9188, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–2426.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies. To prepare the annual report.

Agenda: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: July 20, 2023.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2023–15741 Filed 7–25–23; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0123]

Environmental Assessment and Finding of No Significant Impact of Independent Spent Fuel Storage Facilities Decommissioning Funding Plans

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing this notice regarding the issuance of a final environmental assessment (EA) and a finding of no significant impact (FONSI) for its review and approval of the updated decommissioning funding plans (DFPs) submitted by independent spent fuel storage installation (ISFSI) licensees for the ISFSIs listed in the ''Discussion'' section of this document.

DATES: The EA and FONSI referenced in this document are available on July 26, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0123 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0123. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tilda Liu, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 404–997–4730; email: *Tilda.Liu@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering the approval of the updated DFPs submitted by ISFSI licensees. The NRC staff has prepared a final EA and FONSI determination for each of the updated ISFSI DFPs in accordance with the NRC regulations in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' which implement the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

The NRC requires its licensees to plan for the eventual decommissioning of their licensed facilities prior to license termination. On June 17, 2011, the NRC published a final rule in the **Federal Register** amending its decommissioning planning regulations (76 FR 35511). The final rule amended the NRC regulation, 10 CFR 72.30, which concerns financial assurance and decommissioning for ISFSIs. This regulation requires each holder of, or applicant for, a license under 10 CFR part 72 to submit a DFP for the NRC's review and approval. The DFP is to demonstrate the licensee's financial assurance, *i.e.,* that funds will be available to decommission the ISFSI. The NRC staff will later publish its financial analyses of the DFP submittals which will be available for public inspection in ADAMS.

II. Discussion

The table in this notice includes the plant name, docket number, licensee, and ADAMS accession number for the final EA and FONSI determination for each of the individual ISFSIs. The table also includes the ADAMS accession numbers for other relevant documents, including the updated DFP submittals. For further details with respect to these actions, see the NRC staff's final EA and FONSI determinations which are available for public inspection in ADAMS and at *https://www.regulations.gov* under Docket ID NRC–2023–0123. For additional direction on accessing information related to this document, see the **ADDRESSES** section of this document.

FINDING OF NO SIGNIFICANT IMPACT

Facility	Joseph M. Farley Nuclear Plant
Docket No	72–42.
Licensee	Southern Nuclear Operating Company (SNC).
Proposed Action	The NRC's review and approval of SNC's updated DFPs submitted in accordance with 10 CFR 72.30(c).
Environmental Impact of Proposed Action.	The NRC staff has determined that the proposed action, the review and approval of SNC's updated DFPs, submitted in accordance with 10 CFR 72.30(c), will not authorize changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the updated DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact.	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of SNC's updated DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of the Joseph M. Farley Nuclear Plant. Therefore, the NRC staff determined that approval of the updated DFPs for the Joseph M. Farley Nuclear Plant ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement is not required.
Available Documents	**Federal Register** notice. Final Rule ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments,'' dated March 12, 1984 (49 FR 9381). **Federal Register** notice. Final Rule ''Decommissioning Planning,'' dated June 17, 2011 (76 FR 35512). **Federal Register** notice. Environmental Assessments and Findings of no Significant Impact of Independent Spent Fuel Storage Facilities Decommissioning Funding Plans, dated May 20, 2021 (86 FR 27485). Alabama Emergency Management Agency. ''Review of the Draft Environmental Assessment and Finding of No Significant Impact for the Farley Nuclear Plant Units 1 and 2 Independent Spent Fuel Storage Installation Decommissioning Funding Plan,'' dated March 18, 2021 (ADAMS Accession No. ML21081A039). U.S. Nuclear Regulatory Commission. 2003/08/31–NUREG–1748, ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs, Final Report.'' August 2003 (ADAMS Accession No. ML032540811). U.S. Nuclear Regulatory Commission. ''Environmental Assessment re: Final Rule: Decommissioning Planning'' (10 CFR parts 20, 30, 40, 50, 70, and 72; RIN 3150–AI55). February 2009 (ADAMS Accession No. ML090500648). U.S. Nuclear Regulatory Commission. ESA Section 7 No Effect Determination for ISFSI DFP Reviews (Note to File), dated May 15, 2017 (ADAMS Accession No. ML17135A062). U.S. Nuclear Regulatory Commission. ''Review of the Draft Environmental Assessment and Finding of No Significant Impact for the Farley Nuclear Plant Units 1 and 2 Independent Spent Fuel Storage Installation Decommissioning Funding Plan,'' dated March 9, 2021 (ADAMS Accession No. ML21057A252). U.S. Nuclear Regulatory Commission. ''Final Environmental Assessment and Finding of No Significant Impact for the Southern Nuclear Operating Company, Inc's Initial Decommissioning Funding Plan Submitted in Accordance with 10 CFR 72.30 for Farley Independent Spent Fuel Storage Installation,'' dated May 10, 2021 (ADAMS Package Accession No. ML21085A675). U.S. Nuclear Regulatory Commission. ''Analysis of Southern Nuclear Operating Company, Inc's Initial Decommissioning Funding Plans for the Farley, Hatch, and Vogtle Independent Spent Fuel Storage Installations,'' dated May 20, 2021 (ADAMS Accession No. ML21089A241). U.S. Nuclear Regulatory Commission. ''Review of the Draft Environmental Assessment and Finding of No Significant Impact Related to Farley Independent Spent Fuel Storage Installation Updated Decommissioning Funding Plans.'' dated May 18, 2023 (ADAMS Accession No. ML23116A133, non-public, withheld pursuant to 10 CFR 2.390). Southern Nuclear Operating Company. ISFSI Decommissioning Funding Plan, dated March 31, 2014 (ADAMS Accession No. ML14091A008). Southern Nuclear Operating Company. ISFSI Decommissioning Funding Plan Triennial Update, dated March 30, 2017 (ADAMS Accession No. ML17089A520). Southern Nuclear Operating Company. ISFSI Decommissioning Funding Plan Triennial Update, dated March 31, 2020 (ADAMS Accession No. ML20091K821). Southern Nuclear Operating Company. ISFSI Decommissioning Funding Plan Triennial Update, dated March 29, 2023 (ADAMS Accession No. ML23088A173).
Facility	Edward I. Hatch Nuclear Plant
Docket No	72–36.
Licensee	Southern Nuclear Operating Company (SNC).
Proposed Action	The NRC's review and approval of SNC's updated DFPs submitted in accordance with 10 CFR 72.30(c).

Facility	Edward I. Hatch Nuclear Plant
Environmental Impact of Proposed Action.	The NRC staff has determined that the proposed action, the review and approval of SNC's updated DFPs, submitted in accordance with 10 CFR 72.30(c), will not authorize changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the updated DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact.	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of SNC's updated DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of the Edward I. Hatch Nuclear Plant. Therefore, the NRC staff determined that approval of the updated DFPs for the Edward I. Hatch Nuclear Plant ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement is not required.
Available Documents	**Federal Register** notice. Final Rule ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments,'' dated March 12, 1984 (49 FR 9381). **Federal Register** notice. Final Rule ''Decommissioning Planning,'' dated June 17, 2011 (76 FR 35512). **Federal Register** notice. Environmental Assessments and Findings of no Significant Impact of Independent Spent Fuel Storage Facilities Decommissioning Funding Plans, dated May 20, 2021 (86 FR 27485). U.S. Nuclear Regulatory Commission. 2003/08/31–NUREG–1748, ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs, Final Report.'' August 2003 (ADAMS Accession No. ML032540811). U.S. Nuclear Regulatory Commission. ''Environmental Assessment re: Final Rule: Decommissioning Planning'' (10 CFR parts 20, 30, 40, 50, 70, and 72; RIN 3150–AI55). February 2009 (ADAMS Accession No. ML090500648). U.S. Nuclear Regulatory Commission. ESA Section 7 No Effect Determination for ISFSI DFP Reviews (Note to File), dated May 15, 2017 (ADAMS Accession No. ML17135A062). U.S. Nuclear Regulatory Commission. ''Review of the Draft Environmental Assessment and Finding of No Significant Impact for the Hatch and Vogtle Independent Spent Fuel Storage Installation Decommissioning Funding Plans,'' dated March 9, 2021 (ADAMS Accession No. ML21057A315). U.S. Nuclear Regulatory Commission. ''Final Environmental Assessment and Finding of No Significant Impact for the Southern Nuclear Operating Company, Inc's Initial Decommissioning Funding Plan Submitted in Accordance with 10 CFR 72.30 for Hatch Independent Spent Fuel Storage Installation,'' dated May 10, 2021 (ADAMS Package Accession No. ML21085A829). U.S. Nuclear Regulatory Commission. ''Analysis of Southern Nuclear Operating Company, Inc's Initial Decommissioning Funding Plans for the Farley, Hatch, and Vogtle Independent Spent Fuel Storage Installations,'' dated May 20, 2021 (ADAMS Accession No. ML21089A241). U.S. Nuclear Regulatory Commission. ''Review of the Draft Environmental Assessment and Finding of No Significant Impact Related to Hatch and Vogtle Independent Spent Fuel Storage Installation Updated Decommissioning Funding Plans,'' dated May 14, 2023 (ADAMS Accession No. ML23114A236). Southern Nuclear Operating Company. ISFSI Decommissioning Funding Plan, dated March 31, 2014 (ADAMS Accession No. ML14091A008). Southern Nuclear Operating Company. ISFSI Decommissioning Funding Plan Triennial Update, dated March 30, 2017 (ADAMS Accession No. ML17089A520). Southern Nuclear Operating Company. ISFSI Decommissioning Funding Plan Triennial Update, dated March 31, 2020 (ADAMS Accession No. ML20091K821). Southern Nuclear Operating Company. ISFSI Decommissioning Funding Plan Triennial Update, dated March 29, 2023 (ADAMS Accession No. ML23088A173).
Facility	Vogtle Electric Generating Plant
Docket No	72–1039.
Licensee	Southern Nuclear Operating Company (SNC).
Proposed Action	The NRC's review and approval of SNC's updated DFPs submitted in accordance with 10 CFR 72.30(c).
Environmental Impact of Proposed Action.	The NRC staff has determined that the proposed action, the review and approval of SNC's updated DFPs, submitted in accordance with 10 CFR 72.30(c), will not authorize changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the updated DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact.	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of SNC's updated DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of the Vogtle Electric Generating Plant. Therefore, the NRC staff determined that approval of the updated DFPs for the Vogtle Electric Generating Plant ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement is not required.

Facility	Vogtle Electric Generating Plant
Available Documents	**Federal Register** notice. Final Rule ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments,'' dated March 12, 1984 (49 FR 9381). **Federal Register** notice. Final Rule ''Decommissioning Planning,'' dated June 17, 2011 (76 FR 35512). **Federal Register** notice. Environmental Assessments and Findings of no Significant Impact of Independent Spent Fuel Storage Facilities Decommissioning Funding Plans, dated May 20, 2021 (86 FR 27485). U.S. Nuclear Regulatory Commission. 2003/08/31–NUREG–1748, ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs, Final Report.'' August 2003 (ADAMS Accession No. ML032540811). U.S. Nuclear Regulatory Commission. ''Environmental Assessment re: Final Rule: Decommissioning Planning'' (10 CFR parts 20, 30, 40, 50, 70, and 72; RIN 3150–AI55). February 2009 (ADAMS Accession No. ML090500648). U.S. Nuclear Regulatory Commission. ESA Section 7 No Effect Determination for ISFSI DFP Reviews (Note to File), dated May 15, 2017 (ADAMS Accession No. ML17135A062). U.S. Nuclear Regulatory Commission. ''Review of the Draft Environmental Assessment and Finding of No Significant Impact for the Hatch and Vogtle Independent Spent Fuel Storage Installation Decommissioning Funding Plans,'' dated March 9, 2021 (ADAMS Accession No. ML21057A315). U.S. Nuclear Regulatory Commission. ''Final Environmental Assessment and Finding of No Significant Impact for the Southern Nuclear Operating Company, Inc's Initial Decommissioning Funding Plan Submitted in Accordance with 10 CFR 72.30 for Vogtle Independent Spent Fuel Storage Installation,'' dated May 10, 2021 (ADAMS Package Accession No. ML21089A221). U.S. Nuclear Regulatory Commission. ''Analysis of Southern Nuclear Operating Company, Inc's Initial Decommissioning Funding Plans for the Farley, Hatch, and Vogtle Independent Spent Fuel Storage Installations,'' dated May 20, 2021 (ADAMS Accession No. ML21089A241). U.S. Nuclear Regulatory Commission. ''Review of the Draft Environmental Assessment and Finding of No Significant Impact Related to Hatch and Vogtle Independent Spent Fuel Storage Installation Updated Decommissioning Funding Plans,'' dated May 14, 2023 (ADAMS Accession No. ML23114A236). Southern Nuclear Operating Company. ISFSI Decommissioning Funding Plan, dated March 31, 2014 (ADAMS Accession No. ML14091A008). Southern Nuclear Operating Company. ISFSI Decommissioning Funding Plan Triennial Update, dated March 30, 2017 (ADAMS Accession No. ML17089A520). Southern Nuclear Operating Company. ISFSI Decommissioning Funding Plan Triennial Update, dated March 31, 2020 (ADAMS Accession No. ML20091K821). Southern Nuclear Operating Company. ISFSI Decommissioning Funding Plan Triennial Update, dated March 29, 2023 (ADAMS Accession No. ML23088A173).

Dated: July 20, 2023.

For the Nuclear Regulatory Commission.

Yoira K. Diaz-Sanabria,

Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–15777 Filed 7–25–23; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[Docket ID: OPM–2023–0016]

Submission for Review: 3206–0215, Verification of Full-Time School Attendance, RI 25–49

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM), Retirement Services, offers the general public and other Federal agencies the opportunity to comment on the review of an expiring information collection request (ICR) without change, titled ''Verification of Full-Time School Attendance,'' RI 25–49.

DATES: Comments are encouraged and will be accepted until September 25, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by the following method:

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

All submissions received must include the agency name and docket number for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street, NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent by email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 936–0401.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0215). RI 25–49 is used to verify that adult student annuitants are entitled to payment. The Office of Personnel Management must confirm that a full-time enrollment has been maintained.

The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of 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; and

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.

Analysis

Agency: Office of Personnel Management, Retirement Services.

Title: Verification of Adult Student Enrollment Status.

OMB Number: 3206–0215.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 10,000.

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 10,000.

U.S. Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2023–15760 Filed 7–25–23; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–188 and CP2023–192; MC2023–189 and CP2023–193]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 27, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–188 and CP2023–192; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 23 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 19, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* July 27, 2023.

2. *Docket No(s).:* MC2023–189 and CP2023–193; *Filing Title:* USPS Request to Add Priority Mail, First-Class Package Service & Parcel Select Contract 35 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 19, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* July 27, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–15752 Filed 7–25–23; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* July 26, 2023.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 19, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 23 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–188 and CP2023–192.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2023–15772 Filed 7–25–23; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97955; File No. SR–ICEEU–2023–020]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to Recovery Plan

July 20, 2023

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 10, 2023, ICE Clear Europe Limited filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. 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

ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') proposes to amend its Recovery Plan (''Plan'')[3] to update certain aspects of recovery planning and operations and testing procedures and make certain other clarifications.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe 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

(a) Purpose

ICE Clear Europe is proposing to amend its Recovery Plan to make various enhancements, updates and clarifications. In the discussion of the scale of coverage of the Clearing House's recovery options, the amendments would revise the description of the Significant Coverage from Powers of Assessment (''PoA'') to remove references to the specific expected coverage of defaults by PoA for the F&O and CDS clearing service. ICE Clear Europe is not proposing to change through these amendments the amount of the relevant guaranty funds and related PoA under the Rules and related policies, but does not believe it is necessary to specify expected coverage in this way in the Recovery Plan. As revised, the discussion of coverage from PoA would reflect that losses from defaults of the largest clearing members under extreme but plausible stress scenarios can be immediately covered through PoA, as resources can be collected from non-defaulting Clearing Members intraday and in cash under the existing Rules and Procedures. The amendments would also state that the assessment of the PoA's capacity to offset losses can be performed by reverse stress testing.

In the discussion of the Clearing House's ability to fully cover default losses using partial tear-ups, a statement that default losses can be fully covered would be removed as unnecessary and repetitive. In terms of the discussion of the Clearing House's ability to fully cover investment losses, the amendments would remove a reference to the specific amount to be covered by Clearing House contributions (as such amount is set under the Rules and is subject to change from time to time under the Rules). Certain non-substantive drafting clarifications would also be made in this section.

The amendments would also update the discussion of certain decision-making requirements. In circumstances where the Board cannot be convened in advance of making a material decision under the Plan, the amendments would clarify that the Board would be convened afterwards as soon as reasonably possible and updated on the steps taken. Additionally, the amendments would clarify that although exercising recovery options would not need the approval of Clearing Members, exchanges or other external stakeholders, ICE Clear Europe would seek to communicate its plans and intentions to such stakeholders where possible, and as soon as reasonably practicable.

The procedures for testing of the Plan would be revised to provide that testing would be conducted at least annually (rather than only annually). The amendments would further specify that given the number of recovery options available, one default and one non-default scenario would be tested each year, and all the recovery options would be tested over a three year cycle. The testing schedule (and changes to it) would be approved by, and the results of testing would be reported to, ICEU's Executive Risk Committee. The proposed changes would also more fully describe the testing strategy, which includes both physical elements (such as processing of operational aspects of the Plan in a non-production environment and governance aspects such as Board engagement) and simulated tabletop exercises. Testing of default-related recovery scenarios may also be included in default fire drills, including coordination with other relevant clearing agencies. Additionally, the Recovery Plan test would add to the list of issues examined as part of testing whether all services continue to be provided, including those to affiliates, and what governance pathways would be used. The amendment would clarify that any changes resulting from the review of the Plan after each test would be addressed as part of the defined governance process included in the Plan.

The proposed amendments would make certain clarifications relating to the critical services provided by the Clearing House. Certain updates and corrections are made to the products currently cleared, including to reference option contracts generally instead of only options on futures and to reference the IFAD exchange for which clearing services are provided in the F&O product category. The amendments also would add an explanatory footnote to distinguish critical services from certain similar concepts use in the Clearing House's other policies and frameworks. In the discussion of impacts of recovery options of market participants, a clarification would be added that capital and liquidity impacts on market participants would be taken into account as far as reasonably possible (to reflect certain practical limitations on the Clearing House's ability to address such matters).

The service providers supporting the critical services would now include repo counterparties in addition to investment agents, to reflect the Clearing House's use of repurchase transactions with such counterparties. The amendments would also add to the list of such service providers default brokers, which may be used to execute market transaction in order to hedge a defaulter's book and/or liquidate non-cash collateral. Amendments would also reflect that inter-affiliate arrangements may be documented under intercompany service agreements rather than outsourcing agreements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the Recovery Plan or, if not defined therein, the ICE Clear Europe Clearing Rules.

The amendments would make certain enhancements to the discussion of how the Clearing House mitigates dependencies on service providers. In the context of situations where ICE Clear Europe relies on the existence of multiple, substitutable providers, the amendments would reflect that ICE Clear Europe regularly tests its assumptions that this is an effective strategy, as part of its operational resilience framework. Similarly, where the Clearing House relies on resilience and redundancy with respect to a provider, it would regularly test these assumptions under the operational resilience framework. In terms of contractual protections under arrangements with service providers, the amendments would state that the Clearing House ensures contracts do not permit service providers to unduly alter or terminate the contracts (as opposed to the more limited analysis under the current Plan of whether alteration or termination would be permitted if ICE Clear Europe were under financial stress). The updates would also provide for periodic ongoing analyses of these contracts in the context of the Plan. The amendments would remove a specific determination that investment agents, APS banks, central banks and data providers are excluded from being dependencies on the basis of substitutability; under the revised Plan such service providers may be subject to the mitigation arrangements discussed, as appropriate.

The proposed changes would remove certain statements that the Clearing House does not have a dependency on physical delivery agents, other ICE exchange or ICE Clearing Houses. Although there are applicable mitigants in many cases, such relationships may nonetheless be regarded as dependencies. The amendments would add a provision that ICE Clear Europe for certain markets regularly tests its ability to perform the functions of delivery agents under certain disruption scenarios. The amendments would also clarify certain other testing practices, including as part of the operational resilience framework, applicable to relationships with ICE Exchanges and ICE Technology and Operations Group. For dependencies on other ICE clearing houses, the revised Plan would note that the relevant processes that ICE Clear Europe could use in the event of a failure by the other clearing house are generally already performed by ICE Clear Europe.

In the discussion of technology infrastructure, clarifying references to CDS and F&O are added to the descriptions of the various systems to reflect the specific systems currently used for those businesses. Additionally, the proposed rules would update the list of certain ways in which risks are mitigated to address periodic testing, operational resilience, the role of ICE Clear Europe as a participant in defining requirements in the development of new capabilities, notice periods under service agreements (not merely outsourcing arrangements), and other nonsubstantive changes. The revised Plan would also address certain services that ICE Clear Europe provides to other ICE affiliates, noting that ICE Clear Europe assumes that such services will continue to be provided during the execution of the Plan. ICE Clear Europe believes that in the event of a Plan execution, there will be relevant resources in place that will allow those services to continue, particularly for those that are operational in nature or almost fully automated. Those not fully automated would have backup arrangements that are periodically tested.

For recovery scenarios and triggers, the amendments would clarify the trigger for the non-default losses scenario involving the Clearing House's base capital by defining a breach based on referring to insufficient EMIR eligible capital. The amendments would clarify that each stress scenario listed in the appendix would be mapped to key risks contained in the Clearing House's risk appetite statements, to ensure that each key risk is covered.

The amendments would reference the Clearing House's existing operational resilience framework, which encompasses (and supersedes previous) business continuity and disaster recovery plans and includes incident management processes. Various references throughout the Plan to business continuity, disaster recovery or similar matters have been replaced by references to the operational resilience framework and related incident management processes.

Additional explanatory language with regards to early warnings for default and non-default loss scenarios to make consistent with the Rules. Throughout the Plan, the language has changed to reflect the name update of the Capital Replenishment Plan to be consistent.

The amendments would also remove from the explanations of the Plan's design and development certain duplicative information about coverage of various types of losses that is addressed in other parts of the Plan. Additionally, the Clearing House would clarify certain references to the Crisis Communications and Management Plan (which would be renamed the Communications Plan). Members of each communications group would be updated to reference relevant personnel, including adding the President to most communication groups and adjusting certain other referenced personnel to reflect current Clearing House operations. In addition, the Plan would address a contingency in a recovery situation where the President is not available. Similarly, the references to the Major Incident Response Plan would be updated to reflect that the plan has been renamed the Crisis Management Plan. Regarding the scenario steps in a default and non-default loss, the proposed changes will also make certain minor changes to timing and notification processes.

The proposed changes would add a new Document Governance and Exception Handling section that is consistent with other Clearing House policies. This section would describe the responsibilities for the document owners in accordance with ICEU's governance processes, as well as breach management, exception handling, and document governance.

The description of the ICE Clear Europe committee structure in Appendix A would be removed. ICE Clear Europe believes the structure is fully defined in other documentation and does not need to be included in the Plan.

In addition, amendments throughout the Plan would make other minor non-substantive drafting and conforming changes and typographical corrections.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Plan are consistent with the requirements of Section 17A of the Securities Exchange Act of 1934[4] (''Act'') and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act[5] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed changes to the Plan are intended to make various updates, enhancements and clarifications to the Plan, including with regard to the critical service providers and other dependencies of the Clearing

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F).

House, as well as mitigants for such dependencies. The amendments would also enhance procedures around testing of the Plan and related default and non-default scenarios that could lead to the need to implement the Plan. Other amendments are intended to conform to changes in other ICE Clear Europe policies and procedures. The amendments would also clarify certain aspects of the recovery scenarios and procedures as well as potentially triggering or warning events for losses. Overall, the amendments would help the Clearing House facilitate an orderly recovery of its clearing businesses in the event of a severe financial stress or loss. As a result, in ICE Clear Europe's view, the amendments would be consistent with the prompt and accurate clearance and settlement of the contracts, the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest, consistent with the requirements of Section 17A(b)(3)(F) of the Act.[6]

Rule 17Ad–22(e)(2) provides that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [. . .] provide for governance arrangements that are clear and transparent'' [7] and ''[s]pecify clear and direct lines of responsibility.'' [8] The amendments to the Plan would enhance various aspects of the governance surrounding the implementation, testing and modification of the Plan. Amendments would more clearly state the procedures for communications with relevant groups of stakeholders in connection with the Plan, and take into account the Clearing House's broader Communications Plan and Crisis Management Plan. They would also clarify certain aspects of the role of the President and key personnel. In addition, the amendments would address document governance, breach management and exception handling, in a manner generally consistent with other ICE Clear Europe policies. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad–22(e)(2).[9]

The proposed amendments are also consistent with Rule 17Ad–22(e)(3)(ii), which provides that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [. . .] maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which [. . .] includes 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 . . . .'' [10] As discussed above, the amendments to the Plan would update and clarify various aspects of the Recovery Plan, including to enhance the assessment of critical services and dependencies in the context of a recovery situation. The amendments would also clarify various aspects of the triggers for potential implementation of recovery and recovery options to be used under the Plan. The amendments would also clarify testing procedures. The amendments are thus intended to enhance the effectiveness of the Plan as a means of preparing for the potential of losses, whether from Clearing Member default or failure or for various other causes, that could otherwise threaten the continued operation of the Clearing House. As such, in ICE Clear Europe's view, the amendments are consistent with the requirements of Rule 17Ad–22(e)(3)(ii).[11]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments are being adopted to update and clarify the Plan, all of which relate to the Clearing House's processes for the recovery of the Clearing House in the unlikely occurrence of significant loss events that may negatively harm the Clearing House. The amendments do not involve a change in the Clearing House's Rules or Procedures and will not affect the rights or obligations of Clearing Members, but instead address the means in which the Clearing House may use the tools set forth in its Rules and Procedures in a recovery scenario. ICE Clear Europe does not believe the amendments would affect in the ordinary course of business the costs of clearing, the ability of market participants to access clearing, or the market for clearing services generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change.

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.

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–ICEEU–2023–020 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–ICEEU–2023–020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240.17 Ad–22(e)(2)(i).

[8] 17 CFR 240.17 Ad–22(e)(2)(v).

[9] 17 CFR 240.17Ad–22(e)(2).

[10] 17 CFR 270.17Ad–22(e)(3)(ii).

[11] 17 CFR 240.17Ad–22(e)(3)(ii).

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 filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.*

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–ICEEU–2023–020 and should be submitted on or before August 16, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–15758 Filed 7–25–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–636, OMB Control No. 3235–0679]

Proposed Collection; Comment Request; Extension: Form PF and Rule and Rule 204(b)–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 204(b)–1 (17 CFR 275.204(b)–1) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) implements sections 404 and 406 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') by requiring private fund advisers that have at least $150 million in private fund assets under management to report certain information regarding the private funds they advise on Form PF. These advisers are the respondents to the collection of information. Form PF is designed to facilitate the Financial Stability Oversight Council's (''FSOC'') monitoring of systemic risk in the private fund industry and to assist FSOC in determining whether and how to deploy its regulatory tools with respect to nonbank financial companies. The Commission and the Commodity Futures Trading Commission may also use information collected on Form PF in their regulatory programs, including examinations, investigations and investor protection efforts relating to private fund advisers.

Form PF divides respondents into two broad groups, Large Private Fund Advisers and smaller private fund advisers. ''Large Private Fund Advisers'' are advisers with at least $1.5 billion in assets under management attributable to hedge funds (''large hedge fund advisers''), advisers that manage ''liquidity funds'' and have at least $1 billion in combined assets under management attributable to liquidity funds and registered money market funds (''large liquidity fund advisers''), and advisers with at least $2 billion in assets under management attributable to private equity funds (''large private equity fund advisers''). All other respondents are considered smaller private fund advisers. The Commission estimates that most filers of Form PF have already made their first filing, and so the burden hours applicable to those filers will reflect only ongoing burdens, and not start-up burdens. Accordingly, the Commission estimates the total annual reporting and recordkeeping burden of the collection of information for each respondent is as follows: (a) For smaller private fund advisers making their first Form PF filing, an estimated amortized average annual burden of 13 hours for each of the first three years; (b) for smaller private fund advisers that already make Form PF filings, an estimated amortized average annual burden of 15 hours for each of the next three years; (c) for smaller private funds, an estimated average annual burden of 5 hours for event reporting for smaller private equity fund advisers for each of the next three years; (d) for large hedge fund advisers making their first Form PF filing, an estimated amortized average annual burden of 108 hours for each of the first three years; (e) for large hedge fund advisers that already make Form PF filings, an estimated amortized average annual burden of 600 hours for each of the next three years; (f) for large hedge fund advisers, an estimated average annual burden of 10 hours for current reporting for each of the next three years; (g) for large liquidity fund advisers making their first Form PF filing, an estimated amortized average annual burden of 67 hours for each of the first three years; (h) for large liquidity fund advisers that already make Form PF filings, an estimated amortized average annual burden of 280 hours for each of the next three years; (i) for large private equity fund advisers making their first Form PF filing, an estimated amortized average annual burden of 84 hours for each of the first three years; (j) for large private equity fund advisers that already make Form PF filings, an estimated amortized average annual burden of 128 hours for each of the next three years; and (k) for large private equity fund advisers, an estimated average annual burden of 5 hours for event reporting for each of the next three years.

With respect to annual internal costs, the Commission estimates the collection of information will result in 122.86 burden hours per year on average for each respondent. With respect to external cost burdens, the Commission estimates a range from $0 to $50,000 per adviser.

Estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The changes in burden hours are due to the staff's estimates of the time costs and external costs that result from the adopted amendments, the use of updated data, and the use of different methodologies to calculate certain estimates. Compliance with the collection of information requirements of Form PF is mandatory for advisers that satisfy the criteria described in Instruction 1 to the Form. Responses to the collection of information will be kept confidential to the extent permitted by law. The Commission does not intend to make public information reported on Form PF that is identifiable to any particular adviser or private fund, although the Commission may use Form PF information in an enforcement action. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

[12] 17 CFR 200.30–3(a)(12).

unless it displays a currently valid OMB control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by September 25, 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: July 21, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–15827 Filed 7–25–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–824; OMB Control No. 3235–0500]

Proposed Collection; Comment Request; Extension: Rule 608

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 608 (17 CFR 242.608) 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.

Rule 608 specifies procedures for filing or amending national market system plans (''NMS Plans''). Self-regulatory organizations (''SROs'') filing a new NMS Plan must submit the text of the NMS Plan to the Commission, along with a statement of purpose, and, if applicable, specified supporting materials that may include: (1) a copy of all governing or constituent documents, (2) a description of the manner in which the NMS Plan, and any facility or procedure contemplated by the NMS Plan, will be implemented, (3) a listing of all significant phases of development and implementation contemplated by the NMS Plan, including a projected completion date for each phase, (4) an analysis of the competitive impact of implementing the NMS Plan, (5) a description of any written agreements or understandings between or among plan participants or sponsors relating to interpretations of the NMS Plan or conditions for becoming a plan participant or sponsor, and (6) a description of the manner in which any facility contemplated by the NMS Plan shall be operated. Participants or sponsors to the NMS Plan must ensure that a current and complete version of the NMS Plan is posted on a designated website or a plan website after being notified by the Commission that the NMS Plan is effective. Each plan participant or sponsor must also provide a link on its own website to the current website to the current version of the NMS Plan.

The Commission estimates that the creation and submission of a new NMS Plan and any related materials would result in an average aggregate burden of approximately 850 hours per year (25 SROs × 34 hours = 850 hours). The Commission further estimates an average aggregate burden of approximately 125 hours per year (25 SROs × 5 hours = 125 hours), for each of the SROs to keep a current and complete version of the NMS Plan posted on a designated website or a plan website, and to provide a link to the current version of the NMS Plan on its own website. In addition, the Commission estimates that the creation of a new NMS Plan and any related materials would result in an average aggregate cost of approximately $150,000 per year (25 SROs × $6,000 = $150,000).

SROs proposing to amend an existing NMS Plan must submit the text of the amendment to the Commission, along with a statement of purpose, and, if applicable, the supporting materials described above, as well as a statement that the amendment has been approved by the plan participants or sponsors in accordance with the terms of the NMS Plan. Participants or sponsors to the NMS Plan must ensure that any proposed amendments are posted to a designated website or a plan website after filing the amendments with the Commission and that those websites are updated to reflect the current status of the amendment and the NMS Plan. Each plan participant or sponsor must also provide a link on its own website to the current version of the NMS Plan. The Commission estimates that the creation and submission of NMS Plan amendments and any related materials would result in an average aggregate burden of approximately 11,050 hours per year (25 SROs × 442 hours = 11,050 hours). The Commission further estimates an average aggregate burden of approximately 124 hours per year (25 SROs × 4.94 hours = 123.5 hours rounded up to 124) for SROs to post any pending NMS Plan amendments to a designated website or a plan website and to update such websites to reflect the current status of the amendment and the NMS Plan. In addition, the Commission estimates that the creation of an NMS Plan amendment and any related materials would result in an average aggregate cost of approximately $325,000 per year (25 SROs × $13,000 = $325,000).

Finally, to the extent that a plan processor is required for any facility contemplated by a NMS Plan, the plan participants or sponsors must file with the Commission a statement identifying the plan processor selected, describing the material terms under which the plan processor is to serve, and indicating the solicitation efforts, if any, for alternative plan processors, the alternatives considered, and the reasons for the selection of the plan processor. The Commission estimates that the preparation and materials related to the selection of a plan processor would result in an average aggregate burden of approximately 283 hours per year (25 SROs × 11.33 hours = 283.33 rounded down to 233). In addition, the Commission estimates that the preparation and submission of materials related to the selection of a plan processor would result in an average aggregate cost of approximately $8,333 per year (25 SROs × $333.33 = $8,333.33 rounded down to $8,333).

The above estimates result in a total annual industry burden of approximately 12,432 hours (850 + 125 + 11,050 + 124 + 283) and a total annual industry cost of approximately $483,333 ($150,000 + $325,000 + $8,333).

Compliance with Rule 608 is mandatory. The text of the NMS Plans and any amendments will not be confidential but published on a designated website or a plan website. To the extent that Rule 608 requires the

SROs to submit confidential information to the Commission, that information will be kept confidential subject to the provisions of applicable law.[1] The SROs are required by law to retain the records and information that are collected pursuant to Rule 608 for a period of not less than 5 years, the first 2 years in an easily accessible place.[2] Rule 608 does not affect this existing requirement.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by September 25, 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: July 21, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–15828 Filed 7–25–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–422, OMB Control No. 3235–0471]

Proposed Collection; Comment Request; Extension: Rule 15c1–5

Upon Written Request, Copies Available From: U.S. 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 15c1–5 (17 CFR 240.15c1–5) 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.

Rule 15c1–5 states that any broker-dealer controlled by, controlling, or under common control with the issuer of a security that the broker-dealer is trying to sell to or buy from a customer must give the customer written notification disclosing the control relationship at or before completion of the transaction. The Commission estimates that 175 respondents provide notifications annually under Rule 15c1–5 and that each respondent would spend approximately 10 hours per year complying with the requirements of the rule for a total burden of approximately 1,750 hours per year. There is no retention period requirement under Rule 15c1–5. This Rule does not involve the collection of confidential information.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by September 25, 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: July 20, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–15762 Filed 7–25–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97956; File No. SR–CBOE–2023–005]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Make Permanent the Operation of the Program That Allows the Exchange to List P.M.-Settled Third Friday-of-the-Month S&P 500 Stock Index Options (''SPX'') Series

July 20, 2023.

On January 6, 2023, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') 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 make permanent the operation of its pilot program (''Program'') that permits the Exchange to list p.m.-settled third Friday-of-the-month SPX options (''SPXPM''). The proposed rule change was published for comment in the **Federal Register** on January 24, 2023.[3]

On March 7, 2023, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On March 17, 2023, the Exchange filed Amendment No. 1 to the proposed rule change (''Amendment No. 1'').[6] On April 24, 2023, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change and published Amendment No. 1 for notice and comment.[7]

Section 19(b)(2) of the Exchange Act[8] provides that, after initiating 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

[1] *See, e.g.,* 5 U.S.C. 552 *et seq.;* 15 U.S.C. 78x (governing the public availability of information obtained by the Commission).

[2] *See* 17 CFR 240.17a–1(b).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 96703 (January 18, 2023), 88 FR 4265.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 97063, 88 FR 15476 (March 13, 2023).

[6] Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-cboe-2023-005/srcboe2023005.htm.*

[7] *See* Securities Exchange Act Release No. 97367 (April 24, 2023), 88 FR 26366 (April 28, 2023).

[8] 15 U.S.C. 78s(b)(2).

notice of filing of the proposed rule change. 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 reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on January 24, 2023.[9] The 180th day after publication of the proposed rule change is July 23, 2023. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

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 proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,[10] designates September 21, 2023, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–CBOE–2023–005).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–15771 Filed 7–25–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–423, OMB Control No. 3235–0472]

Proposed Collection; Comment Request; Extension: Rule 15c1–6

Upon Written Request, Copies Available From: U.S. 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 15c1–6 (17 CFR 240.15c1–6) 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.

Rule 15c1–6 states that any broker-dealer trying to sell to or buy from a customer a security in a primary or secondary distribution in which the broker-dealer is participating or is otherwise financially interested must give the customer written notification of the broker-dealer's participation or interest at or before completion of the transaction. The Commission estimates that approximately 350 respondents will collect information annually under Rule 15c1–6 and that each respondent will spend approximately 10 hours annually complying with the collection of information requirement for a total burden of approximately 3,500 hours per year in the aggregate.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by September 25, 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: July 20, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–15763 Filed 7–25–23; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18020 and #18021; MINNESOTA Disaster Number MN–00107]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Minnesota

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Minnesota (FEMA–4722–DR), dated 07/19/2023.

Incident: Severe Storms and Flooding.

Incident Period: 04/11/2023 through 04/30/2023.

DATES: Issued on 07/19/2023.

Physical Loan Application Deadline Date: 09/18/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 04/19/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/19/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Aitkin, Big Stone, Carlton, Chippewa, Clay, Grant, Houston, Kittson, Lac Qui Parle, Lake Of The Woods, Mahnomen, Marshall, Morrison, Norman, Pine, Pope, Renville, Roseau, Saint Louis, Stevens, Swift, Traverse, Wilkin and the Prairie Island Indian Community.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

[9] *See supra* note 3 and accompanying text.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

The number assigned to this disaster for physical damage is 18020 6 and for economic injury is 18021 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–15745 Filed 7–25–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18022 and #18023; OKLAHOMA Disaster Number OK–00171]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Oklahoma

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–4721–DR), dated 07/19/2023.

Incident: Severe Storms, Straight-line Winds, and Tornadoes.

Incident Period: 06/14/2023 through 06/18/2023.

DATES: Issued on 07/19/2023.

Physical Loan Application Deadline Date: 09/18/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 04/19/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/19/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Beaver, Cimarron, Comanche, Cotton, Craig, Creek, Delaware, Harper, Jefferson, Love, Major, Mayes, Mccurtain, Payne, Pushmataha, Rogers, Stephens, Tulsa, Woodward.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 18022 B and for economic injury is 18023 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–15746 Filed 7–25–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Delegation of Authority No. 541]

Delegation of Authority Cyberspace and Digital Policy

By virtue of the authority vested in the Secretary of State by the laws of the United States, including section 1(a)(4) of the State Department Basic Authorities Act (22 U.S.C. 2651a(a)(4)) and the authorities hereinafter mentioned, I hereby delegate to the Ambassador at Large for Cyberspace and Digital Policy, to the extent authorized by law, the authorities and functions vested in the Secretary of State by 22 U.S.C. 2707 and the following authorities:

1. Section IV of E.O. 10530 of May 10, 1954, regarding the authority to grant or revoke approval of submarine cables;

2. E.O. 13873 of May 15, 2019, *Securing the Information and Communications Technology and Services Supply Chain;* and

3. Section 3 of E.O. 13913 of April 4, 2020, relating to the function of advisor to the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector.

The Secretary, Deputy Secretary, and Deputy Secretary for Management and Resources may also exercise any function or authority delegated herein. Any reference in this delegation of authority to a statute shall be deemed to be a reference to such statute as amended from time to time. These authorities may be re-delegated consistent with 3 U.S.C. 301 and to the extent authorized by law.

Section 9 of Delegation of Authority 214, dated September 20, 1994, and Delegation of Authority 219, dated October 29, 1996, are hereby rescinded. This delegation of authority will be published in the **Federal Register**.

Dated: May 21, 2023.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2023–15774 Filed 7–25–23; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice: 12134]

Report to Congress Pursuant to Section 353(b) of the United States—Northern Triangle Enhanced Engagement Act

ACTION: Notice of report.

SUMMARY: This report on Corrupt and Undemocratic Actors is submitted in fulfilment of the State Department's Congressional reporting requirement for 2023 regarding foreign persons who are determined to have knowingly engaged in actions that undermine democratic processes or institutions, significant corruption, or obstruction of investigation into such acts of corruption in El Salvador, Guatemala, and Honduras pursuant to section 353(b) of the United States—Northern Triangle Enhanced Engagement Act, as amended.

SUPPLEMENTARY INFORMATION: Report to Congress on Foreign Persons Who Have Knowingly Engaged in Actions that Undermine Democratic Processes or Institutions, Significant Corruption, or Obstruction of Investigations Into Such Acts of Corruption in El Salvador, Guatemala, Honduras, and Nicaragua, Pursuant to Section 353(b) of the United States—Northern Triangle Enhanced Engagement Act (22 U.S.C. 2277a(b), as amended) (Section 353)

Consistent with Section 353(b) of the United States—Northern Triangle Enhanced Engagement Act (22 U.S.C. 2277a(b)) (the Act), as amended, this report is being submitted to the House Foreign Affairs Committee,Senate Foreign Relations Committee, House Committee on the Judiciary, and the Senate Committee on the Judiciary.

Section 353(b) requires the submission of a report that identifies the following persons: foreign persons who the President has determined have knowingly engaged (1) in actions that undermine democratic processes or institutions; (2) in significant corruption; and (3) in obstruction of investigations into such acts of corruption, in El Salvador, Guatemala, Honduras, and Nicaragua, including the following: corruption related to

government contracts; bribery and extortion; the facilitation or transfer of the proceeds of corruption, including through money laundering; and acts of violence, harassment, or intimidation directed at governmental and nongovernmental corruption investigators. On June 21, 2021, the President delegated his authority under Section 353 to the Secretary of State.

Under section 353, foreign persons identified in the report submitted to Congress are generally ineligible for visas and admission to the United States, and any current visa shall be revoked immediately, and any other valid visa or entry documentation cancelled. Consistent with Section 353(g), this report will be published in the **Federal Register**.

This report includes individuals who have been determined to have engaged in the relevant activity based upon credible information or allegations of the conduct at issue, from media reporting and other sources. The Department will continue to review the individuals listed in the report and consider all available tools to deter and disrupt corrupt and undemocratic activity in El Salvador, Guatemala, Honduras, and Nicaragua. The Department also continues to review additional credible information and allegations concerning corruption or undemocratic activity and to utilize all applicable authorities, as appropriate, to ensure corrupt or undemocratic officials are denied safe haven in the United States.

El Salvador

Jose Miguel ''Mecafe'' Antonio Menendez Avelar, a former president of the Center for Fairs and Conventions (CIFCO), engaged in significant corruption by steering an $8.4 million Ministry of Public Works contract for the construction of a bridge in Chalatenango Department, El Salvador, to a Guatemalan businessman. In return, Menendez illegally received a small plane, a Beechcraft King Air 90, as a gift.

Carlos Alberto Ortiz, a former president of Banco Hipotecario, a state-owned bank, engaged in significant corruption by laundering $97 million in exchange for $72,000 in bribes.

Carlos Enrique Cruz Arana, a former vice president of Banco Hipotecario, a state-owned bank, engaged in significant corruption by laundering $94.5 million in exchange for $64,500 in bribes.

Jolman Alexander Ayala, a former compliance officer of Banco Hipotecario, a state-owned bank, engaged in significant corruption by laundering $177 million in exchange for $78,000 in bribes.

Carlos Mauricio Funes Cartagena, a former president of El Salvador, engaged in significant corruption by orchestrating and participating in several schemes involving bribery, embezzlement, and money laundering while president, pilfering hundreds of millions of dollars from state coffers.

Salvador Sanchez Ceren, a former president and vice president of El Salvador, engaged in significant corruption by laundering money during his tenure as vice president, personally receiving more than $1.3 million in public funds in exchange, and participated in a scheme to divert $183 million in public funds away from public accounts and oversight into personal accounts while serving as president.

Guatemala

Cinthia Edelmira Monterroso Gómez, a current prosecutor, undermined democratic processes or institutions by bringing unsubstantiated, politically motivated criminal charges against journalists for exercising their freedom of expression as protected by Guatemalan law.

Edgar Humberto Navarro Castro, a former president of Guatemala's energy wholesale market administrator (AMM), engaged in significant corruption by providing official benefits in exchange for bribes and kickbacks, at the expense of improving energy efficiency and taking effective action against climate change.

Fredy Raul Orellana Letona, a current judge, undermined democratic processes or institutions by authorizing unsubstantiated, politically motivated criminal charges against journalists who were exercising their freedom of expression as protected by Guatemalan law.

Gendri Rocael Reyes Mazariegos, a former minister of interior, engaged in significant corruption.

Joviel Acevedo Ayala, the current head of Guatemalan Education Workers Union (STEG), engaged in significant corruption by providing STEG's political support in exchange for bribes from public officials.

Jimi Rodolfo Bremer Ramírez, a current judge, undermined democratic processes or institutions by authorizing politically motivated criminal charges against journalists for exercising their freedom of expression as protected by Guatemalan law.

Lesther Castellanos Rodas, a former judge and current Guatemalan Rapporteur against Torture, undermined democratic processes or institutions by retaliating against an anticorruption prosecutor for filing administrative complaints concerning Castellanos's handling of a criminal case.

Melvin Quijivix Vega, the current president of the National Electrification Institute (INDE), engaged in significant corruption by using his position and connections to improperly and unlawfully direct government procurement contracts to specific companies, in several cases to a company he privately owns.

Omar Ricardo Barrios Osorio, the current president of the Board of Directors of the National Port Commission, undermined democratic processes or institutions by conspiring to intimidate and harass an anticorruption prosecutor for denouncing corrupt activity.

Walter Ramiro Mazariegos Biolis, the Rector of the San Carlos University (USAC), undermined democratic processes or institutions by accepting the position of Rector of the public education institution in July 2022 following a fraudulent selection process.

Honduras

Alex Alberto Moraes Giron, a former administrative manager of state-owned Strategic Investment of Honduras (INVEST–H), engaged in significant corruption by misappropriating public funds during the COVID–19 pandemic, including by defrauding the Honduran government of approximately $1.6 million intended for facemasks to be used by medical personnel.

Alexander Lopez Orellana, the current mayor of El Progreso and secretary general of the Liberal Party's Central Executive Council, engaged in significant corruption by improperly awarding multi-million dollar municipal contracts to his political allies.

Edna Yolany Batres Cruz, a former Minister of Health, engaged in significant corruption when she defrauded the Honduran government of more than $300,000 by colluding with Ministry of Health officials and private-sector businesspeople to improperly award government contracts.

Jesus Arturo Mejia Arita, a former general manager of the Honduran National Electric Energy Company (ENEE), engaged in significant corruption by awarding non-competitive or overpriced contracts for the generation of electricity and other energy-related services in exchange for bribes, and by facilitating corrupt schemes related to the hiring and firing of ENEE employees in exchange for kickbacks.

Marcelo Antonio Chimirri Castro, the former director of the Honduran Telecommunications Company

(HONDUTEL), engaged in significant corruption by committing fraud to improperly keep a telecommunications agreement in place in exchange for bribes and obstructed investigations into his corrupt acts by intimidating journalists.

Miguel Rodrigo Pastor Mejia, a former director of the now-defunct Secretariat of Public Works, Transport, and Housing (SOPTRAVI), engaged in significant corruption, laundering money on behalf of the Los Cachiros drug trafficking organization, by awarding $2.76 million in Honduran government contracts to a Cachiros-controlled construction firm.

Roberto Antonio Ordonez Wolfovich, a former minister of infrastructure and public services (INSEP), former minister of energy, and former presidential advisor to President Juan Orlando Hernandez, engaged in significant corruption by embezzling state funds through the overvaluation of public works projects.

Samuel Garcia Salgado, a current member of the Honduran National Congress from the Liberal Party, undermined democratic processes or institutions by manipulating the outcome of the Supreme Court of Justice election in 2023 for his personal and political gain.

Victor Élias Bendeck Ramirez, a private businessman and former member of the Central American Parliament, engaged in significant corruption through a series of fraudulent business activities in the banking, real estate, and other sectors and by using his influence with government officials for his personal gain.

Yani Benjamin Rosenthal Hidalgo, the current president of the Liberal Party in Honduras, undermined democratic processes or institutions by manipulating the outcome of the Supreme Court of Justice election in 2023 for his personal and political gain. Rosenthal also used his influence with government officials to escape accountability for apparent violations of Honduran law by his family-owned cable company.

Nicaragua

Wendy Carolina Morales Urbina, the current Nicaraguan attorney general, undermined democratic processes or institutions, using the office of the attorney general to facilitate a coordinated campaign to suppress dissent, by confiscating property from the government's political opponents without a legal basis. Urbina has also seized property from thousands of nongovernmental organizations (NGOs) under laws explicitly designed to suppress freedom of association.

Arling Patricia Alonso Gomez, the current first vice president of the National Assembly, undermined democratic processes or institutions by taking part in coordinated government retaliation to strip Nicaraguan citizenship from political opponents and critics of the Ortega-Murillo regime.

Gladis de los Angeles Baez, the current second vice president of the National Assembly, undermined democratic processes or institutions by taking part in coordinated government retaliation to strip Nicaraguan citizenship from political opponents and critics of the Ortega-Murillo regime.

Loria Raquel Dixon Brautigam, the current first secretary of the National Assembly, undermined democratic processes or institutions by taking part in coordinated government retaliation to strip Nicaraguan citizenship from political opponents and critics of the Ortega-Murillo regime.

Alejandro Mejia Ferreti, the current third secretary of the National Assembly, undermined democratic processes and institutions by taking part in coordinated government retaliation to strip Nicaraguan citizenship from political opponents and critics of the Ortega-Murillo regime.

Rosa Argentina Solís Davila, an appeals court judge in the Criminal Appeals Court of Managua, undermined democratic processes or institutions by using the Appeals Court to facilitate a coordinated government campaign to retaliate against critics of the Ortega-Murillo regime and suppress dissent by stripping Nicaraguan citizenship from political opponents and critics of the Ortega-Murillo regime.

Angela Davila Navarrete, a current appeals court judge in the Criminal Appeals Court of Managua, undermined democratic processes or institutions by using the Appeals Court to facilitate a coordinated government campaign to retaliate against critics of the Ortega-Murillo regime and suppress dissent by stripping Nicaraguan citizenship from political opponents and critics of the Ortega-Murillo regime.

Denis Membreño Rivas, the current director of the Financial Analysis Unit (UAF), the Nicaraguan government's financial crimes unit, undermined democratic processes or institutions by taking part in a coordinated campaign to suppress dissent, using his position to facilitate asset seizures from 94 political dissidents in exile and 222 former political prisoners, without any legal basis.

Aldo Martín Sáenz Ulloa, a current sub-director of the Financial Analysis Unit (UAF), the Nicaraguan government's financial crimes unit, undermined democratic processes or institutions by taking part in a coordinated campaign to retaliate against critics of the Ortega-Murillo regime and to suppress dissent, using his position to facilitate asset seizures from 94 political dissidents in exile and 222 former political prisoners, without any legal basis.

Valeria Maritza Halleslevens Centeno, the current director of the National Directorate of Property Registrar Offices (DNR), undermined democratic processes or institutions by using her position and influence to facilitate a coordinated government effort to confiscate the property of political opponents.

Eduardo Celestino Ortega Roa, a current deputy director of the National Directorate of Property Registrar Offices (DNR), undermined democratic processes or institutions by using his position and influence to facilitate a coordinated government effort to confiscate the property of political opponents.

Marta Mayela Diaz Ortiz, a current vice superintendent of banks and other financial institutions (SIBOIF), undermined democratic processes or institutions by using SIBOIF to provide the financial information of political dissidents in exile and former political prisoners to officials in the Nicaraguan judiciary as part of a coordinated government effort to suppress dissent by seizing the assets of political adversaries without a legal basis.

Sagrario de Fatima Benavides Lanuza, a vice director of the Nicaraguan Social Security Institute (INSS), undermined democratic processes or institutions by using her position and influence to facilitate a coordinated, politically motivated government campaign to terminate and seize pensions from political adversaries without a legal basis.

Dated: July 14, 2023.

Richard R. Verma,

Deputy Secretary of State for Management and Resources.

[FR Doc. 2023–15775 Filed 7–25–23; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice: 12133]

Certification Pursuant to Section 7041(A)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2023

By virtue of the authority vested in me as Secretary of State pursuant to section 7041(a)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2023 (Div. K, Pub. L. 117–328), I hereby certify that the Government of Egypt is sustaining the strategic relationship with the United States and meeting its obligations under the 1979 Egypt-Israel Peace Treaty.

This certification shall be published in the **Federal Register** and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Dated: July 17, 2023.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2023–15773 Filed 7–25–23; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0209]

Women of Trucking Advisory Board (WOTAB); Notice of Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the WOTAB.

DATES: The meeting will be held on Monday, August 14, 2023, from 10 a.m. to 4:30 p.m. ET. Requests for accommodations for a disability must be received by Friday, August 4. Requests to submit written materials for consideration during the meeting must be received no later than Friday, August 4.

ADDRESSES: The meeting will be held virtually for its entirety. Please register in advance of the meeting at *www.fmcsa.dot.gov/wotab.* Copies of WOTAB task statements and an agenda for the entire meeting will be made available at *www.fmcsa.dot.gov/wotab* at least 1 week in advance of the meeting. Once approved, copies of the meeting minutes will be available at the website following the meeting. You may visit the WOTAB website at *www.fmcsa.dot.gov/wotab* for further information on the committee and its activities.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Designated Federal Officer, WOTAB, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 360–2925, *wotab@dot.gov.* Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

WOTAB was created under the Federal Advisory Committee Act (FACA) in accordance with section 23007(d)(1) of the Bipartisan Infrastructure Law (BIL) (Pub. L. 117–58), which requires the Federal Motor Carrier Safety Administration (FMCSA) to establish WOTAB. WOTAB will review and report on policies that provide education, training, mentorship, and outreach to women in the trucking industry and identify barriers and industry trends that directly or indirectly discourage women from pursuing and retaining careers in trucking.

WOTAB operates in accordance with FACA under the terms of the WOTAB charter, filed February 11, 2022.

II. Agenda

WOTAB will begin consideration of Task 23–3, Opportunities to Enhance Trucking Training, Mentorship, Education, and Advancement and Outreach Programs That Would Increase the Number of Women in the CMV Industry. For this and all topics considered by the committee, FMCSA will include presentations by Agency experts and those in the field under discussion.

III. Public Participation

The meeting will be open to the public via virtual platform. Advance registration via the website is required.

DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services due to a disability, such as sign language interpretation or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by Friday, August 4.

Oral comments from the public will be heard during designated comment periods at the discretion of the WOTAB chair and Designated Federal Officer. To accommodate as many speakers as possible, the time for each commenter may be limited. Speakers are requested to submit a written copy of their remarks for inclusion in the meeting records and for circulation to WOTAB members. All prepared remarks submitted on time will be accepted and considered as part of the record. Any member of the public may present a written statement to the committee at any time.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–15845 Filed 7–25–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0061]

Union Pacific Railroad's Request To Amend Its Positive Train Control Safety Plan

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 July 14, 2023, the Union Pacific Railroad (UP) submitted a request for amendment (RFA) to its FRA-approved Positive Train Control Safety Plan (PTCSP) in order to add information on UP's Arrangement of its Onboard positive train control (PTC) Apparatus, to correct regulatory reference formatting, and to add a PTCSP section reference. As this RFA may involve a request for FRA's approval of proposed material modifications to an FRA-certified PTC system, FRA is publishing this notice and inviting public comment on UP's RFA to its PTCSP.

DATES: FRA will consider comments received by August 15, 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–2010–0061. 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 PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its 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 or discontinuance of a signal and train control system. Accordingly, this notice informs the public that, on July 14, 2023, UP submitted an RFA to its PTCSP for its Interoperable Electronic Train Management System (I–ETMS), which seeks FRA's approval to add information on UP's Arrangement of Onboard PTC Apparatus and provide other general edits to its PTCSP. That RFA is available in Docket No. FRA–2010–0061.

Interested parties are invited to comment on UP's RFA to its PTCSP by submitting written comments or data. During FRA's review of UP'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 to its PTCSP 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. 2023–15824 Filed 7–25–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2023–0092]

Potential Research and Development Areas of Interest for the Advanced Research Projects Agency—Infrastructure (ARPA–I); Request for Information; Extension of Comment Period

AGENCY: Department of Transportation (DOT).

ACTION: Notice; request for information (RFI); extension of comment period.

SUMMARY: On June 13, 2023, the Office of the Assistant Secretary for Research and Technology (OST–R) of the Department of Transportation (DOT) published in the **Federal Register** a request for information seeking comments on potential research and development areas of interest for the Advanced Research Projects Agency—Infrastructure (ARPA–I). That request established a 45-day comment period closing on July 28, 2023. DOT is extending the public comment period until August 11, 2023.

DATES: The comment period for the notice published on June 13, 2023 (88 FR 38590) is extended. The due date for submitting comments is August 11, 2023.

ADDRESSES: Please submit any written comments to Docket Number DOT–OST–2023–0092 electronically through the Federal eRulemaking Portal at *https://regulations.gov.* Go to *https://regulations.gov* and select ''Department of Transportation (DOT)'' from the agency menu to submit or view public comments. Note that, except as provided below, all submissions received, including any personal information provided, will be posted without change and will be available to the public on *https://www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *https://www.transportation.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Timothy A. Klein, Director, Technology Policy and Outreach, Office of the Assistant Secretary for Research and Technology (202–366–0075) or by email at *timothy.klein@dot.gov.*

SUPPLEMENTARY INFORMATION: DOT published a request for information in the **Federal Register** on June 13, 2023 (88 FR 38590) seeking comments on potential research and development areas of interest for the Advanced Research Projects Agency—Infrastructure (ARPA–I). The public comment period is extended to August 11, 2023. All other information in the notice from June 13, 2023 remains the same.

Confidential Business Information: Do not submit information disclosure of which is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information ''CBI'') to *Regulations.gov.* Comments submitted through *Regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted.

Dated: July 21, 2023.

Robert C. Hampshire,

Deputy Assistant Secretary for Research and Technology.

[FR Doc. 2023–15850 Filed 7–25–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Information Collection Requirements in Connection With the Imposition of a Special Measure Against Bank of Dandong as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a renewal, without change, to an information collection requirement finalized on November 8, 2017, imposing a special measure against Bank of Dandong as a financial institution of primary money laundering concern. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome and must be received on or before September 25, 2023.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2023–0007 and the Office of Management and Budget (OMB) control number 1506–0072.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2023–0007 and OMB control number 1506–0072.

Please submit comments by one method only. Comments will be reviewed consistent with the PRA and applicable OMB regulations and guidance. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at 1–800–767–2825 or electronically at *frc@fincen.gov*.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Foreign Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56 (October 26, 2001), and other legislation, including the Anti-Money Laundering Act of 2020 (AML Act).[1] The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1960, and 31 U.S.C. 5311–5314 and 5316–5336, and notes thereto, with implementing regulations at 31 CFR Chapter X.

The BSA authorizes the Secretary of the Treasury (the ''Secretary''), *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, or regulatory matters, risk assessments or proceedings, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement AML programs and compliance procedures.[2] Regulations implementing the BSA appear at 31 CFR chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.[3]

Section 311 of the USA PATRIOT Act (section 311), codified at 31 U.S.C. 5318A, grants FinCEN the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, financial institution, class of transactions, or type of account is of ''primary money laundering concern,'' to require domestic financial institutions and financial agencies to take one or more ''special measures.''

Special measures one through four, codified at 31 U.S.C. 5318A(b)(1)–(b)(4), impose additional recordkeeping, information collection, and reporting requirements on covered U.S. financial institutions. The fifth special measure, codified at 31 U.S.C. 5318A(b)(5), allows FinCEN to impose prohibitions or conditions on the opening or maintenance of certain correspondent accounts. Special measures are safeguards that protect the U.S. financial system from money laundering and terrorist financing.

FinCEN issued a final rule on November 8, 2017, imposing the fifth special measure to prohibit U.S. financial institutions from opening or maintaining a correspondent account for, or on behalf of, Bank of Dandong.[4] The rule requires that covered U.S. financial institutions apply due diligence to correspondent accounts they maintain on behalf of foreign financial institutions that is reasonably designed to guard against the indirect use of those accounts by Bank of Dandong. See 31 CFR 1010.660. Covered U.S. financial institutions are required under 31 CFR 1010.660(b)(3)(i)(A) to notify holders of foreign correspondent accounts that they may not provide Bank of Dandong with access to such accounts. The requirement is intended to ensure cooperation from correspondent account holders in denying Bank of Dandong access to the U.S. financial system. Covered U.S. financial institutions are required under 31 CFR 1010.660(b)(4)(i) to document compliance with the notification requirement. The information is used by federal agencies and certain self-regulatory organizations to verify compliance with 31 CFR 1010.660.

II. Paperwork Reduction Act of 1995 (PRA)[5]

Title: Information Collection Requirements in Connection with the Imposition of a Special Measure Against Bank of Dandong as a Financial Institution of Primary Money Laundering Concern.

OMB Control Number: 1506–0072.

Report Number: Not applicable.

Abstract: FinCEN is issuing this notice to renew the OMB control number for the imposition of a special measure against Bank of Dandong as a financial institution of primary money laundering concern pursuant to the authority contained in 31 U.S.C. 5318A. *See* 31 CFR 1010.660.

Type of Review: Renewal without change of a currently approved collection.

Affected Public: Businesses and other for-profit institutions, and not-for-profit institutions.

Frequency: One time notification and recordkeeping associated with the notification. See 31 CFR 1010.660(b)(3)(i)(A) and 1010.660(b)(4)(i).

[1] The AML Act was enacted as Division F, sections 6001–6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, 134 Stat. 3388 (2021).

[2] Section 358 of the USA PATRIOT Act expanded the scope of the BSA by including a reference to reports and records ''that have a high degree of usefulness in intelligence or counterintelligence activities to protect against international terrorism.'' Section 6101 of the AML Act further expanded the purpose of the BSA to cover such matters as preventing money laundering, tracking illicit funds, assessing risk, and establishing appropriate frameworks for information sharing.

[3] Treasury Order 180–01 (Jan. 14, 2020). Therefore, references to the authority of the Secretary under Section 311 of the USA PATRIOT Act apply equally to the Director of FinCEN.

[4] FinCEN, *Final Rule—Imposition of Special Measure Against Bank of Dandong as a Financial Institution of Primary Money Laundering Concern,* 82 FR 51758 (Nov. 8, 2017).

[5] Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

Estimated Number of Respondents: 15,876.

RESPONDENT FINANCIAL INSTITUTIONS BY CATEGORY

Type of institution	Count
Banks, savings associations, thrifts, trust companies[6]	5,068
Credit unions[7]	4,863
Brokers or dealers in securities[8]	3,538
Mutual funds[9]	1,378
Futures commission merchants and introducing brokers in commodities[10]	1,029
Total	15,876

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden: 15,876 hours (15,876 respondents × 1 hour).

When the final rule was published on November 8, 2017, FinCEN estimated that 5,787 U.S. financial institutions were affected by the rule. FinCEN has since revised its estimate upward to account for all domestic financial institutions that could potentially maintain correspondent accounts for foreign banks. There are approximately 15,876 such financial institutions doing business in the United States.

Records required to be retained under the BSA must be retained for five years. Generally, information collected pursuant to the BSA is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. 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: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs, cost of operation and maintenance, and cost involved in purchasing services.

Himamauli Das,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 2023–15784 Filed 7–25–23; 8:45 am]

BILLING CODE 4810–02–P

[6] All counts are from the Q4 2022 Federal Financial Institutions Examination Council (FFIEC) Call Report data, available at *https://cdr.ffiec.gov/public/pws/downloadbulkdata.aspx.* Data for institutions that are not insured, are insured under non-FDIC deposit insurance regimes, or do not have a Federal functional regulator are from the Federal Deposit Insurance Corporation's Research Information System, available at *https://www.fdic.gov/foia/ris/index.html.*

[7] Credit union data are from the National Credit Union Administration for Q4 2022, *available at https://ncua.gov/analysis/credit-union-corporate-call-report-data.*

[8] According to the Securities and Exchange Commission (SEC), there are 3,538 brokers or dealers in securities as of the end of fiscal year 2022. *See* SEC, *Fiscal Year 2024 Congressional Budget Justification,* p. 32, *https://www.sec.gov/files/fy-2024-congressional-budget-justification_final-3-10.pdf.*

[9] According to information provided by the SEC as of December 2022 (including filings made through January 20, 2023), there are 1,378 open-end registered investment companies that report on Form N–CEN. FinCEN assesses that these companies are required to comply with 31 CFR 1010.660.

[10] As of March 31, 2023, there are 60 futures commission merchants. *See* Commodity Futures Trading Commission (CFTC), ''Financial Data for FCMs'', available at *https://www.cftc.gov/MarketReports/financialfcmdata/index.htm.* Additionally, as of April 30, 2023, there are 969 introducing brokers in commodities according to the CFTC. These two counts total 1,029.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Tuesday, August 8, 2023.

FOR FURTHER INFORMATION CONTACT: Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be held Tuesday, August 8, 2023, at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the website: *http://www.improveirs.org.* The agenda includes a committee discussions involving subcommittee 1 and 2 Issue 66142 VITA/TCE Training Materials Review and Issue 66143 Taxpayer Communications—Recordkeeping. Subcommittee 2 Issue 55988 Allow taxpayers to fill out a form stating their issue.

Dated: July 20, 2023.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2023–15765 Filed 7–25–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Tuesday, August 8, 2023.

FOR FURTHER INFORMATION CONTACT: Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that a meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications

Project Committee will be held Tuesday, August 8, 2023, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Robert Rosalia. For more information, please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the website: *http://www.improveirs.org.* The agenda will include a committee discussion involving subcommittee 1: 62742—Form 8615 & Inst (Children Who Have Unearned Income). Subcommittee 2: 52664—Form 3520 & F3520A (Foreign Trust).

Dated: July 20, 2023.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2023–15764 Filed 7–25–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Thursday, August 10, 2023.

FOR FURTHER INFORMATION CONTACT: Rosalind Matherne at 1–888–912–1227 or 202–317–4115.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Lines Project Committee will be held Thursday, August 10, 2023, at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Rosalind Matherne. For more information, please contact Rosalind Matherne at 1–888–912–1227 or 202–317–4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda includes a committee discussion that may involve Subcommittee 1 Issue #66342—Voicebot and Chatbot Project; Subcommittee 2 Issue #66029—Modify Certified Acceptance Agent Program to Resolve ID Theft Issues; and Issue #66342—Voicebot and Chatbot Project.

Dated: July 20, 2023.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2023–15769 Filed 7–25–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Thursday, August 10, 2023.

FOR FURTHER INFORMATION CONTACT: Ann Tabat at 1–888–912–1227 or (602) 636–9143.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be held Thursday, August 10, 2023, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Ann Tabat. For more information, please contact Ann Tabat at 1–888–912–1227 or (602) 636–9143, or write TAP Office, 4041 N Central Ave., Phoenix, AZ 85012 or contact us at the website: *http://www.improveirs.org.* The agenda will include a committee discussion about the IRS response to Issue 53484–LTR 3030C (Bal-Due/Interest Due). There will be a discussion of the subcommittee's review on Issue 66192—Difficult/Challenging Letters/Notices, and Issue 52479 Review of Notice CP503.

Dated: July 20, 2023.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2023–15768 Filed 7–25–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Monday, August 28, 2023.

FOR FURTHER INFORMATION CONTACT: Rosalind Matherne at 1–888–912–1227 or 202–317–4115.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Monday, August 28, 2023, at 3 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information, please contact Rosalind Matherne at 1–888–912–1227 or 202–317–4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1503, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.*

The agenda will include reports from the committees, and subcommittee discussions on priorities the TAP will focus on for the 2023 year. Public input is welcomed.

Dated: July 20, 2023.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2023–15770 Filed 7–25–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Special Projects Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Wednesday, August 9, 2023.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1–888–912–1227 or 202–317–4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be held Wednesday, August 9, 2023, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Antoinette Ross. For more information please contact Antoinette Ross at 1–888–912–1227 or 202–317–4110, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda includes a committee discussion involving subcommittee–1 Issue number 48336—Electronic Filing of Form 8621; Information Returns by a Shareholder of a Passive Foreign Investment Company; Issue 59522—International Phone Apps; subcommittee–2 Issue 58722—Misleading Wording on website; and Issue 51824—Estate Gift Tax.

Dated: July 20, 2023.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2023–15766 Filed 7–25–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Thursday, August 10, 2023.

FOR FURTHER INFORMATION CONTACT: Conchata Holloway at 1–888–912–1227 or 214–413–6550.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, August 10, 2023, at 12:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Conchata Holloway. For more information, please contact Conchata Holloway at 1–888–912–1227 or 214–413–6550, or write TAP Office, 1114 Commerce St MC 1005 Dallas, TX 75242 or contact us at the website: *http://www.improveirs.org.* The agenda includes a committee discussion involving subcommittee 1 Issue 54250; Increase E-filing of Forms/Tax Returns; and Issue 48294 Entities with multiple EIN's. Subcommittee 2 Issue 66193; and effectively measuring outreach.

Dated: July 20, 2023.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2023–15767 Filed 7–25–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Bureau of Fiscal Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

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 August 25, 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:

Bureau of the Fiscal Service (BFS)

1. Title: Pools and Associations—Annual Letter.

OMB Number: 1530–0007.

Abstract: The information is collected for the determinations of an acceptable percentage for each pool and association to allow Treasury certified companies credit on their Schedule F for authorized ceded reinsurance in determining the companies' underwriting limitations.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 84.

Estimated Time per Respondent: 1 hour 30 minutes.

Estimated Total Annual Burden Hours: 126.

2. Title: Certificate of Identity.
OMB Number: 1530–0026.
Form Number: FS Form 0385.
Abstract: The information on the completed form is used to establish an individual's identity in a claim for payment of United States savings and retirement securities.
Current Actions: Extension of a currently approved collection.
Type of Review: Regular.
Affected Public: Individuals or Households.
Estimated Number of Respondents: 330.
Estimated Time per Respondent: 10 minutes.
Estimated Total Annual Burden Hours: 55.
3. Title: Special Form of Request for Payment of US Savings and Retirement Securities Where Use of a Detached Request is Authorized.
OMB Number: 1530–0028.
Form Number: FS Form 1522.
Abstract: The information on the completed form is submitted by the owner, co-owner, surviving beneficiary, or legal representative of the estate of a deceased or incompetent owner, persons entitled to the estate of a deceased registrant, or such other persons to request payment of United States Savings Bonds, Savings Notes, Retirement Plan Bonds, and Individual Retirement Bonds.
Current Actions: Extension of a currently approved collection.
Type of Review: Regular.
Affected Public: Individuals or households.
Estimated Number of Respondents: 6,000.
Estimated Time per Respondent: 15 minutes.
Estimated Total Annual Burden Hours: 1,500.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,
Treasury PRA Clearance Officer.
[FR Doc. 2023–15814 Filed 7–25–23; 8:45 am]
BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service (IRS) 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 August 25, 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:

Internal Revenue Service (IRS)

1. Title: W–2 (Wage and Tax Statement), W–2c (Corrected Wage and Tax Statement), W–2AS (American Samoa Wage and Tax Statement), W–2GU (Guam Wage and Tax Statement), W–2VI (U.S. Virgin Islands Wage and Tax Statement), W–3 (Transmittal of Wage and Tax Statements), W–3c (Transmittal of Corrected Wage and Tax Statements), W–3PR (Informe de Comprobantes de Retención Transmittal of Withholding Statements), W–3c PR (Transmision de Comprobantes de Retención Corregidos, Transmittal of Corrected Wage and Tax Statements), and W–3SS (Transmittal of Wage and Tax Statements).
OMB Number: 1545–0008.
Form Numbers: W–2, W–2c, W–2AS, W–2GU, W–2VI, W–3, W–3PR, W–3c, W–3cPR, and W–3SS.
Abstract: Employers report income and withholding information on Form W–2. Individuals use Form W–2 to prepare their income tax returns. Forms W–2AS, W–2GU and W–2VI are variations of Form W–2 for use in U.S. possessions. The Form W–3 series is used to transmit W–2 series forms to the Social Security Administration. Forms W–2c, W–3c and W–3cPR are used to correct previously filed Forms W–2, W–3, and W–3PR.
Current Actions: There are no material changes in the paperwork burden previously approved by OMB. However, the estimated number of responses has increase based on the number of taxpayers filing the forms.
Type of Review: Extension of a currently approved collection.
Affected Public: Business or other for-profit organizations and individuals, or households, not-for-profit institutions, farms, and Federal, state local or tribal governments.
Estimated Number of Respondents: 301,441,008.
Estimated Time per Respondent: varies.
Estimated Total Annual Burden Hours: 150,594,103.
2. Title: Application to Use LIFO Inventory Method.
OMB Number: 1545–0042.
Form Number: Form 970.
Abstract: Taxpayers file Form 970 to elect to use the last-in, first-out (LIFO) inventory method or to extend the LIFO method to additional goods. The IRS uses Form 970 to determine if the election was properly made. The estimates in this notice are for estates, trusts, and tax-exempt organizations filing Form 970.
Current Actions: There is no change to the existing collection. However, the estimated number of responses was reduced to eliminate duplication of burden estimates. The estimated burden for individuals filing Form 970 is approved under OMB control number 1545–0074, and the estimated burden for businesses filing Form 970 is approved under OMB control number 1545–0123.
Type of Review: Extension of a currently approved collection.
Affected Public: Private sector.
Estimated Number of Responses: 100.
Estimated Time per Respondent: 21 hours, 6 minutes.
Estimated Total Annual Burden Hours: 2,111.
3. Title: Investment Credit.
OMB Number: 1545–0155.
Form Number: 3468.
Abstract: Form 3468 is used to compute Taxpayers' credit against their income tax for certain expenses incurred for their trades or businesses. The information collected is used by the IRS to verify that the credit has been correctly computed.
Current Actions: There are no changes to burden.
Type of Review: Extension of a currently approved collection.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 2,109.
Estimated Time per Response: 35 hours, 57 minutes.
Estimated Total Annual Burden Hours: 75,107.

4. Title: General Business Credit.

OMB Number: 1545–0895.

Form Number: Form 3800.

Abstract: Internal Revenue Code section 38 permits taxpayers to reduce their income tax liability by the amount of their general business credit, which is an aggregation of their investment credit, work opportunity credit, welfare-to-work credit, alcohol fuel credit, research credit, low-income housing credit, disabled access credit, enhanced oil recovery credit, etc. Form 3800 is used to figure the correct credit.

Current Actions: We have made no changes to Form 3800 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms, and individuals.

Estimated Number of Respondents: 65,000.

Estimated Time per Respondent: 33.38 hours.

Estimated Total Annual Burden Hours: 2,169,700.

5. Title: Reporting Requirements for Recipients of Points Paid on Residential Mortgages and Mortgage Interest Statement.

OMB Number: 1545–1380.

Form Number: Form 1098.

Regulation Project Number: TD 8191 as amended by TD 8507, TD 8571, TD 8734, and TD 9849.

Abstract: Section 6050H provides that an information return must be made by any person who is engaged in a trade or business and who, during that trade or business, receives from any individual $600 or more of interest on any mortgage in a calendar year. Any person required to make an information return under section 6050H also must furnish a statement to the payor of record on or before January 31 of the year following the calendar year in which the interest was received. Form 1098, *Mortgage Interest Statement,* is used to report mortgage interest (including points) received during the year.

Current Actions: There is an increase in the estimated number of respondents previously approved by OMB. IRS has increased the number of respondents by 16,708,000 based on the projected number of filers from IRS Publication 6961. This update to the agency estimate has increased the burden by 4,187,000 hours.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 96,140,044.

Estimated Number of Responses: 97,358,960.

Estimated Time per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 24,318,656.

6. Title: Improving Customer Experience (OMB Circular A–11, Section 280 (Implementation).

OMB Number: 1545–2290.

Abstract: A modern, streamlined and responsive customer experience means: raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. This information collection activity provides a means to garner customer and stakeholder feedback in an efficient, timely manner in accordance with the Administration's commitment to improving customer service delivery as discussed in Section 280 of OMB Circular A–11 at *https://www.whitehouse.gov/wp-content/uploads/2018/06/s280.pdf.*

As discussed in OMB guidance, agencies should identify their highest-impact customer journeys (using customer volume, annual program cost, and/or knowledge of customer priority as weighting factors) and select touchpoints/transactions within those journeys to collect feedback. These results will be used to improve the delivery of Federal services and programs. It will also provide government-wide data on customer experience that can be displayed on *www.performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

As a general matter, these information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

The Internal Revenue Service will only submit collections if they meet the following criteria.

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used for general service improvement and program management purposes.

Upon agreement between OMB and the agency all or a subset of information may be released as part of A–11, Section 280 requirements only on *performance.gov.* Summaries of customer research and user testing activities may be included in public-facing customer journey maps and summaries. Additional release of data must be done coordinated with OMB.

These collections will allow for ongoing, collaborative and actionable communications between the Agency, its customers and stakeholders, and OMB as it monitors agency compliance on Section 280. These responses will inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on services will be unavailable.

Current Actions: IRS is requesting an increase in the bank of burden hours to cover existing and planned surveys.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal governments.

Estimated Number of Respondents: 1,011,000.

Estimated Time per Respondent: 9 minutes.

Estimated Total Annual Burden Hours: 150,000.

Title: Advanced Manufacturing Production Credit.

7. OMB Number: 1545–2306.

Form Number: Form 7207.

Abstract: This form is used to claim the advanced manufacturing production credit under section 45x for eligible components produced by the taxpayer and sold during the tax year in the taxpayer's trade or business to an unrelated person.

Current Actions: IRS is revising the form and instructions to include Inflation Reduction Act of 2022 provisions for Tax Year 2024.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 3 hours and 56 mins.

Estimated Total Annual Burden Hours: 3,930 hours.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2023–15822 Filed 7–25–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Plans for the Department of Veterans Affairs To Assess the Current Scientific Literature and Historical Detailed Claims Data Regarding Certain Medical Conditions Associated With Military Environmental Exposures and To Solicit Public Comment

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) announces its plan to assess the scientific literature and historical claims data regarding certain medical conditions associated with military environmental exposures. This assessment will consider the possibility of a relationship between the following medical conditions—acute leukemias, chronic leukemias and multiple myeloma—and exposure to fine particulate matter ($PM_{2.5}$) from airborne hazards and open burn pits for service members who were deployed in the Southwest Asia theater of operations, Somalia, Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria, Yemen, and Uzbekistan. Multiple myeloma, when it originates in the head or neck, is considered a presumptive condition pursuant to the PACT Act. However, cases of multiple myeloma originating outside of the head and neck have not yet been evaluated for association with exposure to $PM_{2.5}$ from airborne hazards and open burn pits in the Southwest Asia theater of operations, Somalia, Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria, Yemen, and Uzbekistan. Additionally, a scientific review of acute leukemias, chronic leukemias, and multiple myeloma and exposure to $PM_{2.5}$ and its associated chemical composition from airborne hazards and open burn pits in the Southwest Asia theater of operations, Somalia, Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria, Yemen, and Uzbekistan would provide an opportunity to review an organ system (blood) not included in the PACT Act. VA solicits public comment on the importance of completing this assessment of scientific literature and historical claims data for these conditions or others. Once the conclusions of this scientific assessment have been peer reviewed, they may be used to inform decisions regarding veteran's qualifying period of service, such as those who served on active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War, as well as Somalia, Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria, Yemen, or Uzbekistan from September 11, 2001, until the present time.

DATES: Comments must be received on or before August 25, 2023.

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

FOR FURTHER INFORMATION CONTACT: Health Outcomes Military Exposures, Director of Policy, Peter D. Rumm, MD, Master of Public Health, at 202–461–7297.

SUPPLEMENTARY INFORMATION: In accordance with 38 U.S.C. 1172, as created by section 202 of the *Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022* (also known as the PACT Act), VA is publishing this notice about its planned scientific assessment of the possibility of a relationship between the following medical conditions—acute leukemias, chronic leukemias and multiple myeloma outside of the head and neck—and exposure to $PM_{2.5}$ from airborne hazards and open burn pits in the Southwest Asia theater of operations, Somalia, Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria, Yemen, and Uzbekistan. VA is also soliciting public comment about other conditions that would benefit from review of the possible association, the conditions, and health outcomes related to them.

The rationale for the selection of acute leukemias, chronic leukemias, and multiple myeloma outside of the head and neck is based on their biological properties that may suggest correlation between these diseases and the described exposures. Lymphomas already are included in the PACT Act, and leukemias. Leukemias and multiple myeloma represent the remaining types of cancer of blood forming tissues. The latest classifications of these cancer types recognize that some leukemias and lymphomas are different forms of the same disease, as chronic lymphocytic leukemia and small lymphocytic lymphoma. The bone marrow can be sensitive to the toxicity of specific chemicals including waste that may have been disposed of in open burn pits, including, among others, arsenic, lead, and mercury. Acute leukemias, chronic leukemias, and multiple myeloma outside of the head and neck have not been previously evaluated for association with exposure to $PM_{2.5}$ from airborne hazards and open burn pits in the Southwest Asia theater of operations, Somalia, Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria, Yemen, and Uzbekistan.

VA continues to review and assess information about military environmental exposure incidents, emerging scientific evidence regarding toxic substances, and health outcomes in deployed and non-deployed cohorts. Additionally, active epidemiological surveillance and ongoing monitoring of military exposures in collaboration with the Department of Defense continues. VA's involvement in surveillance, monitoring, and research covers a wide variety of areas from garrison specific, such as Karshi Khanabad (K–2) Air Base, to exposure specific, such as perfluoroalkyl and polyfluoroalkyl substances, to military occupation specific, such as missileers. Additional information is available at Military Exposures—Public Health (*va.gov*). When the scientific review concludes that there is a statistically significant signal or possible association of military environment exposure and health outcomes, this may trigger an investigation that may lead to additional research or may be subject to a **Federal Register** notice and comment process required under section 202 of the PACT Act. Additional notices of this type will be published as VA moves forward in the review of conditions and their possible association with military

environmental exposures for the purposes of providing health care, services, and benefits to veterans entitled to them.

After reviewing comments received in response to this notice, VA will conduct the scientific review of the specified conditions, taking into account the latest scientific classification schemes for blood cancers and scientific evidence regarding shared etiologies, and will consider whether to conduct scientific reviews of any other conditions in response to the comments received, as appropriate. VA will then follow the procedures in 38 U.S.C. 1172–1174 for initiating and conducting assessments and formal evaluations. If appropriate, the VA will designate a Technical Working Group (TWG) to conduct an assessment pursuant to 38 U.S.C. 1172(c), and the TWG may develop a recommendation for formal evaluation under 38 U.S.C. 1173, pursuant to 38 U.S.C. 1172(d). Once a formal evaluation is commenced, a recommendation with respect to establishing a presumption of service connection must be submitted to the Secretary within 120 days, in accordance with 38 U.S.C. 1173(d). And within 160 days of receiving the recommendation with respect to establishing a presumption of service connection, the Secretary must determine whether a presumption is warranted in accordance with 38 U.S.C. 1174(a). This may include commencing rulemaking to establish new presumptions for some or all of the conditions formally evaluated and/or publishing notice in the **Federal Register** of any determination that a presumption or presumptions are unwarranted for some or all of the conditions that were subject of the formal evaluation.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on July 19, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

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

[FR Doc. 2023–15624 Filed 7–25–23; 8:45 am]

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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 Green Floater and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R5–ES–2023–0012; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BF80

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Green Floater and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the green floater (*Lasmigona subviridis*), a mussel species from as many as 10 States in the eastern United States and the District of Columbia, as a threatened species with a rule issued under section 4(d) of the Endangered Species Act of 1973, as amended (Act). This document also serves as our 12-month finding on a petition to list the green floater. After a review of the best available scientific and commercial information, we find that listing the species is warranted. We also propose to designate critical habitat for the green floater under the Act. In total, approximately 2,553 kilometers (1,586 miles) of streams in Maryland, New York, North Carolina, Pennsylvania, Virginia, and West Virginia fall within the boundaries of the proposed critical habitat designation. We also announce the availability of a draft economic analysis of the proposed designation of critical habitat for the green floater. If we finalize this rule as proposed, it would add this species to the List of Endangered and Threatened Wildlife and extend the Act's protections to the species and its designated critical habitat.

DATES: We will accept comments received or postmarked on or before September 25, 2023. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by September 11, 2023.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R5–ES–2023–0012, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R5–ES–2023–0012, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

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

Availability of supporting materials: Supporting materials, such as the species status assessment report, are available at *https://www.regulations.gov* at Docket No. FWS–R5–ES–2023–0012. For the proposed critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file for this proposed critical habitat designation and are available at *https://www.regulations.gov* at Docket No. FWS–R5–ES–2023–0012 and on our internet site at *https://www.fws.gov/office/new-york-ecological-services-field.*

FOR FURTHER INFORMATION CONTACT: Ian Drew, Field Supervisor, U.S. Fish and Wildlife Service, New York Ecological Services Field Office, 3817 Luker Road, Cortland, NY 13045; telephone 607–753–9334. 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 green floater meets the Act's definition of a threatened species; therefore, we are proposing to list it as such and proposing a designation of its critical habitat. Both listing a species as an endangered or threatened species and making a critical habitat designation 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. We propose the listing of the green floater as a threatened species with a rule under section 4(d) of the Act (a ''4(d) rule''), and we propose the designation of critical habitat for the species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that habitat degradation (Factor A), resulting from the cumulative impacts of land use change and associated watershed-level effects on water quality, habitat connectivity, and stream conditions, poses the greatest risk to the future viability of the green floater. Habitat degradation can occur as a result of increased surface runoff, sedimentation, and pollution, and decreased substrate stability, both instream and along streambanks. These degraded conditions negatively impact the green floater by, for example, smothering the organism or washing the organism downstream. In the future, climate change (Factor A) is expected to exacerbate the degradation of the green floater's habitat through increased water temperatures, changes and shifts in seasonal patterns of precipitation and runoff, and extreme weather events such as flood or droughts.

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.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments, including additional information, concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns and the locations of any additional populations of this species;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Threats and conservation actions affecting the species, including:

(a) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(b) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species.

(c) Existing regulations or conservation actions that may be addressing threats to this species.

(3) The historical and current status of this species.

(4) Regulations that may be necessary and advisable to provide for the conservation of the green floater and that we can consider in developing a 4(d) rule for the species. In particular, we seek information concerning the extent to which we should include any of the section 9 prohibitions in the 4(d) rule or whether we should consider any additional exceptions from the prohibitions in the 4(d) rule.

(5) Specific information on the species' habitat, including:

(a) The amount and distribution of green floater habitat;

(b) Any additional areas occurring within the range of the species (the States of Alabama, Georgia, Maryland, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, Virginia, and West Virginia, and the District of Columbia) that should be included in the designation because they (i) are occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations, or (ii) are unoccupied at the time of listing and are essential for the conservation of the species;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) Whether occupied areas are adequate for the conservation of the species. This information may help us evaluate the potential to include areas not occupied at the time of listing. Additionally, please provide specific information regarding whether or not unoccupied areas would, with reasonable certainty, contribute to the conservation of the species and contain at least one physical or biological feature essential to the conservation of the species. We also seek comments or information regarding whether areas not occupied at the time of listing qualify as habitat for the species.

(6) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(7) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(8) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts.

(9) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. If you think we should exclude any additional areas, please provide information supporting a benefit of exclusion.

(10) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available, and section 4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific data available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Our final determinations may differ from this proposal because we will consider all comments we receive during the comment period as well as any information that may become available after this proposal. Based on the new information we receive (and, if relevant, any comments on that new information), we may conclude that the species is endangered instead of threatened, or we may conclude that the

species does not warrant listing as either an endangered species or a threatened species. For critical habitat, our final designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, or may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion and exclusion will not result in the extinction of the species. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the 4(d) rule if we conclude it is appropriate in light of comments and new information received. For example, we may expand the prohibitions to include prohibiting additional activities if we conclude that those additional activities are not compatible with conservation of the species. Conversely, we may establish additional exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the species. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

In our November 21, 1991, candidate notice of review (CNOR; published at 56 FR 58804) we identified the green floater as a Category 2 candidate species. Category 2 candidate species were those taxa for which listing was possibly appropriate, but for which conclusive data on biological vulnerability and threats were not available to support proposed rules. In the February 28, 1996, CNOR (61 FR 7596), we discontinued the designation of species as Category 2 candidates; therefore, the green floater was no longer a candidate species.

On April 20, 2010, we were petitioned to list 404 aquatic species in the southeastern United States, including the green floater. In response to the petition, we published a partial 90-day finding on September 27, 2011 (76 FR 59836), in which we announced our finding that the petition contained substantial information that listing might be warranted for numerous species, including the green floater.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the green floater (Service 2021, entire). The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited independent scientific review of the information contained in the green floater SSA report. We sent the SSA report to five independent peer reviewers and received one response. Results of this structured peer review process can be found at *https://www.regulations.gov* under Docket No. FWS–R5–ES–2023–0012. In preparing this proposed rule, we incorporated the results of this review, as appropriate, into the SSA report, which is the foundation for this proposed rule.

Summary of Peer Reviewer Comments

As discussed in Peer Review above, we received comments from one peer reviewer on the draft SSA report. We reviewed all comments we received from the peer reviewer for substantive issues and new information regarding the information contained in the SSA report. The peer reviewer generally concurred with our methods and conclusions and provided additional information and other editorial suggestions. No substantive changes to our analysis and conclusions within the SSA report were necessary, and peer reviewer comments are addressed in version 1.0 of the SSA report (Service 2021, entire).

I. Proposed Listing Determination

Background

The green floater is a freshwater mussel found in small streams to large rivers in the eastern United States. It is historically native to the District of Columbia and 10 States (Alabama, Georgia, Maryland, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, Virginia, and West Virginia). Today, however, green floaters are considered extirpated in Alabama and Georgia, and there are no recent records from New Jersey or the District of Columbia.

Green floaters are small freshwater mussels with ovate trapezoidal shaped shells. Their shells are yellowish brown to olive green with green rays (Bogan and Ashton 2016, p. 43). Adults rarely exceed 5.5 centimeters (cm) (2.2 inches (in)) (Johnson 1970, p. 344) but can grow to 7.0 cm (2.8 in) in length (Watters et al. 2009, p. 347). Like all freshwater mussels, the green floater is an omnivore that feeds on a wide variety of microscopic particulate matter (*i.e.,* bacteria and algae).

The best available information suggests the green floater is a short-lived, fast-growing species compared to similar mussels. The green floater is considered a long-term brooder because individuals produce eggs that develop as larvae in the adult mussels and are then released after several months (Haag 2012, pp. 40–41, 203–204). In contrast, short-term brooders are similar in that larvae develop in the adult mussels, but the brood period is shorter, lasting several days or weeks. While some mussels can live to 100 years old, green floaters typically live just 3 to 4 years (Watters et al. 2009, p. 349). In laboratory settings, green floaters can mature and release sperm at less than 1 year of age (Mair 2020, pers. comm.)

Green floaters are hermaphroditic (Ortmann 1919, p. 122; van der Schalie 1970, p. 106) and have the ability to self-fertilize, which increases the probability of fertilization (Haag 2012, p. 191). Spawning and reproduction occur during the late summer or early fall. In the winter, green floaters can directly metamorphose larvae, called glochidia, meaning that adults keep the glochidia in their gills until they mature into juveniles and then release them into the water column in the spring (Barfield and Watters 1998, p. 22; Lellis and King 1998, p. 23; Haag 2012, p. 150). For most freshwater mussels, glochidia are released into the water column and must attach to the gills of a host fish in order to undergo metamorphosis and transform into juveniles. Several weeks or months

later, the juveniles detach from the fish and burrow into the substrate. Green floater adults have the ability to expel glochidia that use fish hosts, too (J. Jones 2020, unpublished data), but it is not known what proportion of green floaters use this method of reproduction. The added ability to directly metamorphose glochidia without requiring an intermediate fish host is unique to the green floater. This life strategy may allow the green floater to occur in small streams with small populations and few fish (Haag 2012, pp. 150, 191), although the use of fish hosts is necessary for periodic upstream dispersal.

Green floaters likely maximize population growth during periods of favorable conditions (Haag 2012, pp. 208, 284). Adult green floaters can produce between 2,600 and 33,300 juveniles per individual each year (R. Mair, Service, unpublished data), and the number of juveniles produced can vary greatly from year to year. For example, researchers at Harrison Lake National Fish Hatchery in Virginia observed that the average number of juveniles released per individual jumped from 4,600 to 22,500 per individual in a 2-year span. These numbers do not represent the total number of juveniles expected to survive to adulthood, a number which is unknown but is likely to be a small proportion of the juveniles released. When they are found in natural environments, green floaters can occur singly or in small aggregations of a few individuals.

Streams with slow to medium flows and good water quality provide the best habitat for green floaters (Ortmann 1919, p. 124; Johnson 1970, p. 345; Clarke 1985, p. 56; Kerferl 1990, p. 47). They are often found in sand or small gravel substrates where they establish a foothold and bury themselves as deep as 38 cm (15 in) (Haag 2012, p. 31; Lord 2020, pers. comm.). Their mobility is limited, and fast flowing currents or high-water events can cause them to be washed downstream (Strayer 1999, pp. 468, 472). When they occur in larger streams and rivers, they are found in quieter pools and eddies, away from strong currents (WVDNR 2008, p. 2).

For more information, please refer to the SSA report (version 1.0; Service 2021, pp. 1–30), which presents a thorough review of the taxonomy, life history, and ecology of the green floater.

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 of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as we 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 the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed for listing 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 green floater'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 change, 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 use 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; the full SSA report can be found at Docket No. FWS–R5–ES–2023–0012 on *https://www.regulations.gov.*

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability. We analyze these factors both individually and cumulatively to determine the current condition of the species and project the future condition of the species under several plausible future scenarios.

Species Needs

We assessed the best available information to identify the physical and biological needs to support all life stages for the green floater. Green floaters occur in a variety of habitats across the species' large range, but they require specific conditions for the habitat to be suitable. Water flow, streambed substrate, water quality, water temperature, and conditions that support their host fish are all important habitat components for the health of green floaters.

Green floaters occur in small streams to large rivers, pools, eddies, and canals with current speeds that are low or moderate (Ortmann 1919, p. 124; Clarke 1985, p. 56; WVDNR 2008, p. 2). The optimal current is stable, not flashy, and responds slowly to precipitation events (Strayer 1993, pp. 241, 244). Green floaters require slow and stable flows because they spend most of their lives buried just below the surface of the streambed with their posterior end angled upward and their anterior end in the substrate. This position allows them to siphon water through their incurrent aperture, secrete waste through their excurrent aperture, and stabilize themselves using their foot. The incoming current speeds must be adequate to deliver a steady supply of food and oxygen.

Green floaters are able to survive high flow events by burying into the substrate. Adult green floaters have been found buried between 8 and 13 cm (3 and 5 in) while juveniles have been found as deep as 38 cm (15 in) (Barber 2020, pers. comm.; Lord 2020, pers. comm.). They are associated with substrates composed primarily of sand or small gravel (Holst 2020, pers. comm.). They can be found in both quiet, backwater areas (*e.g.,* eddies) with more silt and large, boulder-dominated streams, but some amount of sand or gravel is necessary for them to establish a foothold (Clayton 2020, pers. comm.). If they become dislodged from the substrate, they can take up to 30 minutes to rebury themselves, possibly requiring less time in sand and silt substrates (Haag 2012, p. 32). If they become dislodged during a high water event or flood, they could be washed downstream (Strayer 1999, pp. 468, 472).

Like all freshwater mussels, green floaters are sensitive to certain water quality parameters and need clean water with low levels of contaminants, adequate dissolved oxygen, and low salinity. Juvenile mussels may be more sensitive than adults to the presence of contaminants, especially copper and ammonia, which can cause physiological effects or death (Goudreau et al. 1993, pp. 224, 226–227; Jacobson et al. 1993, p. 882). The specific dissolved oxygen requirements for green floaters are unknown; however, other freshwater mussels begin to exhibit stress when dissolved oxygen levels fall below 6 milligrams per liter (mg/L) (Chen et al. 2001, pp. 213–214). Stress is apparent through behavioral changes such as gaping (*i.e.,* opening of the shells to maintain oxygen levels) and lying on the surface of the substrate (Sparks and Strayer 1998, pp. 131–133). Green floaters are also intolerant to brackish water and require the low salinity levels that occur naturally in freshwater streams.

Green floaters require water temperatures that are warm enough for glochidia release but not so warm that they kill or stress the adults. Research from lab and field studies indicate that the appropriate temperature for glochidia release is likely between 15 and 20 degrees Celsius (°C) (59 and 68 degrees Fahrenheit (°F)). Adult mussels begin to exhibit the gaping behaviors described above when water temperatures get too warm. Lethal maximum water temperatures for green floaters have not been studied but are expected to be between 25.3 and 42.7 °C (77.5 and 106.0 °F), similar to those reported for comparable species. Maximum temperatures are related to the duration of exposure. Mussels can survive temperatures on the higher end of the spectrum for short periods of time (*i.e.,* minutes or hours) and can survive temperatures on the lower end for days or weeks. Juvenile mussels may be more sensitive to warm temperatures.

Adequate water quality and temperatures are important habitat components for the health of host fish as well, which green floaters require for upstream dispersal. In laboratory studies, green floaters successfully used mottled sculpin (*Cottus bairdii*), rock bass (*Ambloplites rupestris*), central

stoneroller (*Campostoma anomalum*), blacknose dace (*Rhinichthys atratulus*), and margined madtom (*Noturus insignis*) for glochidia metamorphosis (J. Jones 2020, unpublished data). These species all occur within the range of the green floater and could function as hosts in natural settings as well.

The green floater historically occurred in four major drainages: the Atlantic Slope (*i.e.,* watersheds along the east coast of the United States), St. Lawrence-Great Lakes, Mississippi River (Clarke 1985, p. 57), and Gulf (*i.e.,* hydrologically connected to the Gulf of Mexico) (Brim Box and Williams 2000, p. 59). We delineated analysis units for the green floater in these drainages based on recent occupancy information. We used data from surveys conducted by partners, including State agencies, Federal agencies, nonprofit organizations, and contractors, between 1999 to 2019. This period covers approximately three generations of green floaters, which are thought to live up to 7 years (Watters et al. 2009, p. 349). Using these survey data, we determined the green floater historically existed in 179 watersheds across 10 States and the District of Columbia; 85 of these watersheds have had no sightings since 1999 (see figure 1, below, and Service 2021, appendix C).

BILLING CODE 4333–15–P

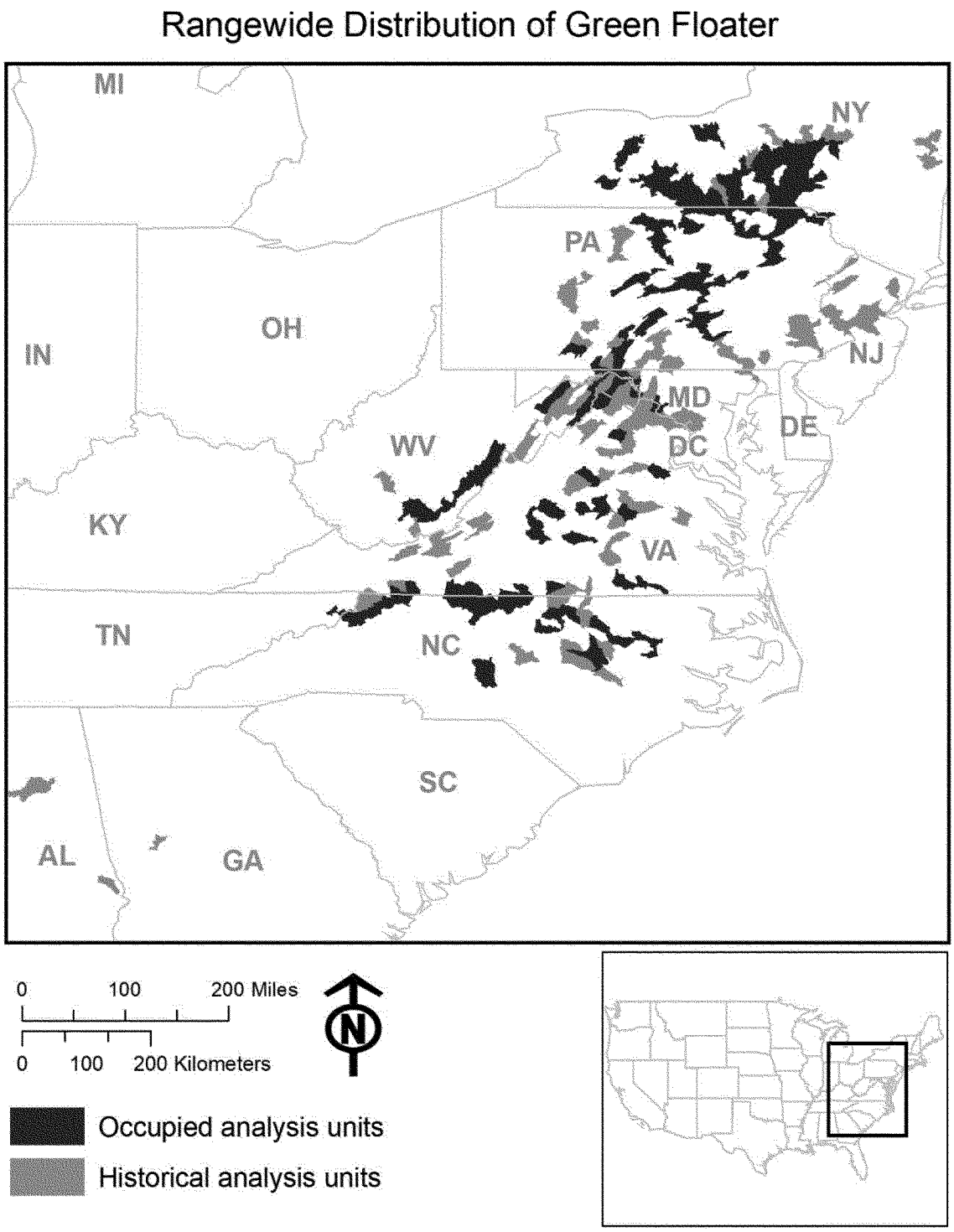

Figure 1. Distribution of recent (1999–2019) and historical (pre-1999) occurrences of green floaters in Hydrologic Unit Code (HUC) 10 watersheds in the eastern United States.

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To assess resiliency, we evaluated relevant environmental and demographic factors to determine the condition of populations across the range of the species. Green floater populations must be able to survive varying habitat conditions (*i.e.,* good and bad years) to respond to and recover from stochastic events (*e.g.,* seasonal events such as heavy rain or severe drought). They must have a healthy demography, *i.e.,* a population that includes organisms at a range of life stages and occupy areas with suitable habitat conditions for all life stages and seasons. Healthy demography is achieved by having a sufficient number

of adults, recruitment (*i.e.,* presence of adults and juveniles), and habitat connectivity that supports genetic exchange within and between populations. Genetic exchange is needed to preserve genetic diversity, without which the health of populations can decrease. Barriers, such as large dams and blocked culvert pipes, can impede genetic exchange by limiting the dispersal of juvenile mussels and preventing host fish migration. Some populations are found between barriers and downstream of dams, but the healthiest green floater populations are likely to be found in free-flowing streams and rivers.

To assess representation, we evaluated the ecological and genetic diversity across the current range of the species. It is important to have sufficiently resilient populations (referred to in figure 1, above, as analysis units) where both genetic and ecological differences are apparent to maintain the existing adaptive capacity. To evaluate representation in the current condition of the green floater, we consider both genetic information and the geographic distribution of populations. The green floater must have healthy populations distributed across the range to capture the breadth of genetic, climate, elevation, and habitat diversity, and sufficient connectivity for periodic genetic exchange across the range of the species.

To assess redundancy, we considered the number and distribution of populations across the range of the species and the potential for catastrophic events to impact the green floater's ability to persist. To have high redundancy, the species needs to have multiple populations distributed across a large area relative to the scale of anticipated catastrophic events.

Factors Influencing Species Viability

Excessive Sedimentation

Excessive sedimentation is one of the primary factors affecting green floater viability. Sedimentation originates from instream (*e.g.,* bank erosion, shifting channels) and upland sources (*e.g.,* soil erosion). Increases in sediment load can accumulate on the stream/river bottom and may lead to bottom scour; lead to embeddedness of rocks, gravel, and cobble; and affect some baseline water quality parameters (*e.g.,* turbidity). Excess sedimentation can harm mussels in multiple ways: suspended particles can abrade mussels and clog the gills and respiratory systems of both mussels and host fish, while deposited sediment can bury mussels and smother host fish eggs (Wood and Armitage 1997, p. 211; Burkhead and Jelks 2001, p. 965). Even where sedimentation does not clog gills so severely as to kill mussels, it may still significantly impact their feeding efficiency and filtering clearance rates (Aldridge et al. 1987, p. 25; Brim Box and Mossa 1999, pp. 100–101).

Increases in suspended sediment can also adversely affect mussels' ability to feed and reproduce. Mussels must have their valves open to feed, but in heavily silted water, they are forced to close their valves to wait for conditions to improve. Mussels in turbid water have been observed closing their valves up to 90 percent of the time, compared to 50 percent of the time for individuals in silt-free environments (Ellis 1936, p. 40). Extended valve closure can lead to decreased health or starvation. Increases in suspended particles can also reduce mussels' ability to encounter sperm, become gravid, and reproduce (Landis et al. 2013, p. 74).

However, a reduced sediment load can also destabilize the stream channel. When a decrease in sediment supply coincides with increased stream flow, the imbalance can cause streams to narrow and deepen (Rakovan and Renwick 2011, p. 40), channeling the flow of water and making the habitat unsuitable for green floaters. Other activities, like dredging, channelization, or storm damage, can also adversely affect physical habitat. Changes in primary productivity (*i.e.,* algae and aquatic plant growth) as a result of nutrient loads or reduced stream flows can limit the suitability of stream habitats for the green floater and other aquatic species (Bogan 1993, p. 604; Wood and Armitage 1997, pp. 209–210; Taylor et al. 2007, p. 374). Fine sediment suspension and deposition affect the primary producers by reducing the amount of sunlight and damaging leaves of plants, which reduces photosynthesis (Lewis 1973, p. 253; Davies-Colley et al. 1992, p. 232), and, in extreme cases, by smothering and eliminating algae and plants (Yamada and Nakamura 2002, p. 489).

During periods of stress, green floaters bury themselves deeper in the substrate and take refuge in interstitial spaces (*i.e.,* small openings between rocks and gravels). While in interstitial spaces, they rely on available pore water (*i.e.,* the water in interstitial spaces between rock and gravel substrates) for oxygen and food particles. Interstitial spaces provide essential habitat for adults and juvenile green floaters by protecting them from high water events and periods of drought, and allowing water loaded with oxygen and food particles to reach the mussels. Excess sedimentation adversely affects mussel habitat by blocking or filling in the interstitial spaces. Excess sand or silt can reduce or block these areas (Brim Box and Mossa 1999, p. 100), which may cause them to become unsuitable for green floaters by having reduced dissolved oxygen levels and limited food availability (Strayer and Malcom 2012, p. 1781).

Pollutants bound to fine sediment and pore water inside interstitial spaces can also be toxic to mussels. The degree of bioavailability of pollutants bound to sediments can be affected by environmental characteristics such as oxygen, temperature, hardness, alkalinity, dissolved organic carbon, chloride, and acidity (Farris and van Hassel 2006, p. 206; Archambault et al. 2017, p. 403).

Excessive sedimentation can be caused by land-disturbing activities associated with development (*i.e.,* residential/commercial, energy, and transportation development). These types of activities increase the amount of impervious surfaces and leave areas of bare, unvegetated soil exposed to direct rainfall. Energy development, agriculture, and forestry activities all take place within the range of the green floater. Energy development is a source of sediment because solar farms, oil and gas pipelines, and transmission lines can cause soil disturbance during installation and maintenance of equipment. Agriculture activities can also cause excessive sedimentation when best management practices are not implemented to minimize soil erosion and increased overland flow, and some forestry practices have the potential to result in increased siltation in riparian systems through the cycle of forest thinning, final harvest, site preparation, and re-planting activities. However, implementation of best management practices and establishment of streamside management zones can minimize the impacts from forestry (Service 2018 and 2019, chapter 6). Adherence to these best management practices and streamside management zones broadly protects water quality, particularly related to sedimentation (as reviewed by Cristan et al. 2016, entire; Warrington et al. 2017, entire; Schilling et al. 2021, entire).

Impervious surfaces (*e.g.,* roads, concrete) are a source of pollutants such as oil and gas because the surfaces prevent liquids from entering the ground. During precipitation events, the pollutants collect in the rainfall, and because water is unable to absorb into the impervious surfaces too, the mixture flows into overland and subsurface drainage runoff. In addition, sediments, which come from the bare, unvegetated

soil, join the polluted runoff and flow into rivers and streams. The increased surface and drainages waters lead to higher stream flows which erode streambanks and riverbanks, increasing turbidity and decreasing streambed stability, all of which negatively impact green floaters.

Water Quality Degradation

In addition to impacts to water quality from sedimentation, water quality can be degraded due to contamination or changes in temperature. Chemical contaminants are widespread and are a major reason for the current declining status of freshwater mussel species nationwide (Augspurger et al. 2007, p. 2025). Chemical contamination of waterways can greatly impact aquatic organisms, and freshwater mussels appear to be more sensitive to some of these chemical contaminants than other test organisms. As sedentary benthic feeders, mussels are exposed to toxic pollutants that enter aquatic environments through direct discharges and stormwater runoff. Contaminants can enter waterways through both point and nonpoint sources, including spills, industrial discharges, municipal effluents, agricultural runoff, and atmospheric deposition from precipitation. These sources contribute excess nutrients, organic compounds, heavy metals, pesticides, and a wide variety of newly emerging contaminants (*e.g.,* antibiotics and hormones from wastewater treatment facilities) to the aquatic environment.

Green floaters are negatively affected by low levels of dissolved oxygen. Dissolved oxygen levels become reduced when nutrients in the water column increase, causing eutrophication and algal blooms. Both natural and anthropogenic sources of organic matter can increase nutrient levels in waterways, but most nutrient pollution is the result of ongoing and large-scale discharges of nitrogen from anthropogenic sources, such as fertilizers and livestock waste. Depletion of dissolved oxygen affects the chemistry and increases the bioavailability of some contaminants. Dissolved oxygen may have the greatest impact on juvenile mussels, which are more sensitive to low levels than adults (Dimock and Wright 1993, p. 189; Sparks and Strayer 1998, pp. 131–133). When there is low dissolved oxygen, juveniles exhibit stress behaviors, such as surfacing, gaping, and exposing their foot and siphons, that expose them to predators (Sparks and Strayer 1998, pp. 132–133).

Freshwater mollusks, including the green floater, are sensitive to chemical pollutants, including chlorine, ammonia, copper, fungicides, and herbicide surfactants (Augspurger et al. 2007, pp. 2025–2028). These chemicals occur in sediments and water and are ingested when mussels filter and feed on particles (Yeager et al. 1994, p. 217; Newton et al. 2003, p. 2553). Ammonia occurs naturally in aquatic systems as a waste product from bacteria. Additional ammonia is deposited into streams through surface water runoff from sources such as industrial, municipal, and agricultural wastewater; decomposition of organic nitrogen; and atmospheric ammonia (Newton 2003, p. 2543; Yao and Zhang 2019, p. 22139). Ammonia is suspended in the atmosphere and returns to the ground as either gaseous ammonia or ammonium ions in precipitation (Air Quality Research Subcommittee 2000, pp. 8–9). Domestic livestock is the largest global contributor to atmospheric ammonia and a growing source of atmospheric deposition (Bouwman et al. 1997, p. 561). Excess nitrogen (in the form of nitrates) in waterways causes plants and algae to flourish and die off, using up dissolved oxygen sources in the water, depleting sources of oxygen for other aquatic organisms, causing eutrophication, and increasing the risk of die offs of fish and aquatic invertebrates (USGS 2022, unpaginated). Excessive inputs of organic matter can also cause ammonia in waterways to reach levels that are detrimental to freshwater mussels (Haag 2012, p. 379). However, the degree of ammonia toxicity varies depending on temperature and pH conditions, which influence the proportion of ammonia in its less toxic (ionized ammonium, NH_4+) or more toxic (un-ionized ammonia, NH_3) state (Augspurger et al. 2003, pp. 2569–70; Haag 2012, p. 379). When temperature and pH levels increase, concentrations of the more highly toxic un-ionized ammonia also increase and can reach levels that are lethal to the green floater and other freshwater mussels (Strayer 2020, pers. comm.). High concentrations of un-ionized ammonia are thought to be a contributing cause of widespread decline of mussels in the Hudson River (Strayer and Malcom 2012, p. 1786). When un-ionized ammonia reached concentrations of 0.2 mg/L, recruitment in wild mussel populations failed (Strayer and Malcom 2012, p. 1787). Juvenile mussels are highly sensitive to un-ionized ammonia, and chronic exposure at concentrations of 0.57 mg/L in 25 °C (77 °F) water was lethal to juveniles in the lab (Augspurger et al. 2003, p. 2572). The *Lasmigona* genus, of which the green floater is a member, was the most sensitive of 12 genera tested for ammonia toxicity of juveniles and adults (Augspurger et al. 2003, p. 2573).

In addition to ammonia, manganese, nickel, chlorine, and sodium dodecyl sulfate have also been linked to mussel declines and/or toxicity (Archambault et al. 2017, entire; Gibson 2015, pp. 90–91; Gibson et al. 2016, p. 33). Sediments that contain manganese and ammonia as a result of mining and agriculture can negatively affect mussel survival and biomass, as observed in the Clinch River and its tributaries (Archambault et al. 2017, pp. 403–405). Manganese and nickel generally enter waterways in the wastewater from various industries, including alloy, glass, and battery manufacturing; via atmospheric deposition as a result of the combustion of fossil fuels; and in the runoff from agriculture and mining operations (Rollin 2011, pp. 618–619). Long-term exposure to ammonia and manganese could reduce immunity and fecundity in mussels (Archambault et al. 2017, p. 405). Sodium dodecyl sulfate, a surfactant found in household detergents and herbicides, can be lethal to some mussels after acute exposure (Gibson et al. 2016, p. 30).

State and Federal regulatory mechanisms (*e.g.,* the Clean Water Act (33 U.S.C. 1251 *et seq.*)) have helped to reduce the negative effects of point source discharges since the 1970s. However, while new water quality criteria are being developed that consider more sensitive aquatic species, most criteria currently do not have any limits associated with them. On August 22, 2013, the U.S. Environmental Protection Agency (EPA) published in the **Federal Register** (78 FR 52192) national recommended ambient water quality criteria for the protection of aquatic life from the effects of ammonia in fresh water. These criteria incorporate the latest scientific knowledge on the toxicity of ammonia to freshwater aquatic species, including freshwater mollusks. So far, few States have adopted the new criteria, which are considerably more stringent than previous criteria. Nickel and chlorine have been shown to be toxic to juvenile mussels at levels below the EPA's current water quality criteria (Gibson 2015, pp. 90–91). Water quality criteria for other compounds that are harmful to mussels, such as sodium dodecyl sulfate, do not currently exist (Gibson et al. 2016, p. 33).

Increased water temperature caused by loss of riparian trees, impoundments, climate change, stormwater, wastewater effluents, and low flows during drought

periods can exacerbate low dissolved oxygen levels and negatively affect juvenile and adult green floaters. Higher water temperatures increase metabolic processes in freshwater mussels and can outstrip energy reserves if they remain above the natural thermal tolerance of a mussel for extended periods of time. Because ammonia toxicity in freshwater environments increases as temperature and pH increase (Newton 2003, p. 2543), temperature increases may exacerbate existing pollution, compounding the threats to green floater growth and survival.

Salt, which enters waterways from road runoff and industrial discharges, can be toxic to freshwater mussels, and concentrations observed in streams and rivers have resulted in death of glochidia in laboratory settings (Gillis 2011, pp. 1704–1707). The largest chloride spikes happen in the winter (Kaushal et al. 2005, pp. 13518–13519), when road salt washes into waterways, keeping chloride levels elevated in months when green floaters release glochidia.

Discharges of high salinity wastewater (called brine), a waste product from oil and gas drilling operations, into streams can also adversely affect freshwater mussels. In Pennsylvania, mussel abundance and diversity were found to be lower downstream of a brine treatment facility (Patnode et al. 2015, p. 59). In northern Appalachia, natural gas operations have negatively affected groundwater and surface water quality through wastewater disposal and increased sedimentation (Vidic et al. 2013, p. 1235009–6; Olmstead et al. 2013, p. 4966), likely impacting mussels in the region.

Organic contaminants such as polycyclic aromatic hydrocarbons (PAHs) and polychlorinated biphenyls (PCBs) are toxic to humans and organisms and can bioaccumulate in plants and animals (Newton and Cope 2007, entire; Maryland DNR 2020, unpaginated). These toxins contaminate water via petroleum spills and discharges, industrial and municipal wastewater, and atmospheric deposition (*e.g.,* coal plants, incinerators) (Albers 2003, p. 346). Natural sources of PAHs are forest and grassland fires, oil seeps, volcanoes, plants, fungi, and bacteria. Anthropogenic sources are petroleum, electric power generation, burning of waste, home heating oil, coke (a fuel derived from coal), carbon, coal tar, asphalt, and internal combustion engines (Albers 2003, p. 345). Oil and gas that drip from automobiles onto pavement eventually enter waterways, especially in urban environments. Where roads cross over streams, PAHs are found in significantly higher concentrations than in upstream reaches (Archambault et al. 2018, p. 470). Cumulative concentrations of PAHs in streams can cause adverse effects to mussels, including reduced immune system function and reduced reproduction (Archambault et al. 2018, p. 474).

In use between approximately 1929 until 1978, PCBs are long-lasting toxic compounds that have significantly degraded major waterbodies throughout the range of the green floater. Despite having been banned, PCBs have accumulated and persist in sediment, affecting aquatic life (including mussels) to this day (Jahn 2020, pers. comm.). For example, up to 1.3 million pounds of PCBs were discharged into the Hudson River between the 1940s and 1970s (USEPA 2016, entire). The area is now a Federal Superfund remediation site, and cleanup activities, which began in 2009, include dredging of the riverbed. Because PCBs exist in the sediment, they are released into the water and continue to persist in the environment.

Alteration of Water Flows

Mussels typically experience low flow and high flow periods and are adapted to deal with seasonal variability. However, extreme drought or flooding can adversely affect mussel populations that are already stressed (Hastie *et al.* 2001, p. 114; Golladay *et al.* 2004, p. 504) and can eliminate appropriate habitats. Green floaters may be able to survive extreme low or high flow events if the duration is short (in the case of stream drying), but populations that experience these events regularly or for extended durations may be at risk.

Very low water levels can be caused by severe drought or water use. During low water flow periods, mussel mortality is primarily caused by dehydration, thermal stress, and exposure to predation (Golladay *et al.* 2004, p. 504; Pandolfo *et al.* 2010, p. 965; Galbraith *et al.* 2015, pp. 49–50). Water withdrawals are associated with public and private water uses, sewage treatment, and power generation (*e.g.,* dams), and may be exacerbated by climate change (Neff *et al.* 2000, p. 207). Rapid dewatering can lead to increased stress and mortality, especially in more sensitive mussel species (Galbraith *et al.* 2015, p. 50), and prevent dispersal. While green floaters can survive short periods of low flows, persistent low flows can cause them to experience oxygen deprivation and increased water temperatures, ultimately stranding them in place if conditions do not improve or they are unable to relocate. If deeper water is unavailable, they may bury themselves for long periods of time, which can cause mortality, stress, and reduced reproduction and recruitment in the population.

High flows can be caused by extreme precipitation (*i.e.,* snowmelt or rainfall) events or regulated dam releases. These events cause water levels to rise, increasing flow velocities which can substantially change, destabilize, or destroy mussel habitat. High flow velocities can completely change the course of the stream, scour streambeds, erode stream banks, and fill interstitial spaces with sediment. Where a channel is no longer connected to floodplains, peak flows are higher and faster, which can degrade or eliminate green floater habitat (Clayton 2020, pers. comm.).

High flows may also result in dislodgement or displacement of mussels. Flooding can bury mussels in silt, crush them with large rocks moved by the current, or dislodge and relocate them to downstream areas that may or may not provide suitable habitat (Hastie *et al.* 2001, pp. 113–114).

Barriers, such as improperly installed or maintained culverts, and impoundments associated with dams (reservoirs), reduce the diversity and abundance of mussels by altering habitat both upstream and downstream (Bogan 1993, p. 605; Neves *et al.* 1997, p. 63). Culverts and dams can inundate upstream shallow-water habitats, increasing sediment deposition behind the barrier. The excess sediment can smother green floaters by filling the interstitial spaces where they occur, thereby depriving them of oxygen and nutrients. Besides sedimentation, the increase in depth can degrade mussel habitat in a few ways. For instance, in large reservoirs, deep water is very cold and often devoid of oxygen and necessary nutrients. Smaller reservoirs often accumulate excess nutrients, and hence lower dissolved oxygen, and have higher water temperatures than adjacent stream reaches, all of which can stress mussel populations.

Dams and other barriers also tend to reduce the water available to mussel populations downstream. In addition, the frequency, duration, timing, and location of water releases from dams can affect the suitability of downstream habitats for green floaters. Sudden, high-volume releases can increase scour in some places by washing away sediment, then smother other areas by depositing sediment, filling interstitial spaces, and burying the sandy and gravelly habitats that mussels prefer. Large fluctuations in flow regimes from dam releases can also cause seasonal dissolved oxygen depletion, lead to significant variation in water temperatures, and change the

species of fish present in the stream, all of which can lead to unsuitable conditions and negatively impact green floaters. The instability of sediment from scour, flushing, and deposition of eroded bank material can result in juvenile mussels failing to settle and stay in interstitial spaces (Hastie *et al.* 2001, p. 114).

Nevertheless, there are cases of populations of other mussel species thriving in stable conditions downstream of some dams, especially small, low head dams (Gangloff 2013, p. 476 and references therein; Bowers-Altman 2020, pers. comm.). Smaller dams have fewer adverse effects because they do not tend to act as complete barriers for water flow. Small dams and their impoundments can benefit mussel habitat by filtering and lowering nutrient loads, oxygenating streams during low-water periods, and stabilizing stream beds (Gangloff 2013, pp. 478–479). Impoundments can also benefit the habitat by retaining fine sediments and associated toxins, inhibiting the spread of invasive species, and slowing or weakening water flows during flood events (Fairchild and Velinsky 2006, p. 328; Jackson and Pringle 2010, entire). Although dams and impoundments are considered to have an overall negative impact across the range of the green floater, altered or reduced hydrologic connectivity can be preferable to natural connectivity regimes in highly developed landscapes.

Loss and Fragmentation of Habitat

Habitat fragmentation isolates mussel populations, which contributes to their risk of extirpation from stochastic events (Haag 2012, pp. 336–338). Streams are naturally dynamic, frequently creating, destroying, or shifting areas of quality habitat over a particular timeframe. However, human-caused factors can lead to permanent fragmentation of suitable habitat. For instance, barriers (*e.g.,* dams, improperly installed or maintained culverts with poor fish passage) can disrupt the connectivity of green floater habitat and isolate mussel populations by preventing host fish from moving upstream or downstream. Dams have caused genetic isolation in river systems for fish and could have the same effect on mussel populations. The alteration in fish populations can be a threat to the survival of mussels and their overall reproductive success over time (Haag 2009, pp. 117–118).

Fragmentation has other causes, too. Pollution or other habitat degradation at specific points can completely separate stream reaches from one another (Fagan 2002, p. 3246). Similarly, drought conditions can temporarily fragment habitat by reducing or eliminating flows and preventing movement of fish hosts carrying glochidia. Where mussel populations are small, habitat fragmentation can cause local extirpation because populations cannot be reestablished by colonization from other areas. Connectivity between mussel beds or occupied habitats is thus particularly important where reaches of suitable habitat are created and destroyed frequently.

Invasive Species

Several invasive species, including zebra and quagga mussels (*Dreissena* spp.), Asian clams (*Corbicula fluminea*), invasive crayfish species (especially the rusty crayfish (*Faxonius rusticus*)), and various species of bass, catfish, and carp are present in the green floater's range and are likely to prey upon or compete with green floater and alter the green floater's habitat (Strayer 2020, pers. comm). Although the extent of the effects of these invasive species on the green floater are unknown, their influence on the green floater is likely to be detrimental and is expected to increase in the future. Populations of these species and others are expanding their ranges and becoming established in more watersheds inhabited by green floaters over time. When invasive species are introduced to natural systems, they may have many advantages over native species, such as the ability to adapt to varying environments and a high tolerance of conditions that allows them to thrive outside of their native range. There may not be natural predators adapted to control the invasive species; thus, they have the potential to live longer and reproduce more often, rapidly increasing their populations and range. Native species may become an easy food source for invasive species, and the invasive species can carry diseases that could potentially spread to native species. Some invasive species can drastically alter aquatic habitats by affecting flow dynamics and can contaminate streams by dying in mass mortality events that change the amount of dissolved oxygen and ammonia in the water.

Effects of Climate Change

There are a multitude of ongoing and anticipated changes in the environment resulting from climate change. Likely impacts of these changes on aquatic systems that could affect green floaters include increases in water temperatures, changes in seasonal precipitation, and changes in extreme precipitation events. Sedentary freshwater mussels have limited refugia from disturbances such as droughts and floods, and since their physiological processes are constrained by water temperature, increases in water temperature caused by climate change can further stress vulnerable populations and lead to shifts in mussel community structure (Galbraith *et al.* 2010, p. 1176). Extreme events have become more common as the climate changes, and both floods and droughts can degrade habitat and affect water quality parameters, like dissolved oxygen (see ''Alteration of Water Flows,'' above). Low water flows (*e.g.,* following a prolonged summer drought) can expose mussels to intense opportunistic predation (Wicklow *et al.* 2017, pp. 45, 47, 55, 137). All of these predicted impacts of climate change are already occurring in the range of the green floater, and they are expected to worsen over time (Poff *et al.* 2002, pp. ii–v), and human alteration of channels and flow regimes may limit the ability of green floater and host fish species to adapt and relocate.

Inherent Factors

Green floaters exhibit several inherent traits that likely influence population viability, including hermaphroditism, direct development of juvenile mussels in the marsupia (*i.e.,* brood chamber in the outer gills), and low fecundity compared to some other mussel species. When habitat conditions are favorable, their abilities to develop glochidia without host fish and to self-fertilize allow green floaters to persist in small streams with small populations and few fish, which positively impacts the species' viability (Haag 2012, pp. 150, 191). However, low fecundity rates limit the ability of populations to quickly rebound after stochastic events. In addition, hermaphroditism can lead to lower genetic diversity, and reliance on juvenile development without a host fish can lead to a diminished distribution.

Green floaters are frequently found in low numbers within their occupied habitats, with some found in mussel beds along with other mussel species and some found individually. Smaller population size puts sites at greater risk of extirpation from demographic or environmental stochasticity (*e.g.,* periods of poor reproductive success or periods of severe flooding or drought) or genetic drift. The smallest populations of green floaters also face greater threats from anthropogenic changes and management activities that affect habitat. In addition, smaller populations may have reduced genetic diversity and

fitness and thus are more susceptible to environmental changes.

Conservation Efforts and Regulatory Mechanisms

There are several regulatory mechanisms that protect the green floater or its habitat. The green floater is State-listed as endangered or threatened in 8 States (Maryland, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, Virginia, and West Virginia) of the 10 States where it historically occurred. In these eight States, the green floater receives some level of protection due to the State listing, though this varies by State. The green floater has been identified on the lists of Northeast and Southeast Regional Species of Greatest Conservation Need, which enables States in those regions to prioritize research and conservation of the species through State wildlife action plans.

Green floaters may be afforded some protection by the Clean Water Act's (CWA) dredge or fill permitting framework. CWA section 404 established a program to regulate the discharge of dredged and fill material into waters of the United States. Permits to fill wetlands or streams are issued by the U.S. Army Corps of Engineers, and mitigation is required to offset impacts above minimal levels. Such mitigation could include preservation or restoration of stream reaches inhabited by the green floater. CWA section 401 requires that an applicant for a Federal dredge or fill permit under section 404 obtain a certification that any discharges from the facility will not violate water-quality standards, including some established by States. Current State water quality standards are designed to be protective of aquatic organisms; however, freshwater mollusks may be more susceptible to the effects of some pollutants than organisms for which the CWA standards were developed. In addition, several State laws require setbacks or buffers for development in or near aquatic systems but allow variances/waivers for those restrictions. Accordingly, both Federal and State laws and regulations afford some protection to water quality in the green floater's habitat; however, because these laws do not prohibit development, and because it is not known whether existing water quality standards are adequate to protect the green floater, the impacts caused and protections afforded by the regulatory framework are not precisely known.

Several States are taking additional actions to improve habitat for freshwater mussels, including green floaters. For example, the West Virginia Department of Natural Resources has created a West Virginia Conservation Strategy (2019) and works with partners to implement watershed protection, stream protection, the restoration and maintenance of natural flow regimes, and the reduction of pollutants (*e.g.,* road salt, industrial and agricultural effluents, and sewage) to improve aquatic habitat for mussels. In a bridge project on the Rappahannock River, for instance, the Virginia Department of Wildlife Resources collected and relocated a total of 30 green floaters. Agency staff subsequently documented recruitment of green floaters at the relocation site in the Rappahannock River (Watson 2020, pers. comm.).

A variety of agencies and organizations (*e.g.,* the Service, the U.S. Department of Agriculture's Natural Resources Conservation Service, The Nature Conservancy, Trout Unlimited, and American Rivers) fund and implement projects to remove barriers to fish passage, plant and maintain sufficient riparian buffers, and improve water quality by capturing and treating wastewater and sediment before they enter rivers and streams. These efforts have the effect of improving habitat for freshwater mussels, among other aquatic species. For instance, Federal and State agencies (Delaware, the District of Columbia, Maryland, Pennsylvania, New York, Virginia, and West Virginia), local governments, nonprofit organizations, and academic institutions have worked together since 1983 to implement the Chesapeake Bay Watershed Agreement, with the goal of reducing pollution (in particular, nutrient pollution), restoring wetland and other aquatic habitats, and promoting environmentally friendly land-use practices in the Chesapeake Bay watershed. In 2017, a system was put in place to monitor progress and document adaptive management strategies. These efforts have demonstrated continued improvement of the habitat over time, which has likely benefited green floater populations in the area.

Several captive breeding efforts have been conducted to determine the feasibility of propagating green floaters. In 2017 and 2018, the White Sulphur Springs National Fish Hatchery grew over 80,000 juvenile green floaters in West Virginia. The Harrison Lake National Fish Hatchery in Richmond has successfully propagated and released juvenile green floaters into Virginia rivers and streams. These efforts have the potential to restore populations of green floater in the future; however, they are currently limited in scope, and long-term population increases in the wild have yet to be documented.

Summary

Our analysis of the factors influencing the green floater revealed multiple threats to the current and future viability of the species: habitat loss or fragmentation; changes in water flows; degraded water quality; and impacts of climate change. Factors like low fecundity that are inherent to the species contribute to the likelihood of populations becoming extirpated, especially when populations consist of just a few individuals. Secondary factors that may pose a threat are the impacts that invasive species may have on the green floater. Other potential factors such as disease and predation were also considered but the extent of these issues and their effects on green floater populations are unknown. There are conservation programs and water quality standards that may benefit freshwater mussels but few that target the green floater specifically.

Many of the above-summarized risk factors may act synergistically or additively on the green floater. The combined impact of multiple stressors is likely more harmful than a single stressor acting alone. For the green floater, the inherent factor of having low fecundity is likely to work in conjunction with each of the other stressors to limit the species' ability to recover from catastrophes (*e.g.,* severe floods, droughts) or to expand the population when conditions are favorable. For a full explanation of the impact of stressors on the viability of the species, see chapter 4 of the SSA report (Service 2021, pp. 36–57).

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the species. To assess the current and future condition of the species, we evaluate 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.

Current Condition

To evaluate the current condition of the green floater, we considered the resiliency of the known population, the redundancy of populations or analysis

units, and the ecological or genetic representation within the species across its range. We assessed the resiliency of the 179 analysis units by evaluating the number of live green floaters reported per year and trend, the length of occupied stream segments, and habitat quality that were established based on evidence from documented studies, available unpublished information, and expert opinion (see Service 2021, appendix C). Metrics were evaluated in sequential order. Abundance and trend data from surveys were considered the most accurate indicators of current condition and the occupied habitat and habitat quality metrics were only assessed if abundance and trend data were lacking. Then current condition categories of high, medium, low, presumed extirpated, and historical/unknown were assigned to the analysis units. Condition categories were assigned as high, medium, or low resiliency in places where one or more live individuals were found in a geographic area since 1999. High resiliency indicates that green floaters are abundant (more than 100 individuals) in the analysis unit and that the population appears to be stable or increasing. For analysis units that meet the requirements for high resiliency, the amount of occupied habitat and habitat quality are not considered. Medium resiliency indicates either that green floaters are common (10 to 100 individuals) in the analysis unit and the population is stable or increasing, or that green floaters are abundant in the analysis unit and the population is decreasing. Medium resiliency also indicates that occupied steams are greater or equal to 1 km (0.62 mi) in length. Low resiliency indicates that green floaters are rare (fewer than 10 individuals) and that the likelihood of the population withstanding a stochastic event is low. Low resiliency also indicates that occupied steams are less than 1 km (0.62 mi) in length or observations are highly fragmented, and that the habitat is considered by experts to be less suitable for green floaters. Presumed extirpated was assigned to geographic areas where green floaters have not been found recently (1999 to 2019), and multiple surveys have been conducted and local experts do not expect to find them there in the future. Historical/unknown was assigned to geographic areas in which green floaters have not been found recently (1999 to 2019), but sufficient surveys have not been conducted to declare the analysis unit as having the condition ''presumed extirpated.''

The results of our analysis show that across the range of the green floater, 16 percent of analysis units are designated as having medium (13 percent) or high (3 percent) resiliency. The condition of the other 84 percent of analysis units is low (36 percent), presumed extirpated (14 percent), or historical/unknown (34 percent). In many of the analysis units where the green floater's condition is designated as medium or high, distribution is not continuous and small groups of green floaters are found in pockets of habitat. It is common to find fewer than 10 live individuals at a location in a survey year, and in many analysis units, few green floaters are found over long stretches of river. For example, in several analysis units in New York (including the Cohocton and Unadilla Rivers), green floaters were found in very low numbers dispersed over 20 to 30 miles of suitable habitat. In addition, there is one analysis unit in West Virginia (Knapp Creek) in which green floaters were found in 2014 in high numbers but, due to habitat alterations, were not found the subsequent year. In these unique cases, information provided by local experts helped determine the appropriate condition category.

Green floaters have not been found in approximately half (47 percent) of the analysis units since before 1999. However, many of these analysis units were categorized as historical/unknown because not enough surveys have been conducted to determine with high confidence that the species no longer occurs. Of the 179 analysis units, 60 are considered historical/unknown. Using present land use (*e.g.,* landscape attributes and water quality) and climate projections, we modeled the probabilities of the historical/unknown units being in each category (high, medium, low, or presumed extirpated). The results suggest that almost all of the analysis units designated as historical/unknown are likely in low condition, with a small subset of eight analysis units having a high likelihood of being presumed extirpated. The analysis indicates that green floaters currently occupy the majority (53 to 82 percent) of analysis units in their historical range (see full results in table 1).

TABLE 1—SUMMARY OF THE CURRENT CONDITION OF THE RESILIENCY OF GREEN FLOATER ANALYSIS UNITS, INCLUDING MODELED RESULTS FOR ANALYSIS UNITS IN THE HISTORICAL/UNKNOWN CATEGORY

	Number of analysis units			
	High	Medium	Low	Presumed extirpated
Current condition of high, medium, low, and presumed extirpated analysis units	6	24	64	25
Modeled condition of historical/unknown analysis units	*1	*1	51	8
Totals	7	25	115	33

*One analysis unit (South Branch Potomac, West Virginia) was predicted to have lower risk of being in the presumed extirpated or low categories. Therefore, the unit is likely in medium or high condition, but the model was not designed to predict one over the other.

The green floater must be able to respond to physical (*e.g.,* climate conditions, habitat conditions or structure across large areas) and biological changes (*e.g.,* novel diseases, pathogens, predators) in its environment into the future. The species' adaptive capacity is shown through its multiple reproductive strategies (*i.e.,* direct development of glochidia and use of host fish) and ability to occur over a large geographical range. The green floater occurs in both sides of the Eastern Continental Divide in the Atlantic Slope and Mississippi River drainages, a rare distribution for mussels, where it endures a wide array of climatic conditions (*e.g.,* temperatures) and elevational gradients (*e.g.,* 200 to 900 meters (650 to 3,000 feet) above sea level in West Virginia). We assume that there is little connectivity between populations separated by the Continental Divide now and there is significant genetic information indicating the species does not exist as a single continuous population as well. A zone of discontinuity exists suggesting individuals in the northern part of the

range are evolving separately from those in the southern parts (King *et al.* 1999, pp. S69–73, S76).

We considered the green floater's reproductive strategies as well as its broad historical geographic range to determine the breadth of the species' representation and adaptive capacity in five regions, which we refer to as representation units (Great Lakes, Mid-Atlantic, South Atlantic, Mississippi, and Gulf). The boundaries of these units are based on the major watersheds and locations of known genetic differences among green floater populations. The genetic differences that exist among populations north and south of the Potomac River indicate that populations in the Mid-Atlantic and South Atlantic representation units may be adapted to local environmental conditions (*e.g.,* temperature).

As discussed in the paragraphs above, the majority of the analysis units considered in the resiliency analysis are categorized as low or presumed extirpated, and these are scattered throughout four representation units (Great Lakes, Mid-Atlantic, South Atlantic, and Mississippi). The green floater is likely extirpated entirely from the Gulf representation unit. Analysis units designated as medium and high are unevenly distributed across the representation units: 17 are found in the Mid-Atlantic, 9 are found in the South Atlantic, 4 are found in the Mississippi, and none are found in the Great Lakes representation unit.

We considered the green floater's current redundancy by assessing the number of and distribution of healthy populations across the species' range. Thirty of the 179 analysis units (16 percent) were found to be sufficiently resilient (in medium or high condition). Green floater populations in six of these analysis units (designated as high condition) are thought to be capable of expanding their range if suitable adjacent habitat is available. Should a large-scale catastrophic event occur, the species would be best able to recover without human intervention in the Mid-Atlantic, South Atlantic, and Mississippi representation units.

Future Condition Projections

To assess the future condition of the green floater, we projected changes in land use and climate to model future conditions for each analysis unit to year 2060. We first modeled the probability that an analysis unit would be classified in each condition category based on historical land use and climate patterns. These probabilities produced by the present condition model represent the species' current (or baseline) risk profile. We then modeled future condition for each analysis unit out to year 2060 and incorporated a range of plausible scenarios for each parameter, including land use projections under four emission scenarios (A1B, A2, B1, and B2), and climate projections under 12 climate scenarios derived from six global climate models (bcc–csm1–1–m, BNU–ESM, CanESM2, GFDL–ESM2G, GFDL–ESM2M, inmcm4) and two representative concentration pathways (RCP 4.5 and 8.5) (see Service 2021, Appendix D). The presentation of the results focused on the probability that an analysis unit would be classified as either presumed extirpated or low condition, combining the two categories discussed in the current condition analysis. Presumed extirpated and low were grouped together in the results to accurately represent the uncertainty of the model for each category.

The variables most likely to have negative effects on green floater condition were the percentage of developed land, the patch density of developed land (*i.e.,* proportional cover of development and its spatial pattern), and mean runoff, which likely reflect deteriorating habitat quality from increased erosion, decreased substrate stability, and poor water quality.

The results of the present condition model indicated that all analysis units (179 total), except 4 in West Virginia and North Carolina, have a mean probability greater than 50 percent of being classified as presumed extirpated or low resiliency based on surrounding land use. Sixty-four of the 94 analysis units with confirmed occurrence are currently classified as having low resiliency, and the remaining 30 appear to be at high risk of becoming so, based on land use patterns. Most analysis units (97 of 179) are located within the Mid-Atlantic representative unit, which is the central region that has the greatest future risk. According to the future condition model, 2 of the 179 analysis units (1 percent) are projected to be in high condition in 2060, 4 analysis units (2 percent) are projected to be in medium condition, and 173 analysis units (97 percent) are projected to be in presumed extirpated or low condition. The future risk of an analysis unit being classified as presumed extirpated or low condition at 2060 was generally similar to baseline risk throughout the range; however, variation tended to be wider for most analysis units due to the added uncertainty across multiple future scenarios. The major rangewide trends indicate there is a high risk that future populations will have low resiliency in the central portion of the range and, according to the future condition model, a projected increase in risk in the remaining southern portion. Most populations have already been extirpated from regions where there is projected increase in development (the metro areas of Washington, District of Columbia; Philadelphia, Pennsylvania; New York, New York; and Albany, New York). The major exceptions are analysis units in the southern portion of the range surrounding Greensboro, North Carolina; Raleigh-Durham, North Carolina; and Lynchburg, Virginia. The risk of extirpation (presumed extirpated) is projected to increase 20 to 30 percent in populations in these metro areas (James, Dan, Eno, Neuse, and Tar River watersheds) by 2060. This suggests that increased risk in the southern portion of the range could have large impacts on species-level resilience and representation.

In summary, there are very few locations where the green floater is expected to continue to be healthy and sufficiently resilient into the future. By the year 2060, 97 percent of the known locations are likely to have low resiliency or will be extirpated. We anticipate a continued declining status of the green floater due to ongoing and increasing threats primarily related to increases in developed land use. Due to the biology and current distribution of the species, it is unlikely that green floaters will be able to disperse and shift their range in response to predicted habitat changes or novel threats in most watersheds.

Determination of Green Floater's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, our analysis indicates that the most important risk factor affecting the green floater's current and future status and trends is the destruction and modification of its habitat (Factor A). The primary drivers of the status of the species to the present have been excessive sedimentation, water quality degradation, alteration of water flows, loss and fragmentation of habitat, invasive species, and the effects of climate change (Factor A). Land-disturbing activities associated with development (*e.g.,* residential/commercial, energy, and transportation development) have contributed to soil erosion and excessive sedimentation in many areas of the green floater's range. Development and an increase in impervious surfaces have created conditions in which heavy rain events cause higher stream flows, which have eroded streambanks and riverbanks, increased turbidity, and decreased streambed stability at numerous sites. These conditions have also caused sediment and pollutants from a wide variety of anthropogenic sources (*e.g.,* mining, agriculture, wastewater, industrial discharge, oil and gas drilling operations) to wash into rivers and streams. Many of these stressors have directly killed green floaters while others have reduced the fitness of individuals or reduced fecundity.

We considered whether the green floater is presently in danger of extinction and determined that, despite the stressors acting upon the species, proposing endangered status is not appropriate. Green floaters currently occupy the majority (53 to 82 percent) of analysis units in their historical range. They are currently found in seven States, primarily occurring in the Atlantic Slope. Individuals have recently been found in New York, Pennsylvania, Maryland, West Virginia, Virginia, North Carolina, and Tennessee, although the range has contracted, and the species occurs as disjunct populations in rivers and streams in these States. Green floaters have been observed recently (since 1999) in 94 of the 179 analysis units and are likely to occur in another 52 units for which the status was modeled based on current land use patterns. Populations in 30 of the observed locations (32 percent) are currently healthy and resilient to stochastic events. Populations in six of the observed locations (6 percent) are likely capable of expanding their range if suitable adjacent habitat is available. These moderately to highly resilient populations are scattered across the Mid-Atlantic, South Atlantic, and Mississippi regions, an area covering both sides of the Eastern Continental Divide in the Atlantic Slope and Mississippi River drainages. Given the number and distribution of sufficiently resilient populations, the green floater is likely to persist at multiple locations should a large-scale catastrophic event occur, and it is unlikely that a single catastrophic event would affect the entire species across its large range.

The species' current representation (adaptive capacity) is evident through its use of two reproductive strategies (*i.e.,* direct development of glochidia and use of host fish) and continued persistence over a large geographical range where the climatic and habitat conditions vary widely. While threats are currently acting on the species and many of those threats are expected to continue into the future (see below), we did not find that the green floater is currently in danger of extinction throughout all of its range. With 30 moderately or highly resilient populations in three physiographic regions, the current condition of the species provides for enough resiliency, redundancy, and representation such that it is not currently at risk of extinction.

While the green floater is not currently in danger of extinction, under the Act we must determine whether the species is likely to become in danger of extinction within the foreseeable future throughout all of its range (*i.e.,* whether the species warrants listing as threatened). In the foreseeable future, we anticipate the status of the green floater to continue to decline due to ongoing and increasing threats primarily related to increases in developed land use (Factor A). By the year 2060, 173 (97 percent) of green floater analysis units have a mean probability greater than 50 percent of being in low condition or extirpated, and only 6 analysis units (3 percent) are expected to be moderately or highly resilient. Green floater populations in the Mid-Atlantic and South Atlantic regions that are currently the most highly resilient, especially those near growing metropolitan areas in North Carolina and Virginia, are expected to experience the greatest change. Loss of green floaters from these regions could impact the species' resilience and representation by severely decreasing its distribution in the central and southern parts of the range.

Concurrent with the growing threat of loss and degradation of habitat caused by development, climate change (Factor A) is expected to further exacerbate the degradation of green floater habitat through increased water temperatures, changes and shifts in seasonal patterns of precipitation and runoff, and extreme weather events such as flood or droughts. These changes will make the habitat less hospitable to the species in the future by disrupting fundamental ecological processes upon which the species relies to meet basic needs such as food and oxygen. The effects of climate change on the environment are expected to disrupt and limit green floater reproduction as well. Because of biological factors inherent to the species' life history, the green floater has likely always occurred in smaller populations compared to other mussel species. However, in conjunction with the climate-related stressors such as floods and droughts, small population size puts the species at high risk of becoming extirpated from sites where the habitat is in poor condition, such as those conditions expected with increased development. The cumulative effect of these threats will be continued decreases in the green floater's resiliency, redundancy, and representation, which will negatively impact the species' viability into the future. Thus, after assessing the best available information, we conclude that the green floater is not currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

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'' (hereafter ''Final Policy''; 79 FR 37578, July 1, 2014) that provided if the Service determines that a species is threatened throughout all of its range, the Service 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 green floater, 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 green floater 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 green floater, we considered whether the threats or their effects on the species are greater in any biologically meaningful portion of the species' range. We examined the following threats: excessive sedimentation, water quality degradation, alteration of water flows, the loss and fragmentation of habitat, invasive species, climate change, and factors inherent to the species, including cumulative effects.

We identified one portion of the species' range that warranted further consideration as a potentially significant portion of the range. We identified the Great Lakes representation unit as a portion of the range for further analysis because no populations with moderate or high resiliency are located there. We analyzed whether the Great Lakes representation unit might be a biologically meaningful portion of the species' range where threats are impacting individuals differently from how they are affecting the species elsewhere in its range. Overall, we found that the loss and degradation of suitable habitats caused by the threats is pervasive across the green floater's range and we did not identify any threats that were concentrated in any of the five representation units analyzed or other portions of the range, including the Great Lakes. However, although we did not identify any particular threats that are concentrated in the Great Lakes representation unit, all six analysis units in that area have low resiliency. It is possible that the threats affecting the Great Lakes region could be having a disproportionate impact in that area compared to the rest of the species' range. Therefore, the species' response to those threats may be causing the species in that portion of the range to have a different biological status than its biological status rangewide.

Because we concluded that the biological status of the green floater in the Great Lakes representation unit may differ from its biological status rangewide, we next evaluated whether or not this area is significant. Of the representation units that are currently occupied by green floaters, the Great Lakes unit is the smallest, covering the smallest land area and containing only 6 percent of the analysis units with confirmed occupancy rangewide. Although all representation units provide some contribution to the species' resiliency, representation, and redundancy, the Great Lakes representation unit encompasses only a small portion of the total range, the habitat there is not high quality relative to the other portions of the range, and the unit does not constitute high or unique value habitat for the species. Therefore, we concluded that the Great Lakes representation unit is not significant in the context of our ''significant portion of the range'' analysis.

The Gulf representation unit, which is part of the green floater's larger historical range, has no resilient populations, but because it is completely extirpated, we cannot consider it as part of this analysis to be a significant portion of the range.

While there may be some variation in the intensity of threats in the five representation units, we found that the loss and degradation of suitable habitats caused by the threats is pervasive across the species' range. Consequently, 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 need to consider whether any portions are significant, and, therefore, we did not apply the aspects of the Final Policy, including the definition of ''significant'' that those court decisions held to be invalid.

Determination of Status

Our review of the best available scientific and commercial information indicates that the green floater meets the Act's definition of a threatened species. Therefore, we propose to list the green floater as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies, including the Service, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies

recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (*https://www.fws.gov/program/endangered-species*), or from our New York Ecological Services Field Office (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.

If this species is 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 Alabama, Georgia, Maryland, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, Virginia, and West Virginia would be eligible for Federal funds to implement management actions that promote the protection or recovery of the green floater. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance*.

Although the green floater is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7 of the Act is titled Interagency Cooperation and mandates all Federal action agencies to use their existing authorities to further the conservation purposes of the Act and to ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. Regulations implementing section 7 are codified at 50 CFR part 402.

Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Each Federal agency shall review its action at the earliest possible time to determine whether it may affect listed species or critical habitat. If a determination is made that the action may affect listed species or critical habitat, formal consultation is required (50 CFR 402.14(a)), unless the Service concurs in writing that the action is not likely to adversely affect listed species or critical habitat. At the end of a formal consultation, the Service issues a biological opinion, containing its determination of whether the federal action is likely to result in jeopardy or adverse modification.

In contrast, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action which *is likely* to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. Although the conference procedures are required only when an action is likely to result in jeopardy or adverse modification, action agencies may voluntarily confer with the Service on actions that may affect species proposed for listing or critical habitat proposed to be designated. In the event that the subject species is listed or the relevant critical habitat is designated, a conference opinion may be adopted as a biological opinion and serve as compliance with section 7(a)(2).

Examples of discretionary actions for the green floater that may be subject to conference and consultation procedures under section 7 are land management or other landscape-altering activities on Federal lands administered by the U.S. Fish and Wildlife Service, U.S. Forest Service, and National Park Service, as well as 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 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. Examples of Federal agency actions that may require consultation for the green floater could include replacing and repairing bridges and culverts, road construction projects, and managing vegetation near streams. Federal agencies should coordinate with the local Service Field Office (see **FOR FURTHER INFORMATION CONTACT**, above) with any specific questions on section 7 consultation and conference requirements.

It the policy of the Service, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the extent known at the time a species is listed, specific activities that will not be considered likely to result in violation of section 9 of the Act. To the extent possible, activities that will be considered likely to result in violation will also be identified in as specific a manner as possible. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. Although most of the prohibitions in section 9 of the Act apply to endangered species, sections 9(a)(1)(G) and 9(a)(2)(E) of the Act prohibit the violation of any regulation under section 4(d) pertaining to any threatened species of fish or wildlife, or threatened species of plant, respectively. Section 4(d) of the Act directs the Secretary to promulgate protective regulations that are necessary and advisable for the conservation of threatened species. As a result, we interpret our policy to mean that, when we list a species as a threatened species, to the extent possible, we identify activities that will or will not be considered likely to result in violation of the protective regulations under section 4(d) for that species.

At this time, we are unable to identify specific activities that will or will not be considered likely to result in violation of section 9 of the Act beyond what is already clear from the descriptions of prohibitions and exceptions established by protective regulation under section 4(d) of the Act.

Questions regarding whether specific activities would constitute violation of section 9 of the Act should be directed to the New York Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

II. Proposed Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened species. The U.S. Supreme Court has noted that statutory language similar to the language in section 4(d) of the Act authorizing the Secretary to take action that she ''deems necessary and advisable'' affords a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592, 600 (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 one or more of the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld, as a valid exercise of agency authority, rules developed under section 4(d) that included limited prohibitions against takings (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 WL 2344927 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 WL 511479 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The provisions of this proposed 4(d) rule would promote conservation of the green floater by encouraging management of the habitat in ways that meet both stream management considerations and the conservation needs of the green floater. The provisions of this proposed rule are one of many tools that we would use to promote the conservation of the green floater. This proposed 4(d) rule would apply only if and when we make final the listing of the green floater as a threatened species.

As mentioned above in Available Conservation Measures, section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, even before the listing of any species or the designation of its critical habitat is finalized, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of critical habitat proposed to be designated for such species.

These requirements are the same for a threatened species with a species-specific 4(d) rule. For example, as with an endangered species, if a Federal agency determines that an action is ''not likely to adversely affect'' a threatened species, it will require the Service's written concurrence (50 CFR 402.13(c)). Similarly, if a Federal agency determinates that an action is ''likely to adversely affect'' a threatened species, the action will require formal consultation with the Service and the formulation of a biological opinion (50 CFR 402.14(a)).

Provisions of the Proposed 4(d) Rule

Exercising the Secretary's authority under section 4(d) of the Act, we have developed a proposed rule that is designed to address the green floater's conservation needs. As discussed above in Summary of Biological Status and Threats, we have concluded that the green floater is likely to become in danger of extinction within the foreseeable future primarily due to habitat degradation caused by development and climate change. Section 4(d) requires the Secretary to issue such regulations as she deems necessary and advisable to provide for the conservation of each threatened species and authorizes the Secretary to include among those protective regulations any of the prohibitions that section 9(a)(1) of the Act prescribes for endangered species. We find that, if finalized, the protections, prohibitions, and exceptions in this proposed rule as a whole satisfy the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the green floater.

The protective regulations we are proposing for green floater incorporate prohibitions from the Act's section 9(a)(1) to address the threats to the species. Section 9(a)(1) prohibits the following activities for endangered wildlife: importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, 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. This protective regulation includes all of these prohibitions because the green floater is at risk of extinction within the foreseeable future and putting these prohibitions in place will help prevent further declines, preserve the species' remaining populations, slow its rate of decline, and decrease synergistic, negative effects from other ongoing or future threats.

In particular, this proposed 4(d) rule would provide for the conservation of the green floater 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.

Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulations at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally.

Regulating take would help preserve the species' remaining populations, slow their rate of decline, and decrease synergistic, negative effects from other ongoing or future threats. Therefore, we propose to prohibit take of the green floater, except for take resulting from those actions and activities specifically excepted by the 4(d) rule.

Exceptions to the prohibition on take would include all of the general exceptions to the prohibition against take of endangered wildlife, as set forth in 50 CFR 17.21 and certain other specific activities that we propose for exception, as described below.

The proposed 4(d) rule would also provide for the conservation of the species by allowing exceptions that incentivize conservation actions or that, while they may have some minimal level of take of the green floater, are not expected to rise to the level that would have a negative impact (*i.e.,* would have only de minimis impacts) on the species' conservation. The proposed exceptions to these prohibitions include streambank restoration projects and bridge and culvert replacement or removal projects (described below) that are expected to have negligible impacts to the green floater and its habitat.

A major threat to the green floater is the degradation of stream habitat, particularly the erosion of banks, which leads to excessive sedimentation and poor water quality that can bury green floaters or deprive them of oxygen and nutrients. Stream bank restoration projects that stabilize and vegetate bare or incised stream banks help to reduce bank erosion and concomitant instream sedimentation and improve habitat conditions for the species. Streambank projects that use vegetation and bioengineering techniques (*e.g.,* instream structures to redirect flows) rather than hardscapes (*e.g.,* rock revetments and riprap) to stabilize the habitat create more suitable conditions for green floaters. Vegetated banks contribute to cooler water temperatures and provide habitat for other wildlife. When streambanks are stable, the streams are more resilient to damage caused by catastrophic events related to climate change like heavy precipitation and floods.

Bridge and culvert replacement or removal projects can benefit the green floater by restoring water flow to stream segments that have become disconnected from the larger watershed or improving fish passage or both. In places where bridges and culverts have collapsed, become blocked, or in some other way prevent the flow of water, green floater glochidia are not able to disperse to other suitable habitat, and reproduction and gene flow become limited. Water flows that are too slow to hold adequate oxygen can cause green floaters to become stressed or die. Before conducting instream activities in places where green floaters may occur, surveys are required to determine if they are present. Survey plans must be submitted to and approved by the local Service field office before conducting surveys. All surveys must be conducted by a qualified and permitted biologist, as allowed by Section 10(a)(1)(A) of the Act. If green floaters are found, the biologist must coordinate with their local Service field office regarding salvage and relocation of individuals to suitable habitat before project implementation. Should green floaters be relocated, monitoring must be conducted after project implementation. In most cases where water flows are very low, we would not expect conditions to support live green floaters. This step is meant to prevent unintended harm where individuals have survived and preserve potential adaptive traits to low-quality habitats.

Despite these prohibitions regarding threatened species, we may under certain circumstances issue permits to carry out one or more otherwise prohibited activities, including those described above. The regulations that govern permits for threatened wildlife state that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species. These include permits issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act (50 CFR 17.32). The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist us in implementing all aspects of the Act. In this regard, section 6 of the Act provides that we must cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with us in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve green floater that may result in otherwise prohibited take without additional authorization.

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or our ability to enter into partnerships for the management and protection of the green floater. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between us and other Federal agencies, where appropriate. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that we could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested, above).

III. Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures

that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that each Federal agency ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Rather, designation requires that, where a landowner requests Federal agency funding or authorization for an action that may affect an area designated as critical habitat, the Federal agency consult with the Service under section 7(a)(2) of the Act. If the action may affect the listed species itself (such as for occupied critical habitat), the Federal agency would have already been required to consult with the Service even absent the designation because of the requirement to ensure that the action is not likely to jeopardize the continued existence of the species. Even if the Service were to conclude after consultation that the proposed activity is likely to result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in 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 the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of those 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 absence of 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, the green floater occurs in small streams to large rivers with stable flow regimes and suitable substrates. When they occur in larger streams and rivers, they are found in quieter pools and eddies, away from strong currents. Their mobility is limited, and fast flowing currents or high-water events can cause them to lose their foothold and be washed downstream.

The primary habitat elements that influence resiliency of the green floater include water flow, streambed substrate, water quality, water temperature, and conditions that support their host fish. All life stages of green floaters require aquatic habitats with stable sand and gravel substrates, a sufficient amount of clean water with slow to moderate flow and refugia (*i.e.,* eddies and ponded areas in streams), and sufficient food resources (*i.e.,* microscopic particulates from plankton, bacteria, detritus, or dissolved organic matter). Based on what is known from studying surrogate species, glochidia require temperatures between 59 and 68 °F (15 and 20 °C) for release, and juvenile mussels cannot survive temperatures above 86 °F (30 °C). Green floaters have the ability reproduce by directly metamorphosing glochidia without requiring an intermediate fish host, but the use of fish hosts is necessary for upstream dispersal of the species. 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 report (Service 2021, pp. 18–35).

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of green floater from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the SSA report (Service 2021, entire; available on *https://www.regulations.gov* under Docket No. FWS–R5–ES–2023–0012). We have determined that the following physical or biological features are essential to the conservation of green floater:

(1) Flows adequate to maintain both benthic habitats and stream connectivity, allow glochidia and juveniles to become established in their habitats, allow the exchange of nutrients and oxygen to mussels, and maintain food availability and spawning habitat for host fishes. The characteristics of such flows include a stable, not flashy, flow regime, with slow to moderate currents to provide refugia during periods of higher flows.

(2) Suitable sand and gravel substrates and connected instream habitats characterized by stable stream channels and banks and by minimal sedimentation and erosion.

(3) Sufficient amount of food resources, including microscopic particulate matter (plankton, bacteria, detritus, or dissolved organic matter).

(4) 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, those general to other mussel species:

- Adequate dissolved oxygen;
- Low salinity;
- Low temperature (generally below 86 °F (30 °C));
- Low ammonia (generally below 0.5 parts per million total ammonia-nitrogen), PAHs, PCBs, and heavy metal concentrations; and
- No excessive total suspended solids and other pollutants, including contaminants of emerging concern.

(5) The presence and abundance of fish hosts necessary for recruitment of the green floater (including, but not limited to, mottled sculpin (*Cottus bairdii*), rock bass (*Ambloplites rupestris*), central stoneroller (*Campostoma anomalum*), blacknose dace (*Rhinichthys atratulus*), and margined madtom (*Noturus insignis*)).

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 green floater may require special management considerations or protection to reduce the following threats: (1) land-disturbing activities associated with development (*i.e.,* residential/commercial, energy, and transportation development); (2) agriculture and forestry activities that do not implement best management practices to minimize soil erosion and increased overland flow and (3) barriers that fragment streams and rivers (*e.g.,* dams and improperly installed or maintained culverts); (4) contaminants from point and non-point sources (*e.g.,* spills, industrial discharges, municipal effluents, agricultural runoff, and atmospheric deposition from precipitation); (5) impacts of climate change; and (6) potential effects of nonnative species.

Special management considerations or protection may be required within critical habitat areas to address these threats. Management activities that could ameliorate these threats include, but are not limited to, protecting and restoring streams and streambank habitats, including stable sand and gravel substrates; maintaining and restoring slow to moderate, not flashy, water flows in streams that may support the species; maintaining and restoring connectivity between streams; reducing or removing contaminants from waterways and sediments; coordinating with landowners and local managers to implement best management practices during agriculture and forestry activities; and minimizing the likelihood that agriculture or energy development projects will impact the quality or quantity of suitable habitat.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical

area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not currently proposing to designate any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the definition of critical habitat, and we have determined that the occupied areas are sufficient to conserve the species.

We anticipate that recovery will require maintaining and, where necessary, improving habitat and habitat connectivity to ensure the long-term viability of the green floater. We have determined that the areas containing one or more of the essential physical or biological features and occupied by the green floater are sufficient to maintain the species' resiliency, redundancy, and representation and to conserve the species. Therefore, we are not currently proposing to designate any areas outside the geographical area occupied by the species.

In summary, for areas within the geographic area occupied by the species at the time of listing, we delineated critical habitat stream segment boundaries using the following criteria: Evaluate suitability of streams within the hydrologic units occupied at the time of listing and delineate those areas that contain some or all of the physical or biological features necessary to support life-history functions essential to the conservation of the species. All stream segments proposed for designation contain one or more of the physical or biological features and support multiple life-history processes.

From the complete list of occupied watersheds (see Service 2021, appendix C), which were based on HUC 10 watersheds, we identified a subset of watersheds that provide the most highly suitable green floater habitat and present the best opportunities for the species' recovery. This subset includes all the analysis units classified as being in medium or high condition according to the SSA report (version 1.0; Service 2021, pp. 61–76). This subset also includes analysis units classified or modeled as being in low condition that are between or adjacent to units in medium or high condition. These low condition areas represent areas where green floaters are expected to be able to increase in numbers with the protections afforded by the Act, potentially increasing the future resiliency of the species. We then also identified analysis units classified or modeled as being in low condition in the SSA report, but that are disconnected from watersheds determined to be in better condition, that present opportunities to increase the species' future resiliency, redundancy, and representation.

The critical habitat designation does not include all rivers and streams currently occupied by the species, nor all rivers and streams known to have been occupied by the species historically. Instead, it includes only the occupied rivers and streams within the current range that we determined have the physical or biological features that are essential to the conservation of these species and meet the definition of critical habitat. These rivers and streams contain populations most likely to be self-sustaining over time and populations that will allow for the maintenance and expansion of the species. Adjacent units and disconnected units in low condition that are not being proposed as critical habitat have been omitted because they are located near highly developed areas or have very low-quality habitat that is unlikely to be restored to a condition suitable to support a healthy population of green floaters. Analysis units where green floater occupancy has not been confirmed since before 1999 have also been omitted because they are not considered currently occupied. The time period between 1999 and 2019 was selected to represent recent occurrences because this period covers approximately three generations of green floaters and is notable for the relative increase in mussel survey effort. We are not designating any areas outside the areas confirmed occupied by the green floater during this time period because we determined that these areas are sufficient to conserve the species.

In the selected analysis units, we identified the coordinates of the occupied rivers and streams and then refined the length of each segment by matching the starting and ending points to locations of known green floater occurrences collected between 1999 and 2019. We then expanded the area upstream to the next named tributary and downstream to the next confluence, stream intersection, or barrier. We assumed that where green floaters have been observed or collected, the entire stream is occupied upstream to the next named tributary and downstream to the next confluence, stream intersection, or barrier. Thus, we have interpreted ''occupied'' in a conservative manner and have assumed green floaters to be present in all stream segments with similar conditions that are physically accessible to the ones in which they have been documented.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack the physical or biological features necessary for green floaters. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We propose to designate as critical habitat stream and river segments 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.

Stream and river segments are proposed for designation based on one or more of the physical or biological features being present to support the green floater's life-history processes. All of the segments contain one or more of the physical or biological features necessary to support the green floater's particular use of that habitat. Because all of the proposed segments are currently occupied by the species, they are likely to contain all of the physical or biological features necessary to support the species to some degree, but the quality of those physical or biological features may not be in optimal condition. For example, a unit may have some sand and gravel substrates but the suitability of these substrates for green floaters may be improved if sources of sedimentation and erosion were minimized.

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *https://www.regulations.gov* at Docket No. FWS–R5–ES–2023–0012 and on our

internet site at *https://www.fws.gov/office/new-york-ecological-services-field.*

Proposed Critical Habitat Designation

We are proposing to designate approximately 2,553 river km (1,586 river mi) in eight units as critical habitat for the green floater. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for green floater. The eight areas we propose as critical habitat are the following watersheds: (1) Southwestern Lake Ontario, (2) Susquehanna, (3) Potomac, (4) Kanawha, (5) Lower Chesapeake, (6) Chowan-Roanoke, (7) Neuse-Pamlico, and (8) Upper Tennessee. Table 2 shows the proposed critical habitat units and subunits and the approximate area of each.

TABLE 2—PROPOSED CRITICAL HABITAT UNITS FOR THE GREEN FLOATER

[All proposed units are occupied by the species]

Critical habitat unit	Adjacent riparian land ownership by type	Approximate river km (mi)
Unit 1: Southwestern Lake Ontario Watershed (NY):		
1. Genesee River	Private	55.6 (34.6)
Unit 2: Susquehanna Watershed (NY and PA):		
2a. Susquehanna River	Public (State)	10.3 (6.4)
	Private	335.5 (208.5)
2b. Fivemile Creek	Private	13.9 (8.7)
2c. Cohocton River	Public (State, Local)	6.6 (4.1)
	Private	41.1 (25.6)
2d. Tioga River	Public (State)	0.6 (0.4)
	Private	15.1 (9.4)
2e. Chemung River	Public (State, Local)	11.0 (6.8)
	Private	62.0 (38.5)
2f. Catatonk Creek	Private	34.2 (21.2)
2g. Tunkhannock Creek	Private	4.5 (2.8)
2h. Tioughnioga River	Public (Local)	0.2 (0.1)
	Private	59.2 (36.8)
2i. Chenango River	Public (State)	6.3 (3.9)
	Private	134.7 (83.7)
2j. Unadilla River	Private	93.7 (58.2)
2k. Upper Susquehanna River	Private	99.3 (61.7)
2l. Pine Creek	Public (State)	39.1 (24.3)
	Private	76.4 (47.5)
2m. Marsh Creek	Public (State)	1.7 (1.1)
	Private	2.7 (1.7)
2n. West Branch Susquehanna	Private	45.8 (28.5)
2o. Buffalo Creek	Public (Local)	7.4 (4.6)
	Private	5.8 (3.5)
2p. Penns Creek	Public (Local)	0.3 (0.2)
	Private	35.2 (21.9)
Unit 3: Potomac Watershed (PA, MD, and WV):		
3a. Potomac River	Public (Federal, State)	52.7 (32.7)
	Private	27.6 (17.1)
3b. Patterson Creek	Private	22.3 (13.9)
3c. Sideling Hill Creek	Public (State)	16.5 (10.3)
	Private	34.8 (21.6)
3d. Cacapon River	Private	123.0 (76.5)
3e. Licking Creek	Private	6.7 (4.1)
3f. Back Creek	Private	46.8 (29.1)
Unit 4: Kanawha Watershed (NC, VA, and WV):		
4a. Greenbrier	Public (Federal, State)	258.0 (160.3)
	Private	1.7 (1.1)
4b. Deer Creek	Public (Federal, State)	17.4 (10.8)
4c. Knapp Creek	Public (Federal, State, Local)	30.3 (18.8)
	Private	1.9 (1.2)
4d. New River	Public (State)	6.5 (4.0)
	Private	9.0 (5.6)
4e. Little River (Kanawha)	Private	17.9 (11.1)
4f. South Fork New River	Private	146.7 (90.5)
Unit 5: Lower Chesapeake Watershed (VA):		
5a. Tye River	Public (Federal)	0.6 (0.4)
	Private	53.5 (33.2)
5b. Pedlar River	Private	8.6 (5.4)
Unit 6: Chowan-Roanoke Watershed (NC and VA):		
6a. Dan River	Public (State, Local)	2.5 (1.6)
	Private	218.8 (135.9)
6b. South Mayo	Public (State)	1.8 (1.1)
	Private	2.8 (1.8)
6c. North Mayo	Public (State)	2.5 (1.6)
	Private	3.4 (2.1)

TABLE 2—PROPOSED CRITICAL HABITAT UNITS FOR THE GREEN FLOATER—Continued

[All proposed units are occupied by the species]

Critical habitat unit	Adjacent riparian land ownership by type	Approximate river km (mi)
6d. Mayo River	Public (State)	15.9 (9.9)
	Private	9.2 (5.7)
6e. Meherrin River	Private	106.1 (65.9)
Unit 7: Neuse-Pamlico Watershed (NC):		
7a. Neuse River	Public (State, Local)	16.0 (9.9)
	Private	10.8 (6.7)
7b. Eno River	Public (Federal, State, Local)	33.1 (20.6)
	Private	21.3 (13.2)
7c. Flat River	Public (Federal, State, Local)	17.6 (10.9)
	Private	13.3 (8.3)
7d. Little River (Neuse-Pamlico)	Public (State, Local)	7.4 (4.6)
	Private	1.2 (0.8)
Unit 8: Upper Tennessee Watershed (NC):		
8. Watauga River	Private	16.0 (9.9)
Total		2,552.6 (1,586.1)

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all proposed units, and reasons why they meet the definition of critical habitat for the green floater, below. Each of these proposed units and subunits are occupied by the species and currently support the breeding, feeding, and sheltering needs for the species.

Unit 1: Southwestern Lake Ontario Watershed

Unit 1 consists of 55.6 stream km (34.6 mi) of the Genesee River in the Southwestern Lake Ontario watershed in Livingston County, New York, from New York Route 36 downstream to the river's confluence with White Creek. It includes the river channel up to the ordinary high water mark. Riparian lands that border the unit are all (100 percent) privately owned. This unit contains one or more of the physical or biological features essential to the species' conservation.

Special management considerations or protection may be required within Unit 1 to address excess nutrients, sediment, and pollutants that enter the river as well as recreation and management activities. Sources of these types of pollution are wastewater, agricultural runoff, and urban stormwater runoff that could come from the nearby towns of Avon, Geneseo, and Mount Morris adjacent to the river or towns located upstream. The Mount Morris Lake and Dam and Genesee River Gorge are approximately 2.4 km (1.5 mi) upstream of Unit 1. Management activities, such as debris and sediment removal at the dam and lake, as well as water releases from the dam, have the potential to impact the water quality and quantity in Unit 1.

Unit 2: Susquehanna Watershed

Unit 2 consists of 16 subunits of the Susquehanna watershed in New York (Broome, Chemung, Chenango, Cortland, Delaware, Herkimer, Madison, Otsego, Steuben, and Tioga Counties) and Pennsylvania (Bradford, Clinton, Columbia, Dauphin, Lackawanna, Luzerne, Lycoming, Montour, Northumberland, Perry, Snyder, Tioga, Union, and Wyoming Counties). Each of the subunits in this unit contain one or more of the physical or biological features essential to the species' conservation.

Special management considerations or protection may be required within Unit 2 to address excess nutrients, sediment, and pollutants that enter the river, construction projects, and conservation activities. Several major urban areas are encompassed by Unit 2, including Scranton, Pennsylvania, and Binghamton, New York, in addition to numerous small towns adjacent to rivers and streams that have the potential to influence the water quality and quantity in the unit. Future construction projects to repair or replace bridges, roads, culverts, and embankments; to remove debris; and to repair or remove hazard dams have the potential to impact habitat in this unit as well.

In New York, the U.S. Department of Agriculture's Natural Resources Conservation Service supports several programs designed to restore and conserve rivers and streams. Future restoration plans include construction of stream crossings, planting of riparian buffers, installation of streambank and shoreline protection, channel bed stabilization, and clearing and snagging woody debris from streams. During construction, these restoration activities may result in short-term impacts to water quality but are expected to benefit the green floater in the long term.

The subunits of Unit 2 overlap with numerous public lands for which existing protections and management will likely maintain habitat conditions that support the green floater (water quality, water quantity/flow, instream substrate, and connectivity) into the future. In Pennsylvania, these public lands include State-owned forests and natural areas (*e.g.,* Tioga and Tiadaghton State Forests, Pine Gorge State Natural Area, Algerine Wild Area) and State Parks (*e.g.,* Colton Point and L. Harrison State Parks). In New York, public lands include the Chenango Valley State Park and a series of easements associated with the Federal Wetlands Reserve Program. Each of these land types ensure some protection from development and land-disturbing activities. Activities on Wetlands Reserve Program easements that would affect vegetation or hydrology, or would alter wildlife patterns, would first require a compatible use permit, and only activities consistent with the long-term protection and enhancement of the easement area are authorized.

Subunit 2a is a total length of 345.8 km (214.9 mi) of the Susquehanna River in Tioga County, New York, and Columbia, Montour, and Northumberland Counties, Pennsylvania. This subunit includes the river channel up to the ordinary high water mark. The upper section of subunit 2a flows from the entrance of Owego Creek to Harvey's Creek. The lower section starts at Nescopeck Creek and flows to the confluence of Fishing Creek. The land adjacent to the Susquehanna River in this subunit is primarily private (97 percent), although

some land along the river is owned by the State of Pennsylvania (3 percent).

Subunit 2b consists of a 13.9-km (8.7-mi) segment of Fivemile Creek in Steuben County, New York. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of an unnamed tributary and ends at the confluence of Fivemile Creek and the Cohocton River. Riparian lands that border the subunit are all (100 percent) privately owned.

Subunit 2c consists of a 47.6-km (29.6-mi) segment of the Cohocton River in Steuben County, New York. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence of Cotton Creek and Tenmile Creek and ends at the confluence of the Tioga River and Middle Cohocton Creek. The land adjacent to the Cohocton River in this subunit is primarily private (86 percent), although some land along the river is owned by the State of New York (6 percent) and local governments (8 percent).

Subunit 2d consists of a 15.7-km (9.7-mi) segment of the Canisteo and Tioga Rivers in Steuben County, New York. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence of Tuscarora Creek at the Canisteo River and ends at the confluence of the Tioga River and Chemung River. The land adjacent to the Canisteo and Tioga Rivers in this subunit is primarily private (96 percent), although some land along the river is owned by the State (4 percent).

Subunit 2e consists of a 73.0-km (45.4-mi) segment of the Chemung River in Steuben and Chemung Counties, New York, and Bradford County, Pennsylvania. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence of the Tioga River with the Cohocton River and ends at the confluence of the Chemung River and the Susquehanna River. The land adjacent to the Tioga River in this subunit is primarily private (85 percent), although some land along the river is owned by the State (9 percent) and local governments (6 percent).

Subunit 2f consists of a 34.2-km (21.2-mi) segment of Catatonk Creek in Tioga County, New York, and Bradford County, Pennsylvania. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence of Miller Creek and Michigan Creek and ends at the confluence of Fishing Creek and West Branch Owego Creek. Riparian lands that border the subunit are all (100 percent) privately owned.

Subunit 2g consists of a 4.5-km (2.8-mi) segment of Tunkhannock Creek in Bradford, Wyoming, Lackawanna, and Luzerne Counties, Pennsylvania. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Billings Mill Brook and ends at the confluence of Tunkhannock Creek and the Susquehanna River. Riparian lands that border the subunit are all (100 percent) privately owned.

Subunit 2h consists of a 59.4-km (36.9-mi) segment of the Tioughnioga River in Broome and Cortland Counties, New York. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence of the East Branch Tioughnioga and West Branch Tioughnioga Rivers and ends at the confluence of the Tioughnioga River and the Chenango River. The land adjacent to the Tioughnioga River in this subunit is primarily private (nearly 100 percent), although some land along the river is owned by local governments (less than 1 percent).

Subunit 2i consists of a 140.9-km (87.6-mi) segment of the Chenango River in Broome, Chenango, and Madison Counties, New York. This subunit includes the river channel up to the ordinary high water mark. It starts in the Sangerfield River downstream of Ninemile Swamp and ends at the confluence of the Chenango River and the Susquehanna River. The land adjacent to the Chenango River in this subunit is primarily private (96 percent), although some land along the river is owned by the State of New York (4 percent).

Subunit 2j consists of a 93.7-km (58.2-mi) segment of the Unadilla River in Chenango, Herkimer, and Otsego Counties, New York. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of North Winfield Creek and ends at the confluence of the Unadilla River and the Susquehanna River. Riparian lands that border the subunit are all (100 percent) privately owned.

Subunit 2k consists of a 99.3-km (61.7-mi) segment of the Upper Susquehanna River in Broome, Chenango, Delaware, and Otsego Counties, New York, and Susquehanna County, Pennsylvania. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Mill Creek and ends at the entrance of Starrucca Creek. Riparian lands that border the subunit are all (100 percent) privately owned.

Subunit 2l consists of a 115.5-km (71.8-mi) segment of Pine Creek in Clinton, Lycoming, and Tioga Counties, Pennsylvania. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Phoenix Run and ends at the confluence of Pine Creek and the Susquehanna River. The land adjacent to Pine Creek in this subunit is owned by private entities (66 percent) and the State of Pennsylvania (34 percent).

Subunit 2m consists of a 4.4-km (2.7-mi) segment of Marsh Creek in Tioga County, New York. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Asaph Run and ends at the confluence of Marsh Creek and Pine Creek. The land adjacent to Marsh Creek in this subunit is owned by private entities (62 percent) and the State of Pennsylvania (38 percent).

Subunit 2n consists of a 45.8-km (28.5-mi) segment of the West Branch Susquehanna River in Lycoming, Northumberland, and Union Counties, Pennsylvania. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Muncy Creek and ends at the confluence of the West Branch Susquehanna River and the Susquehanna River. Riparian lands that border the subunit are all (100 percent) privately owned.

Subunit 2o consists of a 13.2-km (8.2-mi) segment of Buffalo Creek in Union County, Pennsylvania. This subunit includes the river channel up to the ordinary high water mark. It starts at the intersection of Johnson Mill Road and Buffalo Creek and ends at the confluence of Buffalo Creek and the West Branch Susquehanna River. The last segment of Buffalo Creek is also known as Mill Race. The land adjacent to Buffalo Creek in this subunit is owned by local governments (56 percent), nongovernmental organizations (5 percent), and private entities (39 percent).

Subunit 2p consists of a 35.5-km (22.1-mi) segment of Penns Creek in Dauphin, Northumberland, Perry, Snyder, and Union Counties, Pennsylvania. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of an unnamed tributary near the intersection of Penns Creek Road and Wildwood Road and ends at the confluence of Penns Creek and the Susquehanna River. The land adjacent to Penns Creek in this subunit is primarily private (99 percent), although some land along the creek is owned by local governments (1 percent).

Unit 3: Potomac Watershed

Unit 3 consists of six subunits of the Potomac watershed in Pennsylvania (Bedford and Fulton Counties),

Maryland (Allegany and Washington Counties), and West Virginia (Berkeley, Hampshire, Hardy, Mineral, and Morgan Counties). Each of the subunits in this unit contain one or more of the physical or biological features essential to the species' conservation.

Special management considerations or protection may be required within Unit 3 to address excess nutrients, sediment, and pollutants that enter the river, as well as maintenance and construction projects. Sources of these types of pollution are wastewater, agricultural runoff, and urban stormwater runoff that come from Cumberland, Maryland; Martinsburg, West Virginia; and numerous small towns adjacent to rivers and streams that influence the water quality and quantity in the unit. The Potomac River is adjacent to the Chesapeake and Ohio (C&O) Canal National Historical Park, a federally owned property managed by the National Park Service. In support of a recent project to stabilize a retaining wall within the banks of the Potomac River, National Park Service staff surveyed for freshwater mussels and observed 10 green floaters. Anticipated maintenance projects in the National Historical Park include dredging of sediment and repairs of utility lines, walls, and boat ramps along the C&O Canal. Future construction projects throughout the watershed to repair or remove hazard dams and canals, dredge sections of the river, install pipelines, and replace bridges have the potential to impact water quality and quantity in this unit as well.

The subunits of Unit 3 overlap with public lands for which protections and management will likely enable habitat conditions that support the green floater to remain high into the future. In Maryland, overlapping public lands include State-owned forests and parks (*e.g.,* Green Ridge State Forest and Fort Frederick State Park) and the C&O Canal National Historical Park. Beginning in Pennsylvania and continuing into Maryland, the forests and streams of Sideling Hill Creek are maintained as a nature preserve by The Nature Conservancy. These land types ensure some protection from development and land-disturbing activities.

Subunit 3a consists of an 80.3-km (49.9-mi) segment of the Potomac River in Washington County, Maryland, and Berkeley County, West Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of the Cacapon River and ends at the entrance of Downey Branch. The land adjacent to the Potomac River in this subunit is owned by the Federal (62 percent) and State (4 percent) governments and private entities (34 percent).

Subunit 3b consists of a 22.3-km (13.9-mi) segment of Patterson Creek in Mineral County, West Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Cabin Run and ends at the confluence of Patterson Creek and the Potomac River. Riparian lands that border the subunit are all (100 percent) privately owned.

Subunit 3c consists of a 51.3-km (31.9-mi) segment of Sideling Hill Creek in Allegany County, Maryland, and Bedford and Fulton Counties, Pennsylvania. This subunit includes the river channel up to the ordinary high water mark. It starts at the Rice Road crossing of West Branch Sideling Hill Creek and ends at the confluence of Sideling Hill Creek and the Potomac River. The land adjacent to Sideling Hill Creek in this subunit is owned by State governments (32 percent), nongovernmental organizations (7 percent), and private entities (61 percent).

Subunit 3d consists of a 123.0-km (76.5-mi) segment of the Cacapon River in Washington County, Maryland; and Hardy, Hampshire, and Morgan Counties, West Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Trout Run and ends at the confluence of the Cacapon River and the Potomac River. Riparian lands that border the subunit are all (100 percent) privately owned.

Subunit 3e consists of a 6.7-km (4.1-mi) segment of Licking Creek in Washington County, Maryland. This subunit includes the river channel up to the ordinary high water mark. It starts at the crossing of Pecktonville Road and ends at the confluence of Licking Creek and the Potomac River. Riparian lands that border the subunit are all (100 percent) privately owned.

Subunit 3f consists of a 46.8-km (29.1-mi) segment of Back Creek in Berkeley County, West Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Big Run and ends at the confluence of Back Creek and the Potomac River. Riparian lands that border the subunit are all (100 percent) privately owned.

Unit 4: Kanawha Watershed

Unit 4 consists of six subunits of the Kanawha watershed in North Carolina (Allegany, Ashe, and Watauga Counties), Virginia (Carroll and Grayson Counties), and West Virginia (Greenbrier, Monroe, Pocahontas, and Summers Counties). Each of the subunits in this unit contain one or more of the physical or biological features essential to the species' conservation.

Special management considerations or protection may be required within Unit 4 to address excess nutrients, sediment, and pollutants that enter the river, as well as land-disturbing activities. Sources of these types of pollution are wastewater, agricultural runoff, and urban stormwater runoff from the nearby towns of Boone, North Carolina; Lewisburg, West Virginia; and numerous small towns in the watershed that influence the water quality and quantity in the unit. Parts of the Kanawha waterhead are encompassed by the Monongahela National Forest, a federally owned property managed by the U.S. Forest Service. Anticipated projects within the National Forest that could impact water quality and quantity in this unit include vegetation management and removal, and maintenance of locks and dams.

In addition to the Monongahela National Forest, the subunits of Unit 4 overlap with numerous other public lands for which protections and management will help maintain habitat conditions that support the green floater. In West Virginia, overlapping public lands include State-owned forests (*e.g.,* Calvin Price and Seneca State Forests), parks (*e.g.,* Cass Scenic Railroad and Watoga State Parks), and wildlife management areas (*e.g.,* Rimel, Little River, and Neola Wildlife Management Areas). In Virginia, overlapping public lands include the New River Trail State Park. Each of these land types ensures some protection from development and land-disturbing activities.

Subunit 4a consists of a 259.7-km (161.4-mi) segment of the Greenbrier River in Greenbrier, Monroe, Pocahontas, and Summers Counties, West Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Cove Run and ends at the confluence of the Greenbrier River and the New River. The land adjacent to the Greenbrier River in this subunit is owned by the Federal (30 percent) and State (69 percent) governments and private entities (1 percent).

Subunit 4b consists of a 17.4-km (10.8-mi) segment of Deer Creek in Pocahontas County, West Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Hospital Run and ends at the confluence of Deer Creek and the Greenbrier River. The land adjacent to Deer Creek in this subunit is

owned by the Federal (34 percent) and State (66 percent) governments.

Subunit 4c consists of a 32.2-km (20-mi) segment of Knapp Creek in Pocahontas County, West Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence of Moore Run and Knapp Creek and ends at the confluence of Knapp Creek and the Greenbrier River. The land adjacent to Knapp Creek in this subunit is owned by the Federal (31 percent), State (62 percent), and local (1 percent) governments and private entities (6 percent).

Subunit 4d consists of a 15.5-km (9.7-mi) segment of the New River in Carroll and Grayson Counties, Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at Sarasota Lane and ends at the confluence of Chestnut Creek and the New River. The land adjacent to the New River in this subunit is owned by the State of Virginia (42 percent) and private entities (58 percent).

Subunit 4e consists of a 17.9-km (11.1-mi) segment of the Little River in the Kanawha watershed in Alleghany County, North Carolina, and Grayson County, Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Brush Creek and ends at the confluence of the Little River and the New River. Riparian lands that border the subunit are all (100 percent) privately owned.

Subunit 4f consists of a 145.7-km (90.5-mi) segment of the South Fork New River in Alleghany, Ashe, and Watauga Counties, North Carolina. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence of the East Fork South Fork New River, Middle Fork South Fork New River, and Winkler Creek and ends at the confluence of the South Fork New River and North Fork New River. Riparian lands that border the subunit are all (100 percent) privately owned.

Unit 5: Lower Chesapeake Watershed

Unit 5 consists of two subunits of the Lower Chesapeake watershed in Virginia (Amherst, Buckingham, and Nelson Counties). Each of the subunits in this unit contain one or more of the physical or biological features essential to the species' conservation.

Special management considerations or protection may be required within Unit 5 to address excess nutrients, sediment, and pollutants that enter the river. Sources of these types of pollution are wastewater, agricultural runoff, and urban stormwater runoff that come from Lynchburg, Virginia, and numerous small towns adjacent to rivers and streams that have the potential to influence the water quality and quantity in the unit.

Unit 5 overlaps with public lands for which protections and management will help to maintain habitat conditions that support the green floater. The George Washington and Jefferson National Forest, a federally owned property managed by the U.S. Forest Service, overlaps with Subunit 5a.

Subunit 5a consists of a 54.1-km (33.6-mi) segment of the Tye River in Amherst, Buckingham, and Nelson Counties, Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence of Coxs Creek and Campbell Creek and ends at the confluence of the Tye River and the James River. The land adjacent to the Tye River in this subunit is primarily private (99 percent), although some land along the river is owned by the Federal government (1 percent).

Subunit 5b consists of a 8.6-km (5.4-mi) segment of the Pedlar River in Amherst County, Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Horsley Creek and ends at the confluence of the Pedlar River and James River. Riparian lands that border the subunit are all (100 percent) privately owned.

Unit 6: Chowan-Roanoke Watershed

Unit 6 consists of five subunits in the Chowan-Roanoke watershed of North Carolina (Caswell, Rockingham, and Stokes Counties) and Virginia (Brunswick, Greensville, Halifax, Henry, Patrick, Pittsylvania, and Southampton Counties). Each of the subunits in this unit contain one or more of the physical or biological features essential to the species' conservation.

Special management considerations or protection may be required within Unit 6 to address excess nutrients, sediment, and pollutants that enter the river, as well as land-disturbing activities. Sources of these types of pollution are wastewater, agricultural runoff, and urban stormwater runoff from the nearby towns Eden, North Carolina; Danville, Virginia; and numerous small towns adjacent to rivers and streams that have the potential to influence the water quality and quantity in the unit. Land-disturbing activities to maintain locks and dams have the potential to impact water quality and quantity in this unit as well.

The subunits of Unit 6 overlap with public lands for which protections and management will likely enable habitat conditions that support the green floater to remain high into the future. State Parks along the Mayo River exist in both Virginia and North Carolina. In North Carolina, overlapping public lands include the Hanging Rock State Park. This designation as a State Park ensures some protection from development and land-disturbing activities.

Subunit 6a consists of a 221.3-km (137.5-mi) segment of the Dan River in Caswell, Rockingham, and Stokes Counties, North Carolina, and Halifax, Henry, Patrick, and Pittsylvania Counties, Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Squall Creek and ends at the entrance of County Line Creek. The land adjacent to the Dan River in this subunit is primarily private (98 percent), although some land along the river is owned by nongovernmental organizations (1 percent) and State and local governments (1 percent).

Subunit 6b consists of a 4.6-km (2.9-mi) segment of the South Mayo River in Henry County, Virginia, and Rockingham County, North Carolina. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Crooked Creek and ends at the confluence of the South Mayo River and the Mayo River. The land adjacent to the South Mayo River in this subunit is owned by State governments (39 percent) and private entities (61 percent).

Subunit 6c consists of a 5.9-km (3.7-mi) segment of the North Mayo River in Henry County, Virginia, and Rockingham County, North Carolina. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Jumping Branch and ends at the confluence of the North Mayo River and the Mayo River. The land adjacent to the North Mayo River in this subunit is owned by State governments (42 percent) and private entities (58 percent).

Subunit 6d consists of a 25.1-km (15.6-mi) segment of the Mayo River in Rockingham County, North Carolina. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence of the North Mayo and South Mayo Rivers and ends at the confluence of the Mayo River and the Dan River. The land adjacent to the Mayo River in this subunit is owned by the State of North Carolina (63 percent) and private entities (37 percent).

Subunit 6e consists of a 106.1-km (65.9-mi) segment of the Meherrin River in Brunswick, Greensville, and Southampton Counties, Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Shining Creek and ends at the entrance of Fountains Creek.

Riparian lands that border the subunit are all (100 percent) privately owned.

Unit 7: Neuse-Pamlico Watershed

Unit 7 consists of four subunits of the Neuse-Pamlico watershed in North Carolina (Durham, Johnston, Orange, Person, and Wake Counties). Each of the subunits in this unit contain one or more of the physical or biological features essential to the species' conservation.

Special management considerations or protection may be required within Unit 7 to address excess nutrients, sediment, and pollutants that enter the river, as well as urban development. Several major urban areas are encompassed by Unit 7, including the Raleigh-Durham metro area, in addition to numerous small towns adjacent to rivers and streams that have the potential to influence the water quality and quantity in the unit. Growth and development in the Raleigh-Durham area are expected to continue and special management protections may be required to address potential decreases of forest cover and increases of impervious surfaces.

The subunits of Unit 7 overlap with numerous public lands for which protections and management will likely help maintain habitat conditions that support the green floater. Overlapping public lands include State-owned properties such as the Falls Lake Recreation Area, Occoneechee Mountain and Mitchell Mill Natural Areas, Eno River State Park, and Eno River Diabase Sill Plant Conservation Preserve. Numerous county-owned properties (*e.g.,* Neuse River Greenway, Lake Michie Recreation Area, Durham County Parks, and Wake County Parks) overlap in Unit 7 as well. The Falls Lake Natural Area is part of a larger reservoir that is owned and managed by a network of partners, including the State and local governments and the U.S. Army Corps of Engineers. Each of these land types ensure some protection from development and land-disturbing activities.

Subunit 7a consists of a 26.8-km (16.6-mi) segment of the Neuse River in Johnston and Wake Counties, North Carolina. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Crabtree Creek and ends near Prestwick Drive. The land adjacent to the Neuse River in this subunit is owned by local governments (50 percent), the State of North Carolina (10 percent), nongovernmental organizations (10 percent), and private entities (30 percent).

Subunit 7b consists of a 54.4-km (33.8-mi) segment of the Eno River in Durham and Orange Counties, North Carolina. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of McGowan Creek and ends at Falls Lake. The land adjacent to the Eno River in this subunit is owned by Federal (3 percent), State (40 percent), and local (18 percent) governments, nongovernmental organizations (1 percent), and private entities (38 percent).

Subunit 7c consists of a 30.9-km (19.2-mi) segment of the Flat River in Durham and Person Counties, North Carolina. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence of the North Flat River and South Flat River and ends at Falls Lake. The land adjacent to the Flat River in this subunit is owned by Federal (8 percent), State (18 percent), and local (31 percent) governments, and private entities (43 percent).

Subunit 7d consists of an 8.6-km (5.4-mi) segment of the Little River in the Neuse-Pamlico watershed in Wake County, North Carolina. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence with Perry Creek and ends at the entrance of Big Branch. The land adjacent to the Little River in this subunit is owned by State (17 percent) and local (69 percent) governments, nongovernmental organizations (3 percent), and private entities (11 percent).

Unit 8: Upper Tennessee Watershed

Unit 8 consists of 16.0-km (9.9-mi) of the Watauga River in the Upper Tennessee Watershed in Watauga County, North Carolina, from the entrance of Baird Creek to the entrance of Beech Creek. It includes the river channel up to the ordinary high water mark. Riparian lands that border the unit are all (100 percent) privately owned. This unit contains one or more of the physical or biological features essential to the species' conservation.

Special management considerations or protection may be required within Unit 8 to address excess nutrients, sediment, and pollutants that enter the river. Sources of these types of pollution are wastewater, agricultural runoff, and urban stormwater runoff from numerous small towns and farms adjacent to rivers and streams.

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 authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

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 if any of the following four conditions occur: (1) the amount or extent of taking specified in the incidental take statement is exceeded; (2) 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; (3) 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 (4) 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 ''*Destruction or Adverse Modification*'' *Standard*

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat 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:

(1) Actions that would alter the minimum flow or the existing flow regime. Such activities could include, but are not limited to, impoundment, channelization, water diversion, water withdrawal, and hydropower generation. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the green floater and its fish hosts by decreasing or altering flows to levels that would adversely affect their ability to complete their life cycles.

(2) Actions that would significantly alter water chemistry or temperature. Such activities could include, but are not limited to, release of chemicals (including pesticides, pharmaceuticals, metals, and salts), biological pollutants, or heated effluents into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water conditions to levels that are beyond the tolerances of the mussel or its host fish and result in direct or cumulative adverse effects to these individuals and their life cycles.

(3) Actions that would significantly increase sediment deposition within the stream channel. Such activities could include, but are not limited to, excessive sedimentation from livestock grazing, road and other construction projects, oil and gas exploration and extraction, channel alteration, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances. When appropriate best management practices are not followed, these activities could eliminate or reduce the habitat necessary for the growth and reproduction of the green floater and its host fish by increasing the sediment deposition to levels that would adversely affect their ability to complete their life cycles.

(4) Actions that would significantly increase the algal community within the stream channel. Such activities could include, but are not limited to, release of nutrients into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities can result in excessive algal growth, which degrades or reduces habitat for the green floater and its fish hosts, by generating nutrients during their decay and decreasing dissolved oxygen levels to levels below the tolerances of the mussel and/or its fish hosts. Algae can also directly compete with mussel offspring by covering the sediment, thereby preventing the glochidia from settling into the sediment.

(5) Actions that would significantly alter channel morphology or geometry. Such activities could include, but are not limited to, channelization, impoundment, road and bridge construction, pipeline and utility maintenance, oil and gas extraction, mining, dredging, and destruction of riparian vegetation. These activities may lead to changes in water flows and levels that would degrade or eliminate the mussel or its fish hosts and/or their habitats. These actions can also lead to increased sedimentation and degradation in water quality to levels that are beyond the tolerances of the green floater or its fish hosts.

(6) Actions that result in the introduction, spread, or augmentation of nonnative aquatic species in occupied stream segments, or in stream segments that are hydrologically connected to occupied stream segments, even if those segments are occasionally intermittent, or introduction of other species that compete with or prey on the green floater. Possible actions could include, but are not limited to, stocking of nonnative fishes, stocking of sport fish, or other related actions. These activities can introduce parasites or disease for host fish, and could result in direct predation, or affect the growth, reproduction, and survival, of green floaters.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act Improvement Act of 1997 (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. No DoD lands with a completed INRMP are within the proposed critical habitat 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 designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of

Section 4(b)(2) of the Endangered Species Act (hereafter, the ''2016 Policy''; 81 FR 7226, February 11, 2016), both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled, ''The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act'' (M–37016).

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. In our final rules, we explain any decision to exclude areas, as well as decisions not to exclude, to make clear the rational basis for our decision. We describe below the process that we use for taking into consideration each category of impacts and any initial analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). Therefore, the baseline represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

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. Section 3(f) of E.O. 12866 identifies four criteria for when a regulation is considered a ''significant regulatory action,'' and if any one of these criteria are met, the regulation requires additional analysis, review, and approval. The criterion relevant here is whether the designation of critical habitat may have an economic effect of $200 million or more in any given year. Therefore, our consideration of economic impacts uses a screening analysis to assess whether a designation of critical habitat for the green floater is likely to have an annual effect on the economy of $200 million or more.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the green floater (IEc 2022, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes any probable incremental economic impacts where land and water use may already be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The presence of the listed species in occupied areas of critical habitat means that any destruction or adverse modification of those areas is also likely to jeopardize the continued existence of the species. Therefore, designating occupied areas as critical habitat typically causes little if any incremental impacts above and beyond the impacts of listing the species. As a result, we generally focus the screening analysis on areas of unoccupied critical habitat (unoccupied units or unoccupied areas within occupied units). Overall, the screening analysis assesses whether designation of critical habitat is likely to result in any additional management or conservation efforts that may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM constitute what we consider to be our draft economic analysis (DEA) of the proposed critical habitat designation for the green floater; our DEA is summarized in the narrative below.

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 proposed designation of critical habitat for the green floater, first we identified, in the IEM dated June 7, 2022, probable incremental economic impacts associated with the following categories of activities: (1) culvert and bridge replacement; (2) pipeline maintenance;

(3) bank stabilization; (4) stream crossing; (5) watershed restoration; (6) road construction and maintenance; (7) pesticide use; (8) streambank and shoreline protection; (9) channel bed stabilization; and (10) riparian forest buffer. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we list the species, in areas where the green floater is present, Federal agencies would be required to consult with the Service under section 7 of the Act on activities they authorize, fund, or carry out that may affect the species. If, when we list the species, we also finalize this proposed critical habitat designation, Federal agencies would be required to consider the effects of their actions on the designated habitat, and if the Federal action may affect critical habitat, our consultations would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the green floater's critical habitat. Because the designation of critical habitat for green floater is being proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would likely adversely affect the essential physical or biological features of occupied critical habitat are also likely to adversely affect the green floater itself. 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 proposed designation of critical habitat.

The proposed critical habitat designation for the green floater totals approximately 2,553 km (1,586 mi) of stream in eight units, all of which are currently occupied by the species. Ownership of riparian lands adjacent to the proposed units includes 2,007 km (1,247 mi; 79 percent) in private ownership and 546 km (339 mi; 21 percent) in public (Federal, State, or local government) ownership.

The total incremental costs of critical habitat designation for the green floater is anticipated to be less than $8.8 million per year. The costs are reflective of the proposed critical habitat area, the presence of the species (*i.e.,* already occupied) in these areas, and the presence of other federally listed species and designated critical habitats. Since consultation is already required in some of these areas as a result of the presence of three other aquatic listed species (*i.e.,* candy darter (*Etheostoma osburni*), Carolina madtom (*Noturus furiosus*), and Neuse River waterdog (*Necturus lewisi*)) and their critical habitats and would be required as a result of the listing of the green floater, the economic costs of the critical habitat designation would likely be primarily limited to additional administrative efforts to consider adverse modification for the green floater in section 7 consultations. In total, 4,198 section 7 consultation actions (approximately 58 formal consultations, 3,100 informal consultations, and 1,040 technical assistance efforts) are anticipated to occur annually in proposed critical habitat areas. Critical habitat may also trigger additional regulatory changes. For example, the designation may cause other Federal, State, or local permitting or regulatory agencies to expand or change standards or requirements. Regulatory uncertainty generated by critical habitat may also have impacts. For example, landowners or buyers may perceive that the rule would restrict land or water use activities in some way and therefore value the use of the land less than they would have absent critical habitat. This is a perception, or stigma, effect of critical habitat on markets.

We are soliciting data and comments from the public on the DEA discussed above, as well as on all aspects of this proposed rule and our required determinations. During the development of a final designation, we will consider the information presented in the DEA and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2), our implementing regulations at 50 CFR 424.19, and the 2016 Policy. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), then national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' However, the Service must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i) because section 4(b)(2) requires the Service to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal requester provides information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that

could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for green floater are not owned or managed by the DoD or DHS, and, therefore, we anticipate no impact on national security or homeland security.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as HCPs, safe harbor agreements (SHAs), or candidate conservation agreements with assurances (CCAAs)—or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other impacts that might occur because of the designation.

Summary of Exclusions Considered Under 4(b)(2) of the Act

In preparing this proposal, we have determined that no HCPs or other management plans for the green floater currently exist, and the proposed designation does not include any Tribal lands or trust resources or any lands for which designation would have any economic or national security impacts. Therefore, we anticipate no impact on Tribal lands, partnerships, or HCPs from this proposed critical habitat designation and thus, as described above, we are not considering excluding any particular areas on the basis of the presence of conservation agreements or impacts to trust resources.

However, if through the public comment period we receive information that we determine indicates that there are potential economic, national security, or other relevant impacts from designating particular areas as critical habitat, then as part of developing the final designation of critical habitat, we will evaluate that information and may conduct a discretionary exclusion analysis to determine whether to exclude those areas under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19. If we receive a request for exclusion of a particular area and after evaluation of supporting information we do not exclude, we will fully describe our decision in the final rule for this action.

Required Determinations

Clarity of the Rule

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

(1) Be logically organized;
(2) Use the active voice to address readers directly;
(3) Use clear language rather than jargon;
(4) Be divided into short sections and sentences; and
(5) Use lists and tables wherever possible.

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

Regulatory Planning and Review—Executive Orders 12866, 13563, and 14094

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 final rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that

might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designation. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare statements of energy effects when undertaking certain actions. Facilities that provide energy supply, distribution, or use (*e.g.,* dams, pipelines) occur within some units of the proposed critical habitat designation 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 this proposed critical habitat designation would significantly affect energy supplies, distribution, or use and will not have an annual effect on the economy of $200 million or more. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

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

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

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because it will not produce a Federal mandate of $200 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 and, as such, a Small Government Agency Plan is not required. 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 green floater in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that

would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designation of critical habitat for green floater, and it concludes that, if adopted, this designation of critical habitat 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 proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the Federal government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This 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)).

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), E.O. 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 Secretaries' Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands fall within the boundaries of the proposed critical habitat for the green floater, so no Tribal lands would be affected by the proposed designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the New York Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the New York Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

■ 2. In § 17.11, in paragraph (h), amend the List of Endangered and Threatened Wildlife by adding an entry for ''Floater, green'' 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				
* * * * * * *				
Floater, green	*Lasmigona subviridis*	Wherever found	T	[**Federal Register** citation when published as a final rule]; 50 CFR 17.45(h); [4d] 50 CFR 17.95(f).[CH]
* * * * * * *				

■ 3. Amend § 17.45 by adding a new paragraph (h) to read as follows:

§ 17.45 Special rules—snails and clams.

* * * * *

(h) Green floater (*Lasmigona subviridis*)—(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the green floater. Except as provided under paragraph (h)(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 (4) for endangered wildlife.

(iii) Take, as set forth at § 17.31(b).

(iv) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

(v) Take incidental to an otherwise lawful activity caused by:

(A) Stream bank restoration 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. Following these bioengineering methods, stream banks must be stabilized using native species appropriate for the region (*e.g.,* 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)). These methods must not include the sole use of quarried rock (riprap) or the use of rock baskets (*e.g.,* gabion baskets). Stream bank restoration projects must also satisfy all Federal, State, and local permitting requirements.

(B) Bridge or culvert replacement/removal projects that remove migration barriers (*e.g.,* collapsing, blocked, or perched culverts) or generally allow for improved connectivity and upstream and downstream movements of green floaters or their fish hosts while maintaining normal stream flows, preventing bed and bank erosion, and improving habitat conditions for the species (using aquatic organism passage methods). Before starting stream crossing activities, surveys to determine presence of green floaters must be performed by a qualified and permitted biologist (defined as a biologist or aquatic resources manager that has been approved by the Service to locate, identify, and handle green floaters as allowed by Section 10(a)(1)(A) of the Endangered Species Act). Before conducting instream activities in places where green floaters may occur, surveys are required to determine if they are present. Survey plans must be submitted to and approved by the local Service field office before conducting surveys. If green floaters are found, the biologist must coordinate with their local Service field office regarding salvage and relocation of individuals to suitable habitat before project implementation. Should green floaters be relocated, monitoring must be conducted after project implementation. Bridge or culvert replacement/removal projects must also satisfy all Federal, State, and local permitting requirements.

■ 4. In § 17.95, amend paragraph (f) by adding an entry for ''Green Floater (*Lasmigona subviridis*)'' immediately before the entry for ''Carolina Heelsplitter (*Lasmigona decorata*)'', to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and Snails.*

* * * * *

Green Floater (*Lasmigona subviridis*)

(1) Critical habitat units are depicted on the maps in this entry for Allegany and Washington Counties, Maryland; Broome, Chemung, Chenango, Cortland, Delaware, Herkimer, Livingston, Madison, Otsego, Steuben, and Tioga Counties, New York; Allegany, Ashe, Caswell, Durham, Johnston, Orange, Person, Rockingham, Stokes, Wake, and Watauga Counties, North Carolina; Bedford, Bradford, Clinton, Columbia, Dauphin, Fulton, Lackawanna, Luzerne, Lycoming, Montour, Northumberland, Perry, Snyder, Susquehanna, Tioga, Union, and Wyoming Counties, Pennsylvania; Amherst, Brunswick, Buckingham, Carroll, Grayson, Greensville, Halifax, Henry, Nelson, Patrick, Pittsylvania, and Southampton Counties, Virginia; and Berkeley, Greenbrier, Hampshire, Hardy, Mineral, Monroe, Morgan, Pocahontas, and Summers Counties, West Virginia.

(2) Within these areas, the physical or biological features essential to the conservation of the green floater consist of the following components:

(i) Flows adequate to maintain both benthic habitats and stream connectivity, allow glochidia and juveniles to become established in their habitats, allow the exchange of nutrients and oxygen to mussels, and maintain food availability and spawning habitat for host fishes. The characteristics of

such flows include a stable, not flashy, flow regime, with slow to moderate currents to provide refugia during periods of higher flows.

(ii) Suitable sand and gravel substrates and connected instream habitats characterized by stable stream channels and banks and by minimal sedimentation and erosion.

(iii) Sufficient amount of food resources, including microscopic particulate matter (plankton, bacteria, detritus, or dissolved organic matter).

(iv) 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, those general to other mussel species:

(A) Adequate dissolved oxygen;

(B) Low salinity;

(C) Low temperature (generally below 86 °F (30 °C));

(D) Low ammonia (generally below 0.5 parts per million total ammonia-nitrogen), polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), and heavy metal concentrations; and

(E) No excessive total suspended solids and other pollutants, including contaminants of emerging concern.

(v) The presence and abundance of fish hosts necessary for recruitment of the green floater (including, but not limited to, mottled sculpin (*Cottus bairdii*), rock bass (*Ambloplites rupestris*), central stoneroller (*Campostoma anomalum*), blacknose dace (*Rhinichthys atratulus*), and margined madtom (*Noturus insignis*)).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of the final rule.

(4) Data layers defining map units were created by overlaying Natural Heritage Element Occurrence data and U.S. Geological Survey hydrologic data for stream reaches. The hydrologic data used in the critical habitat maps were extracted from the U.S. Environmental Protection Agency's National Hydrography Dataset Plus Version 2 (NHDPlusV2) 1:100k scale nationwide hydrologic layer (USEPA 2012, unpaginated) with a projection of NAD83 Geographic. Natural Heritage program and State mussel database species presence data from Maryland, New York, North Carolina, Pennsylvania, Virginia, and West Virginia were used to select specific river and stream segments for inclusion in the critical habitat layer. The U.S. Major Rivers database is from ArcGIS Online (last modified February 22, 2018) with a projection of World Geodetic System (WGS) 1984 Web Mercator Auxiliary Sphere. 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://fws.gov/office/new-york-ecological-services-field,* at *https://www.regulations.gov* at Docket No. FWS–R5–ES–2023–0012, 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 follows:

Figure 1 to Green Floater (*Lasmigona subviridis*) paragraph (5)

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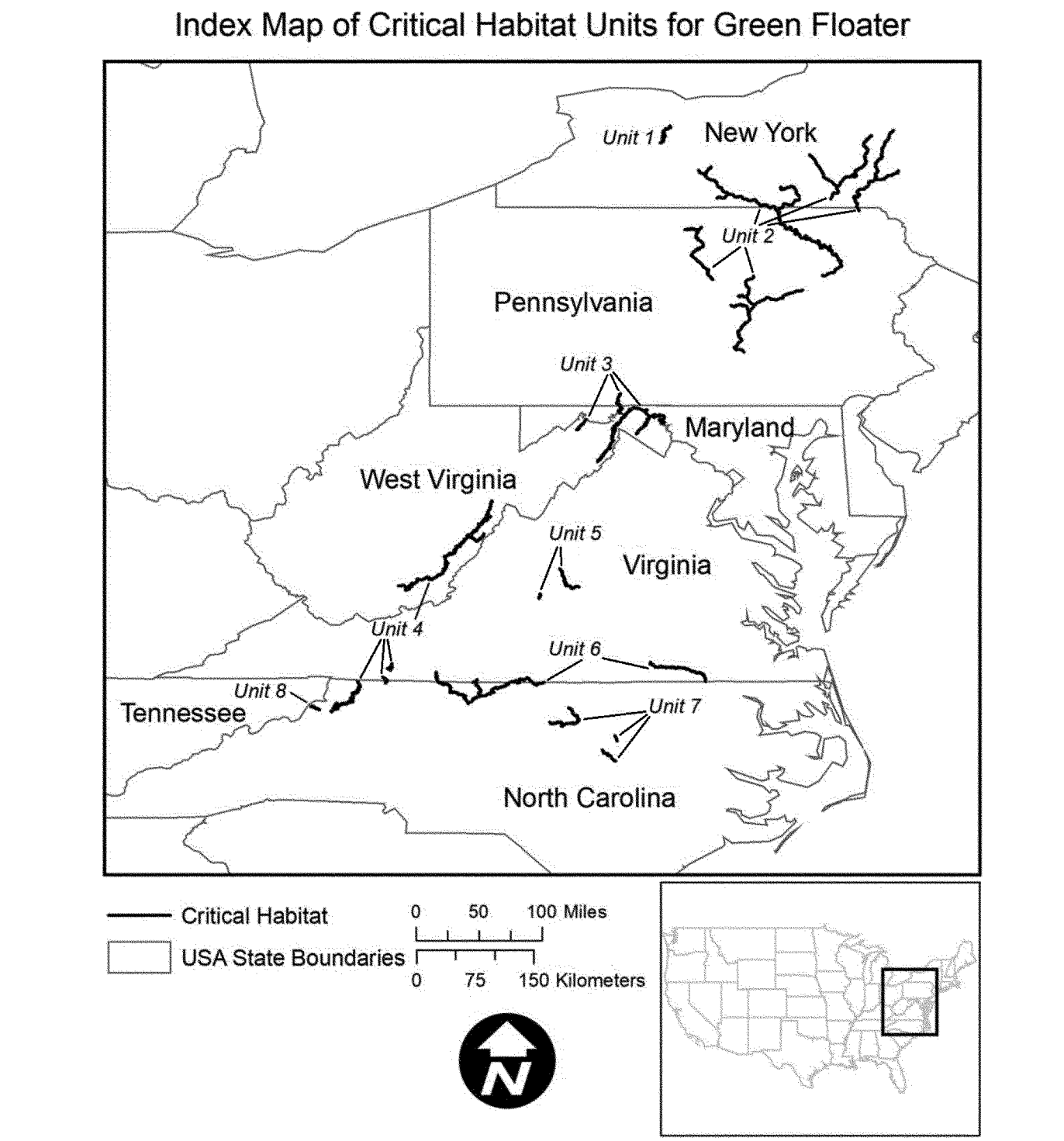
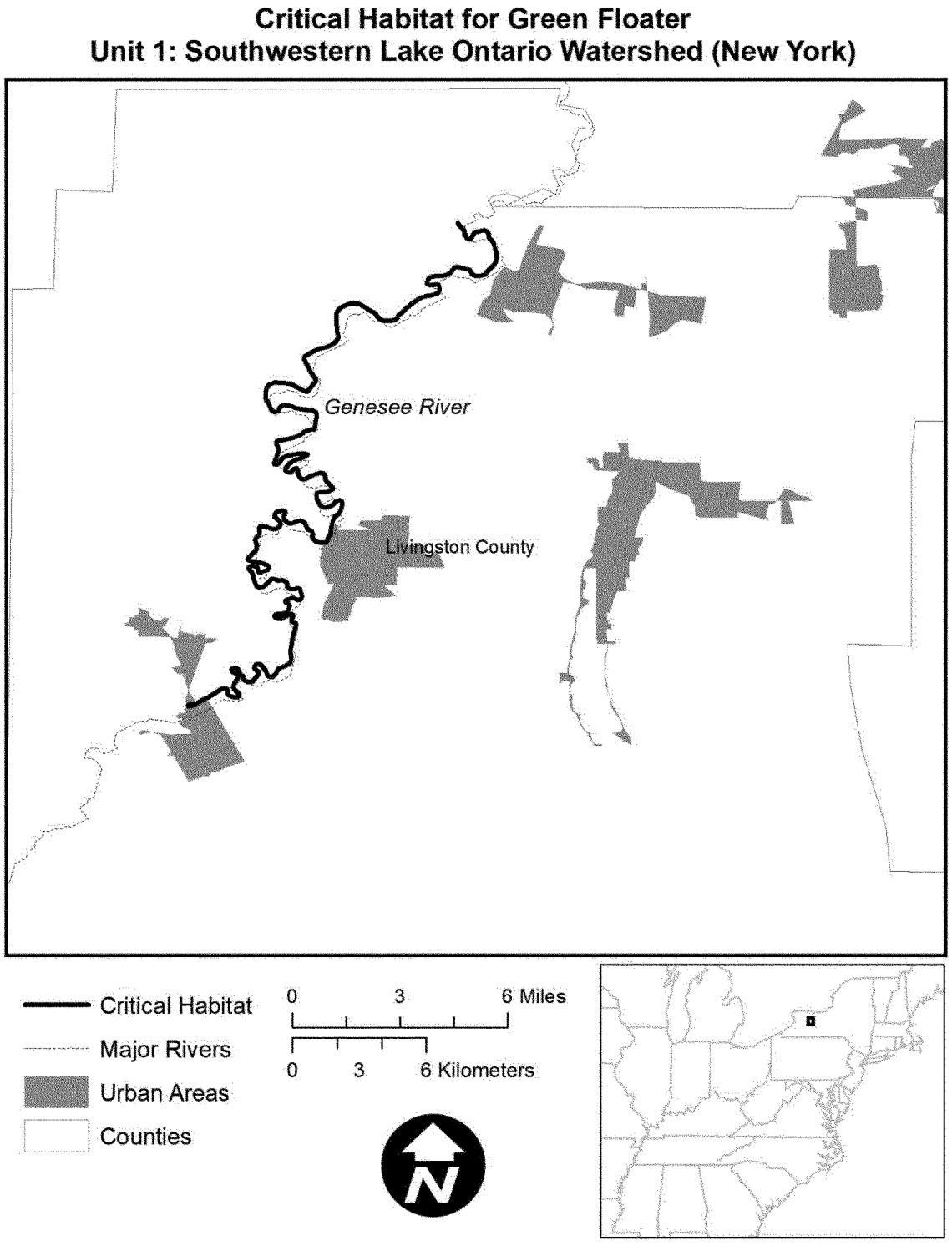


(6) Unit 1: Southwestern Lake Ontario Watershed (Livingston County, New York).

(i) Unit 1 consists of 55.6 stream kilometers (km) (34.6 stream miles (mi)) of the Genesee River in Livingston County, New York, from New York Route 36 downstream to the river's confluence with White Creek. It includes the river channel up to the ordinary high water mark.

(ii) Map of Unit 1 follows:

Figure 2 to Green Floater (*Lasmigona subviridis*) paragraph (6)(ii)



(7) Unit 2: Susquehanna Watershed (Broome, Chemung, Chenango, Cortland, Delaware, Herkimer, Madison, Otsego, Steuben, and Tioga Counties, New York; and Bradford, Clinton, Columbia, Dauphin, Lackawanna, Luzerne, Lycoming, Montour, Northumberland, Perry, Snyder, Susquehanna, Tioga, Union, and Wyoming Counties, Pennsylvania).

(i) Unit 2 consists of the following 16 subunits:

(A) Subunit 2a is a total length of 345.8 km (214.9 mi) of the Susquehanna River in Tioga County, New York, and Columbia, Montour, and Northumberland Counties, Pennsylvania. This subunit includes the

river channel up to the ordinary high water mark. The upper section of Subunit 2a flows from the entrance of Owego Creek to Harvey's Creek. The lower section starts at Nescopeck Creek and flows to the confluence of Fishing Creek.

(B) Subunit 2b consists of a 13.9-km (8.7-mi) segment of Fivemile Creek in Steuben County, New York. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of an unnamed tributary and ends at the confluence of Fivemile Creek and the Cohocton River.

(C) Subunit 2c consists of a 47.6-km (29.6-mi) segment of the Cohocton River in Steuben County, New York. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence of Cotton Creek and Tenmile Creek and ends at the confluence of the Tioga River and Middle Cohocton Creek.

(D) Subunit 2d consists of a 15.7-km (9.7-mi) segment of the Canisteo and Tioga Rivers in Steuben County, New York. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence of Tuscarora Creek at the Canisteo River and ends at the confluence of the Tioga River and Chemung River.

(E) Subunit 2e consists of a 73.0-km (45.4-mi) segment of the Chemung River in Steuben and Chemung Counties, New York, and Bradford County, Pennsylvania. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence of the Tioga River with the Cohocton River and ends at the confluence of the Chemung River and the Susquehanna River.

(F) Subunit 2f consists of a 34.2-km (21.2-mi) segment of Catatonk Creek in Tioga County, New York, and Bradford County, Pennsylvania. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence of Miller Creek and Michigan Creek and ends at the confluence of Fishing Creek with West Branch Owego Creek.

(G) Subunit 2g consists of a 4.5-km (2.8-mi) segment of Tunkhannock Creek in Bradford, Wyoming, Lackawanna, and Luzerne Counties, Pennsylvania. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Billings Mill Brook and ends at the confluence of Tunkhannock Creek and the Susquehanna River.

(H) Subunit 2h consists of a 59.4-km (36.9-mi) segment of the Tioughnioga River in Broome and Cortland Counties, New York. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence of the East Branch Tioughnioga and West Branch Tioughnioga Rivers and ends at the confluence of the Tioughnioga River and the Chenango River.

(I) Subunit 2i consists of a 140.9-km (87.6-mi) segment of the Chenango River in Broome, Chenango, and Madison Counties, New York. This subunit includes the river channel up to the ordinary high water mark. It starts in the Sangerfield River downstream of Ninemile Swamp and ends at the confluence of the Chenango River and the Susquehanna River.

(J) Subunit 2j consists of a 93.7-km (58.2-mi) segment of the Unadilla River in Chenango, Herkimer, and Otsego Counties, New York. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of North Winfield Creek and ends at the confluence of the Unadilla River and the Susquehanna River.

(K) Subunit 2k consists of a 99.3-km (61.7-mi) segment of the Upper Susquehanna River in Broome, Chenango, Delaware, and Otsego Counties, New York, and Susquehanna County, Pennsylvania. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Mill Creek and ends at the entrance of Starrucca Creek.

(L) Subunit 2l consists of a 115.5-km (71.8-mi) segment of Pine Creek in Clinton, Lycoming, and Tioga Counties, Pennsylvania. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Phoenix Run and ends at the confluence of Pine Creek and the Susquehanna River.

(M) Subunit 2m consists of a 4.4-km (2.7-mi) segment of Marsh Creek in Tioga County, New York. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Asaph Run and ends at the confluence of Marsh Creek and Pine Creek.

(N) Subunit 2n consists of a 45.8-km (28.5-mi) segment of the West Branch Susquehanna River in Lycoming, Northumberland, and Union Counties, Pennsylvania. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Muncy Creek and ends at the confluence of the West Branch Susquehanna River and the Susquehanna River.

(O) Subunit 2o consists of a 13.2-km (8.2-mi) segment of Buffalo Creek in Union County, Pennsylvania. This subunit includes the river channel up to the ordinary high water mark. It starts at the intersection of Johnson Mill Road and Buffalo Creek and ends at the confluence of Buffalo Creek and the West Branch Susquehanna River. The last segment of Buffalo Creek is also known as Mill Race.

(P) Subunit 2p consists of a 35.5-km (22.1-mi) segment of Penns Creek in Dauphin, Northumberland, Perry, Snyder, and Union Counties, Pennsylvania. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of an unnamed tributary near the intersection of Penns Creek Road and Wildwood Road and ends at the confluence of Penns Creek and the Susquehanna River.

(ii) Maps of Unit 2 follow:

Figure 3 to Green Floater (*Lasmigona subviridis*) paragraph (7)(ii)

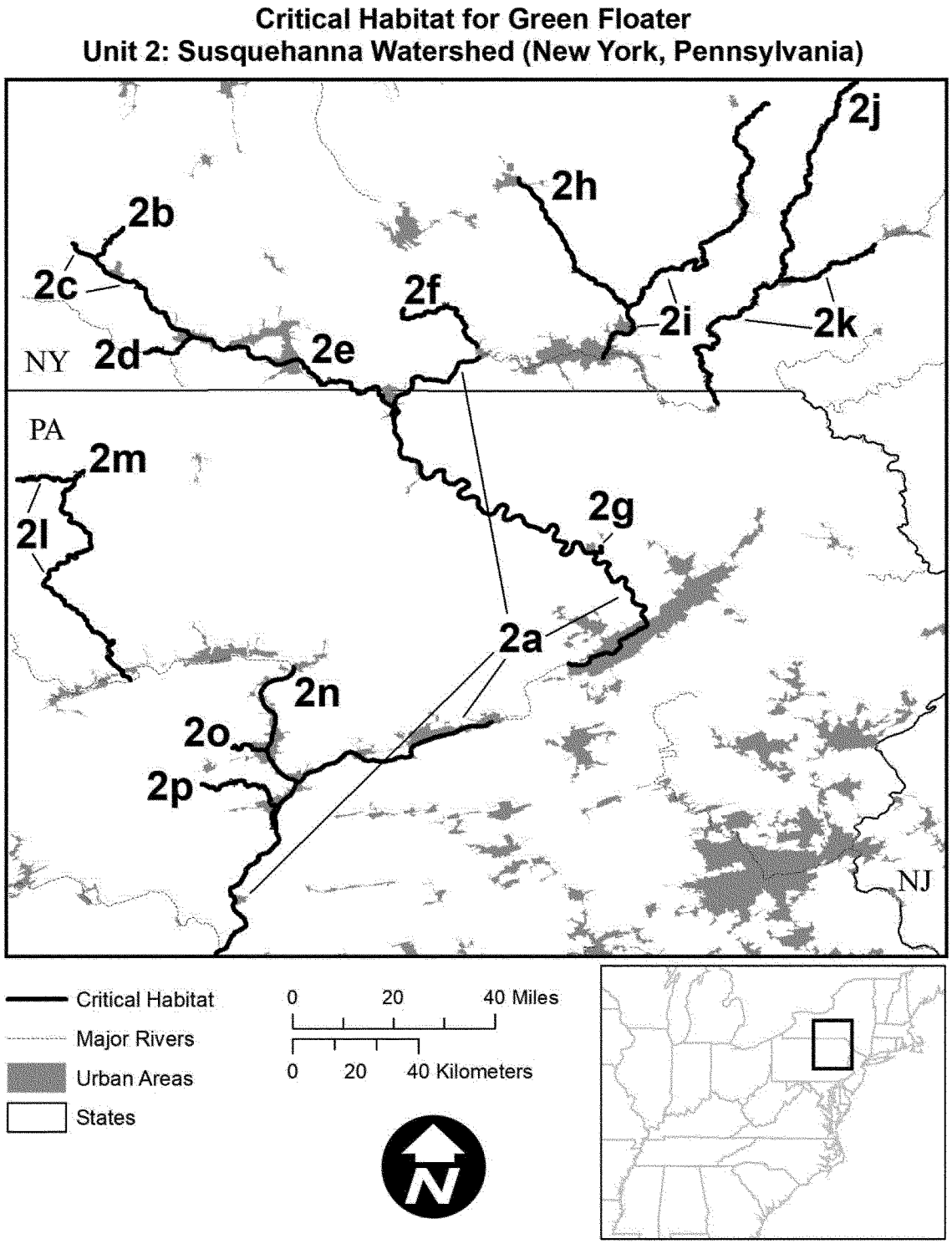


Figure 4 to Green Floater (*Lasmigona subviridis*) paragraph (7)(ii)

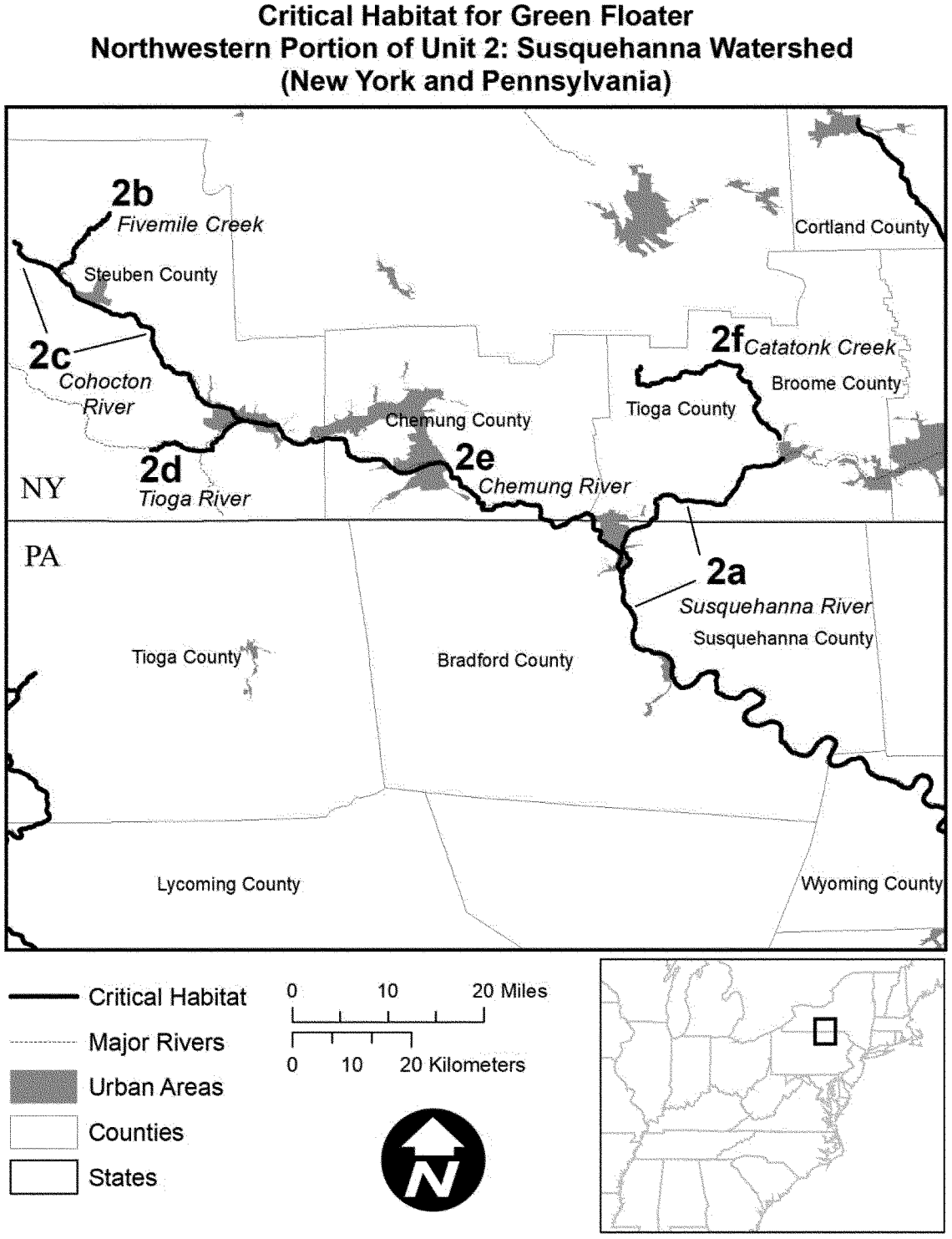


Figure 5 to Green Floater (*Lasmigona subviridis*) paragraph (7)(ii)

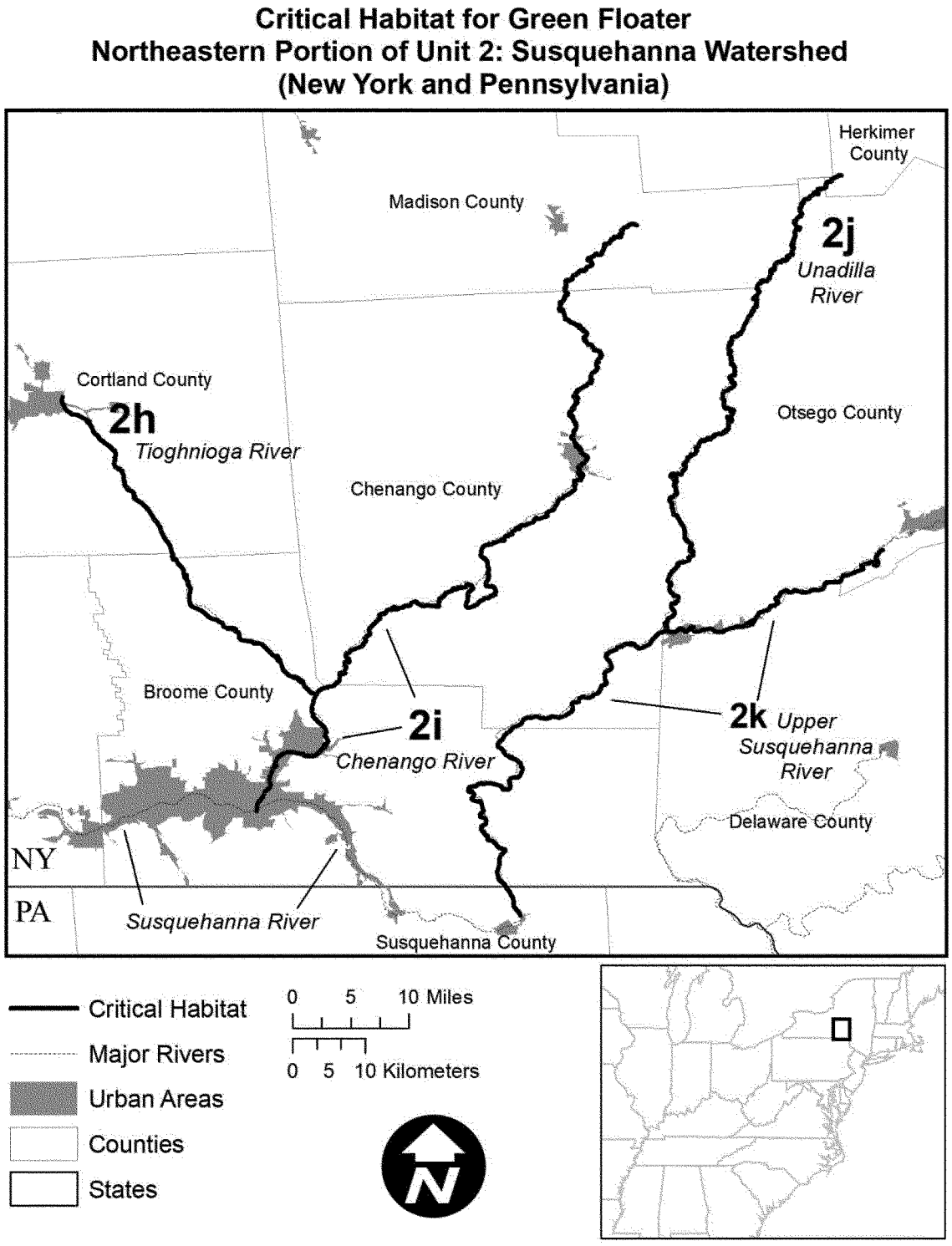


Figure 6 to Green Floater (*Lasmigona subviridis*) paragraph (7)(ii)

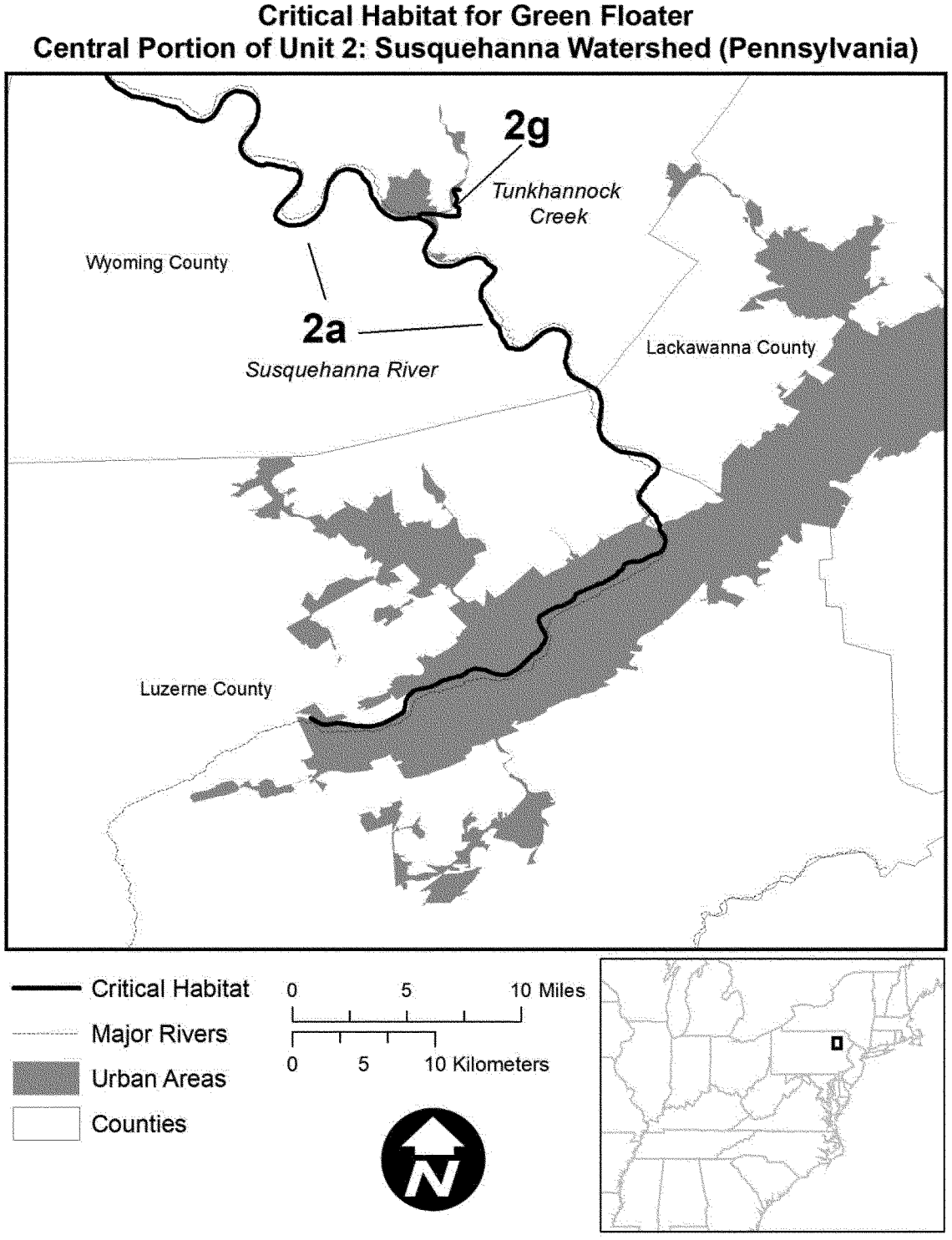


Figure 7 to Green Floater (*Lasmigona subviridis*) paragraph (7)(ii)

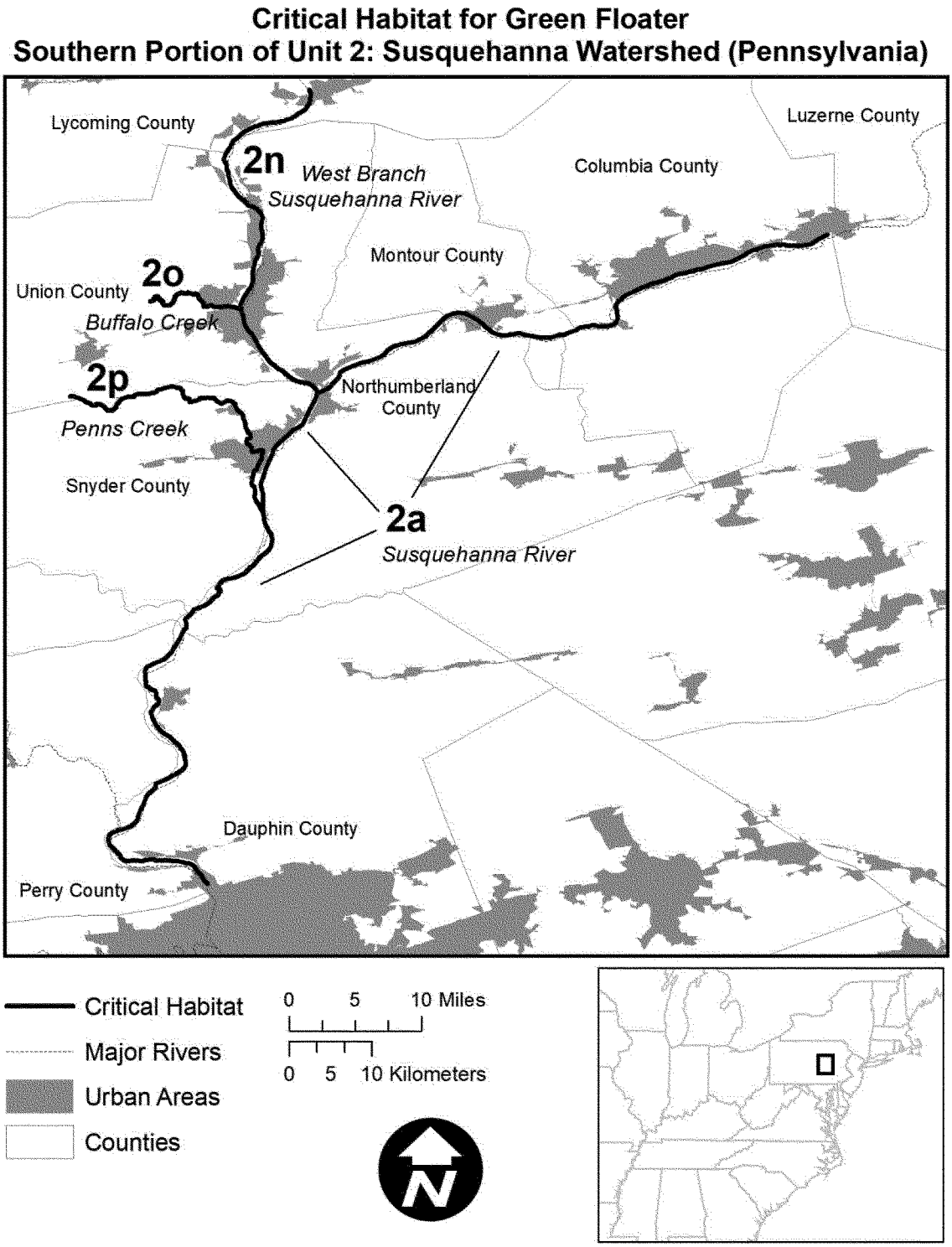
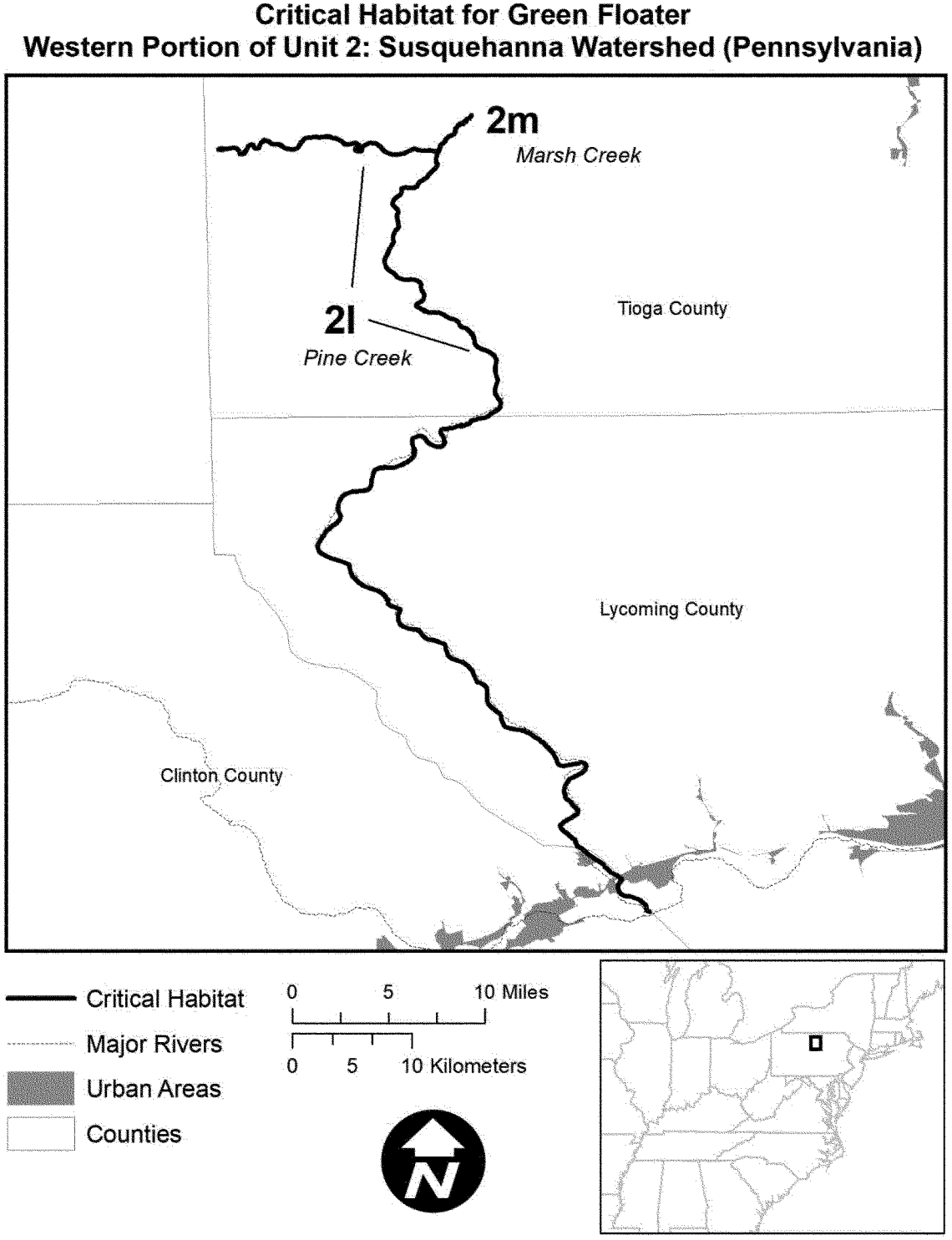


Figure 8 to Green Floater (*Lasmigona subviridis*) paragraph (7)(ii)



(8) Unit 3: Potomac Watershed (Bedford and Fulton Counties, Pennsylvania; Allegany and Washington Counties, Maryland; and Berkeley, Hampshire, Hardy, Mineral, and Morgan Counties, West Virginia).

(i) Unit 3 consists of the following six subunits:

(A) Subunit 3a consists of an 80.3-km (49.9-mi) segment of the Potomac River in Washington County, Maryland, and Berkeley County, West Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of the Cacapon River and ends at the entrance of Downey Branch.

(B) Subunit 3b consists of a 22.3-km (13.9-mi) segment of Patterson Creek in

Mineral County, West Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Cabin Run and ends at the confluence of Patterson Creek and the Potomac River.

(C) Subunit 3c consists of a 51.3-km (31.9-mi) segment of Sideling Hill Creek in Allegany County, Maryland, and Bedford and Fulton Counties, Pennsylvania. This subunit includes the river channel up to the ordinary high water mark. It starts at the Rice Road crossing of West Branch Sideling Hill Creek and ends at the confluence of Sideling Hill Creek and the Potomac River.

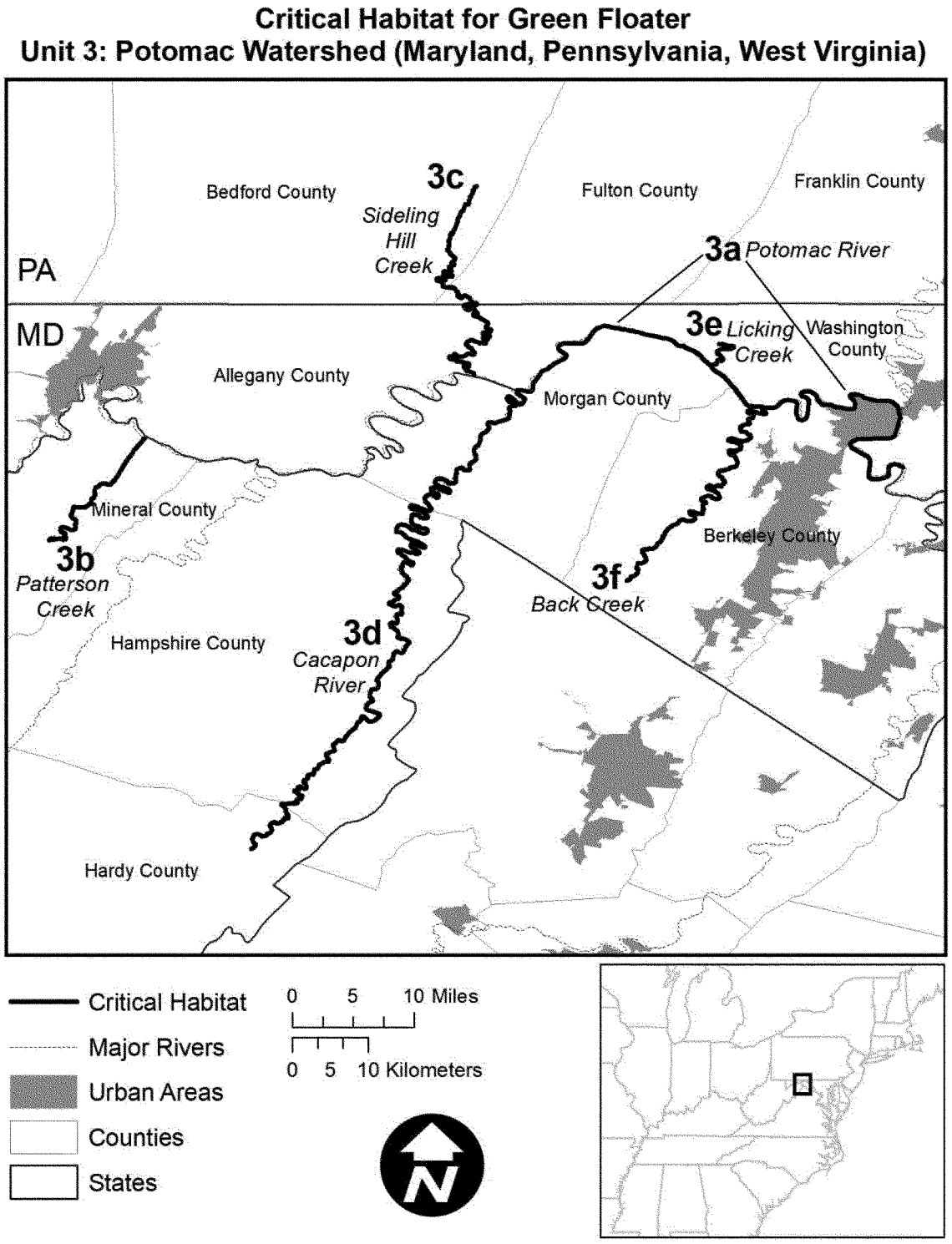
(D) Subunit 3d consists of a 123.0-km (76.5-mi) segment of the Cacapon River in Washington County, Maryland, and in Hardy, Hampshire, and Morgan Counties, West Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Trout Run and ends at the confluence of the Cacapon River and the Potomac River.

(E) Subunit 3e consists of a 6.7-km (4.1-mi) segment of Licking Creek in Washington County, Maryland. This subunit includes the river channel up to the ordinary high water mark. It starts at the crossing of Pecktonville Road and ends at the confluence of Licking Creek and the Potomac River.

(F) Subunit 3f consists of a 46.8-km (29.1-mi) segment of Back Creek in Berkeley County, West Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Big Run and ends at the confluence of Back Creek and the Potomac River.

(ii) Map of Unit 3 follows:

Figure 9 to Green Floater (*Lasmigona subviridis*) paragraph (8)(ii)



(9) Unit 4: Kanawha Watershed (Allegany, Ashe, and Watauga Counties, North Carolina; Carroll and Grayson Counties, Virginia; and Greenbrier, Monroe, Pocahontas, and Summers Counties, West Virginia).

(i) Unit 4 consists of the following six subunits:

(A) Subunit 4a consists of a 259.7-km (161.4-mi) segment of the Greenbrier River in Greenbrier, Monroe, Pocahontas, and Summers Counties, West Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Cove Run and ends at the confluence of the Greenbrier River and the New River.

(B) Subunit 4b consists of a 17.4-km (10.8-mi) segment of Deer Creek in Pocahontas County, West Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Hospital Run and ends at the confluence of Deer Creek and the Greenbrier River.

(C) Subunit 4c consists of a 32.2-km (20-mi) segment of Knapp Creek in Pocahontas County, West Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Moore Run and Knapp Creek and ends at the confluence of Knapp Creek and the Greenbrier River.

(D) Subunit 4d consists of a 15.5-km (9.7-mi) segment of the New River in Carroll and Grayson Counties, Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at Sarasota Lane and ends at the confluence of Chestnut Creek and the New River.

(E) Subunit 4e consists of a 17.9-km (11.1-mi) segment of the Little River in the Kanawha watershed in Alleghany County, North Carolina, and Grayson County, Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Brush Creek and ends at the confluence of the Little River and the New River.

(F) Subunit 4f consists of a 145.7-km (90.5-mi) segment of the South Fork New River in Alleghany, Ashe, and Watauga Counties, North Carolina. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence of the East Fork South Fork New River, Middle Fork South Fork New River, and Winkler Creek and ends at the confluence of the South Fork New River and North Fork New River.

(ii) Maps of Unit 4 follow:

Figure 10 to Green Floater (*Lasmigona subviridis*) paragraph (9)(ii)

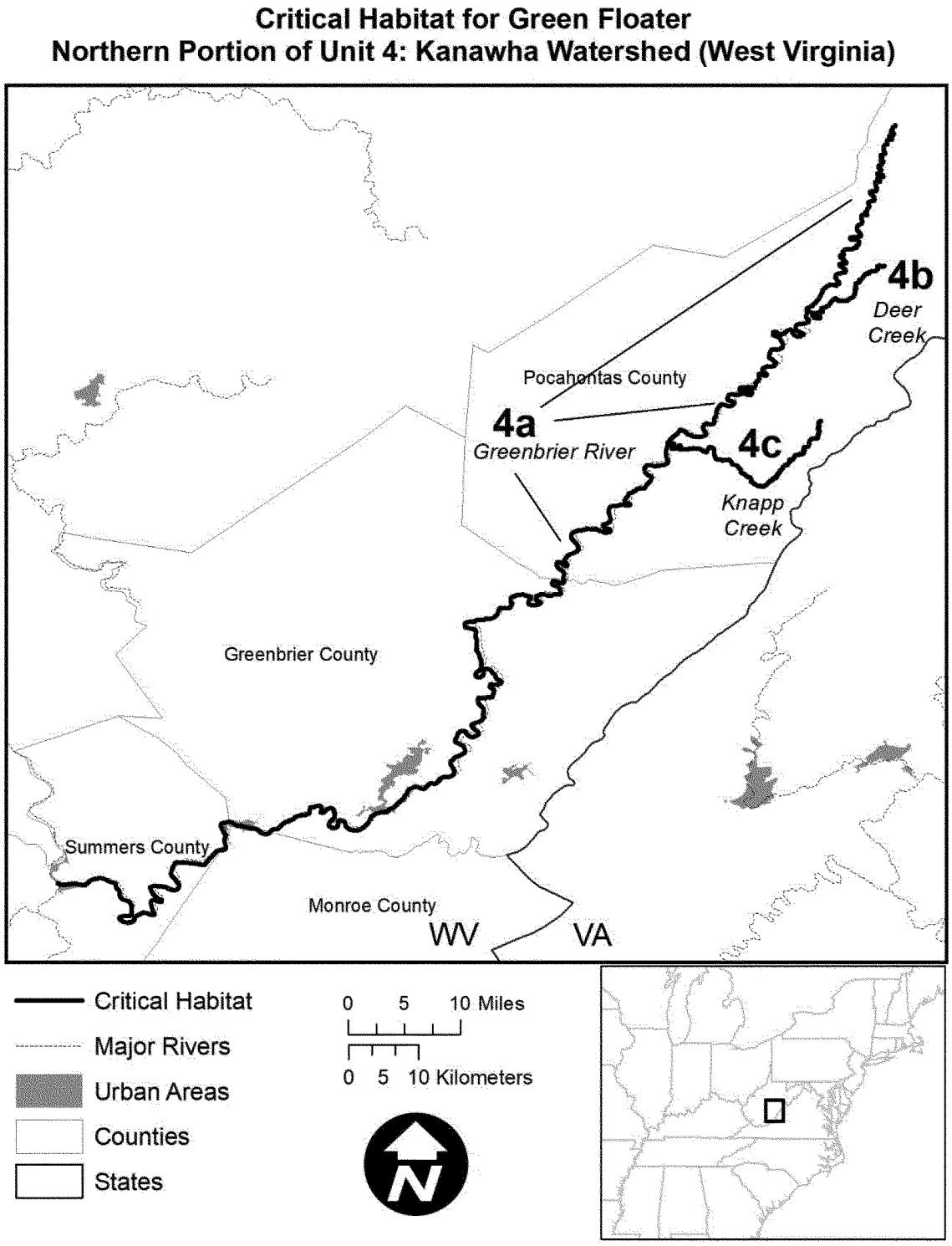
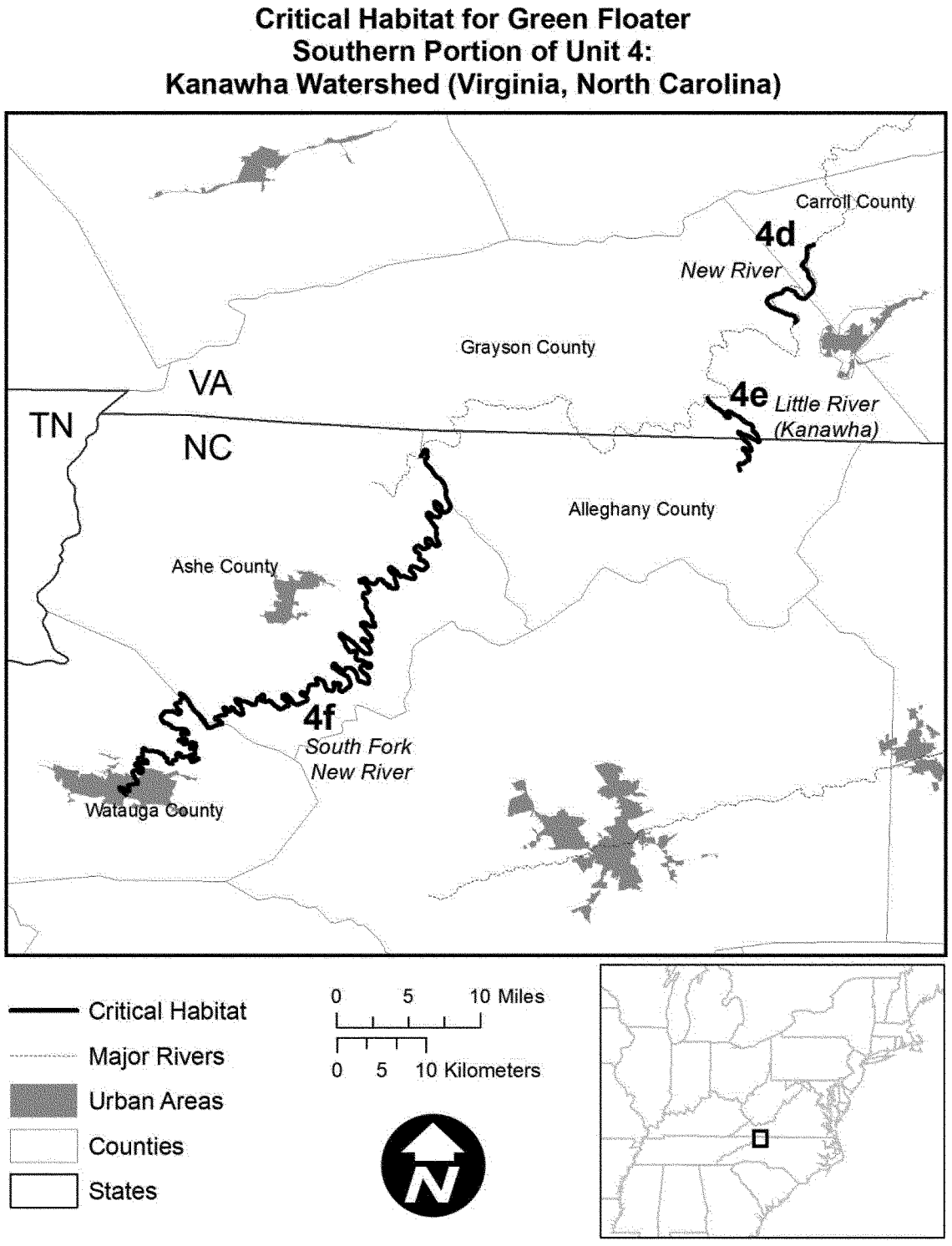


Figure 11 to Green Floater (*Lasmigona subviridis*) paragraph (9)(ii)



(10) Unit 5: Lower Chesapeake Watershed (Amherst, Buckingham, and Nelson Counties, Virginia).

(i) Unit 5 consists of the following two subunits:

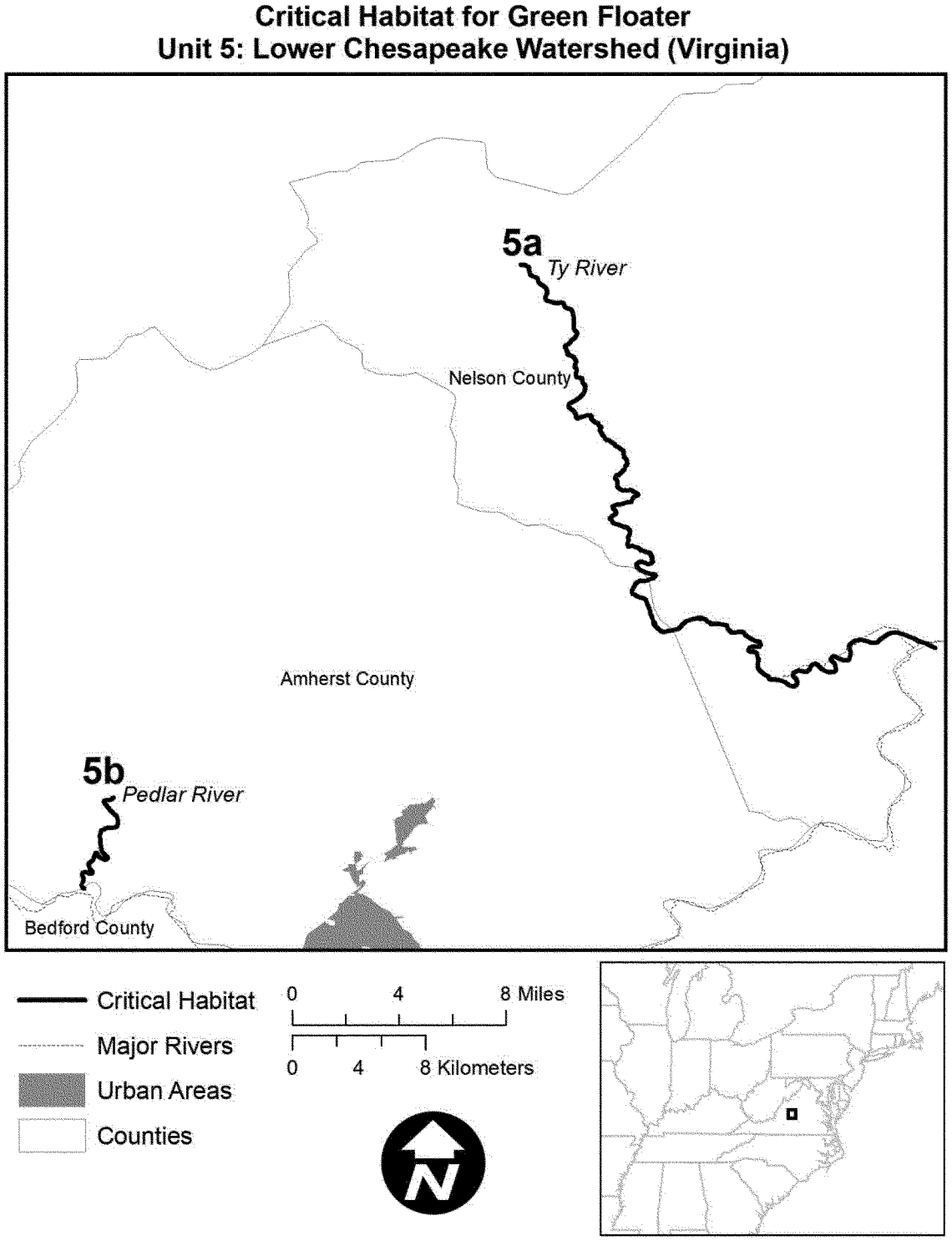
(A) Subunit 5a consists of a 54.1-km (33.6-mi) segment of the Tye River in Amherst, Buckingham, and Nelson Counties, Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence of Coxs Creek and Campbell Creek and ends at the confluence of the Tye River and the James River.

(B) Subunit 5b consists of a 8.6-km (5.4-mi) segment of the Pedlar River in Amherst County, Virginia. This subunit

includes the river channel up to the ordinary high water mark. It starts at the entrance of Horsley Creek and ends at the confluence of the Pedlar River and James River.

(ii) Map of Unit 5 follows:

Figure 12 to Green Floater (*Lasmigona subviridis*) paragraph (10)(ii)



(11) Unit 6: Chowan-Roanoke Watershed (Caswell, Rockingham, and Stokes Counties, North Carolina; and Brunswick, Greensville, Halifax, Henry, Patrick, Pittsylvania, and Southampton Counties, Virginia).

(i) Unit 6 consists of the following five subunits:

(A) Subunit 6a consists of a 221.3-km (137.5-mi) segment of the Dan River in Caswell, Rockingham, and Stokes Counties, North Carolina, and in Halifax, Henry, Patrick, and Pittsylvania

Counties, Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Squall Creek and ends at the entrance of County Line Creek.

(B) Subunit 6b consists of a 4.6-km (2.9-mi) segment of the South Mayo River in Henry County, Virginia, and Rockingham County, North Carolina. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Crooked Creek and ends at the confluence of the South Mayo River and the Mayo River.

(C) Subunit 6c consists of a 5.9-km (3.7-mi) segment of the North Mayo River in Henry County, Virginia, and Rockingham County, North Carolina. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Jumping Branch and ends at the confluence of the North Mayo River and the Mayo River.

(D) Subunit 6d consists of a 25.1-km (15.6-mi) segment of the Mayo River in Rockingham County, North Carolina. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence of the North Mayo and South Mayo Rivers and ends at the confluence of the Mayo River and the Dan River.

(E) Subunit 6e consists of a 106.1-km (65.9-mi) segment of the Meherrin River in Brunswick, Greensville, and Southampton Counties, Virginia. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Shining Creek and ends at the entrance of Fountains Creek.

(ii) Maps of Unit 6 follow:

Figure 13 to Green Floater (*Lasmigona subviridis*) paragraph (11)(ii)

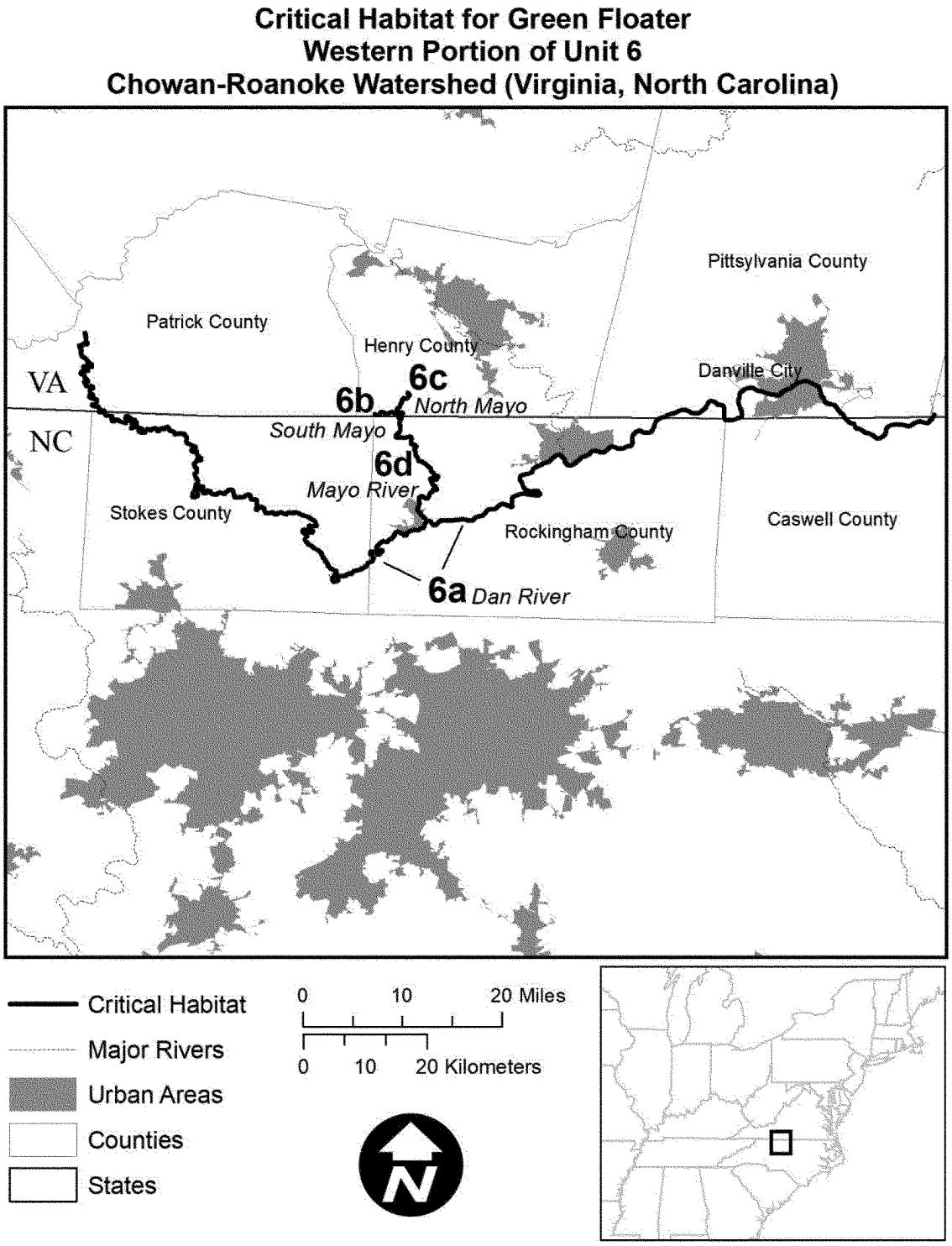
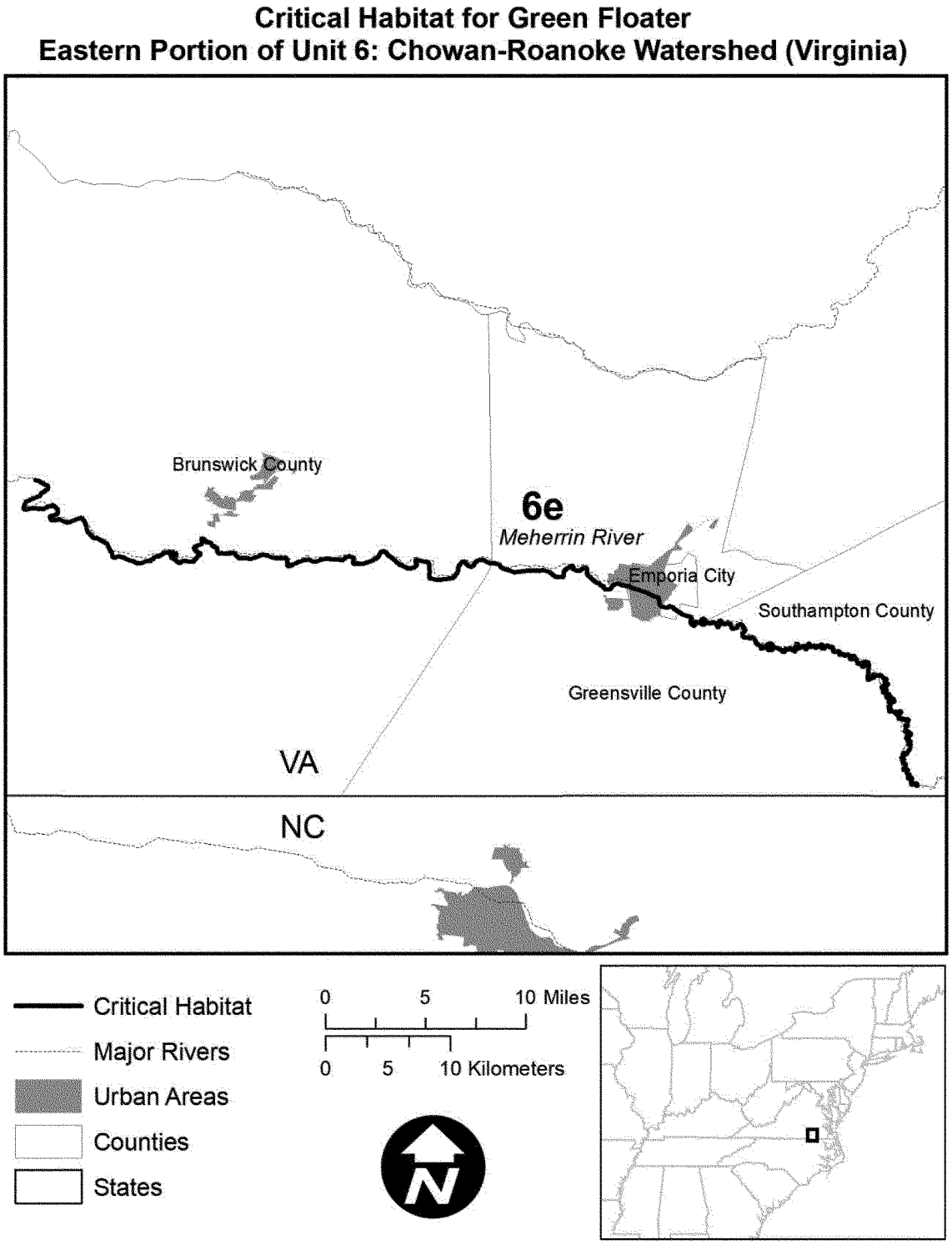


Figure 14 to Green Floater (*Lasmigona subviridis*) paragraph (11)(ii)



(12) Unit 7: Neuse-Pamlico Watershed (Durham, Johnston, Orange, Person, and Wake Counties, North Carolina).

(i) Unit 7 consists of the following four subunits:

(A) Subunit 7a consists of a 26.8-km (16.6-mi) segment of the Neuse River in Johnston and Wake Counties, North Carolina. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of Crabtree Creek and ends near Prestwick Drive.

(B) Subunit 7b consists of a 54.4-km (33.8-mi) segment of the Eno River in Durham and Orange Counties, North Carolina. This subunit includes the river channel up to the ordinary high water mark. It starts at the entrance of McGowan Creek and ends at Falls Lake.

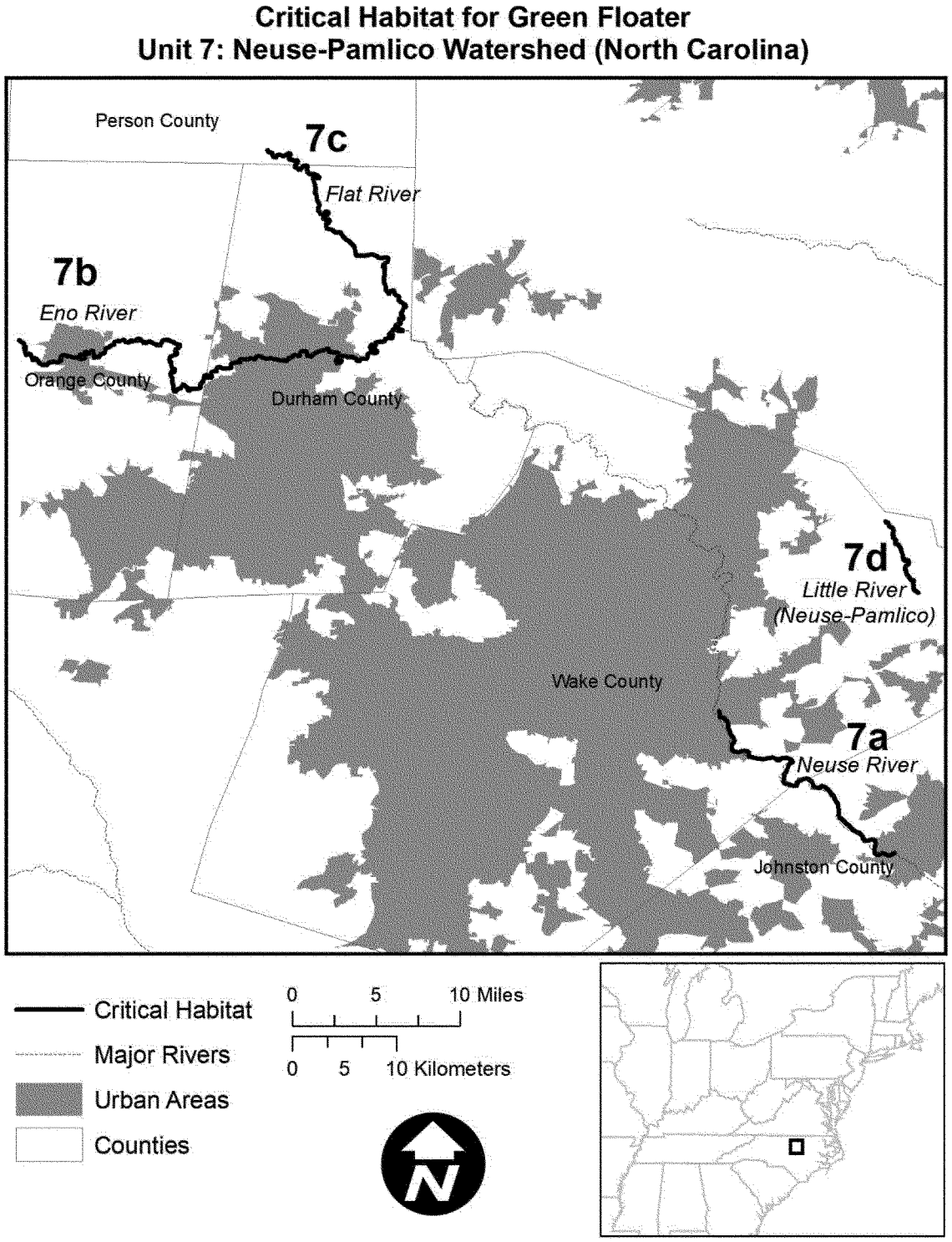
(C) Subunit 7c consists of a 30.9-km (19.2-mi) segment of the Flat River in Durham and Person Counties, North Carolina. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence of the North Flat River and South Flat River and ends at Falls Lake.

(D) Subunit 7d consists of an 8.6-km (5.4-mi) segment of the Little River in

the Neuse-Pamlico watershed in Wake County, North Carolina. This subunit includes the river channel up to the ordinary high water mark. It starts at the confluence with Perry Creek and ends at the entrance of Big Branch.

(ii) Map of Unit 7 follows:

Figure 15 to Green Floater (*Lasmigona subviridis*) paragraph (12)(ii)

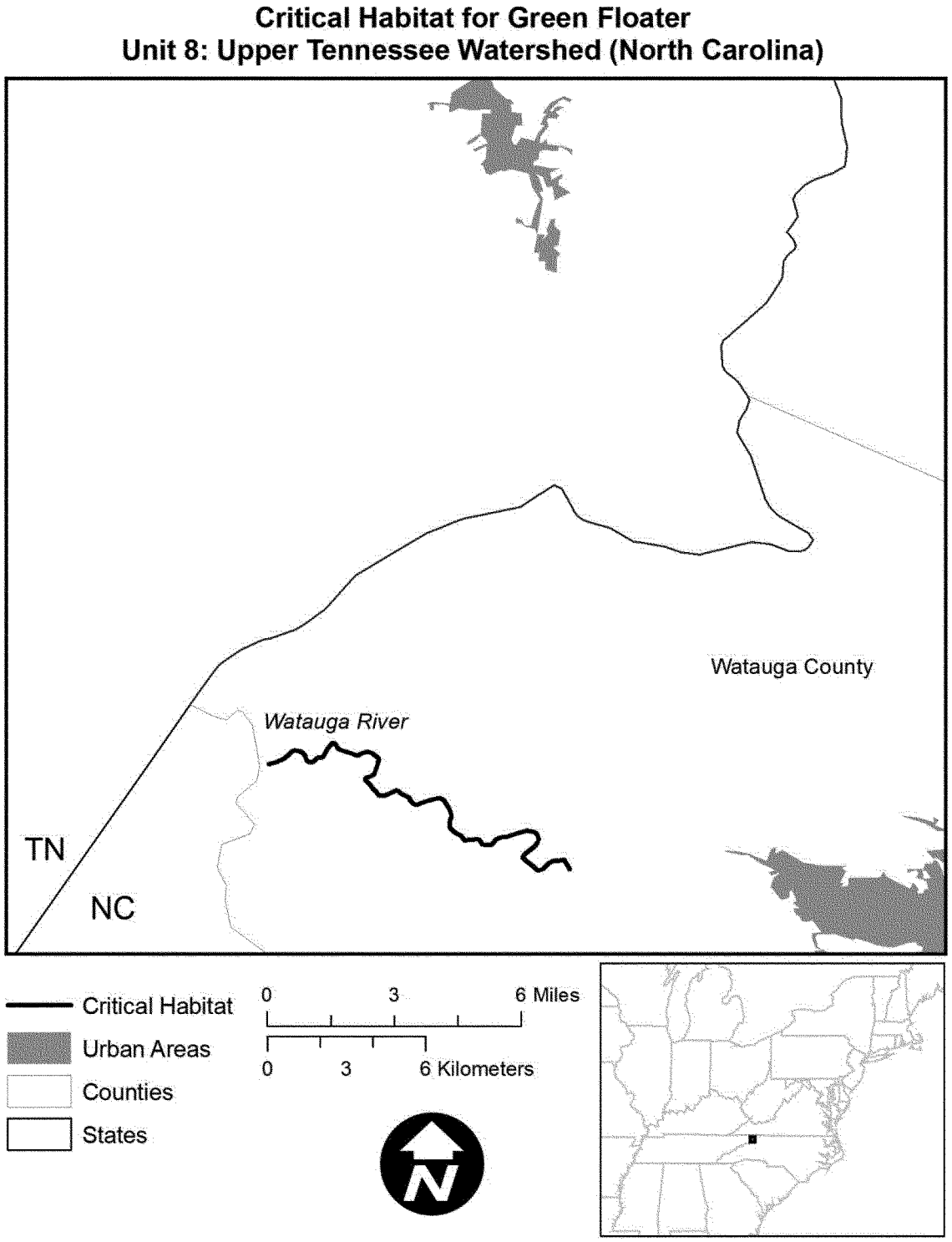


(13) Unit 8: Upper Tennessee Watershed (Watauga County, North Carolina).

(i) Unit 8 consists of 16.0-km (9.9-mi) of the Watauga River in Watauga County, North Carolina, from the entrance of Baird Creek to the entrance of Beech Creek. It includes the river channel up to the ordinary high water mark.

(ii) Map of Unit 8 follows:

Figure 16 to Green Floater (*Lasmigona subviridis*) paragraph (13)(ii)



* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–15143 Filed 7–25–23; 8:45 am]

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