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Presidential Documents

Title 3—

The President

Memorandum of September 27, 2023

Restoring Healthy and Abundant Salmon, Steelhead, and Other Native Fish Populations in the Columbia River Basin

Memorandum for the Heads of Executive Departments and Agencies

The Columbia River and its tributaries, wetlands, and estuaries are the lifeblood of the Pacific Northwest, providing abundant water, power, recreation, agriculture, transportation, and natural resources that have supported livelihoods, cultural and spiritual practices, commerce, and economic growth. The salmon, steelhead, and other native fish populations in the Columbia River Basin (Basin) are essential to the culture, economy, and way of life of Tribal Nations in the region and Indigenous peoples in Canada, and also provide an important food source for endangered orca, which are sacred to many Tribal Nations in the region. In 1855, the United States and four of the Tribal Nations of the Basin entered into treaties specifying that these Tribal Nations reserved the right to harvest fish on their reservations and at all usual and accustomed places. At that time, an estimated 7.5 to 16 million adult salmon and steelhead returned to the Basin each year.

Actions since 1855, including the Federal Government's construction and operation of dams in the Basin, have severely depleted fish populations. Thirteen salmon and steelhead populations are listed as threatened or endangered, other populations of those fish have been extirpated, and other native fish populations have also declined, causing substantial harm to Tribal Nations and other communities reliant on salmon and steelhead. Despite decades of hard work, ingenuity, expense, and commitment across Federal, Tribal, State, and local governments and a wide range of stakeholders, the populations of salmon, steelhead, and other native fish populations in the Basin continue to decline or have not recovered to the level that would warrant removing any population from the list of threatened and endangered species.

It is time for a sustained national effort to restore healthy and abundant native fish populations in the Basin. For these reasons, and by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* It is a priority of my Administration to honor Federal trust and treaty responsibilities to Tribal Nations—including to those Tribal Nations harmed by the construction and operation of Federal dams that are part of the Columbia River System (CRS)—and to carry out the requirement of the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96–501) to operate, manage, and regulate the CRS to adequately protect, mitigate, and enhance fish and wildlife affected by the Federal dams in the Basin in a manner that provides equitable treatment for fish and wildlife with the other purposes for which the Federal dams are managed and operated.

In recognition of these priorities, it is the policy of my Administration to work with the Congress and with Tribal Nations, States, local governments, and stakeholders to pursue effective, creative, and durable solutions, informed by Indigenous Knowledge, to restore healthy and abundant salmon, steelhead, and other native fish populations in the Basin; to secure a clean and resilient energy future for the region; to support local agriculture and its role in food security domestically and globally; and to invest in the

communities that depend on the services provided by the Basin's Federal dams to enhance resilience to changes to the operation of the CRS, including those necessary to address changing hydrological conditions due to climate change.

Sec. 2. *Federal Implementation.* (a) All executive departments and agencies (agencies) with applicable authorities and responsibilities, including the Department of the Interior, including the Bureau of Indian Affairs, the Bureau of Land Management, the Bureau of Reclamation, the United States Fish and Wildlife Service, and the United States Geological Survey; the Department of Agriculture, including the United States Forest Service and the Natural Resources Conservation Service; the Department of Commerce, including the National Oceanic and Atmospheric Administration; the Department of Energy, including the Bonneville Power Administration; the Department of the Army, including the United States Army Corps of Engineers; and the Environmental Protection Agency, are directed to utilize their authorities and available resources to advance the policy established in section 1 of this memorandum.

(b) Within 120 days of the date of this memorandum, all agencies with applicable authorities and responsibilities, including those agencies identified in subsection (a) of this section, shall review their programs affecting salmon, steelhead, and other native fish populations in the Basin, including any program with authority or responsibility with respect to the CRS, for consistency with the policy established in section 1 of this memorandum. As soon as practicable following such review, agencies shall, consistent with applicable law, identify and initiate any steps necessary to advance that policy.

(c) Within 220 days of the date of this memorandum, all agencies with applicable authorities and responsibilities, including those agencies identified in subsection (a) of this section, shall provide the Director of the Office of Management and Budget (Director) an assessment of the agency's programs that can advance the policy established in section 1 of this memorandum and the resources such programs need for this purpose. Based on the assessment, each agency shall prioritize these activities to the extent feasible in their program and budget planning.

Sec. 3. *Intergovernmental Partnership.* The Chair of the Council on Environmental Quality (Chair) and the Director shall explore opportunities and mechanisms to develop an intergovernmental partnership, including through a memorandum of understanding, to advance the policy established in section 1 of this memorandum within the United States; the States of Oregon, Washington, Montana, and Idaho; the Tribal Nations of the Basin, including the Columbia Basin Treaty Tribes (the Nez Perce Tribe, the Confederated Tribes and Bands of the Yakama Indian Nation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation); the Upper Columbia United Tribes (the Confederated Tribes of the Colville Reservation, the Coeur d'Alene Tribe of Indians, the Spokane Tribe of Indians, the Kalispel Tribe of Indians, and the Kootenai Tribe of Idaho); the Upper Snake River Tribes (the Burns Paiute Tribe, the Fort McDermitt Paiute-Shoshone Tribe, the Shoshone-Bannock Tribes of the Fort Hall Reservation, and the Shoshone-Paiute Tribes of the Duck Valley Reservation); and other Tribal Nations, as appropriate. Within 120 days of the date of this memorandum, the Chair and the Director shall submit a report to the President with an update on progress in developing this intergovernmental partnership.

Sec. 4. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect the ability of heads of agencies to meet the requirements of sections 2 and 3 of this memorandum before the deadlines in those sections or to produce additional materials not specifically requested in this memorandum.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

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

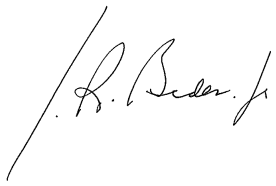
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

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

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

(e) Independent agencies are strongly encouraged to comply with the provisions of this memorandum.

Sec. 5. *Publication.* The Chair is hereby authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, September 27, 2023

[FR Doc. 2023–21882
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Doc. No. AMS–SC–22–0069]

Marketing Order Regulations for Almonds Grown in California

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Almond Board of California (Board) to change multiple provisions in the administrative requirements prescribed under the Federal marketing order regulating the handling of almonds grown in California (Order). This action amends administrative requirements regulating quality control, exempt dispositions, and interest and late charges provisions. In addition, the rule stays two sections of the administrative requirements that define almond butter and stipulate disposition in reserve outlets by handlers to facilitate the efficient administration of the Order.

DATES: Effective November 1, 2023.

FOR FURTHER INFORMATION CONTACT: Peter Sommers, Marketing Specialist, or Gary Olson, Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *PeterR.Sommers@usda.gov* or *GaryD.Olson@usda.gov.*

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

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California. Part 981 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Board locally administers the Order and comprises growers and handlers of almonds operating within the production area.

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Orders 12866, 14094 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This rule has been reviewed under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined this rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

This final rule amends administrative requirements in the Order regulating quality control, exempt dispositions, and interest and late charges provisions. In addition, the rule stays two sections of the administrative requirements that define almond butter and stipulate disposition in reserve outlets by handlers. This action modifies the Order's requirements to reflect updates in industry practices and is expected to help facilitate the orderly administration of the Order.

The Board initially recommended the changes effectuated herein, along with proposed changes to the Order's roadside stand exemption and credit-back provisions, at meetings held on December 7, 2020, and June 17, 2021. AMS subsequently published a proposed rule in the **Federal Register** addressing the aggregate of those proposed changes on February 22, 2022 (87 FR 9455), with a 60-day comment period ending April 25, 2022. Four comments were received during the comment period. Two comments favored the proposed rule, one comment was neutral, and one was opposed. The comment opposed to the action was submitted by a large cooperative marketing association and contained embedded comments from four individual growers. These comments opposed changes to the credit-back provision and further questioned the Board's administrative process in recommending the proposed changes to AMS.

After consideration of the comments received during the proposed rule's initial comment period, AMS reopened the comment period for 15 additional days from June 22, 2022, to July 7, 2022

(87 FR 37240). During the reopened comment period, 1,155 comments were received. Approximately 98 percent of the comments were opposed to the proposed changes to the roadside stand exemption. Notably, aside from the objections to the credit-back provision and the roadside stand exemption, commenters did not oppose any other portions of the proposed rule.

Given the opposition to proposed changes to the credit-back and roadside stand exemption provisions in the Order, AMS published a withdrawal of the proposed rule in the **Federal Register** on August 22, 2022 (87 FR 51270).

The Board met on September 30, 2022, and unanimously recommended the resubmission of the proposed changes to the Order's regulations, minus the previously proposed changes to the credit-back and roadside stand exemption provisions. Excepting the previously discussed provisions that were removed, the modifications to the Order's regulations, as effectuated herein, are identical to the changes proposed in the initial proposed rule published February 22, 2022 (87 FR 9455). A proposed rule concerning this action was published in the **Federal Register** on April 27, 2023 (88 FR 25565), and it received one comment. The commentor expressed opinions on the sustainability of almond production that did not address the merits of the proposed rule. The commenter did not support or oppose the proposal.

Multiple sections in the Order provide the authority for this action. The authorities are cited with the descriptions of each of the changes in the following narrative.

Section 981.42 of the Order provides the authority to establish quality control regulations for both incoming and outgoing product. Section 981.442 of the Order's administrative requirements establishes quality control regulations under that authority. Section 981.442(a) establishes the quality requirements for incoming product received by handlers. Section 981.442(b) establishes the quality requirements for outgoing product prior to being shipped by handlers.

This final rule modifies provisions in § 981.442(a) to clarify ambiguous language, remove irrelevant dates, and more clearly define ''accepted user'' as it is referenced in the regulations. The rule also relaxes the requirements for handlers in meeting their disposition obligation under the regulations. The incoming quality requirements have been amended to allow inedible kernels, foreign material, and other defects sorted from off-site cleaning facilities to be credited to a handler's disposition obligation. In addition, almond meal will be allowed to meet the non-inedible portion of the disposition obligation, with the meal content to be determined in a manner acceptable to the Board.

In § 981.442(b), the rule amends the regulations to facilitate handlers utilizing off-site cleaning and treatment facilities in fulfillment of their quality control requirements. The action will allow the transfer of product for off-site cleaning without the transfer being considered a shipment, designates off-site treatment facilities as ''custom processors,'' and establishes application and approval procedures for Board authorization of such custom processors. This final rule also clarifies the roles of the Technical Expert Review Panel (TERP) and the Board in administering the program as detailed in several provisions in § 981.442(b). Lastly, the rule refines the duties of a Direct Verifiable (DV) program auditor to disallow individuals who conduct process validations from being named as the DV auditor for that same equipment used in the treatment process.

Section 981.50 of the Order establishes handler reserve obligation requirements. Under those Order provisions, certain products are exempted from the reserve obligation, subject to the accountability of the Board. Section 981.450 establishes the provisions for exempt dispositions under the reserve obligation. This rule enhances the procedures currently in place for the Board to account for exempt dispositions. Moving forward, outlets for exempted product will need to be pre-approved by the Board in accordance with the requirements contained in § 981.442(a)(7). Finally, because ''animal feed'' encompasses ''poultry feed,'' § 981.450 is simplified by removing any reference to the word ''poultry.''

Section 981.66(b) of the Order establishes the conditions governing the disposition of reserve product. Within that paragraph, diversion of reserve almonds to be manufactured into almond butter is listed as an allowable outlet for such product. Section 981.466 further defines ''almond butter'' as used in § 981.66. The expanded definition of almond butter is no longer relevant in the administration of the program. Therefore, this rule stays § 981.466 indefinitely.

Section 981.467 establishes the requirements regarding the disposition in reserve outlets by handlers. The section details the establishment of agents of the Board, delineates reserve credit in satisfaction of a reserve obligation, sets minimum prices, and establishes certain dates pertaining to the reserve disposition obligations. As the Order is not currently regulating volume, and a significant portion of the requirements are outdated, the provisions in § 981.467 are not currently relevant to the administration of the Order. As such, this rule stays the entire section indefinitely.

Lastly, § 981.481 stipulates the requirements for submission of handler assessment payments, which include documentary requirements for proof of timely submission of assessment payments. Other than actual receipt of payment in the Board's office within 30 days of the invoice date on the handler's statement, the current provisions only identify the U.S. Postal Service postmark as proof of timely submission. This rule adds ''or by some other verifiable delivery tracking system'' to the section to allow handlers alternative delivery methods.

The Board believes that the changes effectuated herein are necessary to update the Order's administrative requirements to adapt to changes in the industry and to reflect current industry practices. Many of the revisions are conforming changes, but this final rule also makes changes to the quality control regulations that the Board views as essential to the continued efficient administration of the Order. The changes contained herein are expected to facilitate the orderly marketing of California almonds and benefit growers and handlers in the industry.

Final Regulatory Flexibility Analysis

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

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

There are approximately 7,600 almond growers in the production area and approximately 100 handlers subject to regulation under the Order. At the time this analysis was prepared, small agricultural almond producers were defined by the Small Business Administration (SBA) as those having annual receipts equal to or less than $3,750,000 (North American Industry

Classification System code 111335, Tree Nut Farming), and small agricultural service firms were defined as those having annual receipts equal to or less than $34,000,000 (North American Industry Classification System code 115114, Postharvest Crop Activities) (13 CFR 121.201). The SBA thresholds for producers and handlers changed after the publication of the proposed rule. Thus, AMS changed the thresholds to reflect the currently applicable SBA thresholds in this final rule. The changes do not impact AMS's ultimate determination regarding the impact of the rule on small entities.

National Agricultural Statistics Service (NASS) reported in its 2017 Census of Agriculture (Census) that there were 7,611 almond farms in the production area, of which 6,683 had bearing acres. Additionally, the Census indicates that out of the 6,683 California farms with bearing acres of almonds, 4,425 (66 percent) have fewer than 100 bearing acres.

In its annual Noncitrus Fruits and Nuts Publication, NASS reported a 2021 crop year average yield of 2,210 pounds per acre and a season average grower price of $1.86 per pound. Therefore, a 100-acre farm with an average yield of 2,220 pounds per acre would produce about 222,000 pounds of almonds (2,220 pounds times 100 acres equals 221,000 pounds). At $1.86 per pound, that farm's production would be valued at $412,920 (222,000 pounds times $1.86 per pound equals $412,920). Since the Census indicates that 66 percent of California's almond farms are less than 100 acres, it may be concluded that the majority of California almond growers had annual receipts from the sale of almonds of less than $412,920 for the 2020–21 crop year, which is below the SBA threshold of $3,750,000 for small producers. Therefore, the majority of growers may be classified as small businesses.

To estimate the proportion of almond handlers that would be considered small businesses, it was assumed that the unit value per pound of almonds exported in a particular year may serve as a representative almond price at the handler level. A unit value for a commodity is the value of exports divided by the quantity exported. Data from the Global Agricultural Trade System (GATS) database of USDA's Foreign Agricultural Service showed that the value of almond exports from August 2020 to July 2021 (combining shelled and inshell) was $4.647 billion. The quantity of almond exports over that time-period was 2.162 billion pounds. Dividing the export value by the quantity yields a unit value of $2.15 per pound ($4.647 billion divided by 2.162 billion pounds equals $2.15).

NASS estimated that the California almond industry produced 2.915 billion pounds of almonds in 2021. Applying the $2.15 derived representative handler price per pound to total industry production results in an estimated total revenue at the handler level of $6.267 billion (2.915 billion pounds × $2.15 per pound). With an estimated 100 handlers in the California almond industry, average revenue per handler would be approximately $62.67 million ($6.267 billion divided by 100). Assuming a normal distribution of revenues, most almond handlers shipped almonds valued at more than $34,000,000 during the 2010–21 crop year. Therefore, the majority of handlers may be classified as large businesses.

This final rule revises multiple provisions in the Order's administrative requirements. This action amends regulations covering the Order's quality control, exempt dispositions, and interest and late charges provisions. In addition, it stays regulations contained in §§ 981.466 and 981.467. One of the sections that is stayed defines almond butter and the other regulates almond disposition in reserve outlets by handlers. Both sections are stayed indefinitely.

More specifically, in § 981.442(a), the rule clarifies ambiguous language, removes irrelevant dates, and more clearly defines the term ''accepted user'' as it is referenced in the regulations. It also relaxes the requirements for handlers in meeting their disposition obligation under the Order.

Additionally, in § 981.442(b), the rule change will allow the transfer of product for off-site cleaning without the transfer being considered a shipment, designate off-site treatment facilities as ''custom processors,'' and establish application and approval procedures for Board authorization of custom processors. This action also clarifies the roles of the TERP and the Board in administering the program in several subparagraphs in the section. Further, this rule refines the definition of a DV program auditor to disallow individuals who conduct process validations from being named as the DV auditor for that same equipment used in the treatment process.

This rule also amends § 981.450 to require outlets for exempted product be Board-approved, in accordance with § 981.442(a)(7).

Further, § 981.466, which defines ''almond butter'' as it is used in § 981.66(b), is no longer relevant in the administration of the program and is stayed indefinitely. In addition, as the Order is not currently regulating volume, § 981.467 is not necessary for the administration of the Order and is also stayed indefinitely.

Lastly, this action revises § 981.481 by adding ''or by some other verifiable delivery tracking system'' to the requirements to allow handlers alternative trackable delivery methods for demonstration of timely submission of assessment payments.

The authorities for the changes detailed above are contained in §§ 981.42, 981.50, 981.66, 981.67, and 981.81 of the Order.

The Board believes that the administrative requirement revisions effectuated herein are necessary to reflect changes in the industry and to update the regulations to reflect current practices. Many of the modifications are conforming changes, but this action also makes substantive changes to quality control requirements that the Board views as essential to the efficient administration of the Order. The changes contained herein are expected to facilitate the orderly marketing of California almonds and benefit growers and handlers in the industry.

Initially, the Board unanimously recommended the changes contained herein, along with other recommended changes that were subsequently removed from consideration. The Board unanimously recommended the changes contained herein at a meeting on September 30, 2022.

AMS anticipates this final rule will impose minimal, if any, additional costs on handlers or growers, regardless of size. The changes to the administrative requirements are intended to clarify certain provisions, remove ambiguous and obsolete language, and adapt the requirements to facilitate the orderly marketing of almonds. The benefits derived from this rule are not expected to be disproportionately more or less for small handlers or growers than for larger entities.

The Board considered alternatives to this action, including making no changes to the current requirements and only making changes to some of the requirements. After consideration of all the alternatives, and in consultation with AMS, the Board determined that making the recommended changes is the best option to facilitate the Order's administration, contribute to the orderly marketing of almonds, and provide the greatest benefit to growers and handlers while maintaining the integrity of the Order.

Further, the Board's meeting was widely publicized throughout the California almond industry, and all interested persons were invited to

attend the meeting and participate in Board deliberations. Like all Board meetings, the September 30, 2022, meeting was a public meeting, and all entities, both large and small, were able to express their views on this issue. Finally, interested persons were invited to submit comments on the proposed rule, including the regulatory and information collection impacts of the proposed action on small businesses.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB Nos. 0581–0178 (Vegetable and Specialty Crops) and 0581–0242 (Almond Salmonella). This rule announces AMS's intent to request approval from OMB for amendments made to existing information collections under OMB Nos. 0581–0178 and 0581–0242, and for a new information collection under OMB No. 0581–NEW.

Upon publication of this final rule, AMS will submit a Justification for Change to OMB for the ABC Form 52—Direct Verifiable (DV) Program for Further Processing of Untreated Almonds Application Form (OMB No. 0581–0242). The form is necessary to administer the DV Program established by § 981.442(b)(6)(i) in the Order's quality control requirements. The rule changes the body that approves DV Program applications from the TERP to the Board. The instructions that accompany ABC Form 52 need to be revised accordingly.

Lastly, this final rule creates a new form for California almond handlers, titled ABC Form 55, ''Custom Processor Application.''

Title: Custom Processor Application (7 CFR part 981).

OMB Number: 0581–NEW.

Type of Request: New Collection.

Abstract: The information requirements in this request are essential to carry out the intent of the Act and to administer the Order. The Order is effective under the Act, and AMS is responsible for the oversight of the Order's administration.

The Order's quality control requirements for outgoing product require handlers to subject their almonds to a treatment process or processes prior to shipment to reduce potential *Salmonella* bacteria contamination. The Order's quality control requirements allow handlers to utilize off-site treatment facilities to fulfill that requirement. The Board unanimously recommended that the Order's quality control requirements be amended to define off-site treatment facilities located within the production area as ''custom processors'' and to require such custom processors to annually apply to the Board for approval.

An individual desiring approval as a custom processor must demonstrate that their facility meets the Order's treatment process requirements and must submit an application to the Board. ABC Form 55, ''Custom Processor Application,'' must be submitted directly to the Board once each year no later than July 31. The application provides the Board with the name of the applicant, the location of each treatment facility covered by the application, applicant contact information, and certification that the applicant's technology and equipment provide a treatment process that has been validated by a Board-approved process authority.

The Order authorizes the Board to collect certain information necessary for the administration of the Order. The information collected will only be used by authorized representatives of the AMS, including the AMS Specialty Crops Program regional and headquarters staff, and authorized employees of the Board. All proprietary information will be kept confidential in accordance with the Act and the Order.

The request for new information collection under the Order is as follows:

Custom Processor Application

Estimate of Burden: Public reporting burden for this collection of information is estimated to be an average of 0.5 hours per response.

Respondents: Nut processors located within the Order's area of production.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 25.

Estimated Total Annual Burden on Respondents: 12.5 hours.

A 60-day comment period regarding the information collection related to this rule was imbedded in the proposed rule that was published on April 27, 2023 (88 FR 25565). The comment period closed June 26, 2023. One comment was received. The commentor expressed opinions on the sustainability of almond production but did not address the merits of the proposed information collection. Therefore, AMS made no changes to the information collection requirements as proposed.

Upon approval by OMB, this information collection will be merged with the information collection currently approved under OMB No. 0581–0242 (Almond Salmonella).

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

Further, the Board's meetings are widely publicized throughout the California almond industry, and all interested persons are invited to attend the meetings and participate in Board deliberations on all issues. Like all Board meetings, the December 7, 2020, June 17, 2021, and September 30, 2022, meetings were open to the public, and all entities, both large and small, were able to express their views on the proposed changes. Also, the Board has several appointed committees to review certain issues and make recommendations to the Board. The Board's Almond Quality, Food Safety, and Services Committee met several times in 2019 and discussed these changes in detail. Those meetings were also public meetings, and both large and small entities were able to participate and express their views. Finally, interested persons were invited to submit comments on the proposed rule, including the regulatory and information collection impacts of this action on small businesses.

A proposed rule concerning this action was published in the **Federal Register** on April 27, 2023 (88 FR 25565). Copies of the proposed rule were also mailed or sent via email to all California almond handlers. The proposal was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending June 26, 2023, was provided for interested persons to respond to the proposal. One comment was received. The commentor expressed opinions on the sustainability of almond production that did not address the merits of the proposed rule. The commenter did not support or oppose the proposal. Therefore, AMS made no changes to the information collection requirements as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://*

www.ams.usda.gov/rules-regulations/moa/small-businesses. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Board, feedback from commenters, and other available information, AMS has determined that this final rule tends to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 981 as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Amend § 981.442 by:
■ a. Revising paragraphs (a)(1), (a)(4)(i), and (a)(5);
■ b. Revising the introductory text of paragraph (b);
■ c. Revising paragraphs (b)(2), (b)(3)(i) and (v), and (b)(4)(i) and (v);
■ d. Revising the introductory text of paragraph (b)(6)(i); and
■ e. Revising paragraphs (b)(6)(i)(A), (C), and (D).

The revisions read as follows:

§ 981.442 Quality control.

(a) * * *

(1) *Sampling.* Each handler shall cause a representative sample of almonds to be drawn from each lot of any variety received from any incoming source. The sample shall be drawn before inedible kernels are removed from the lot after hulling/shelling, or before the lot is processed or stored by the handler. For receipts at premises with mechanical sampling equipment and under contracts providing for payment by the handler to the grower for sound meat content, samples shall be drawn by the handler in a manner acceptable to the Board and the inspection agency. The inspection agency shall make periodic checks of the mechanical sampling procedures. For all other receipts, including but not limited to field examination and purchase receipts, accumulations purchased for cash at the handler's door or from an accumulator, or almonds of the handler's own production, sampling shall be conducted or monitored by the inspection agency in a manner acceptable to the Board. All samples shall be bagged and identified in a manner acceptable to the Board and the inspection agency.

* * * * *

(4) * * *

(i) The weight of inedible kernels in excess of 2 percent of kernel weight reported to the Board of any variety received by a handler shall constitute that handler's disposition obligation. For any almonds sold inshell, the weight may be reported to the Board and the disposition obligation for that variety reduced proportionately.

* * * * *

(5) *Meeting the disposition obligation.* Each handler shall meet its disposition obligation by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material, to Board-approved accepted users, which can include, but are not limited to, crushers, feed manufacturers, feeders, or dealers in nut wastes, located within the production area. Inedible kernels, foreign material, and other defects sorted from edible kernels by off-site cleaning facilities may be used towards that handler's disposition obligation or destroyed. Handlers shall notify the Board at least 72 hours prior to delivery of product to an off-site cleaning facility or accepted user location: *Provided,* That the Board or its employees may lessen this notification time whenever it determines that the 72-hour requirement is impracticable. The Board may supervise deliveries at its option. In the case of a handler having an annual total obligation of less than 1,000 pounds, delivery may be to the Board in lieu of an accepted user, in which case the Board would certify the disposition lot and report the results to the USDA. For dispositions by handlers with mechanical sampling equipment, samples may be drawn by the handler in a manner acceptable to the Board and the inspection agency. For all other dispositions, samples shall be drawn by or under supervision of the inspection agency. Upon approval by the Board and the inspection agency, sampling may be accomplished at the accepted user's destination. The edible and inedible almond meat content of each delivery shall be determined by the inspection agency and reported by the inspection agency to the Board and the handler. The handler's disposition obligation will be credited upon satisfactory completion of ABC Form 8. ABC Form 8, Part A, is filled out by the handler, and Part B by the accepted user. At least 50 percent of a handler's total crop year inedible disposition obligation shall be satisfied with dispositions consisting of inedible kernels as defined in § 981.408: *Provided,* That this 50 percent requirement shall not apply to handlers with total annual obligations of less than 1,000 pounds. Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than September 30 succeeding the crop year in which the obligation was incurred. Almond meal can be used for meeting the non-inedible portion of the obligation. Meal content shall be determined in a manner acceptable to the Board.

* * * * *

(b) *Outgoing.* Pursuant to § 981.42(b), and except as provided in § 981.13 and in paragraph (b)(6) of this section, handlers shall subject their almonds to a treatment process or processes prior to shipment to reduce potential *Salmonella* bacteria contamination in accordance with the provisions of this section. Temporary transfer by a handler to an off-site cleaning facility is not considered a shipment under this section. Handlers may utilize off-site cleaning facilities within the production area, on record with the Board, to provide sorting services to separate inedible kernels, foreign material, and other defects from edible kernels. Product sent by a handler to an off-site cleaning facility is considered a temporary transfer, with ownership maintained by the handler, and accountability required for all product fractions and handler obligations pursuant to § 981.42.

* * * * *

(2) *On-site versus off-site treatment.* Handlers shall subject almonds to a treatment process or processes prior to shipment either at their handling facility (on-site) or a custom processor (defined as a Board-approved off-site treatment facility located within the production area subject to the provisions of paragraph (b)(4)(v) of this section). Transportation of almonds by a handler to a custom processor shall not be deemed a shipment. A handler with an on-site treatment process or processes may use such facility to act as a custom processor for other handlers.

(3) * * *

(i) Validation means that the treatment technology and equipment have been demonstrated to achieve in total a minimum 4-log reduction of *Salmonella* bacteria in almonds.

Validation data prepared by a Board-approved process authority must be submitted to the Board, and accepted by the TERP, for each piece of equipment used to treat almonds prior to its use under the program.

* * * * *

(v) The TERP, in coordination with the Board, may revoke any approval for cause. The Board shall notify the process authority in writing of the reasons for revoking the approval. Should the process authority disagree with the decision, they may appeal the decision in writing to the Board, and ultimately to USDA. A process authority whose approval has been revoked must submit a new application to the TERP and await approval.

(4) * * *

(i) By May 31, each handler shall submit to the Board a Handler Treatment Plan (Treatment Plan) for the upcoming crop year. A Treatment Plan shall describe how a handler plans to treat his or her almonds and must address specific parameters as outlined by the Board for the handler to ship almonds. Such plan shall be reviewed by the Board, in conjunction with the inspection agency, to ensure it is complete and can be verified, and be approved by the Board. Almonds sent by a handler for treatment at a custom processing facility affiliated with another handler shall be subject to the approved Treatment Plan utilized at that facility. Handlers shall follow their own approved Treatment Plans for almonds sent to custom processors that are not affiliated with another handler.

* * * * *

(v) Custom processors shall provide access to the inspection agency and Board staff for verification of treatment and review of treatment records. Custom processors shall utilize technologies that have been determined to achieve, in total, a minimum 4-log reduction of Salmonella bacteria in almonds, pursuant to a letter of determination issued by FDA or accepted by the TERP. Custom processors must submit a Custom Processor Application, ABC Form 55, to the Board annually by July 31. A custom processor who submits a timely application, and utilizes a treatment process or processes that has been validated by a Board-approved process authority and approved by the Board in conjunction with the TERP, shall be approved by the Board for handler use. The Board may revoke any such approval for cause. The Board shall notify the custom processor of the reasons for revoking the approval. Should the custom processor disagree with the Board's decision, it may appeal the decision in writing to USDA. Handlers may treat their almonds only at custom processor treatment facilities that have been approved by the Board.

* * * * *

(6) * * *

(i) Handlers may ship untreated almonds for further processing directly to manufacturers located within the U.S., Canada, or Mexico. This program shall be termed the Direct Verifiable (DV) program. Handlers may only ship untreated almonds to manufacturers who have submitted ABC Form No. 52, ''Application for Direct Verifiable (DV) Program for Further Processing of Untreated Almonds,'' and have been approved by the Board. Such almonds must be shipped directly to approved manufacturing locations, as specified on Form No. 52. Such manufacturers (DV Users) must submit an initial Form No. 52 to the Board for review and approval in conjunction with the TERP. Should the applicant disagree with the Board's decision concerning approval, it may appeal the decision in writing to the Board, and ultimately to USDA. For subsequent crop years, approved DV Users with no changes to their initial application must send the Board a letter, signed and dated, indicating that there are no changes to the application the Board has on file. Approved DV Users desiring to make changes to their approved application must resubmit Form No. 52 to the Board for approval. The TERP, in coordination with the Board, may revoke any approval for cause. The Board shall notify the DV User in writing of the reasons for revoking the approval. Should the DV User disagree with the decision, it may appeal the decision in writing to the Board, and ultimately to USDA. A DV User whose approval has been revoked must submit a new application to the Board and await approval. The Board shall issue a DV User code to an approved DV User. Handlers must reference such code in all documentation accompanying the lot and identify each container of such almonds with the term ''unpasteurized.'' Such lettering shall be on one outside principal display panel, at least ½ inch in height, clear and legible. If a third party is involved in the transaction, the handler must provide sufficient documentation to the Board to track the shipment from the handler's facility to the approved DV User. While a third party may be involved in such transactions, shipments to a third party and then to a manufacturing location are not permitted under the DV program. Approved DV Users shall:

(A) Subject such almonds to a treatment process or processes using technologies that achieve in total a minimum 4-log reduction of *Salmonella* bacteria as determined by the FDA or established by a process authority accepted by the TERP, in accordance with and subject to the provisions and procedures of paragraph (b)(3) of this section. Establish means that the treatment process and protocol have been evaluated to ensure the technology's ability to deliver a lethal treatment for *Salmonella* bacteria in almonds to achieve a minimum 4-log reduction;

* * * * *

(C) Have their treatment technology and equipment validated by a Board approved process authority and accepted by the TERP. Documentation must be provided with their DV application to verify that their treatment technology and equipment have been validated by a Board-approved process authority. Such documentation shall be sufficient to demonstrate that the treatment processes and equipment achieve a 4-log reduction in *Salmonella* bacteria. Treatment technology and equipment that have been modified to a point where operating parameters such as time, temperature, or volume change, shall be revalidated;

(D) Have their technology and procedures verified by a Board-approved DV auditor to ensure they are being applied appropriately. A DV auditor may not be an employee of the manufacturer that they are auditing. A DV auditor may not be the same individual who conducted the process validation accepted by the TERP for the equipment being audited. DV auditors must submit a report to the Board after conducting each audit. DV auditors must submit an initial application to the Board on ABC Form No. 53, ''Application for Direct Verifiable (DV) Program Auditors,'' and be approved by the Board in coordination with the TERP. Should the applicant disagree with the decision concerning approval, they may appeal the decision in writing to the Board, and ultimately to USDA. For subsequent crop years, approved DV auditors with no changes to their initial application must send the Board a letter, signed and dated, indicating that there are no changes to the application the Board has on file. Approved DV auditors whose status has changed must submit a new application. The Board, in coordination with the TERP, may revoke any approval for cause. The Board shall notify the DV auditor in writing of the reasons for revoking the approval. Should the DV auditor disagree with the

decision to revoke, it may appeal the decision in writing to the Board, and ultimately to USDA. A DV auditor whose approval has been revoked must submit a new application to the Board and await approval;

* * * * *

■ 3. Revise § 981.450 to read as follows:

§ 981.450 Exempt dispositions.

As provided in § 981.50, any handler disposing of almonds for crushing into oil, or for animal feed, may have the kernel weight of these almonds excluded from their program obligations, so long as:

(a) The handler qualifies as, or delivers such almonds to, a Board-approved accepted user;

(b) Each delivery is made directly to the accepted user by June 30 of each crop year; and

(c) Each delivery is certified to the Board by the handler on ABC Form 8.

§§ 981.466 and 981.467 [Stayed]

■ 4. Sections 981.466 and 981.467 are stayed indefinitely.

■ 5. Revise § 981.481 to read as follows:

§ 981.481 Interest and late payment charges.

(a) Pursuant to § 981.81(e), the Board shall impose an interest charge on any handler whose assessment payment has not been received in the Board's office within 30 days of the invoice date shown on the handler's statement, unless an envelope containing the payment has been legibly postmarked by the U.S. Postal Service or some other verifiable delivery tracking system as having been remitted within 30 days of the invoice date. The interest charge shall be a rate of one and a half percent per month and shall be applied to the unpaid assessment balance for the number of days all or any part of the unpaid balance is delinquent beyond the 30-day payment period.

(b) In addition to the interest charge specified in paragraph (a) of this section, the Board shall impose a late payment charge on any handler whose payment has not been received in the Board's office within 60 days of the invoice date, unless an envelope containing the payment has been legibly postmarked by the U.S. Postal Service or some other verifiable delivery tracking system as having been remitted within 60 days of the invoice date. The late payment charge shall be 10 percent of the unpaid balance.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–21702 Filed 9–29–23; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1220; Project Identifier MCAI–2023–00478–T; Amendment 39–22553; AD 2023–19–03]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This AD is effective November 6, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 6, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1220; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

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

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

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Model A330–200 series airplanes; Model A330–200 Freighter series airplanes; Model A330–300 series airplanes; Model A330–800 series airplanes; Model A330–900 series airplanes; Model A340–200 series airplanes; and Model A340–300 series airplanes. The NPRM published in the **Federal Register** on June 27, 2023 (88 FR 41516). The NPRM was prompted by AD 2023–0057, dated March 16, 2023, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2023–0057) (also referred to as the MCAI). The MCAI states cracks were found in the fuel control unit housing assembly of a Honeywell GTCP331–350 APU, which caused fuel leakage in the APU compartment. This condition, if not addressed, could lead to an uncommanded in-flight shutdown of the APU, or a fire in the APU compartment, possibly resulting in damage to the airplane.

In the NPRM, the FAA proposed to require replacing any affected APU fuel control unit or affected APU, as specified in EASA AD 2023–0057. The NPRM also proposed to prohibit the installation of affected parts under certain conditions. 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–2023–1220.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

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

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

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

Costs of Compliance

The FAA estimates that this AD affects 128 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
Up to 5 work-hours × $85 per hour = $425.	*$	Up to $425	Up to $54,400.

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

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

Authority for This Rulemaking

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

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

Regulatory Findings

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,

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

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

List of Subjects in 14 CFR Part 39

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

The 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:

2023–19–03 Airbus SAS: Amendment 39–22553; Docket No. FAA–2023–1220; Project Identifier MCAI–2023–00478–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 6, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes specified in paragraphs (c)(1) through (7) of this AD, certificated in any category.

(1) Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Model A330–223F and –243F airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Model A330–841 airplanes.

(5) Model A330–941 airplanes.

(6) Model A340–211, –212, and –213 airplanes.

(7) Model A340–311, –312, and –313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 49, Airborne Auxiliary Power.

(e) Unsafe Condition

This AD was prompted by a report of cracks in the fuel control unit housing assembly of a Honeywell GTCP331–350

auxiliary power unit (APU), which caused fuel leakage in the APU compartment. The FAA is issuing this AD to address the cracked fuel control unit housing assemblies. The unsafe condition, if not addressed, could result in an uncommanded APU in-flight shutdown, or fire in the APU compartment, which could result in damage to the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0057, dated March 16, 2023 (EASA AD 2023–0057).

(h) Exceptions to EASA AD 2023–0057

(1) Where EASA AD 2023–0057 refers to its effective date; this AD requires using the effective date of this AD.

(2) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0057.

(3) Where EASA AD 2023–0057 defines ''the SB,'' for this AD, operators must use Honeywell Service Bulletin GTCP331–49–7954, dated December 19, 2007.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

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

(j) Additional Information

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

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0057, dated March 16, 2023.

(ii) Honeywell Service Bulletin GTCP331–49–7954, dated December 19, 2007.

(3) For EASA AD 2023–0057, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) For Honeywell service information identified in this AD, contact Honeywell International, Inc., 111 South 34th Street, Phoenix, AZ 85034; phone: (800) 601–3099; fax: (602) 365–5577; website: *myaerospace.honeywell.com/wps/portal.*

(5) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on September 15, 2023.

Victor Wicklund,

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

[FR Doc. 2023–21635 Filed 9–29–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0190; Project Identifier 2019–CE–048–AD; Amendment 39–22556; AD 2023–19–06]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited (Type Certificate Previously Held by Bombardier Inc. and de Havilland Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 64–09–03, which applied to all de Havilland (type certificate now held by Viking Air Limited (Viking)) Model DHC–2 ''Beaver'' airplanes. AD 64–09–03 required inspecting the aileron mass balance weight arms for cracks and corrosion and replacing any damaged part. Since the FAA issued AD 64–09–03, Transport Canada superseded its mandatory continuing airworthiness information (MCAI) to correct an unsafe condition on these products. This AD requires incorporating into the existing maintenance records for your airplane the actions and associated thresholds and intervals, including life limits, specified in a supplemental inspection and corrosion control manual for Model DHC–2 airplanes. This AD also requires completing all of the initial tasks identified in this manual and reporting certain corrosion findings to Viking. The actions in this supplemental inspection and corrosion control manual include the inspection of the aileron balance weight arms required by AD 64–09–03. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 6, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 6, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0190; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the MCAI, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room

W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

• For service information identified in this final rule, contact Viking Air Limited Technical Support, 1959 de Havilland Way, Sidney, British Columbia, Canada V8L 5V5; phone: (800) 663–8444; fax: (250) 656–0673; email: *technical.support@vikingair.com;* website: *vikingair.com/support/service-bulletins.*

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

FOR FURTHER INFORMATION CONTACT: James Delisio, Continued Operational Safety Program Manager, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7321; email: *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to supersede AD 64–09–03, Amendment 718 (29 FR 5390, April 22, 1964) (AD 64–09–03). AD 64–09–03 applied to all de Havilland (type certificate now held by Viking Air Limited) Model DHC–2 ''Beaver'' airplanes. AD 64–09–03 required repetitively inspecting the aileron mass balance weight arms for cracks and corrosion and replacing any damaged part. AD 64–09–03 resulted from cracks and corrosion found on aileron mass balance weight arm part numbers (P/Ns) C2WA151, C2WA152, C2WA127, and C2WA128. The FAA issued AD 64–09–03 to address corrosion-related degradation of the aileron mass balance weight arms which, if not addressed, could lead to structural failure with consequent loss of control of the airplane.

The NPRM published in the **Federal Register** on February 8, 2022 (87 FR 7065); corrected February 18, 2022 (87 FR 9274). The NPRM was prompted by AD CF–2019–25, dated July 19, 2019 (referred to after this as the MCAI), issued by Transport Canada, which is the aviation authority for Canada. The MCAI states that it supersedes prior Transport Canada ADs related to a supplementary inspection and corrosion control program for aging airplanes, which identifies specific locations of an airplane that must be inspected to ensure corrosion-related degradation does not result in an unsafe condition. The MCAI continues to require the tasks included in the initial issue of Viking, DHC–2 Beaver Supplemental Inspection and Corrosion Control Manual, PSM 1–2–5, dated June 21, 2017, and requires additional inspections for components of airframe systems other than flight controls, which are included in Viking DHC–2 Beaver Supplemental Inspection and Corrosion Control Manual, PSM 1–2–5, Revision 1, dated January 10, 2019 (Viking PSM 1–2–5, Revision 1). Corrosion-related degradation, if not addressed, could lead to structural failure with consequent loss of control of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–0190.

In the NPRM, the FAA proposed to require establishing a corrosion prevention and control program approved by the FAA. In the NPRM, the FAA also proposed to require completing all of the initial tasks identified in the program and reporting corrosion findings to Viking.

The FAA issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to supersede AD 64–09–03. The SNPRM published in the **Federal Register** on April 25, 2023 (88 FR 24927). The SNPRM was prompted by the FAA's decision to revise the proposed actions specified in the NPRM and to reopen the comment period to allow the public the chance to comment on whether the proposed AD would have a significant economic impact on a substantial number of small entities. In the SNPRM, the FAA proposed to require incorporating into the existing maintenance records for your airplane the actions and associated thresholds and intervals, including life limits, specified in Parts 2 and 3 of Viking PSM 1–2–5, Revision 1, completing all the initial tasks identified in Viking PSM 1–2–5, Revision 1, and reporting to Viking any Level 2 or Level 3 corrosion findings. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from three individuals. The following presents the comments received on the SNPRM and the FAA's response to each comment.

Request To Withdraw NPRM and SNPRM

One individual commenter requested that the FAA reconsider issuing the proposed AD and a second individual commenter requested that the FAA withdraw the proposed rulemaking. The first commenter noted that during an annual inspection, a licensed Airframe and Powerplant (A&P) mechanic can determine if an airplane has been properly maintained and if corrosion is present. This commenter indicated that, by issuing the proposed AD, the FAA would force many operators and pilots to give up their airplanes due to exorbitant costs. This commenter stated that because one or two airplanes were found with extensive corrosion, all Model DHC–2 airplanes should not be placed in the same category and that ''the Beaver'' is one of the finest built airplanes and should be respected as such.

The second individual commenter stated that the FAA must stop broad brushing all airplanes of a certain build as the same. The commenter noted that a Model DHC–2 ''Beaver'' built in 1948 is not the same as one built in 1967 and that the lifetime use of service and environmental conditions determine an airplane's risk factors. The commenter explained that many Beavers have thousands of pages of flight records spanning over 70 years that allow owners and maintainers to subjectively evaluate an airplane's condition and operating environments; therefore, based on the points above, the FAA should immediately withdraw the proposed rulemaking because it lacks merit.

The FAA acknowledges the commenters' concerns regarding the impact this final rule will have on operators and pilots. As noted by the first commenter, Model DHC–2 airplanes are currently required to perform annual and 100-hour inspections, including inspections for corrosion, that are required by the Federal Aviation Regulations. The FAA does not agree that these current regulations require the same inspections as those proposed in the SNPRM. The inspections proposed in the SNPRM are focused on certain areas of the airplane and are more detailed than those covered in the required annual or 100-hour inspections. The inspections required by this AD are part of a supplemental inspection and corrosion prevention program that is included in Parts 2 and 3 of Viking PSM 1–2–5, Revision 1. These inspection types and intervals address locations or parts that are not currently required to be inspected as part of annual or 100-hour inspections in existing regulations. These new inspections and intervals are needed to detect and address corrosion, which could lead to structural failure with consequent loss of control of the airplane.

The FAA also acknowledges the first commenter's concern regarding the ''exorbitant cost'' of complying with the requirements of this AD that could result in operators and pilots having to give up their airplanes. Under 14 CFR 39.1, issuance of an AD is based on the finding that an unsafe condition exists or is likely to develop in aircraft of a particular type design. An aging airplane requires more attention during maintenance procedures and, at times, more frequent inspections of structural components to detect damage due to environmental deterioration, accidental damage, and fatigue. The unsafe condition addressed in this final rule includes undetected corrosion, which could lead to structural failure and consequent loss of control of the airplane. Inspections and repairs are therefore necessary to detect and correct such corrosion before it leads to structural failure.

In response to both commenters' statements that all Model DHC–2 airplanes should not be placed in the same category, the FAA has determined that an unsafe condition exists or is likely to exist or develop in other products of the same type design. In this case, the FAA independently reviewed the MCAI and related service information and determined an unsafe condition exists and an AD is needed to address that unsafe condition. Further, it is within the FAA's authority and responsibility to issue ADs to require actions to address unsafe conditions that are not otherwise being addressed (or are not addressed adequately) by routine maintenance procedures.

The FAA has not changed this AD regarding this issue.

Request for Clarification Regarding Conflicting AD Requirements for the Affected Models

One individual commenter requested clarification regarding what operators should do if there are conflicts between the requirements specified in the SNPRM and the requirements of existing ADs for the affected airplanes. The commenter noted that AD 2008–11–11, Amendment 39–15533 (73 FR 34611, June 18, 2008) (AD 2008–11–11) specifies a fluorescent penetrant inspection for cracks in the front spar center section web of the tailplane, while task C55–10–02 in Viking PSM 1–2–5, Revision 1, allows using a fluorescent penetrant or an eddy current inspection, which seems contradictory.

The FAA acknowledges the commenter's concern. The FAA has reviewed all potentially related ADs against the proposed requirements in the SNPRM and determined that other than AD 64–09–03, no other ADs need to be superseded or rescinded. Any other ADs involving inspections for corrosion on the affected airplanes require either inspections for different parts or locations on an airplane or the inspections are not as in-depth or repetitive; therefore, they do not overlap with the inspections required by this AD. This includes the requirements of AD 2008–11–11, which requires inspecting a different airplane part than the part specified in task C55–10–02 of Viking PSM 1–2–5, Revision 1.

The FAA has not changed this AD regarding this issue.

Request To Revise Requirements Based on Airplane Usage Conditions

One individual commenter requested that the SNPRM be revised to provide different requirements based on how an airplane is used. The commenter suggested that instead of using a broad approach and including all Model DHC–2 airplanes, the FAA should use a logical evaluation process and consider the following parameters to determine if an airplane's airworthiness might be compromised due to corrosion: operating environment (exposure to saltwater); commercial or private use; stress on the airframe due to repetitive flights with heavy loads; total flight hours on the airframe; airplane history (has it been partially or completely rebuilt); and maintenance history.

The FAA disagrees with the commenter's request to change the SNPRM based on different airplane operational usage. There is no current requirement to track the hours spent flying in different conditions or types of water. Additionally, operators may not know an airplane's entire flight or maintenance history. Without this detailed knowledge of each airplane, it would be impossible for the FAA to develop a special set of inspections based on airplane usage conditions. However, operators may submit a proposal for revised requirements by requesting an alternative method of compliance (AMOC) using the procedures specified in paragraph (i) of this AD.

The FAA has not changed this AD regarding this issue.

Request To Revise Costs of Compliance

One individual commenter requested that the FAA revise the labor rate in the Costs of Compliance section of the SNPRM. The commenter noted that the FAA's estimate of $85 per hour is not accurate and that the current labor rate for an experienced DHC–2/3 airplane mechanic is greater than $110 per hour, depending on where in the United States the work is being performed. The commenter also mentioned that public comments on the NPRM that is related to the SNPRM stated that DHC–2 mechanic rates are $110 to $150 per hour, depending on the geographic regions where the work is being performed. The commenter added that the proposed costs do not consider the current shortage of qualified mechanics able to do the inspections.

The FAA agrees that the labor rate of $85 per work-hour is dated but disagrees with the commenter's estimate of $110 to $150 per hour. The FAA notes that the current wage rate for aviation mechanics as provided by the Bureau of Labor Statistics, found at *www.bls.gov/oes/current/oes493011.htm,* after accounting for fringe benefits that are valued at roughly 50% of the nominal wage, is lower than the estimated fully burdened labor rate (a labor rate with fringe benefits included) of $85 per work-hour; therefore, the FAA is unable to justify increasing the labor rate from $85 per work-hour. The FAA continues to use the higher $85 per work-hour figure in order to provide a conservative estimate of the costs.

Regarding the commenter's statement that the wage rate for DHC–2 mechanics varies geographically, the commenter did not provide any documentation or references to support this statement. Furthermore, unless the distribution of DHC–2 airplanes also varies along the same geography, using an average rate captures the average effect, including any higher wages; therefore, the FAA has not added a geographical adjustment into its assessment.

The FAA acknowledges the commenter's concerns regarding labor shortages, although this does not affect the cost of this final rule.

The FAA has not changed this AD regarding this issue.

Conclusion

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the SNPRM.

ADs Mandating Airworthiness Limitations (ALS)

The FAA has previously mandated airworthiness limitations by issuing ADs that require revising the ALS of the existing maintenance manual or instructions for continued airworthiness to incorporate new or revised inspections. This AD, however, requires establishing and incorporating new inspections into the existing maintenance records required by 14 CFR 91.417(a)(2) or 135.439(a)(2) for your airplane. The FAA does not intend this as a substantive change. Requiring incorporation of the new ALS requirements into the existing maintenance records, rather than requiring individual repetitive inspections and replacements, allows operators to record AD compliance once after updating the existing maintenance records, rather than recording compliance after every inspection and part replacement.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Viking PSM 1–2–5, Revision 1, which specifies procedures for inspecting locations of the airplane that are particularly susceptible to corrosion-related degradation and includes repetitive inspection intervals, defines the different levels of corrosion, and provides corrective action if corrosion is found.

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**.

Other Related Service Information

The FAA reviewed Viking DHC–2 Beaver Service Bulletin V2/0011, Revision NC, dated November 28, 2019. This service information provides a list of new inspection tasks that have been added to the DHC–2 supplementary inspection and corrosion control program, Viking PSM 1–2–5, Revision 1.

Impact on Intrastate Aviation in Alaska

In light of the heavy reliance on aviation for intrastate transportation in Alaska, the FAA has fully considered the effects of this final rule (including costs to be borne by affected operators) from the earliest possible stages of AD development. As previously stated, 14 CFR part 39 requires operators to correct an unsafe condition identified on an airplane to ensure operation of that airplane in an airworthy condition. The FAA has determined that the need to correct corrosion-related degradation in aging aircraft, which could lead to structural failure with consequent loss of control of the airplane, outweighs any impact on aviation in Alaska.

Costs of Compliance

The FAA estimates that this AD affects 409 airplanes of U.S. registry. The FAA also estimates that it will take about 1 work-hour per airplane at a labor rate of $85 per work-hour to revise the existing maintenance records.

Based on these figures, the FAA estimates the cost of this AD on U.S. operators to be $34,765 or $85 per airplane.

The FAA estimates it will take about 1 work-hour to report any Level 2 corrosion found during the initial or subsequent inspections or any Level 3 corrosion found during the initial or subsequent inspections, for an estimated cost of $85 per airplane.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 601–612) (RFA) establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.

To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

The FAA published an Initial Regulatory Flexibility Analysis (IRFA) for this rule to aid the public in commenting on the potential impacts to small entities. The FAA considered the public comments in developing the final rule and this Final Regulatory Flexibility Analysis (FRFA). A FRFA must contain the following:

(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 in 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 proposed rule, including an estimate of the classes of small entities which 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 the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

1. Need for and Objectives of the Rule

The NPRM proposed to supersede AD 64–09–03, which applied to all de Havilland (type certificate now held by Viking) Model DHC–2 ''Beaver'' airplanes, because after the FAA issued AD 64–09–03, Transport Canada superseded its MCAI to identify specific locations of an airplane that must be inspected to ensure corrosion-related degradation does not result in an unsafe condition. This final rule requires incorporating into the existing maintenance records for your airplane the actions and associated thresholds and intervals, including life limits, specified in a supplemental inspection and corrosion control manual for Model DHC–2 airplanes. This final rule also requires completing all the initial tasks identified in this manual and reporting certain corrosion findings to Viking. The actions in this supplemental inspection and corrosion control manual include the inspection of the aileron balance weight arms required by AD 64–09–03.

2. Significant Issues Raised in Public Comments

The FAA received comments related to costs from three individual commenters. The following presents the significant issues in the comments received on the SNPRM and the FAA's response to each comment.

Request To Revise Requirements Based on Airplane Usage Conditions

Two commenters requested that the SNPRM be revised to have different requirements based on how the airplane is used, including but not limited to corrosion level, operating environment (*e.g.,* near salt water), commercial or private use, and airplane history.

The FAA disagrees with the commenters' requests to change the SNPRM based on airplane operational usage. There is no current requirement to track the hours spent flying in different conditions or types of water. Additionally, operators may not know an airplane's entire flight or maintenance history. Without this detailed knowledge of each airplane, it would be impossible for the FAA to develop a special set of inspections based on airplane usage conditions. However, operators may submit a proposal for revised requirements by requesting an AMOC using the procedures specified in paragraph (i) of this AD. The FAA has not changed this AD regarding this issue.

Request To Revise Costs of Compliance: Labor Rate

One commenter requested that the FAA revise the labor rate in the Costs of Compliance section of the SNPRM. The commenter noted that current labor rates are anywhere from $110 to $150 per hour and added that the proposed costs do not consider the current shortage of qualified mechanics able to do the inspections.

The FAA agrees that the labor rate of $85 per work-hour provided in the SNPRM is dated but disagrees with the provided estimate of $110 to $150 per hour provided by the commenter. The FAA notes that the current wage rate for aviation mechanics as provided by the Bureau of Labor Statistics, found at *www.bls.gov/oes/current/oes493011.htm,* after accounting for fringe benefits that are valued at roughly 50% of the nominal wage, is lower than the estimated fully burdened labor rate (a labor rate with fringe benefits included) of $85 per work-hour. Therefore, the FAA is unable to justify increasing the labor rate from $85 per work-hour. The FAA continues to use the higher $85 per work-hour figure in order to provide a conservative estimate of the costs.

The commenter also indicated that the wage rate for DHC–2 mechanics varies geographically but did not provide any documentation or references to support this statement. Furthermore, unless the distribution of DHC–2 airplanes also varies along the same geography, using an average rate captures the average effect, including any higher wages; therefore, the FAA has not added a geographical adjustment into its assessment.

3. Response to SBA Comments

The Chief Counsel for Advocacy of the SBA did not file any comments in response to the SNPRM. Thus, the FAA did not make any changes to this final rule.

4. Small Entities to Which the Rule Will Apply

The FAA used the definition of small entities in the RFA for this analysis. The RFA defines small entities as small businesses, small governmental jurisdictions, or small organizations. In 5 U.S.C. 601(3), the RFA defines ''small business'' to have the same meaning as ''small business concern'' under section 3 of the Small Business Act. The Small Business Act authorizes the SBA to define ''small business'' by issuing regulations.

SBA (2022) has established size standards for various types of economic activities, or industries, under the North American Industry Classification System (NAICS).[1] These size standards generally define small businesses based on the number of employees or annual receipts.

The FAA Civil Aircraft Registry shows 409 Model DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes that will be affected by this AD. These 409 airplanes are registered to 235 private businesses, 76 individuals, and 3 government agencies. The 76 individuals and 3 government agencies are excluded from this analysis as the RFA does not apply to individuals and the 3 government agencies are not small entities as defined by the RFA.[2]

Three hundred nineteen (319) airplanes are owned and operated by 235 private entities. A sample of 50 private businesses was randomly selected for the analysis.[3] Of the 50 sampled entities, 45 were found to be small. The results of the cost impact analysis for these 45 small entities are shown in Table 1 and will be discussed in the following section.

As can be seen, the impacts range from nearly 0%, to a maximum of 0.5%. The average impact is 0.1%, and the median impact rounds to 0.0%. As

[1] Small Business Administration (SBA). 2022. Table of Size Standards. Effective July 14, 2022. *https://www.sba.gov/document/support-table-size-standards.*

[2] Two airplanes are registered to the U.S. Department of the Interior. Five airplanes are registered to the United States Forest Service, within the U.S. Department of Agriculture. Two airplanes are registered to the State of Alaska to the Alaska Department of Fish & Game. These government agencies and are not small entities under the RFA.

[3] The sample was selected by shuffling the order of the list of 409 DHC–2 airplanes in the FAA Registry and going down the randomized list. If revenue and employee count data were available, it was included in the sample; otherwise, it was excluded. This process was repeated until 50 firms, for which revenue and employee data were available, had been added to the sample. The shuffling was accomplished by giving each entry in the registry an index value between 0 and 1 using Excel's RAND function. The entries were then sorted by that index value to randomize their order.

such, the FAA has determined that this rule will not significantly impact a substantial number of small entities.

TABLE 1—COST IMPACT ON SMALL ENTITIES

Operator	FAA Registry type	DHC–2 A/C	Revenues ($1,000)	Cost	Cost/ revenue (%)	NAICS code	Size standard	NAICS industry
ALASKAS FISHING UNLIMITED INC.	Non-Citizen Corp.	1	79	$170.0	0.2	721214	$8 mn	Recreational and Vacation Camps (except Campgrounds).
DOUGLAS AVIATION LTD	Corporation	2	90	340.0	0.4	541990	$17 mn	All Other Professional, Scientific and Technical Services.
NORTHSTAR HOLDINGS LLC	LLC	3	110	510.0	0.5	551112	$40 mn	Offices of Other Holding Companies.
RHK OF KANSAS	Corporation	1	110	170.0	0.2	541110	$13.5 mn	Offices of Lawyers.
SUMMIT LEASING LLC	LLC	1	110	170.0	0.2	532490	$35 mn	Other Comm'l & Ind. Machinery and Equip. Rental & Leasing.
JESPERSEN AIRCRAFT SERVICES INC.	Corporation	3	113	510.0	0.4	481219	$22 mn	Other Nonscheduled Air Transportation.
KATMAI AIR LLC	LLC	1	117	170.0	0.1	532411	$40 mn	Comm'l Air, Rail, & Water Transp. Equip. Rental and Leasing.
MUSTANG HIGH FLIGHT LLC	LLC	1	127	170.0	0.1	334511	1250 emp ...	Search, Detect., Nav., Guid., Aero., & Naut. Systems & Inst. Mfg.
FLIGHT MANAGEMENT LLC	LLC	2	161	340.0	0.2	561110	$11 mn	Office Administrative Services.
NEWHALEN LODGE INC	Corporation	3	165	510.0	0.3	721199	$8 mn	All Other Traveler Accommodation.
4R AVIATION LLC	LLC	1	177	170.0	0.1	336411	1500 emp ...	Aircraft Manufacturing.
RAINBOW KING LODGE INC ...	Corporation	2	209	340.0	0.2	721199	$8 mn	All Other Traveler Accommodation.
DOYON AIRCRAFT LEASING LLC.	LLC	1	250	170.0	0.1	532411	$40 mn	Comm'l Air, Rail, & Water Transp. Equip. Rental and Leasing.
KENMORE CREW LEASING INC TRUSTEE.	Corporation	1	278	170.0	0.1	532490	$35 mn	Other Comm'l & Ind. Machinery and Equip. Rental & Leasing.
COMANCHE FIGHTERS LLC ...	LLC	1	301	170.0	0.1	813930	$14.5 mn	Labor Unions and Similar Labor Organizations.
BAY AIR INC	Corporation	1	307	170.0	0.1	481111	1500 emp ...	Scheduled Passenger Air Transportation.
COYOTE AIR LLC	LLC	2	310	340.0	0.1	481211	1500 emp ...	Nonscheduled Chartered Passenger Air Transp.
KINGFISHER AIR INC	Corporation	1	366	170.0	0.0	481219	$22 mn	Other Nonscheduled Air Transportation.
ASSOCIATED LEASING LLC ...	LLC	1	500	170.0	0.0	532490	$35 mn	Other Comm'l & Ind. Machinery and Equip. Rental & Leasing.
TIKCHIK NARROWS LODGE INC.	Corporation	3	720	510.0	0.1	721214	$8 mn	Recreational and Vacation Camps (except Campgrounds).
NORTHWEST SEAPLANES INC.	Corporation	3	750	510.0	0.1	481111	1500 emp ...	Scheduled Passenger Air Transportation.
SNOW MOUNTAIN ENTERPRISES LLC.	LLC	1	750	170.0	0.0	532000	$8 mn	Rental and Leasing Services, N.F.S.
ISLAND WINGS AIR SERVICE LLC.	LLC	2	956	340.0	0.0	481211	1500 emp ...	Nonscheduled Chartered Passenger Air Transp.
TVPX AIRCRAFT SOLUTIONS INC TRUSTEE.	Corporation	3	1,157	510.0	0.0	336310	1000 emp ...	Motor Vehicle Gasoline Engine and Engine Parts Mfg.
SHELDON AIR SERVICE LLC ..	LLC	1	1,400	170.0	0.0	481219	$22 mn	Other Nonscheduled Air Transportation.
TALKEETNA AIR TAXI INC	Corporation	1	1,635	170.0	0.0	481219	$22 mn	Other Nonscheduled Air Transportation.
NO SEE UM LODGE INC	Corporation	3	2,036	510.0	0.0	721214	$8 mn	Recreational and Vacation Camps (except Campgrounds).
WARD AIR INC	Corporation	4	2,191	680.0	0.0	481219	$22 mn	Other Nonscheduled Air Transportation.
HISTORIC FLIGHT FOUNDATION.	Corporation	1	2,500	340.0	0.0	712110	$30 mn	Museums.
LAKE HAVASU SEAPLANES LLC.	LLC	1	2,500	170.0	0.0	611000	$8 mn	Educational Services, N.F.S.
RDJ BROTHERS TRUCKING INC.	Corporation	1	2,500	170.0	0.0	236000	$39.5 mn	Construction of buildings, N.F.S.
SEAWIND AVIATION INC	Corporation	2	2,500	170.0	0.0	481211	1500 emp ...	Nonscheduled Chartered Passenger Air Transp.
TIKCHIK AIRVENTURES LLC ..	LLC	1	2,500	170.0	0.0	481211	1500 emp ...	Nonscheduled Chartered Passenger Air Transp.
WOLF TRAIL LODGE INC	Corporation	1	2,500	170.0	0.0	721000	$8 mn	Accommodation, N.F.S.
ANDREW AIRWAYS INC	Corporation	3	2,576	510.0	0.0	485999	$16.5 mn	All Other Transit and Ground Passenger Transportation.

TABLE 1—COST IMPACT ON SMALL ENTITIES—Continued

Operator	FAA Registry type	DHC–2 A/C	Revenues ($1,000)	Cost	Cost/ revenue (%)	NAICS code	Size standard	NAICS industry
ALASKAS ENCHANTED LAKE LODGE INC.	Corporation	2	2,729	340.0	0.0	721310	$12.5 mn	Rooming & Boarding Houses, Dormitories, and Workers' Camps.
RAINBOW RIVER LODGE LLC	LLC	2	4,000	340.0	0.0	721214	$8 mn	Recreational and Vacation Camps (except Campgrounds).
K BAY AIR LLC	LLC	1	4,427	170.0	0.0	481219	$22 mn	Other Nonscheduled Air Transportation.
RAPIDS CAMP LODGE INC	Corporation	1	7,000	170.0	0.0	713990	$8 mn	All Other Amusement and Recreation Industries.
PROGRESSIVE PLASTICS INC	Corporation	1	7,500	170.0	0.0	326199	750 emp	All Other Plastics Product Manufacturing.
BROWN HELICOPTER INC	Corporation	1	9,000	170.0	0.0	336412	1500 emp ...	Aircraft Engine and Engine Parts Manufacturing.
PERRYCOOK FLIGHT SERVICES LLC.	LLC	1	12,500	170.0	0.0	481211	1500 emp ...	Nonscheduled Chartered Passenger Air Transp.
KOMRO INTERNATIONAL LLC	LLC	1	14,100	170.0	0.0	423820	125 emp	Farm & Garden Machinery & Equip. Merchant Wholesalers.
CONCRETE WORKS OF COLORADO INC.	Corporation	1	16,190	170.0	0.0	238110	$16.5 mn	Poured Concrete Foundation and Structure Contractors.
KENMORE AIR HARBOR LLC	LLC	9	51,500	1,530.0	0.0	481111	1500 emp ...	Scheduled Passenger Air Transportation.

Total 80 $161,997 $13,600.
Mean $3,600 $302 0.1%
Median $956 $170 0.0%
Notes:
1. The size standard is the maximum size for the NAICS industry considered by the Small Business Administration to be a small entity.
2. AD costs per airplane are 1 work-hour × $85 = $85 + $85 reporting costs for initial inspection, for a total of $170.
3. All percentage figures are rounded to the nearest tenth of a percent. All 0.0% figures represent values below 0.1%, but above 0%.

5. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The FAA estimates that this AD will take 1 work-hour per airplane at a labor rate of $85 per work-hour to incorporate into the existing maintenance records the actions specified in Parts 2 and 3 of Viking PSM 1–2–5, Revision 1, plus $85 per airplane to report any Level 2 corrosion found during the initial or subsequent inspections or any Level 3 corrosion found during the initial or subsequent inspections, for an estimated total cost of $170 per airplane.

The estimated cost of this AD, per small entity, is shown in the ''Cost'' column of Table 1 and cost impact is measured by cost as a percentage of revenues. As the table shows, the mean cost impact is 0.1% of annual revenues,[4] while the median cost impact is 0.0%.

To the extent that small entities provide more unique services or serve markets with less competition, they may also be able to pass on costs in the form of price increases. However, the FAA assumed that none of these small entities would be able to pass these compliance costs to their customers in terms of higher prices. This shows no significant impact on any of the small entities.

[4] These revenue data come from online sources such as *zoominfo.com, opencorporates.com, buzzfile.com, manta.com, allbiz.com,* and *lookupcompanyrevenue.com.*

6. Significant Alternatives Considered

As part of the FRFA, the FAA is required to consider regulatory alternatives that may be less burdensome.

The FAA did not find any significant regulatory alternatives to this AD that would accomplish the safety objectives of this AD.

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,

(2) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the RFA.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:
■ a. Removing Airworthiness Directive 64–09–03, Amendment 718 (29 FR 5390, April 22, 1964); and
■ b. Adding the following new airworthiness directive:

2023–19–06 Viking Air Limited (Type Certificate Previously Held by Bombardier Inc. and de Havilland Inc.): Amendment 39–22556; Docket No. FAA–2022–0190; Project Identifier 2019–CE–048–AD.

(a) Effective Date

This airworthiness directive (AD) is effective November 6, 2023.

(b) Affected ADs

This AD replaces AD 64–09–03, Amendment 718 (29 FR 5390, April 22, 1964).

(c) Applicability

This AD applies to Viking Air Limited (type certificate previously held by Bombardier Inc. and de Havilland Inc.) Model DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2000, Airframe.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as corrosion-related degradation in aging aircraft. The FAA is issuing this AD to detect and address corrosion, which could lead to structural failure with consequent loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within 90 days after the effective date of this AD, incorporate into the existing maintenance records required by 14 CFR 91.417(a)(2) or 135.439(a)(2), as applicable for your airplane, the actions and associated thresholds and intervals, including life limits, specified in Parts 2 and 3 of Viking DHC–2 Beaver Supplemental Inspection and Corrosion Control Manual, PSM 1–2–5, Revision 1, dated January 10, 2019 (Viking PSM 1–2–5, Revision 1). Do each initial task within 6 months after the effective date of this AD or at the threshold for each applicable task specified in Part 3 of Viking Product Support Manual PSM 1–2–5, Revision 1, whichever occurs later. Where Viking PSM 1–2–5, Revision 1, specifies contacting Viking for instructions on forward and rear fin attachment bolt replacement, inspection, and installation, and for a disposition regarding attachment bolts, this AD requires contacting the Manager, International Validation Branch, FAA; or Transport Canada; or Viking's Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

Note 1 to paragraph (g)(1): Viking DHC–2 Beaver Service Bulletin V2/0011, Revision NC, dated November 28, 2019, contains additional information related to this AD.

(2) After the action required by paragraph (g)(1) of this AD has been done, no alternative actions and associated thresholds and intervals, including life limits, are allowed unless they are approved as specified in paragraph (i) of this AD.

(h) Reporting

(1) For inspections done after the effective date of this AD, report to Viking any Level 2 or Level 3 corrosion, as specified in Viking PSM 1–2–5, Revision 1, at the times specified in and in accordance with part 3, paragraph 5, of Viking PSM 1–2–5, Revision 1.

(2) For inspections done before the effective date of this AD, within 30 days after the effective date of this AD, report to Viking any Level 2 or Level 3 corrosion, as specified in Viking PSM 1–2–5, Revision 1, in accordance with part 3, paragraph 5, of Viking PSM 1–2–5, Revision 1.

(i) Alternative Methods of Compliance (AMOCs)

(1) 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 ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (j)(2) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov.* If mailing information, also submit information by email.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved specifically for this AD by the Manager, International Validation Branch, FAA.

(j) Additional Information

(1) Refer to the MCAI from Transport Canada, AD CF–2019–25, dated July 5, 2019, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–0190.

(2) For more information about this AD, contact James Delisio, Continued Operational Safety Program Manager, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7321; email: *9-avs-nyaco-cos@faa.gov.*

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

(k) Material Incorporated by Reference

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

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

(i) Viking DHC–2 Beaver Supplemental Inspection and Corrosion Control Manual, PSM 1–2–5, Revision 1, dated January 10, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact Viking Air Limited Technical Support, 1959 De Havilland Way, Sidney, British Columbia, Canada, V8L 5V5; phone: (800) 663–8444; fax: (250) 656–0673; email: *technical.support@vikingair.com;* website: *vikingair.com/support/service-bulletins.*

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

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

Issued on September 15, 2023.

Victor Wicklund,

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

[FR Doc. 2023–21631 Filed 9–29–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0674; Project Identifier AD–2021–00373–T; Amendment 39–22559; AD 2023–19–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–24–04, which applied to all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. AD 2020–24–04 required revising the existing airplane flight manual (AFM) to incorporate procedures for an approach with a localizer-based navigation aid, monitoring localizer raw data, calling out any significant deviations, and performing an immediate go around under certain conditions. This AD was prompted by the development of a modification to address the previously identified unsafe condition, and the identification of a separate unsafe condition where misleading vertical flight director (FD) guidance can be presented to the flightcrew under certain conditions. This AD continues to require the actions specified in AD 2020–24–04 and requires installing applicable software updates to the flight control module (FCM). Using updated software terminates the retained AFM requirement in this AD. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 6, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 6, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket

No. FAA–2022–0674; 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, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2022–0674.

FOR FURTHER INFORMATION CONTACT: Doug Tsuji, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3548; email: *Douglas.Tsjui@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–24–04, Amendment 39–21334 (85 FR 77991, December 3, 2020; corrected December 14, 2020 (85 FR 80589)) (AD 2020–24–04). AD 2020–24–04 applied to all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. The NPRM published in the **Federal Register** on June 29, 2022 (87 FR 38682). The NPRM was prompted by reports indicating that the autopilot flight director system (AFDS) failed to transition to the instrument landing system localizer (LOC) beam after the consistent localizer capture function in the FCMs initiated a transition to capture LOC during approach, and the manufacturer's development of a modification to address this unsafe condition. The NPRM was also prompted by the identification of a separate unsafe condition where misleading vertical FD guidance can be presented to the flightcrew under certain conditions. In the NPRM, the FAA proposed to continue to require the actions specified in AD 2020–24–04 and to require installing applicable software updates to the FCM. Installing updated software terminates the retained AFM requirement in this AD. The FAA is issuing this AD to address the AFDS failing to transition, which could result in localizer overshoot leading to glideslope descent on the wrong heading. Combined with a lack of flight deck effects for a consistent localizer capture mode failure, this condition could result in a controlled flight into terrain (CFIT). The NPRM was further prompted by reports of misleading vertical flight director guidance that in certain scenarios can be presented to the flightcrew during approach and could lead to CFIT or a runway overrun.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from the Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

The FAA received additional comments from two commenters, including Boeing and an individual. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Remove Certain Line Numbers From the Applicability

Boeing requested that the proposed AD be revised to remove line numbers 1062 and 1076 from the applicability. Boeing noted that those airplanes would have the requirements of B787–81205–SB270053–00 RB, Issue 002, dated May 6, 2021, incorporated during production.

The FAA agrees with the intent of the commenter's request. The FAA has added paragraph (j)(2) of this AD to specify that for airplanes on which Common Block Point (CBP) 5.1, 27 FCM Operational Program Software (OPS) part number HNP5A–AL01–5041 or later-approved software part number is installed on FCM–L, FCM–C, and FCM–R during production, the actions specified in paragraph (h) of this AD are not required. Additionally, the FAA has revised paragraph (g) of this AD to apply only to airplanes on which CBP 5.1, 27 FCM OPS part number HNP5A–AL01–5041 or later approved software part number is not installed on FCM–L, FCM–C, and FCM–R. Finally, the FAA has revised paragraph (k) of this AD to specify that installation of CBP 5.1, 27 FCM OPS part number HNP5A–AL01–5041 or later-approved software part number on FCM–L, FCM–C, and FCM–R in production terminates the AFM revision required by paragraph (g) of this AD. Since some airplanes had this software installed during production, the FAA has determined that revision of the existing AFM required by paragraph (g) of this AD is not applicable to those airplanes.

Request To Allow Additional Terminating Action

An individual requested that the FAA clarify whether accomplishing the actions in Boeing Alert Requirements Bulletin B787–81205–SB270053–00 RB, Issue 001, dated February 19, 2021, terminates the AFM revision required by paragraph (g) of the proposed AD. The commenter noted that paragraph (l)(1) of the proposed AD provides credit for previous accomplishment of Boeing Alert Requirements Bulletin B787–81205–SB270053–00 RB, Issue 001, dated February 19, 2021, but does not specify whether that credit extends to the terminating actions specified in paragraph (k) of the proposed AD.

The FAA agrees to clarify. The FAA has revised paragraph (l)(1) of this AD to specify that the credit applies to the actions in both paragraphs (h) and (k) of this AD. Therefore, accomplishing the actions in Boeing Alert Requirements Bulletin B787–81205–SB270053–00 RB, Issue 001, dated February 19, 2021, terminates the AFM revision required by paragraph (g) of the proposed AD, provided the software update has been installed on all affected airplanes in an operator's fleet.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin B787–81205–SB270053–00 RB, Issue 002, dated May 6, 2021. This service information specifies procedures for updating flight control electronics (FCE) software to install CBP 5.1 OPS having part number HNP5A–AL01–5041 in the FCM, and doing a software configuration check.

Boeing Alert Requirements Bulletin B787–81205–SB270053–00 RB, Issue 002, dated May 6, 2021, specifies prior or concurrent accomplishment of Boeing Alert Service Bulletin B787–81205–SB270044–00, Issue 003, dated

July 7, 2020; or Boeing Service Bulletin B787–81205–SB270046–00, Issue 002, dated October 24, 2019; as applicable, which specify procedures for installing FCE software update CBP 5.0.

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**.

Costs of Compliance

The FAA estimates that this AD affects 214 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS *

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revising the AFM (retained actions from AD 2020–24–04).	1 work-hour × $85 per hour = $85	$0	$85	$18,190
Updating the software	Up to 4 work-hours × $85 per hour = $340	(*)	*340	*72,760

* The table does not include the parts cost for the software.

The FAA has determined that updating the software requires installing up to 8 software loads, at $300 per load, per operator. For the parts cost, the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost for software to be $2,400 per operator.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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,

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2020–24–04, Amendment 39–21334 (85 FR 77991, December 3, 2020; corrected December 14, 2020 (85 FR 80589)); and

■ b. Adding the following new AD:

2023–19–09 The Boeing Company: Amendment 39–22559; Docket No. FAA–2022–0674; Project Identifier AD–2021–00373–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 6, 2023.

(b) Affected ADs

This AD replaces AD 2020–24–04, Amendment 39–21334 (85 FR 77991, December 3, 2020; corrected December 14, 2020 (85 FR 80589)) (AD 2020–24–04).

(c) Applicability

This AD applies to all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto flight.

(e) Unsafe Condition

This AD was prompted by reports indicating that the autopilot flight director system (AFDS) failed to transition to the instrument landing system localizer (LOC) beam after the consistent localizer capture function in the flight control modules initiated a transition to capture LOC during approach. The FAA is issuing this AD to address the AFDS failing to transition, which could result in localizer overshoot leading to glideslope descent on the wrong heading. Combined with a lack of flight deck effects for a consistent localizer capture mode failure, this condition could result in a controlled flight into terrain (CFIT). This AD was further prompted by reports of misleading vertical flight director guidance that in certain scenarios can be presented to the flightcrew during approach and could lead to CFIT or a runway overrun.

(f) Compliance

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

(g) Retained Revision of the Existing Airplane Flight Manual (AFM), With New Terminating Action and Revised Affected Airplanes

This paragraph restates the requirements of paragraph (g) of AD 2020–24–04, with new terminating action and revised affected airplanes. For airplanes on which Common Block Point (CBP) 5.1, 27 Flight Control Module (FCM) Operational Program Software (OPS) part number HNP5A–AL01–5041 or later approved software part number is not installed on FCM–L, FCM–C, and FCM–R: Within 14 days after December 18, 2020 (the effective date of AD 2020–24–04), revise the Operating Procedures chapter of the existing AFM and applicable corresponding operational procedures to incorporate the procedures specified in figure 1 to paragraph (g) of this AD. Revising the existing AFM to include the changes specified in paragraph (g) of this AD may be done by inserting a

copy of figure 1 to paragraph (g) of this AD into the existing AFM. Installing the software required by paragraph (h) of this AD terminates the requirement for revising the existing AFM in this paragraph.

Figure 1 to paragraph (g) – *Operating Instructions*

(Required by AD 2020-24-04)

Autopilot Flight Director System – Operating Instructions:

When conducting an approach with a localizer-based navigation aid, monitor localizer raw data and call out any significant deviations. If AFDS performance is not satisfactory, the flight crew must intervene. Perform an immediate go-around if the airplane has not intercepted the final approach course as shown by the localizer deviation.

(h) New Required Actions

For airplanes identified in paragraph A, ''Effectivity,'' of Boeing Alert Requirements Bulletin B787–81205–SB270053–00 RB, Issue 002, dated May 6, 2021: Except as specified by paragraph (j) of this AD, at the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB270053–00 RB, Issue 002, dated May 6, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB270053–00 RB, Issue 002, dated May 6, 2021.

Note 1 to paragraph (h): Guidance for accomplishing the actions required by paragraph (h) of this AD can be found in Boeing Alert Service Bulletin B787–81205–SB270053–00, Issue 002, dated May 6, 2021, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB270053–00 RB, Issue 002, dated May 6, 2021.

(i) Concurrent Actions

For airplanes identified as Group 1, Configuration 1, and as Group 2, Configuration 1, in paragraph A, ''Effectivity,'' of Boeing Alert Requirements Bulletin B787–81205–SB270053–00 RB, Issue 002, dated May 6, 2021: Prior to or concurrently with accomplishing the actions required by paragraph (h) of this AD, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the applicable service information identified in paragraphs (i)(1) and (2) of this AD.

(1) Boeing Alert Service Bulletin B787–81205–SB270044–00, Issue 003, dated July 7, 2020.

(2) Boeing Service Bulletin B787–81205–SB270046–00, Issue 002, dated October 24, 2019.

(j) Exceptions to Requirements of Paragraph (h) of This AD

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB270053–00 RB, Issue 002, dated May 6, 2021, use the phrase ''the Issue 001 date of the Requirements Bulletin B787–81205–SB270053–00 RB,'' this AD requires using ''the effective date of this AD.''

(2) For airplanes on which CBP 5.1, 27 FCM OPS part number HNP5A–AL01–5041 or later-approved software part number was installed on FCM–L, FCM–C, and FCM–R in production, the actions specified in paragraph (h) of this AD are not required.

(k) Terminating Action for AFM Revision

Installation of the software update specified in the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB270053–00 RB, Issue 002, dated May 6, 2021, or installation of CBP 5.1, 27 FCM OPS part number HNP5A–AL01–5041 or later-approved software part number on FCM–L, FCM–C, and FCM–R in production, terminates the AFM revision required by paragraph (g) of this AD, and the AFM revision may be removed, provided that this software update has been installed on all affected airplanes in an operator's fleet.

(l) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraphs (h) and (k) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Requirements Bulletin B787–81205–SB270053–00 RB, Issue 001, dated February 19, 2021.

(2) This paragraph provides credit for the actions specified in paragraph (i)(1) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin B787–81205–SB270044–00, Issue 001, dated December 18, 2018; or Boeing Alert Service Bulletin B787–81205–SB270044–00, Issue 002, dated November 20, 2019.

(3) This paragraph provides credit for the actions specified in paragraph (i)(2) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin B787–81205–SB270046–00, Issue 001, dated November 30, 2018.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (n)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520, Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2020–24–04 are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

(5) Except as specified by paragraph (j) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (m)(5)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition

(n) Related Information

(1) For more information about this AD, contact Doug Tsuji, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA

98198; phone: 206–231–3548; email: *Douglas.Tsjui@faa.gov.*

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

(o) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin B787–81205–SB270044–00, Issue 003, dated July 7, 2020.

(ii) Boeing Service Bulletin B787–81205–SB270046–00, Issue 002, dated October 24, 2019.

(iii) Boeing Alert Requirements Bulletin B787–81205–SB270053–00 RB, Issue 002, dated May 6, 2021.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on September 27, 2023.

Victor Wicklund,

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

[FR Doc. 2023–21673 Filed 9–29–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1643; Project Identifier MCAI–2022–01649–A; Amendment 39–22555; AD 2023–19–05]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Operations) Limited and British Aerospace Regional Aircraft Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2017–19–22 for all British Aerospace Regional Aircraft Jetstream Series 3101 and Jetstream Model 3201 airplanes. AD 2017–19–22 required incorporating BAE Systems' Corrosion Prevention and Control program into the Airworthiness Limitations Section (ALS) of the existing instructions for continued airworthiness (ICA) for your airplane, which added new and more restrictive inspections for corrosion that include inspecting the door hinges/supporting structure and attachment bolts for the main spar joint and engine support, and the rudder hinge location on the vertical stabilizer, and applicable corrective actions. Since the FAA issued AD 2017–19–22, the Civil Aviation Authority (CAA) of the United Kingdom (UK) superseded the mandatory continuing airworthiness information (MCAI) issued by the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) to correct an unsafe condition on these products. This AD requires revising the ALS of the existing ICA for your airplane. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 6, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 6, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2023–1643; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the MCAI, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact BAE Systems (Operations) Ltd., Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; phone: +44 3300 488727; fax: +44 1292 675704; email: *RApublications@baesystems.com;* website: *baesystems.com/businesses/regionalaircraft/.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–1643.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Westbury, NY 11590; phone: (816) 329–4059; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–19–22, Amendment 39–19052 (82 FR 44502, September 25, 2017) (AD 2017–19–22). AD 2017–19–22 applied to all British Aerospace Regional Aircraft Jetstream Series 3101 and Jetstream Model 3201 airplanes. AD 2017–19–22 required incorporating new revisions to the ALS of the existing ICA for your airplane to incorporate new and more restrictive inspections for corrosion, which include inspecting the door hinges/supporting structure and attachment bolts of the main spar joint and engine support, and the hinge location on the vertical stabilizer, and repair or replacement, as applicable. The FAA issued AD 2017–19–22 to address corrosion on the rudder upper hinge bracket and internal wing, areas of the passenger/crew door hinges and supporting structure, the main spar joint, and the engine support attachment bolts, which could lead to reduced structural integrity with consequent loss of control.

The NPRM published in the **Federal Register** on July 27, 2023 (88 FR 48393). The NPRM was prompted by UK CAA AD G–2022–0021, dated December 21, 2022 (referred to after this as the MCAI), issued by the UK CAA, which is the aviation authority for the UK. The MCAI states that reports were received of corrosion on the rudder tab hinges, fuselage skin beneath the marker beacon antenna external doubler, and fuselage skin beneath the static vent external doubler, resulting in the need for new and more restrictive inspection requirements. The MCAI requires accomplishing the actions specified in BAE Systems Jetstream Series 3100 & 3200 Corrosion Prevention and Control Programme, Manual Ref: JS/CPCP/01, Revision 9, dated April 15, 2022 (BAE Systems CPCP Manual JS/CPCP/01, Revision 9) within the associated threshold and intervals specified in BAE Systems CPCP Manual JS/CPCP/01, Revision 9.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1643.

In the NPRM, the FAA proposed to require revising the ALS of the existing

ICA for your approved maintenance or inspection program, as applicable, by including new actions, which include inspecting the rudder tab hinges, fuselage skin beneath the marker beacon antenna external doubler, and fuselage skin beneath the static vent external doubler for corrosion, and depending on the inspection results, performing applicable corrective actions.

The FAA is issuing this AD to address corrosion on the rudder tab hinges, fuselage skin beneath the marker beacon antenna external doubler, and fuselage skin beneath the static vent external doubler. The unsafe condition, if not addressed, could lead to reduced structural integrity of the affected parts with consequent loss of control of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed BAE Systems CPCP Manual JS/CPCP/01, Revision 9. This service information specifies procedures for a comprehensive corrosion prevention and control program.

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**.

Differences Between This AD and the MCAI

The MCAI applies to Model Jetstream Series 3100 and Jetstream Series 3200 airplanes, which are identified on the FAA type certificates as Jetstream Model 3101 and Jetstream Model 3201 airplanes, respectively.

The MCAI specifies contacting BAE for approved corrective actions instructions and this AD requires, for certain corrective actions, contacting the Manager, International Validation Branch, FAA; UK CAA; British Aerospace (Operations) Limited's Design Organization Approval (DOA) (for Jetstream Series 3101); or British Aerospace Regional Aircraft's DOA (for Jetstream Model 3201) for approved corrective action instructions and accomplishing those instructions accordingly. If approved by the DOA, the approval must include the DOA-authorized signature.

The MCAI requires revising the existing aircraft maintenance program (AMP) to introduce the actions specified in BAE Systems CPCP Manual JS/CPCP/01, Revision 9. After the AMP is revised, the MCAI does not require recording AD compliance on a continued basis each time an action in the revised AMP is performed. The AMP is not required for U.S. operators for the affected airplanes; however, this AD requires incorporating BAE Systems CPCP Manual JS/CPCP/01, Revision 9, into the ALS of the existing ICA for your airplane, which has the same intended result as revising the AMP of not needing to record compliance with the AD each time an individual action is accomplished.

The MCAI requires doing all actions in BAE Systems CPCP Manual JS/CPCP/01, Revision 9, from the effective date of UK CAA AD G–2022–0021 and this AD requires doing all actions in BAE Systems CPCP Manual JS/CPCP/01, Revision 9, at the compliance times specified in that manual or within 12 months after the effective date of this AD, whichever occurs later, except for the actions identified in paragraph (g)(3) of this AD.

BAE Systems CPCP Manual JS/CPCP/01, Revision 9 specifies reporting of Level 2 and Level 3 corrosion, and this AD does not.

Costs of Compliance

The FAA estimates that this AD affects 42 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the ICA	1 work-hour × $85 per hour = $85	$0	$85	$3,570

The scope of damage found while performing the actions specified in BAE Systems CPCP Manual JS/CPCP/01, Revision 9, could vary significantly from airplane to airplane. The FAA has no data to determine the costs to repair or replace damaged parts on each airplane or the number of airplanes that may require repair.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA has determined that 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,

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

(3) Will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2017–19–22, Amendment 39–19052 (82 FR 44502, September 25, 2017); and

■ b. Adding the following new airworthiness directive:

2023–19–05 British Aerospace (Operations) Limited and British Aerospace Regional Aircraft: Amendment 39–22555; Docket No. FAA–2023–1643; Project Identifier MCAI–2022–01649–A.

(a) Effective Date

This airworthiness directive (AD) is effective November 6, 2023.

(b) Affected ADs

This AD replaces AD 2017–19–22, Amendment 39–19052 (82 FR 44502, September 25, 2017).

(c) Applicability

This AD applies to British Aerospace (Operations) Limited Model Jetstream Model 3101 airplanes and British Aerospace Regional Aircraft Model Jetstream Model 3201 airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2721, Rudder Tab Control System; 5330, Fuselage Main, Plate/Skin.

(e) Unsafe Condition

This AD was prompted by reports of corrosion on the rudder tab hinges, fuselage skin beneath the marker beacon antenna external doubler, and fuselage skin beneath the static vent external doubler. The FAA is issuing this AD to detect and correct corrosion on the rudder tab hinges, fuselage skin beneath the marker beacon antenna external doubler, and fuselage skin beneath the static vent external doubler. The unsafe condition, if not addressed, could lead to reduced structural integrity of the affected parts with consequent loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Before further flight after the effective date of this AD, revise the Airworthiness Limitations Section of the existing instructions for continued airworthiness for your approved maintenance or inspection program, as applicable, by incorporating the actions and associated thresholds and intervals, including life limits, specified in BAE Systems Jetstream Series 3100 & 3200 Corrosion Prevention and Control Programme, Manual Ref: JS/CPCP/01, Revision 9, dated April 15, 2022 (BAE Systems CPCP Manual JS/CPCP/01, Revision 9).

(2) The actions required by paragraph (g)(1) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(3) Do all the actions in BAE Systems CPCP Manual JS/CPCP/01, Revision 9, as follows:

(i) For all tasks other than 130/EX/01 C3, 140/EX/01 C2, 150/EX/01 C2, 150/EX/01 C3, 150/EX/01 C4, and 200/EX/01 C3: At the compliance times specified in BAE Systems CPCP Manual JS/CPCP/01, Revision 9, or within 12 months after the effective date of this AD, whichever occurs later.

(ii) For tasks 130/EX/01 C3, 140/EX/01 C2, 150/EX/01 C2, 150/EX/01 C3, 150/EX/01 C4, and 200/EX/01 C3: Within 12 months after the effective date of this AD.

(4) If any discrepancy, as identified in BAE Systems CPCP Manual JS/CPCP/01, Revision 9, is found during any inspection or task required by paragraph (g)(3) of this AD, repair or replace, as applicable, all damaged structural parts and components and do the maintenance procedures for corrective action in accordance with and at the compliance time specified in BAE Systems CPCP Manual JS/CPCP/01, Revision 9, except reporting Level 2 and Level 3 corrosion and reporting cracks or other structural defects are not required. If no compliance time is defined, do the applicable corrective action before further flight.

(5) If during any inspection or task required by paragraph (g)(3) of this AD, any discrepancy is found that is not identified in paragraph (g)(4) of this AD or is beyond the repairable limits specified in paragraph (g)(4) of this AD, before further flight, contact either the Manager, International Validation Branch, FAA; Civil Aviation Authority (CAA) of the United Kingdom (UK); British Aerospace (Operations) Limited's Design Organization Approval (DOA) (for Jetstream Series 3101); or British Aerospace Regional Aircraft's DOA (for Jetstream Model 3201) for approved corrective action instructions and accomplish those instructions accordingly. If approved by the DOA, the approval must include the DOA-authorized signature.

(h) Provisions for Alternative Actions and Intervals

After the action required by paragraph (g)(1) of this AD has been done, no alternative actions and associated thresholds and intervals, including life limits, are allowed unless they are approved as specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

(j) Additional Information

(1) Refer to UK CAA AD G–2022–0021, dated December 21, 2022, for related information. This UK CAA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1643.

(2) For more information about this AD, contact Doug Rudolph, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Westbury, NY 11590; phone: (816) 329–4059; email: *doug.rudolph@faa.gov*.

(k) Material Incorporated by Reference

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

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

(i) BAE Systems Jetstream Series 3100 & 3200 Corrosion Prevention and Control Programme, Manual Ref: JS/CPCP/01, Revision 9, dated April 15, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact BAE Systems (Operations) Ltd., Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; phone: +44 3300 488727; fax: +44 1292 675704; email: *RApublications@baesystems.com;* website: *baesystems.com/businesses/regionalaircraft/*.

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

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

email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on September 18, 2023.

Victor Wicklund,

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

[FR Doc. 2023–21632 Filed 9–29–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 181

[Public Notice: 12151]

RIN 1400–AF63

Publication, Coordination, and Reporting of International Agreements: Amendments

AGENCY: Department of State.

ACTION: Final rule; request for comment.

SUMMARY: The Department of State (''Department'') finalizes regulations regarding the publication, coordination, and reporting of international agreements. Section 5947 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 made changes regarding the reporting to Congress and publication of the texts of international agreements and related information. The amendments include changes to the scope and deadlines associated with requirements to report international agreements and related information to Congress, and to publish the texts of international agreements in the Treaties and Other International Acts Series (TIAS). These amendments are intended to reflect and to implement the recently enacted changes to the reporting process.

DATES:

Effective date: This rule is effective on October 2, 2023.

Comments due date: The Department of State will consider comments submitted until November 1, 2023.

ADDRESSES: Interested parties may submit comments to the Department by any of the following methods:

- *Internet (preferred):* At *www.regulations.gov,* you can search for the document using Docket Number DOS–2023–0024 or RIN 1400–AF63.
- *Email:* Michael Mattler, Office of the Legal Adviser, U.S. Department of State, *treatyoffice@state.gov.*
- 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: Michael Mattler, Assistant Legal Adviser for Treaty Affairs, Office of the Legal Adviser, Department of State, Washington, DC 20520, (202) 647–1345, or at *treatyoffice@state.gov.*

SUPPLEMENTARY INFORMATION: The Department of State is implementing amendments to 22 CFR part 181 to reflect the enactment of Section 5947 of the National Defense Authorization Act for Fiscal Year (FY) 2023 (Pub. L. 117–263) (''the NDAA''). Section 5947 amends 1 U.S.C. 112a and 1 U.S.C. 112b, known as the Case-Zablocki Act, regarding the publication, coordination, and reporting to Congress of international agreements.

Section 5947 expands the application of the Case-Zablocki Act's reporting and publication requirements to include ''qualifying non-binding'' instruments as defined in the statute. To implement these changes, the rule adds two new sections to 22 CFR part 181: one establishing criteria that will apply to the identification of qualifying non-binding instruments (Section 181.4) and one regarding the process the Department of State will follow for assessing whether particular non-binding instruments constitute ''qualifying non-binding instruments'' within the meaning of the statute (Section 181.5). These sections follow the form and structure of existing Sections 181.2 and 181.3 which establish comparable criteria and procedures regarding the identification of international agreements.

In accordance with 1 U.S.C. 112b(k)(5), among the elements for determining whether a non-binding instrument is a ''qualifying non-binding instrument'' for the purposes of the statute is whether the instrument ''could reasonably be expected to have a significant impact on the foreign policy of the United States.'' Amended 22 CFR 181.3(b)(3) establishes factors for consideration when assessing the significance of a non-binding instrument on the foreign policy of the United States. These factors reflect considerations cited by the Congressional sponsors of section 5947 in connection with Congress's consideration of the legislation. These factors include whether, and to what extent, the instrument is of importance to the United States' relationship with another country, such as by addressing a significant new policy or initiative (rather than ongoing activities or cooperation); affects the rights or responsibilities of U.S. citizens, U.S. nationals, or individuals in the United States; impacts State laws; has budgetary or appropriations impact; requires changes to U.S. law to satisfy commitments made therein; presents a new commitment or risk for the entire Nation; and is of Congressional or public interest.

The procedures set out in 22 CFR 181.4(b) for assessing whether particular non-binding instruments could reasonably be expected to have a significant impact on the foreign policy of the United States provide for such assessments to be made in the first instance by the State Department bureau for instruments negotiated by the Department of State or the U.S. Government agency responsible for negotiating the instrument. On a monthly basis a list of instruments identified by State Department bureaus and U.S. Government agencies as reasonably expected to have a significant impact on the foreign policy of the United States will be submitted to the Under Secretary of State for Political Affairs for approval for transmittal to the Congress in accordance with the Case-Zablocki Act.

Amendments to 22 CFR 181.6 update the procedures by which U.S. Government agencies consult with the Secretary of State regarding international agreements proposed for negotiation or conclusion to reflect developments in practice and technical clarifications since 22 CFR 181.6 was last updated. Amendments to this section also reflect recommendations from the Government Accountability Office designed to facilitate the identification and monitoring of international agreements containing fiscal contingencies that could give rise to future financial losses or other costs for the United States or U.S. Government agencies in amounts that could be material for the purposes of reporting on annual financial statements.

Amendments to 22 CFR 181.7 consolidate in a single section guidance previously contained in other sections of the regulations regarding transmittal by U.S. Government agencies to the Department of State of international agreements and related material. They also include new guidance on the transmittal of qualifying non-binding instruments and related material to reflect new requirements contained in section 5947 of NDAA 2023, as well as

updated deadlines for the transmittal of materials reflected in that section.

Amendments to 22 CFR 181.8 implement changes made by Section 5947 in the categories of information required to be transmitted to the Congress related to international agreements and qualifying non-binding instruments. The new provisions are drawn from the text of the relevant statutory requirements.

Amendments to 22 CFR 181.9 implement changes made by section 5947 of NDAA 2023 regarding requirements for the publication of international agreements. They reflect new requirements to publish the texts of qualifying non-binding instruments as well as information regarding legal authorities relied upon to enter into international agreements and qualifying non-binding instruments, and any new legislative or regulatory authorities needed to implement such agreements and instruments. Amendments to this section also reflect changes made by section 5947 to categories of international agreements that are exempt from requirements to be published and to deadlines for publication. The amended language in this section is drawn from the text of section 5947.

Regulatory Analysis

Administrative Procedures Act

The Department is issuing this rule as a final rule, asserting the ''good cause'' exemption to the Administrative Procedure Act (5 U.S.C. 553(b)). The Department finds that public comment would be impractical prior to the effective date of this rulemaking, given the short deadline provided by Congress to implement this rule, and the imminent effective date of the statute itself. See *Sepulveda* v. *Block*, 782 F.2d 363 (2d Cir. 1986). Section 5947(a)(5) requires ''the President, through the Secretary of State [to] promulgate such rules and regulations as may be necessary'' to implement the changes to 1 U.S.C. 112b, not later than 180 days after the date of statute's enactment. Section 5947(c) provided that the amendments ''shall take effect on the date that is 270 days after the date of the enactment of this Act.'' The NDAA was signed by the President on December 23, 2022, resulting in a deadline for the finalization of the required rules of June 21, 2023, and the statute itself became effective on September 19, 2023. However, the Department will consider relevant public comments submitted up to 30 days after publication.

Regulatory Flexibility Act/Executive Order 13272: Small Business

This rulemaking is hereby certified as not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Congressional Review Act

This rulemaking does not constitute a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking.

The Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure nor would it significantly or uniquely affect small governments.

Executive Orders 12372 and 13132: Federalism and Executive Order 13175, Impact on Tribes

This rule 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 national government. Nor will the regulations have federalism implications warranting the application of Executive Orders 12372 and 13132. This rule will not have tribal implications, will not impose costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Executive Orders 12866 and 14094; 13563: Regulatory Review

This rule has been drafted in accordance with the principles of Executive Order 12866, as amended by Executive Order 14094, and 13563. The rulemaking is mandated by a Congressional statute; therefore, Congress determined that the benefits of this rulemaking outweigh the costs. This rule has been determined to be a significant rulemaking under section 3 of Executive Order 12866, but not economically significant.

Executive Order 12988: Civil Justice Reform

This rule has been reviewed in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulation. This rule contains no new collection of information requirements.

List of Subjects in 22 CFR Part 181

Treaties.

■ For the reasons set forth above, the State Department revises 22 CFR part 181 to read as follows:

PART 181—COORDINATION, REPORTING AND PUBLICATION OF INTERNATIONAL AGREEMENTS

Sec.

Authority: 1 U.S.C. 112a, 112b; and 22 U.S.C. 2651a.

§ 181.1 Purpose and application.

(a) The purpose of this part is to implement the provisions of 1 U.S.C. 112b, popularly known as the Case-Zablocki Act (hereinafter ''the Act''), on the reporting to Congress and publication of international agreements and qualifying non-binding instruments and related coordination with the Secretary of State. This part applies to all agencies of the U.S. Government whose responsibilities include the negotiation and conclusion of international agreements and qualifying non-binding instruments. This part does not, however, constitute a delegation by the Secretary of State of the authority to engage in such activities. Further, it does not affect any additional requirements of law governing the relationship between particular agencies and the Secretary of State in connection with international negotiations and agreements, or any other requirements

of law concerning the relationship between particular agencies and the Congress. The term ''agency'' as used in this part means each authority of the United States Government, whether or not it is within or subject to review by another agency.

(b) Pursuant to the key legal requirements of the Act—full and timely disclosure to the Congress of all concluded international agreements and qualifying non-binding instruments, publication of international agreements and qualifying non-binding instruments, and consultation by agencies with the Secretary of State with respect to proposed international agreements—every agency of the U.S. Government is required to comply with each of the provisions set out in this part in implementation of the Act. Nevertheless, this part is intended as a framework of measures and procedures which, it is recognized, cannot anticipate all circumstances or situations that may arise. Deviation or derogation from the provisions of this part will not affect the legal validity, under United States law or under international law, of international agreements concluded, will not give rise to a cause of action, and will not affect any public or private rights established by such agreements, Similarly, any such deviation will not affect the status or effectiveness of any non-binding instrument.

(c) To facilitate coordination with the Department of State in the implementation of the Act, agencies whose responsibilities include the negotiation and conclusion of international agreements or qualifying non-binding instruments shall notify the Department of State of the official designated as the agency's Chief International Agreements Officer in accordance with 1 U.S.C. 112b(e) promptly upon that official's designation, and shall promptly inform the Department of any changes in the official designated.

(d) For the Department of State, the Deputy Legal Adviser with supervisory responsibility over the Office of Treaty Affairs will be designated as the Department's Chief International Agreements Officer in accordance with 1 U.S.C. 112b(e), and will have the title of International Agreements Compliance Officer.

§ 181.2 Criteria with respect to international agreements.

(a) *General.* The following criteria are to be applied in deciding whether any undertaking, oral agreement, document, or set of documents, including an exchange of notes or of correspondence, constitutes an international agreement within the meaning of the Act. Each of the criteria except those in paragraph (a)(5) of this section must be met in order for any given undertaking of the United States to constitute an international agreement within the meaning of the Act.

(1) *Identity and intention of the parties.* A party to an international agreement must be a state, a state agency, or an intergovernmental organization. The parties must intend their undertaking to be legally binding, and not merely of political or personal effect. Documents intended to have political or moral weight, but not intended to be legally binding, are not international agreements. An example of the latter is the Final Act of the Helsinki Conference on Cooperation and Security in Europe. In addition, the parties must intend their undertaking to be governed by international law, although this intent need not be manifested by a third-party dispute settlement mechanism or any express reference to international law. In the absence of any provision in the arrangement with respect to governing law, it will be presumed to be governed by international law. This presumption may be overcome by clear evidence, in the negotiating history of the arrangement or otherwise, that the parties intended the arrangement to be governed by another legal system. Arrangements governed solely by the law of the United States, or one of the states or jurisdictions thereof, or by the law of any foreign state, are not international agreements for these purposes. For example, a foreign military sales loan agreement governed in its entirety by U.S. law is not an international agreement.

(2) *Significance of the arrangement.* Minor or trivial undertakings, even if couched in legal language and form, are not considered international agreements within the meaning of the Act. In deciding what level of significance must be reached before a particular arrangement becomes an international agreement, the entire context of the transaction and the expectations and intent of the parties must be taken into account. The duration of the activities pursuant to the undertaking or the duration of the undertaking itself shall not be a factor in determining whether it constitutes an international agreement. It remains a matter of judgment based on all of the circumstances of the transaction. Determinations are made pursuant to § 181.3. Examples of arrangements that may constitute international agreements are agreements that:

(i) Are of political significance;

(ii) Involve substantial grants of funds or loans by the United States or credits payable to the United States;

(iii) Constitute a substantial commitment of funds that extends beyond a fiscal year or would be a basis for requesting new appropriations;

(iv) Involve continuing and/or substantial cooperation in the conduct of a particular program or activity, such as scientific, technical, or other cooperation, including the exchange or receipt of information and its treatment, or the pooling of data. However, individual research grants and contracts do not ordinarily constitute international agreements.

(3) *Specificity, including objective criteria for determining enforceability.* International agreements require precision and specificity in the language setting forth the undertakings of the parties. Undertakings couched in vague or very general terms containing no objective criteria for determining enforceability or performance are not normally international agreements. Most frequently such terms reflect an intent not to be bound. For example, a promise to ''help develop a more viable world economic system'' lacks the specificity essential to constitute a legally binding international agreement. However, the intent of the parties is the key factor. Undertakings as general as those of, for example, Articles 55 and 56 of the United Nations Charter have been held to create internationally binding obligations intended as such by the parties.

(4) *Necessity for two or more parties.* While unilateral commitments on occasion may be legally binding, they do not constitute international agreements. For example, a statement by the President promising to send money to Country Y to assist earthquake victims would not be an international agreement. It might be an important undertaking, but not all undertakings in international relations are in the form of international agreements. Care should be taken to examine whether a particular undertaking is truly unilateral in nature, or is part of a larger bilateral or multilateral set of undertakings. Moreover, ''consideration,'' as that term is used in domestic contract law, is not required for international agreements.

(5) *Form.* Form as such is not normally an important factor, but it does deserve consideration. Documents which do not follow the customary form for international agreements, as to matters such as style, final clauses, signatures, or entry into force dates, may or may not be international agreements. Failure to use the customary form may

constitute evidence of a lack of intent to be legally bound by the arrangement. If, however, the general content and context reveal an intention to enter into a legally binding relationship, a departure from customary form will not preclude the arrangement from being an international agreement. Moreover, the title of the agreement will not be determinative. Decisions will be made on the basis of the substance of the arrangement, rather than on its denomination as an international agreement, a memorandum of understanding, exchange of notes, exchange of letters, technical arrangement, protocol, note verbale, aide-memoire, agreed minute, or any other name.

(b) *Agency-level agreements.* Agency-level agreements are international agreements within the meaning of the Act if they satisfy the criteria discussed in paragraph (a) of this section. The fact that an agreement is concluded by and on behalf of a particular agency of the United States Government, rather than the United States Government, does not mean that the agreement is not an international agreement. Determinations are made on the basis of the substance of the agency-level agreement in question.

(c) *Implementing agreements.* (1) An implementing agreement, if it satisfies the criteria discussed in paragraph (a) of this section, may itself be an international agreement within the meaning of the Act, depending upon how precisely it is anticipated and identified in the underlying agreement it is designed to implement. If the terms of the implementing agreement are closely anticipated and identified in the underlying agreement, only the underlying agreement is considered an international agreement. For example, the underlying agreement might call for the sale by the United States of 1,000 tractors, and a subsequent implementing agreement might require a first installment on this obligation by the sale of 100 tractors of the brand X variety. In that case, the implementing agreement is sufficiently identified in the underlying agreement, and would not itself be considered an international agreement within the meaning of the Act. Project annexes and other documents which provide technical content for an umbrella agreement are not normally treated as international agreements. However, if the underlying agreement is general in nature, and the implementing agreement meets the specified criteria of paragraph (a) of this section, the implementing agreement itself might well be an international agreement within the meaning of the Act. For example, if the underlying agreement calls for the conclusion of ''agreements for agricultural assistance,'' but without further specificity, then a particular agricultural assistance agreement subsequently concluded in ''implementation'' of that obligation, provided it meets the criteria discussed in paragraph (a) of this section, would constitute an international agreement independent of the underlying agreement.

(2) Although the considerations discussed in this paragraph generally are to be applied to determine whether an implementing agreement is itself an international agreement within the meaning of the Act, the Act specifies some circumstances in which an implementing agreement may be subject to the requirements of the Act for reasons independent of the considerations in this paragraph. For example, the Act defines the ''text'' of an international agreement to include ''any implementing agreement or arrangement . . . that is entered into contemporaneously and in conjunction with the international agreement,'' and further provides, subject to some exceptions, that the Secretary shall submit to specified members of Congress the text of implementing agreements not otherwise covered by the Act not later than 30 days after receipt of a request from the Chair or Ranking Member of the Senate Foreign Relations Committee or the House Foreign Affairs Committee for the text of such implementing agreements.

(d) *Extensions and modifications of agreements.* If an undertaking constitutes an international agreement within the meaning of the Act, then a subsequent extension or modification of such an agreement would itself constitute an international agreement within the meaning of the Act.

(e) *Oral agreements.* Any oral arrangement that meets the criteria discussed in paragraphs (a)(1) through (4) of this section is an international agreement and, pursuant to section (f) of the Act, must be reduced to writing by the agency that concluded the oral arrangement. In such written form, the arrangement is subject to all the requirements of the Act and of this part. Whenever a question arises whether an oral arrangement constitutes an international agreement, the arrangement shall be reduced to writing and the decision made in accordance with § 181.3.

§ 181.3 Determinations with respect to international agreements.

(a) Whether any undertaking, document, or set of documents constitutes or would constitute an international agreement within the meaning of the Act shall be determined by the Legal Adviser of the Department of State, a Deputy Legal Adviser, or in most cases the Assistant Legal Adviser for Treaty Affairs. Such determinations shall be made either on a case-by-case basis, or on periodic consultation, as appropriate.

(b) Agencies whose responsibilities include the negotiation and conclusion of international agreements are responsible for transmitting to the Assistant Legal Adviser for Treaty Affairs, for decision pursuant to paragraph (a) of this section, the text, as defined in § 181.10, of any document or set of documents that might constitute an international agreement. The transmittal shall be made prior to or simultaneously with the request for consultations with the Secretary of State required by subsection (g) of the Act and § 181.6.

(c) Agencies to which paragraph (b) of this section applies shall consult periodically with the Assistant Legal Adviser for Treaty Affairs in order to determine which categories of arrangements for which they are responsible are likely to be international agreements within the meaning of the Act.

§ 181.4 Criteria with respect to qualifying non-binding instruments.

(a) General. Pursuant to 1 U.S.C. 112b(k)(5), a qualifying non-binding instrument is a non-binding instrument that:

(1) Is or will be under negotiation, is signed or otherwise becomes operative, or is implemented with one or more foreign governments, international organizations, or foreign entities, including non-state actors; and

(2)(i) Could reasonably be expected to have a significant impact on the foreign policy of the United States; or

(ii) Is the subject of a written communication from the Chair or Ranking Member of the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives to the Secretary.

(3) Consistent with 1 U.S.C. 112b(k)(5)(B), any non-binding instrument that is signed or otherwise becomes operative or is implemented pursuant to the authorities relied upon by the Department of Defense, the Armed Forces of the United States, or any element of the intelligence community does not constitute a qualifying non-binding instrument.

(4) As outlined in further detail in this part, requirements under 1 U.S.C. 112b

regarding the transmittal to Congress and publication of qualifying non-binding instruments and related information apply only to qualifying non-binding instruments that have been signed, concluded, or otherwise finalized, and do not apply to instruments under negotiation prior to being signed, concluded, or otherwise finalized.

(b) *Significant foreign policy impact non-binding instruments.* The criteria set out in the following paragraphs are to be applied in deciding whether any undertaking, document, or set of documents, including an exchange of notes or of correspondence, constitutes a non-binding instrument that could reasonably be expected to have a significant impact on the foreign policy of the United States within the meaning of section 112b(k)(5)(A)(ii)(I) of the Act.

(1) *Legal character.* Non-binding instruments are intended to have political or moral weight, rather than legal force. An instrument is not a non-binding instrument if it gives rise to legal rights or obligations under either international law or domestic law.

(2) *Participants.* Consistent with 1 U.S.C. 112b(k)(5)(A)(i), a qualifying non-binding instrument may be concluded between the United States (or an agency thereof) and one or more foreign governments (or an agency thereof), international organizations, or foreign entities, including non-state actors.

(3) *Significance.* (i) Consistent with 1 U.S.C. 112b(k)(5)(A)(ii)(I), and except for a non-binding instrument referred to in 1 U.S.C. 112b(k)(5)(B), a non-binding instrument that could reasonably be expected to have a significant impact on the foreign policy of the United States, and that meets the other elements set out in 1 U.S.C. 112b(k)(5), is a qualifying non-binding instrument within the meaning of the Act. The degree of significance of any particular instrument requires an objective wholistic assessment; no single criterion or factor by itself is determinative. In deciding whether a particular instrument meets the significance standard, the entire context of the transaction, including the factors set out below and the expectations and intent of the participants, must be taken into account. Factors that may be relevant in determining whether a non-binding instrument could reasonably be expected to have a significant impact on the foreign policy of the United States include whether, and to what extent, the instrument:

(A) Is of importance to the United States' relationship with another country, such as by addressing a significant new policy or initiative (rather than ongoing activities or cooperation);

(B) Affects the rights or responsibilities of U.S. citizens, U.S. nationals, or individuals in the United States;

(C) Impacts State laws;

(D) Has budgetary or appropriations impact;

(E) Requires changes to U.S. law to satisfy commitments made therein;

(F) Presents a new commitment or risk for the entire Nation); and

(G) Is of Congressional or public interest.

(ii) In applying these criteria, neither the form or structure of the instrument nor the number of participants involved shall be determinative of whether the instrument meets the significance standard. Similarly, neither the duration of the activities pursuant to the instrument nor the duration of the instrument itself shall be determinative of whether the instrument meets the standard. An instrument that is technical in nature could meet the standard if, for example, it was of particular importance to a bilateral relationship, or if it satisfied other of the criteria set out in this section.

(iii) In the context of these considerations, non-binding instruments concluded as part of the regular work of international organizations and fora such as the United Nations and its specialized agencies, the G–20, and similar multilateral or regional groupings and that are made public within 30 days of their conclusion in most instances will not be submitted to Congress pursuant to 1 U.S.C. 112b(k)(5)(A)(ii)(I). Similarly, instruments memorializing general outcomes of meetings between senior U.S. officials and foreign counterparts and that are made public within 30 days of their conclusion in most instances will not be submitted to Congress pursuant to 1 U.S.C. 112b(k)(5)(A)(ii)(I).

(iv) In the context of these criteria, non-binding instruments concluded for the purposes of facilitating routine sharing of information (including personally identifiable information of U.S. citizens, U.S. nationals, or other individuals in the United States) in a manner authorized by U.S. law for the purposes of law enforcement cooperation, will not, on that basis alone, be regarded as expected to have a significant impact on the foreign policy of the United States.

(c) Non-binding instruments requested by Congress. In accordance with section 112b(k)(5)(A)(ii)(II) of the Act, and except for instruments referred to in section 112b(k)(5)(B) of the Act, a non-binding instrument that is the subject of a written communication from the Chair or Ranking Member of either of the appropriate congressional committees defined in the Act as the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs, to the Secretary is a qualifying non-binding instrument.

§ 181.5 Determinations with respect to qualifying non-binding instruments.

(a) *In general.* Whether a non-binding instrument constitutes a qualifying non-binding instrument for the purposes of the Act shall be determined in accordance with this section and 1 U.S.C. 112b(k)(5)(B), as referenced in § 181.4(a).

(b) *Significant foreign policy impact non-binding instruments.* (1) Department of State bureaus whose responsibilities include the negotiation of non-binding instruments, or the oversight of negotiation of non-binding instruments by posts abroad, shall designate an official no lower than the rank of Deputy Assistant Secretary to be responsible for the identification of instruments, except for instruments referred to in section 112b(k)(5)(B) of the Act, that could reasonably be expected to have a significant impact on the foreign policy of the United States. In identifying such instruments, bureaus shall take into account the considerations set out in § 181.4.

(2) As provided in § 181.7(a)(2), Department of State bureaus whose responsibilities include the negotiation of non-binding instruments, or the oversight of negotiation of non-binding instruments by posts abroad, shall notify the Bureau of Legislative Affairs and the Office of the Assistant Legal Adviser for Treaty Affairs within 15 days of the signature, conclusion, or other finalization of a qualifying non-binding instrument that they have identified as one that could reasonably be expected to have a significant impact on the foreign policy of the United States. Bureaus shall also indicate whether the instrument has already been published, or whether it is anticipated to be published, either on the website of the Department of State or by a depositary or other similar administrative body.

(3) As provided in § 181.7(a)(2), agencies whose responsibilities include the negotiation and conclusion of non-binding instruments shall transmit to the Department via a memorandum addressed to the Department's Executive Secretary the text of any qualifying non-binding instrument that they, applying the criteria in § 181.4(b), determine could reasonably be expected to have a

significant impact on the foreign policy of the United States within 15 days of its signature, conclusion, or other finalization. Upon receipt, such documents shall be transmitted to the Bureau of Legislative Affairs and the Office of the Assistant Legal Adviser for Treaty Affairs.

(4) On a monthly basis, the Bureau of Legislative Affairs and the Office of the Assistant Legal Adviser for Treaty Affairs shall compile a list of qualifying non-binding instruments received in accordance with paragraphs (b)(2) and (3) of this section and shall submit the list to the Under Secretary of State for Political Affairs for his or her approval for transmittal to the Congress in accordance with the procedures set out in § 181.8.

(5) State Department bureaus and U.S. Government agencies are encouraged to identify qualifying non-binding instruments that could reasonably be expected to have a significant impact on the foreign policy of the United States at the earliest possible stage during the negotiating process and to advise of their expected conclusion in advance of the deadlines specified in paragraphs (b)(2) and (3) of this section, in order to facilitate timely compliance with the Act.

(c) *Qualifying non-binding instruments requested by Congress.* The Department of State's Bureau of Legislative Affairs shall be responsible for receiving on behalf of the Secretary communications related to non-binding instruments from the Chair or Ranking Member of either of the appropriate congressional committees (see § 181.4(a)(2)(ii)) in accordance with the Act. Upon receipt of such a communication, the Bureau of Legislative Affairs shall immediately notify the Department of State bureau or U.S. Government agency responsible for the negotiation and conclusion of any qualifying non-binding instrument that is the subject of the communication, with a view to receiving the text of any such qualifying non-binding instrument and associated information in accordance with § 181.7(a)(2) for transmittal to the requesting member in accordance with § 181.8.

§ 181.6 Consultations with the Secretary of State.

(a) The Secretary of State is responsible, on behalf of the President, for ensuring that all proposed international agreements of the United States are fully consistent with United States foreign policy objectives. In accordance with 1 U.S.C. 112b(g), no agency of the U.S. Government may sign or otherwise conclude an international agreement, whether entered into in the name of the U.S. Government or in the name of the agency, without prior consultation with the Secretary of State or the Secretary's designee. At an early stage in the development and negotiation of non-binding instruments, agencies should also consult as appropriate with the Department of State to facilitate identification at an early stage of instruments that may constitute qualifying non-binding instruments for the purposes of the Act, and to ensure that the intended non-binding character of such instruments is appropriately reflected in their drafting. . .

(b) Consultation with the Secretary of State (or the Secretary's designee) regarding proposed international agreements, including to obtain authority to negotiate or conclude an international agreement, shall be done pursuant to Department of State procedures set out in Volume 11, Foreign Affairs Manual, Chapter 700 (Circular 175 procedure). Officers of the Department of State shall be responsible for the preparation of all documents required by the Circular 175 procedure.

(c) Any agency wishing to commence negotiations for a proposed international agreement or to conclude an international agreement shall transmit to the interested bureau or office in the Department of State, or to the Office of the Legal Adviser, for consultation pursuant to this section, the following:

(1) A draft text of the proposed agreement or a detailed summary of the proposed agreement if the text is not available (where authority to negotiate a proposed agreement is sought) or the text of the agreement proposed to be concluded (where authority to conclude an agreement is sought).

(2) A detailed description of the Constitutional, statutory, or treaty authority proposed to be relied upon to negotiate or to conclude the agreement. If multiple authorities are relied upon, all such authorities shall be cited. All citations to the Constitution of the United States, a treaty, or a statute shall include the specific article or section and subsection reference whenever available and, if not available, shall be as specific as possible. If the authority relied upon is or includes article II of the Constitution of the United States, the basis for that reliance shall be explained.

(3) Other relevant background information, including:

(i) If a proposed agreement embodies a commitment to furnish funds, goods, or services that are beyond or in addition to those authorized in an approved budget, the agency proposing the agreement shall state what arrangements have been planned or carried out concerning consultation with the Office of Management and Budget for such commitment. The Department of State should receive confirmation that the relevant budget approved by the President provides or requests funds adequate to fulfill the proposed commitment, or that the President has made a determination to seek the required funds.

(ii) If a proposed agreement embodies a commitment that could reasonably be expected to require (for its implementation) the issuance of a significant regulatory action (as defined in section 3 of Executive Order 12866), the agency proposing the agreement shall state what arrangements have been planned or carried out concerning timely consultation with the Office of Management and Budget (OMB) for such commitment. The Department of State should receive confirmation that OMB has been consulted in a timely manner concerning the proposed commitment.

(iii) If a proposed agreement contains fiscal contingencies that could give rise to material future financial losses or other costs for the United States (or an agency thereof), the agency proposing the agreement shall identify the contingency and indicate what arrangements have been planned for monitoring the contingency and for meeting any expenses that may arise from it.

(d) The Department of State will endeavor to complete the consultation process in respect of a proposed international agreement in most cases within 30 days of receipt of a request for consultation pursuant to this section and of the information specified in paragraph (c) of this section. The negotiation or conclusion (as the case may be) of a proposed international agreement may not be undertaken prior to the completion of the consultation process.

(e) Consultation may encompass a specific class of agreements rather than a particular agreement where a series of agreements of the same general type is contemplated; that is, where a number of agreements are to be negotiated according to a more or less standard formula, such as, for example, Public Law 480 Agricultural Commodities Agreements. Any agency wishing to conclude a particular agreement within a specific class of agreements about which consultations have previously been held pursuant to this section shall transmit a draft text of the proposed agreement to the Office of the Legal

Adviser as early as possible but in no event later than 20 days prior to the anticipated date for concluding the agreement.

(f) The consultation requirement shall be deemed to be satisfied with respect to proposed international agreements of the United States about which the Secretary of State (or the Secretary's designee) has been consulted in the Secretary's capacity as a member of an interagency committee or council established for the purpose of approving such proposed agreements. Such consultation should encompass both policy and legal issues associated with the proposed agreement. Designees of the Secretary of State serving on any such interagency committee or council are to provide as soon as possible to the interested offices or bureaus of the Department of State and to the Office of the Legal Adviser copies of draft texts or summaries of such proposed agreements and other background information as requested.

(g) Before an international agreement containing a foreign language text may be signed or otherwise concluded, a signed memorandum must be obtained from a responsible language officer of the Department of State or of the U.S. Government agency concerned certifying that the foreign language text and the English language text are in conformity with each other and that both texts have the same meaning in all substantive respects. The signed memorandum is to be made available to the Department of State upon request.

§ 181.7 Fifteen-day rule for transmittal of concluded international agreements and qualifying non-binding instruments to the Department of State.

(a) This rule, which is required by section 112b(d) of the Act, is essential for purposes of permitting the Department of State to meet its obligations under the Act to transmit concluded international agreements and qualifying non-binding instruments to the Congress by the end of the month following their conclusion, and to report on international agreements and qualifying non-binding instruments that entered into force or became operative by the end of the month following the date on which they entered into force or became operative.

(1) International agreements. Any agency, including the Department of State, that concludes an international agreement within the meaning of the Act, whether entered into in the name of the U.S. Government or in the name of the agency, must transmit the following documents and certification to the Office of the Assistant Legal Adviser for Treaty Affairs at the Department of State in accordance with the procedures set out in Volume 11, Foreign Affairs Manual, Chapter 700, as soon as possible and in no event to arrive at that office later than fifteen (15) days after the date the agreement is signed or otherwise concluded:

(i) Signed or initialed original texts constituting the agreement, together with all accompanying papers, including any annex, appendix, codicil, side agreement, side letter, or any document of similar purpose or function to the aforementioned regardless of the title of the document that is entered into contemporaneously and in conjunction with the agreement, and any implementing agreements or arrangements or any document of similar purpose or function to the aforementioned regardless of the title of the document that is entered into contemporaneously and in conjunction with the agreement. (See § 181.10.) The texts transmitted must be accurate, legible, and complete, and must include the texts of all languages in which the international agreement was signed, or initialed;

(A) Where the original texts of concluded international agreements are not available, certified copies must be transmitted in the same manner as original texts. A certified copy must be an exact copy of the signed original.

(B) When an exchange of diplomatic notes between the United States and a foreign government constitutes an international agreement or has the effect of extending, modifying, or terminating an international agreement, a properly certified copy of the note from the United States to the foreign government, and the signed original or the note from the foreign government to the United States, must be transmitted.

(C) If in conjunction with the international agreement signed, other diplomatic notes are exchanged (either at the same time, beforehand, or subsequently), properly certified copies of the diplomatic notes from the United States to the foreign government must be transmitted with the signed originals of the notes from the foreign government.

(D) Copies may be certified either by a certification on the document itself, or by a separate certification attached to the document.

(1) A certification on the document itself is placed at the end of the document, either typed or stamped, and states that the document is a true copy of the original text signed or initialed by (insert full name of signatory), and is signed by the certifying officer.

(2) A certification on a separate document is typed and briefly describes the document being certified and states that it is a true copy of the original text signed or initialed by (insert full name of signatory), and is signed by the certifying officer.

(ii) A signed memorandum of language conformity obtained pursuant to § 181.6(g), as applicable;

(iii) A statement listing the names and titles/positions of the individuals signing or initialing the international agreement for the foreign government as well as for the United States, unless clear in the texts being transmitted;

(iv) A statement identifying the Circular 175 authorization pursuant to which the international agreement was concluded, so that the sources of legal authority relevant to the agreement's conclusion and implementation may be readily identified for inclusion in reporting to Congress under the Act; and

(v) the exchange of diplomatic notes bringing an international agreement into force, as applicable.

(2) Qualifying non-binding instruments. (i) When a Department of State bureau identifies a non-binding instrument that is not covered by section 112b(k)(5)(B) of the Act as one that could reasonably be expected to have a significant impact on the foreign policy of the United States pursuant to § 181.5(b), the bureau shall provide to the Bureau of Legislative Affairs and the Office of the Assistant Legal Adviser for Treaty Affairs within 15 days of the conclusion of the qualifying non-binding instrument the documents and information specified in paragraph (a)(1)(iv) of this section.

(ii) When an agency other than the Department of State, applying the criteria in § 181.4(b), determines that a non-binding instrument (other than a non-binding instrument covered by section 112b(k)(5)(B) of the Act) could reasonably be expected to have a significant impact on the foreign policy of the United States, the agency shall transmit to the Department via a memorandum addressed to the Department's Executive Secretary within 15 days of the conclusion of the qualifying non-binding instrument the documents and information specified in subparagraph iv.

(iii) When a Department of State bureau or an agency receives from the Department of State's Bureau of Legislative Affairs notice of a written communication related to a qualifying non-binding instrument from the Chair or Ranking Member of either of the appropriate congressional committees in accordance with § 181.5(c), the bureau or agency shall provide to the Bureau of

Legislative Affairs and the Office of the Assistant Legal Adviser for Treaty Affairs within 15 days the documents and information specified in subparagraph iv.

(iv) The documents and information to be provided pursuant to paragraphs (a)(2)(i), (ii), and (iii) of this section are as follows:

(A) The text of the qualifying non-binding instrument (the signed original instrument need not be submitted), together with all accompanying papers, including any annex, appendix, codicil, side agreement, side letter, or any document of similar purpose or function to the aforementioned regardless of the title of the document that is entered into contemporaneously and in conjunction with the instrument, and any implementing agreements or arrangements or any document of similar purpose or function to the aforementioned regardless of the title of the document that is entered into contemporaneously and in conjunction with the instrument (See section 181.10);

(B) A detailed description of the Constitutional, statutory, or treaty authority relied upon to conclude the qualifying non-binding instrument. If multiple authorities are relied upon, all such authorities shall be cited. All citations to the Constitution of the United States, a treaty, or a statute shall include the specific article or section and subsection reference whenever available and, if not available, shall be as specific as possible. If the authority relied upon is or includes article II of the Constitution of the United States, the basis for that reliance shall be explained;

(C) A description of any new or amended statutory or regulatory authority anticipated to be required to implement the instrument for inclusion in reporting to Congress under the Act; and

(D) An indication of whether the text has been published on the website of the Department of State or of another U.S. Government agency, or by a depositary or other similar administrative body.

(b) On an ongoing basis, State Department bureaus and U.S. Government agencies shall promptly provide to the Bureau of Legislative Affairs and the Assistant Legal Adviser for Treaty Affairs any implementing materials related to an international agreement or qualifying non-binding instrument needed to respond to a request from the Chair or Ranking Member of the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives for such materials in accordance with 1 U.S.C. 112b(c). State Department bureaus and U.S. Government agencies shall provide to the Bureau of Legislative Affairs and the Assistant Legal Adviser for Treaty Affairs materials responsive to the congressional communication within 15 days of being informed of such communication.

(c) In the event the text of an international agreement or qualifying non-binding instrument changes between the time of its conclusion and the time of its entry into force or effect, State Department bureaus and U.S. Government agencies shall provide to the Assistant Legal Adviser for Treaty Affairs the revised text of the agreement or qualifying non-binding instrument within 15 days of its entry into force or effect so that the Department is able to provide the revised text to Congress within the statutorily-required time period.

§ 181.8 Transmittal to the Congress.

(a) Not less frequently than once each month the Assistant Legal Adviser for Treaty Affairs shall transmit to the Majority Leader of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, and to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives the following:

(1) A list of all international agreements and qualifying non-binding instruments signed, concluded, or otherwise finalized during the prior month;

(2) The text of all international agreements and qualifying non-binding instruments described in subparagraph (a)(1) of this section;

(3) For each international agreement and qualifying non-binding instrument transmitted, a detailed description of the legal authority relied upon to enter into the international agreement or qualifying non-binding instrument;

(4) A list of all international agreements that entered into force and qualifying non-binding instruments that became operative for the United States or an agency of the United States during the prior month;

(5) The text of all international agreements and qualifying non-binding instruments described in paragraph (a)(4) of this section if such text differs from the text of the agreement or instrument previously provided pursuant to paragraph (a)(2) of this section; and

(6) A statement describing any new or amended statutory or regulatory authority anticipated to be required to fully implement each international agreement and qualifying non-binding instrument included in the list described in paragraph (a)(1) of this section.

(b) If any of the information or texts to be transmitted pursuant to paragraph (a) of this section is or contains classified information, the Assistant Legal Adviser for Treaty Affairs shall transmit such information or texts in a classified annex.

(c) Pursuant to section 12 of the Taiwan Relations Act (22 U.S.C. 3311), any agreement entered into between the American Institute in Taiwan and the governing authorities on Taiwan, or any agreement entered into between the Institute and an agency of the United States Government, shall be transmitted by the Assistant Legal Adviser for Treaty Affairs to the President of the Senate and to the Speaker of the House of Representatives as soon as practicable after the entry into force of such agreements, but in no event later than 60 days thereafter. Classified agreements entered into by the Institute shall be transmitted by the Assistant Legal Adviser for Treaty Affairs to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs.

§ 181.9 Publication of international agreements and qualifying non-binding instruments.

(a) *Publication of international agreements.* Not later than 120 days after the date on which an international agreement enters into force, the Office of the Assistant Legal Adviser for Treaty Affairs shall be responsible for making the text of the agreement, as that term is defined in § 181.10, available to the public on the website of the Department of State, unless one of the exemptions to publication in paragraph (d) of this section applies.

(b) *Publication of qualifying non-binding instruments.* Not less frequently than once every 120 days, the Assistant Legal Adviser for Treaty Affairs shall provide to the Bureau of Administration and the Bureau of Administration shall publish on the website of the Department of State the text, as that term is defined in § 181.10(c), of each qualifying nonbinding instrument that became operative during the preceding 120 days, unless one of the exemptions to publication in paragraph (d) of this section applies. In the case of a qualified non-binding instrument that is the subject of a communication from the Chair or Ranking Member of either of the appropriate congressional committees pursuant to section 112b(k)(5)(A)(ii)(II) of the Act, the

Bureau of Legislative Affairs, in coordination with the Assistant Legal Adviser for Treaty Affairs, shall provide the text of the instrument, as that term is defined in § 181.1(c), to the Bureau of Administration for publication on the website of the Department of State, unless one of the exemptions to publication in paragraph (d) of this section applies.

(c) *Publication of information related to international agreements and qualifying non-binding instruments.* With respect to each international agreement published pursuant to paragraph (a) of this section and each qualifying non-binding instrument published pursuant to paragraph (b) of this section, and with respect to international agreements and qualifying non-binding instruments that have been separately published by a depositary or other similar administrative body in accordance with paragraph (d)(i)(v) of this section, the Assistant Legal Adviser for Treaty Affairs shall provide to the Bureau of Administration for publication on the website of the Department of State within the timeframes specified in those subsections a detailed description of the legal authority relied upon to enter into the agreement or instrument, and a statement describing any new or amended statutory or regulatory authority anticipated to be required to implement the agreement or instrument.

(d) *Exemptions from publication.* (1) Pursuant to 1 U.S.C. 112b(b)(3), the following categories of international agreements and qualifying non-binding instruments will not be published:

(i) International agreements and qualifying non-binding instruments that contain information that has been given a national security classification pursuant to Executive Order 13526 (50 U.S.C. 3161 note; relating to classified national security information) or any predecessor or successor order, or that contain any information that is otherwise exempt from public disclosure pursuant to United States law. ''Information that is otherwise exempt from public disclosure pursuant to United States law'' includes information that is exempt from public disclosure under the Freedom of Information Act pursuant to one of the exemptions set out in 5 U.S.C. 552(b)(1) through (9);

(ii) International agreements and qualifying non-binding instruments that address military operations, military exercises, acquisition and cross servicing, logistics support, military personnel exchange or education programs, or the provision of health care to military personnel on a reciprocal basis;

(iii) International agreements and qualifying non-binding instruments that establish the terms of grant or other similar assistance, including in-kind assistance, financed with foreign assistance funds pursuant to the Foreign Assistance Act of 1961 (22 U.S.C. 2151 *et seq.*) or the Food for Peace Act (7 U.S.C. 1691 *et seq.*);

(iv) International agreements and qualifying non-binding instruments, such as project annexes and other similar instruments, for which the principal function is to establish technical details for the implementation of a specific project undertaken pursuant to another agreement or qualifying nonbinding instrument that has been published in accordance with 1 U.S.C. 112b(b)(1) or (2);

(v) International agreements and qualifying non-binding instruments that have been separately published by a depositary or other similar administrative body, except that the information described in § 181.8(a)(3) and (6) relating to such international agreements and qualifying non-binding instruments shall be made available to the public on the website of the Department of State in accordance with paragraph (c) of this section; and

(vi) any international agreements and qualifying non-binding instruments within one of the above categories that had not been published as of September 19, 2023, unless, in the case of such a non-binding instrument, the instrument is the subject of a written communication from the Chair or Ranking Member of either the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives to the Secretary in accordance with 1 U.S.C. 112b(k)(5)(A)(ii)(II).

(2) Pursuant to 1 U.S.C. 112a(b), any international agreements and qualifying non-binding instruments in the possession of the Department of State, other than those in paragraph (d)(1)(i) of this section, but not published will be made available upon request by the Department of State.

(3) Pursuant to 1 U.S.C. 112b(l)(1), nothing in the Act may be construed to authorize the withholding from disclosure to the public of any record if such disclosure is required by law.

§ 181.10 Definition of ''text''.

(a) In accordance with 1 U.S.C. 112b(k)(7), the term ''text'' with respect to an international agreement or qualifying non-binding instrument includes:

(1) Any annex, appendix, codicil, side agreement, side letter, or any document of similar purpose or function to the aforementioned, regardless of the title of the document, that is entered into contemporaneously and in conjunction with the international agreement or qualifying non-binding instrument; and

(2) Any implementing agreement or arrangement, or any document of similar purpose or function to the aforementioned regardless of the title of the document, that is entered into contemporaneously and in conjunction with the international agreement or qualifying non-binding instrument.

(b) 1 U.S.C. 112b(k)(7) further provides that, as used in this definition, the term ''contemporaneously and in conjunction with'':

(1) Shall be construed liberally; and

(2) May not be interpreted to require any action to have occurred simultaneously or on the same day.

Joshua L. Dorosin,

Deputy Legal Adviser, Department of State.

[FR Doc. 2023–21666 Filed 9–29–23; 8:45 am]

BILLING CODE 4710–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R02–OAR–2021–0871; FRL–11226–02–R2]

Air Plan Approval; New Jersey; Redesignation of the Warren County 1971 Sulfur Dioxide Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On November 15, 2021, the New Jersey Department of Environmental Protection (NJDEP) submitted a request for the Environmental Protection Agency (EPA) to approve the redesignation of the New Jersey portion of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region (Warren County, New Jersey) from nonattainment to attainment for the 1971 Sulfur Dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). In conjunction with its redesignation request, NJDEP submitted a State Implementation Plan (SIP) revision containing a limited maintenance plan and its associated contingency measures for the Warren County 1971 SO_2 Nonattainment Area (Warren County SO_2 NAA) to ensure

that attainment of the SO_2 NAAQS will continue to be maintained. The EPA is taking final action to approve the requested SIP revision and to redesignate the Warren County SO_2 NAA from nonattainment to attainment for the 1971 SO_2 NAAQS.

DATES: This final rule is effective on October 2, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2021–0871. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Controlled Unclassified Information (CUI) (formally referred to as Confidential Business Information (CBI)) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kenneth Fradkin, Air Programs Branch, Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, at (212) 637–3702, or by email at *Fradkin.Kenneth@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What is the background for this action?

On August 14, 2023, the EPA proposed to redesignate the Warren County SO_2 NAA to attainment for the 3-hour, 24-hour, and annual 1971 SO_2 NAAQS, based on the demonstrated compliance with the requirements of the redesignation criteria provided under CAA section 107(d)(3)(E). The EPA also proposed to approve the limited maintenance plan as a revision to the New Jersey SIP. NJDEP submitted the redesignation request and SIP revision on November 15, 2021.

The specific details of New Jersey's redesignation request and SIP revision, and the rationale for the EPA's approval action are explained in the EPA's proposed rulemaking and are not restated in this final action. For this detailed information, the reader is referred to the EPA's August 14, 2023, proposed rulemaking (88 FR 54983).

II. Environmental Justice Considerations

NJDEP provided a supplement to its SIP submission on March 16, 2023, which described New Jersey's programs and initiatives addressing the needs of communities with Environmental Justice (EJ) concerns.

The EPA performed an EJ analysis for the Warren County SO_2 NAA for the purpose of providing additional context and information about this rulemaking to the public and not as a basis for the action.

On August 14, 2023, we proposed to find that action would not have or lead to disproportionately high or adverse human health or environmental effects on communities with EJ concerns. For the specific details regarding the EPA's evaluation of EJ considerations, the reader is referred to the August 14, 2023, proposed rulemaking (88 FR 54983, 54994–54995).

III. What comments were received in response to the EPA's proposed action?

The EPA provided a 30-day review and comment period for the August 14, 2023, proposed rule. The comment period ended on September 13, 2023. The EPA received no comments on the proposed action.

IV. What action is the EPA taking?

The EPA has evaluated New Jersey's redesignation request and determined that it meets the redesignation criteria provided under CAA section 107(d)(3)(E) and is consistent with Agency regulations and policy. The EPA is approving New Jersey's request to redesignate the Warren County SO_2 NAA to attainment for the 3-hour, 24-hour, and annual 1971 SO_2 NAAQS. Additionally, the EPA is approving the maintenance plan for the Warren County SO_2 NAA pursuant to section 175A of the CAA.

In accordance with 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), the EPA finds there is good cause for this action to become effective immediately upon publication. The immediate effective date for this action is authorized under 5 U.S.C. 553(d)(1). Section 553(d)(1) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. The EPA has determined that this rule relieves a restriction because this rule relieves sources in the area of Nonattainment New Source Review (NNSR) permitting requirements; instead, upon the effective date of this action, sources will be subject to less restrictive Prevention of Significant Deterioration (PSD) permitting requirements. For this reason, the EPA finds good cause under 5 U.S.C. 553(d)(1) for this action to become effective on the date of publication of this action.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, 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 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 it will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

NJDEP evaluated EJ considerations as part of its SIP submittal even though the CAA and applicable implementing regulations neither prohibit nor require an evaluation. The EPA's evaluation of the NJDEP's environmental justice considerations 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. The EPA is taking action under the CAA on reasoning independent of the NJDEP's evaluation of environmental justice. Due to the nature of this action, it is expected to have a neutral to positive impact on the air quality of the affected area.

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

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

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

Lisa Garcia,

Regional Administrator, Region 2.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart FF—New Jersey

■ 2. In § 52.1570, the table in paragraph (e) is amended by adding the entry for ''1971 Sulfur Dioxide Redesignation Request and Maintenance Plan for the Warren County Area'', at the end of the table to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEW JERSEY NONREGULATORY AND QUASI-REGULATORY PROVISIONS

SIP element	Applicable geographic or nonattainment area	New Jersey submittal date	EPA approval date	Explanation
*	* *	* *	*	*
1971 Sulfur Dioxide Redesignation Request and Maintenance Plan for the Warren County Area.	New Jersey portion of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region (Warren County, New Jersey).	November 15, 2021	October 2, 2023, [insert **Federal Register** citation].	• Full approval.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. In § 81.331 the table entitled ''New Jersey—1971 Sulfur Dioxide NAAQS'' is amended by revising the entries under ''Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR'' to read as follows:

§ 81.331 New Jersey.

NEW JERSEY—1971 SULFUR DIOXIDE NAAQS

[Primary and secondary]

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * * * *				
Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR:				
The Township of Harmony				X
The Township of White				X
The Township of Oxford				X
The Township of Belvidere				X
Portions of Liberty Township				X
Portions of Mansfield Township				X
Remainder of AQCR				X

* * * * *

[FR Doc. 2023–21700 Filed 9–29–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 21–450; FCC 23–62; FR ID 173798]

Affordable Connectivity Program

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission (FCC) is correcting a final rule that appeared in the **Federal Register** on September 1, 2023. The document issued a final rule to establish the enhanced discounts available for monthly broadband services provided in high-cost areas by participants in the Affordable Connectivity Program (ACP).

DATES: Effective October 2, 2023.

FOR FURTHER INFORMATION CONTACT: For further information, please contact, Travis Hahn, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, at *Travis.Hahn@fcc.gov* or 202–418–7400.

SUPPLEMENTARY INFORMATION:

Correction

In FR Doc. 2023–18621, appearing on page 60347 in the **Federal Register** of Friday, September 1, 2023, the following corrections are made:

§ 54.1814 [Corrected]

■ 1. On Page 60355, in the third column, in part 54, in paragraph (b), ''(2)'' is corrected to read as ''(3)''.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–21292 Filed 9–29–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220523–0193; RTID 0648–XD386]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category October Through November Time Period Quota Transfer

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring 25 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category October through November time period resulting in an adjusted October through November time period subquota of 117.4 mt and a Reserve category quota of 87.2 mt. This action would affect Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: The transfer is effective September 28, 2023, through November 30, 2023.

FOR FURTHER INFORMATION CONTACT: Lisa Crawford, *lisa.crawford@noaa.gov,* 301–427–8503; or Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic 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.

As described in § 635.27(a), the current baseline U.S. BFT quota is 1,316.14 metric tons (mt) (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). The baseline quotas for the General and Reserve categories are 710.7 mt and 38.2 mt, respectively. The General category baseline quota is suballocated to different time periods. Relevant to this action, the baseline subquota for the October to November time period is 92.4 mt. To date, NMFS has published several actions that resulted in adjustments to the Reserve category quota, including the allowable carryover of underharvest from 2022 to 2023, resulting in an adjusted Reserve category quota of 112.2 mt (88 FR 48136, July 26, 2023; 88 FR 64385,

September 19, 2023; 88 FR 64831 September 20, 2023). In this action, NMFS is transferring 25 mt from the Reserve category to the General category October through November time period. This transfer results in 117.4 mt (92.4 mt + 25 mt = 117.4 mt) being available for the General category October through November time period. This transfer also results in 87.2 mt (112.2 mt − 25 mt = 87.2 mt) being available in the Reserve category through the remainder of the 2023 fishing year.

Transfer of 25 mt From the Reserve Category to the General 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 General 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 General category will support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS considered the catches of the General category quota to date and the likelihood of overharvests and an earlier closure of the General category if no adjustment is made (§ 635.27(a)(7)(ii) and (ix)). While the General category is currently closed and the October through November time-period subquota has not yet opened or been exceeded, without a quota transfer, NMFS would likely need to close the General category shortly after the October through November time period opens and participants would have to stop BFT fishing activities while commercial-sized BFT remain available in the areas where General category permitted vessels operate. A quota transfer of 25 mt at this time provides limited additional opportunities to harvest the U.S. BFT quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the General category to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(7)(iii)), NMFS considered General 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. Thus, this quota transfer will 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 most of 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. NMFS recently took such an action to carry over the allowable 106.5 mt of underharvest from 2022 to 2023 (88 FR 64831, September 20, 2023). 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 General 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)). Specific to the General category, this includes providing opportunities equitably across all time periods.

Given these considerations, NMFS is transferring 25 mt of the available 112.2 mt of Reserve category quota to the General category October through November time period subquota. Therefore, NMFS adjusts the General category October through November time period subquota to 117.4 mt and the Reserve category quota to 87.2 mt for the remainder of the 2023 fishing year, or until modified by a later action.

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, General and HMS Charter/Headboat 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 call the Atlantic Tunas Information Line at (978) 281–9260, or access *https://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 of the General category is impracticable and contrary to the public interest as the General category fishery will open on October 1 for the October through November time period. Based on General category catch rates, a delay in this action would likely result in BFT landings exceeding the adjusted October through November 2023 General category quota shortly after the opening on October 1. Subquota exceedance may result in the need to reduce quota for the General category later in the year and thus could affect later fishing opportunities. 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 General category quota. This action does not raise conservation and management concerns. Transferring quota from the Reserve category to the General 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: September 27, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–21707 Filed 9–27–23; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 221206–0261]

RIN 0648–BM62

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2023–2024 Biennial Specifications and Management Measures; Inseason Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; inseason adjustments to biennial groundfish management measures.

SUMMARY: This final rule announces routine inseason adjustments to management measures in commercial and recreational groundfish fisheries for the remainder of the 2023 fishing year. This action is intended to allow commercial and recreational fishing vessels to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: This final rule is effective October 2, 2023.

ADDRESSES: *Electronic Access:* This rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are available at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/* including the 2021 stock assessment for quillback rockfish (see Agenda Item E.2, Attachment 4, November 2021) and supporting information for the Council's recommendations at the September 2023 meeting.

FOR FURTHER INFORMATION CONTACT: Keeley Kent, phone: 206–247–8252 or email: *keeley.kent@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Pacific Coast Groundfish Fishery Management Plan (PCGFMP) and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish in the exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California. The Pacific Fishery Management Council (Council) develops groundfish harvest specifications and management measures for 2 year periods (*i.e.,* a biennium). NMFS published the final rule to implement harvest specifications and management measures for the 2023–2024 biennium for most species managed under the PCGFMP on December 16, 2022 (87 FR 77007). In general, the management measures set at the start of the biennial harvest specifications cycle help the various sectors of the fishery attain, but not exceed, the catch limits for each stock. The Council, in coordination with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, recommends adjustments to the management measures during the fishing year to achieve this goal.

At its September 2023 meeting, in an effort to limit mortality of quillback rockfish off California (as discussed below), the Council recommended NMFS prohibit quillback rockfish retention in federal waters off California in all recreational (*i.e.,* bag limit of zero) and commercial (*i.e.,* zero retention under trip limit for minor nearshore rockfish complex) groundfish fisheries; close the ''nearshore'' recreational groundfish fisheries for the remainder of 2023 in federal waters for the Northern Groundfish Management Area (GMA), Mendocino GMA, San Francisco GMA, and Central GMA; and prohibit recreational vessels from fishing in federal waters shoreward of the 50 fathom rockfish conservation area (RCA) boundary line. Shelf rockfish, slope rockfish, and lingcod may be taken seaward of the 50-fathom boundary line by recreational vessels, while it will be unlawful to take or possess nearshore rockfish, cabezon or greenlings at any depth in federal waters by recreational vessels. To further limit incidental catch and discards of quillback rockfish, the Council also recommended modifying fixed gear trip limits between 42° North (N) latitude (lat.) to 34°27′ N lat. for limited entry (LE) and open access (OA) fisheries for the following co-occurring species: Minor Shelf Rockfish complex, widow rockfish, yellowtail rockfish, canary rockfish, Minor Nearshore Rockfish complex, lingcod, chilipepper rockfish, bocaccio rockfish, and cabezon.

In addition to the quillback rockfish related management measure adjustments, the Council recommended modifying fixed gear trip limits for LE and OA fisheries for sablefish north of 36° N lat. and lingcod north of 42° N lat. All of the inseason actions the Council recommended were adjustments to be implemented for the remainder of the 2023 fishing year.

Pacific Coast groundfish fisheries are managed using harvest specifications or

limits (*e.g.,* overfishing limits [OFL], acceptable biological catch [ABC], annual catch limits [ACL] and harvest guidelines [HG]) recommended biennially by the Council and based on the best scientific information available at that time (50 CFR 660.60(b)). During development of the harvest specifications, the Council also recommends management measures (*e.g.,* Annual Catch Targets (ACTs), trip limits, area closures, and bag limits) that are meant to mitigate catch so as not to exceed the harvest specifications. The harvest specifications and mitigation measures developed for the 2023–2024 biennium used data through the 2021 fishing year. Each of the adjustments to mitigation measures discussed below are based on updated fisheries information that was unavailable when the analysis for the current harvest specifications was completed. As new fisheries data becomes available, adjustments to mitigation measures are projected so as to help harvesters achieve but not exceed the harvest limits.

Quillback Rockfish Off California

Under current management, quillback rockfish are a contributing species within the Minor Nearshore Rockfish complex north and south of 40°10′ N lat. The harvest specifications for this species (ACL, ABC, OFL) contribute to the harvest specifications of the complex. Quillback rockfish was assessed in 2021 and that assessment was determined to be the best scientific information available by the Pacific Fishery Management Council's Science and Statistical Committee as well as NMFS (see **ADDRESSES**). Due to differences in data availability and fishery exploitation, the quillback rockfish assessment split the species into three separate assessment areas by state boundary line. The individual assessment areas suggested differences in abundance and potential localized depletion. The assessment for the portion of quillback rockfish off California indicated that population is depleted and limited mixing with other populations of quillback rockfish off the West Coast is thought to occur. Additionally, the assessment indicated the species has been fished at levels too high to maintain good yields and a healthy population since the 1990s.

In an analysis for the November 2021 Council meeting, a report by the Groundfish Management Team (GMT) showed continued exceedances of the OFL contribution of quillback rockfish to the nearshore rockfish complex every year in all 4 years between 2017 and 2020 (Agenda Item E.3.a GMT Report 2, November 2021). Additionally, the Council noted that quillback rockfish has a 2.22 vulnerability score, making it one of the most vulnerable rockfishes in the PCGFMP. For these reasons, the Council recommended species-specific ACTs for quillback rockfish off the coast of California as part of the 2023–24 harvest specifications and management measures (87 FR 77007, December 16, 2022) to support better tracking of mortality in light of the depleted nature of quillback off California.

Quillback rockfish have a shared commercial and recreational species-specific ACT of 0.87 metric tons (mt) for the area between 42° N lat. and 40°10′ N lat. and 0.89 mt for south of 40°10′ N lat. (see 50 CFR 660 Table 1a and Table 2a). The ACTs were set under the 2023–24 Groundfish Harvest Specifications and Management Measures action in response to the 2021 stock assessment for quillback rockfish off the coast of California, which has been deemed the best scientific information available by NOAA Fisheries and the scientific advisors to the Council. Given quillback rockfish are currently managed in a stock complex, the new ACT was meant to essentially formalize the ACL contributions for management purposes. Setting the ACTs equal to the ACL contributions allows the Council to recommend necessary management measures inseason when the ACL contribution is met or projected to be met. Exceeding the ACL contribution for species in a complex would otherwise typically not trigger a Council response or accountability measure.

At the September 2023 Council meeting, the California Department of Fish and Wildlife (CDFW) requested that the Council take action in federal waters similar to management measures recently taken in California state waters as a result of mortality of quillback rockfish off California estimated to substantially exceed the federally set harvest limits (see **ADDRESSES**). Updated quillback rockfish mortality as of August 27, 2023, for California recreational fisheries and September 5, 2023 for California commercial landings is provided in Table 1 below (Agenda Item G.8.a Supplemental GMT Report 5, September 2023). Table 1 demonstrates that estimated mortality across California (4.12 mt), without taking into account commercial discards, is substantially higher than the combined ACTs (1.76 mt) and substantially higher than the combined OFL contributions (2.1 mt). Therefore, because the ACTs were set in order to address localized depletion identified in the 2021 stock assessment, the Council determined that major reductions in fishing opportunity for the remainder of the year are warranted.

TABLE 1—BEST ESTIMATE OF 2023 CALIFORNIA QUILLBACK ROCKFISH COMMERCIAL NON-TRAWL LANDINGS AND RECREATIONAL MORTALITY, IN METRIC TONS (MT)

[California Recreational Fishery Survey (CRFS) estimates through June, Anticipated Catch Values (ACVs) through August 27; commercial landings data retrieved from PacFIN September 5. Inseason catch estimates are compared to the 2023 quillback rockfish ACT/ACL contributions north and south of 40°10′ N lat.]

Area	Estimated recreational total mortality (mt)	Commercial landings (mt)	Combined mortality (mt) [a]	2023 Quillback ACT (= ACL contribution) (mt)	% Attainment
North 40°10′ N lat	1.75	0.25	2.00	0.87	230
South 40°10′ N lat	1.84	0.28	2.12	0.89	238

[a] Commercial does not include estimated discard mortality.

In response, the Council's GMT conducted analysis to see if there were any particular aspects of the fishery (by sector, location, gear type, *etc.*) where quillback were most commonly encountered, in order to narrow the scope of potential restrictions that may be most effective at reducing further impacts to quillback rockfish for the remainder of 2023.

The GMT analyzed observer (commercial only) and landings data (commercial and recreational) from 2021 and 2022 for the two geographic areas off the coast of California with

quillback rockfish ACTs in 2023: between 42° N lat. and 40°10′ N lat. and south of 40°10′ N lat. The sectors with highest estimated quillback rockfish removals in 2021 and 2022 were as follows: landings in the recreational fishery south of 40°10′ N lat. (7.5 mt in 2021 and 6.3 mt in 2022), discard mortality in the OA fixed gear fishery north of 40°10′ N lat. in 2022 (5.3 mt), landings in the recreational fishery north of 40°10′ N lat. (3.0 mt in 2021 and 2.9 mt in 2022), and both landings and discards combined in the nearshore fishery both north (2.2 mt in 2021 and 1.9 mt in 2022) and south (2.7 mt in 2021 and 1.6 mt in 2022).

This information indicated that in 2021 and 2022, most landed catch of quillback rockfish was from recreational fisheries, OA fixed gear had high estimated discards in 2022, and the nearshore fishery has a relatively lower overall but more consistent harvest tonnage from a mix of both landings and discards. Further investigation on commercial fishery encounters indicated that very few trips in the OA fixed gear fishery that fished with hook and line gears caught quillback rockfish in 2021 and 2022 (approximately 2 percent of trips between 42° N lat. and 40°10′ N lat. and less than 0.2 percent of trips south of 40°10′ N lat.). Comparatively, the nearshore fishery has much higher encounter rates with quillback rockfish, with approximately 15 percent of trips between 42° N lat. and 40°10′ N lat. and 6 percent of trips south of 40°10′ N lat. catching quillback rockfish.

A further consideration of limited available spatial data indicated that quillback rockfish are very rarely encountered in waters deeper than 50 fathoms (91.4 meters (m)) but that the depth ranges where they are most commonly encountered varies somewhat by latitude with more attributed catches in shallower depths (*e.g.,* 11–30 fathoms, 20.1–54.9 m) in the more northern areas and deeper than 20 fathoms (36.6 m) in southern parts of the California coast.

The GMT also looked at whether the legal non-bottom contact hook-and-line gear allowed in the non-trawl rockfish conservation area (RCA) (50 CFR 660.330(b)(3)) has been encountering quillback rockfish. This gear was a new management measure under the 2023–24 harvest specifications and management measures (87 FR 77007, December 16, 2022) within the non-trawl RCA in order to provide additional opportunity to commercial non-trawl fisheries to target healthy stocks while relieving pressure on depleted or constraining nearshore stocks. While data is limited so far, the gear configurations have shown to have relatively low bycatch of groundfish species of concern while being able to harvest healthy midwater rockfish. In the 14 years the three Experimental Fishing Permits (EFPs) operated that used similar gear (Emley-Platt, Real Good Fish, and Oregon RFA EFP), a total of only three quillback rockfish were caught. Further analysis showed that of the 108 mt of total catch in all three EFPs combined, approximately only 3 percent was quillback rockfish.

In light of this new information, the Council recommended limiting the closures of trip limits by gear type and by area in order to maintain some fishing opportunity with limited quillback rockfish impacts, and focusing action on the sectors with greater quillback impacts. The recommendations from the Council are projected to reduce take of quillback rockfish in order to address localized depletion while minimizing the economic impact to fishing communities to the extent possible. Therefore, the Council recommended and NMFS is implementing, by modifying Tables 2 North and South to part 660, subpart E, Tables 3 North and South to part 660, subpart F, and 50 CFR 660.360(c)(3), a zero pound trip and bag limits, thereby effectively prohibiting retention of quillback rockfish off California (south of 42° N lat.) in both commercial (0 lbs per bimonthly period trip limit) and recreational fisheries in federal waters (0 lbs bag limit). The Council also recommended and NMFS is implementing, by Tables 2 North and South to part 660, subpart E, a zero pound trip limit for LE fisheries, effectively closing those LE fisheries for period 6 (November–December) between 42° North (N) latitude (lat.) to 34°27′ N lat. (unless otherwise specified) for the following stocks and complexes: Minor Shelf Rockfish complex, widow rockfish, yellowtail rockfish (42° N lat. to 40°10′ N lat), canary rockfish, Minor Nearshore Rockfish complex, lingcod, chilipepper rockfish (40°10′ N lat. to 34°27′ N lat.), bocaccio rockfish (40°10′ N lat. to 34°27′ N lat.), and cabezon.

The Council recommended and NMFS is implementing, by modifying Tables 3 North and South to part 660, subpart F, a zero pound trip limit for OA fisheries, effectively closing the OA fisheries for period 6 (November–December) between 42° North (N) latitude (lat.) to 34°27′ N lat. for the following stocks and complexes: Minor Nearshore Rockfish complex, lingcod, and cabezon.

The Council recommended and NMFS is implementing, by modifying Tables 3 North and South to part 660, subpart F, a zero pound trip limit for OA fisheries, effectively closing the OA fishieries for period 6 (November–December), except for vessels using legal non-bottom contact hook and line gear (as defined at § 660.330(b)(3)) between 42° North (N) latitude (lat.) to 34°27′ N lat. (unless otherwise specified) for the following stocks and complexes: minor shelf rockfish (42° N lat. to 40°10′ N lat), widow rockfish, yellowtail rockfish (42° N lat. to 40°10′ N lat), canary rockfish, chilipepper rockfish (40°10′ N lat. to 34°27′ N lat.), and bocaccio rockfish (40°10′ N lat. to 34°27′ N lat.).

Additionally, the Council recommended and NMFS is implementing, by modifying 50 CFR 660.360, a closure for the nearshore recreational groundfish fisheries for the remainder of 2023 in federal waters for the Northern GMA, Mendocino GMA, San Francisco GMA, and Central GMA; and prohibiting recreational vessels from fishing in federal waters shoreward of the 50 fathom RCA boundary line. Shelf rockfish, slope rockfish, and lingcod may be taken seaward of the 50-fathom boundary line by recreational vessels, while it will be unlawful to take or possess nearshore rockfish, cabezon or greenlings at any depth in federal waters by recreational vessels.

Vermilion Rockfish

Vermilion rockfish off California are currently managed as part of the Minor Shelf Rockfish complex, south of 40°10′ N latitude; as well as the Minor Shelf Rockfish complex north of 40°10′ N latitude, but only in the area between 42° and 40°10′ N lat. For 2023, the southern complex has an ACL of 1,469 mt, and vermilion rockfish has an ACL contribution of 281.3 mt; the northern complex has an ACL of 1,283 mt, and vermilion rockfish has an ACL contribution of 6.5 mt within it.

With the changes described above, which will shift fishing effort from the nearshore out to the shelf, concerns about limiting shelf stocks, specifically vermilion rockfish, arose. Due to the high value of vermilion rockfish, there are concerns about potential effort increases to minor shelf rockfish species, especially vermilion rockfish, as well as additional concerns with non-compliance in utilizing the legal non-bottom contact hook and line gear (as defined at § 660.330(b)(3)). While the Council intends to minimize impacts to quillback rockfish, the intent of this action is also to avoid overharvesting other species. To achieve this, the

Council recommended reducing trip limits to minimize the potential for effort shift. Within the Minor Shelf Rockfish Complex, vermilion rockfish south of 40°10′ ACL contribution is projected to be exceeded and therefore the Council determined that additional trip limit reductions should be taken. The expected mortality under current limits are shown in Table 2.

TABLE 2—PROJECTED LANDINGS OF VERMILION, VERMILION ALLOCATION, AND PROJECTED PERCENTAGE OF VERMILION ATTAINED THROUGH THE END OF THE YEAR BY CURRENT TRIP LIMIT AND FISHERY

Area	Projected landings (mt)	OFL/ABC/ACL Contribution to the Minor Shelf Complex	Projected attainment of ACL contribution
42° N lat.–40°10′ N lat	6.7 mt	OFL=6.99; ABC/ACL=6.54	102
40°10′ N lat.–34°27′ N lat	375.0 mt	OFL=311.24; ABC/ACL=281.3	133

Given that the new LE trip limits for the Minor Shelf Rockfish complex will be set to zero for the areas between 42° N lat. to 40°10′ N lat. and 40°10′ N lat. to 34°27′ N lat. for period 6 (November–December), it is assumed that the LE entrants will shift their effort to the OA fishery when targeting the Minor Shelf Rockfish complex since legal non-bottom contact hook and line gear (as defined at § 660.330(b)(3)) will still be allowed in that area. Therefore, the GMT analyzed the potential reduction to open access Minor Shelf Rockfish complex trip limits between 42° N lat. to 40°10′ N lat. and 40°10′ N lat. to 34°27′ N lat. Additionally, the GMT analyzed a potential reduction to the vermilion rockfish subtrip limit between 40°10′ N lat. and 34°27′ N lat. (Agenda Item G.8.a Supplemental GMT Report 5, September 2023).

Consequently, the Council recommended and NMFS is implementing, by modifying Tables 3 North and South to part 660, subpart F, a closure of the Minor Shelf Rockfish complex trip limit for all OA gear between 42° N lat. to 34°27′ N lat. except legal non-bottom contact hook and line gear (as defined at § 660.330(b)(3)) (as discussed above). For vessels using legal non-bottom contact hook and line gear, the Council recommended and NMFS is implementing a reduction in the Minor Shelf Rockfish complex trip limits for period 6 (November–December). Between 42° N lat. to 40°10′ N lat., the Minor Shelf Rockfish trip limit will be 400 lbs. (181.4 kg) per month. Between 40° 10′ N lat. to 34°27′ N lat., the trip limit will be 2,000 lbs. (907.2 kg) per bimonthly period, of which no more than 200 lb. (90.7 kg) may be vermilion rockfish.

Sablefish

Sablefish is an important commercial species on the west coast with vessels targeting sablefish with both trawl and fixed gear (longlines and pots/traps). Sablefish is managed with a coast-wide ACL that is apportioned north and south of 36° N lat. based on a 5-year rolling average of swept-area biomass from the trawl survey. In 2023, the portion of the ACL for sablefish north of 36° N lat. is 8,486 mt with a fishery HG of 7,600 mt. The fishery HG north of 36° N lat. is further divided between the Limited Entry Fixed Gear (LEFG) and OA sectors with 90.6 percent, or 6,885 mt, going to the LEFG sector and 9.4 percent, or 714 mt, going to the OA sector.

At the September 2023 Council meeting, the Council's GMT received requests from industry members and members of the Council's Groundfish Advisory Subpanel to examine the potential to increase sablefish trips limits for the LEFG and OA fisheries north of 36° N lat. Landings in both northern sectors are tracking well below their respective sector-specific targets so far in 2023, and the LEFG sector in particular had a slow start to the fishing season, largely driven by fishing opportunities off Alaska. The intent of increasing trip limits is to increase harvest opportunities for vessels targeting sablefish. To evaluate potential increases to sablefish trip limits, the GMT made model-based landings projections under current regulations and alternative sablefish trip limits, including the limits ultimately recommended by the Council, for the LEFG and OA fisheries through the remainder of the year. Table 4 shows the projected sablefish landings, the sablefish allocations, and the projected attainment percentage by fishery under both the current trip limits and the Council's recommended adjusted trip limits. These projections were based on the most recent catch information available through early September 2023. Industry did not request changes to sablefish trip limits for the LEFG or OA fishery south of 36° N lat. Therefore, NMFS and the Council did not consider trip limit changes for these fisheries at this time.

TABLE 3—PROJECTED LANDINGS OF SABLEFISH, SABLEFISH ALLOCATION, AND PROJECTED PERCENTAGE OF SABLEFISH ATTAINED THROUGH THE END OF THE YEAR BY TRIP LIMIT AND FISHERY

Fishery	Trip limits	Projected landings (round weight) (mt)	Allocation (mt)	Projected percentage attained
LEFG North of 36° N lat.	*Current:* 4,500 lb. (2,042 kg)/week, not to exceed 9,000 lb. (4,082 kg)/two months.	215–240	417	52–58
	Recommended: 9,000 lb. (4,082 kg)/week, not to exceed 18,000 lb. (8,165 kg)/two months.	317–364		82–87
OA North of 36° N lat.	*Current:* 3,000 lb. (1,361 kg)/day, not to exceed 6,000 lb. (2,722 kg)/two months.	520–561	687	76–82
	Recommended: 4,000 lb. (1,814 kg)/day, not to exceed 8,000 lb. (8,629 kg)/two months.	599–654		87–95

As shown in Table 4, under the current trip limits, the model predicts catches of sablefish will be at or below 58 percent, or 240 mt of the 417 mt allocation, for LEFG and 82 percent, or 561 mt of the 687 mt allocation, for OA fishery north of 36° N lat. Under the Council's recommended trip limits, sablefish attainment is projected to increase in the LEFG and OA fisheries north of 36° N lat. up to 87 and 95 percent, respectively.

Trip limit increases for sablefish are intended to increase attainment of the non-trawl HG. The recommended trip limit increases do not change projected impacts to co-occurring rebuilding species compared to the impacts anticipated in the 2023–24 harvest specifications because the projected impacts to those species assume that the entire sablefish ACL is harvested. Therefore, the Council recommended and NMFS is implementing, by modifying Tables 2 North and South to part 660, subpart E, trip limit changes for the LEFG fishery north of 36° N lat. to set the limits at ''9,000 lbs. (4,082.3 kg)/week not to exceed 18,000 lbs. (8,164.7 kg)/2 months'' beginning in period 6 (November–December) through the end of the year. NMFS is also implementing, by modifying Tables 3 North and South to part 660, subpart F, trip limit changes for the OA sablefish fishery north of 36° N lat. to set the limits at 4,000 lbs. (1,814.4 kg)/week not to exceed 8,000 lbs. (3,628.7 kg)/2 months starting with period 6 (November–December) through the end of the year.

Lingcod

Prior to the September 2023 meeting, the GMT also received a request to increase the lingcod trip limits north of 42° N lat. to reduce regulatory discarding and increase economic opportunity. Status quo is currently resulting in regulatory discard for certain participants in the fishery. Lingcod is managed with an ACL north of 40°10′ N lat. and an ACL south of 40°10′ N lat. The 2023 ACL for lingcod north of 40°10′ N lat. is 4,378 mt.

To evaluate potential increases to lingcod trip limits north of 42° N lat., the GMT made model-based landings projections under current regulations and alternative trip limits, including the limits ultimately recommended by the Council, for the LE and OA fisheries through the remainder of the year. Table 5 shows the projected lingcod landings, the lingcod allocations, and the projected attainment percentage by fishery under both the current trip limits and the Council's recommended adjusted trip limits for north of 42° N lat. These projections were based on the most recent catch information available through late August 2023.

TABLE 4—PROJECTED LANDINGS OF LINGCOD, LINGCOD ALLOCATION, AND PROJECTED PERCENTAGE OF LINGCOD NORTH OF 42° N LAT. ATTAINED THROUGH THE END OF THE YEAR BY TRIP LIMIT AND FISHERY

Fishery	Trip limits	Projected landings (round weight) (mt)
LE North of 42° N lat	*Current:* 7,000 lb. (3,175.1 kg)/two months	160.8
OA North of 42° N lat	*Current:* 3,500 lb. (1,587.6 kg)/month.	
LE North of 42° N lat	*Recommended:* 9,000 lb. (4,082.3 kg)/two months	166.0
OA North of 42° N lat	Recommended: 4,500 lb. (2,041.2 kg)/month.	

Under the current trip limits, the model predicts catches of lingcod north of 42° N lat. will total 160.8 mt, which is 7.1 percent of the 2023 non-trawl allocation of lingcod (2,254.1 mt). Under the Council's recommended trip limits, lingcod mortality north of 42° N lat. is expected to increase to 166.0 mt, which is 7.4 percent of the 2023 non-trawl allocation of lingcod.

Trip limit increases for lingcod are intended to marginally increase attainment of the non-trawl allocation. The recommended trip limit increases do not appreciably change projected impacts to co-occurring rebuilding species compared to the impacts anticipated in the 2023–2024 harvest specifications because the projected impacts to those species assume that the entire lingcod ACL is harvested. Therefore, the Council recommended and NMFS is implementing, by modifying Table 2 North to part 660, subpart E, and Table 3 North to part 660, subpart F, trip limit changes for LE and OA lingcod north of 42° N lat. for period 6 (November–December) as shown above in Table 5. These changes will be implemented through the end of 2023.

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures, based on the best scientific information available, consistent with the PCGFMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection by contacting the NMFS West Coast Region (see **FOR FURTHER INFORMATION CONTACT**, above), or view at the NMFS West Coast Groundfish website: *https://www.fisheries.noaa.gov/species/west-coast-groundfish.*

Pursuant to 5 U.S.C. 553(b), NMFS finds good cause to waive prior public notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. Changes of this nature were anticipated in the final rule for the 2023–24 harvest specifications and management measures which published on December 16, 2022 (87 FR 76007). The majority of the adjustments to management measures in this action address a conservation concern for quillback rockfish off of California as new information demonstrates the current management measures are not sufficient to control mortality as is needed. Therefore, providing a comment period for this action could hamper the adherence to scientifically informed reference points, created to ensure sustainability of the affected fisheries, and would delay measures intended to address localized depletion of quillback rockfish. In addition, trip limit increases for sablefish and lingcod are expected to potentially increase economic value of the fisheries by increasing harvest opportunity and reducing regulatory discards. Delaying implementation to allow for public comment would likely reduce the economic benefits to the commercial fishing industry and the businesses that rely on that industry, because the new regulations could not be implemented in time to realize the projected benefits to fishing

communities. For these same reasons, NMFS finds reason to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(1) so that this final rule may become effective upon publication in the **Federal Register**.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: September 27, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended 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. Revise Table 2 (North) to part 660, subpart E, to read as follows:

BILLING CODE 3510–22–P

Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 9/26/2023

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 46°16' N lat.	shoreline - 100 fm line[1/]					
2	46°16' N lat. - 40°10' N lat.	30 fm line[1/] - 100 fm line[1/]					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Bank, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
3	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	8,000 lb/ 2 months					
4	**Pacific ocean perch**	3,600 lb/ 2 months					
5	**Sablefish**	4,500 lb/ week, not to exceed 9,000 lb /2 months					9,000 lb/ week, not to exceed 18,000 lb /2 months
6	**Longspine thornyhead**	10,000 lb/ 2 months					
7	**Shortspine thornyhead**	2,000 lb/ 2 months				2,500 lb/ 2 months	
8	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/] [7/]**	10,000 lb/ month					
9	**Whiting**	10,000 lb/ trip					
10	**Minor Shelf Rockfish[2/]**						
11	North of 42°00' N lat.	800 lb/ month					
12	42°00' N lat. - 40°10' N lat.	800 lb/ month					0 lb/ month
13	**Widow rockfish**						
14	North of 42°00' N lat.	4,000 lb/ 2 months					
15	42°00' N lat. - 40°10' N lat.	4,000 lb/ 2 months					0 lb/ 2 months
16	**Yellowtail rockfish**						
17	North of 42°00' N lat.	3,000 lb/ month					
18	42°00' N lat. - 40°10' N lat.	3,000 lb/ month					0 lb/ 2 months
19	**Canary rockfish**						
20	North of 42°00' N lat.	4,000 lb/ 2 months					
21	42°00' N lat. - 40°10' N lat.	4,000 lb/ 2 months					0 lb/ 2 months
22	**Yelloweye rockfish**	CLOSED					
23	**Quillback rockfish**						
24	42°00' N lat. - 40°10' N lat.	0 lb/ 2 months					
25	**Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish, & black rockfish[4/]**						
26	North of 42°00' N lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish[3/]					
27	42°00' N lat. - 40°10' N lat. Minor Nearshore Rockfish	2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					0 lb/ 2 months
28	42°00' N lat. - 40°10' N lat. Black Rockfish	7,000 lb/ 2 months					
29	**Lingcod[5/]**						
30	North of 42°00' N lat.	7,000 lb/ 2 months					9,000 lb/ 2 months
31	42°00' N lat. - 40°10' N lat.	2,000 lb/ 2 months					0 lb/ 2 months
32	**Pacific cod**	1,000 lb/ 2 months					
33	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
34	**Longnose skate**	Unlimited					
35	**Other Fish[6/]**	Unlimited					
36	**Cabezon in California**	Unlimited					0 lb/ 2 months
37	**Oregon Cabezon/Kelp Greenling**	Unlimited					
38	**Big skate**	Unlimited					

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Bocaccio, chilipepper and cowcod are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N lat.), and between Destruction Is. (47°40' N lat.) and Leadbetter Pnt. (46°38.17' N lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N lat. and 22 inches (56 cm) total length South of 42° N lat.

6/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

7/ LEFG vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.230 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 3. Revise Table 2 (South) to part 660, subpart E, to read as follows:

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 9/26/2023

TABLE 2 (South)

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N lat. - 38°57.5' N lat.		40 fm line[1/] - 125 fm line[1/]					
2	38°57.5' N lat. -34°27' N lat.		50 fm line[1/] - 125 fm line[1/]					
3	South of 34°27' N lat.		100 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
4	**Minor Slope rockfish[2/] & Darkblotched rockfish**		40,000 lb/ 2 months, of which no more than 6,000 lb may be blackgill rockfish					
5	**Splitnose rockfish**		40,000 lb/ 2 months					
6	**Sablefish**							
7	40°10' N lat. - 36°00' N lat.		4,500 lb/ week, not to exceed 9,000 lb /2 months					9,000 lb/ week, not to exceed 18,000 lb /2 months
8	South of 36°00' N lat.		2,500 lb/ week					
9	**Longspine thornyhead**		10,000 lb/ 2 months					
10	**Shortspine thornyhead**							
11	40°10' N lat. - 34°27' N lat.		2,000 lb/ 2 months			2,500 lb/ 2 months		
12	South of 34°27' N lat.		3,000 lb/ 2 months					
13	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/8/]**		10,000 lb/ month					
14	**Whiting**		10,000 lb/ trip					
15	**Minor Shelf Rockfish[2/]**							
16		40°10' N lat. - 34°27' N lat.	8,000 lb/ 2 months, of which no more than 500 lb may be vermilion					0 lb/ 2 months
17		South of 34°27' N lat.	5,000 lb/ 2 months, of which no more than 3,000 lb may be vermilion					
18	**Widow**							
19		40°10' N lat. - 34°27' N lat.	10,000 lb/ 2 months					0 lb/ 2 months
20		South of 34°27' N lat.	8,000 lb/ 2 months					
21	**Chilipepper**							
22		40°10' N lat. - 34°27' N lat.	10,000 lb. / 2 months					0 lb/ 2 months
23		South of 34°27' N lat.	8,000 lb. / 2 months					
24	**Canary rockfish**							
25		40°10' N lat. - 34°27' N lat.	4,000 lb/ 2 months					0 lb/ 2 months
26		South of 34°27' N lat.	4,000 lb/ 2 months					
27	**Yelloweye rockfish**		CLOSED					
28	**Quillback rockfish**		0 lb/ 2 months					
29	**Cowcod**		CLOSED					
30	**Bronzespotted rockfish**		CLOSED					
31	**Bocaccio**							
32		40°10' N lat. - 34°27' N lat.	8,000 lb/ 2 months					0 lb/ 2 months
33		South of 34°27' N lat.	8,000 lb/ 2 months					
34	**Minor Nearshore Rockfish**							
35	40°10' N lat. - 34°27' N lat. Shallow nearshore[4/]		2,000 lb/ 2 months					0 lb/ 2 months
36	South of 34°27' N lat. Shallow nearshore[4/]		2,000 lb/ 2 months					
37	40°10' N lat. - 34°27' N lat. Deeper nearshore[5/]		2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, of which no more than 75 lb may be copper rockfish					0 lb/ 2 months
38	South of 34°27' N lat. Deeper nearshore[5/]		2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					2,000 lb/ 2 months, of which no more than 75 lb may be copper rockfish
39	**California Scorpionfish**		3,500 lb/ 2 months					
40	**Lingcod[6/]**							
41		40°10' N lat. - 34°27' N lat.	1,600 lb / 2 months					0 lb/ 2 months
42		South of 34°27' N lat.	1,600 lb / 2 months					
43	**Pacific cod**		1,000 lb/ 2 months					
44	**Spiny dogfish**		200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
45	**Longnose skate**		Unlimited					
46	**Other Fish[7/]**		Unlimited					
47	**Cabezon in California**							
48		40°10' N lat. - 34°27' N lat.	Unlimited					0 lb/ 2 months
49		South of 34°27' N lat.	Unlimited					
50	**Big Skate**		Unlimited					

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Pacific ocean perch is included in the trip limits for Minor Slope Rockfish. Blackgill rockfish have a species specific trip sub-limit within the Minor Slope Rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for Minor Shelf Rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 22 inches (56 cm) total length South of 42° N lat.

7/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

8/ LEFG vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.230 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 4. Revise Table 3 (North) to part 660, subpart F, to read as follows:

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

9/26/2023

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 46°16' N lat.	shoreline - 100 fm line[1/]					
2	46°16' N lat. - 40°10' N lat.	30 fm line[1/] - 100 fm line[1/]					
	See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Bank, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
3	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	2,000 lb/ month					
4	**Pacific ocean perch**	100 lb/ month					
5	**Sablefish**	3,000 lb/ week, not to exceed 6,000 lb/ 2 months					4,000 lb/ week, not to exceed 8,000 lb/ 2 months
6	**Shortpine thornyheads**	50 lb/ month					
7	**Longspine thornyheads**	50 lb/ month					
8	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/ 7/]**	5,000 lb/ month					
9	**Whiting**	300 lb/ month					
10	**Minor Shelf Rockfish2/**						
11	North of 42°00' N lat.	800 lb/ month					
12	42°00' N lat. - 40°10' N lat.	800 lb/ month					400 lb/month; only legal non-bottom contact hook-and-line gear (as defined at § 660.330(b)(3)) may be used
13	**Widow rockfish**	2,000 lb/ 2 months					2,000 lb/ 2 months; between 42°00' N lat. - 40°10' N lat., only legal non-bottom contact hook-and-line gear (as defined at § 660.330(b)(3)) may be used
14	**Yellowtail rockfish**	1,500 lb/ month					1,500 lb/month; between 42°00' N lat. - 40°10' N lat., only legal non-bottom contact hook-and-line gear (as defined at § 660.330(b)(3)) may be used
15	**Canary rockfish**	2,000 lb/ 2 months					2,000 lb/ 2 months; between 42°00' N lat. - 40°10' N lat., only legal non-bottom contact hook-and-line gear (as defined at § 660.330(b)(3)) may be used
16	**Yelloweye rockfish**	CLOSED					
17	**Quillback rockfish**						
18	42°00' N lat. - 40°10' N lat.	0 lb/ 2 months					
19	**Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish, & black rockfish**						
20	North of 42°00' N lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish[4/]					
21	42°00' N lat. - 40°10' N lat. Minor Nearshore Rockfish	2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					0 lb/ 2 months
22	42°00' N lat. - 40°10' N lat. Black rockfish	7,000 lb/ 2 months					0 lb/ 2 months
23	**Lingcod[5/]**						
24	North of 42°00' N lat.	3,500 lb/ month					4,500 lb/ month
25	42°00' N lat. - 40°10' N lat.	1,000 lb/ month					0 lb/ month
26	**Pacific cod**	1,000 lb/ 2 months					
27	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
28	**Longnose skate**	Unlimited					
29	**Big skate**	Unlimited					
30	**Other Fish[6/]**	Unlimited					
31	**Cabezon in California**	Unlimited					0 lb/ 2 months
32	**Oregon Cabezon/Kelp Greenling**	Unlimited					
33	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)*						
34	North	*Salmon trollers may retain and land up to 500 lb of yellowtail rockfish per month as long as salmon is on board, both within and outside of the RCA. Salmon trollers may retain and land up to 1 lingcod per 2 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. The lingcod limit only applies during times when lingcod retention is allowed, and is not "CLOSED." Theses limits are within the per month limits described in the table above, and not in addition to those limits. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.*					
35	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*						
36	North	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N lat.), and between Destruction Is. (47°40' N lat.) and Leadbetter Pnt. (46°38.17' N lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N lat. and 22 inches (56 cm) South of 42° N lat.

6/ "Other fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

7/ Open access vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.330 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 5. Revise Table 3 (South) to part 660, subpart F, to read as follows:

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 9/26/2023

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N lat. - 38°57.5' N lat.		40 fm line[1/] - 125 fm line[1/]					
2	38°57.5' N lat. -34°27' N lat.		50 fm line[1/] - 125 fm line[1/]					
3	South of 34°27' N lat.		100 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**		10,000 lb/ 2 months, of which no more than 2,500 lb may be blackgill rockfish					
5	**Splitnose rockfish**		200 lb/ month					
6	**Sablefish**							
7	40°10' N lat. - 36°00' N lat.		3,000 lb/ week, not to exceed 6,000 lb/ 2 months					4,000 lb/ week, not to exceed 8,000 lb/ 2 months
8	South of 36°00' N lat.		2,000 lb/ week, not to exceed 6,000 lb/ 2 months					
9	**Shortpine thornyheads**							
10		40°10' N lat. - 34°27' N lat.	50 lb/ month					
11	**Longspine thornyheads**							
12		40°10' N lat. - 34°27' N lat.	50 lb/ month					
13	**Shortpine thornyheads and longspine thornyheads**							
14	South of 34°27' N lat.		100 lb/ day, no more than 1,000 lb/ 2 months					
15 16 17	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/9]**		5,000 lb/ month					
18	**Whiting**		300 lb/ month					
19	**Minor Shelf Rockfish[2/]**							
20		40°10' N lat. - 34°27' N lat.	4,000 lb/ 2 months, of which no more than 400 lb may be vermilion					2,000 lb/ 2 months, of which no more than 200 lb may be vermilion; only legal non-bottom contact hook-and-line gear (as defined at § 660.330(b)(3)) may be used
21	South of 34°27' N lat.		3,000 lb/ 2 months, of which no more than 1,200 lb may be vermilion					
22	**Widow rockfish**							
23		40°10' N lat. - 34°27' N lat.	6,000 lb/ 2 months					6,000 lb/ 2 months; only legal non-bottom contact hook-and-line gear (as defined at § 660.330(b)(3)) may be used
24	South of 34°27' N lat.		4,000 lb/ 2 months					
25	**Chilipepper**							
26		40°10' N lat. - 34°27' N lat.	6,000 lb/ 2 months					6,000 lb/ 2 months; only legal non-bottom contact hook-and-line gear (as defined at § 660.330(b)(3)) may be used
27	South of 34°27' N lat.		4,000 lb/ 2 months					
28	**Canary rockfish**							
29		40°10' N lat. - 34°27' N lat.	2,000 lb/ 2 months					2,000 lb/ 2 months; only legal non-bottom contact hook-and-line gear (as defined at § 660.330(b)(3)) may be used
30	South of 34°27' N lat.		2,000 lb/ 2 months					
31	**Yelloweye rockfish**		CLOSED					
32	**Cowcod**		CLOSED					
33	**Bronzespotted rockfish**		CLOSED					
34	**Quillback rockfish**		0 lb/ 2 months					
35	**Bocaccio**							
36		40°10' N lat. - 34°27' N lat.	6,000 lb/ 2 months					6,000 lb/ 2 months; only legal non-bottom contact hook-and-line gear (as defined at § 660.330(b)(3)) may be used
37	South of 34°27' N lat.		6,000 lb/ 2 months					
38	**Minor Nearshore Rockfish**							
39	40°10' N lat. - 34°27' N lat. Shallow nearshore[4/]		2,000 lb/ 2 months					0 lb/ 2 months
40	40°10' N lat. - 34°27' N lat. Deeper nearshore[5/]		2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					0 lb/ 2 months
41	South of 34°27' N lat. Shallow nearshore[4/]		2,000 lb/ 2 months					
42	South of 34°27' N lat. Deeper nearshore[5/]		2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					2,000 lb/ 2 months, of which no more than 75 lb may be copper rockfish
43	**California Scorpionfish**		3,500 lb/ 2 months					
44	**Lingcod[8/]**							
45		40°10' N lat. - 34°27' N lat.	700 lb / month					0 lb/ month
46	South of 34°27' N lat.		700 lb / month					
47	**Pacific cod**		1,000 lb/ 2 months					
48	**Spiny dogfish**		200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
49	**Longnose skate**		Unlimited					
50	**Big skate**		Unlimited					
51	**Other Fish[7/]**		Unlimited					
52	**Cabezon in California**							
53		40°10' N lat. - 34°27' N lat.	Unlimited					0 lb/ month
54	South of 34°27' N lat.		Unlimited					

TABLE 3 (South)

Table 3 (South) Continued

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 9/26/2023

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
56	40°10' N lat. - 38°57.5' N lat.	40 fm line[1/] - 125 fm line[1/]					
57	38°57.5' N lat. -34°27' N lat.	50 fm line[1/] - 125 fm line[1/]					
58	South of 34°27' N lat.	100 fm line[1/] - 150 fm line[1/] (also applies around islands)					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
59	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish, as described below)*						
60	South of 40°10' N lat.	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lb of Chinook salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 4,000 lb per 2 month limit for minor shelf rockfish between 40°10' and 34°27' N lat., and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
61	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N lat., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
62	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
63	*40°10' N lat. - 38°00' N lat.*	*100 fm line[1/] - 200 fm line[1/]*		*100 fm line[1/] - 150 fm line[1/]*			*100 fm line[1/] - 200 fm line[1/]*
64	*38°00' N lat. - 34°27' N lat.*	*100 fm line[1/] - 150 fm line[1/]*					
65	*South of 34°27' N lat.*	*100 fm line[1/] - 150 fm line[1/]*					
66		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 29).					
67	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
69	South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/ day and 1,500 lb/ trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary rockfish, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/ trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (South) Continued

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Pacific ocean perch is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 22 inches (56 cm) South of 42° N lat.

7/ "Other fish" are defined at § 660.11 and includes kelp greenling off California and leopard shark.

8/ Open access vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.330 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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■ 6. In 660.360, revise paragraph (c)(3) introductory text, and paragraphs (c)(3)(i)(A)(*1*) through *(5)* to read as follows:

§ 660.360 Recreational fishery—management measures.

* * * * *

(c) * * *

(3) *California.* Seaward of California, for groundfish species not specifically mentioned in this paragraph, fishers are subject to the overall 20-fish bag limit for all species of finfish, of which no more than 10 fish of any one species may be taken or possessed by any one person. Petrale sole, Pacific sanddab, and starry flounder are not subject to a bag limit. Recreational spearfishing for all federally-managed groundfish, is exempt from closed areas and seasons, consistent with Title 14 of the California Code of Regulations. This exemption applies only to recreational vessels and divers provided no other fishing gear, except spearfishing gear, is on board the vessel. California state law may provide regulations similar to Federal regulations for kelp greenlings. Retention of cowcod, yelloweye rockfish, quillback rockfish, and bronzespotted rockfish, is prohibited in the recreational fishery seaward of California all year in all areas. Retention of species or species groups for which the season is closed is prohibited in the recreational fishery seaward of California all year in all areas, unless otherwise authorized in this section. For each person engaged in recreational fishing in the EEZ seaward of California, the following closed areas, seasons, bag limits, and size limits apply:

(i) * * *

(A) * * *

(*1*) Between 42° N lat. (California/Oregon border) and 40°10′ N lat. (Northern Management Area), recreational fishing for the RCG Complex and lingcod is closed from January 1 through May 14, is open at all depths from May 15 through October October 2, 2023, is prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts October 2, 2023 through December 31.

(*2*) Between 40°10′ N lat. and 38°57.50′ N lat. (Mendocino Management Area), recreational fishing for the RCG Complex and lingcod is closed from January 1 through May 14; prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from May 15 through July 15 (seaward of 50 fm (91 m) is open), is open at all depths from July 16 through October 2, 2023, and is prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from October 3, 2023 through December 31.

(*3*) Between 38°57.50′ N lat. and 37°11′ N lat. (San Francisco Management Area), recreational fishing for the RCG Complex and lingcod is closed from January 1 through May 14; is prohibited in the EEZ shoreward of the boundary line approximating the 50

fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from May 15 through July 15 (seaward of 50 fm (91 m) is open), is open at all depths from July 16 through October 2, 2023, and is prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from October October 3, 2023 through December 31. Closures around Cordell Bank (see paragraph (c)(3)(i)(C) of this section) also apply in this area.

(*4*) Between 37°11′ N lat. and 34°27′ N lat. (Central Management Area), recreational fishing for the RCG Complex and lingcod is closed from January 1 through April 30, is open at all depths from May 1 through September 30; and is prohibited in the EEZ shoreward of a boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from October 1 through December 31 (seaward of 50 fm (91 m) is open).

(5) South of 34°27′ N lat. (Southern Management Area), recreational fishing for the RCG Complex and lingcod is closed from January 1 through March 31, open at all depths from April 1 through September 15; and is prohibited in the EEZ shoreward of a boundary line approximating the 50 fm (91 m) depth contour from September 16 through December 31 along the mainland coast and along islands and offshore seamounts (seaward of 50 fm (91 m) is open), except in the CCAs where fishing is prohibited seaward of the 40 fm (73 m) depth contour when the fishing season is open (see paragraph (c)(3)(i)(B) of this section).

* * * * *

[FR Doc. 2023–21710 Filed 9–29–23; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230306–0065; RTID 0648–XD425]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from trawl catcher vessels to catcher vessels less than 60 feet (18.3 m) length overall (LOA) using hook-and-line or pot gear and to Amendment 80 trawl catcher/processors in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2023 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective September 26, 2023, through 2400 hours, Alaska local time (A.l.t.), December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2023 Pacific cod TAC specified for trawl catcher vessels in the BSAI is 26,307 mt as established by the final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023), correction (88 FR 18258, March 28, 2023) and reallocation (88 FR 56778, August 21, 2023).

The 2023 Pacific cod TAC allocated to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI is 4,740 mt as established by the final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023), correction (88 FR 18258, March 28, 2023), and reallocations (88 FR 18443, March 29, 2023; 88 FR 56778, August 21, 2023).

The 2023 Pacific cod TAC allocated to Amendment 80 trawl catcher/processors in the BSAI is 16,254 mt as established by the final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023), and correction (88 FR 18258, March 28, 2023).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that trawl catcher vessels will not be able to harvest 1,000 mt of the 2023 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*9*).

Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS reallocates 300 mt from trawl catcher vessels to the annual amount specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear, and in accordance with § 679.20(a)(7)(iii)(B), NMFS reallocates 700 mt from trawl catcher vessels to the annual amount specified for Amendment 80 trawl catcher/processors.

The harvest specifications for 2023 Pacific cod included in final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023), correction (88 FR 18258, March 28, 2023), and reallocations (88 FR 18443, March 29, 2023; 88 FR 56778, August 21, 2023) is revised as follows: 25,307 mt to trawl catcher vessels, 5,040 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear, and 16,954 mt to Amendment 80 trawl catcher/processors.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the originally specified apportionment of the Pacific cod TAC. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 26, 2023.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 26, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–21556 Filed 9–26–23; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 230929–0224]

RIN 0648–BF01

Fisheries of the Northeastern United States; Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: Based on the Atlantic States Marine Fisheries Commission's recommendations, we are implementing aggregate ownership caps in Lobster Conservation Management Areas 2 and 3, a maximum trap cap reduction in Area 3, and mandatory coastwide electronic harvester reporting for all federally permitted lobster vessels. The ownership caps and trap cap reduction measures are intended to reduce fishing exploitation and latent effort in the trap fishery by scaling the fishery to the size of the Southern New England lobster stock. The harvester reporting requirement is intended to improve the spatial resolution of harvester data, and improve and expand the collection of fishery effort data. This action is necessary to better manage the lobster fishery toward sustainability and to ensure fishery regulations for the lobster fishery in Federal waters remain compatible with the intent of the Commission's Interstate Fishery Management Plan for American Lobster and consistent with the Atlantic Coastal Fisheries Cooperative Management Act.

DATES:

Effective dates: This rule is effective November 1, 2023; except for amendatory instructions 3(f) and 4 (§ 697.4(q) and (§ 697.6(n)(1)(ii)(B)), which are effective April 1, 2024; and amendatory instruction 6 (§ 697.19(c) and (m)), which is effective May 1, 2025.

Comments due date: Written comments on this interim final rule must be received on or before December 1, 2023.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2022–0032, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter ''NOAA–NMFS–2022–0032'' in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personally identifiable 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).

A copy of the environmental assessment, including the Regulatory Impact Review (RIR) and the Regulatory Flexibility Act (RFA) analyses is available online at: *https://www.fisheries.noaa.gov/action/proposed-measures-federal-american-lobster-fishery.* You may also request copies of the environmental assessment, including the Regulatory Impact Review (RIR) and the Regulatory Flexibility Act (RFA) analyses prepared for this action at: National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2276 or by calling (978) 281–9315.

Copies of the Atlantic States Marine Fisheries Commission's Addenda to the Interstate Fishery Management Plan for American Lobster are available at: *https://asmfc.org/species/american-lobster* under the heading Management Plans & FMP reviews.

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Policy Analyst, (978) 281–9122.

SUPPLEMENTARY INFORMATION:

Background

Statutory Authority

These regulations modify Federal lobster fishery management measures in the Exclusive Economic Zone (EEZ) under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 *et seq.*). This authority states that, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and, after consultation with the appropriate fishery management council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, from 3 to 200 nautical miles offshore. The regulations must be: (1) Compatible with the effective implementation of an Interstate Fishery Management Plan developed by the Atlantic States Marine Fisheries Commission (hereafter Commission); and (2) consistent with the National Standards set forth in section 301 of the Magnuson-Stevens Act.

Purpose and Need for Management

The purpose of this action is to manage the American lobster fishery to maximize resource sustainability, recognizing that Federal management occurs in concert with state management, and thus, that compatibility between state and Federal measures is crucial to the overall success of American lobster management. To achieve this purpose, we are responding to state management measures to address poor stock conditions and persistent recruitment failure of the Southern New England (SNE) American lobster stock. We are also responding to efforts to improve the spatial resolution of harvester data, and improve and expand the collection of fishery effort data. A full description of the Commission's recommendations and justification for measures, as well as NMFS' rationale for measures ultimately proposed is included in the proposed rule (87 FR 41084, July 11, 2022) and is not repeated here.

Approved Measures

Area 2 Measures

In Area 2, we are implementing an ownership cap that would restrict an entity to 800 Area 2 traps, effective on May 1, 2025, as proposed, regardless of the status of those traps (actively fished, inactive, and associated with a permit in confirmation of permit history, etc.). We are accepting additional comment on this measure, as discussed below. This action does not place a limit on the number of permits that can be owned. This measure complements the Commission's Area 2 recommendations in Addendum XXI (see **ADDRESSES**), but does not include all of the specific Area 2 measures as originally envisioned. The Commission intended Addendum XXI measures be implemented in conjunction with the 2016–2021 Area 2 trap reductions, including trap 'banking.' Trap banking was intended to be a tool for industry to obtain additional allocation in excess of the maximum trap cap, and in advance of the annual trap reductions to avoid engaging in annual trap transfers to mitigate the trap cuts. Given that the

annual 2016–2021 trap reductions are complete, the trap 'banking' provisions of Addendum XXI are no longer a necessary element of the Area 2 management plan. This ownership cap of 800 Area 2 traps, effective on May 1, 2025, incorporates elements of Addendum XXI within the current context of the fishery.

TABLE 1—AREA 2 OWNERSHIP CAP SUMMARY

Fishing year	Ownership cap
2023 (current limits)	n/a
2025	800

As discussed in greater detail in the proposed rule (87 FR 41084, July 11, 2022), the Commission's goals were to address latent effort and scale the fishery to the size of the lobster stock to allow for potential stock rebuilding, and to preserve the owner/operator nature of the fishery. Our analysis of 2019 permit and trap data indicated that the vast majority (85 percent) of Area 2 entities own a single permit, and thus have a trap allocation of 800 traps or fewer. Thus, as the vast majority of the fishery already complies with this requirement, few negative economic impacts are expected to result from this approved measure, though these entities would be prevented from building up their businesses beyond 800 traps in the future.

Addendum XXI originally included a provision that would allow an entity owning two or more permits (*i.e.,* 1,600 (or more) traps) as of 2003 to retain their traps, but they would not be allowed to expand further by owning or sharing ownership of any additional traps. Consistent with this recommendation, entities who exceeded the 800-trap limit as of May 1, 2022, may retain their trap allocations, but cannot accrue ownership of additional traps.

Based on 2019 permit data, approximately 15 percent of Area 2 entities (5 entities) exceeded the approved ownership cap of 800 traps, due to owning outright, or having an ownership interest in, multiple Federal Area 2 permits. These five entities are a small portion of the fishery and demonstrate that substantial consolidation in the Area 2 fishery has not taken place. As this measure allows entities who exceeded the 800-trap limit as of May 1, 2022, to retain their trap allocations, few negative economic impacts are expected to result from this action, though these entities would be prevented from acquiring additional traps beyond their current allocations in the future. This allowance is entity-specific, and does not transfer with permits if they are sold to a new entity that did not have a trap higher limit on May 1, 2022.

This action does not place limits on the number of permits that an Area 2 entity may own. Entities would be free to own or purchase additional permits, provided that the total trap allocation across those permits does not exceed 800 traps (or the entity-specific allocation for those entities who exceeded the 800-trap limit as of May 1, 2022). Entities with multiple Federal Area 2 permits would be free to determine how to divide their trap allocation across multiple permits and would be free to adjust permit-specific trap allocations using the annual trap transfer program.

During the proposed rule (87 FR 41084, July 11, 2022) comment period, we received several comments that our management partners and industry need additional time to understand these measures, consider them in the current context of the fishery, and provide adequate comment. While we are approving these measures in this action, we are delaying implementation until May 1, 2025, while we accept additional public comments on these measures. Upon consideration of additional comments we receive, we will evaluate the Area 2 and 3 measures in this interim final rule, and, if necessary and appropriate, publish a subsequent rule to address any changes.

Area 3 Measures

This action implements two separate but related measures in Area 3. First, this action reduces the maximum number of traps that could be allocated to a permit in Area 3 (*i.e.,* maximum trap cap) from 1,945 traps to 1,548 traps, over the course of three years, as outlined in Table 1. We will begin implementing the 3-year maximum trap cap reductions beginning on May 1, 2025, and at the start of the following two fishing years. This maximum trap cap will be assessed on a per permit basis and may result in trap reductions if a permit's trap allocation exceeds this limit in a given fishing year. A permit holder would be free to use the annual trap transfer program to adjust their vessels' trap allocations during the maximum trap cap reductions.

Based on 2019 permit data, 21 permits have trap allocations that exceed the first-year cap of 1,805 by a total of just over 1,000 traps. In the second year of the reduction to a maximum trap cap of 1,629 traps, 37 permits have trap allocations that exceed the cap, by a total of just over 6,000 traps. By the final year of the reductions to a maximum trap cap of 1,548 traps, 43 permits would have trap allocations that exceed the cap, by just over 9,000 traps. Only the permits that are in excess of the maximum trap cap would be affected by this measure. We expect that some negative economic impacts may result from decreasing the maximum trap cap for permit holders that exceed the ultimate cap of 1,548 traps. We estimated that, at most, a corresponding loss of $600,000 (in 2019 dollars) in collective lost trap value and profit in the first year could be expected by these permit holders, as discussed in greater detail below. As discussed above, these vessel owners would be free to use the trap transfer program to either sell the right to fish with these excess traps to recoup some potential economic losses or, if they own multiple vessels, adjust their trap allocations across their fleet.

Second, as of May 1, 2025, we will implement an aggregate ownership cap, at the entity level, which would continue to allow an entity to accumulate and own as many permits as it desired, but would cap the number of traps an entity could own across permits to the equivalent of five times the maximum trap cap. The aggregate ownership cap would be reduced over three years, in proportion to the maximum trap cap reduction, as summarized in Table 1. This action does not place a limit on the number of permits that can be owned; but limits the total aggregate number of traps that an entity may own across all permits.

TABLE 2—AREA 3 MAXIMUM TRAP CAP AND AGGREGATE OWNERSHIP CAP REDUCTIONS

Fishing year	Maximum trap cap	Aggregate ownership cap
2023 (current limits)	1,945	n/a
2025	1,805	9,025
2026	1,629	8,145
2027	1,548	7,740

As discussed in greater detail in the proposed rule (87 FR 41084, July 11, 2022), the Commission's goals were to address latent effort and scale the fishery to the size of the lobster stock to allow for potential stock rebuilding, and to limit consolidation in the Area 3 fishery. A review of 2019 Area 3 permit and trap allocations by entity reveals that a substantial level of consolidation has not occurred, as only two entities exceed the final aggregate ownership allocation of 7,740 traps. Entities below this limit as of May 1, 2022, would be

allowed to purchase permits or additional traps up to the aggregate ownership cap of 7,740 traps. For entities that exceeded the aggregate ownership cap as of May 1, 2022, their trap allocations will be capped at their aggregate level as of May 1, 2022, and will be prohibited from exceeding this level. Although these entities may maintain ownership of their total May 1, 2022, trap allocations, each individual permit is still subject to the maximum trap cap, including the approved 3-year maximum trap cap reductions. In other words, the ownership cap is independent of the trap reductions. Even if an entity is able to retain an aggregate trap allocation above an ownership cap, the individual permits that comprise the overall allocation are still subject to the trap reduction. Therefore, an entity may have a reduction in overall traps through the reduced maximum trap cap of their individual permits, even if they would not be affected by the aggregate cap or reductions.

As this measure would allow entities who exceeded the ownership cap as of May 1, 2022, to retain their trap allocations, few negative economic impacts are expected to result solely from this ownership cap, though these entities would be prevented from expanding their businesses beyond their current allocations in the future. As discussed above, the implementation of the maximum trap caps may result in some traps being retired from these entities; however, they would be free to use the trap transfer program to either sell traps to recoup some potential economic losses or, if they own multiple vessels, adjust their trap allocations across their fleet.

Given that the annual 2016–2020 trap reductions are complete, as with Area 2, the individual permit cap or trap 'banking' provisions of Addendum XXII (see **ADDRESSES**) are no longer a necessary element of the Area 3 management plan. Further, because of other Area 3 measures that will limit the number of total traps an entity can own, a limit on the number of permits is no longer necessary.

This action does not place limits on the number of permits that an Area 3 entity may own. Entities would be free to own or purchase additional permits, provided that the total trap allocation across those permits does not exceed the ownership cap in any given year (and final ownership cap of 7,740 traps), and each individual vessel's trap allocation does not exceed the maximum trap cap in any given year (and final maximum trap cap of 1,548 traps). Entities with multiple Federal Area 3 permits would be free to determine how to divide their total trap allocation across multiple permits and would be free to adjust permit-specific trap allocations using the annual trap transfer program.

During the proposed rule comment period, we received several comments that our management partners and industry need additional time to understand these measures, consider them in the current context of the fishery, and provide adequate comment. While we are proceeding with implementation of these measures as proposed on May 1, 2025, we are accepting comment for an additional 60 days through this interim final rule. Upon consideration of additional comments, we will publish a subsequent rule if changes to these measures are determined to be necessary and appropriate. If we make no changes to these measures, we will ensure adequate and appropriate notification of such is provided to the fishing industry in advance of the May 1, 2025, effective date.

Mandatory Reporting

We are implementing mandatory electronic harvester reporting requirements for all Federal lobster permit holders and adding the collection of several additional data elements in the electronic form, within 48 hours following the completion of a trip, beginning April 1, 2024. The submission of electronic vessel trip reports (eVTR) is being required that align the reporting requirements for Federal lobster permit holders with the existing reporting requirements for all other fisheries permitted by Greater Atlantic Regional Fisheries Office (GARFO).

This rule also implements the collection of several additional data elements in the electronic form and includes some changes from the proposed rule. In addition to the existing reporting elements of the Federal eVTR, Addendum XXVI (see **ADDRESSES**) recommended that we collect information on: Lobster Management Area fished; 10-minute square fished; number of traps hauled; trip length; and total number of buoy lines in the water. As states and NMFS moved to consider modifying databases to accommodate the collection of these elements, the Commission convened a Data Working Group during 2020 consisting of state and Federal partners, Atlantic Coastal Cooperative Statistics Program (ACCSP) staff, and the Commission's lobster policy staff. The Working Group provided guidance for how jurisdictions should collect these data, which resulted in a March 8, 2021, letter recommending the collection of additional data elements, including: Total number of traps hauled by chart area; total number of traps in the water in each chart area fished; average number of traps per string hauled in each chart area fished; total number of buoy lines in each chart area fished; and total number of buoy lines in the water.

While we proposed all new data elements, as recommended, we requested comment on the redundancy of several new data elements. First, we requested comment on the utility of several of these new data elements, as we are able to derive the lobster management area, 10-minute square fished, and trip length from fields that are already on the VTR. Ultimately, we are approving data elements that are new. All of these are: Total number of traps hauled by chart area, number of traps in chart area fished, average number of traps per string hauled in the chart area fished, number of buoy lines in the chart area fished, and total number of buoy lines in the water. To alleviate the reporting burden to industry, we are not implementing or requiring redundant fields (the lobster management area, 10-minute square fished, and trip length) in the Federal eVTR. However, to remain consistent with the data that states are providing to the ACCSP data warehouse from state-level reporting requirements, we intend to derive these data elements from data collected and provide derived data to the ACCSP data warehouse.

While other elements of this rule are set to become effective at the start of the 2025 fishing year, this rule implements mandatory harvester reporting requirements earlier, on April 1, 2024. We recognize that mandating the collection of this data as soon as possible is essential to improve the science and management of the lobster fishery, to understand the co-occurrence of the fishery with protected species, and to support our ability to determine impacts from other marine activities. Further, as discussed in greater detail in the comments and responses below, most comment letters supported proceeding with mandatory harvester requirements on an accelerated timeframe from the Area 2 and 3 requirements. Based on the need for the data and general support for this approach, Federal eVTRs will become required for all Federal American lobster permit holders beginning on April 1, 2024.

Benefits, Costs and Other Economic Impacts

Overall economic impacts, as summarized in the accompanying

environmental assessment and presented in Table 2, are difficult to quantify but expected to be minimal.

TABLE 3—SUMMARY OF ANTICIPATED ECONOMIC IMPACTS

Measure	Number of permits affected	Cost	Benefits
Area 2 Ownership Cap ..	~200	Minimal, as codifies existing fishery, restricts future ability to increase capacity.	Minimal, provides sustained fishery participation, mirrors state requirements to avoid confusion.
Area 3 Ownership Cap ..	~130	Minimal, as codifies existing fishery, restricts future ability to increase capacity.	Minimal, provides sustained fishery participation, mirrors state requirements to avoid confusion.
Area 3 Maximum Trap Cap Reduction.	43	~$600,000 in lost trap value and profit loss (in first year).	Minimal, potential to help rebuild SNE lobster stock.
Mandatory Harvester Reporting.	~3,000	Minimal, requires device and free reporting application. Monetized cost approximately $156,000/year (2019$).	Improved spatial resolution of fishery data would aid lobster management, understanding overlap with protected species.

Ownership caps in Areas 2 and 3 are expected to have minimal impacts, as these measures capture the Area 2 and 3 fisheries as they are prosecuted today in perpetuity. As entities that exceed these ownership caps will be capped at their aggregate level as of May 1, 2022, and will be prohibited from exceeding this level in the future, no entity will lose traps as a result of this measure, and thus will not incur an economic loss. These caps would restrict entities that are at or above the caps from continuing to build up their businesses. Positive impacts can be expected to the larger fishing community, as such an action supports National Standard 8 of the Magnuson-Stevens Fishery Conservation and Management Act, by providing sustained fishery participation at current levels for communities engaged in the Area 2 and 3 fisheries. In addition, implementation of Federal regulations that are mirrored at the state level would avoid administrative and regulatory disconnects that could have occurred if the states and the Federal government made disparate allocative decisions on a single entity. Such a situation would cause confusion for harvesters and enforcement, resulting in an ineffective management program, and avoidance of this situation creates a cost savings. Additional discussion of the costs and benefits can be found in sections 6 and 8.14 of the environmental assessment.

As discussed in greater detail in Section 7.2.2.2 of the environmental assessment accompanying this action, Area 3 maximum trap cap reductions may, at most, result in approximately 10,000 traps being retired from 43 permit holders whose trap allocation exceeds the year 3 maximum trap cap of 1,548 traps. We estimated that, at most, a corresponding loss of $600,000 (in 2019 dollars) in collective lost trap value (based on the 2019 value of traps on the trap transfer market) and profit in the first year could be expected by these permit holders. However, these permit holders would be free to use the trap transfer program to either sell traps to recoup some potential economic losses or, if they own multiple vessels, adjust their trap allocations across their fleet. In addition, implementation of Federal regulations that are mirrored at the state level would avoid administrative and regulatory disconnects that could have occurred if the states and the Federal government made disparate allocative decisions on a single entity. Such a situation would cause confusion for harvesters and enforcement, resulting in an ineffective management program, and avoidance of this situation creates a cost savings. Further, any traps retired from the Area 3 fishery may reduce fishing pressure and aid in rebuilding on the SNE stock, leading to increased future catch by Area 3 permit holders. Additional discussion of the costs and benefits can be found in sections 6 and 8.14 of the environmental assessment.

As discussed in greater detail below in Classification, mandatory electronic harvester reporting is expected to apply to all 2,291 Federal American lobster permits, 2,025 entities, and 1,683 small entities. It is also expected to have a minimal cost with associated benefits. Devices used to complete and submit reports (smartphones, tablets, etc.) are nearly universally used and reporting applications for these devices are available free of charge. Improved spatial resolution of fishery data would result in a better understanding of where fishing activity occurs, which would aid lobster management and assist with understanding the overlap between the fishery and protected species. It would also bring consistency with requirements for other permits, thus minimizing potential confusion about applicable requirements. Additional discussion of the costs and benefits can be found in sections 6 and 8.14 of the environmental assessment. Further, half (approximately 1,500) of all Federal lobster permit holders (see section 6.1.5 of the environmental assessment) are presently required to report to NMFS due to holding permits in other fisheries with mandatory reporting requirements. The remainder of Federal lobster permit holders (approximately 1,400) must, at this time, report to their state. Therefore, this action transitions Federal permit holders who currently report to their state to reporting to NMFS.

Corrections

This rule also makes several regulatory corrections. We are removing regulations that are no longer necessary because they were time-limited and outdated or have been updated by this action, including:

- Area 1 participation requirements at § 697.4(a)(7)(vi);
- Outer Cape Area participation requirements at § 697.4(a)(7)(vii);
- Area 2 participation requirements at § 697.4(a)(7)(viii);
- Outdated lobster size restrictions at § 697.20(a)(5) and (6); and
- Outdated gear marking requirements at § 697.21(a)(1).

In addition, we are correcting several regulations, including:

- Updating the Greater Atlantic Regional Fisheries Office name and address in several locations;
- Correcting management area coordinates at § 697.18 and § 697.23; and
- Trap transferability requirements at § 697.27(a)(1)(vi), allowing traps to be transferred in any increment.

Comments and Responses

We published a proposed rule in the **Federal Register** on July 11, 2022 (87 FR 41084), soliciting public comment. The comment period ended on August 10,

2022. We received comments from 10 different groups: Atlantic States Marine Fisheries Commission; the Maine Department of Marine Resources; the Massachusetts Lobstermen's Association; the Atlantic Offshore Lobstermen's Association; three members of the fishing industry; two members of the public; and a group of environmental organizations. Only comments that were applicable to the proposed measures are addressed below.

General Comments

Comment 1: One member of the public supported the proposed rule, indicating that more regulation and data collection will increase sustainability. The commenter also cited the continued need for regulations to improve the condition of the critically endangered North Atlantic right whale.

Response: We agree that this action will improve management of the lobster fishery. The measures being implemented in Areas 2 and 3 are designed to respond to the poor condition of the Southern New England lobster stock. They are intended to reduce fishing exploitation and latent effort in the trap fishery by scaling the fishery to the smaller size of the Southern New England lobster stock. Data resulting from mandatory harvester reporting through eVTRs will be critical to future evaluation of lobster stock condition and utilization, and fishery effort. These fishery effort data will be an invaluable part of understanding the overlap between the lobster fishery and the occurrence of all protected species, including the North Atlantic right whale, as well as understanding impacts from other marine activities.

Area 2 and 3 Measures

Comment 2: The Atlantic States Marine Fisheries Commission, the Atlantic Offshore Lobstermen's Association, and two individuals requested that we extend the comment period on the Area 2 and 3 measures, to allow industry, industry representatives, and management partners additional time to understand the proposed measures. The Commission, Association, and one individual noted that nearly 10 years have passed since the Commission finalized these measures, during which additional consolidation and other management measures (*e.g.,* implementation of the Interstate Fishery Management Plan for Jonah crab and measures to protect North Atlantic right whales) have resulted in fundamental fishery changes. The Commission and Association also noted several points of confusion and requested clarification. One individual also suggested that any proposed trap cap, trap reduction, and ownership cap measures that were proposed for implementation in 2023 be delayed until 2024, giving industry time to optimize their trap allocations using the trap transfer program during the 2023 application period.

Response: We agree that additional time for the industry and our management partners to understand the Area 2 and 3 measures is warranted. Through this interim final rule, we will solicit additional public comment for 60 days to provide more time for industry and our management partners to comment further upon these measures. As a result, we are also delaying implementation of the Area 2 and 3 ownership caps and Area 3 maximum trap cap reductions until 2025. Upon consideration of additional comments, we will publish a subsequent rule if changes to these measures are determined to be necessary and appropriate. We appreciate the feedback on areas of confusion in the proposed rule, and have provided clarifications in the preamble of this interim final rule.

Comment 3: A group of conservation organizations, including the Conservation Law Foundation, Center for Biological Diversity, Defenders of Wildlife, and Whale and Dolphin Conservation, commented in support of the Area 2 and 3 measures as proposed, as a means to reduce vertical lines used by the fishery. The organizations acknowledged that we may receive requests to take additional comments, and requested we use the additional time to ensure that unfished traps are not activated, resulting in additional vertical lines being deployed by the fishery.

Response: Although we believe that the rule will have ancillary benefits to marine mammals, the purpose of this action is to improve the sustainable management of lobster and complement the Commission's Interstate Fishery Management Plan for American Lobster to ensure compatibility between state and federal regulations. As such, the comments are beyond the scope of this rulemaking. We note, however, that NMFS, in other actions, has and/or is in the process of implementing regulatory measures to protect marine mammals (see, *e.g.,* the Atlantic Large Whale Take Reduction Plan Phase 1 action, 86 FR 51970, September 17, 2021; Proposed Vessel Speed Rule, 87 FR 46921, August 1, 2022; and Notice of Intent to Prepare Environmental Impact Statement for Phase 2 and 3 actions, 87 FR 55405, September 9, 2022). All of these actions, including the present action, will reduce mortalities and serious injuries from Northeast lobster/Jonah crab pots and traps to North Atlantic right whales.

Comment 4: The Massachusetts Lobstermen's Association supported an ownership cap of 800 traps to promote support of an owner/operator fishery. The Association opposed any additional trap cuts, or regulating the number of permits that could be owned, as owning additional permits has been used to weather past trap cuts by effectively 'banking' traps. The Association further requested that the 10-percent conservation tax associated with the trap transfer program be rescinded, as the Area 2 fishery has already reduced the number of traps permitted in the area by approximately 50 percent.

Response: We agree, and are approving the Area 2 ownership cap of 800 traps per entity for most Area 2 entities. While we are allowing any entity that exceeded the 800-trap limit as of May 1, 2022, to retain their trap allocations, these entities are prohibited from owning any additional traps beginning on May 1, 2025. We agree that this measure, along with prohibiting all entities under the 800-trap limit to not exceed an allocation of 800 traps in the future will work to preserve the owner/operator nature of the Area 2 fishery.

This action did not propose, and does not include, any restrictions on the number of permits that can be owned. When considering the Commission's recommendation and developing these measures, we reviewed Area 2 permit data and were aware that some entities owned multiple permits, often transferring the trap allocation from a secondary permit to mitigate the 2016–2021 traps cuts and retain a full allocation of 800 traps. Thus, this action only regulates the number of traps that can be owned per entity. Entities can determine how best to split traps across their permits to maximize their business operations. Further, these Area 2 measures will not result in NMFS assessing any additional trap reductions on Area 2 entities. Due to the 2016–2021 trap reductions, the vast majority of Area 2 entities hold 800 traps or fewer and, thus, are at or under the limits approved in this action. The Commission recommended that we allow entities that exceeded the 800-trap limit to maintain their trap allocations, but prevent these entities from ownership in additional traps. Thus, this action allows any entity that exceeded the 800-trap limit as of May 1, 2022, to retain their trap allocation as of May 1, 2022, but prevents these entities from owning additional traps. Together, these measures codify the Area 2 fishery, as it exists in 2022, and will not

make any further changes or reduce Area 2 allocations.

Finally, a change such as the removal of the trap transfer conservation tax, without concurrent implementation by the states, would create a misalignment in our trap transfer programs and would result in inconsistent individual vessel trap allocations. As we have stated in past actions, particularly our Final Rule (79 FR 19026, April 7, 2014) implementing our Trap Transfer Program, incongruent state and federal management has the potential to undermine effective lobster management. Thus, this action includes no changes to the trap transfer conservation tax.

Comment 5: One commenter opposed the Area 3 maximum trap cap reductions, and instead, suggested using enhanced enforcement of V-Notch requirements, or possibly implementation of Zero Tolerance V-Notch to achieve management and conservation objectives. The commenter stated:

1. The measures were developed following the 2009 stock assessment, and are no longer based on the best available science;

2. The Area 3 fishery has already undergone a near 25-percent trap reduction;

3. The proposed measures, coupled with regulations to protect the North Atlantic right whale requiring longer trap trawls, will create inefficiencies for industry, including their ability to locate lobster, and will increase the fishery's carbon footprint; and

4. These measures run counter to National Standards 5 and 7.

Response: We disagree. First, while the commenter is correct that these measures were developed in response to the 2009 American lobster stock assessment, they are still based on the full suite of best available scientific information. Subsequent 2015 and 2020 stock assessments have yielded similar results to the 2009 assessment, indicating that the stock remains in recruitment failure and at record low levels of abundance. Despite these measures being developed in 2013 following the 2009 assessment; the Commission, including numerous members of the lobster fishery, recently affirmed their support of the measures to appropriately scale the fishery to the Southern New England lobster stock. Further, the data used in developing the environmental assessment and supporting analyses drew on more recent data on lobsters and other managed species, habitat, protected species, and economics of the fishery, including the most recent permit data available. Thus, this action is consistent with National Standard 2 in using the best scientific information available, including the information used to develop these measures and information used in the impacts analyses and environmental assessment.

The commenter is correct that we implemented a 5-year, 5-percent trap reduction, assessed at the permit level, from 2016 to 2020, complementing measures in Addendum XVIII. The Lobster Board developed Addendum XXI shortly after the approval of Addendum XVIII and intended for concurrent implementation, such that Area 3 allocations and the maximum trap cap would be reduced in tandem. Ultimately, Federal implementation of these measures did not proceed as originally conceived. As discussed in greater detail in the response to Comment 6, our outreach materials for the annual trap transfer program notified industry that future regulations may impact trap allocations, and to proceed at their own risk. Any permit holders who chose to rebuild their allocations made short-term business decisions, and were advised of the risks. Thus, these permit holders may have experienced unexpected benefits, but this does not change our obligation under the Atlantic Coastal Fisheries Cooperative Management Act to complement the measures recommended by the Commission.

We recognize that the management landscape has changed in the 10 years since the Commission approved Addendum XXI, including several NMFS actions to promote the recovery of North Atlantic right whales. As discussed in the above comment response, we are delaying implementation of the Area 2 and 3 measures approved in this interim final rule and accepting additional comment on these measures. This will give industry, partner states, and the Commission additional time to understand and formulate comments and recommendations on these measures, in light of recent changes to the fishery.

We disagree that the proposed measures do not comply with National Standards 5 and 7. The proposed measures were developed by the Commission with a goal of scaling the fishery to the smaller size of the Southern New England lobster stock in light of the most recent stock assessment information. Ownership caps and the maximum trap cap reductions, in conjunction with the existing trap transfer program, promote efficiency by allowing participants to regulate their trap allocation or even exit the fishery based on their situation and the economics within the Area-specific fishery. Thus, we are promoting efficiencies in the Area 3 fishery, consistent with National Standard 5, while meeting necessary conservation objectives for the Southern New England lobster stock. In addition, these measures are intended to ensure state and Federal regulations are compatible, minimize confusion by industry participants, enhance compliance, and avoid duplication. The Commission has mandated that the states implement these measures and has similarly requested that NMFS do the same. Compatible measures and coordinated management of the ownership caps also reduces administrative costs to agencies and industry participants, clarify and standardize application procedures, and more effectively quantifies trap fishing effort in the future. Thus, we are minimizing costs and avoiding unnecessary duplication. Failure to complement these recommended measures and unilaterally implement alternative measures would be inappropriate and not consistent with our authority under section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 *et seq.*).

Comment 6: One commenter argued against the proposed Area 3 maximum trap cap reductions, stating that the larger problem is gear fished in excess of the current 1,945-trap limit. The letter indicated that 1,548 traps would not be sufficient for permit holders to make a living and plan for the future.

Response: In general, fishery regulations exist to ensure sustainable fish populations and protect endangered species and habitat, and to ensure that resources are available for future generations to enjoy. We agree with the commenter that illegal fishing and willful violation of fishery management regulations threaten the sustainability of fisheries and put those who comply with the rules at a disadvantage. NOAA's Office of Law Enforcement, as well as the enforcement offices of our state partners, work to ensure compliance with these various regulations. NMFS recently acquired a remotely operated vehicle (ROV) to aid in enforcement efforts for the lobster fishery. This ROV better enables enforcement to ensure compliance with trap limits and tagging requirements, as well as measures to ensure the conservation of protected species.

The Area 3 trap measures are intended to scale the fishery in light of the Southern New England lobster stock population. Our analysis indicated that approximately 40 Area 3 permit holders would be affected by the proposed maximum trap cap reductions, with a potential to affect approximately 9,000 traps. We acknowledge that this could result in some negative socio-economic impacts to these permit holders. However, these negative impacts may be mitigated by participating in the annual trap transfer program. At worst, a permit holder could recoup some of their potential losses. At best, permit holders with multiple vessels/permits would have the opportunity to reconfigure their trap allocations across their fleet.

As summarized in other response to comments and in the preamble of this rule, we acknowledge that these measures were recommended by the Commission 10 years ago, and much about the fishery and fishery management landscape has changed in the intervening years. Nevertheless, the Commission, which includes members of industry, supported this rulemaking and the proposed measures, but requested more time to consider the Area 2 and 3 measures in the current context of the fishery. As a result of public comments received, we are approving these measures and delaying implementation for 1 year to accept additional public comment and give industry time to better understand these measures and provide more input.

Comment 7: One commenter inquired what would happen to traps purchased in recent years through the annual trap transfer program. The commenter questioned our perceived incentivizing of business growth through the trap transfer program, only to later take away traps purchased.

Response: As discussed in the above comment response, our analysis indicates that approximately 40 permit holders would lose a total of 9,000 traps with the implementation of the maximum trap cap reductions. Some of these traps were likely acquired through the trap transfer program. Regardless of their origin, traps over the proposed 3-year maximum trap cap reduction schedule will be retired, unless permit holders engage in the trap transfer program to either sell traps or realign their trap allocations across multiple permits.

Since the inception of the trap transfer program, our outreach materials and trap transfer application notified permit holders to proceed with caution when participating in the program. Since we began rulemaking on these addenda in the late 2010s, we have specifically stated in these materials that we were undertaking rulemaking that could affect future trap allocations, and to proceed with transfers at their own risk. Thus, industry has been frequently cautioned about the implications of their individual business decisions. We also note, as we stated in the response to Comment 6, that the lobster management under the Commission is a bottoms-up approach where regulations are recommended to the states and Federal Government by the Commission, which is an entity comprised of a multitude of stakeholders, including members of the fishing industry. The Commission recommended this measure and supported it in its recent commentary.

Comment 8: One commenter supported only permitting subsistence fishing as a way to support the recovery of the Southern New England lobster stock.

Response: We work in partnership with regional fishery management councils and commissions to manage our nation's Federal fisheries. Through this process, we have implemented subsistence, tribal, and non-commercial fishing opportunities throughout the nation. More information on these opportunities can be found at: *https://www.fisheries.noaa.gov/topic/resources-fishing/subsistence-fishing.*

Subsistence fishing is not within the purpose and need of this action and has not, to date, been incorporated into the Commission's Interstate Fishery Management Plan for American Lobster. Thus, it would be inappropriate for us to implement such a measure as it would be a radical departure from the Lobster Plan and create incompatible state and federal regulations. The ownership and trap cap measures approved in this rule were developed to scale the fishery to the Southern New England lobster stock, and are expected to sufficiently meet this conservation objective, while still providing permit holders flexibility and ways to mitigate these reductions. Eliminating all fishing for this stock, with the exception of subsistence fishing, would not be consistent with the goals and objectives of the Fishery Management Plan.

Harvester Reporting

Comment 9: The Atlantic State Marine Fisheries Commission, Maine Department of Marine Resources, the Atlantic Offshore Lobstermen's Association, and a group of conservation organizations, including the Conservation Law Foundation, Center for Biological Diversity, Defenders of Wildlife, and Whale and Dolphin Conservation, supported the proposed harvester reporting measures with a January 1, 2023, implementation date. The Commission, Department, and Association supported the derivation of redundant data. While the Department and Association noted potential data limitations associated with the reporting of a single point for reported fishing location on the Federal eVTR, they indicated that a future 'vessel tracking' program may fill this gap. The Department and Commission noted that a successful transition to reporting must include a comprehensive outreach plan to inform permit holders of these new requirements. The conservation organizations supported the collection of additional fishing location and depth information.

Response: We appreciate the support for Federal eVTRs, including minimizing reporting redundancy. We agree that additional reporting requirements approved and recommended by the Commission for state and Federal implementation (*i.e.,* the vessel tracking program) will allow for a finer-scale understanding of effort in the lobster fishery, including location and depth information. The Commission's vessel tracking recommendation will be considered in a subsequent rulemaking.

With regard to the implementation date, we understand the urgent need to begin collecting these data as quickly as possible. However, we must balance that need against the industry's ability to comply with new requirements. Thus, we intend to implement this requirement on April 1, 2024, which will provide industry with the opportunity to understand the requirements and options, receive any necessary training, obtain any technology, acquire a free reporting application, and begin to report.

Comment 9: The Massachusetts Lobstermen's Association opposed the proposed mandatory harvester reporting requirements using the Federal eVTR, noting the recent burden on industry in complying with recent regulations aimed at protecting the critically endangered North Atlantic right whale.

Response: As discussed in section 7.2.3.2 of the environmental assessment, we understand the regulatory burden on the lobster industry to comply with a host of new regulations; however, we disagree that this will place a significant new burden on the industry. Data presented in our environmental assessment indicated that of the approximate 900 Federal lobster permit holders who reside in Massachusetts, over 500 permit holders are already required to submit Federal trip reports because they hold Federal permits for

other species. Over 200 of these 900 permits are in confirmation of permit history and would not be required to submit reports due to their permit status. The remaining approximately 150 permits would be newly required to submit Federal eVTRs; however, as the Commonwealth has required harvester reporting for its state lobster permit holders for many years, we view this as a transition of reporting and not a wholly new requirement. Further, as discussed in the environmental assessment, because electronic reporting applications are free and run on electronic devices that are ubiquitous, minimal out-of-pocket costs are expected to result from this requirement.

In addition, we intend to give industry sufficient time to comply with this harvester reporting requirement. We intend to implement this requirement on April 1, 2024, which will provide industry with the opportunity to understand the requirements and options, receive any necessary training, obtain any technology, acquire a free reporting application, and begin to report.

Changes From the Proposed Rule

We are implementing the mandatory harvester reporting requirements, Area 2 cap measures, and corrections as proposed. Based on comments requesting additional time to consider the Area 2 and 3 proposed measures, we are approving the Area 3 measures largely as proposed, but with a 1-year delay. Upon consideration of additional comments, we will publish a subsequent rule if changes to these measures are determined to be necessary and appropriate. If we make no changes to these measures, we will ensure adequate and appropriate notification of such is provided to the fishing industry in advance of the May 1, 2025, effective date.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Atlantic Coastal Fisheries Cooperative Management Act, applicable provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

This final rule has been determined to be significant for purposes of Executive Order 12866.

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 the public comments in response to the IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**).

A Statement of the Need for, and Objectives, of the Rule

This is provided in the preamble to this rule and the proposed rule (87 FR 41084, July 11, 2022) and not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

No public comments were received pertaining directly to the economic effects of this rule. Comments 2, 5 and 6 (see Comments and Responses) raised the need for additional time to understand the economic impacts of this action, citing that the impacts of this action plus recent actions regulating the lobster fishery will change the economics of the fishery. No specific data or dollar value estimates were provided. Responses to the comments are provided above.

The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration 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.

NMFS received no comments on the proposed rule for this action from the Chief Counsel for Advocacy of the Small Business Administration; therefore, no changes were made in this final rule as a result.

Description and Estimate of the Number of Small Entities to Which the Rule Would Apply

As of June 1, 2021, NMFS had issued 2,291 Federal American lobster permits that are potentially regulated by this action. The Area 2-preferred alternative would apply to 131 Federal permits, and the Area 3-preferred alternatives would apply to 82 Federal permits. The reporting requirements preferred alternative would apply to all 2,291 Federal American lobster permits, though many of these permit holders are already subject to electronic trip reporting based on other species permits they hold that require eVTRs.

Each vessel may be individually owned or part of a larger corporate ownership structure and, for RFA purposes, it is the ownership entity that is ultimately regulated by this action. Ownership entities are identified on June 1st of each year based on the list of all permit numbers, for the most recent complete calendar year, that have applied for any type of Greater Atlantic Region Federal fishing permit. The current ownership data set is based on calendar year 2020 permits and contains gross sales associated with those permits for calendar years 2018 through 2020.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. The Small Business Administration (SBA) has established size standards for all other major industry sectors in the U.S., including for-hire fishing (NAICS code 487210). These entities are classified as small businesses if combined annual receipts are not in excess of $8.0 million for all its affiliated operations. Similar to permit data, the annual average of the three most recent years (2018–2020) is used in determining annual receipts for fishing and for-hire businesses.

Ownership data collected from permit holders indicates that there are 2,025 distinct business entities that hold at least one Federal permit regulated by this action. All 2,025 business entities identified could be directly regulated by this action. Of these 2,025 entities, 1,685 are commercial fishing entities, 6 are for-hire entities, and 334 did not have revenues (*i.e.,* were inactive in 2020). Of the 1,685 commercial fishing entities, 1,677 are categorized as small entities and 8 are categorized as large entities, per the NMFS guidelines. All six for-hire entities are categorized as small businesses. A summary of these entity designations is provided in Table 4.

TABLE 4—SUMMARY OF ENTITIES

	Total entities	Small entities	Large entities
Entities Regulated by Action	2,025	1,683	8
Commercial fishing Entities	1,685	1,677	8
For-Hire Entities	6	6	0
Unidentified (no revenue)	334	n/a	n/a

The Area 2 cap of 800 traps is at, or higher than, most entities' trap allocations, and all entities with trap allocations in excess of the preferred cap will be able to retain their current allocation as of May 1, 2022. Thus, no costs are expected. The Area 3 ownership caps are similarly set higher than most entities' allocations, and all entities in excess of the preferred cap will be able to retain their current allocation. The maximum trap cap reduction may result in the loss of some traps, reducing fishing revenues and profits for fishing businesses. The loss in fishing profit from retired traps is estimated to be between $307,000 and $419,000, assuming a profit margin of 5 percent. For harvester reporting, the GARFO-supported application for eVTRs is free of charge, and most individuals in the fishery own a device which can be used to submit eVTRs. Wage hours are summarized below. We requested comments in the proposed rule on economic impacts of the reporting requirements approved in this rule, including assumptions that impacts are discountable due to the prevalence of smartphones and tablets in society and the fact that reporting applications are free, and that entities are able to cover fixed costs on diminished revenues. No comments were received on the proposed approach.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action contains new reporting and recordkeeping requirements for Federal American lobster permit holders that would involve costs to vessels to catch lobsters. Vessels would be required to complete a Federal vessel trip report at sea and submit the report electronically to GARFO within 48 hours of returning to port. Costs in terms of burden is estimated to be 7 minutes per report, or 10,065 burden hours total. With a mean hourly wage of $14.49 dollars, total wage burden costs are $155,586 (in 2019 dollars).

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

This action imposes minimal impacts on small entities. Given the current state of the Area management programs, the implemented measures remain consistent with the Commission's recommendations, but do not consider outdated management measures (*i.e.,* trap banking). Further, both the Area 2 and Area 3 ownership caps allow for entities who exceed the specified ownership cap limits to retain their permits and traps, but prevent these entities from ownership in additional permits and traps. For Area 3, we are also approving a reduction to the maximum number of traps that can be fished. Area 3 permit holders may participate in the Trap Transfer Program ahead of reductions going into place, and thus could either optimize trap allocations across vessels owned or sell traps and recoup some economic losses. Finally, approving mandatory harvester requirements using eVTR would leverage technology to minimize the burden of completing and submitting/mailing paper Federal vessel trip reports.

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 FRFA, 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.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as this small entity compliance guide was prepared. Copies of the guide and this rule are available upon request from the Greater Atlantic Regional Office (see **ADDRESSES**), and the guide/permit holder bulletin will be sent to all holders of lobster permits.

This final rule contains a new collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). The collection-of-information requirement in this rule, currently assigned Control Number 0648–0806, relates to the collection under Control Number 0648–0212, ''Greater Atlantic Region Logbook Family of Forms'' as both collect similar types of information. However, due to multiple concurrent actions revising Control Number 0648–0212, the collection-of-information requirement in this final rule was assigned a temporary Control Number that will later be merged into Control Number 0648–0212. This rule creates new requirements by requiring all Federal lobster permit holders to submit electronic vessel trip reports, including several additional new data elements. Public reporting burden for electronic trip reports is estimated to average 7 minutes (0.117 hours) per individual 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. Total annual cost to the public from this collection is estimated to be approximately $156,000 (in 2019 dollars).

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. Written comments and recommendations for this information collection should be submitted on the following website: *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review'' or by using the search function and entering the title of the collection.

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

List of Subjects in 50 CFR Part 697

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 26, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 697 is amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

■ 1. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 1501 *et seq.*

■ 2. In § 697.2, remove the definition for ''Qualifying Year'' and revise the definition for ''Regional Administrator'' to read as follows:

§ 697.2 Definitions.

* * * * *

Regional Administrator, means Regional Administrator, Greater Atlantic Region, NMFS, or Regional Administrator, Southeast Region, NMFS, whichever has the applicable jurisdiction, or a respective designee.

* * * * *

■ 3. In § 697.4,
■ a. Revise paragraph (a)(1) introductory text, and paragraphs (a)(7)(i) and (ii);
■ b. Remove and reserve paragraphs (a)(7)(vi) through (viii);
■ c. Revise paragraph (d)(1);
■ d. Revise paragraph (f)(1)(i);
■ e. Remove paragraph (f)(1)(v); and
■ f. Effective April 1, 2024, add paragraph (q).

The revisions and addition read as follows:

§ 697.4 Vessel permits and trap tags.

(a) * * *

(1) *Eligibility.* To be eligible for issuance or renewal of a Federal limited access lobster permit, a vessel must:

* * * * *

(7) * * *

(i) It is unlawful for vessels issued a limited access American lobster permit fishing with traps, to retain on board, land, or possess American lobster in or from the management areas specified in § 697.18, unless such fishing vessel has been issued a valid management area designation certificate or valid limited access American lobster permit specifying such management area(s).

(ii) Each owner of a fishing vessel that fishes with traps capable of catching lobster must declare to NMFS in his/her annual application for permit renewal which management areas, as described in § 697.18, the vessel will fish in for lobster with trap gear during that fishing season. A federal lobster permit holder may declare into Lobster Conservation Management Areas 1, 2, 3, 4, 5, and/or the Outer Cape Management Area to fish with traps, only in the following two circumstances:

(A) The NOAA Regional Administrator previously qualified the permit into the requested area as part of the Area 1, 2, 3, 4, 5 and/or Outer Cape Cod Limited Access Program during the initial limited access area qualification process; and/or

(B) The permit holder, even if the permit has not qualified as described in paragraph (a)(7)(ii)(A) of this section, is seeking access to Area 2, 3, and/or the Outer Cape Area based upon ownership of traps acquired as part of the Trap Transfer Program, described in § 697.27, that the NOAA Regional Administrator has previously qualified and allocated under the Area 2, 3, and/or the Outer Cape Cod Limited Access Programs.

* * * * *

(d) * * *

(1) Any lobster trap fished in Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member, unless exempt under § 697.26.

* * * * *

(f) * * *

(1) * * *

(i) The applicant has failed to submit a complete application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified in paragraph (q) of this section.

* * * * *

(q) *Fishing Vessel Trip Reports*—(1) *Information to be Submitted.* Beginning April 1, 2024, all federally permitted lobster vessels must maintain onboard the vessel and submit an electronic fishing log to NMFS for each fishing trip. Both the vessel permit owner and the vessel permit operator are responsible for ensuring the report is accurate and is filed. The report must be filed regardless of species fished for or taken during the trip and this report must be entered into and submitted through a software application approved by NMFS. The report must contain the following information:

(i) Vessel name;

(ii) USCG documentation number (or state registration number, if undocumented);

(iii) Permit number;

(iv) Date/time left port on fishing trip;

(v) Date/time returned from port on fishing trip;

(vi) Trip type (commercial, recreational, party, or charter);

(vii) Number of crew;

(viii) Number of anglers (if a charter or party boat);

(ix) Gear fished;

(x) Lobster trawl/string information;

(A) Total number of trawls/strings in the water;

(B) Average number of pots per trawl/string;

(C) Total number of pots in the water;

(xi) Entrance (ring/hoop) size;

(xii) Chart area fished, based on the location of the start of haul back;

(xiii) Latitude/longitude where the majority of fishing effort occurred;

(xiv) Average depth where the majority of fishing effort occurred;

(xv) Total number of strings hauled per chart area per trip;

(xvi) Average soak time per trawl/string;

(xvii) Hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species;

(xviii) Dealer permit number;

(xix) Dealer name;

(xx) Date sold, port and state landed; and

(xxi) Vessel operator's name, signature, and operator's permit number (if applicable).

(xxii) Total number of traps hauled by chart area;

(xxiii) Number of traps in chart area fished;

(xxiv) Average number of traps per string hauled in the chart area fished;

(xxv) Number of buoy lines in the chart area fished; and

(xxvi) Total number of buoy lines in the water.

(2) *When to fill out a vessel trip report.* Vessel trip reports required by paragraph (q)(1)(i) of this section must be filled out with all required information, except for information not yet ascertainable, prior to entering port. Information that may be considered unascertainable prior to entering port includes dealer name, dealer permit number, and date sold. Vessel trip reports must be completed as soon as the missing information is ascertained.

(3) *Inspection.* All persons required to submit reports under this part must make these reports and their underlying information available for inspection immediately upon the request of an authorized officer or an employee of NMFS designated by the Regional Administrator to make such inspections.

(4) *Submitting reports*—(i) For any vessel issued a valid lobster permit, or eligible to renew a limited access permit under this part, fishing vessel trip reports, required by paragraph (b)(1) of this section, must be submitted within 48 hours of the conclusion of a trip.

(ii) For the purposes of paragraph (q)(4)(i) of this section, the date when fish are offloaded from a commercial vessel will establish the conclusion of a commercial trip.

(iii) For the purposes of paragraph (q)(4)(i) of this section, the date a charter/party vessel enters port will establish the conclusion of a for-hire trip.

■ 4. Effective April 1, 2024, in § 697.6, revise paragraph (n)(1)(ii)(B) to read as follows:

§ 697.6 Dealer permits.

* * * * *

(n) * * *

(1) * * *

(ii) * * *

(B) When purchasing or receiving fish from a vessel landing in a port located outside of the Greater Atlantic Region (Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia and North Carolina), only purchases or receipts of species managed by the Greater Atlantic Region under this part (American lobster or Jonah crab), and part 648 of this chapter, must be reported. Other reporting requirements may apply to those species not managed by the Greater Atlantic Region, which are not affected by this paragraph (n); and

* * * * *

■ 5. Revise § 697.18 to read as follows:

§ 697.18 Lobster management areas.

The following lobster management areas are established for purposes of implementing the management measures specified in this part. (A copy of a chart showing the American lobster EEZ management areas is available upon request to the Office of the Regional Administrator, NMFS, 55 Great Republic Drive, Gloucester, MA 01930.)

(a) *EEZ Nearshore Management Area 1.* EEZ Nearshore Management Area 1 includes state and federal waters nearshore in the Gulf of Maine that are bounded on the west and north by the coastlines of Massachusetts (including the southwestern extent of the Cape Cod Canal), New Hampshire, and Maine, bounded on the east by the U.S.-Canada Maritime Boundary, and bounded on the southeast by the following points connected in the order listed by straight lines:

TABLE 1 TO PARAGRAPH (a)

Point	Latitude	Longitude	Notes
A	43°58.25′ N	67°21.44′ W	(1)
B	43°41′ N	68°00′ N	.....
C	43°12′ N	69°00′ W	.....
D	42°49′ N	69°40′ W	.....
E	42°15.5′ N	69°40′ W	.....
F	42°10′ N	69°56′ W	.....
G	42°05.5′ N	70°14′ W	.....
H	42°04.25′ N	70°17.22′ W	.....
I	42°02.84′ N	70°16.1′ W	.....
J	42°03.4′ N	70°14.2′ W	.....

(1) Point A is intended to fall on the U.S./Canada Maritime Boundary.

(b) *EEZ Nearshore Management Area 2.* EEZ Nearshore Management Area 2 includes state and federal waters nearshore in Southern New England that are bounded on the north by the coastlines of Massachusetts (including the northeastern extent of the Cape Cod Canal) and Rhode Island, and bounded on all other sides by the following points connected in the order listed by straight lines:

TABLE 2 TO PARAGRAPH (b)

Point	Latitude	Longitude	Notes
A	41°40′ N	70°05′ W	.....
B	41°15′ N	70°05′ W	.....
C	41°21.5′ N	69°16′ W	.....
D	41°10′ N	69°06.5′ W	.....
E	40°55′ N	68°54′ W	.....
F	40°27.5′ N	72°14′ W	.....
G	40°45.5′ N	71°34′ W	.....
H	41°07′ N	71°43′ W	.....
I	41°06.5′ N	71°47′ W	.....
J	41°11.5′ N	71°47.25′ W	.....
K	41°18.5′ N	71°54.5′ W	(1)

(1) From Point K, the EEZ Nearshore Management Area 2 follows the maritime boundary between Connecticut and Rhode Island to the coastal Connecticut/Rhode Island boundary.

(c) *Area 2/3 Overlap.* The Area 2/3 Overlap is defined by the area, comprised entirely of Federal waters, bounded by straight lines connecting the following points, in the order stated:

TABLE 3 TO PARAGRAPH (c)

Point	Latitude	Longitude
A	41°10′ N	69°06.5′ W
B	40°55′ N	68°54′ W
C	40°27.5′ N	72°14′ W
D	40°45.5′ N	71°34′ W
A	41°10′ N	69°06.5′ W

(d) *EEZ Offshore Management Area 3.* EEZ Offshore Management Area 3 is defined by the area, comprised entirely of Federal waters, bounded by straight lines connecting the following points, in the order stated:

TABLE 4 TO PARAGRAPH (d)

Point	Latitude	Longitude	Notes
A	43°58.25′ N	67°21′ W	(1),(2)
B	43°41′ N	68°00′ W	.....
C	43°12′ N	69°00′ W	.....
D	42°49′ N	69°40′ W	.....
E	42°15.5′ N	69°40′ W	.....
F	42°10′ N	69°56′ W	.....
G	42°21.5 N	69°16′ W	.....
H	41°10′ N	69°06.5′ W	.....
I	40°45.5′ N	71°34′ W	.....
J	40°27.5′ N	72°14′ W	.....
K	40°12.5′ N	72°48.5′ W	.....
L	39°50′ N	73°01′ W	.....
M	38°39.5′ N	73°40′ W	.....
N	38°12′ N	73°55′ W	.....
O	37°12′ N	74°44′ W	.....
P	35°34′ N	74°51′ W	.....
Q	35°14.5′ N	75°31′ W	.....
R	35°14.5′ N	71°24′ W	(2)

(1) Point A is intended to fall on the U.S.-Canada Maritime Boundary

(2) From Point R back to Point A along the outer limit of the US EEZ and the U.S.-Canada Maritime Boundary

(e) *EEZ Nearshore Management Area 4.* EEZ Nearshore Management Area 4 includes state and federal waters nearshore in the northern Mid-Atlantic, bounded on the west and north by the coastlines of New Jersey and New York (crossing the East River at 74° W), and bounded on all other sides by the following points connected in the order listed by straight lines, unless otherwise noted:

TABLE 5 TO PARAGRAPH (e)

Point	Latitude	Longitude	Notes
A	41°0.7′ N	72°00′ W	.....
B	40°57.33′ N	72°00′ W	(1),(2)
C	41°06.5′ N	71°47′ W	(2),(3)
D	41°07′ N	71°43′ W	.....
E	40°45.5′ N	71°34′ W	.....
F	41°27.5′ N	72°14′ W	.....
G	40°12.5′ N	72°48.5′ W	.....
H	39°50′ N	73°01′ W	.....
I	39°50′ N	72°09.2′ W	.....

(1) Point B is intended to fall along the Three Nautical Mile line.

(2) From Point B to Point C following the Three Nautical Mile line.

(3) Point C is intended to fall along the Three Nautical Mile line.

(f) *EEZ Nearshore Management Area 5.* EEZ Nearshore Management Area 5 includes state and Federal waters nearshore in the southern Mid-Atlantic, bounded on the west by the coastline of the United states, and bounded on all other sides by the following points connected in the order listed by straight lines:

TABLE 6 TO PARAGRAPH (f)

Point	Latitude	Longitude
A	39°50′ N	74°09.2′ W
B	39°50′ N	72°55′ W
C	38°38.2′ N	73°33.8′ W
D	38°10.4′ N	73°49′ W
E	37°10.6′ N	74°38′ W
F	35°31.9′ N	74°45.5′ W
G	35°14.5′ N	75°19.3′ W
H	35°14.5′ N	75°31.5′ W

(g) *Area 3/5 Overlap.* The Area 3/5 Overlap includes state and Federal waters in the southern Mid-Atlantic bounded by the following points connected in the order listed by straight lines:

TABLE 7 TO PARAGRAPH (g)

Point	Latitude	Longitude
A	39°50′ N	73°01′ W
B	39°50′ N	72°55′ W
C	38°38.2′ N	73°33.8′ W
D	38°10.4′ N	73°49′ W
E	37°10.6′ N	74°38′ W
F	35°31.9′ N	74°45.5′ W
G	35°14.5′ N	75°19.3′ W
H	35°14.5′ N	75°31′ W
I	35°34′ N	74°51′ W
J	37°12′ N	74°44′ W
K	38°12′ N	73°55′ W
L	38°39.5′ N	73°40′ W
A	39°50′ N	73°01′ W

(h) *Nearshore Management Area 6.* The Nearshore Management Area 6 includes New York and Connecticut state waters, bounded by the Long Island Sound coastlines of both states (including the East River until 74° W, and the northern extent of the Harlem River), and bounded on the east by the following points connected in the order listed by straight lines:

TABLE 8 TO PARAGRAPH (h)

Point	Latitude	Longitude	Notes
A	41°0.7′ N	72°00′ W	.....
B	40°57.33′ N	72°00′ W	(1)(2)
C	41°06.5′ N	71°47′ W	(2)(3)
D	41°11.5″ N	71°47.25″ W	.....
E	41°18.5″ N	71°54.5″ W	(4)

(1) Point B is intended to fall along the Three Nautical Mile line.
(2) From Point B to Point C following the Three Nautical Mile line.
(3) Point C is intended to fall along the Three Nautical Mile line.
(4) From Point E, the Nearshore Management Area 6 follows the maritime boundary between Connecticut and Rhode Island to the coastal Connecticut/Rhode Island boundary.

(i) *EEZ Nearshore Outer Cape Lobster Management Area.* EEZ Nearshore Outer Cape Lobster Management Area includes state and Federal waters off Cape Cod, bounded by the following points connected in the order listed by straight lines, unless otherwise noted:

TABLE 9 TO PARAGRAPH (i)

Point	Latitude	Longitude	Notes
A	41°54.46′ N	70°03.99′ W	(1)
B	41°52′ N	70°07.49′ W	.....
C	42°02.84′ N	70°16.1′ W	.....
D	42°04.25′ N	70°17.22′ W	.....
E	42°05.5′ N	70°14′ W	.....
F	42°10′ N	69°65′ W	.....
G	41°21.5′ N	69°16′ W	.....
H	41°15′ N	70°05′ W	.....
I	41°40′ N	70°05′ W	(1)

(1) From Point I back to Point A following the outer coastline of Cape Cod.

(j) *Area management.* NMFS may, consistent with § 697.25, implement management measures necessary for each management area, in order to end overfishing and rebuild stocks of American lobster.

■ 6. Effective May 1, 2025, in § 697.19, revise the section heading and paragraph (c), and add paragraph (m), to read as follows:

§ 697.19 Trap limits, ownership caps, and trap tag requirements for vessels fishing with lobster traps.

* * * * *

(c) *Area 3 trap limits.* (1) Effective May 1, 2025, the Area 3 trap limit is 1,805 traps. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into Area 3 by the Regional Administrator, as part of the Federal Area 3 Limited Access Program. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(2) Effective May 1, 2026, the Area 3 trap limit is 1,629 traps. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into Area 3 by the Regional Administrator, as part of the Federal Area 3 Limited Access Program. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(3) Effective May 1, 2027, the Area 3 trap limit is 1,548 traps. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into Area 3 by the Regional Administrator, as part of the Federal Area 3 Limited Access Program. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

* * * * *

(m) *Ownership caps.* (1) An entity shall be defined as any person having an ownership interest, including, but not limited to, persons who are shareholders in a vessel owned by a corporation, who are partners (general or limited) to a vessel owner, or who, in any way, partly own a federally permitted lobster vessel. In determining an entity's ownership cap allocation, NMFS will not attribute based upon an entity's percentage ownership interest, but will attribute the full amount of a permit's allocation to the entity upon a finding of any ownership interest in the permit.

(2) Area 2—Effective May 1, 2025, an entity's Area 2 ownership cap shall be based upon the entity's aggregate trap allocation as of May 1, 2022 as follows:

(i) Any entity who had a cumulative Area 2 trap allocation at or below 800 traps as of May 1, 2022 shall be restricted to an 800 cumulative trap maximum for all permits with an Area 2 trap allocation. No such entity may possess Area 2 trap allocations in excess of 800 traps.

(ii) Any entity who had a cumulative Area 2 trap allocation above 800 traps as of May 1, 2022 may retain their allocation at that May 1 2022 level but shall be restricted from expanding this cumulative Area 2 trap allocation above the May 1, 2022 trap allocation level. No such entity may possess Area 2 trap allocations in excess of their May 1, 2022 level. This higher allocation is allowed only for the duration of the entity's ownership of Area 2 lobster permits, and is forfeited once ownership is lost, sold, or transferred.

(iii) Vessel owners with an Area 2 lobster permit in confirmation of permit history, and in compliance with the ownership restrictions in paragraph (m)(1) of this section, are eligible to renew such permits(s) and/or confirmation(s) of permit history, but will be bound by the trap limits in paragraphs (m)(2)(i) or (m)(2)(ii) of this section.

(3) Area 3. (i) Effective May 1, 2025, the Area 3 ownership cap shall be restricted to no more than 9,025 allocated traps. An entity is prohibited from possessing Area 3 trap allocations in excess of 9,025 traps.

(ii) Effective May 1, 2026, the Area 3 ownership cap shall be restricted to no more than 8,145 allocated traps. An entity is prohibited from possessing Area 3 trap allocations in excess of 8,145 traps.

(iii) Effective May 1, 2027, the Area 3 ownership cap shall be restricted to no more than 7,740 allocated traps. An entity is prohibited from possessing

Area 3 trap allocations in excess of 7,740 traps.

(iv) Vessel owners with an Area 3 lobster permit in confirmation of permit history, and in compliance with the ownership restrictions in paragraph (m)(1) of this section, are eligible to renew such permits(s) and/or confirmation(s) of permit history, but will be bound by the trap limits in paragraphs (m)(3)(i) through (iii) of this section.

(v) Paragraphs (m)(3)(i) through (iii) of this section do not apply to an entity's Area 3 lobster trap permits and/or confirmations of permit history if that entity's trap allocation exceeded 7,740 traps as of May 1, 2022. The trap allocations of all such entities will be capped at their May 1, 2022 trap allocation. This higher allocation is allowed only for the duration of the entity's ownership of Area 2 lobster permits, and is forfeited once ownership is lost, sold, or transferred.

■ 7. In § 697.20, revise paragraphs (a)(5) through (7), and remove paragraphs (a)(8) and (9), to read as follows:

§ 697.20 Size, harvesting and landing requirements.

(a) * * *

(5) The minimum carapace length for all American lobsters harvested in or from the Offshore Management Area 3 is $3^{17}/_{32}$ inches (8.97 cm).

(6) The minimum carapace length for all American lobsters landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 is $3^{17}/_{32}$ inches (8.97 cm).

(7) No person may ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster that is smaller than the minimum size specified in paragraph (a) of this section.

* * * * *

■ 8. In § 697.21;
■ a. Revise paragraphs (a)(1);
■ b. Remove and reserve paragraph (a)(2);
■ c. Revise paragraphs (b)(4)(i) through (iii), (c)(3) and (4);
■ d. Remove paragraph (c)(5); and
■ e. Revise paragraphs (e) and (f).

The revisions are to read as follows:

§ 697.21 Gear identification and marking, escape vent, maximum trap size, and ghost panel requirements.

(a) * * *

(1) *Identification and trap tagging.* Lobster gear must be marked with a trap tag (as specified in § 697.19) with the following code of identification:

(i) A number assigned by the Regional Administrator; or

(ii) Whatever positive identification marking is required by the vessel's home-port state.

* * * * *

(b) * * *

(4) * * *

(i) *Gulf of Maine gear area.* Gulf of Maine gear area is defined as all waters of the EEZ north of 42°20′ N lat. seaward of the outer boundary of the territorial sea (12 nautical miles (22.2 km) from the baseline);

(ii) *Georges Bank gear area.* Georges Bank gear area is defined as all waters of the EEZ south of 42°20′ N lat. and east of 70°00′ W long. or the outer boundary of the territorial sea (12 nautical miles (22.2 km) from the baseline), whichever lies farther east;

(iii) *Southern New England gear area.* Southern New England gear area is defined as all waters of the EEZ west of 70°00′ W long., east of 71°30′ W long., and north of 36°33' N lat. at a depth greater than 25 fathoms (45.72 m); and

* * * * *

(c) * * *

(3) All American lobster traps deployed or possessed in the EEZ Offshore Management Area 3, or deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit fishing in or electing to fish in the EEZ Offshore Management Area 3, must include either of the following escape vents in the parlor section of the trap, located in such a manner that it will not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use:

(i) A rectangular portal with an unobstructed opening not less than $2^{1}/_{16}$ inches (5.24 cm) × $5^{3}/_{4}$ inches (14.61 cm);

(ii) Two circular portals with unobstructed openings not less than $2^{11}/_{16}$ inches (6.82 cm) in diameter.

(4) The Regional Administrator may, at the request of, or after consultation with, the Commission, approve and specify, through a technical amendment, any other type of acceptable escape vent that the Regional Administrator finds to be consistent with paragraph (c) of this section.

* * * * *

(e) *Maximum trap size*—(1) *EEZ Nearshore Management Area maximum trap size.* American lobster traps deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit as specified under § 697.4, if deployed or possessed by a person or vessel permitted to fish in any EEZ Nearshore Management Area (Area 1, Outer Cape, Area 2, Area 4, Area 5, or Area 6) and the Area 2/3 Overlap, or only in the Area 2/3 Overlap, shall not exceed 22,950 cubic inches (376,081 cubic centimeters) in volume as measured on the outside portion of the trap, exclusive of the runners.

(2) *EEZ Offshore Management Area maximum trap size.* American lobster traps deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit as specified under § 697.4, if deployed or possessed by a person or vessel permitted to fish only in EEZ Offshore Management Area 3 or only in EEZ Offshore Management Area 3 and the Area 2/3 Overlap, shall not exceed 30,100 cubic inches (493,249 cubic centimeters) in volume as measured on the outside portion of the trap, exclusive of the runners.

(f) *Enforcement action.* Unidentified, unmarked, unvented, or improperly-vented American lobster traps, or any untagged American lobster traps, or any lobster traps subject to the requirements and specifications of § 697.21, which fail to meet such requirements and specifications may be seized and disposed of in accordance with the provisions of 15 CFR part 904.

* * * * *

■ 9. In § 697.23, revise paragraphs (b)(2), (c)(2), (d)(2), and (e)(2) to read as follows:

§ 697.23 Restricted gear areas.

* * * * *

(b) * * *

(2) *Definition of Restricted Gear Area I.* Restricted Gear Area I is defined by the following points connected in the order listed by straight lines (points followed by an asterisk are shared with an adjacent Restricted Gear Area):

TABLE 1 TO PARAGRAPH (b)(2)

Point	Latitude	Longitude	Note
AA	40°02.75′ N	70°16.10′ W	(*)
AB	40°02.45′ N	70°14.10′ W	(*)
AC	40°05.20′ N	70°10.90′ W	(*)
AD	40°03.75′ N	70°10.15′ W	(*)
AE	40°00.70′ N	70°08.70′ W	(*)
AF	39°59.20′ N	70°04.90′ W	(*)
AG ...	39°58.25′ N	70°03.00′ W	(*)
AH	39°56.90′ N	69°57.45′ W	(*)
AI	39°57.40′ N	69°55.90′ W	(*)
AJ	39°57.55′ N	69°54.05′ W	(*)
AK	39°56.70′ N	69°53.60′ W	(*)
AL	39°55.75′ N	69°41.40′ W	(*)
AM ...	39°56.20′ N	69°40.20′ W	(*)
AN	39°58.80′ N	69°38.45′ W	(*)
AO ...	39°59.15′ N	69°37.30′ W	(*)
AP	40°00.90′ N	69°37.30′ W	(*)

TABLE 1 TO PARAGRAPH (b)(2)—Continued

Point	Latitude	Longitude	Note
AQ	40°00.65′ N	69°36.50′ W	(*)
AR	39°57.85′ N	69°35.15′ W	(*)
AS	39°56.80′ N	69°34.10′ W	(*)
AT	39°56.50′ N	69°26.35′ W	(*)
AU	39°56.75′ N	69°24.40′ W	(*)
AV	39°57.80′ N	69°20.35′ W	(*)
AW	40°00.05′ N	69°14.60′ W	(*)
AX	40°02.65′ N	69°11.15′ W	(*)
AY	40°02.00′ N	69°08.35′ W	(*)
AZ	40°02.65′ N	69°05.60′ W	(*)
BA	40°04.10′ N	69°03.90′ W	(*)
BB	40°05.65′ N	69°03.55′ W	(*)
BC	40°08.45′ N	69°03.60′ W	(*)
BD	40°09.75′ N	69°04.15′ W	(*)
BE	40°10.25′ N	69°04.40′ W	(*)
BF	40°11.60′ N	69°05.40′ W	(*)
BG	40°11.00′ N	69°03.80′ W	(*)
BH	40°08.90′ N	69°01.75′ W	(*)
BI	40°05.30′ N	69°01.10′ W	(*)
BJ	40°05.20′ N	69°00.50′ W	(*)
BK	40°04.35′ N	69°00.50′ W	(*)
BL	40°03.65′ N	69°00.00′ W	(*)
BM	40°03.60′ N	68°57.20′ W	(*)
BN	40°05.70′ N	68°52.40′ W	(*)
BO	40°08.10′ N	68°51.00′ W	(*)
BP	40°08.70′ N	68°49.60′ W	(*)
BQ	40°06.90′ N	68°46.50′ W	(*)
BR	40°07.20′ N	68°38.40′ W	(*)
BS	40°07.90′ N	68°36.00′ W	(*)
BT	40°06.40′ N	68°35.80′ W	.....
BU	40°05.25′ N	68°39.30′ W	.....
BV	40°05.40′ N	68°44.50′ W	.....
BW	40°06.00′ N	68°46.50′ W	.....
BX	40°07.40′ N	68°49.60′ W	.....
BY	40°05.55′ N	68°49.80′ W	.....
BZ	40°03.90′ N	68°51.70′ W	.....
CA	40°02.25′ N	68°55.40′ W	.....
CB	40°02.60′ N	69°00.00′ W	.....
CC	40°02.75′ N	69°00.75′ W	.....
CD	40°04.20′ N	69°01.75′ W	.....
CE	40°06.15′ N	69°01.95′ W	.....
CF	40°07.25′ N	69°02.00′ W	.....
CG	40°08.50′ N	69°02.25′ W	.....
CH	40°09.20′ N	69°02.95′ W	.....
CI	40°09.75′ N	69°03.30′ W	.....
CJ	40°09.55′ N	69°03.85′ W	.....
CK	40°08.40′ N	69°03.40′ W	.....
CL	40°07.20′ N	69°03.30′ W	.....
CM	40°06.00′ N	69°03.10′ W	.....
CN	40°05.40′ N	69°03.05′ W	.....
CO	40°04.80′ N	69°03.05′ W	.....
CP	40°03.55′ N	69°03.55′ W	.....
CQ	40°01.90′ N	69°03.95′ W	.....
CR	40°01.00′ N	69°04.40′ W	.....
CS	39°59.90′ N	69°06.25′ W	.....
CT	40°00.60′ N	69°10.05′ W	.....
CU	39°59.25′ N	69°11.15′ W	.....
CV	39°57.45′ N	69°16.05′ W	.....
CW	39°56.10′ N	69°20.10′ W	.....
CX	39°54.60′ N	69°25.65′ W	.....
CY	39°54.65′ N	69°26.90′ W	.....
CZ	39°54.80′ N	69°30.95′ W	.....
DA	39°54.35′ N	69°33.40′ W	.....
DB	39°55.00′ N	69°34.90′ W	.....
DC	39°56.55′ N	69°36.00′ W	.....
DD	39°57.95′ N	69°36.45′ W	.....
DE	39°58.75′ N	69°36.30′ W	.....
DF	39°58.80′ N	69°36.95′ W	.....
DG	39°57.95′ N	69°38.10′ W	.....
DH	39°54.50′ N	69°38.25′ W	.....
DI	39°53.60′ N	69°46.50′ W	.....

TABLE 1 TO PARAGRAPH (b)(2)—Continued

Point	Latitude	Longitude	Note
DJ	39°54.70′ N	69°50.00′ W	.....
DK	39°55.25′ N	69°51.40′ W	.....
DL	39°55.20′ N	69°53.10′ W	.....
DM	39°54.85′ N	69°53.90′ W	.....
DN	39°55.70′ N	69°54.90′ W	.....
DO	39°56.15′ N	69°55.35′ W	.....
DP	39°56.05′ N	69°56.25′ W	.....
DQ	39°55.30′ N	69°57.10′ W	.....
DR	39°54.80′ N	69°58.60′ W	.....
DS	39°56.05′ N	70°00.65′ W	.....
DT	39°55.30′ N	70°02.95′ W	.....
DU	39°56.90′ N	70°11.30′ W	.....
DV	39°58.90′ N	70°11.50′ W	.....
DW	39°59.60′ N	70°11.10′ W	.....
DX	40°01.35′ N	70°11.20′ W	.....
DY	40°02.60′ N	70°12.00′ W	.....
DZ	40°00.40′ N	70°12.30′ W	.....
EA	39°59.75′ N	70°13.05′ W	.....
EB	39°59.30′ N	70°14.00′ W	*
AA	40°02.75′ N	70°16.10′ W	*

(c) * * *

(2) *Definition of Restricted Gear Area II.* Restricted Gear Area II is defined by the following points connected in the order listed by straight lines (points followed by an asterisk are shared with an adjacent Restricted Gear Area):

TABLE 2 TO PARAGRAPH (c)(2)

Point	Latitude	Longitude	Note
AA	40°02.75′ N	70°16.10′ W	(*)
EB	39°59.30′ N	70°14.00′ W	(*)
EC	39°58.85′ N	70°15.20′ W	.....
ED	39°59.30′ N	70°18.40′ W	.....
EE	39°58.10′ N	70°19.40′ W	.....
EF	39°57.00′ N	70°19.85′ W	.....
EG	39°57.55′ N	70°21.25′ W	.....
EH	39°57.50′ N	70°22.80′ W	.....
EI	39°57.10′ N	70°25.40′ W	.....
EJ	39°57.65′ N	70°27.05′ W	.....
EK	39°58.58′ N	70°27.70′ W	.....
EL	40°00.65′ N	70°28.80′ W	.....
EM	40°02.20′ N	70°29.15′ W	.....
EN	40°01.00′ N	70°30.20′ W	.....
EO	39°58.58′ N	70°31.85′ W	.....
EP	39°57.05′ N	70°34.35′ W	.....
EQ	39°56.42′ N	70°36.80′ W	.....
ER	39°58.15′ N	70°48.00′ W	.....
ES	39°58.30′ N	70°51.10′ W	.....
ET	39°58.10′ N	70°52.25′ W	.....
EU	39°58.05′ N	70°53.55′ W	.....
EV	39°58.40′ N	70°59.60′ W	.....
EW	39°59.80′ N	71°01.05′ W	.....
EX	39°58.20′ N	71°05.85′ W	.....
EY	39°57.45′ N	71°12.15′ W	.....
EZ	39°57.20′ N	71°15.00′ W	.....
FA	39°56.30′ N	71°18.95′ W	.....
FB	39°51.40′ N	71°36.10′ W	.....
FC	39°51.75′ N	71°41.50′ W	.....
FD	39°50.05′ N	71°42.50′ W	.....
FE	39°50.00′ N	71°45.00′ W	.....
FF	39°48.95′ N	71°46.05′ W	.....
FG	39°46.60′ N	71°46.10′ W	.....
FH	39°43.50′ N	71°49.40′ W	.....
FI	39°41.30′ N	71°55.00′ W	.....
FJ	39°39.00′ N	71°55.60′ W	.....
FK	39°36.72′ N	71°58.25′ W	.....

TABLE 2 TO PARAGRAPH (c)(2)—Continued

Point	Latitude	Longitude	Note
FL	39°35.15′ N	71°58.55′ W	.....
FM	39°34.50′ N	72°00.75′ W	.....
FN	39°32.20′ N	72°02.25′ W	.....
FO	39°32.15′ N	72°04.10′ W	.....
FP	39°28.50′ N	72°06.50′ W	.....
FQ	39°29.00′ N	72°09.25′ W	.....
FR	39°29.75′ N	72°09.80′ W	(*)
FS	39°32.65′ N	72°06.10′ W	(*)
FT	39°35.45′ N	72°02.00′ W	(*)
FU	39°41.15′ N	71°57.10′ W	(*)
FV	39°46.95′ N	71°49.00′ W	(*)
FW	39°53.10′ N	71°42.70′ W	(*)
FX	39°52.60′ N	71°40.35′ W	(*)
FY	39°53.10′ N	71°36.10′ W	(*)
FZ	39°57.50′ N	71°20.60′ W	(*)
GA	40°00.70′ N	71°19.80′ W	(*)
GB	39°59.30′ N	71°18.40′ W	(*)
GC	40°02.00′ N	71°01.30′ W	(*)
GD	40°00.50′ N	70°57.60′ W	(*)
GE	40°00.10′ N	70°45.10′ W	(*)
GF	39°58.90′ N	70°38.65′ W	(*)
GG	39°59.15′ N	70°34.45′ W	(*)
GH	40°00.55′ N	70°32.10′ W	(*)
GI	40°03.85′ N	70°28.75′ W	(*)
GJ	39°59.75′ N	70°25.50′ W	(*)
GK	39°59.80′ N	70°21.75′ W	(*)
GL	40°00.70′ N	70°18.60′ W	(*)
AA	40°02.75′ N	70°16.10′ W	(*)

(d) * * *

(2) *Definition of Restricted Gear Area III.* Restricted Gear Area III is defined by the following points connected in the order listed by straight lines (points followed by an asterisk are shared with an adjacent Restricted Gear Area):

TABLE 3 TO PARAGRAPH (d)(2)

Point	Latitude	Longitude	Note
AA	40°02.75′ N	70°16.10′ W	(*)
GL	40°00.70′ N	70°18.60′ W	(*)
GK	39°59.80′ N	70°21.75′ W	(*)
GJ	39°59.75′ N	70°25.50′ W	(*)
GI	40°03.85′ N	70°28.75′ W	(*)
GH	40°00.55′ N	70°32.10′ W	(*)
GG	39°59.15′ N	70°34.45′ W	(*)
GF	39°58.90′ N	70°38.65′ W	(*)
GE	40°00.10′ N	70°45.10′ W	(*)
GD	40°00.50′ N	70°57.60′ W	(*)
GC	40°02.00′ N	71°01.30′ W	(*)
GB	39°59.30′ N	71°18.40′ W	(*)
GA	40°00.70′ N	71°19.80′ W	(*)
FZ	39°57.50′ N	71°20.60′ W	(*)
FY	39°53.10′ N	71°36.10′ W	(*)
FX	39°52.60′ N	71°40.35′ W	(*)
FW	39°53.10′ N	71°42.70′ W	(*)
FV	39°46.95′ N	71°49.00′ W	(*)
FU	39°41.15′ N	71°57.10′ W	(*)
FT	39°35.45′ N	72°02.00′ W	(*)
FS	39°32.65′ N	72°06.10′ W	(*)
FR	39°29.75′ N	72°09.80′ W	(*)
GM	39°33.65′ N	72°15.00′ W	.....
GN	39°47.20′ N	72°01.60′ W	.....
GO	39°53.75′ N	71°52.25′ W	.....
GP	39°55.85′ N	71°45.00′ W	.....
GQ	39°55.60′ N	71°41.20′ W	.....
GR	39°57.90′ N	71°28.70′ W	.....
GS	40°10.70′ N	71°10.25′ W	.....

TABLE 3 TO PARAGRAPH (d)(2)—Continued

Point	Latitude	Longitude	Note
GT	40°12.75′ N	70°55.05′ W	.....
GU ...	40°11.05′ N	70°45.80′ W	.....
GV ...	40°06.50′ N	70°40.05′ W	.....
GW ..	40°05.60′ N	70°17.70′ W	.....
AA	40°02.75′ N	70°16.10′ W	(*)

(e) * * *

(2) *Definition of Restricted Gear Area IV.* Restricted Gear Area IV is defined by the following points connected in the order listed by straight lines (points followed by an asterisk are shared with an adjacent Restricted Gear Area):

TABLE 4 TO PARAGRAPH (e)(2)

Point	Latitude	Longitude	Note
AA	40°02.75′ N	70°16.10′ W	(*)
GX ...	40°07.80′ N	70°09.20′ W	.....
GY ...	40°07.60′ N	70°04.50′ W	.....
GZ	40°02.10′ N	69°45.00′ W	.....
HA	40°01.30′ N	69°45.00′ W	.....
HB	40°00.50′ N	69°38.80′ W	.....
HC ...	40°01.70′ N	69°37.40′ W	.....
HD ...	40°01.70′ N	69°35.40′ W	.....
HE	40°00.40′ N	69°35.20′ W	.....
HF	39°57.30′ N	69°25.10′ W	.....
HG ...	40°05.50′ N	69°09.00′ W	.....
HH ...	40°14.30′ N	69°05.80′ W	.....
HI	40°14.00′ N	69°04.70′ W	.....
HJ	40°11.60′ N	68°53.00′ W	.....
HK	40°13.60′ N	68°40.60′ W	.....
BS	40°07.90′ N	68°36.00′ W	(*)
BR	40°07.20′ N	68°38.40′ W	(*)
BQ ...	40°06.90′ N	68°46.50′ W	(*)
BP	40°08.70′ N	68°49.60′ W	(*)
BO ...	40°08.10′ N	68°51.00′ W	(*)
BN	40°05.70′ N	68°52.40′ W	(*)
BM ...	40°03.60′ N	68°57.20′ W	(*)
BL	40°03.65′ N	69°00.00′ W	(*)
BK	40°04.35′ N	69°00.50′ W	(*)

TABLE 4 TO PARAGRAPH (e)(2)—Continued

Point	Latitude	Longitude	Note
BJ	40°05.20′ N	69°00.50′ W	(*)
BI	40°05.30′ N	69°01.10′ W	(*)
BH	40°08.90′ N	69°01.75′ W	(*)
BG ...	40°11.00′ N	69°03.80′ W	(*)
BF	40°11.60′ N	69°05.40′ W	(*)
BE	40°10.25′ N	69°04.40′ W	(*)
BD	40°09.75′ N	69°04.15′ W	(*)
BC	40°08.45′ N	69°03.60′ W	(*)
BB	40°05.65′ N	69°03.55′ W	(*)
BA	40°04.10′ N	69°03.90′ W	(*)
AZ	40°02.65′ N	69°05.60′ W	(*)
AY	40°02.00′ N	69°08.35′ W	(*)
AX	40°02.65′ N	69°11.15′ W	(*)
AW ...	40°00.05′ N	69°14.60′ W	(*)
AV	39°57.80′ N	69°20.35′ W	(*)
AU	39°56.75′ N	69°24.40′ W	(*)
AT	39°56.50′ N	69°26.35′ W	(*)
AS	39°56.80′ N	69°34.10′ W	(*)
AR	39°57.85′ N	69°35.15′ W	(*)
AQ ...	40°00.65′ N	69°36.50′ W	(*)
AP	40°00.90′ N	69°37.30′ W	(*)
AO ...	39°59.15′ N	69°37.30′ W	(*)
AN	39°58.80′ N	69°38.45′ W	(*)
AM ...	39°56.20′ N	69°40.20′ W	(*)
AL	39°55.75′ N	69°41.40′ W	(*)
AK	39°56.70′ N	69°53.60′ W	(*)
AJ	39°57.55′ N	69°54.05′ W	(*)
AI	39°57.40′ N	69°55.90′ W	(*)
AH	39°56.90′ N	69°57.45′ W	(*)
AG ...	39°58.25′ N	70°03.00′ W	(*)
AF	39°59.20′ N	70°04.90′ W	(*)
AE	40°00.70′ N	70°08.70′ W	(*)
AD	40°03.75′ N	70°10.15′ W	(*)
AC	40°05.20′ N	70°10.90′ W	(*)
AB	40°02.45′ N	70°14.10′ W	(*)
AA	40°02.75′ N	70°16.10′ W	(*)

* * * * *

■ 10. Revise § 697.24 to read as follows:

§ 697.24 Exempted waters for Maine State American lobster permits.

A person or vessel holding a valid permit or license issued by the State of Maine that lawfully permits that person to engage in commercial fishing for American lobster may, with the approval of the State of Maine, engage in commercial fishing for American lobsters in the following areas designated as EEZ, if such fishing is conducted in such waters in accordance with all other applicable Federal and State regulations:

(a) West of Monhegan Island in the Federal waters located north of the line from 43°42.17′ N lat., 69°34.27′ W long. to 43°42.25′ N lat., 69°19.30′ W long.

(b) East of Monhegan Island in the federal waters located northwest of the line from 43°44′ N lat., 69°15.08′ W long. to 43°48.17′ N lat., 69°8.02′ W long.

(c) South of Vinalhaven in the federal waters located west of the line from 43°52.61′ N lat., 68°40.00′ W long. to 43°58.12′ N lat., 68°32.95′ W long.

(d) South of Boris Bubert Island in the federal waters located northwest of the line from 44°19.27′ N lat., 67°49.50′ W long. to 44°23.67′ N lat., 67°40.50′ W long.

■ 11. In § 697.27, revise paragraph (a)(2)(vi) to read as follows:

§ 697.27 Trap transferability.

(a) * * *

(2) * * *

(vi) Trap allocations may be transferred in any increment.

* * * * *

[FR Doc. 2023–21466 Filed 9–29–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 189
Monday, October 2, 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 ENERGY

10 CFR Part 474

[EERE–2021–VT–0033]

RIN 1904–AF47

Petroleum-Equivalent Fuel Economy Calculation

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

ACTION: Notification of ex parte communication; request for comments.

SUMMARY: On April 11, 2023, the U.S. Department of Energy (DOE) published a notice of proposed rulemaking (NOPR), in which DOE proposed regulations regarding procedures for calculating a value for the petroleum equivalent fuel economy of electric vehicles (EVs) for use in the Corporate Average Fuel Economy (CAFE) program administered by the Department of Transportation (DOT). In their comments to DOE's NOPR, the Alliance for Automotive Innovation (Auto Innovators) raised the issue of the ability of manufacturers to comply with the proposed PEF in 2027 due to vehicle design cycles. DOE is providing notice that it sent follow-up letters to member companies of the Auto Innovators inviting the companies to provide information to clarify the challenges to implementing the revised standard to apply to model year (MY) 2027–2031 vehicles as proposed. In this notice and request for comment, DOE requests additional comment on the questions posed to the Auto Innovator members providing a similar opportunity to all stakeholders.

DATES: The comment period for the NOPR that published on April 11, 2023, closed on June 12, 2023 (88 FR 21525). DOE will accept comments responding to this document on or before October 17, 2023.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by RIN 1904–AF47, by any of the following methods:

Federal eRulemaking Portal: www.regulations.gov/docket/EERE-2021-VT-0033. Follow the instructions for submitting comments.

Email: pefpetition2021vt0033@ee.doe.gov. Include the RIN 1904–AF47 in the subject line of the message.

Postal Mail: U.S. Department of Energy, RIN 1904–AF47, 1000 Independence Avenue SW, Washington, DC 20585. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. Hand delivered comments may be accepted upon request. For detailed instructions on submitting comments and additional information on the rulemaking process, see Public Participation section for details.

Docket: The docket, which includes **Federal Register** notices, 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, some documents listed in the index such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at the *www.regulations.gov* web page associated with RIN 1904–AF47. The docket web page contains simple instructions on how to access all documents, including public comments, in the docket. See Public Participation for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Kevin Stork, U.S. Department of Energy, Vehicle Technologies Office, EE–3V, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–8306. Email: *Kevin.Stork@ee.doe.gov.*

Ms. Laura Zuber, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 306–7651. Email: *Laura.Zuber@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

On April 11, 2023, DOE proposed to update the petroleum-equivalency factor used to calculate the fuel economy of electric vehicles (EVs). 88 FR 21525. DOE proposed that the revised PEF value apply to MY 2027 vehicles. 88 FR 21531. DOE noted that the proposed PEF value would cover the same vehicles covered by the NHTSA CAFE regulation. In the NOPR, DOE requested comments on this proposed approach. *Id.*

Several commenters submitted comments in response to this specific request. Specifically, Auto Innovators raised concerns related to the proposed effective date.[1] Auto Innovators argued that because engine design and development cycles are typically much longer than three years, there are extremely limited opportunities for engine redesign for model year 2027 vehicles. Auto Innovator Comments at 17. In addition, Auto Innovators took the position that there is ''insufficient lead-time'' because the proposed PEF value would ''require even more rapid improvements to CAFE performance,'' but that ''product planning decisions have already been made.'' *Id.* Another commenter suggested that if DOE did move forward with decreased PEF value, that the decreased PEF value should not apply until after 2031.[2]

On September 14, 2023, DOE sent letters to member companies of Auto Innovators inviting them to clarify comments regarding the effective date.[3] DOE posted a memorandum in the docket for this rulemaking that identifies the recipients of these letters and includes a PDF of the letters. Responses to that letter will be included in the docket for this rulemaking (except information deemed to be exempt from public disclosure).

DOE is taking public comment on the same two questions that DOE posed to the Auto Innovators:

1. Identify specific situations where there is a risk that an automaker would

[1] Comments from the Alliance for Automotive Innovation, June 12, 2023 (Auto Innovator Comments).

[2] Comments from Porsche Cars North America, Inc., June 12, 2023, at 3.

[3] DOE posted a memorandum regarding *ex parte* communication in the docket for this rulemaking the same day as it posted this request. This memorandum states that DOE sent the posted letters to members of Auto Innovators on September 14, 2023.

have lead time challenges should the NOPR be finalized as proposed.

2. Provide information, data, and associated analysis detailing specific challenges regarding to lead time.

Public Participation

DOE will accept data and information responding to this document, but no later than the date provided in the **DATES** section at the beginning of this document. Interested parties may submit the requested data and information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting responses via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your response is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your response due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your response.

However, your contact information will be publicly viewable if you include it in the response itself or in any documents attached to your response. Any information that you do not want to be publicly viewable should not be included in your response, nor in any document attached to your response. Persons viewing responses will see only first and last names, organization names, correspondence containing responses, and any documents submitted with the responses.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Responses submitted through *www.regulations.gov* cannot be claimed as CBI. Responses received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, responses will be posted within a few days of being submitted. However, if large volumes of responses are being processed simultaneously, your response may not be viewable for up to several weeks. Please keep the tracking number that *www.regulations.gov* provides after you have successfully uploaded your response.

Submitting comments via email or postal mail. Responses and documents submitted via email or postal mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your response or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any requested information.

Include contact information each time you submit responses, data, documents, and other information to DOE. If you submit via postal mail please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (''faxes'') will be accepted.

Responses, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all responses may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Signing Authority

This document of the Department of Energy was signed on September 26, 2023, by Jeffrey Marootian, Principal Deputy 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 September 27. 2023.

Treena V. Garrett,

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

[FR Doc. 2023–21654 Filed 9–29–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 27, 29, 91, 121, 125, and 135

[Docket No.: FAA–2019–0491; Notice No. 23–12]

RIN 2120–AK34

Interior Parts and Components Fire Protection for Transport Category Airplanes; Extension of Comment Period

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

ACTION: Supplemental notice of proposed rulemaking (SNPRM); Extension of comment period.

SUMMARY: This action extends the comment period for a SNPRM titled ''Interior Parts and Components Fire Protection for Transport Category Airplanes'' that was published on August 17, 2023. In that document, the FAA provided additional information on its proposed elimination of a smoke emissions testing requirement. The FAA also changed its calculations related to the proposed rule's costs and benefits. The FAA is extending the comment period closing date to allow commenters

additional time to analyze the proposed rule and prepare a response.

DATES: The comment period for the SNPRM published on August 17, 2023, at 88 FR 55941, is extended. Comments should be received on or before November 30, 2023.

ADDRESSES: Send comments identified by docket number FAA–2019–0491 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *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 or 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 accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the 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.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, AIR–20, Office of Senior Technical Experts, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198; telephone (206) 231–3146; email *Jeff.Gardlin@faa.gov.*

SUPPLEMENTARY INFORMATION:

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the internet by—

1. Searching the Federal eRulemaking Portal at *www.regulations.gov;*
2. Visiting the FAA's Regulations and Policies web page at *www.faa.gov/regulations_policies/;* or
3. Accessing the Government Printing Office's web page at *www.GovInfo.com.*

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) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the internet through the Federal eRulemaking Portal referenced in item (1) above.

Background

On August 17, 2023, the FAA published a SNPRM titled ''Interior Parts and Components Fire Protection for Transport Category Airplanes'' in the **Federal Register** (88 FR 55941; Notice No. 23–12). In the SNPRM, the FAA provided additional information on its proposed elimination of a smoke emissions testing requirement. The FAA also changed its calculations related to the proposed rule's costs and benefits. Although the rule language is repeated in the SNPRM for completeness, there are no changes to the rule language as originally proposed in the associated NPRM. The FAA is extending the comment period closing date to allow commenters additional time to analyze the proposed rule and prepare a response. Commenters were instructed to provide comments on or before October 2, 2023 (*i.e.,* 45 days from the date of publication of the SNPRM).

Since publication, the FAA has received five requests to extend the comment period by an additional one hundred and twenty (120) days. The commenters requested more time to review the proposed rule and develop comments and recommendations.

The FAA grants the petitioners' request for an extension of the comment period. The FAA recognizes the importance of the proposed rule and that an extension would help commenters craft complete and thoughtful responses. However, the FAA believes that an additional sixty (60) days provides sufficient opportunity to review the SNPRM and provide comments. With this extension, the comment period will now close on November 30, 2023. This will provide the public with a total of one hundred and five (105) days to conduct its review and submit comments to the docket.

The FAA will not grant any additional requests to further extend the comment period for this rulemaking.

Extension of Comment Period

In accordance with § 11.47(c) of Title 14, Code of Federal Regulations, the FAA has reviewed the petitions for extension of the comment period for this notice. The petitioners have shown a substantive interest in the proposed policy and good cause for the extension of the comment period. The FAA has determined that an extension of the comment period for an additional sixty (60) days to November 30, 2023 is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for Notice No. 23–12 is extended until November 30, 2023.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC.

Brandon Roberts,

Executive Director, Office of Rulemaking.

[FR Doc. 2023–21581 Filed 9–29–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1895; Project Identifier MCAI–2023–00652–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 16, 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–2023–1895; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*. It is also available at *regulations.gov* under Docket No. FAA–2023–1895.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3225; email *dan.rodina@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1895; Project Identifier MCAI–2023–00652–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan Rodina, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3225; email *dan.rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0091, dated May 5, 2023 (EASA AD 2023–0091) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A300–600 series airplanes. The MCAI states that new or more restrictive airworthiness limitations have been developed. The FAA is proposing this AD to prevent reduced structural integrity of the airplane.

EASA AD 2023–0091 specifies that it requires certain tasks (limitations) already in Airbus A300–600 ALS Part 2 DT–ALI, Revision 03, that is required by EASA AD 2019–0090, dated April 26, 2019 (which corresponds to FAA AD 2019–21–01, Amendment 39–19767 (84 FR 56935, October 24, 2019) (AD 2019–21–01)), and that incorporation of EASA AD 2023–0091 invalidates (terminates) prior instructions for those tasks. This proposed AD would therefore terminate the limitations required by paragraph (g) of AD 2019–21–01, for the tasks identified in the service information referred to in EASA AD 2023–0091 only.

The FAA is proposing this AD to address fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1895.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2023–0091, which specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2023–0091 described previously, as incorporated by reference. Any differences with EASA AD 2023–0091 are identified as exceptions in the regulatory text of this proposed AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (k)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0091 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0091 through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0091 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0091. Service information required EASA AD 2023–0091 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2023–1895 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under ''Additional AD Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

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

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2023–1895; Project Identifier MCAI–2023–00652–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 16, 2023.

(b) Affected ADs

This AD affects AD 2019–21–01, Amendment 39–19767 (84 FR 56935, October 24, 2019) (AD 2019–21–01).

(c) Applicability

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

(1) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(2) Model A300 B4–605R and B4–622R airplanes.

(3) Model A300 F4–605R and F4–622R airplanes.

(4) Model A300 C4–605R Variant F airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0091, dated May 5, 2023 (EASA AD 2023–0091).

(h) Exceptions to EASA AD 2023–0091

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2023–0091.

(2) Paragraph (3) of EASA AD 2023–0091 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA 2023–0091 is at the applicable ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2023–0091, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraph (4) of EASA AD 2023–0091.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0091.

(i) Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2023–0091.

(j) Terminating Action for AD 2019–21–01

Accomplishing the actions required by this AD terminates the corresponding requirements of AD 2019–21–01 for the tasks identified in the service information referenced in EASA AD 2023–0091 only.

(k) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(l) Additional Information

For more information about this AD, contact Dan Rodina, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3225; email *dan.rodina@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0091, dated May 5, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0091, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on September 26, 2023.

Victor Wicklund,

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

[FR Doc. 2023–21634 Filed 9–29–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice: 11995]

RIN 1400–AF61

Schedule of Fees for Consular Services—Administrative Processing of Request for Certificate of Loss of Nationality (CLN) Fee

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State (''Department'') is proposing to amend the Schedule of Fees for Consular Services (''Schedule'') to reduce the current fee for Administrative Processing of a Request for a Certificate of Loss of Nationality of the United States (CLN) from $2,350 to $450.

DATES: The Department of State will accept comments until November 1, 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 Regulatory Information Number (RIN) 1400–AF61 or docket number DOS–2023–0026.

* *Email: fees@state.gov.* You must include the RIN (1400–AF61) 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 that will address relevant comments as expeditiously as possible.

FOR FURTHER INFORMATION CONTACT: Johanna Cruz, Management Analyst, Office of the Comptroller, Bureau of Consular Affairs, Department of State; phone: 202–485–8915, email: *fees@state.gov.*

SUPPLEMENTARY INFORMATION:

Background

The proposed rule makes changes to the Department of State's Schedule of Fees for Consular Services by reducing the fee for Item #8, Administrative Processing of Request for Certificate of Loss of Nationality of the United States (CLN), from $2,350 to $450. The fee for administrative processing of a CLN (referred to as the ''fee for CLN services'' throughout this rulemaking) applies to U.S. nationals (*i.e.,* U.S. citizens and non-citizen nationals) who request a CLN under 8 U.S.C. 1481(a)(5) (taking the oath of renunciation before a U.S. diplomatic or consular officer abroad) as well as those who request a CLN under 8 U.S.C. 1481(a)(1) to 1481(a)(4) or other applicable law administered by the Department of State. The fee for CLN services is remitted entirely to the Department of Treasury; revenue collected from the fee for CLN services is not factored into the Bureau of Consular Affairs' (CA) budget.

What is the authority for this action?

The Department of State derives the authority to set fees based on the cost of the consular services it provides, and to charge those fees from the general user charges statute, 31 U.S.C. 9701. *See, e.g.,* 31 U.S.C. 9701(b)(2)(A) (''The head of each agency . . . may prescribe regulations establishing the charge for a service or thing of value provided by the agency . . . based on . . . the costs to the government.''). The President also has the power to set the amount of fees to be charged for consular services provided at U.S. embassies and consulates abroad pursuant to 22 U.S.C. 4219, and has delegated this authority to the Secretary of State, E.O. 10718 (June 27, 1957). In the absence of a specific statutory fee retention authority, fees collected for consular services must be deposited into the general fund of the Treasury pursuant to 31 U.S.C. 3302(b).

Activity-Based Costing

OMB Circular A–25 states that it is the objective of the United States Government to ''(a) ensure that each service, sale, or use of Government goods or resources provided by an agency to specific recipients be self-sustaining; [and] (b) promote efficient allocation of the Nation's resources by establishing charges for special benefits provided to the recipient that are at least as great as costs to the Government of providing the special benefits . . .'' OMB Circular A–25, 5(a)–(b); *see also* 31 U.S.C. 9701(b)(2)(A) (agency ''may prescribe regulations establishing the charge for a service or thing of value provided by the agency . . . based on . . . the costs to the Government . . .''). To set fees that are ''self-sustaining,'' the Department must determine the full cost of providing each consular service. Following guidance provided in ''Managerial Cost Accounting Concepts and Standards for the Federal Government,'' OMB's Statement #4 of Federal Accounting Standards (SFFAS #4), *available at http://www.fasab.gov/pdffiles/sffas-4.pdf,* the Department chose to develop and use an activity-based costing (ABC) model to determine the full cost of all the services listed in its Schedule of Fees, including those whose fee the Department proposes to change. The Department refers to the specific ABC model that underpins the proposed fees as the ''Cost of Service Model'' or ''CoSM.''

The Government Accountability Office (GAO) defines ABC as a ''set of accounting methods used to identify and describe costs and required resources for activities within processes.'' Organizations can use the same staff and resources (computer equipment, production facilities, etc.) to produce multiple products or services; therefore, ABC models seek to identify and assign costs to processes and activities and then to individual products and services through the identification of key cost drivers referred to as ''resource drivers'' and ''activity drivers.'' The goal is to proportionally and accurately distribute costs. ABC models require financial and accounting analysis and modeling skills combined with a detailed understanding of an organization's business processes. SFFAS Statement #4 provides a detailed discussion of the use of cost accounting by the U.S. Government.

The ABC approach focuses on the activities required to produce a particular service or product and uses resource drivers to assign costs through activities and activity drivers to assign costs from activities to services. In the context of the work of the Department's Bureau of Consular Affairs (CA), resource drivers assign costs (resources including materials, supplies, and labor utilized in the production or delivery of services and products) to activities using business rules that reflect the operational reality of CA and the data available from consular systems, surveys, and internal records. Most resource drivers are based on time spent on each activity. Activity drivers assign the cost of consular activities to the services CA provides. Most activity drivers are based on volumes.

Why is the Department adjusting this fee?

Processing a U.S. citizen's request for a CLN based on the performance of a potentially expatriating act provided by statute has always been extremely costly for the Department, requiring consular officers and employees overseas, as well as Bureau of Consular Affairs employees domestically, to spend substantial time accepting, processing, and adjudicating these requests. *See* 75 FR 6324; 79 FR 51250–51. This service is necessarily time consuming because of constitutional and other safeguards imposed by U.S. law to ensure the would-be renunciant is a U.S. national who fully understands the serious consequences of renunciation and that the renunciation is both voluntary and intentional. 80 FR 51466.

A fee for processing a request for a CLN under INA 349(a)(5) (taking the oath of renunciation before a U.S. diplomatic or consular officer abroad) was first implemented in 2010. The fee was set at $450, which at that time represented less than 25% of the cost to the U.S. Government. 75 FR 36529. The Department set the fee below cost ''in order to lessen the impact on those who need this service and not discourage the utilization of the service.'' 75 FR 36529. That decision was consistent with the approach taken with respect to certain other fees the Department has discretion to set below cost, including those provided to U.S. citizens in connection with applications for a Consular Report of Birth Abroad, emergency services, documentary services, and death and estate services. The Department's estimate of the level at which U.S. citizens will not be deterred from taking advantage of the service was based on its extensive consultations with experienced consular officers and senior Department managers. 75 FR 36527.

Subsequently, the number of requests for a CLN increased dramatically. During the period the $450 fee was in place, the demand for CLNs jumped from 956 in 2010 to 3,436 in 2014, an approximately 360-fold increase. The dramatic increase in demand meant that far more consular officer time and resources were consumed providing CLN services. As a result, the Department made the decision to set the fee at cost. In 2014, the Department issued an interim final rule raising the fee from $450 to $2,350, as determined by the results of the 2010–2014 Cost of Service Model (CoSM), which incorporated improvements that better captured the actual costs to the U.S. Government of providing consular services overseas. 79 FR 51251. The rule was finalized in 2015. 80 FR 51465.

At the time the fee was increased, the Department received approximately two dozen comments suggesting that the new fee was too costly and that it therefore acted as a deterrent to renunciation. *See* 80 FR 51465. The Department took those concerns into account in setting the fee, but ultimately determined that the significant additional burden on consular operations justified setting the fee at cost, in accordance with general fee-setting principles in 31 U.S.C. 9701 and OMB Circular A–25. *Id.*

In the years since the fee was increased, members of the public have continued to raise concerns about the cost of the fee and the impact of the fee on their ability to renounce their citizenship. While there is no legal requirement for individuals to declare their motivation for renouncing U.S. citizenship, anecdotal evidence suggests that difficulties due at least in part to stricter financial reporting requirements imposed by the Foreign Account Tax Compliance Act (FATCA), Public Law 111–147, on foreign financial institutions with whom U.S. nationals have an account or accounts may well be a factor.

After significant deliberation, taking into account both the affected public's concerns regarding the cost of the fee and the not insignificant anecdotal evidence regarding the difficulties many U.S. nationals residing abroad are encountering at least in part because of FATCA, the Department has made a policy decision to help alleviate at least the cost burden for those individuals who decide for whatever reason to request CLN services by returning to the below-cost fee of $450. Although the prior fee of $450 represents a fraction of the cost of providing CLN services, this change will better align the fee for CLN services with other fees for services provided to U.S. citizens abroad, including, for example, applications for a Consular Report of Birth Abroad, which all are set significantly below cost, even as the costs of providing these services have fluctuated over time.

The Department reviews its Cost of Service Model annually, to calculate the cost of providing all services, including CLN services, applying its standard ABC methodology. If, in the future, the results of the CoSM indicate that the Department ought to reevaluate its approach to the fee for CLN services and/or other services provided to U.S. citizens that are set below cost, the Department will engage its experienced consular officers and senior Department managers to help determine the appropriate level at which to set the fee, balancing the need for the U.S. Government to recoup its costs with the need to charge a fee for these services that does not deter individuals from seeking them.

This proposed fee change applies to all services included under ''Administrative Processing of Request for Certificate of Loss of Nationality'' on the Department's Schedule of Fees for Consular Services. 22 CFR 22.1 Item 8. That item lists services to U.S. nationals (*i.e.,* U.S. citizens and non-citizen nationals) who request a CLN under 8 U.S.C. 1481(a)(5) as well as services to U.S. nationals who request a CLN under 8 U.S.C. 1481(a)(1)–(4) or other applicable law. The fee for processing a request for a CLN under 8 U.S.C. 1481(a)(1)–(4) was also set at $2,350 in 2018 as a matter of ''fee parity'' after the 2010–2014 CoSM indicated that documenting a U.S. national's relinquishment of nationality is extremely costly regardless of the subsection under which the request for a CLN is made. 80 FR 53707. Although the fee for processing a request for a CLN under 8 U.S.C. 1481(a)(1)–(4) was never set at $450, the same considerations apply and warrant a consistent approach in setting the fee below cost.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rulemaking as a proposed rule, with a 30-day provision for public comments. The Department believes that a 30-day comment period provides the public sufficient opportunity to meaningfully review the proposed rule and generate informed comments on its text. The proposed rule involves only one fee, and is not lengthy, technical, and/or complex. Moreover, the Department is engaging in this rulemaking in response to public concerns that already have been raised. A 30-day comment period will enable the Department to complete rulemaking expeditiously, which will facilitate implementation of a change that will benefit applicants seeking CLN services.

Regulatory Flexibility Act

The Department has reviewed this proposed rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6).

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, 2 U.S.C. 1501–1504.

Executive Orders 12866, 13563, and 14094

The Department has reviewed this proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866, as amended by Executive Order 14094, and Executive Order 13563, and affirms that this regulation is consistent with the guidance therein. The Office of Management and Budget has designated this rulemaking as significant under E.O. 12866.

Details of the changes to the Schedule of Fee are as follows:

TABLE 1—CHANGES TO THE SCHEDULE OF FEES

Item No.	Proposed fee	Current fee	Change in fee	Percentage decrease	Projected annual number of applications [1]	Estimated change in annual fees collected [2]	Change in state retained fees	Change in remittance to Treasury
SCHEDULE OF FEES FOR CONSULAR SERVICES								
*	*	*	*	*	*	*	*	
PASSPORT AND CITIZENSHIP SERVICES								
8. Administrative Processing of Request for Certificate of Loss of Nationality	$450	$2,350	($1,900)	(80)	4,661	($8,855,900)	$0	($8,855,900)

[1] Based on estimated FY 2022 workload calculated with FY2021 actual demand.
[2] Using FY 2021 workload to generate collections. This will be a reduction in total annual remittance to Treasury.

Executive Orders 12372 and 13132

This rulemaking 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 rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Executive Order 13175

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 preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 22

Consular services, Fees.

Accordingly, for the reasons stated in the preamble, 22 CFR part 22 is proposed to be amended as follows:

PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICE

■ 1. The authority citation for part 22 continues to read as follows:

Authority: 8 U.S.C. 1101 note, 1153 note, 1157 note, 1183a note, 1184(c)(12), 1201(c), 1351, 1351 note, 1713, 1714, 1714 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 214 note, 1475e, 2504(h), 2651a, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

■ 2. In § 22.1, amend the table by revising Item 8 to read as follows:

§ 22.1 Schedule of Fees.

The following table sets forth the fees for the following categories listed on the U.S. Department of State's Schedule of Fees for Consular Services:

SCHEDULE OF FEES FOR CONSULAR SERVICES

Item No.	Fee
Passport and Citizenship Services	
* * * * * * *	
8. Administrative Processing of Request for Certificate of Loss of Nationality	$450
* * * * * * *	

Hugo Rodriguez,

Acting Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 2023–21559 Filed 9–29–23; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40 and 47

[REG–115559–23]

RIN 1545–BQ93

Excise Tax on Designated Drugs; Procedural Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would provide guidance on how taxpayers will report liability for the excise tax imposed on manufacturers, producers, or importers of certain designated drugs. The proposed regulations affect manufacturers, producers, and importers of designated drugs that sell such drugs during certain statutory periods. The proposed regulations also

would except such tax from semimonthly deposit requirements.

DATES: Written or electronic comments and requests for a public hearing must be received by December 1, 2023. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–115559–23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:LPD:PR (REG–115559–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, contact Jacob W. Peeples, James S. Williford, or Michael H. Beker at (202) 317–6855 (not a toll-free number); concerning the submission of comments and/or requests for a public hearing, contact Vivian Hayes by phone at (202) 317–5306 (not a toll-free number) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations that would amend the Excise Tax Procedural Regulations (26 CFR part 40) and add a new part 47 to 26 CFR chapter 1 to contain the ''Designated Drugs Excise Tax Regulations'' related to the excise tax imposed by section 5000D of the Internal Revenue Code (Code) on certain sales by manufacturers, producers, or importers of designated drugs (section 5000D tax).

Section 5000D, added to chapter 50A of the Code by section 11003 of Public Law 117–169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), imposes an excise tax on the sale by the manufacturer, producer, or importer (taxpayer) of any designated drug during a day that falls within a period described in section 5000D(b). Because chapter 50A is a new chapter of the Code, the existing regulations that prescribe the procedural rules applicable to most excise taxes do not apply to chapter 50A.

Notice 2023–52 (2023–35 I.R.B. 650) announces that the Treasury Department and the IRS intend to propose regulations addressing substantive and procedural issues related to the section 5000D tax. These proposed regulations address return filing and other procedural requirements related to the section 5000D tax as set forth in Notice 2023–52. The Treasury Department and the IRS will issue a separate notice of proposed rulemaking to address substantive issues related to the section 5000D tax.

Explanation of Provisions

I. Proposed Amendments to 26 CFR Part 40

These proposed regulations would apply the Excise Tax Procedural Regulations in 26 CFR part 40 to excise taxes imposed by chapter 50A of the Code (and thus to the section 5000D tax), with some limited exceptions.

A. Proposed Amendments to § 40.0–1

Section 40.0–1(a) provides generally that the regulations in part 40 set forth administrative rules relating to the excise taxes imposed by chapters 31 through 34, 36, 38, 39, and 49 of the Code. Proposed § 40.0–1(a) would amend that provision by adding chapter 50A of the Code to the list of Code chapters subject to the part 40 regulations.

B. Proposed Amendments to § 40.6011(a)–1

Section 40.6011(a)–1(a)(1) provides that the return of tax to which part 40 applies must be made on Form 720, *Quarterly Federal Excise Tax Return,* according to the instructions applicable to the form. Section 40.6011(a)–1(a)(2) provides, in part, that a return must be filed for the first calendar quarter in which liability for tax is incurred (or tax must be collected and paid over) and for each subsequent calendar quarter, whether or not liability is incurred (or tax must be collected and paid over) during that subsequent quarter, until a final return under § 40.6011(a)–2 is filed.

Proposed § 40.6011(a)–1(d) would provide that a return that reports liability imposed by section 5000D must be made for a period of one calendar quarter, and that a return must be filed for each calendar quarter in which liability for the section 5000D tax is incurred. Therefore, under these proposed regulations, taxpayers would be required to report any section 5000D tax liability on Form 720; however, taxpayers would not be required to file subsequent returns for quarters in which they incur no section 5000D tax liability.

C. Proposed Amendments to § 40.6302(c)–1

Section 40.6302(c)–1(a) provides that except as provided by statute or by § 40.6302(c)–1(e), each person required under § 40.6011(a)–1(a)(2) to file a quarterly return must make a deposit of tax for each semimonthly period (as defined in § 40.0–1(c)) in which tax liability is incurred. Section 40.6302(c)–1(e) provides a list of taxes that are excepted from the semimonthly deposit requirement.

Proposed § 40.6302(c)–1(e)(1)(vi) would add the section 5000D tax to the list of taxes that are excepted from the semimonthly deposit requirement. Therefore, under these proposed regulations, taxpayers with section 5000D tax liability would not be required to make semimonthly deposits of the section 5000D tax.

II. Proposed Addition of 26 CFR Part 47

In addition to proposing the addition of a new part 47 to 26 CFR chapter 1, proposed § 47.5000D–1 would provide an introductory provision under part 47 that would designate 26 CFR part 47 as the ''Designated Drugs Excise Tax Regulations.''

Proposed Applicability Dates

These proposed regulations, once adopted as final regulations in a Treasury Decision published in the **Federal Register**, are proposed to apply to calendar quarters beginning on or after October 1, 2023. Taxpayers may rely on these proposed regulations for such returns beginning on October 1, 2023, and before the date that a Treasury Decision published in the **Federal Register** adopts these regulations as final regulations.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

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.

II. Paperwork Reduction Act

The collections of information contained within these proposed regulations will be submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3507(d)). *See* 5 CFR 1320.11. The Treasury Department and the IRS request comments on the information collection burdens related to the proposed regulations. Commenters are strongly encouraged to submit public comments electronically. Written comments and recommendations for the proposed information collection should be sent to *https://www.reginfo.gov/public/do/PRAMain,* with copies to the IRS. To find this particular information collection, select ''Currently under Review—Open for Public Comments'' and then use the search function. Submit electronic submissions for the proposed information collection to the IRS via email at *pra.comments@irs.gov* (indicate REG–115559–23 in the subject line). Comments on the collection of information must be received by December 1, 2023. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in these proposed regulations relate to reporting and recordkeeping requirements that will allow section 5000D taxpayers to meet their tax reporting obligations. The collections of information would generally be used by the IRS for tax compliance purposes and by taxpayers to facilitate proper tax reporting and compliance. The reporting and recordkeeping requirements are covered within the form and instructions for Form 720. IRS is seeking OMB approval on the statutorily required revisions to the form. Therefore, collection requirements will be submitted to OMB under control number 1545–0023.

Because the section 5000D tax is a new tax that has never been reported to the IRS, the Treasury Department and the IRS do not have historical data on the number of affected taxpayers. The Centers for Medicare and Medicaid Services (CMS) has selected 10 drugs for price negotiation for initial price applicability year 2026. CMS will select for negotiation a limited number of drugs for each initial price applicability year after that, as outlined in the IRA. Further, manufacturers, producers, and importers of such drugs may or may not become subject to section 5000D tax liability. Based on the foregoing, the IRS estimates that there will be between 0 and 50 taxpayers during the next 3 years.

If a taxpayer has a section 5000D tax liability, it would be required to file Form 720 to report such liability. Form 720 is a quarterly return. A taxpayer would only be required to file Form 720 during calendar quarters in which the taxpayer has a section 5000D tax liability. Therefore, a taxpayer that has a section 5000D tax liability in one calendar quarter but not in subsequent calendar quarters would only be required to file one Form 720.

The respondents with regard to the section 5000D tax are manufacturers, producers, and importers of certain drugs. The Treasury Department and the IRS estimate the annual burden of the collections of information as follows (these estimates, which are for PRA purposes only, are based on the high end of the range of possible taxpayers and the high end of the range of the frequency of responses, in which a taxpayer would have tax liability in all four calendar quarters):

Estimated frequency of responses: Quarterly.

Estimated number of responses: 50.

Estimated burden time per respondent: 6.9 hours.

Estimated total annual reporting burden: 1,380 hours.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the section 5000D tax is imposed only when certain drug manufacturers, producers, and importers sell certain drugs during periods described in section 5000D(b). The periods described in section 5000D(b) relate to benchmarks in the Medicare Drug Price Negotiation Program, which involves only certain drugs with high Medicare expenditures. If any section 5000D tax liability arises, the taxpayers will primarily not be small entities. As noted earlier, data is not readily available about the number of taxpayers affected, but the number is likely to be limited, in part due to the limited number of drugs selected for the Drug Price Negotiation Program in any particular year. In addition, these proposed regulations will assist taxpayers in meeting their tax reporting obligations by providing clarity on how to report section 5000D tax liability, which will make it easier for taxpayers to comply with section 5000D. Therefore, these proposed regulations will not create additional obligations for, or impose a significant economic impact on, small entities, and a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. Notwithstanding this certification, the Treasury Department and the IRS welcome comments on the impact of these proposed regulations on small entities.

IV. Section 7805(f)

Pursuant to section 7805(f) of the Code, these proposed regulations have been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. These proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or

by the private sector, in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications, do not impose substantial direct compliance costs on State and local governments, and do not preempt State law within the meaning of the Executive order.

Statement of Availability of IRS Documents

The IRS Notice cited in this preamble is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and is 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.*

Comments and Requests for a Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at *https://www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Jacob W. Peeples of the Office of the Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 47

Excise taxes.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR chapter I, subchapter D, as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

■ **Paragraph 1.** The authority citation for part 40 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

■ **Par. 2.** Section 40.0–1 is amended by revising paragraphs (a) and (e) to read as follows:

§ 40.0–1 Introduction.

(a) *In general.* The regulations in this part are designated the *Excise Tax Procedural Regulations*. The regulations in this part set forth administrative provisions relating to the excise taxes imposed by chapters 31 through 34, 36, 38, 39, 49, and 50A of the Internal Revenue Code (Code) (except for the chapter 32 tax imposed by section 4181 (firearms tax) and the chapter 36 taxes imposed by sections 4461 (harbor maintenance tax) and 4481 (heavy vehicle use tax)), and to floor stocks taxes imposed on articles subject to any of these taxes. Chapter 31 relates to retail excise taxes; chapter 32 to manufacturers' excise taxes; chapter 33 to taxes imposed on communications services and air transportation services; chapter 34 to taxes imposed on certain insurance policies; chapter 36 to taxes imposed on transportation by water; chapter 38 to environmental taxes; chapter 39 to taxes imposed on registration-required obligations; chapter 49 to taxes imposed on indoor tanning services; and chapter 50A to taxes imposed on designated drugs. References in this part to taxes also include references to the fees imposed by sections 4375 and 4376 of the Code. See parts 43, 46 through 49, and 52 of this chapter for regulations related to the imposition of tax.

* * * * *

(e) *Applicability dates*—(1) *Paragraph (a).* Paragraph (a) of this section applies to returns required to be filed under § 40.6011(a)–1 for calendar quarters beginning on or after October 1, 2023. For rules that apply before October 1, 2023, see 26 CFR part 40, revised as of April 1, 2023.

(2) *Paragraphs (b) and (c).* Paragraphs (b) and (c) of this section apply to returns for calendar quarters beginning after March 31, 2013. For rules that apply before March 31, 2013, see 26 CFR part 40, revised as of April 1, 2012.

(3) *Paragraph (d).* Paragraph (d) of this section applies to returns for calendar quarters beginning on or after January 19, 2021. For rules that apply before January 19, 2021, see 26 CFR part 40, revised as of April 1, 2020.

■ **Par. 3.** Section 40.6011(a)–1 is amended by:

■ 1. Revising the first sentence of paragraph (a)(2)(i).

■ 2. Adding paragraphs (d) and (e).

The revision and additions read as follows:

§ 40.6011(a)–1 Returns.

(a) * * *

(2) * * *

(i) * * * Except as provided in paragraphs (b) through (d) of this section, the return must be made for a period of one calendar quarter. * * *

* * * * *

(d) *Tax on designated drugs.* A return that reports liability imposed by section 5000D must be made for a period of one calendar quarter. A return must be filed for each calendar quarter in which liability for the tax imposed by section 5000D is incurred. There is no requirement that a return be filed for a calendar quarter in which there is no liability imposed by section 5000D.

(e) *Applicability dates*—(1) *Paragraph (a)(2)(i).* Paragraph (a)(2)(i) of this section applies to returns filed for calendar quarters beginning on or after October 1, 2023. For rules that apply before October 1, 2023, see 26 CFR part 40, revised as of April 1, 2023.

(2) *Paragraph (c). See* paragraph (c)(2) of this section.

(3) *Paragraph (d).* Paragraph (d) of this section applies to returns filed for calendar quarters beginning on and after October 1, 2023.

■ **Par. 4.** Section 40.6302(c)–1 is amended by:

■ 1. Revising paragraphs (e)(1)(iv) and (v).

■ 2. Adding paragraph (e)(1)(vi).

■ 3. Revising paragraph (f).

The revisions and addition read as follows:

§ 40.6302(c)–1 Deposits.

* * * * *

(e) * * *

(1) * * *

(iv) Sections 4375 and 4376 (relating to fees on health insurance policies and self-insured insurance plans);

(v) Section 5000B (relating to indoor tanning services); and

(vi) Section 5000D (relating to designated drugs).

* * * * *

(f) *Applicability dates*—(1) *Paragraphs (a) through (d).* Paragraphs (a) through (d) of this section apply to deposits and payments made after March 31, 2013. For rules that apply before March 31, 2013, see 26 CFR part 40, revised as of April 1, 2012.

(2) *Paragraph (e).* Paragraph (e) of this section applies to calendar quarters beginning on or after October 1, 2023. For rules that apply before October 1, 2023, see 26 CFR part 40, revised as of April 1, 2023.

■ **Par. 5.** Add part 47 to read as follows:

PART 47—DESIGNATED DRUGS EXCISE TAX REGULATIONS

Sec.
47.5000D–0 Table of contents.
47.5000D–1 Introduction.
47.5000D–2–47.5000D–3 [Reserved]

Authority: 26 U.S.C. 7805.

Section 47.5000D–1 also issued under 26 U.S.C. 5000D.

§ 47.5000D–0 Table of contents.

This section lists the table of contents for §§ 47.5000D–1 through 47.5000D–3.

§ 47.5000D–1 Introduction.

(a) In general.

(b) Applicability date.

§§ 47.5000D–2 and 47.5000D–3 [Reserved]

§ 47.5000D–1 Introduction.

(a) *In general.* The regulations in this part are designated the *Designated Drugs Excise Tax Regulations.* The regulations in this part relate to the tax imposed by section 5000D of the Internal Revenue Code. See part 40 of this chapter for regulations relating to returns, payments, and other procedural rules applicable to this part.

(b) *Applicability date.* This section applies to returns filed for calendar quarters beginning on or after October 1, 2023.

§§ 47.5000D–2–47.5000D–3 [Reserved]

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2023–21586 Filed 9–27–23; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 214 and 251

RIN 0596–AD56

Special Uses; Land Use Fees; Temporary Land Use Fee Reductions for Recreation Residence Permits

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Proposed rule; request for public comment.

SUMMARY: The Forest Service (Forest Service or Agency), United States Department of Agriculture, is proposing to update its special uses regulations, consistent with the requirement in the Cabin Fee Act, to provide for suspension or temporary reduction of the land use fee for a recreation residence permit if access to, or occupancy of, the recreation residence is significantly restricted.

DATES: Comments on the proposed rule must be received in writing by December 1, 2023.

ADDRESSES: Comments, identified by RIN 0596–AD56, may be submitted via one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for sending comments.
- *Mail:* Director, Lands Staff, 201 14th Street SW, Washington, DC 20250–1124.
- *Hand Delivery:* Director, Lands, Minerals, and Geology Management Staff, 1st Floor Southeast, 201 14th Street SW, Washington, DC 20250–1124.

Comments should be confined to issues pertinent to the proposed rule; should explain the reasons for any recommended changes; and should reference the specific section and wording being addressed, where possible. All timely comments, including names and addresses when provided, will be placed in the record and will be available for public review and copying. The public may review comments at the Office of the Director, Lands, Minerals, and Geology Management Staff, Sidney R. Yates Federal Building, 1st Floor Southeast, 201 14th Street SW, Washington, DC, on business days between 8:30 a.m. and 4:00 p.m. Visitors are encouraged to call ahead at (202) 205–3563 to facilitate entry into the building. Comments may also be viewed on the Federal eRulemaking Portal at *https://www.regulations.gov*. In the search box, enter ''RIN 0596–AD56'' and click the ''Search'' button.

FOR FURTHER INFORMATION CONTACT: Brandon Smith, Lands, Minerals, and Geology Management Staff, (406) 491–1605 or *brandon.c.smith@usda.gov*. Individuals who use telecommunication devices for the hearing impaired may call the Federal Relay Service at (800) 877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Forest Service administers the use and occupancy of National Forest System lands through issuance of special use authorizations. The Forest Service administers approximately 74,000 special use authorizations, including nearly 14,000 recreation residence permits on National Forest System lands spread across 24 states and 114 national forests. Recreation residences are privately owned cabins that have been authorized on National Forest System lands since 1915. Like other types of special use authorizations, permits for recreation residences are subject to an annual land use fee, payable in advance at the beginning of the calendar year.

Need for the Proposed Rule

The Cabin Fee Act of 2014 (16 U.S.C. 6214) establishes a tiered fee structure for the use and occupancy of recreation residences on National Forest System lands. Section 2(f)(3)(A) of the Cabin Fee Act requires the Forest Service to establish criteria by which the annual land use fee for a recreation residence permit may be suspended or temporarily reduced if access to, or occupancy of, the recreation residence is significantly restricted. Section 2(f)(3)(B) of the Cabin Fee Act requires the determination of whether to suspend or temporarily reduce the annual land use fee for a recreation residence permit to be administratively appealable.

Proposed Revisions to 36 CFR Part 214

The proposed rule would amend 36 CFR 214.4(c) by adding paragraph (6) to provide for appeal of a decision of whether to temporarily reduce the annual land use fee for a recreation residence permit during significantly restricted access to, or occupancy of, the recreation residence.

Proposed Revisions to 36 CFR Part 251, Subpart B

The proposed rule would add a definition to 36 CFR 251.51 for the term ''significantly restricted access to, or occupancy of, a recreation residence,'' which would be defined as when access to, or occupancy of, a recreation residence is prohibited by law for a

period of at least 30 consecutive calendar days (a) by an order issued under 36 CFR part 261, subpart B, closing an area including the National Forest System lands occupied by the recreation residence or closing a National Forest System road providing the sole access to the recreation residence to address public health or safety concerns, such as severe risk of fire or flooding or (b) by a State or county department of transportation imposing a round-the-clock closure of a State or county road providing the sole access to a recreation residence. The objectivity and simplicity of this definition would avoid the need for a detailed factual inquiry or exercise of discretion, thereby facilitating and enhancing consistency in implementation.

The definition for ''significantly restricted access to, or occupancy of, a recreation residence'' would not include other situations where access to, or occupancy of, the recreation residence is restricted, such as situations where the recreation residence cannot be accessed or occupied because a private access road or the recreation residence has not been adequately maintained or where a private access road or the recreation residence has been destroyed or substantially damaged. The Agency believes these situations should be outside the scope of the temporary land use fee reduction, consistent with the risk of loss clause in the term special use permit for recreation residences.

The proposed rule would amend 36 CFR 251.57 by adding paragraph (j) to provide for temporarily reducing the annual land use fee for a recreation residence permit during significantly restricted access to, or occupancy of, the recreation residence. For consistency and ease of implementation, the proposed rule would provide for temporarily reducing the land use fee proportionate to the number of days of significantly restricted access to, or occupancy of, the recreation residence, rather than for suspending the land use fee after significantly restricted access to, or occupancy of, the recreation residence has reached a specified number of days. A temporary land use fee reduction would be calculated by dividing the annual land use fee for the recreation residence by 365 to determine the daily land use fee and then multiplying the daily land use fee by the number of days of significantly restricted access to, or occupancy of, the recreation residence. For ease of administration, if significantly restricted access to, or occupancy of, a recreation residence includes part of one day, that day would be counted as a whole day. A temporary land use fee reduction during significantly restricted access to, or occupancy of, a recreation residence would be applied to the annual land use fee for the recreation residence permit for the following year.

The proposed rule would have no effect on the risk of loss clause in term special use permits for recreation residences, other than by providing for temporarily reducing the annual land use fee for a recreation residence permit in accordance with the terms of the proposed rule, consistent with the Cabin Fee Act. The proposed rule would have no effect on any other type of special use or special use authorization.

Regulatory Certifications

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will determine whether a regulatory action is significant and will review significant regulatory actions. The Office of Information and Regulatory Affairs has determined that this proposed rule is not significant. Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability; to reduce uncertainty; and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Agency has developed the proposed rule consistent with Executive Order 13563.

Congressional Review Act

Pursuant to subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has designated this proposed rule as not a major rule as defined by 5 U.S.C. 804(2).

National Environmental Policy Act

The proposed rule would update the Agency's regulations consistent with the requirement in the Cabin Fee Act to provide for a suspension or temporary reduction in the land use fee for a recreation residence permit if access to, or occupancy of, the recreational residence is significantly restricted. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instructions.'' The Agency's preliminary assessment is that this proposed rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final rule.

Regulatory Flexibility Act Analysis

The Agency has considered the proposed rule under the requirements of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). The proposed rule would update the Agency's regulations consistent with the requirement in the Cabin Fee Act to provide for a suspension or temporary reduction in the land use fee for a recreation residence permit if access to, or occupancy of, the recreational residence is significantly restricted. This proposed rule would not have any direct effect on small entities as defined by the Regulatory Flexibility Act. The proposed rule would not impose recordkeeping requirements on small entities; would not affect their competitive position in relation to large entities; and would not affect their cash flow, liquidity, or ability to remain in the market. Therefore, the Forest Service has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

Federalism

The Agency has considered the proposed rule under the requirements of Executive Order 13132, *Federalism.* The Agency has determined that the proposed rule conforms with the federalism principles set out in this executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has concluded that the proposed rule does not have federalism implications.

Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments,* requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that 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. The proposed rule would update the Agency's regulations consistent with the requirement in the Cabin Fee Act to provide for a suspension or temporary reduction in the land use fee for a recreation residence permit if access to, or occupancy of, the recreational residence is significantly restricted. The Agency has reviewed this proposed rule in accordance with the requirements of Executive Order 13175 and has determined that this proposed rule would not have substantial direct effects on 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. Therefore, consultation and coordination with Indian Tribal governments is not required for this proposed rule.

Environmental Justice

The Agency has considered the proposed rule under the requirements of Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.* The Forest Service has determined that the proposed rule is not expected to result in disproportionately high and adverse impacts on minority or low-income populations or the exclusion of minority and low-income populations from meaningful involvement in decision-making.

No Takings Implications

The Agency has analyzed the proposed rule in accordance with the principles and criteria in Executive Order 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights.* The Agency has determined that the proposed rule would not pose the risk of a taking of private property.

Energy Effects

The Agency has reviewed the proposed rule under Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.* The Agency has determined that the proposed rule would not constitute a significant energy action as defined in Executive Order 13211.

Civil Justice Reform

The Forest Service has analyzed the proposed rule in accordance with the principles and criteria in Executive Order 12988, *Civil Justice Reform.* After adoption of the proposed rule, (1) all State and local laws and regulations that conflict with the proposed rule or that impede its full implementation would be preempted; (2) no retroactive effect would be given to the proposed rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Agency has assessed the effects of the proposed rule on State, local, and Tribal governments and the private sector. The proposed rule would not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Controlling Paperwork Burdens on the Public

The proposed rule does not contain recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects

36 CFR Part 214

Administrative practice and procedure, National forests.

36 CFR Part 251

Administrative practice and procedure, Alaska, Electric power, Mineral resources, National forests, Public lands—rights-of-way, Reporting and recordkeeping requirements, Water resources.

Therefore, for the reasons set forth in the preamble, the Forest Service proposes to amend chapter II of title 36 of the Code of Federal Regulations as follows:

PART 214—POSTDECISIONAL ADMINISTRATIVE REVIEW PROCESS FOR OCCUPANCY OR USE OF NATIONAL FOREST SYSTEM LANDS AND RESOURCES

■ 1. The authority citation for part 214 continues to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 472, 551.

■ 2. Amend § 214.4 by adding paragraph (c)(6) to read as follows:

§ 214.4 Decisions that are appealable.

* * * * *

(c) * * *

* * * * *

(6) A decision of whether to temporarily reduce the annual land use fee for a recreation residence permit during a period of significantly restricted access to, or occupancy of, the recreation residence.

* * * * *

PART 251—LAND USES

Subpart B—Special Uses

■ 3. The authority citation for part 251, subpart B, continues to read as follows:

Authority: 16 U.S.C. 460*l*–6a, 460*l*–6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1772.

■ 4. Amend § 251.51 by adding in alphabetical order a definition for ''significantly restricted access to, or occupancy of, a recreation residence'' to read as follows:

§ 251.51 Definitions.

* * * * *

Significantly restricted access to, or occupancy of, a recreation residence—When access to, or occupancy of, a recreation residence is prohibited by law for a period of at least 30 consecutive calendar days (a) by an order issued under 36 CFR part 261, subpart B, closing an area including the National Forest System lands occupied by the recreation residence or closing a National Forest System road providing the sole access to the recreation residence to address public health or safety concerns, such as severe risk of fire or flooding or (b) by a State or county department of transportation imposing a round-the-clock closure of a State or county road providing the sole access to a recreation residence.

* * * * *

■ 5. Amend § 251.57 by revising the title and adding paragraph (j) to read as follows:

§ 251.57 Land use fees.

* * * * *

(j) The annual land use fee for a recreation residence permit shall be temporarily reduced during periods of significantly restricted access to, or occupancy of, the recreation residence. A temporary land use fee reduction for significantly restricted access to, or occupancy of, a recreation residence shall be calculated by dividing the annual land use fee for the recreation residence permit by 365 to determine

the daily land use fee and then multiplying the daily land use fee by the number of days of significantly restricted access to, or occupancy of, the recreation residence. If significantly restricted access to, or occupancy of, the recreation residence includes part of one day, that day shall be counted as a whole day. A temporary land use fee reduction during significantly restricted access to, or occupancy of, a recreation residence shall be applied as a credit to the annual land use fee for the recreation residence permit for the following year.

Homer Wilkes,

Under Secretary, Natural Resources and Environment.

[FR Doc. 2023–21564 Filed 9–29–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Ch. I

[Docket ID FEMA–2023–0026]

RIN 1660–AB12

FEMA Proposed Policy: Federal Flood Risk Management Standard (FFRMS)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on the proposed FEMA policy, *Federal Flood Risk Management Standard (FFRMS).* This proposed policy would provide detail, consistent with applicable regulations, on applicability, processes, resources, and responsibilities for implementing the FFRMS as part of FEMA's 8-step decision making process for carrying out the directives of Executive Order 11988, Floodplain Management, as amended.

DATES: Comments must be received by December 1, 2023.

ADDRESSES: You may submit comments, identified by Docket ID: FEMA–2023–0026, via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Portia Ross, Policy and Integration Division Director, Office of Environmental Planning and Historic Preservation, Resilience, DHS/FEMA, 400 C St. SW, Suite 313, Washington, DC 20472–3020. Phone: (202) 709–0677; Email: *fema-regulations@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: FEMA is proposing to issue a policy complementary to 44 CFR part 9, Floodplain Management and Protection of Wetlands, which governs FEMA's implementation the Federal Flood Risk Management Standard (FFRMS). This policy would facilitate implementation of FFRMS and bolster the resilience of communities and Federal assets against the impacts of flooding.

Consistent with a proposed rule that is published elsewhere in this issue of the **Federal Register**, this proposed policy would require that FEMA determine the appropriate vertical flood elevation and corresponding horizontal FFRMS floodplain for Actions Subject to the FFRMS using either the Climate Informed Science Approach (CISA), the Freeboard Value Approach (FVA), or the 0.2 Percent Annual Chance Flood Approach (0.2PFA). Under the proposed policy, FEMA would determine the FFRMS flood elevation and corresponding FFRMS floodplain according to CISA for all locations where CISA is available where the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science exist. When using CISA, for non-critical actions the FFRMS floodplain would be at least as restrictive as the 1% annual chance (AC) flood elevation and corresponding horizontal floodplain, and for critical actions the FFRMS floodplain would be at least as restrictive as the 0.2% AC flood elevation and corresponding horizontal floodplain. For locations where CISA is not available and actionable, FEMA would determine the FFRMS elevation and FFRMS floodplain for non-critical actions by using the area that would be inundated by the lower of the 0.2% AC flood or +2-foot FVA. For critical actions, FEMA would determine the FFRMS elevation and FFRMS floodplain using the area that would be inundated by the higher of the 0.2% AC flood or +3-foot FVA. (For locations where information about the elevation and/or extent of the 0.2% AC floodplain is not available, the FFRMS floodplain would be the +3-foot FVA for critical actions and +2-foot FVA for non-critical actions).

This policy would also outline FEMA's process to identify actions that may receive substantial damage or substantial improvement determinations, require consideration of natural features and nature-based approaches as alternatives to a proposed action, explain requirements to minimize flood risk, and encourage early coordination when multiple Federal agencies are jointly engaged in an action to ensure a consistent approach to determine which floodplain determination is applied.

Authority: Executive Order 11988, Floodplain Management, as amended and implementing regulations of 44 CFR part 9, among other authorities listed in the proposed policy.

Deanne B. Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–21093 Filed 9–29–23; 8:45 am]

BILLING CODE 9111–66–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 205, 260, 261, and 263

RIN 0970–AC97

Strengthening Temporary Assistance for Needy Families (TANF) as a Safety Net and Work Program

AGENCY: Office of Family Assistance (OFA); Administration for Children and Families (ACF); Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: ACF proposes to amend the Temporary Assistance for Needy Families (TANF) program regulations to strengthen the safety net and reduce administrative burden. This NPRM encompasses a package of reforms to ensure TANF programs are designed and funds are used in accordance with the statute. In addition, the package includes provisions that are more technical in nature and are designed to reduce administrative burden and increase program effectiveness.

DATES: In order to be considered, the Department must receive written comments on this NPRM on or before December 1, 2023.

ADDRESSES: ACF encourages the public to submit comments electronically to ensure they are received in a timely manner. You may submit comments, identified by [docket number] and/or Regulatory Information Number (RIN) 0970–AC99, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email comments to: TANFquestions@acf.hhs.gov.*

• *Instructions:* All submissions received must include the agency name and docket number ([docket number]) or RIN (0970–AC79) for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov, including any personal information provided.*

FOR FURTHER INFORMATION CONTACT: The Office of Family Assistance, ACF, at *TANFquestions@acf.hhs.gov or 202–401–9275.* Deaf and hard of hearing individuals may call 202–401–9275 through their chosen relay service or 711 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

List of Proposals

This NPRM would: (1) establish a ceiling on the term ''needy''; (2) clarify when an expenditure is ''reasonably calculated to accomplish a TANF purpose''; (3) exclude as an allowable TANF maintenance-of-effort (MOE) expenditures cash donations from non-governmental third parties and the value of third-party in-kind contributions; (4) ensure that excused holidays match the number of federal holidays, following the recognition of Juneteenth as a federal holiday; (5) develop new criteria to allow states to use alternative Income and Eligibility Verification System (IEVS) measures; (6) clarify the ''significant progress'' criteria following a work participation rate corrective compliance plan; (7) clarify the existing regulatory text about the allowability of costs associated with disseminating program information.

Background

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 created TANF, repealing the Aid to Families with Dependent Children (AFDC) and related programs. The TANF program provides a fixed block grant of about $16.5 billion to states, territories (Guam, the Virgin Islands, and Puerto Rico), and the District of Columbia. Additionally, federally recognized American Indian tribes and Alaska Native organizations may elect to operate their own TANF programs.[1] TANF's annual funding has never been adjusted for inflation in its 27-year history and is now worth almost 50 percent less than when the program was created.

The TANF statute at 42 U.S.C. 601(a) and 604(a)(1) provides that TANF grants must be used in any manner reasonably calculated to accomplish one or more of the following four purposes:

(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(4) encourage the formation and maintenance of two-parent families.

Within this statutory framework, state TANF programs provide a range of benefits and services that can serve as a critical support to families experiencing economic hardships, including the provision of cash assistance, employment and training assistance, and related services. Pursuant to 42 U.S.C. 604(a)(2), a state may also use its TANF grant for expenditures that were authorized under the prior AFDC, Job Opportunities and Basic Skills Training (JOBS), or Emergency Assistance (EA) programs as reflected in a state's plan on certain dates specified in the statute.

To avoid incurring a penalty under 42 U.S.C. 609(a)(7), a state must meet a MOE requirement each fiscal year, that is, expenditure of state funds in TANF or a separate state program for certain benefits and services. As established in 42 U.S.C. 609(a)(7), each state must expend funds that meet a TANF purpose for eligible families in an amount equal to at least 80 percent of state spending in FY 1994 for AFDC programs related to cash assistance, emergency assistance, job training, and child care. This required amount falls to 75 percent if the state meets its TANF work participation requirement for the fiscal year.

Work participation rates measure the degree to which a state engages families receiving assistance funded by TANF or MOE in work activities specified under federal law. A state faces financial penalty for a fiscal year if it does not meet both an overall work participation rate of 50 percent and a two-parent work participation rate of 90 percent in each case, minus any caseload reduction credit. 42 U.S.C. 609(a)(3). A state's caseload reduction credit for a fiscal year equals the percentage point decline (for reasons other than changes in eligibility rules) in its average monthly caseload between FY 2005 (the current base year) and a comparison year. The Fiscal Responsibility Act of 2023 recalibrates the base year for caseload reduction from FY 2005 to FY 2015, starting in FY 2026. In addition, the ''excess MOE'' provision in TANF regulations allows a state to increase its caseload reduction credit, and thus lower its work participation rate target further, by spending more MOE funds than is required.

While states must adhere to the work participation rate and other federal requirements, such as a 60-month lifetime limit on an adult receiving federally funded assistance, states otherwise have flexibility in designing their TANF programs. Each state decides on the type and amount of assistance payments, the range of other services to be provided, and the rules for determining who is eligible for benefits within certain federal statutory parameters.

Statutory Authority

This proposed regulation is issued under Title IV of the Social Security Act, 42 U.S.C. 601 *et seq.* As explained in the preamble to the 1999 TANF final rule, the Secretary of Health and Human Services has authority to regulate in areas where the statute specifies and where Congress has charged the Department of Health and Human Services (HHS or the Department) with enforcing penalties. 64 FR 17725, April 12,1999.

Note that here and below we use the term ''we'' in the regulatory text and preamble. The term ''we'' is synonymous with the Secretary of the Department of Health and Human Services or any of the following individuals or agencies acting on his behalf: the Assistant Secretary for Children and Families, the Department, and the Administration for Children and Families.

The first two proposals, both related to allowable spending, would clarify the criteria the Department will use when applying the misuse of funds penalty in 42 U.S.C. 609(a)(1). These proposals would help ensure that states expend TANF funds in accordance with the provisions of Title IV–A. The statute at 42 U.S.C. 609(a)(1) requires the Department to assess a misuse of funds penalty when TANF funds have ''been used in violation of this part.'' As noted in the 1999 preamble, we have an obligation to set out, in regulations, the criteria we will use in carrying out our express authority to enforce certain TANF provisions by assessing penalties in cases where TANF funds were spent

[1] Proposed changes to the TANF regulations are limited to the state regulations at this time. This NPRM does not propose any changes to the tribal TANF regulations. Prior to any changes in tribal TANF regulations, we will engage in tribal consultation.

for unallowable activities. 64 FR 17725, April 12,1999. Essentially, we have the authority and the responsibility to provide notice to grantees of when an expenditure constitutes a misuse of funds made in violation of Title IV–A. We note that this rulemaking is consistent with 42 U.S.C. 617 which provides, in relevant part, that the Department may regulate ''where expressly provided in this part.''

In the preamble to the original TANF final rule (64 FR 17720 *et seq.,* April 12, 1999), we indicated that we would regulate in a manner that did not impinge on a state's ability to design an effective and responsive program. At the same time, we expressed our commitment to ensuring that states are accountable for meeting TANF requirements and indicated that we would gather information on how states were responding to the added flexibility under TANF. We stated that we would consider proposing appropriate legislative or regulatory remedies if we found that states were using their flexibility to avoid TANF requirements or otherwise undermine the statutory goals of the program. A review of state spending patterns suggests that it is the appropriate time to regulate in relation to allowable spending to ensure that the statutory goals of the program are being met.

Under the law, a state participating in TANF must describe in its state plan how it will conduct a TANF program ''that provides assistance to needy families with (or expecting) children and provides parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient.'' 42 U.S.C. 602(a)(1)(A)(i). More than 27 years after the establishment of TANF, state programs have shifted away from a focus on direct cash and employment assistance. Although states are permitted under the statute to determine how much funding to expend on cash assistance, we remind states that there is a large body of research that shows that cash assistance is a critically important tool for reducing family and child poverty.[2] Studies have found that when families receive TANF and are more financially secure, they are less likely to be involved in the child welfare system.[3] In FY 2021, combined federal TANF and MOE expenditures and transfers totaled $30.3 billion. Despite the evidence that cash assistance reduces child and family poverty, of that amount, less than 23 percent was used for cash assistance, compared to 71 percent in FY 1997. In 2020, for every 100 families in poverty, only 21 received cash assistance from TANF, a reduction from 68 families when TANF was enacted in 1996.[4] In 2019, TANF cash assistance served just 21.3 percent of eligible families across the country, compared to 1997 when TANF cash assistance served almost 70 percent of estimated eligible families.[5]

States are also underinvesting in work, education, and training for parents with low incomes as well as critical work supports. We remind states that TANF funds directed to child care can serve as an essential work support to families that helps lift these families out of poverty, expose children to high-quality services during a rapid period of development, and reduce incidences of involvement in the child welfare system.[6]

The TANF statute provides that states can transfer up to 30 percent of their federal TANF block grant funds to the Child Care and Development Fund (CCDF), and they can also spend their federal TANF funds and MOE funds directly on child care. In FY 2021, states transferred approximately $1.16 billion to CCDF. Additionally, states spent $3.75 billion of TANF and MOE funds directly on child care, but approximately half of states chose not to transfer any TANF funds to CCDF. TANF funds transferred to CCDF are subject to CCDF rules—including health and safety requirements. TANF funds transferred to CCDF are also subject to reporting requirements that illustrate the impact of child care funding and allow the public greater visibility into the average subsidy that a family receives, the number of children served, and whether states are reaching particularly vulnerable populations of children, including children with disabilities. A state's expenditure on child care is meaningful as it addresses a cost that is particularly high for needy families. As illustrated by recent research from the President's Council of Economic Advisers, child care costs represent 23 percent of annual expenses for families earning less than $34,000, and 31 percent of annual expenses for families earning under $25,000.[7] However, when states use TANF and MOE funds directly on child care it allows for a substantial amount of federal funding to be spent on child care without any requirement that the children receiving services are in settings that meet basic health or safety standards, potentially putting children at risk. It is also unclear how many children are served with these funds, or where they are served. To the extent that states interested in expending TANF funds on child care did so through transfers to CCDF, it would yield benefits to families that receive higher quality care and improve public awareness of how those funds are spent. The President's Executive Order on Increasing Access to High-Quality Care and Supporting Caregivers encourages the use of TANF funds for high-quality child care as a critical work support for needy families.[8]

Instead of a focus on cash assistance, work, and critical work supports like child care, states are spending TANF and MOE funds on a wide range of benefits and services, including some with tenuous connections to a TANF purpose and, in some instances, providing supports for families with incomes up to 400 percent of the federal poverty guidelines.

To ensure states are spending their funds in accordance with the purposes of TANF, the Department is proposing two changes to clarify allowable expenditures. The first proposed change would establish a federal limit on how states may define the term ''needy'' and the second seeks to clarify how the term ''reasonably calculated to accomplish a TANF purpose'' applies. These changes would also establish criteria for assessing what is and is not an allowable use of funds, and therefore, are within the Department's regulatory authority to enforce the misuse of funds penalty provision at 42 U.S.C. 609(a)(1).

The Department is introducing a third proposed change that would exclude as

[2] D. Thomson, R. Ryberg, K. Harper, J. Fuller, K. Paschall, J. Franklin, & L. Guzman, (2022). Lessons From a Historic Decline in Child Poverty. Child Trends; M.A. Curran, (2022). Research Roundup of the Expanded Child Tax Credit: One Year On. In Poverty and Social Policy Report (Vol. 6, Issue 9).

[3] D.A. Weiner, C. Anderson, & K. Thomas. (2021). *System transformation to support child and family well-being: The central role of economic and concrete supports.* Chicago, IL: Chapin Hall at the University of Chicago.

[4] Aditi Shrivastava and Gina Azito Thompson, ''TANF Cash Assistance Should Reach Millions More Families to Lessen Hardship,'' Center on Budget and Policy Priorities, February 18, 2022, available at: *https://www.cbpp.org/research/income-security/tanf-cash-assistance-should-reach-millions-more-families-to-lessen.*

[5] U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Welfare Indicators and Risk Factors, 21st Report to Congress,* April 26, 2022, p. A–12, available at: *https://aspe.hhs.gov/sites/default/files/documents/08b81f08f8a96ec7ad7e76554a28efd1/welfare-indicators-rtc.pdf.*

[6] *childtrends.org/publications/alignment-between-early-childhood-and-child-welfare-systems-benefits-children-and-families.*

[7] *https://www.whitehouse.gov/cea/written-materials/2023/07/18/improving-access-affordability-and-quality-in-the-early-care-and-education-ece-market/.*

[8] *https://www.federalregister.gov/documents/2023/04/21/2023-08659/increasing-access-to-high-quality-care-and-supporting-caregivers.*

allowable TANF MOE expenditures cash donations from non-governmental third parties and the value of third-party in-kind contributions under TANF. The Department has authority to regulate what counts as MOE, consistent with the statutory framework, in order to enforce the MOE penalty at 42 U.S.C. 609(a)(7) and to determine how MOE expenditures factor into the caseload reduction credit pursuant to 42 U.S.C. 607(b)(3)(A). This proposed change would ensure that states themselves are investing in TANF programs and maintaining their own financial commitment to needy families, as intended by Congress, all while maintaining state flexibility.

The fourth proposed change would add an eleventh holiday to the number of holidays that can count toward the work participation rate for work-eligible individuals in unpaid work activities, realigning the provision with the federal holidays since the recognition of Juneteenth as a federal holiday.

The last three proposals would reduce administrative burden, provide clarity, and increase program effectiveness in the TANF program. In the fifth proposal, the Department seeks to develop new criteria to allow states to use alternative Income and Eligibility Verification System (IEVS) measures. Section 1137(a)(2) of the Social Security Act allows for the Department to regulate with respect to the need for alternative verification sources in certain circumstances; this proposal would amend the existing regulation at 45 CFR 205.55(d).

The sixth proposed change would clarify the ''significant progress'' criteria following a work participation rate corrective compliance plan to permit a reduction in the amount of a penalty if a state that had failed both the overall and two-parent work participation rates for a year corrected its overall rate but not the two-parent rate. This proposal falls under the Department's authority to regulate where the Department is charged with enforcing certain TANF provisions (42 U.S.C. 609(a)(3)), and thus fits within the statutory authority granted to the Secretary to regulate state conduct in the TANF program.

The seventh proposed change would clarify existing regulatory text about the allowability of costs associated with providing program information. The regulation at 45 CFR 263.0 (b)(1)(i) currently provides that ''providing program information to clients'' is a program cost and not an administrative cost. We propose to delete that language from (b)(1)(i) and create a new subsection (iii) that clarifies the point that administrative costs exclude the costs of disseminating program information. For example, the cost of providing information pamphlets or brochures about how to reduce out-of-wedlock pregnancies is allowable under purpose three, and the cost of providing information about community resources to needy families or needy parents, pursuant to purposes one and two, respectively, is allowable, whether or not the described community resources themselves are funded by TANF.

The TANF statute sets an administrative cap of 15 percent. 42 U.S.C. 604(b). It provides that a ''State to which a grant is made under section 403 shall not expend more than 15 percent of the grant for administrative purposes.'' 42 U.S.C. 604(b). Section 263.0 implements the cap by making clear which categories of expenditures are program costs that do not count towards the cap, and which qualify as administrative costs and thus count towards the cap. Failure to comply with the administrative cap could lead to a misuse of funds penalty, therefore this proposal falls under the Department's authority to regulate where the Department is charged with enforcing certain TANF provisions (42 U.S.C. 609(a)(3)), and thus fits within the statutory authority granted to the Secretary to regulate state conduct in the TANF program.

Taken together, the seven proposed changes would strengthen TANF's safety net function, ease administrative burdens, and ultimately, improve TANF's ability to serve as a critical support to families experiencing economic hardship to achieve economic mobility.

Section-by-Section Discussion of the Proposed Regulatory Provisions

1. *Establish a ceiling on the term ''needy'' so that it may not exceed a family income of 200 percent of the federal poverty guidelines.*

We propose that, for purposes of allowable TANF expenditures and misuse of funds penalties, state definitions of ''needy'' may not exceed 200 percent of the federal poverty guidelines, *i.e.,* for example, an annual income of $49,720 for a family of three in the 48 contiguous states and the District of Columbia using the federal poverty guidelines for 2023.[9] The federal poverty guidelines are often used for administrative purposes in federal programs and are issued each year in the **Federal Register** by HHS under the authority of 42 U.S.C. 9902(2) (See 74 FR 3424, January 19, 2023). We propose this provision to help ensure that TANF funds are being used to provide services to families that are in fact needy, as contemplated by the TANF statute. Census data from 2021 indicate that 35.0 percent of children, or 25.5 million children, live at or below 200 percent of poverty in the United States.[10]

The TANF statute at 42 U.S.C. 601(a)(1) & (2) specifies that expenditures under TANF purpose one may only be made for ''needy'' families and TANF purpose two may only be made for ''needy'' parents. Generally, MOE must also be spent for ''needy families.'' Accordingly, the term ''needy'' is crucial in determining allowable TANF expenditures under the first two purposes of TANF and expenditures countable toward state MOE requirements. Current regulations do not define the term ''needy'', which means there is presently no federally specified income limit for use of TANF funds under TANF purposes one and two as well as for most MOE expenditures.

This proposed rule would amend § 260.30 to add a definition of ''needy.'' This change would require that state definitions of ''needy'' with respect to all federal TANF and state MOE expenditures that are subject to a required needs standard must be limited to individuals in families with incomes at or below 200 percent of the federal poverty guidelines.[11] A state may use a definition of needy that is at any level at or below 200 percent of the federal poverty guidelines, but a state definition of ''needy'' could not exceed 200 percent of the federal poverty guidelines under this proposed change. The state may continue to establish different standards of need for different services limited to ''needy'' families, but all must

[9] Readers should note the difference between the federal poverty guidelines produced by HHS and the poverty thresholds produced by the Census Bureau. In this NPRM, we use ''the federal poverty guidelines'' which is the version of the federal poverty measure issued each year in the **Federal Register** by HHS under the authority of 42 U.S.C. 9902(2). The federal poverty guidelines are a simplification of the poverty thresholds. The poverty thresholds are issued by the Census Bureau and used mainly for statistical purposes. The federal poverty guidelines are often used for administrative purposes in federal programs, although they are most commonly referred to as ''federal poverty level,'' ''federal poverty line,'' or ''FPL.'' See *https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines* for more detail on the federal poverty guidelines.

[10] Census Bureau poverty estimates are based on the federal poverty thresholds, published by the Census Bureau each year. The Census Bureau poverty thresholds are mainly used for statistical purposes and are a different measure than the federal poverty guidelines.

[11] See *https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines* for more detail on the federal poverty guidelines.

be at or below the 200 percent of the federal poverty guidelines. While the Department does not have the authority to regulate for a minimum standard, we encourage states to set guidelines that do not limit the breadth of eligibility within the proposed 200 percent of federal poverty guidelines. The proposed change would not impact the need for income verification and therefore the Department does not expect it to create significant additional administrative burden. The Department solicits comment on strategies for minimizing administrative burdens in the implementation of this proposed ceiling on the term ''needy.''

We believe that limiting the definition of need to 200 percent of the federal poverty guidelines is consistent with the intent of Congress in establishing TANF. We are mindful that, in TANF, Congress sought to provide increased state flexibility in relation to the prior AFDC program. At the time that TANF was enacted in 1996, the median gross income limit for a family of three in the AFDC Program was $1,079—about equal to 100 percent of the federal poverty guidelines in 1996.[12] Only two states had a gross income limit exceeding 200 percent of the federal poverty guidelines and the great majority of state standards of need were below 150 percent of the federal poverty guidelines. The actual median benefit amount for a family of three with no other countable income was also $389 (36 percent of the federal poverty guidelines).[13] Accordingly, setting a definition of ''needy'' at 200 percent of the federal poverty guidelines sets a reasonable boundary, but still allows for state flexibility far in excess of state practices in the former AFDC program.

The Department notes that the proposed 200-percent limit is consistent with the statutory requirement that TANF funds transferred to the Social Services Block Grant ''shall be used only for children or their families whose income is less than 200 percent of the income official poverty line. . . .'' 42 U.S.C. 604(d)(3)(B). Congress did not set a similar limit on TANF funds not transferred to the Social Services Block Grant; however, the Department notes that the statute referenced ''needy families'' and, at the time TANF was enacted, as noted above, AFDC standards of need in states were much lower than 200 percent of poverty. States would have the flexibility to set standards lower than 200 percent under this proposal and could also choose to set a standard based on a percentage of state median income, as long as the limit corresponded with an amount that was at or below the 200-percent of the federal poverty guidelines standard.

There is currently no regulatory definition of ''needy'' because rather than defining the term ''needy'', the 1999 TANF final rule deferred to state reasonable definitions of the term. This approach centered on state flexibility. The drafters also acknowledged the possibility that we might revisit that decision if we identified situations in which state actions undermined the goals of the program. 64 FR 17725–26, April 12, 1999. Over the last 25 years, all states have maintained initial eligibility income limits for cash assistance below 200 percent of the federal poverty guidelines; however, we have observed that some states have used the flexibility to allow higher-income families to be eligible for programs where a needs standard is required, going beyond the bounds of a reasonable definition of ''needy''.

Many states have used TANF or MOE funds for services other than cash assistance under purpose one and two for families at 300 or 400 percent of the federal poverty guidelines, or even higher. In at least 40 states, ACF identified programs with income limits of over 200 percent of the federal poverty guidelines. There were several different types of programs, including pre-kindergarten, child welfare, tax credits, employment, housing, and emergency assistance. Examples include child welfare services for families up to 500 percent of the federal poverty guidelines and pre-kindergarten for families at 300 percent of the federal poverty guidelines. All these services are generally allowable uses of TANF and MOE funds under purposes one and two; our concern is not the services for which the funds are used, but rather that TANF funds are being expended for programs that are not targeted to needy families as intended by Congress. It is important to understand that an income limit as high as 400 percent of the federal poverty guidelines allows TANF-funded services under TANF purposes one and two to go to families earning roughly $92,000 per year for a family of three. We recognize that families within 400 percent of the federal poverty guidelines may also face hardship, and that programs that offer this support are important investments in child well-being. However, the Department is proposing a ceiling on the term ''needy'' to ensure that TANF funds are expended in accordance with the statutory requirements and to maintain program integrity.

Given the state spending described above, we are proposing this rule because we think states are going beyond the bounds of a reasonable definition of ''needy.'' This proposal would provide clarity on how the Department would assess when an expenditure warranted a misuse of funds penalty, 42 U.S.C. 609(a)(1), because states have expended funds on individuals or families that are not needy within a reasonable definition of the statutory term. As the Department concluded in the 1999 TANF final rule, the Secretary has authority to regulate in areas where the statute specifies and where Congress has charged the Department with enforcing penalties, 64 FR 17725, April 12, 1999.

The preamble to the regulations explained how the Department interpreted its authority and constraints on its authority under 42 U.S.C. 617:

> Under the new section 417 of the Act, the Federal government may not regulate State conduct or enforce any TANF provision except to the extent expressly provided by law. This limitation on Federal authority is consistent with the principle of State flexibility and the general State and congressional interest in shifting more responsibility for program policy and procedures to the States. We interpreted this provision to allow us to regulate in two different kinds of situations: (1) Where Congress has explicitly directed the Secretary to regulate (for example, under the caseload reduction provisions, described below); and (2) where Congress has charged the Department of Health and Human Services (HHS) with enforcing penalties, even if there is no explicit mention of regulation. In this latter case, we believe we have an obligation to States to set out, in regulations, the criteria we will use in carrying out our express authority to enforce certain TANF provisions by assessing penalties.

64 FR 17720, 17725, April 12, 1999.

As noted earlier, this proposed rule is in line with the limitation in 42 U.S.C. 617, because we believe we have an obligation to set out, in regulations, the criteria we will use in carrying out our misuse of funds penalty authority when TANF funds ''have been used in violation of this part,'' meaning where TANF funds are spent for unallowable activities. *Id.*

The Department considered alternatives to this proposal, including determining a standard of need that varies according to the state's cost of living, or an index of the average state median income, as well as other possible limits on the term ''needy'', such as limiting the term to families below 130 percent of the federal poverty guidelines. As previously noted, we are

[12] The AFDC gross income limit equaled 185 percent of a state's standard of need.

[13] See table 8–12 of the 1996 Green Book *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//155481/08tanf.txt.*

mindful that, in TANF, Congress sought to provide increased state flexibility in relation to the prior AFDC program, where the median gross income limit was about equal to 100 percent of the federal poverty guidelines at that time. Additionally, we noted that a limit at 200 percent of the federal poverty guidelines limit is consistent with the statutory requirement regarding TANF funds transferred to the Social Services Block Grant. Research has shown that parents with incomes below 200 percent of the federal poverty guidelines are more than twice as likely as higher income parents to report at least one form of material hardship, such as those related to housing, food, or medical needs.[14] We welcome comments on the proposed limit of 200 percent of the federal poverty guidelines, which aligns with this research.

2. *Determining when an expenditure is ''reasonably calculated to accomplish a TANF purpose''.*

This proposed rule would amend 45 CFR 263.11 to add a new subsection (c) that sets forth the reasonable person standard for assessing whether an expenditure is ''reasonably calculated to accomplish the purpose of this part'' 42 U.S.C. 604(a)(1). The proposed regulation defines it to mean expenditures that a reasonable person would consider to be within one or more of the enumerated four purposes of the TANF program.

Section 604(a) provides the general rules for how TANF grant funds are expended. Entitled ''Use of grants,'' it provides in subsection (a)(1) that ''[s]ubject to this part,'' a state may use the grant ''in any manner that is reasonably calculated to accomplish the purpose of this part, including to provide low income households with assistance in meeting home heating and cooling costs . . .''. Section 601(a), entitled ''Purpose'' provides that ''[t]he purpose of this part is to increase the flexibility of States in operating a program designed to'' accomplish one or more of the four enumerated statutory purposes: (1) provide assistance to needy families so that children may be cared for in their homes or in the homes of relatives; (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and (4) encourage the formation and maintenance of two-parent families. This regulation proposes a standard the Department will apply in determining whether it considers an expenditure to be ''reasonably calculated to accomplish the purpose of this part.''

This proposal sets forth the standard the Department will apply to determine whether expenditures are not reasonably calculated under section 604(a)(1) and thus warrant a penalty under the misuse of funds penalty authority in section 609(a)(1). As the Department explained in promulgating the 1999 TANF final rule, the Secretary has authority to regulate in areas where the statute specifies and where Congress has charged the Department with enforcing penalties.

In the original TANF final rule (64 FR 17720, April 12, 1999), the Department did not regulate in relation to section 604(a)(1). As we noted then, we ''endeavored to regulate in a manner that does not impinge on a State's ability to design an effective and responsive program.'' *Id.* at 17725. We noted that, in the absence of regulation, we would defer to a state's reasonable interpretation of statutory provisions:

> To the extent that we have not addressed a provision in this final regulation, States may expend their Federal TANF funds under their own reasonable interpretations of the statutory language, and that is the standard that will apply in determining penalty liability.

64 FR 17841, April 12, 1999.

At the same time, the 1999 final rule preamble pointed to instances in which the Department had concluded that certain expenditures could not be reasonably calculated to accomplish the purpose of TANF. At the time the Department issued the regulations, there was particular interest in and concern about the possible use of TANF for foster care maintenance, other out-of-home costs, and use of TANF for juvenile justice expenditures. We expressed in the 1999 final rule preamble that, while certain costs might be permissible under TANF's grandfather clause, such costs are not otherwise allowable under TANF:

> With regard to foster care or other out-of-home maintenance payments, we would note that such costs are not allowable TANF costs under section 404(a)(1) of the Act since they are not reasonably calculated to further a TANF purpose . . .
>
> There are additional costs related to foster care or out-of-home maintenance payments that may be allowable and referred to, in short-hand, as foster care. For example, there are costs for family preservation activities, such as counseling, home visits, and parenting training, that would be allowable TANF costs because they are reasonably calculated to enable a child to be cared for in his or her own home.

64 FR 17762, April 12, 1999.

Subsequently, the preamble explained:

> However, expenditures for residential care as well as assessment or rehabilitative services, including services provided to children in the juvenile justice system, do not meet any of the purposes of the TANF program and would not count toward basic MOE. The principal purpose [] for placement is to protect the child or to protect society because of the child's behavior, not to care for the child in his or her own home (purpose 1). Since the focus is to address the child's needs, expenditures to care for the child in these living situations does not end the dependence of needy parents on government benefits by promoting job preparation, work and marriage (purpose 2). The remaining two purposes do not even remotely relate to this situation.

64 FR 17823, April 12, 1999.

In 2015, the Department reminded states that, ''[a]ny federal TANF expenditures for juvenile justice services . . . will be considered a misuse of TANF funds and subject to penalty action.'' [15] While we noted in the 1999 final rule preamble that states have flexibility to design their TANF programs, we also expressed our commitment to ensuring that states were accountable for meeting TANF requirements and indicated that we would gather information on how states were responding to the added flexibility under TANF, 64 FR 17725, April 12, 1999. We wrote that ''we reserved the right to revisit some issues, either through legislative or regulatory proposals, if we identified situations where State actions were not furthering the objectives of the Act'', *Id.* As discussed in detail below, a review of state spending patterns suggests that it is the appropriate time to regulate allowable spending to ensure that states are expending critical TANF funds on expenditures that are reasonably calculated to accomplish one or more of the TANF purposes.

As noted earlier, we believe this rulemaking is in line with the limitation in 42 U.S.C. 617 because the Department has authority and the obligation to assess misuse of funds penalties. Accordingly, we believe we have an obligation to set out, in regulations, the standard we will use in carrying out our misuse of funds penalty authority when TANF funds ''have been used in violation of this part'', meaning where TANF expenditures are not

[14] Michael Karpman, Dulce Gonzalez, Stephen Zuckerman, and Gina Adams, *What Explains the Widespread Material Hardship among Low-Income Families with Children?* Urban Institute, December 2018.

[15] *https://www.acf.hhs.gov/ofa/policy-guidance/tanf-acf-pi-2015-02-prohibition-use-federal-tanf-and-state-moe-funds-juvenile.*

reasonably calculated to meet one or more of the TANF purposes, *Id.* We also view this proposal as providing notice to states of how we intend to interpret the reasonably calculated provision and are not articulating a standard beyond that provided for in the statute.

We are mindful that the TANF statute sought to ''increase the flexibility of states. . .'' and we believe the proposed approach below is fully consistent with the statute. 42 U.S.C. 601(a) (2023). In enacting TANF, Congress was not seeking to and did not provide states with unlimited flexibility, but rather sought to increase the flexibility of states in relation to the program that TANF replaced, the AFDC Program. In the AFDC program, there were detailed and complex federal eligibility rules,[16] highly specific definitions of countable income and specified exclusions and disregards,[17] a detailed federal definition of countable resources,[18] detailed federal rules governing the sanction process,[19] and detailed rules governing multiple other aspects of program operations.[20] In the years prior to TANF enactment, states had repeatedly sought federal waivers in relation to these rules and could only attain waivers subject to very specific requirements.[21] TANF was intended to increase state flexibility in relation to this AFDC baseline; however, increased flexibility must still accord with the statutory requirements.[22] It should not be understood to negate them.

It has become clear that, in some instances, states have indeed undercut statutory requirements by using TANF and MOE funds to pay for activities with, at best, tenuous connections to any TANF purpose. This is particularly a problem for expenditures claimed under purposes three and four, where the statute does not limit benefits and services to needy families or needy parents. As described below, these expenditures include over $1 billion spent on college scholarships (including for middle- and high-income individuals without children) that states have asserted are allowable because they are reasonably calculated to accomplish the purpose of preventing and reducing out of wedlock pregnancies. Similarly, close to $1 billion is being spent on general youth services that are not targeted to vulnerable youth, but that states are asserting accomplish the purpose of preventing and reducing out-of-wedlock pregnancies. Additionally, a portion of the close to $2 billion spent on covering costs in state child welfare systems is being justified as providing assistance to needy families, but those expenditures appear to be covering ordinary operating costs of state child welfare systems and not targeted services to meet the goal of preventing children from entering into foster care by providing assistance to families so that children may remain in their homes as articulated in purpose one. While services described may provide important social supports, we believe that in many cases those services would not be interpreted as a reasonable activity to meet a TANF purpose.

As a result, the Department has concluded that it is necessary to articulate a general standard for determining whether an expenditure is reasonably calculated to accomplish a TANF purpose. In accordance with the ''reasonably calculated'' language of the statute, we propose in this rule to describe the applicable standard as a ''reasonable person'' test. This is the same standard that our regulations have employed since 1999 for determining whether a misuse of funds is intentional. The discussion below concerning the ''reasonable person'' test would apply when determining intentional misuse of funds, even though we are not proposing any modification to that regulatory provision. In addition, this process would apply to all expenditures made after the effective date of the rule, which we propose be no earlier than the start of the fiscal year following finalization. We understand states may need some time to make sure that all their state TANF expenditures meet the reasonable person standard and solicit comment on what readers would consider to be a reasonable implementation period.

In many instances, the analysis will be entirely straightforward because certain expenditures clearly fall within the plain language of the statutory purpose. For example, cash assistance for needy families, employment services for needy parents, and teen pregnancy prevention programs clearly fall within the express statutory language of TANF purposes one, two, and three, respectively. However, in other instances, a question may arise as to whether an expenditure is reasonably calculated to accomplish a purpose of TANF. Such a question could arise in a variety of ways, including: in a state plan or plan amendment review; in responding to a state's question about use of TANF funds; in resolving an audit; in an external report related to state TANF program expenditures; or from information gleaned in site visits. In such cases, including when resolving state audit findings, the Department will ask for additional information before assessing a penalty for misuse of funds, 42 U.S.C. 609(a)(1). We will consider, as appropriate, factors including: (1) evidence that the expenditure actually accomplished a TANF purpose; (2) evidence that prior expenditures by the state or another entity for the same or a substantially similar program or activity actually accomplished a TANF purpose; (3) academic or other research indicating that the expenditure could reasonably be expected to accomplish a TANF purpose; (4) whether the actual or expected contribution of the expenditure to accomplishing a TANF purpose is reasonable in light of the extent of that expenditure; and (5) the quality of the reasoning (as outlined below) underlying the state's explanation that the expenditure accomplished or could be expected to accomplish a TANF purpose. In addition, where a program is multifaceted or includes several different types of services, we would examine the extent to which the state uses the Office of Management and Budget cost principles to allocate costs of different components of a service or benefit to appropriate funding sources and ensures that only the portions of a program, benefit, or service that the state demonstrates are reasonably calculated to accomplish a TANF purpose are allocated to TANF.
§ 263.14.

As with any situation in which one must determine whether a particular action is reasonable, the analysis will necessarily be fact-specific. Therefore, a state's explanation should clearly describe such facts as the precise service or benefit it intends to fund, the population eligible to receive the service or benefit, any other eligibility criteria or circumstances that would restrict provision of the benefit or service, the amount the state intends to expend, under which purpose it is claiming the expenditure, and what its rationale is for concluding that the expenditure is reasonably calculated to meet the purpose. In weighing the information that a state provides to support an expenditure as reasonably calculated to accomplish a TANF purpose, we would assess the quality of that evidence, including whether the state's justification for the expenditure is

[16] See 42 U.S.C. 602(a)(7), (13), (18) (1995).

[17] See 42 U.S.C. 602(a)(7), (17), (31), (36) (1995).

[18] See 42 U.S.C. 602(a)(7) (1995).

[19] See 42 U.S.C. 602(a)(19)(G) (1995).

[20] See, *e.g.,* 42 U.S.C. 602(a)(9)–(16), (19), (22)–(26), (33), (37) (1995).

[21] See House Committee on Ways and Means, Green Book: Background Material and Data on Programs within the Jurisdiction of the Committee on Ways and Means, 104–14 § 8 at 434 (1996).

[22] See *id.,* App. L at 1338.

sound, well-supported, and draws a strong, logical connection to the TANF purpose. Our process would evaluate whether the state's explanation addresses relevant and appropriate factors given the nature of the service or benefit it intends to fund.

As we noted above, ''evidence'' refers to supporting materials that substantiate a state's assertion that an activity is reasonably calculated to accomplish a TANF purpose. There are several forms of evidence that a state might provide to support its justification for a TANF expenditure. One of them is evidence from research, and the strongest case will be made with the best available research. Evidence will be strongest if it is based on the following types of research, listed in descending order of rigor: (1) the activity has been evaluated using a rigorous evaluation design (such as randomized controlled or high-quality quasi-experimental trials) and has demonstrated favorable impacts on the outcome(s) of interest; (2) a body of research has demonstrated a favorable association between the activity and the outcome(s) of interest sufficient that a reasonable person would consider the expenditure reasonably calculated to accomplish a TANF purpose; or (3) qualitative or descriptive research suggests the activity favorably affects the outcome(s) of interest sufficiently that a reasonable person would consider the expenditure reasonably calculated to accomplish a TANF purpose. Research evidence could come from an existing systematic review, an existing clearinghouse, a catalog of evidence-based research or evaluation of emerging or substantially similar programs.

While such evidence will most clearly establish that an expenditure is reasonable, programmatic evidence could be sufficient for a reasonable person to find that an activity is reasonably calculated to accomplish a TANF purpose. This can be done through an analysis using performance and administrative data comprised of information on activities, services delivered, and outcomes achieved that a program collects on an ongoing basis to measure progress toward goals or to inform operations and service delivery. Programmatic evidence should include an analysis of this data that demonstrates that the activity accomplishes a TANF purpose. The analysis could substantiate that an activity meets the ''reasonable person'' standard.

Readers should note that we have provided a proposal of the framework we would use to determine if an expenditure were reasonably calculated to accomplish a TANF purpose. We offer a number of examples below, and anticipate that, for many expenditures, it will be entirely clear whether the expenditure is or is not reasonably calculated to accomplish a TANF purpose. The TANF program does not include a state plan approval process; rather it has only a process for determining that a plan is complete in providing information required by statute. TANF also does not have an expenditure preapproval process. Still, we appreciate that, in planning program expenditures, states will value clarity as to whether particular expenditures may be considered reasonably calculated to accomplish a TANF purpose. Thus, from an implementation standpoint, if a state had concerns about whether an expenditure was reasonably calculated to accomplish a TANF purpose, it could, though need not, request the Department's views before proceeding. We welcome comments on additional factors we might consider in the process of determining whether an expenditure is reasonable.

With this proposed standard in mind, the Department provides more information below about how to determine whether an expenditure is reasonably calculated under the reasonable person standard. We note that we do not consider the examples to be an exhaustive list. The Department welcomes comments on these determinations, examples, and potential impacts on financial management and reporting, as well as service delivery and program operations.

TANF purpose one. The first purpose of TANF is ''to assist needy families so that children may be cared for in their own homes or in the homes of relatives.'' Based on the reasonable person standard, recurring cash assistance payments to families and many non-recurrent, short-term benefits that help families meet basic needs are plainly reasonably calculated to assist needy families so that children can stay in their own homes or in the homes of relatives. A reasonable person would realize that, for a child to remain safe in the home, their basic needs must be met. We remind readers that the term ''assistance'' in purpose one is not limited to the definition in 45 CFR 260.31 but subsumes the range of ways in which a state may use TANF funds to help needy families. 45 CFR 260.31(c)(2). Ensuring that families experiencing financial hardship are connected to economic supports such as TANF cash assistance is an effective prevention strategy to allow children to stay in their homes or in the homes of relatives and divert families from entering the child welfare system. Additionally, the Department thinks that, under the reasonable person standard, certain prevention and reunification strategies associated with child welfare systems are plainly reasonably calculated to achieve TANF purpose one. These include parenting skills classes, family reunification efforts, supports for parents preparing for reunification, and providing concrete and economic supports to prevent removal from home. All of these activities are part of the essential services states provide to ensure children can remain or return safely to their own homes or the homes of relatives.

Where the connection to TANF purpose one is not as straightforward, a child welfare service can be reviewed using the reasonable person standard factors outlined above to help determine whether it meets that purpose. For example, some states use TANF or MOE funds to pay for respite care services for parents or other relatives. Those states might provide evidence from the Child Welfare Information Gateway, where peer-reviewed studies of similarly designed programs have found that respite care allows for children to remain permanently in their homes. They might also be able to provide administrative data to show that they have seen respite care services provide the short-term supports necessary to allow children to remain in their own homes or in the homes of relatives compared with the absence of these services. With this information, the Department could determine that the use of respite care services is reasonably calculated to meet TANF purpose one. In another example, a state may want to use TANF funds to provide diversion and alternative response activities. The state could provide information from academic studies or administrative data that these activities help keep children in their own homes or in the homes of relatives and are therefore reasonably calculated to meet TANF purpose one.

Other child welfare activities for children and families do not have as close a connection to, reunification, permanency, or services to prevent child maltreatment. These types of activities, such as child protection investigations, would likely not be allowable under purpose one in the framework outlined in the proposed rule. By their very nature, child protection investigations are intended to learn whether a child has been harmed or is at risk of being harmed and should be removed from the home, rather than to provide assistance so that children can remain in their own homes or in the

homes of relatives. The Department appreciates that, in some cases, the outcome of the investigation will be a determination that the child can remain in the home with specified prevention services to the family. Those services could be allowable under the first purpose of TANF, but not the investigation itself.

TANF purpose two. The second purpose of TANF is to ''end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage.'' There are a range of services that, under the reasonable person standard, are plainly reasonably calculated to accomplish this purpose, such as workforce development services that help needy parents find and keep jobs, as well as work supports such as child care or other services and supports that allow needy parents to look for and maintain employment. The connection between the examples enumerated and ending the dependence of needy parents on government benefits is clear through the direct link between searching for a job and securing the job, enhancing skills and credentials, and increasing earnings, and enrolling children in child care so a parent may work. Such services could include tuition assistance and other education and training supports specifically for needy parents. It could also include many early education programs that are necessary services for families with low incomes to care for children while parents look for and maintain employment. A reasonable person could conclude that providing these services would help parents with low incomes work, and therefore end their dependence on government benefits. The Department values the critical importance of quality early childhood education—including child care and preschool—for all families, but for it to be allowable under TANF purpose two, it must be a support for work for needy parents.

States have used or may want to use TANF or MOE funds to pay for other education and training activities that are not as straightforwardly connected to TANF purpose two. In these instances, the Department would review the benefit or service using the reasonable person framework outlined above. For example, a state might want to provide education and training for childless individuals or to parents regardless of income. The Department believes that it is unlikely there could be sufficient evidence or logical coherence to show that education and training for individuals who are not parents could be reasonably calculated to end the dependence of needy parents. To the extent that is the case, such spending would not be allowed under TANF purpose two under this proposed rule. Similarly, we think it unlikely that states could provide evidence that education and training received without regard to income level could be reasonably calculated to end the dependence of needy parents. As a result, expenditures for these activities are unlikely to be allowed under TANF purpose two under this proposed rule.

TANF purpose three. The third purpose of TANF is to ''prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies.'' The Department believes that certain activities are plainly reasonably calculated to prevent and reduce out-of-wedlock pregnancies. These include programs that provide comprehensive sex education, family planning services, pregnancy prevention programs, and community mobilization services for at risk youth that increase access to pregnancy prevention programs for teens.

However, jurisdictions have sought to claim other expenditures under TANF purpose three where the connection to preventing and reducing out-of-wedlock pregnancies appears to be far more tenuous or even non-existent. College scholarship programs for adults without children likely do not meet the reasonable person standard under purpose three. Since this expenditure does not fall clearly within the plain language of the statutory purpose, the Department would use the factors under our proposed standard to review the expenditure. This would include reviewing the evidence and documentation provided by the state. Without evidence that the expenditure actually accomplishes the TANF purpose, that prior expenditures by the state or another entity for the same or a substantially similar program or activity actually accomplished the TANF purpose, or that there is academic or other research indicating that the expenditure could reasonably be expected to accomplish the TANF purpose, the expenditure is unlikely to meet the reasonable person standard we propose and therefore would likely not be allowable under this proposal.

Similarly, programs that only or primarily provide pregnancy counseling to women only after they become pregnant likely do not meet the reasonable person standard because the connection to preventing and reducing out-of-wedlock pregnancies is tenuous or non-existent, and therefore do not accomplish purpose three. States that provide funding for these types of programs, including through entities sometimes known as crisis pregnancy centers or pregnancy resource centers, must be able to show that the expenditure actually accomplishes the TANF purpose, that prior expenditures by the state or another entity for the same or a substantially similar program or activity actually accomplished the TANF purpose, or that there is academic or other research indicating that the expenditure could reasonably be expected to accomplish the TANF purpose. If pregnancy prevention programming is a part of an ongoing program, such as year round after-school programming, only those costs associated with delivery of pregnancy prevention should be cost allocated and non-TANF funds used to fund other activities.

TANF purpose four. The fourth purpose of TANF is to ''encourage the formation and maintenance of two-parent families.'' The Department believes that certain activities fall clearly within the plain language of the statutory purpose to promote two-parent families. These activities include marriage education, marriage and relationship skills programs, parent and co-parent skills workshops, and public awareness campaigns on the value of marriage and responsible fatherhood.

In FY 2021, 27 states reported a total of $925.0 million in federal TANF and MOE expenditures on ''Services for Children and Youth.'' A wide variety of services and programs may fall in this category, including afterschool and mentoring or academic tutoring programs. States often assert that programs like these meet purposes three and four. The Department recognizes and appreciates the value of such services, but under the statute and the implementing reasonable person standard, many of them likely are not reasonably calculated to achieve purpose four. The Department is unaware of evidence from academic research or program design or outcomes documentation that shows these activities accomplished or could be expected to accomplish the purpose of encouraging the formation and maintenance of two-parent families. For example, if a state were to assert that spending on after-school programs is reasonably calculated to promote the formation and maintenance of two-parent families, the state would need to provide evidence to justify such a service under the reasonable person standard. Even then, if this programming were a small portion of the overall activities in the program, the state would need to cost allocate. Only

the programming that is reasonably calculated to meet purpose four or met another TANF purpose could be funded with TANF.

Authorized Solely Under Prior Law. The Department reiterates that there are some expenditures that are allowable under the TANF program even though they do not meet any of the four purposes enumerated in 42 U.S.C. 604(a)(1). Those are expenditures ''authorized solely under prior law,'' which are allowed pursuant to section 42 U.S.C. 604(a)(2). That provision permits a state to use TANF—but not MOE—funds in any manner that it was authorized to use funds under the prior Title IV–A (AFDC) or IV–F (Job Opportunities and Basic Skills Training programs) on September 30, 1995, or at state option, August 21, 1996. For example, foster care payments to non-relative caregivers do not count as a purpose one expenditure because they are not reasonably calculated to provide assistance so that children may be cared for in their own homes or in the homes of relatives. This is, because, by definition, they provide support to non-relatives caring for children who have been removed from their homes. However, if a state was explicitly authorized to provide such support under prior law, meaning that its AFDC, EA, or JOBS plan in effect on September 30, 1995 (or, at state option, August 21, 1996), included the benefit or service, then the state may use TANF, but not MOE, to support the activity. We refer to these as services that are authorized ''solely'' under prior law, because that is the only way a state may fund them under TANF, as they are not otherwise reasonably calculated to accomplish a TANF purpose.

For all other TANF and MOE-funded activities, we invite readers to provide comments on our proposed standard of ''reasonably calculated to accomplish the TANF purpose'' and offer any alternative approaches for operationalizing the standard.

3. *Exclude third-party, non-governmental spending as allowable MOE.*

This proposed rule would amend § 263.2(e) to exclude, as an allowable TANF MOE expenditure, cash donations and the value of in-kind contributions from non-governmental third parties.

Each state must meet a maintenance-of-effort (MOE) requirement under TANF. To avoid a TANF penalty for a fiscal year, a state must have ''qualified state expenditures'' of at least 80 percent of the amount the state spent on a specified set of programs in FY 1994, before TANF was enacted, or 75 percent if the state satisfies its federal work participation requirement for the fiscal year. The statute specifies that the ''qualified state expenditures'' a state may count toward its MOE requirement in a given fiscal year are ''the total expenditures by the state during the fiscal year'' that meet one or more of the purposes of TANF and serve eligible families. 42 U.S.C. 609(a)(7)(B)(i).

Congress established the level of historic state expenditures based on spending in FY 1994 for a set of programs that existed before TANF and were eliminated at the time that Congress enacted the TANF block grant. The MOE levels were set based on non-federal state spending in FY 1994 for programs authorized under the former Titles IV–A and IV–F of the Social Security Act, specifically the AFDC benefits and administrative costs, the Emergency Assistance Program, the Job Opportunities and Basic Skills Training Program, and a set of child care programs that had been funded under Title IV–A. In shifting from the former structure of federal matching funds for state expenditures to a block grant framework, Congress made the decision to require states to continue to make expenditures for programs and activities meeting TANF purposes at a level not less than 80 percent of the level at which they had been spending in FY 1994 for this set of programs (or 75 percent if the state meets its work participation requirement for the year). Congress established this requirement without an inflation adjustor. When adjusting for inflation (based on 2022 data), states are actually required to spend approximately 50 percent of what they spent in FY 1994.

Under the statutory framework, if a state does not meet its required MOE level for a fiscal year, it is subject to financial penalty in the amount it falls short of its required MOE. The proposed change would further clarify the criteria for the agency to assess this penalty. The intent of this provision is to ensure that states maintain a certain level of financial commitment to the TANF program and participate financially along with the federal government. Financial involvement by states is necessary for the success of the TANF program as envisioned by Congress. Under the current rule, in addition to state funds, a state is permitted to count toward the MOE requirement certain in-kind or cash expenditures by non-governmental third parties, so long as these expenditures meet a TANF purpose and other requirements. In this NPRM, we propose to eliminate the ability of states to count cash donations and in-kind contributions from non-governmental third parties towards MOE. The NPRM distinguishes between governmental spending and that of non-governmental third parties. Governmental spending, meaning spending directly by state, counties, and local government agencies only, would continue to be allowable under the amended rule. For example, if a state uses funds from its workforce department to fund TANF work programs, the state workforce department is a ''governmental third party'' and therefore allowable. State and local government entities also frequently combine funding, which would also still be allowable under this proposed rule.

The Department issued policy guidance in 2004 (TANF–ACF–PA–2004–01) implementing a policy that allowed states to claim third-party spending and contributions as countable towards a state's MOE requirement. The guidance noted that the statute did not explicitly provide that in-kind or cash expenditures by sources in the state other than the state or local government may count toward the state's TANF MOE requirement. Further, it noted that the 1999 TANF final rule had not directly addressed the issue, but that states could look to the cost sharing principles in 45 CFR part 92 (currently 45 CFR part 75), which generally apply to TANF. Those cost sharing principles present a range of ways for a state to satisfy cost sharing requirements, including expenditures for allowable costs or cash donations by non-federal third parties and the value of third-party in-kind contributions. The 2004 guidance concluded that third-party in-kind or cash expenditures could count toward a state's MOE requirement, as long as the spending was used for an allowable purpose.

In our interim final rule, promulgated after the Deficit Reduction Act of 2005 (DRA), we codified the policy by amending § 263.2(e) to provide that ''[e]xpenditures for benefits or services listed under paragraph (a) of this section may include allowable costs borne by others in the State (*e.g.,* local government), including cash donations from non-Federal third parties (*e.g.,* a non-profit organization) and the value of third party in-kind contributions'' if certain requirements were met. 71 FR 37454, 37470, June 29, 2006. We did not receive any comments concerning the third-party provision. The final rule was issued on February 5, 2008 (73 FR 6772, February 5, 2008).

After reviewing how states have implemented this provision, and carefully considering the effects that third-party, non-governmental

contributions have had over the last 15 years, discussed below, we are proposing to revise this provision so that third-party, non-government MOE contributions of any kind cannot count towards a state's MOE requirement. The Department believes that our proposed regulation is the best interpretation of 42 U.S.C. 609(a)(7)(B)(iv). The statute at 42 U.S.C. 609(a)(7)(A) provides that the Secretary shall impose a penalty if a state fails to make ''qualified State expenditures'' equal to at least 80 percent of the amount it spent on welfare programs in FY 1994. ''Qualified State expenditures,'' meaning those countable as MOE, are defined as ''the total expenditures *by the State* during the fiscal year, *under all State programs,* [in certain categories] with respect to eligible families.'' 42 U.S.C. 609(a)(7)(B)(i) (emphasis added). Thus, the statutory language is clearly in reference to expenditures by the state, not subsuming expenditures by non-governmental organizations in the state.

Under current rules, states may count non-governmental expenditures by non-profit organizations, corporations, or other private parties as contributions to state MOE. While these expenditures represent efforts made to serve low-income families *in* a state, they do not reflect the effort made *by* a state. In other words, they constitute expenditures that other organizations make, and a state reports them as MOE as if the state itself had made the expenditure. The Department proposes revising the MOE requirement to prohibit a state from counting third-party, non-governmental spending as its own, and to ensure that states themselves are investing in programs that meet TANF purposes, as was the original intent of the statute.

In addition to our having concluded that the revision is most consistent with the statutory language and intent of Congress, the Department also believes it is justified as a matter of policy. Since third-party MOE became permissible, experience has shown that counting non-governmental spending as MOE may reduce the overall level of services available to low-income families in a state. Most commonly, these third parties are non-governmental entities already providing food assistance, youth services, family preservation services, or housing assistance. The state then counts these existing third-party expenditures as TANF MOE while reducing its own spending—in essence, substituting private, third-party spending on low-income families that would occur regardless of being counted as state expenditures on MOE, for state spending. For example, if a state's basic MOE requirement were $100 million and it counted $25 million in spending from food banks as MOE, the state could then reduce its own financial commitment from $100 million to $75 million. Consequently, the state could spend $25 million less of its general revenue funds on purposes designed to benefit families with low incomes.

States do not report on the source of MOE so the Department cannot determine how much of its MOE requirement each state is fulfilling using third-party, non-governmental spending. However, according to a 2016 GAO report, 16 states reported counting third-party, non-governmental expenditures toward their required spending level in FY 2015.[23] These are the most recent data available. Twenty-nine states reported counting third-party, non-governmental expenditures as state MOE spending at least once from fiscal years 2007 through 2015. Eleven states reported that third-party, non-governmental expenditures accounted for over 10 percent of their TANF MOE spending in their most recent year of counting third-party expenditures. This percentage reached as high as 60 percent in one state, which counted $99 million from third-party, non-governmental dollars to meet its $173 million obligation. Two other states derived over 30 percent of their MOE funds from third-party, non-governmental sources. In short, some states are claiming a significant amount of money as MOE—amounts that do not reflect their own spending on services for low-income families.

This 2016 GAO report also indicated that some of these states asserted that they would be likely to cut services in other areas to reach the basic MOE requirement if third-party, non-governmental dollars could no longer count as MOE. Likewise, some states claimed that they would face penalties or lose partnerships if this provision were implemented. Based on our experience administering the program, we do not expect that these consequences will come to pass, given the few states that currently use this flexibility and the total amount of funds presently at issue. We do not believe there is reason for concern that states would need to cut expenditures for other groups to maintain low-income spending at a level sufficient to meet the MOE requirement, which adjusted for inflation, is less than 40 percent of what the state was spending in FY 1994. Indeed, a state would be more likely to spend additional funds on low-income families to make up for the MOE shortfall if this proposal were to take effect. Moreover, we are not aware of any reason that being unable to count non-governmental expenditures toward MOE requirements should in any way impair or jeopardize partnerships with non-governmental organizations. We invite state agencies and the public to provide information that will shed light on the extent of the use of third-party, non-governmental expenditures to count as MOE.

By proposing to eliminate this provision, our goal is to restore the maintenance-of-effort requirement in a manner consistent with the statutory language and purpose. We invite comment on the effects that this proposed change would have on state programs, budgets, and partnerships.

4. *Ensure that excused holidays match the number of federal holidays, following the recognition of Juneteenth as a federal holiday.*

The Department introduced the idea of counting excused absences and holidays toward the TANF work participation rate in the interim final rule that implemented the legislative changes from the DRA (71 FR 37454, 37466, June 29, 2006). The interim final rule explained that states could count paid employment hours toward the work participation rate by using the hours for which the individual was paid, which therefore allowed paid holidays to count. The Department recognized that individuals in unpaid allowable work activities might also be absent due to a holiday, and therefore the interim final rule allowed states to count ''reasonable short-term, excused absences for hours missed due to holidays.'' Although the interim final rule did not specify a number of holidays that could count toward the work participation rate, the final rule set the number of holidays at 10 (73 FR 6826, February 5, 2008). In the preamble to that final rule, we noted, ''We deliberated at length about the appropriate number [of holidays], considering the number granted on average by private companies, the average number of State paid holidays, and the number of Federal holidays. Ultimately, we chose to limit it to 10 to be consistent with the number of Federal holidays.'' (73 FR 6809, February 5, 2008). On June 17, 2021, President Biden signed into law the Juneteenth National Independence Day Act, which established June 19 as an eleventh legal, public holiday.

Under our authority to issue regulations on how to count and verify

[23] GAO, *Temporary Assistance for Needy Families: Update on States Counting Third-Party Expenditures toward Maintenance of Effort Requirements,* February 2016.

reported hours of work, this proposal would realign the TANF rules with respect to holidays to the number of federal holidays. 42 U.S.C. 607(i)(1). It would revise § 261.60(b) to ensure that the maximum number of holidays permitted to count in the work participation rate for unpaid work activities in the fiscal year matches the number of federal holidays as established in 5 U.S.C. 6103. For example, with the inclusion of Juneteenth, the number of federal holidays increased to 11, and therefore under our proposal a state could allow up to 11 holidays to count toward the work participation rate for individuals in unpaid allowable work activities. The proposal would not alter the calculation for individuals participating in paid work activities, which includes the hours for which an individual was paid, including paid holidays and sick leave, and which can be based on projected actual hours of employment for up to six months, with documentation.

As under current rules, each state must designate in its work verification plan the days that it wishes to count as holidays for those in unpaid activities. The Department encourages states to honor our newest public holiday by granting Juneteenth itself as an excused day for TANF participants in unpaid activities.

5. *Develop new criteria to allow states to use alternative Income and Eligibility Verification System (IEVS) measures.*

This proposed rule would amend § 205.55(d) to allow states to use alternative Income and Eligibility Verification System (IEVS) data sources. IEVS is a set of data matches that each state must complete to confirm the initial and ongoing eligibility of a family for TANF-funded benefits. Section 1137 of the Social Security Act (42 U.S.C. 1320b–7) requires a state to participate in IEVS and to match TANF applicant and recipient data with the following information through IEVS:

1. Employer quarterly reports of income and unemployment insurance benefits from the State Wage Information Collections Agency (SWICA);

2. IRS earned income maintained by the Social Security Administration;

3. Immigration status data maintained by the Immigration and Naturalization Service; and

4. Unearned income from the IRS.

Currently, under § 205.55(d), a state may request approval from the Department to use an alternate source or sources of income and eligibility information to meet any of the IEVS data matching requirements. The state must demonstrate that the alternate source is as timely, complete, and useful as the data provided by the original source. When considering applications, we have noticed that this standard is very difficult to meet, particularly with respect to requests for alternatives to the IRS unearned income data. This is largely because the IRS's data represent the most complete set of national information on unearned income, making other sources inherently less complete. Unearned income data are captured through the IRS 1099 form series; there are currently over 15 different 1099 forms, each dependent upon the type of unearned income being reported. Other data sources are not able to capture every distinct type of unearned income. States have repeatedly noted that some of the required IEVS matches, and especially the match with unearned income data from the IRS, are administratively burdensome and neither cost effective nor programmatically useful. They explain that the costs of maintaining the security procedures required for the IRS match are very high, as they include specific staff training and background protocols, as well as establishing a ''secure room.'' One state indicated that its conservative estimate for these requirements cost over $100,000 annually. At the same time, states have noted the minimal programmatic usefulness of the match with IRS unearned income data, because the majority of recipients of TANF-funded benefits have modest resources and because the data are based on the previous year's tax returns and thus do not clearly reflect the applicant's or participant's current status. We propose to modify the criteria for alternative sources of IEVS data matches so that they are more reasonable and factor in cost effectiveness. Specifically, we propose to allow a state to request to use an alternative data source that is as cost effective rather than as complete as the original source. We would continue to require any alternate data source to be both as timely and useful as the original source. This action would reduce administrative burden on states by allowing them the flexibility to find more cost-effective data matches and perform the ones that are most likely to benefit their programs. This proposal is consistent with the IEVS statute, which provides that certain ''wage, income and other information'' from certain sources ''shall be requested and utilized to the extent that such information may be useful in verifying eligibility for, and the amount of benefits available . . . as determined by the Secretary of Health and Human Services. . . .'' § 1320b–7(a)(2). The Department welcomes comments on the current administrative burdens, including cost and time estimates, and usefulness of the required IEVS matches as well as the benefits that might be gained from using more cost-effective alternate data sources.

6. *Clarify the ''significant progress'' criteria following a work participation rate corrective compliance plan.*

Each state must meet two minimum work participation rates under TANF for a fiscal year, an overall or ''all families'' work participation rate and a two-parent work participation rate, or face a financial penalty. The law provides for a single penalty for failing to meet the work participation requirement, even though there are two separate participation rates, *i.e.,* two ways to trigger the penalty. Until FY 2007, virtually all work participation rate penalties came from failures to meet the two-parent rate alone, but with the changes made by the DRA, some states began to fail the overall rate or both rates. Many states that receive a penalty notice enter into a corrective compliance plan (CCP) to correct the failure and avoid a financial penalty. In accordance with § 262.6(i), a state that enters into a CCP because it is subject to a penalty must completely correct the violation within the plan period to avoid the penalty. If it does not, § 262.6(j)(1) permits a reduction in the penalty if a state did not achieve full compliance pursuant to its CCP goals but made ''significant progress'' towards correcting the violation.

We propose to modify § 261.53(b) to clarify the means of qualifying for ''significant progress'' when a state that has failed its work participation rate also fails to correct the violation fully in a corrective compliance plan because it has corrected one rate but not both. Specifically, it would more directly address a situation where a state that failed both the overall and two-parents rates for a year and subsequently meets the overall rate (but not the two-parent rate) as part of its corrective compliance plan to qualify for a reduced penalty. It also clarifies the description of the existing formula for calculating significant progress. This modification is within the Secretary's authority to ''assess some or all of the penalty . . . if the State does not, in a timely manner, correct or discontinue as appropriate, the violation. . . .'' 42 U.S.C. 609(c)(3).

We are proposing to recalculate a state's penalty as if the state had failed only the two-parent work requirement in the penalty year. Two-parent penalties are based on a state's two-parent caseload percentage, which

typically equals 10 percent or less of the total caseload. Our proposal would reduce administrative burden and substantially reduce some potential penalties, making them commensurate with the degree of a state's remaining noncompliance.

7. *Clarify the existing regulatory text about the allowability of costs associated with disseminating program information.*

The seventh proposed change would clarify existing regulatory text about the allowability of costs associated with providing program information. The regulation at 45 CFR 263.0(b)(1)(i) currently provides that ''providing program information to clients'' is a program cost and not an administrative cost. We propose to delete that language from (b)(1)(i) and create a new subsection (iii) that clarifies the point that administrative costs exclude the costs of disseminating program information. For example, the cost of providing information pamphlets or brochures about how to reduce out-of-wedlock pregnancies is allowable under purpose three, and the cost of providing information about community resources to needy families or needy parents, pursuant to purposes one and two, respectively, is allowable, whether or not the described community resources themselves are funded by TANF.

The TANF statute sets an administrative cap of 15 percent. 42 U.S.C. 604(b). It provides that a ''State to which a grant is made under section 403 shall not expend more than 15 percent of the grant for administrative purposes.'' 42 U.S.C. 604(b). Section 263.0 implements the cap by making clear which categories of expenditures are program costs that do not count towards the cap, and which qualify as administrative costs and thus count towards the cap. Failure to comply with the administrative cap could lead to a misuse of funds penalty, therefore this proposal falls under the Department's authority to regulate where the Department is charged with enforcing certain TANF provisions (42 U.S.C. 609(a)(3)), and thus fits within the statutory authority granted to the Secretary to regulate state conduct in the TANF program.

Severability

To the extent that any portion of the requirements arising from the rule once it becomes final is declared invalid by a court, HHS intends for all other parts of the final rule that are capable of operating in the absence of the specific portion that has been invalidated to remain in effect.

Regulatory Impact Analysis

Introduction

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, Executive Order 14094, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). This analysis identifies economic impacts that exceed the threshold for significance under Section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes estimates of anticipated impacts, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 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 proposed rule would not likely result in unfunded expenditures that meet or exceed this amount.

Statement of Need

As described above, the Department has determined that it is necessary to take regulatory action to strengthen the effectiveness of TANF as the safety net and work program originally intended by Congress. It is critical to implement these reforms at the federal level in order to maintain consistent policies across states that align with congressional intent, while still providing flexibility for states to design programs that meet the specific needs of their populations.

In addition, the package includes provisions that are more technical in nature and are designed to reduce administrative burden and increase program effectiveness. The Department has determined it is necessary to make these changes at the federal level, again to ensure consistency and fairness across states, and to improve the functioning of government.

Summary of Impacts

This analysis finds that the proposed rule would result in a range of transfers of between $1.087 billion and $2.494 billion. The largest impacts from the proposed rules relate to provisions that: establish a ceiling on the term ''needy;'' determine when an expenditure is ''reasonably calculated to accomplish a TANF purpose;'' and exclude third-party, non-governmental spending as allowable MOE. These impacts would be constant in every year, beginning in the first fiscal year after the proposed rule is finalized (if it is finalized). Thus, we adopt a one-year time horizon for these impacts, which also do not depend on the choice of discount rate. Figure A below reports these impacts reported in current dollars. This analysis also discusses several policy alternatives to the proposed rule that ACF considered. ACF invites comments on all estimates contained in this analysis.

FIGURE A—SUMMARY OF ANNUAL IMPACTS

Category	Estimates		Units
	Low	High	Year dollar
Transfers—Federal			
All Provisions—Federal Annualized Monetized ($millions/year).	598.1	1127.4	2023.
From/To	From: State uses of federal funds		To: State uses of federal funds.
Provision—Reasonably Calculated	598.1	1127.4	2023.

FIGURE A—SUMMARY OF ANNUAL IMPACTS—Continued

Category	Estimates		Units
	Low	High	Year dollar
From/To	From: State uses of federal TANF funds on expenditures that are not reasonably calculated to meet a TANF purpose		To: State uses of federal TANF funds on expenditures that are reasonably calculated to meet a TANF purpose.
Transfers—Other Annualized Monetized			
All Provisions—Other Annualized Monetized ($millions/year).	488.7	1366.7	2023.
From/To	From: State funds		To: State funds.
Provision—200%	146.2	584.9	2023.
From/To	From: State funds on expenditures for families above 200 percent of the federal poverty guidelines		To: State funds on expenditures for families at or below 200 percent of the federal poverty guidelines.
Provision—Reasonably Calculated	196.8	636.1	2023.
From/To	From: State funds on expenditures that are not reasonably calculated to meet a TANF purpose		To: State funds on expenditures that are reasonably calculated to meet a TANF purpose.
Provision—Third Party Non-Governmental MOE	145.7	145.7	2023.
From/To	From: State funds outside of TANF		To: State funds used for TANF MOE.
Costs			
Administrative costs for ACF and jurisdictions ($millions/year).	.371		2023.
From/To	From: employee productive time.		To: employee productive time on activities related to rule implementation.

Estimating the Quantified Impacts of the Proposed Rule

We have used the best tools available to estimate the transfers associated with this proposed rule, relying on the financial and programmatic data states report on the ACF–196R (the TANF financial data report) and ACF–204 (the Annual MOE) forms. The utility and the limitations of these forms are outlined below. We have focused our analysis on the first two proposals related to allowable spending and the third proposal related to third-party non-governmental MOE, as the financial data reporting allows us to make some estimates of program impacts that may result from these proposed changes. This regulatory impact analysis focuses on activities funded through the TANF program. However, the direct impact within the program does not fully account for services that would continue to be provided in jurisdictions through other funding sources. We seek public comment on these estimates. When deciding whether or not to include a particular program or funding stream in the estimate, the Department made assumptions that are not official determinations of whether programs or services would be impacted by the proposed rule.

Data Sources for Identifying Impacts

ACF–196R: States are required to report cumulative transfers, expenditures, and unliquidated obligations made with federal TANF and MOE funds on the ACF–196R, submitted quarterly. ACF publishes this data for each fiscal year, and we apply FY 2021 data in this analysis.[24]

On the ACF–196R, there are 29 categories of transfers, expenditures, and unliquidated obligations. Some categories have subcategories that provide additional specificity on how funds were used. For example, category 9 ''Work, Education, and Training Activities'' is broken up into three smaller subcategories, ''Subsidized Employment,'' ''Education and Training,'' and ''Additional Work Activities.'' Others are quite broad, such as category 17, ''Services for Children and Youth.'' Even when the subcategories exist, there may be several types of programs or services captured in one category, serving different populations. It is not possible to determine, for example, what percentage of spending in the ''Refundable Earned Income Tax Credits'' is spent on families above 200 percent of the federal poverty guidelines. One strength of this data source is that states report federal and MOE spending separately, so we can determine how much spending in the reported categories is federal funds and how much is state MOE.

ACF–204: Annual Report on State-Maintenance-of-Effort Programs. States must submit this report for each fiscal year and include information for each benefit or service program for which the state has claimed MOE expenditures for the fiscal year. There is wide variation across states in the quality and detail of these reports.

[24] U.S. Department of Health and Human Services, U.S. Administration for Children and Families, Office of Family Assistance, *FY 2021 TANF and MOE Financial Data,* December 16, 2022, available at: *https://www.acf.hhs.gov/ofa/news/ofa-releases-fy-2021-tanf-and-moe-financial-data#:~:text=In%20FY%202021%2C%20combined%20federal,education%2C%20and%20training%20activities%3B%20and.*

The ACF–204 provides more detail in qualitative and quantitative information about some state MOE programs than the ACF–196R; however, it only encompasses information about MOE spending and is therefore an incomplete picture of spending. We cannot use the ACF–204 to identify the universe of expenditures that may be impacted by the proposed rule, as federal programs will not be included, and some states may have excluded significant portions of their MOE programs. The form can, however, provide some additional context and examples for types of programs that may be impacted.

Implementation Timeline

The Department proposes that each provision would go into effect in the fiscal year following the publication of the final rule. The intent of the proposed implementation timeline is to provide states with appropriate time to understand the provisions, develop responses, and shift funding if necessary to be in compliance and avoid potential penalties. The Department seeks comment on the appropriateness of the proposed timeline.

Impact Estimates for Each Proposed Provision

1. Establish a ceiling on the term ''needy'' so that it may not exceed a family income of 200 percent of the federal poverty guidelines.

This proposed rule would require each state's definition of needy applied to all federal TANF and state MOE expenditures that are subject to a federally required needs standard to be limited to individuals in families with incomes at or below 200 percent of the federal poverty guidelines. A state is able to use definitions of ''needy'' that are at any level at or below 200 percent of the federal poverty guidelines but state definitions of ''needy'' could not exceed 200 percent of the federal poverty guidelines under this proposed change.[25]

If states maintained their current behavior following the implementation of this rule, state spending on families over 200 percent of the federal poverty guidelines would no longer be countable as MOE. A state could fail to reach its MOE requirements and incur a penalty. This would create an incentive for new behavior from states to transfer MOE spending from families above 200 percent of the federal poverty guidelines to families at or below that limit.

To determine the impacts on spending of this provision, ACF reviewed ACF–204 reports and TANF state plans for FY 2021 and identified programs that had eligibility that included families over 200 percent of the federal poverty guidelines. This approach is limited by the wide variation in quality of reports across states, and it was not possible to have a comprehensive view of all states. TANF state plans have information about both federal and MOE TANF programs, but not expenditure amounts. The ACF–204 reports are limited to MOE spending but provide both program eligibility information and expenditure amounts. As a result, we were able to estimate the number of states with either federal or MOE spending on programs that have needs or eligibility standards of over 200 percent of the federal poverty guidelines. But because the ACF–204 reports are limited to MOE, we were only able to estimate expenditure amounts for MOE spending.

In at least 40 states and the District of Columbia, ACF identified programs, either federal or MOE-funded, with income limits of over 200 percent of the federal poverty guidelines. There were several different types of programs, including pre-kindergarten, child welfare, tax credits, employment, housing, and emergency assistance. In some programs, limits were 80 percent of the state median income, while others had limits based on the federal poverty guidelines (*e.g.,* 300 percent). There was not enough detail in the ACF–204 reports or TANF state plans to determine for every reported program if the eligibility standards were above 200 percent of the federal poverty guidelines. ACF expects that there may be an undercount in the number of impacted programs or states.

In addition to a short description of each MOE program type, states also reported the amount of state MOE expenditures for each program on the ACF–204. In 22 states and the District of Columbia, ACF identified programs funded with MOE that had needs or eligibility standards of over 200 percent of the federal poverty guidelines. We estimate that total state MOE expenditures on identified programs with eligibility of over 200 percent of the federal poverty guidelines was $2.92 billion in FY 2021. Because federal spending is not included, this will be an underestimate.

Of that $2.92 billion, only a percentage would have been spent on families with incomes above 200 percent of the federal poverty guidelines. There may be great variation across states and programs in the proportion of funds that are spent on families with higher incomes. ACF estimates that the range of funds spent on families above 200 percent of the federal poverty guidelines was between 5–20 percent, which is $146.2 million to $584.9 million (see Figure B). With the proposed rule, the impacted amount would be transferred to programs and services for families with incomes below 200 percent of the federal poverty guidelines.

FIGURE B—PROGRAMS WITH ELIGIBILITY OVER 200 PERCENT OF THE FEDERAL POVERTY GUIDELINES AND ESTIMATES OF PERCENT OF IMPACTED FUNDS

	Expenditures on programs with eligibility above 200% of the federal poverty guidelines	Funds spent on families above 200% of the federal poverty guidelines if X% of expenditures are above 200% (millions)	
		5%	20%
$ millions	2,924	146.2	584.9

[25] The federal poverty guidelines are published annually by the U.S. Department of Health and Human Services. See Annual Update of the HHS Poverty Guidelines, 74 FR 3424, January 19, 2023, available at: *https://www.federalregister.gov/documents/2023/01/19/2023-00885/annual-update-of-the-hhs-poverty-guidelines.*

State Responses

No change: If states did not change their behavior in response to this rule, an amount between $146.2 million and $584.9 million in spending would be determined to be unallowable. If a state used federal TANF funds on unallowable spending, it would be assessed a penalty for misuse of funds. The penalty would be equal to the amount of funds misused, which would be a reduction in the subsequent year's block grant. The state would be required to make up that reduction in the year following the imposition of the penalty with state funds that do not count as MOE. If it used state funds, it could not count those as MOE. If a state does not meet its required MOE level for a fiscal year, it is subject to financial penalty in the amount it falls short of its required MOE. Therefore if the state were no longer able to meet its MOE requirement following the proposed change, it would be assessed a penalty. The penalty would be equal to the amount that the state fell short of its MOE requirement, which would be a reduction in the subsequent year's block grant. The state would be required to make up that reduction with state spending that does not count as MOE.

Shift spending from services for families with incomes over 200 percent of the federal poverty guidelines to services for families with incomes at or below 200 percent of the federal poverty guidelines.

To avoid a penalty, states would shift the $146.2 to $584.9 million in spending for families with incomes over 200 percent of the federal poverty guidelines to services for families with incomes at or below 200 percent of the federal poverty guidelines. This would represent a transfer focusing on supports for the families that need TANF services the most.

2. Determining when an expenditure is ''reasonably calculated to accomplish a TANF purpose''.

States are able to spend federal TANF and MOE funds on activities that are ''reasonably calculated to accomplish'' one or more of TANF's four purposes: (1) to assist needy families so that children may be cared for in their own homes; (2) to end dependence of needy parents on government benefits by promoting job preparation, work and marriage; (3) to prevent and reduce the incidence of out-of-wedlock pregnancies; and (4) to encourage the formation and maintenance of two-parent families. The proposed rule would amend 45 CFR 263.11 to add a new subsection (c) that sets forth the reasonable person standard for assessing whether an expenditure is ''reasonably calculated to accomplish the purpose of this part'' 42 U.S.C. 604(a)(1). The proposed regulation defines it to mean expenditures that a reasonable person would consider to be within one or more of the enumerated four purposes of the TANF program.

With the proposed rule, spending that does not meet the reasonable person standard will not be allowable. We expect that some of the current TANF and MOE spending, if continued after the implementation of this rule, would not meet this standard. When considering the impacts on spending of this provision, ACF identified the major ACF–196R expenditure areas where spending may be impacted: pre-kindergarten and Head Start, services for children and youth, child welfare, and college scholarships. Much of the spending claimed in these categories would continue to be allowable under the proposed rule if states demonstrate that it meets the reasonable person standard. However, for some expenditures, states will not be able do this, and that spending would not be allowable. The Department made assumptions about a percentage range of spending in a given expenditure category or subcategory that would no longer be allowable under the proposed rule in order to estimate impacts. The Department then considered the cumulative impact across categories to identify the possible responses of states and estimate economic impact. The Department welcomes comments on these estimates, described below.

Pre-Kindergarten and Head Start

ACF expects that a proportion of current spending reported under the ''Pre-Kindergarten and Head Start'' category on the ACF–196R under purposes three and four would not meet the proposed criteria of meeting the reasonable person standard. States with spending on pre-kindergarten and Head Start may be able to claim them as being directly related to purpose two, by demonstrating that the services provide a needed support so that parents may prepare for or go to work. Some states may already be claiming pre-kindergarten and Head Start MOE as purpose two, and others may be able to shift their spending from other purposes to purpose two. This may lead states to change how they claim this spending. If they are currently claiming spending under purpose three or four, they might shift to claiming under purpose two if they can demonstrate that the service helps parents prepare for, obtain, or maintain work. This would not represent a change in spending, but a change in categorization. The Department expects that a substantial portion of pre-kindergarten or Head Start spending may be allowable under purpose two. If states do categorize pre-kindergarten or Head Start spending under purpose two, they would be required to meet the 200 percent of the federal poverty guidelines standard of ''needy'' as proposed in the NPRM. If states are currently spending TANF funds on pre-kindergarten or Head Start for families over 200 percent of the federal poverty guidelines, they would need to shift or narrow that spending to families at or under 200 percent of the federal poverty guidelines.

In FY 2021, 28 states reported spending $2.9 billion on ''Early Care and Education-Pre-Kindergarten/Head Start'' (see Figure C). A reasonable estimate for the proportion of funds that would no longer be allowable may be 10–50 percent (see Figure D). We selected this range because of our expectation that a substantial portion of pre-kindergarten and Head Start spending will be allowable under purpose two, while making the range broad to capture the uncertainty due to lack of detailed data. The Department expects that this would not be uniformly distributed across states, however we do not have detailed data to estimate accurately which states would be most impacted.

	FY 2021 spending on Pre-K and Head Start ($ millions)		
	Combined Federal and MOE	Federal	MOE
U.S. Total	$2,929.3	$70.9	$2,858.5

FIGURE D—ESTIMATED AMOUNT OF PRE-KINDERGARTEN AND HEAD START THAT WILL NO LONGER BE ALLOWABLE IF 10–50% IS NOT ALLOWABLE ($ IN MILLIONS)

	Non-allowable estimate range ($ millions)	
	10%	50%
U.S. Total	$292.9	$1,464.7

Services for Children and Youth

In FY 2021, 28 states reported a total of $925.0 million in federal TANF and MOE expenditures on ''Services for Children and Youth.'' A wide variety of services and programs may fall in this category, including after-school programs and mentoring or tutoring programs. The Department expects that many of these programs would not meet the reasonable person standard, though programs focused on preventing teen pregnancy and non-marital childbearing would likely be allowable. Because of data availability, the Department is presenting a wide range of estimates for the amount of spending in this category that would no longer be allowable under the proposed rule, from 10–50 percent. We welcome comments on the accuracy of this estimate. If 10 to 50 percent of the FY 2021 expenditures were no longer allowable, that would represent $92.5 to $462.5 million.

FIGURE E—EXPENDITURES ON SERVICES FOR CHILDREN AND YOUTH IN FY 2021 AND ESTIMATED NON-ALLOWABLE SPENDING

[$ millions]

Number of States	FY2021 Spending (millions)	Non-allowable estimate range	
		10%	50%
28	$925.0	$92.5	$462.5

Child Welfare

In FY 2021, states spent approximately $1.9 billion in federal TANF and MOE funds on ''Child Welfare Services.'' This category includes the three subcategories ''20.a Family Support/Family Preservation/Reunification Services,'' ''20.b Adoption Services,'' and ''20. C Additional Child Welfare Services'' (see Figure F). The Department expects that most or all spending in 20.a and 20.b would still be allowable under the proposed rule, which is approximately 51 percent of the FY 2021 Child Welfare Services spending. The Department expects that some of the spending in 20.c ''Additional Child Welfare Services,'' such as expenditures on child protective services investigations, would not meet the reasonable person standard and will therefore not be allowable.

FIGURE F—FY 2021 ACF–196 CHILD WELFARE SERVICES SPENDING BY CATEGORY

Child welfare services categories	FY 2021 spending (millions)	% of child welfare services spending FY 2021 (%)
Family Support/Family Preservation/Family Reunification Services	899.2	47
Adoption Services	32.1	2
Additional Child Welfare Services	967.2	51
Total	1,898.5	

States do not report enough detail on child welfare expenditures to determine conclusively the amount of spending that would no longer be allowable. Therefore, the Department estimates that 10 to 50 percent of the current ''Additional Child Welfare Services'' spending would not be allowable. The impact of this would vary across states. In FY 2021, 23 states reported spending ''Additional Child Welfare Services'' funds on the ACF–196R. If 10 to 50 percent of this spending were no longer allowable, that would be $96.7 to $483.6 million, or 5 to 25 percent of FY 2021 ''Child Welfare Services'' spending (see Figure G).

Number of states	FY 2021 spending ($ millions)	Non-allowable estimate range	
		10%	50%
23	$967.2	$96.7	$483.6

College Scholarships

Education and training for parents with low incomes is a critical element of the TANF program's capacity to increase opportunities for family economic mobility. However, the Department is aware of instances of TANF funds being used for college scholarships for adults without children. Under the proposed rule, college scholarships for adults without children would not meet the reasonable person standard.[26]

To estimate spending on college scholarships, ACF examined spending reported on the ACF–196R under ''Education and Training'' or ''non-EITC refundable tax credit.'' Depending on

[26] The Department notes that it is possible that tuition assistance and other education and training supports may meet TANF purpose two, as long as the services specifically support the economic advancement of parents with low incomes.

the structure of their programs, states report college scholarship spending in these categories. ACF identified the expenditures of eight states with known spending on college scholarships for adults without children in FY 2021 in the appropriate ACF–196R category (see Figure H). We then examined the ACF–204 reports for these states with known spending on college scholarships for adults without children and were often able to identify amounts that were more precise than obtained from including the entire ACF–196R category. ACF estimates that these states spent $1.14 billion on college scholarships in FY 2021. This may exclude states with smaller amounts of college scholarship spending that we are unaware of due to current reporting limitations. It also likely overstates the college scholarship expenditures in identified states, as the ACF–196R categories include activities other than college scholarships. For example, in at least one state, the category includes a variety of other tax credits, and the amount of college tuition tax credits is not identified separately. Additionally, a portion of college scholarship spending may go to parents with children at or under 200 percent of the federal poverty guidelines, and therefore might be allowable under purpose two after rule enactment. Given limitations in the data that ACF can collect, we believe that a range from 85 to 115 percent of $1.14 billion, that is, from $970.7 million to 1.31 billion, is a reasonable estimate for non-allowable spending. Because we looked at states with known college scholarship spending on adults without children, and then were able to identify specific college scholarship expenditures in these states, we believe that the percentage of this spending that will be non-allowable is high, providing the basis for the 85 percent lower estimate. There is still some uncertainty, especially in states where the expenditure was a ''non-EITC refundable tax credit,'' as we do not have data on the amount of this spending that is specifically on college scholarships. The upper estimate accounts for states that may have college scholarship spending on adults without children that we are unaware of from current reporting.

FIGURE H—ESTIMATES OF FY 2021 SPENDING IN CATEGORIES THAT INCLUDE COLLEGE SCHOLARSHIPS AND NON-ALLOWABLE ESTIMATE RANGE

[$ millions]

	FY 2021 spending on college scholarships ($ millions)	Non-allowable estimate range ($ millions)	
		85%	115%
U.S. Total	1,142.0	970.7	1,313.3

State Responses

To identify possible state responses to this provision, we looked at the cumulative impact of spending in the four categories described above, and at federal and MOE spending separately, because states incur different types of penalties depending on the type of spending. Figure I summarizes the amount of spending in each category, broken out by federal and MOE. In FY 2021, states spent $1.5 billion in federal funds on pre-kindergarten and Head Start, services for children and youth, additional child welfare services, and college scholarships. States claimed $4.5 billion in maintenance-of-effort spending on those categories. As discussed previously, we expect that a portion of this spending would be non-allowable under the reasonably calculated provision.

FIGURE I—AMOUNT OF FY 2021 SPENDING ON POTENTIALLY IMPACTED CATEGORIES

[$ millions]

Spending category	Amount of spending: FY 2021 (millions)		
	Federal	MOE	Total
Pre-Kindergarten/Head Start	$70.9	$2,858.5	$2,929.3
Services for Children and Youth	211.9	713.1	925.0
Child Welfare Services—Additional Child Welfare Services	589.8	377.4	967.2
College Scholarships	601.0	541.0	1,142.0
Total Spending	1,473.5	4,490.0	5,963.5

Response: No change in behavior.

Federal TANF Spending

In FY 2021, 37 states had federal spending in these categories that we expect may be impacted under the reasonably calculated provision. Taking into account the estimated percentage range of non-allowable spending in each category described previously, we estimate that between $598.1 and $1.13 billion of the total $1.47 billion in federal spending in these categories would be non-allowable (see Figure J.) Therefore, if states did not change their behavior in the year following the enactment of the proposed rule, 37 states would spend between $598.1 and $1.14 billion total in federal TANF funds on services that are non-allowable. In the following fiscal year, the audit process would identify the non-allowable spending, and states would incur a penalty for misuse of funds in the year following the audit. With this penalty, the federal block grant award is reduced by the amount of TANF funds misused. States are required to replace these federal funds with state funds. This would be a transfer of between $598.1 and $1.127 billion in state funds from other uses to TANF. The states would incur the

penalty in the year following audit findings of the non-allowable spending. We expect that the possibly of a penalty would serve as an incentive for states to transfer federal TANF funds from non-allowable spending to allowable uses.

FIGURE J—IMPACT ON FEDERAL SPENDING

Federal	Number of states with federal spending in categories possibly impacted under reasonably calculated provision	Estimate of non-allowable spending under reasonably calculated provision (millions)	
		Low estimate	High estimate
	37	$598.1	$1,127.4

MOE Spending

To meet the basic MOE requirement, states must claim state expenditures each fiscal year of at least 80 percent of a historic State expenditure level for ''qualified State expenditures.'' If a state meets the minimum work participation rate requirements for all families and two-parent families, they only need to spend at least 75 percent of the historic amount. For the purpose of this analysis, we assume that all states have an 80 percent MOE requirement, because states do not know which level they are required to meet until after the fiscal year is over.

In FY 2021, 38 states claimed MOE spending in at least one of the four categories we analyzed as possibly being impacted under the reasonably calculated provision, totaling $4.49 billion. Taking into account the estimate range of non-allowable spending within each category described previously, we estimate that between $854.7 million and $2.60 billion of this spending would be non-allowable under the proposed provision.

Under the proposed reasonably calculated provision, if states were to make no changes to their behavior, they would spend between $854.7 million and $2.60 billion that is non-allowable as MOE. When reviewing state spending, the Department would not ''count'' this spending as MOE. A state with non-allowable spending would have its MOE level reduced by the amount of non-allowable spending.

This reduction in MOE will have different impacts on states depending on their levels of MOE spending. For example, a state may have a $100 million MOE requirement, and claim $120 million in MOE spending. If $15 million of that spending is non-allowable, the state's MOE level would be reduced to $105 million. The state would still meet the MOE requirement. Many states claim ''excess MOE,'' meaning they claim more MOE spending than needed to meet their basic requirement. So, the Department expects after the rule's enactment, most states will still have enough MOE spending to meet their basic requirement and therefore will not be impacted if they do not change their MOE spending behavior.

However, some states may not be able to meet the MOE requirement after subtracting non-allowable spending. For example, if a state has a $100 million MOE requirement, claims $120 million in MOE spending, but $40 million is non-allowable, their MOE spending will be reduced to $80 million. They would not meet their basic MOE requirement and would be assessed a penalty for failing to meet the TANF MOE requirement. In the next fiscal year, their federal TANF grant would be reduced by the amount of the shortfall, $20 million. The state then would need to ''replace'' those funds by spending an additional $20 million in state funds. This would be a transfer of state funds from their status quo use to MOE.

We applied the estimated percentage range of non-allowable spending in each category to state spending in FY 2021, subtracting each state's estimated amount of non-allowable spending from its reported MOE spending. We identified states where this reduction would result in their failure to have enough MOE to meet the 80% MOE requirement, performing this analysis for the low and high ends of the estimated non-allowable spending range.

Of the 38 states who claimed MOE spending in one or more of the four analyzed categories, we estimate that between five and nine states would fail to meet the MOE requirement under the reasonably calculated provision. The amount of MOE shortfall would be between $196.8 and $636.1 million (Figure K). If states did not change their behavior, these five to nine states would be penalized for failing to meet the TANF MOE requirement. They would need to transfer between $196.8 and $636.1 million in state funds to TANF MOE. We expect that this would incentivize impacted states to change behavior to avoid a penalty.

FIGURE K—IMPACT ON MOE SPENDING

MOE	Number of states with MOE spending in categories possibly impacted under reasonably calculated provision	Estimated additional number of states that fail to meet 80% MOE requirement under reasonably calculated provision *		Amount of shortfall (millions)	
		Low estimate	High estimate	Low estimate	High estimate
	38	5	9	$196.8	$636.1

Response: Shift non-allowable spending in pre-kindergarten and Head Start, services for children and youth, and additional child welfare services to activities that meets the reasonable person standard.

States that reported federal TANF spending in these categories could shift the subset of non-allowable federal spending to other programs or services that are directly related to a TANF purpose. For pre-kindergarten and Head Start spending, states may be able to recategorize the non-allowable spending claimed under purpose three as purpose two. We estimate that the total transfer for federal TANF spending would be between $598.1 million and $1.13 billion.

States that claimed MOE spending in these categories could shift spending that is non-allowable under the reasonably calculated provision to other programs or services that are directly

related to a TANF purpose. As discussed previously, we expect that this change in behavior will be incentivized in states where they cannot meet their basic MOE requirement if the non-allowable spending is excluded from their MOE. This is the case in five to nine states, and the estimated transfer in state funds to allowable TANF MOE uses is between $196.8 and $636.1 million.

Caveats

Our estimates only include four spending categories, which we selected because we believe they represent the majority of non-allowable spending. With the implementation of the rule, we may identify non-allowable spending in other categories, which could change the number of impacted states and amount of non-allowable spending.

Our analysis assumes that the percentage of spending on the four categories that is non-allowable is consistent across states. We expect that this is not the case, and that depending on the services provided, some states may have proportionally more non-allowable spending than others. We try to compensate for this by having fairly broad ranges in our estimates.

3. Exclude third-party, non-governmental spending as allowable MOE.

Currently, states are able to count spending by third-party, non-governmental entities toward their MOE and Contingency Fund spending requirements. This third-party, non-governmental spending often occurs in programs outside of the TANF program but for services and benefits that meet TANF allowable purposes. States do not report data to ACF about the source of their MOE; we have based our analysis on information from a GAO study published in 2016, the only published data available for analysis.[27] We used the percentage of MOE spending that was third-party, non-governmental MOE spending in the GAO study to estimate spending for FY 2021, and we estimate that five states used third-party, non-governmental MOE to meet some of their MOE requirement in FY 2021. The total amount of third-party, non-governmental MOE spending in those five states was an estimated $145.7 million.

If these states did not change their behavior following the implementation of a final rule that adopts the provision on third-party, non-governmental MOE as proposed, they would each fall short of meeting the basic MOE requirement by the amount of third-party, non-governmental expenditures that counted toward basic MOE. Each would be assessed a penalty that reduced the TANF grant by the amount of the shortfall. They would have to expend additional state funds beyond their MOE requirement, which do not count as MOE, in the year after we impose the penalty, to replace the reduction of the federal grant. This would represent a transfer of state funds to the TANF program from other state spending. Assuming that all five states failed to expend additional MOE in the first year of implementation to substitute for any of their third-party, non-governmental MOE, a total of $145.7 million of TANF spending would be transferred from the states to the federal government.

We have limited information about third-party non-governmental expenditures, and we cannot accurately estimate how much a state may fall short of its basic MOE requirement in a given year. However, for a state that would need to increase state MOE spending to comply with its basic MOE requirement after changes in this regulation take effect, the impact of falling short and having a penalty would be twice as great as increasing MOE spending and avoiding a penalty. Therefore, we anticipate that states will have an incentive to shift state spending to avoid a penalty. States would transfer spending toward their TANF programs or identify additional state governmental spending that meets one or more of the purposes of TANF and qualifies as MOE.

Under this proposed rule, we do not expect that the third-party, non-governmental expenditures on TANF-eligible individuals would decrease, because these are typically funds that these organizations spend, regardless of the state's ability to count them toward the TANF MOE requirement. It is possible that governmental spending on TANF-eligible individuals would stay the same (by identifying additional existing *governmental* MOE) or increasing MOE spending in other areas. There is great variation in the types of programs that can be considered TANF-related spending (*e.g.,* basic assistance, child care, work supports) and there may be high returns to society for spending on these types of programs. When faced with a need to increase MOE spending, states will have a variety of beneficial types of activities they can choose to fund, and we expect that they would choose those that are in greatest need or provide the highest return on the expenditure, given local conditions. Therefore, an equally efficient or improved utilization of resources is expected.

4. Ensure that excused holidays match the number of federal holidays, following the recognition of Juneteenth as a federal holiday.

This proposal would realign the TANF rules with respect to holidays to the number of federal holidays. It would revise § 261.60(b) to increase from 10 to 11 the maximum number of holidays permitted to count in the work participation rate for unpaid work activities in the fiscal year. The proposal would not alter the calculation for individuals participating in paid work activities, which includes the hours for which an individual was paid, including paid holidays and sick leave, and which can be based on projected actual hours of employment for up to six months, with documentation. There is negligible anticipated fiscal impact of this provision.

5. Develop new criteria to allow states to use alternative Income and Eligibility Verification System (IEVS) measures.

IEVS is a set of data matches that each state must complete to confirm the initial and ongoing eligibility of a family for TANF-funded benefits. State TANF programs are required to participate in IEVS and must match TANF applicant and recipient data with four types of information through IEVS. The Department is proposing to change the criteria for alternate sources of income and eligibility information, which would provide flexibility to states to find more effective data matches and perform the ones that are likely to benefit their programs the most. States will have the option of continuing the status quo IEVS measures or of using the proposed flexibility to use alternative measures. For states that choose to use this flexibility, there will be upfront costs of staff time to develop new criteria and submit them for approval, along with costs of ongoing monitoring and compliance. The main benefit will likely be the cost effectiveness of alternative sources of data matching. We have not quantified these impacts. Because they have the option of maintaining the status quo, we expect that states will only invest upfront and ongoing resources if this cost to them is outweighed by the benefits of the flexibility. The Department expects a reduction in administrative burden for states that opt to take up this provision and welcomes comments from states about the impact of this provision on administrative burden or other costs and benefits.

[27] U.S. Governmental Accountability Office, *Temporary Assistance for Needy Families: Update on States Counting Third-Party Expenditures toward Maintenance of Effort Requirements,* February 2016, available at: *https://www.gao.gov/assets/gao-16-315.pdf.*

6. Clarify the ''significant progress'' criteria following a work participation rate corrective compliance plan.

This proposal would add a clearer means of qualifying for ''significant progress'' when a state that has failed its work participation rate also fails to correct the violation fully in a corrective compliance plan. Specifically, it would permit a state that failed both the overall and two-parents rates for a year and subsequently meets the overall rate (but not the two-parent rate) as part of its corrective compliance plan to qualify for a reduced penalty. The Department considers this proposal necessary to improve governmental processes and expects a reduction in potential financial penalties by making penalties commensurate with the degree of the state's remaining noncompliance.

7. Clarify the existing regulatory text about the allowability of costs associated with disseminating program information.

The seventh proposed change would clarify existing regulatory text about the allowability of costs associated with providing program information. We propose to clarify the point that administrative costs exclude the costs of disseminating program information. The Department considers this necessary to provide clarification because the TANF statute sets an administrative cap of fifteen percent and failure to comply with the administrative cap could lead to a misuse of funds penalty. We do not expect that this will have a fiscal impact because it is only clarifying our longstanding statutory interpretation.

Administrative Costs

Costs to ACF

We identify a one-time cost to ACF's Office of Family Assistance to revise the Compliance Supplement for the Office of Management and Budget's Uniform Administrative requirements, Cost principles, and Audit Requirements Regulations. For the purposes of this analysis, we assume these tasks would be performed by federal employees on the General Schedule payscale at grade 14, step 5, in the locality pay area covering ACF headquarters in Washington, DC, earning an hourly wage of $71.88.[28] Assuming benefits and indirect costs of labor equal 100 percent of the hourly wage, the corresponding fully loaded cost of labor for these employees is $157.48 per hour. We anticipate that it will take two employees, each working 80 hours, to revise these documents, or 160 hours in total. Thus, we estimate that ACF would incur $23,001.60 in costs under the proposed rule. This estimate represents an opportunity cost, monetized as the value of the employee's productive time, rather than additional federal spending.

Costs to States and Other Jurisdictions Administering TANF Programs

We identify a one-time cost to agencies that administer TANF programs to read and understand the proposed rule. Given the length of the preamble (approximately 21,600 words) and average reading speeds about 225 words per minute,[29] we estimate that it would take each individual about 1.6 hours to read and understand the proposed rule.[30] We assume that, in each jurisdiction, one lawyer and one auditor would spend time absorbing this information. We adopt an average pre-tax hourly wage for lawyers of $78.74 per hour,[31] and a corresponding fully loaded cost of labor of $157.48 per hour; for auditors, we adopt a pre-tax hourly wage of $41.70 per hour,[32] and a corresponding fully loaded cost of labor of $83.40 per hour. For this impact, we calculate costs of $385.41 per jurisdiction,[33] and total costs of $20,812.03 across all jurisdictions.[34]

We also identify a cost to agencies that administer TANF programs to determine whether they are in compliance with the regulatory requirements of the proposed rule. We model this impact as one program administrator and one budget officer per jurisdiction each spending 3 work days on this effort, or 48 total working hours per jurisdiction. To monetize this impact, we adopt an average pre-tax hourly wage for managers of $63.08 per hour, and a corresponding fully loaded wage of $126.16. For this impact, we calculate costs of $6,055.68, and total costs of $327,006.72 across all jurisdictions.

In total, we identify $23,001.60 in costs to ACF, $347,818.75 in costs to jurisdictions administering TANF programs, and $370,820.35 in incremental administrative costs attributable to the proposed rule. We request comment on these cost estimates, including to identify any additional sources of costs of this proposed rule.

Analysis of Regulatory Alternatives

In developing this proposed rule, the Department carefully considered the alternative of maintaining the status quo. If the Department does not act, states will be able to continue funding services that do not align with congressional intent. Additionally, there will be valuable missed opportunities to increase administrative efficiency and to support states in designing and implementing effective work programs that provide positive benefits to participants and society.

In addition to maintaining the status quo, we considered other alternatives to the proposals in the NPRM.

Alternative 1: Establish a ceiling on the term ''needy'' so that it may equal but may not exceed a family income of 130 percent of the federal poverty guidelines. We considered several possible approaches to establishing a ceiling on the term ''needy.'' In particular, we considered proposing setting the limit at or below 130 percent of the federal poverty guidelines. We examined the ACF–204 forms submitted by states in 2021 in order to identify programs funded with MOE that had needs or eligibility standards of over 130 percent of the federal poverty guidelines. We estimate that the range of funds spent on families above 130 percent of the federal poverty guidelines is between $483.8 million and $3.285 billion. Under this alternative, the impacted amount would be transferred to programs and services for families with incomes at or below 130 percent of the federal poverty guidelines. We note that because of data limitations, our analysis only includes expenditures claimed as MOE. Therefore our estimate likely underrepresents the magnitude of the impact.

The Department also reviewed general eligibility limits for several other major federal programs that serve families with very low incomes, as shown in Figure L.

[28] U.S. Office of Personnel Management. 2023 General Schedule (GS) Locality Pay Tables: Washington–Baltimore–Arlington, DC–MD–VA–WV–PA. *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/DCB_h.pdf.*

[29] U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. 2016. *Guidelines for Regulatory Impact Analysis. https://aspe.hhs.gov/reports/guidelines-regulatory-impact-analysis.* 225 is a midpoint estimate of the ''average adult reading speed (approximately 200 to 250 words per minute)'' (page 26).

[30] 1.6 hours = 21,600 words ÷ 225 words per minute ÷ 60 minutes per hour.

[31] U.S. Bureau of Labor Statistics. Occupational Employment and Wages, May 2022: 23–1011 Lawyers. *https://www.bls.gov/oes/current/oes231011.htm.* Accessed August 16, 2023.

[32] U.S. Bureau of Labor Statistics. Occupational Employment and Wages, May 2022: 13–2011 Accountants and Auditors. *https://www.bls.gov/oes/current/oes132011.htm.* Accessed August 16, 2023.

[33] $385.41 = 1.6 hours * ($157.48 per hour + $83.40 per hour).

[34] $20,812.03 = 54 jurisdictions * $385.41 per jurisdiction.

FIGURE L—SIMPLIFIED INCOME ELIGIBILITY LIMITS FOR OTHER FEDERAL PROGRAMS

Program	Income eligibility limit
Medicaid	At or below 138% of the federal poverty guidelines in Medicaid-expansion states, lower in non-expansion states.
SNAP	At or below 130% of the federal poverty guidelines; up to 200% for states with broad-based categorical eligibility for those receiving a TANF-funded benefit.
LIHEAP	At or below 150% of the federal poverty guidelines or at or below 60% State Median Income.
Head Start	At or below 100% of the federal poverty guidelines, or households receiving SNAP and other public assistance.
National School Lunch Program	At or below 130% of the federal poverty guidelines eligible for free meals; between 104% and 185% eligible for reduced price meals.
Title IV–E Foster Care	Eligible for Aid to Families with Dependent Children (AFDC) under the state plan in effect July 16, 1996.
Social Services Block Grant	At or below 200% of the federal poverty guidelines.

Because of the wide variety of services funded by TANF, the Department is aware that states may have strategically designed services so that TANF programs can enhance and complement other federal programs while still serving needy families. By setting a ceiling above the limit of many other programs, the Department allows for state flexibility while also aligning closely with another grant that also funds a variety of services for needy families, the Social Services Block Grant.

Alternative 2: Establish a ceiling on the term ''needy'' so that it may equal but may not exceed a family income of 300 percent of the federal poverty guidelines. In addition to a lower needy standard limit, the Department also considered establish a higher ceiling on the term ''needy'' at 300 percent of the federal poverty guidelines. We examined the ACF–204 forms submitted by states in 2021 and identified $826.9 million in expenditures claimed as MOE in programs that have needs standards above 300 percent of the federal poverty guidelines. We estimate that between $41.3 million and $165.4 million of these expenditures are for families above 300 percent of the federal poverty guidelines. Under this alternative, the impacted amount would be transferred to programs and services for families with incomes at or below 300 percent of the federal poverty guidelines. We note that because of data limitations, our analysis only includes expenditures claimed as MOE. Therefore our estimate likely underrepresents the magnitude of the impact.

For context, for a family of three in 2021, this would be an annual income of $65,880. The monthly average would be $5,490, which is 1.5 times greater than the highest state eligibility limit for ongoing eligibility for cash assistance in 2021. Given that 300 percent greatly exceeds the highest income limit for cash assistance initial eligibility, and that it is substantially higher than other federal program income eligibility limits (see Figure L), the Department rejected a 300-percent limit, as it did not appear to be aligned with congressional intent for programs that serve needy families.

Alternative 3: Establish a phase-in schedule for the provisions of the proposed rule: provisions four through seven would have effective dates in the fiscal year of the finalization of the proposed rule; provisions one through three would have an effective date at the start of the fiscal year following publication. Under this alternative, with the finalization of the proposed rule, provisions four through seven, related to work and administrative efficiencies, would be effective immediately. For the first three provisions regarding allowable spending and third-party, non-governmental MOE, there would be an effective data in the fiscal year following the finalization of the rule. By establishing different effective dates, states would have necessary time to identify strategies and make changes to be in compliance with the allowable spending and third-party MOE provisions, which could be a complex process in some states. It would also not delay the implementation of provisions four through seven, which provide some changes that states have requested and strengthen TANF work programs. However, it is likely that provisions four through six will require changes to state administrative systems. Additionally, because of uncertainty in timing of the effective date, the Department is concerned about the burden on states if the rule is finalized late in a fiscal year. Therefore, the Department rejected this alternative in favor of a single effective date for all provisions at the start of the fiscal year following finalization.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. For purposes of the RFA, states and individuals are not considered small entities. As the rule directly and primarily impacts states and indirectly impacts individuals, it has been determined, and the Secretary proposed to certify certifies, that this proposed rule would not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.,* as amended) (PRA), all Departments are required to submit to OMB for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. As required by this Act, we will submit any proposed revised data collection requirements to OMB for review and approval

Executive Order 13132

Executive Order 13132 requires federal agencies to consult with state and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people. While the Department has not identified this rule to have federalism implications as defined in the Executive Order, consistent with Executive Order 13132, the Department specifically solicits and welcomes comments from state and local government officials on this proposed rule.

Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 2000 (Pub. L. 106–58) requires federal agencies to determine whether a policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact

assessment addressing seven criteria specified in the law. This proposed regulation would not have a negative impact on family well-being as defined in the law.

Jeff Hild, Acting Assistant Secretary of the Administration for Children and Families, approved this document on September, 20, 2023.

List of Subjects

45 CFR Part 205

Computer technology, Grant programs—social programs, Public assistance programsReporting and recordkeeping requirements, Wages.

Reporting and recordkeeping requirements, Wages.

45 CFR Part 260

Administrative practice and procedure, Grant programs—social programs, Public assistance programs.

45 CFR Part 261

Administrative practice and procedure, Employment, Grant programs—social programs, Public assistance programs, Reporting and record keeping requirements.

45 CFR Part 263

Administrative practice and procedure, Grant programs—social programs, Public assistance programs, Reporting and record keeping requirements.

Dated: September 22, 2023.

Xavier Becerra,

Secretary.

For the reasons set forth in the preamble, we propose to amend 45 CFR Subtitle B, Chapter II, as follows:

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

■ 1. The authority citation for part 205 continues to read as follows:

Authority: 42 U.S.C. 602, 603, 606, 607, 1302, 1306(a), and 1320b–7: 42 U.S.C. 1973gg–5.

■ 2. In § 205.55, revise paragraph (d) to read as follows:

§ 205.55 Requirements for requesting and furnishing eligibility and income information.

* * * * *

(d) The Secretary may, based upon application from a State, permit a State to obtain and use income and eligibility information from an alternate source or sources in order to meet any requirement of paragraph (a) of this section. The State agency must demonstrate to the Secretary that the alternate source or sources is as timely and useful, and either as complete or as cost effective for verifying eligibility and benefit amounts as the data source required in paragraph (a) of this section. The Secretary will consult with the Secretary of Agriculture and the Secretary of Labor prior to approval of a request, as appropriate. The State must continue to meet the requirements of this section unless the Secretary has approved the request.

* * * * *

PART 260—GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROVISIONS

■ 3. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 601, 601 note, 603, 604, 606, 607, 608, 609, 610, 611, 619, and 1308.

■ 4. Amend § 260.30 by adding the definition ''Needy'' to read as follows:

§ 260.30 What definitions apply under the TANF regulations?

* * * * *

Needy means state established standards of financial need may not exceed a family income of 200 percent of the federal poverty guidelines.

* * * * *

PART 261—ENSURING THAT RECIPIENTS WORK

■ 5. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 601, 602, 607, and 609; Pub. L. 109–171.

■ 6. In § 261.53, revise paragraph (b) to read as follows:

§ 261.53 May a State correct the problem before incurring a penalty?

* * * * *

(b) To qualify for a penalty reduction under § 262.6(j)(1) of this chapter, based on significant progress towards correcting a violation, a State must either:

(1) Reduce the difference between the participation rate it achieved in the fiscal year for which it is subject to a penalty and the rate applicable for the fiscal year in which the corrective compliance plan ends (adjusted for any caseload reduction credit determined pursuant to subpart D of this part) by at least 50 percent; or

(2) Have met the overall work participation rate during the corrective compliance plan period but did not meet both the overall and two-parent work participation rates in the same fiscal year during the corrective compliance plan period, if the State failed both the overall and two-parent work participation rates in the fiscal year for which it is subject to a penalty.

■ 7. In § 261.60, amend paragraph (b) by revising the second, third, and fourth sentences to read as follows:

§ 261.60 What hours of participation may a State report for a work-eligible individual?

* * * * *

(b) * * * For participation in unpaid work activities, it may include excused absences for hours missed due to a maximum number of holidays equal to the number of federal holidays in a fiscal year, as established in 5 U.S.C. 6103, in the preceding 12-month period and up to 80 hours of additional excused absences in the preceding 12-month period, no more than 16 of which may occur in a month, for each work-eligible individual. Each State must designate the days that it wishes to count as holidays for those in unpaid activities in its Work Verification Plan. In order to count an excused absence as actual hours of participation, the individual must have been scheduled to participate in a countable work activity for the period of the absence that the State reports as participation. * * *

* * * * *

PART 263—EXPENDITURES OF STATE AND FEDERAL TANF FUNDS

■ 8. The authority citation for part 263 continues to read as follows:

Authority: 42 U.S.C. 604, 607, 609, and 862a; Pub. L. 109–171.

■ 9. Amend § 263.0, by revising (b)(1)(i) and adding (b)(1)(iii) to read as follows:

§ 263.0 What definitions apply to this part?

* * * * *

(b) * * *

(1) * * *

(i) For example, it excludes costs of providing diversion benefits and services, screening and assessments, development of employability plans, work activities, post-employment services, work supports, and case management. It also excludes costs for contracts devoted entirely to such activities.

* * * * *

(iii) It excludes costs of disseminating program information, such as information about program services, information about TANF purposes, or other information that furthers a TANF purpose.

* * * * *

■ 10. Revise § 263.2(e) to read as follows:

§ 263.2 What kinds of State expenditures count toward meeting a State's basic MOE expenditure requirement?

* * * * *

(e) Expenditures for benefits or services listed under paragraph (a) of this section are limited to allowable costs borne by State or local governments only and may not include cash donations from non-governmental third parties (*e.g.,* a non-profit organization) and may not include the value of third-party in-kind contributions from non-governmental third parties.

* * * * *

■ 11. Amend § 263.11 by adding paragraph (c) to read as follows:

§ 263.11 What uses of Federal TANF funds are improper?

* * * * *

(c) If an expenditure is identified that does not appear to HHS to be reasonably calculated to accomplish a purpose of TANF (as specified at § 260.20 of this chapter), the State must show that it used these funds for a purpose or purposes that a reasonable person would consider to be within one or more of the four purposes of the TANF program (as specified at § 260.20 of this chapter).

[FR Doc. 2023–21169 Filed 9–29–23; 4:15 pm]

BILLING CODE 4184–36–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1831 and 1852

[Notice: (23–099)]

RIN 2700–AE72

NASA Federal Acquisition Regulation Supplement (NFS): Removal of Total Compensation Plan Language (NFS Case 2023–N002)

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA is proposing to amend the NASA Federal Acquisition Regulation Supplement (NFS) as well as corresponding sections of the CFR at 48 CFR part 1831 and 1852 to remove NFS 1831.205–671, Solicitation provision, and NFS Clause 1852.231–71, Determination of Compensation Reasonableness.

DATES: Comments are due December 1, 2023.

FOR FURTHER INFORMATION CONTACT: Edgar Lee, NASA HQs, Office of Procurement Management and Policy Division, LP–011, 300 E. Street SW, Washington, DC 20456–001. Telephone 202–420–1384; facsimile 202–358–3082.

SUPPLEMENTARY INFORMATION:

I. Background

NASA is proposing to amend the NFS by removing NFS 1831.205–671, Solicitation provision, and NFS 1852.231–71, Determination of Compensation Reasonableness, from the NFS. NASA has determined that these provisions are unnecessary as the as they exceed the scope requirements adequately covered in FAR provision 52.222–46, Evaluation of Compensation for Professional Employees. Currently, NFS requires an evaluation for all labor categories and periodic review of total compensation plans after contract award for cost reimbursement contracts (at least every 3 years) to evaluate the reasonableness of compensation for all proposed labor categories in service contracts.

NASA has made a determination to rely on FAR provision 52.222–46, agencywide templates, and instructions, to ensure consistency in the data provided to NASA and subsequent evaluations as well as ensuring NASA continues to pay fair and reasonable wages.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review by OMB under E.O. 12866, Regulatory Planning and Review. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

NASA does not expect this rule, when enacted, to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule is removing the NFS unique requirements for submission of total compensation plan. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. NASA invites comments from small business concerns and other interested parties on the expected impact of this rulemaking on small entities.

NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rulemaking consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 and NFS Case 2023–N002 in correspondence.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply. The changes proposed in this rulemaking will make an existing information collection currently approved under Office of Management and Budget (OMB) control number 2700–0077, *Contractor and Subcontractor Compensation Plans,* unnecessary. Subject to public comment to the contrary as part of this proposed rule, NASA plans to discontinue this collection with the publication of the final rule.

List of Subjects

48 CFR Part 1831

Accounting, Government procurement.

48 CFR Part 1852

Accounting, Government procurement, Reporting and recordkeeping requirements.

Erica Jones,

NASA FAR Supplement Manager.

For the reasons stated in the preamble, NASA proposes to amend 48 CFR parts 1831 and 1852 as follows:

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for part 1831 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

§ 1831.205–671 [Removed and Reserved]

■ 2. Remove and reserve § 1831.205–671.

PART 1852—SOLICITATION PROCEDURES AND CONTRACT CLAUSES

■ 3. The authority citation for part 1852 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

§ 1852.231–71 [Removed and Reserved]

■ 4. Remove and reserve § 1852.231–71.

[FR Doc. 2023–21313 Filed 9–29–23; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230919–0226]

RIN 0648–BL98

Snapper-Grouper Fishery of the South Atlantic Region; Golden Crab Fishery of the South Atlantic Region; Dolphin and Wahoo Fishery of the Atlantic; Acceptable Biological Catch Control Rules

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement amendments to the Fishery Management Plans (FMPs) for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP), the Golden Crab Fishery of the South Atlantic Region (Golden Crab FMP), and the Dolphin and Wahoo Fishery of the Atlantic (Dolphin and Wahoo FMP), referenced here as the Acceptable Biological Catch (ABC) Control Rule Amendments. If implemented, this proposed rule would modify the ABC control rules, allow the phase-in of ABC changes, allow some carry-over of an unharvested portion of the annual catch limit (ACL) to the following fishing year, and modify the FMP framework procedures to implement carry-overs of ACLs when appropriate. The purpose of this proposed rule is to ensure catch level recommendations are based on the best scientific information available, prevent overfishing while achieving optimum yield (OY), and increase flexibility in setting catch limits. NMFS also proposes an administrative clarification to existing regulations for the Snapper-Grouper FMP framework procedure.

DATES: Written comments must be received no later than November 1, 2023.

ADDRESSES: You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2023–0067,'' by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter ''NOAA–NMFS–2023–0067'' in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit all written comments to Nikhil Mehta, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (for example, name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments—enter ''N/A'' in the required fields if you wish to remain anonymous.

An electronic copy of the ABC Control Rule Amendments, which includes an environmental assessment, a fishery impact statement, and a regulatory impact review, may be obtained from the NMFS Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/comprehensive-acceptable-biological-catch-abc-control-rule-amendment-revisions-abc-control.*

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, telephone: 727–824–5305, or email: *nikhil.mehta@noaa.gov.*

SUPPLEMENTARY INFORMATION: The South Atlantic snapper-grouper and golden crab fisheries are managed under the Snapper-Grouper FMP and Golden Crab FMP, respectively. The dolphin and wahoo fishery of the Atlantic is managed under the Dolphin and Wahoo FMP. These three FMPs were prepared by the South Atlantic Fishery Management Council (Council) and are implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Council has developed, and submitted to NMFS for review and approval, the Comprehensive Acceptable Biological Catch Control Rule Amendment: Revisions to the Acceptable Biological Catch Control Rules and Specifications for Carry-Overs and Phase-Ins. The Council document is composed of Amendment 45 to the Snapper-Grouper FMP, Amendment 11 to the Golden Crab FMP, and Amendment 11 to the Dolphin and Wahoo FMP.

Background

The Council and NMFS manage snapper-grouper species and golden crab in Federal waters from North Carolina south to the Florida Keys. The dolphin and wahoo fishery is managed in Federal waters from Maine south to the Florida Keys.

The Council's Scientific and Statistical Committee (SSC) developed an ABC control rule in 2008, using uncertainty and risk traits to determine the acceptable risk of overfishing. The ABC control rule is the method by which the ABC for a stock is set, ideally based on an overfishing limit (OFL) from a stock assessment but at times established using more data-limited methodologies. The acceptable risk of overfishing is denoted as P-Star (P*) and is applied through assessment projections to develop the SSC's ABC recommendation. During development of the Comprehensive ACL Amendment by the Council, the SSC recommended adding additional levels of specificity to the ABC control rules to better address unassessed and data-limited stocks. The Comprehensive ACL Amendment included the ABC control rules for the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs in 2012 (77 FR 15916, March 16, 2012). In 2015, the ABC control rule for the Snapper-Grouper FMP was revised by adding the Only Reliable Catch Stocks (ORCS) approach for applicable snapper-grouper stocks in Amendment 29 to the Snapper-Grouper FMP (80 FR 30947, June 1, 2015). The ORCS approach was recommended by the Council's SSC for calculating ABC values for unassessed stocks when only reliable catch information is available, and was determined to be based on the best scientific information available.

In October 2016, NMFS published a final rule to revise the guidelines for National Standard 1 (NS1) of the Magnuson-Stevens Act (81 FR 71858, October 18, 2016). NS1 states that fishery conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. One of the objectives of the 2016 NS1 revisions was to provide additional flexibility within current statutory limits to address fishery management issues. For example, the revised NS1 guidelines allow for changes in catch limits to be phased in over time and is also described as ''phase-in'' in the ABC Control Rule Amendments and this proposed rule. The revised guidelines also allow for some of the unused portion of an ACL to be carried over from 1 fishing year to the next, which is also described as ''carry-over'' in this proposed rule. Fishery management councils, NMFS regions, and stakeholders have expressed considerable interest in using the phase-

in and carry-over provisions in ABC control rules. In 2020, recommendations and best practices for how to develop and apply these provisions were provided in a NOAA Technical Memorandum (NMFS–F/SPO–203, July 2020). The goals of the technical memo were to: (1) provide examples of how carry-over and phase-in provisions have been implemented in fisheries so that we can learn from past experiences; (2) describe some possible approaches to design and implement carry-over and phase-in provisions; and (3) identify characteristics of fish stocks, fisheries, and management approaches that may impact the benefits and risks of applying carry-over and phase-in provisions. If implemented by NMFS, this proposed rule would incorporate carry-over and phase-in provisions by modifying the existing ABC control rules for the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs by clarifying the incorporation of scientific uncertainty and management risk, modifying the approach used to determine the acceptable risk of overfishing, and prioritizing the use of stock rebuilding plans for overfished stocks.

Management Measure Contained in This Proposed Rule

Modify Framework Procedures

The ABC Control Rule Amendments and this proposed rule would modify the framework procedures in the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs to allow for the future transfer, if pre-qualifying criteria are met, of an unharvested portion of a stock, total, or sector-specific ACL to the following fishing year (details are described in the *Allow Carry-Over of Unharvested Portion of ACLs* section of this proposed rule).

The current framework procedure for the Snapper-Grouper FMP in the regulations at 50 CFR 622.194 was implemented by Amendment 29 to the FMP in 2015. The current framework procedure allows for changes via rulemaking to: biomass levels, age-structured analyses, target dates for rebuilding overfished species, maximum sustainable yield (MSY) (or proxy), OY, ABC, total allowable catch (TAC), quotas (including a quota of zero), ACLs, annual catch targets (ACTs), accountability measures (AMs), maximum fishing mortality threshold (MFMT), minimum stock size threshold (MSST), trip limits, bag limits, size limits, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, fishing year, rebuilding plans, definitions of essential fish habitat (EFH), EFH, EFH habitat areas of particular concern (HAPCs), or coral HAPCs, restrictions on gear and fishing activities applicable in EFH and EFH HAPCs, and establish or modify spawning special management zones (SMZs).

The current framework procedure for the Golden Crab FMP in the regulations at 50 CFR 622.252 was implemented by the final rule for the original Golden Crab FMP in 1996 (61 FR 43952, August 27, 1996). The current framework procedure allows for changes via rulemaking to: biomass levels, age-structured analyses, MSY, ABC, TAC, quotas (including quotas equal to zero), trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, sub-zones and their management measures, time frame for recovery of golden crab if overfished, fishing year (adjustment not to exceed 2 months), observer requirements, authority for the NMFS Regional Administrator (RA) to close the fishery when a quota is reached or is projected to be reached, definitions of EFH, EFH HAPCs, or Coral HAPCs.

The current framework procedure for the Dolphin and Wahoo FMP in the regulations at 50 CFR 622.194 was implemented by Amendment 5 to the Dolphin and Wahoo FMP in 2014 (79 FR 32878, June 9, 2014). The current framework procedure allows for changes via rulemaking to: biomass levels, age-structured analyses, target dates for rebuilding overfished species, MSY (or proxy), OY, ABC, TAC, quotas (including a quota of zero), ACLs, ACTs, AMs, MFMT, MSST, trip limits, bag limits, size limits, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, fishing year, rebuilding plans, definitions of EFH, EFH HAPCs, or Coral HAPCs, restrictions on gear and fishing activities applicable in EFH and EFH HAPCs, and establish or modify spawning SMZs.

The existing framework procedures for the three FMPs in this proposed rule already enable the Council to ask the SSC to consider recommending a temporary, higher ABC. However, the existing approach is not efficient for changes to catch levels and would likely not allow the Council and NMFS to develop and implement changes to catch levels, given the timing of Council and SSC meetings, the time required to develop a framework action, and the time needed for NMFS to implement changes to catch levels within a fishing year based on landings from the previous year.

If NMFS implements this proposed rule, the potential for carry-over of an ACL would not be immediate. Before NMFS could implement an ACL carry-over, NMFS would have to implement this proposed rule. Then, other preceding steps by the Council, SSC, and NMFS must occur.

A future stock assessment must determine if carry-over is possible for that species and specify the appropriate catch level. Then, the SSC would determine and recommend an ABC to the Council and the Council would develop an FMP amendment or framework action for the species with the option of ACL carry-over. If the required rulemaking for a catch level change that would follow was implemented by NMFS, then that species would be eligible for future carry-over through a subsequent abbreviated framework action under the abbreviated framework procedures described in this proposed rule. To support potential carry-over justification, a Term of Reference, would be added to each future stock assessment to project the maximum amount of landings beyond the ABC that could be carried over in 1 year while not resulting in overfishing, or in the stock becoming overfished, within the projection period.

When the Council develops a subsequent fishery management action in response to a stock assessment to specify or revise an ABC and ACL for a stock or sector, the Council would determine whether carry-over would be authorized if annual conditions cause a stock ACL or sector ACL to qualify for carry-over. In doing so, the Council would consider the potential need for, and benefits of, carry-over for a stock that could become eligible according to criteria specified in the ABC control rule. The Council would also consider the duration of time when the specified ABC and ACL are effective. An FMP amendment or framework action that specifies carry-over for a stock or sector would include analysis of the relevant biological, economic, and social information necessary to meet the criteria and guidance of the ABC control rule.

Following the conclusion of each fishing year, Council staff would notify the Council if any stocks and sectors for which carry-over is approved qualify based on the previous year's landings, and may necessitate using preliminary landings estimates from the previous year if those landings data are not yet finalized. If a stock or sector qualifies for carry-over according to specifications of the ABC and annual landings meet criteria specified in the

ABC control rule, NMFS would implement carry-over of eligible landings from the previous year via a temporary rule published in the **Federal Register** through the existing FMP framework procedure and rulemaking process.

The proposed carry-over procedure for eligible fish stocks or fishery sectors generally would not require additional advisory panel (AP) input or SSC recommendation, because input relevant to an ABC being approved with potential for carry-over would be part of the prior development process for the FMP amendment or framework in which the ABC and ACL for a stock or sector are already specified. Application of the carry-over procedure is expected to be routine and formulaic.

The NMFS RA would review any Council recommendations for carry-over and supporting information. If the RA concurs that the Council's recommendations are consistent with the objectives of the applicable FMP, the Magnuson-Stevens Act, and all other applicable law, the RA would be authorized to implement the Council's proposed action through publication of appropriate notification in the **Federal Register**.

If the Council chooses to deviate from the criteria and guidance of the proposed ABC control rules, this abbreviated process would not apply.

Further details of the proposed process can be found in section 2.4.1 and Appendix J of the ABC Control Rule Amendments. An example of the carry-over can be found in Appendix H of the ABC Control Rule Amendments.

The proposed process would allow carry-overs to occur in a more timely manner than that of an FMP amendment or framework action. A faster process is necessary due to the year-to-year nature of carry-overs. Under-harvest of an ACL may only be carried over in the immediate next year. Therefore, defining a stock's eligibility and the amount of ACL being carried over must occur quickly enough such that the fishery has time to harvest the carried over amount within the fishing year following a year of under-harvest. The proposed process also provides the Council discretion in determining whether carry-over should be applied to a potentially eligible stock when setting the ABC and ACL.

It is important to note that this proposed rule would not change current ABCs or ACLs for any species managed under the FMPs affected by the ABC Control Rule Amendments.

Management Measures in the ABC Control Rule Amendments Not Codified by This Proposed Rule

In addition to the measures within this proposed rule, the ABC Control Rule Amendments would modify the ABC control rules, allow the phasing in of ABC changes, and allow carry-over of unharvested portion of the ACL, for Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs.

Modify the ABC Control Rules

As discussed above, the current ABC control rule for the Snapper-Grouper FMP was revised by Amendment 29, and the Comprehensive ACL Amendment implemented the ABC control rules for the Golden Crab, and Dolphin and Wahoo FMPs in 2012. For assessed species, the current ABC control rules classify assessments according to level 1. Level 1 has tier classifications that determine the P* by reducing from an initial value of 50 percent according to uncertainty of assessment results and stock vulnerability (risk tolerance). ABC is determined through projections of assessment information using the accepted probability of overfishing. For unassessed species, ABC is determined by levels 2 through 5, applying one of the following data-limited methods, as data allow (listed from highest to lowest priority): Depletion-Based Stock Reduction Analysis, Depletion-Corrected Average Catch, Only Reliable Catch Stocks (only included in the Snapper-Grouper FMP as level 5), and a decision tree based on species catch history. Determination of ABC for overfished stocks undergoing rebuilding is not specified. Details on the control rule levels, tiers, and classifications are described in Table 2.1.1.1 of the ABC Control Rule Amendments. In summary, level 1 is assigned to assessed stocks and levels 1 through 4 are assigned to unassessed stocks for the Golden Crab, and Dolphin and Wahoo FMPs. Level 5 is assigned to the applicable unassessed stocks in the Snapper-Grouper FMP. Level 1 has tiers that further quantitative classification and methodology to calculate the ABC based on life-history, catch history, scientific uncertainty, stock status, and productivity and susceptibility analysis (PSA).

The proposed rule would modify the ABC control rules for the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs by categorizing stocks based on the available information, scientific uncertainty evaluation, and incorporation of the Council's risk tolerance policy through an accepted P*. The Council would specify the P* based on relative stock biomass and a stock risk rating. When possible, the SSC would determine the OFL and characterize its uncertainty based primarily on the stock assessment and secondarily on the SSC's expert opinion. The OFL and its uncertainty would then be used to derive and recommend the ABC, based on the risk tolerance specified by the Council. The detailed step-by-step procedure detailing how the ABC is derived for assessed stocks can be found in section 2.1.1 of the ABC Control Rule Amendments. ABC for unassessed stocks would be recommended by the SSC based on applicable data-limited methods. Unassessed stocks would be assigned the moderate biomass level unless there is a recommendation from the SSC that justifies assignment of a different level. For overfished stocks, the Council would specify a stock rebuilding plan, considering recommendations from the SSC, and the AP of the respective FMP. The ABC enacted while the rebuilding plan is in effect would be based on recommendations from the Council's SSC. The probability of success for rebuilding plans (1 minus P*) would be at least 50 percent. Control rule categories for assessments are described in detail in Table 2.1.1.2 of the ABC Control Rule Amendments.

In summary, four categories would facilitate an ABC determination based on scientific uncertainty and SSC guidance. The Council, with advice from the SSC and AP, would evaluate management risk for each stock through a stock risk rating. Stock risk ratings include information currently used in the PSA, but also incorporate socio-economic (for example, potential for discard losses, annual commercial value, recreational desirability, *etc.*) and environmental attributes (for example, climate change) (see Appendix E of the ABC Control Rule Amendments for more details). These recommendations would be revisited when new information becomes available (for example, a new stock assessment). The Council would then specify the risk rating as low, medium, or high risk of overfishing. A higher risk of overfishing would indicate that risk tolerance (*i.e.,* the accepted probability of overfishing) should be lower. These stock risk ratings, along with relative biomass levels, would be used to determine the Council's default risk tolerance for each stock. Default P* values based on relative biomass and stock risk rating are shown in Table 2.1.1.3 of the ABC Control Rule Amendments. As an

example, a stock with high biomass and medium stock risk rating would have a P* of 45 percent. This would be lower than the OFL, in accordance with Magnuson-Stevens Act. The SSC can recommend the Council reconsider the stock risk rating. This could happen, for example, with the emergence of new scientific studies or new information discovered through a stock assessment.

The modified ABC control rules would also allow the Council to deviate, to a greater or lesser amount, from the default accepted probability of overfishing by up to 10 percent for an individual stock, based on its expert judgment, new information, or recommendations by the SSC or other expert advisors. Accepted probability of overfishing may not exceed 50 percent. Using a 50 percent probability of overfishing implies negligible scientific uncertainty and sets OFL equal to ABC. At P* equals 0.50, removals above ABC caused by deviations in biological parameters (for example, natural mortality (M), recruitment) could cause an overfishing determination and delay rebuilding plans. Therefore, adjusting P* above the value recommended by the SSC would be infrequent and well justified based on new scientific understanding and the Council's risk tolerance. Additionally, when requested by the Council, the SSC would recommend the ABC for up to 5 years as both a constant value across years and as individual annual values for the same period of years. These options provide more flexibility to both the Council and SSC in the ABC determination.

The proposed rule would not change the current ABC levels for any species managed under the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs. Modifying the ABC control rules as proposed would give the SSC the ability to recommend adjusting or deriving uncertainty of future assessment results (ultimately impacting projections of future catch) if they determine uncertainty is not adequately estimated through information used in the assessment. Evaluation of risk tolerance would also be improved by considering factors beyond the current PSA and expanding the range of reference points used to describe and incorporate relative biomass. For unassessed stocks, the proposed modifications would expand the number of methods that could be considered for estimating OFL and ABC. The addition of economic factors in the ABC control rules would allow the Council to better consider the long-term economic implications when examining management risk which could lead to better economic outcomes and increase net economic benefits in a fishery for a given species. The inclusion of social factors in the ABC control rules would allow the Council to directly consider the importance of a given species to fishing communities and businesses when determining risk tolerance and would have long-term social benefits in the form of a more appropriate ABC.

Allow the Phase-In of ABC Changes

Currently, the phase-in of ABC changes is not allowed in the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs. The proposed rule would establish criteria specifying when the phase-in of ABC changes would be allowed and specify the approach for the phase-in of ABC changes.

The proposed rule would allow the phase-in of increases to ABC as specified by the Council, with advice from the SSC and AP. Increases to ABC (assuming the presence of comparable data between assessments) are generally indicative of an increase in relative biomass and improving stock condition. This allows greater consideration of ecological, social, and economic effects of an increased ABC, and increased flexibility in how that change can be implemented. Because ABCs during an increasing phase-in would be less than those initially recommended by the SSC, the phase-in period is not limited (*i.e.,* it can exceed the maximum timeframe specified for the phase-in decreases). The Council may specify ABC to be less than the SSC's recommended ABC, but it may not exceed the SSC's recommendation. Phasing in an ABC increase would set ABC below the SSC's recommendation. If the phase-in is included in projections used to develop the SSC's ABC recommendation, there also may be an increase to the recommended long-term ABC (*i.e.,* the ABC that persists after the phase-in is complete). Thus, phasing in increases to ABC over a longer time period could result in a greater increase to long-term ABC, and phasing in increases over a shorter period could result in a smaller increase to long-term ABC.

The proposed rule would allow the phase-in of decreases to ABC when a new ABC is less than 80 percent of the existing ABC, and over a period not to exceed 3 years, which is the maximum phase-in period allowed by the NS1 guidelines. The criterion requiring a minimum threshold of difference between the current and new ABCs to be 20 percent defines a significant enough change to merit phasing in the change and is more flexible than other minimum threshold levels considered in the ABC Control Rule Amendments. Phase-ins may be used regardless of the stock relative biomass. The Council would consider whether to apply a phase-in on a case-by-case basis when specifying a stock ABC through an amendment after a new ABC has been recommended by the SSC. A longer phase-in period provides more flexibility and allows a more gradual change from the existing ABC to the new ABC.

The phase-in of the ABC is an option the Council can consider to address the social and economic effects from management changes. Adopting this flexibility does not require the Council to phase in all ABC changes, nor does adopting one approach prevent the Council from choosing a more restrictive schedule of ABC phase-ins (less than 3 years). When considering whether to phase in an ABC change, the Council would compare the risk to the stock against the expected social and economic benefits of the alternative ABC. Management strategy evaluations may be used to quantify such trade-offs. The Council would be able to consult with its scientific and fishery advisors to help develop a rationale and implementation plan for phase-ins. The proposed phase-in of ABC changes is consistent with the NMFS 2020 guidance and incorporates flexibility as per the revised NS1 guidelines into the FMPs for Snapper-Grouper, Golden Crab, and Dolphin and Wahoo.

Allow Carry-Over of Unharvested Portion of ACLs

Currently, carry-over of unharvested portion of ACLs is not allowed in the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs. The proposed rule would establish criteria specifying circumstances when an unharvested portion of the originally specified sector ACL can be carried over from 1 year to increase the available harvest in the immediate next year. Carry-overs may not be delayed, and only amounts from the originally specified sector ACL may be carried over. Carry-over of the unharvested portion of a sector ACL would be allowed if:

(1) The stock status is known;

(2) The stock is neither overfished nor experiencing overfishing;

(3) An overfishing limit for the stock is defined;

(4) ABC decreases are not being phased-in;

(5) There are measures that restrict annual landings to the ACL; and

(6) The post-season AM that reduces the ACL in the following year according

to any landings overages is in place for that stock and sector.

The proposed rule would also specify limits on how much of the unharvested portion of a sector ACL may be carried over from 1 year to increase the sector ACL in the next year. The ABC and the total ACL may be temporarily increased to allow this carry-over. The temporary ABC may not exceed the OFL. The revised total ACL may not exceed the temporary ABC or the total ACL plus the carried over amount, whichever is less. If a stock experiences overfishing, either as the result of a stock assessment or as determined by NMFS' annual evaluation of landings, that stock would no longer qualify for carry-over. Additional conditions to annually qualify for carry-over can be added on a stock-by-stock basis. For example, to prevent overharvest of other species commonly caught with the target species (referred to as co-caught species) during years with a carried-over ACL, a future FMP amendment specifying an ABC and ACL with carry-over could additionally require that the previous year's harvest for co-caught species also be less than or equal to the ACL for carry-over to occur. When applicable, the Council would specify whether fisheries that have split seasons or sub-sector allocations (such as gear allocations) should be eligible for inter-annual carry-over on a case-by-case basis.

Carry-overs would also be sector-specific. The Snapper-Grouper and Dolphin and Wahoo FMPs have both commercial and recreational sectors whereas the Golden Crab FMP includes only a commercial sector. Thus, if only one sector is carrying over unused ACL, the carried-over amount would be allocated only to that sector, subject to limitations defined above. If more than one sector is carrying over unused ACL in the same year, each sector carry-over amount would be completely allocated to the sector from which it was derived, unless the sum of all carry-over amounts plus the specified total ACL is greater than the OFL. In this case, the difference between the temporary revised ABC and the specified total ACL would be allocated using sector allocation percentages specified by the FMP. A revised sector ACL and revised ABC would remain in place for a single fishing year. Following a year that included carry-over, evaluations of carry-over amounts for future years would be based on the ABC and sector ACLs specified by the FMP rather than on the temporarily revised values.

The proposed carry-over criteria and conditions are consistent with the NMFS 2020 guidance. The proposed carry-over criteria and conditions would also make carry-over applicable to only a few stocks managed by the Council under the Snapper-Grouper FMP at the time this action was developed. However, allowing carry-over does fulfill Federal guidance on carry-overs that requires allowance of this management tool to be included in an FMP, and provide additional management flexibility to better enable harvest of optimum yield of a healthy stock.

Proposed Changes to Codified Text Not in the ABC Control Rule Amendments

NMFS proposes to clarify existing regulations in 50 CFR 622.194(a) about the scope of allowable management changes using the framework procedure in the Snapper-Grouper FMP. Specifically, NMFS proposes to clarify allowable changes via framework to EFH, EFH HAPCs, and coral HAPCs.

In 2000, NMFS implemented two final rules that updated the Snapper-Grouper FMP framework procedures to include EFH, EFH HAPCs, and coral HAPCs that enabled more timely implementation of subsequent management measures than is possible via an FMP amendment (65 FR 37292, June 14, 2000; 65 FR 51248, August 23, 2000). Since NMFS implemented those final rules, no other subsequent rulemaking affected the framework procedure for EFH, EFH HAPCs, and coral HAPCs. Specifically, and along with other actions, the referenced final rules implemented Council recommendations to allow for the establishment of or modifications to EFH habitat areas of particular concern (HAPCs) or coral HAPCs via framework procedure. However, existing regulations appear more generally. Further, regulations state both ''definitions of EFH'' and ''EFH,'' and these could be interpreted as duplicative.

NMFS has determined the allowable changes via framework action in the regulations could more clearly describe the existing parameters for EFH, EFH HAPCs, and coral HAPCs. Accordingly, NMFS proposes to revise § 622.194(a) without changing the Council's original management recommendations.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the amendment, the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the legal basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this proposed rule, why it is being considered, and the purposes of this proposed rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of the preamble. The objectives of this proposed rule are to ensure catch level recommendations are based on the best scientific information available, prevent overfishing while achieving OY, and include flexibility in setting catch limits as allowed by the Magnuson-Stevens Act and in accordance with NMFS' guidance on carry-over and phase-in provisions.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. A description of the factual basis for this determination follows.

This proposed rule, if implemented, would revise the ABC control rules and framework procedures in the Snapper-Grouper FMP, Golden Crab FMP, and Dolphin and Wahoo FMP. Specifically, this proposed rule would revise the ABC control rules to better distinguish the roles of the Council and its SSC in determining risk and uncertainty components, include provisions for phasing in ABC changes, include provisions for carrying over unharvested portions of ACLs, and revise framework procedures to include a procedure for implementing carry-overs when allowance of carry-over is specified in the FMP and the sector meets annual eligibility requirements. Even though this proposed rule would alter the existing regulations to allow for the possibility for transfer of an unharvested total or sector-specific ACL to the following fishing year, it would not implement any new management measures. As such, this proposed rule would not regulate any small entities.

Because this proposed rule, if implemented, is not expected to directly regulate any small entities, it is not expected to affect a substantial number of small entities. Further, because no entities are expected to be directly affected by this proposed rule, the profits of small entities are also not expected to change and thus no

economic impacts on small entities are expected.

Because this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 622

Atlantic, Fisheries, Fishing, South Atlantic.

Dated: September 26, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 622 as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.194, revise paragraph (a) to read as follows:

§ 622.194 Adjustment of management measures.

* * * * *

(a) Biomass levels, age-structured analyses, target dates for rebuilding overfished species, maximum sustainable yield (or its proxy), optimum yield, acceptable biological catch, total allowable catch, quotas (including a quota of zero), annual catch limits, annual catch targets, accountability measures, maximum fishing mortality threshold, minimum stock size threshold, trip limits, bag limits, size limits, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, fishing year, rebuilding plans, definitions of essential fish habitat (EFH), establishment of or modifications to EFH habitat areas of particular concern (HAPCs) or coral HAPCs, restrictions on gear and fishing activities applicable in EFH and EFH HAPCs, establish or modify spawning SMZs, and allow transfer of the unharvested total or sector ACL to the following fishing year.

* * * * *

■ 3. In § 622.252, revise paragraph (a) to read as follows:

§ 622.252 Adjustment of management measures.

* * * * *

(a) Biomass levels, age-structured analyses, maximum sustainable yield, acceptable biological catch, total allowable catch, quotas (including quotas equal to zero), trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, sub-zones and their management measures, time frame for recovery of golden crab if overfished, fishing year (adjustment not to exceed 2 months), observer requirements, authority for the Regional Administrator to close the fishery when a quota is reached or is projected to be reached, definitions of essential fish habitat (EFH), EFH habitat areas of particular concern (HAPCs), or coral HAPCs, and allow transfer of the unharvested ACL to the following fishing year.

* * * * *

■ 4. In § 622.281, revise paragraph (a) to read as follows:

§ 622.281 Adjustment of management measures.

* * * * *

(a) Biomass levels, age-structured analyses, maximum sustainable yield, optimum yield, overfishing limit, total allowable catch, acceptable biological catch (ABC), ABC control rule, annual catch limits, annual catch targets, accountability measures, trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, sub-zones and their management measures, overfishing definitions and other status determination criteria, time frame for recovery of Atlantic dolphin or wahoo if overfished, fishing year (adjustment not to exceed 2 months), authority for the Regional Administrator to close a fishery when a quota is reached or is projected to be reached or reopen a fishery when additional quota becomes available, definitions of essential fish habitat (EFH), EFH habitat areas of particular concern (HAPCs), or coral HAPCs, and allow transfer of the unharvested total or sector ACL to the following fishing year.

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[FR Doc. 2023–21738 Filed 9–29–23; 8:45 am]

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Notices

Federal Register
Vol. 88, No. 189
Monday, October 2, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest Advisory Board

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Black Hills National Forest Advisory Board will hold a public meeting according to the details shown below. The Board is authorized under the Forest and Rangeland Renewable Resources Planning Act of 1974, the National Forest Management Act of 1976, the Federal Lands Recreation Enhancement Act, and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the Board is to provide advice and recommendations on a broad range of forest issues such as forest plan revisions or amendments, forest health including fire, insect and disease, travel management, forest monitoring and evaluation, recreation fees, and site-specific projects having forest-wide implications.

DATES: An in-person meeting will be held on October 18, 2023, 1:00 p.m.–4:30 p.m. Mountain Daylight Time (MDT).

Written and Oral Comments: Anyone wishing to provide in-person oral comments must pre-register by 11:59 p.m. MDT on October 13, 2023. Written public comments will be accepted by 11:59 p.m. MDT on October 13, 2023. Comments submitted after this date will be provided to the Forest Service, but the Board may not have adequate time to consider those comments prior to the meeting.

All board meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held in person at the U.S. Forest Service, Mystic Ranger District Office, 8221 Mount Rushmore Road, Rapid City, South Dakota 57702. Board information and meeting details can be found at the following website: *https://www.fs.usda.gov/main/blackhills/workingtogether/advisorycommittees or* by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *scott.j.jacobson@usda.gov or* via mail (*i.e.,* postmarked) to *Scott Jacobson, 8221 Mount Rushmore Road, Rapid City, South Dakota 57702.* The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. MDT, October 13, 2023, and speakers can only register for one speaking slot. Oral comments must be sent by email to *scott.j.jacobson@usda.gov or* via mail (*i.e.,* postmarked) to *Scott Jacobson, 8221 Mount Rushmore Road, Rapid City, South Dakota 57702.*

FOR FURTHER INFORMATION CONTACT: Ivan Green, Designated Federal Officer (DFO), by phone at 605–673–9201 or email at *ivan.green@usda.gov,* or Scott Jacobson, Committee Coordinator, at 605–440–1409 or email at *scott.j.jacobson@usda.gov.*

SUPPLEMENTARY INFORMATION: The meeting agenda will include:

1. Off Highway Vehicle (OHV) discussion;
2. Mountain Planning Services Group presentation; and
3. Forest Plan Revision update.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Written comments may be submitted to the Forest Service up to seven days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at (202) 720–2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

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.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Board. To ensure that the recommendations of the Board have taken into account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: September 26, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–21565 Filed 9–29–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–053, C–570–054]

Certain Aluminum Foil From the People's Republic of China: Continuation of Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) and countervailing duty (CVD) orders on certain aluminum foil (aluminum foil) from the People's Republic of China (China) would likely lead to the continuation or recurrence of dumping and countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable September 22, 2023.

FOR FURTHER INFORMATION CONTACT: Harrison Tanchuck or Erin Kearney, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7421, or (202) 482–0167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 19, 2018, Commerce published in the **Federal Register** the AD and CVD orders on aluminum foil from China.[1] On March 1, 2023, the ITC instituted,[2] and Commerce initiated,[3] the first sunset review of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *Orders* would likely lead to the continuation or recurrence of dumping and countervailable subsidies, and therefore, notified the ITC of the magnitude of the margins of dumping and subsidy rates likely to prevail should the *Orders* be revoked.[4]

On September 22, 2023, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Orders

The merchandise covered by these *Orders* is aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil is made from an aluminum alloy that contains more than 92 percent aluminum. Aluminum foil may be made to ASTM specification ASTM B479, but can also be made to other specifications. Regardless of specification, however, all aluminum foil meeting the scope description is included in the scope, including aluminum foil to which lubricant has been applied to one or both sides of the foil.

Excluded from the scope of these *Orders* is aluminum foil that is backed with paper, paperboard, plastics, or similar backing materials on one side or both sides of the aluminum foil, as well as etched capacitor foil and aluminum foil that is cut to shape.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above. The products under the *Orders* are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7607.11.3000, 7607.11.6000, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000. Further, merchandise that falls within the scope of these *Orders* may also be entered into the United States under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these *Orders* is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to continuation or recurrence of dumping and countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be September 22, 2023.[6] Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to fifth anniversary of the date of the last determination by the ITC.

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: September 26, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–21653 Filed 9–29–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Aluminum Foil from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 83 FR 17362 (April 19, 2018); *see also Certain Aluminum Foil from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 83 FR 17360 (April 19, 2018); and *Certain Aluminum Foil from the People's Republic of China: Notice of Court Decision Not in Harmony With the Amended Final Determination in the Countervailing Duty Investigation, and Notice of Amended Final Determination and Amended Countervailing Duty Order,* 85 FR 47730 (August 6, 2020) (collectively, the *Orders*).

[2] *See Aluminum Foil from China; Institution of Five-Year Reviews,* 88 FR 12990 (March 1, 2023).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 88 FR 12915 (March 1, 2023).

[4] *See Certain Aluminum Foil from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order,* 88 FR 42292 (June 30, 2023), and accompanying Issues and Decision Memorandum (IDM); *see also Certain Aluminum Foil from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 88 FR 42884 (June 28, 2023), and accompanying IDM.

[5] *See Aluminum Foil from China; Determinations,* 88 FR 65405 (September 22, 2023) (*ITC Final Determination*).

[6] *See ITC Final Determination.*

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The International Trade Commission (the ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

DATES: Applicable October 2, 2023.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s) and suspended investigation(s):

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–570–071 ...	731–TA–1397	China	Sodium Gluconate, Gluconic Acid, and Derivative Products (1st Review).	Thomas Martin (202) 482–3936.
A–570–985 ...	731–TA–1203	China	Xanthan Gum (2nd Review)	Thomas Martin (202) 482–3936.
C–570–072 ..	701–TA–590	China	Sodium Gluconate, Gluconic Acid, and Derivative Products (1st Review).	Thomas Martin (202) 482–3936.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[2]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal**

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to* COVID–19; *Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[2] *See* 19 CFR 351.218(d)(1)(iii).

Register of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC 's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: September 20, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–21708 Filed 9–29–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under sections 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

SUPPLEMENTARY INFORMATION:

Upcoming Sunset Reviews for November 2023

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in November 2023 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping Duty Proceedings	
Clad Steel Plate from Japan, A–588–838 (5th Review)	Mary Kolberg (202) 482–1785.
Silicomanganese from China, A–570–828 (5th Review)	Mary Kolberg (202) 482–1785.
Silicomanganese from Ukraine, A–823–805 (5th Review)	Mary Kolberg (202) 482–1785.
Steel Concrete Reinforcing Bars from Belarus, A–822–804 (4th Review)	Jacky Arrowsmith (202) 482–5255.
Steel Concrete Reinforcing Bars from China, A–570–860 (4th Review)	Jacky Arrowsmith (202) 482–5255.
Steel Concrete Reinforcing Bars from Indonesia, A–560–811 (4th Review)	Jacky Arrowsmith (202) 482–5255.
Steel Concrete Reinforcing Bars from Latvia, A–449–804 (4th Review)	Jacky Arrowsmith (202) 482–5255.
Steel Concrete Reinforcing Bars from Moldova, A–841–804 (4th Review)	Jacky Arrowsmith (202) 482–5255.
Steel Concrete Reinforcing Bars from Poland, A–455–803 (4th Review)	Jacky Arrowsmith (202) 482–5255.
Steel Concrete Reinforcing Bars from Ukraine, A–823–809 (4th Review)	Jacky Arrowsmith (202) 482–5255.

Countervailing Duty Proceedings

No Sunset Review of countervailing duty orders is scheduled for initiation in November 2023.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in November 2023.

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 20, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–21705 Filed 9–29–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD428]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public online meeting.

SUMMARY: The Economics Subcommittee of the Pacific Fishery Management Council's (Pacific Council) Scientific and Statistical Committee (SSC) will convene an online meeting to review the economic analysis associated with sablefish gear switching alternatives being considered by the Pacific Council. The SSC Economics Subcommittee meeting is open to the public.

DATES: The SSC Economics Subcommittee meeting will be held Tuesday, October 24, 2023, from 1 p.m. until 5 p.m. (Pacific Daylight Time) or

until business for the day has been completed.

ADDRESSES: The SSC Economics Subcommittee meeting will be conducted as an online meeting. Specific meeting information, including the agenda and directions on how to join the meeting and system requirements, will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Marlene A. Bellman, Staff Officer, Pacific Council; telephone: (503) 820–2414, email: *marlene.bellman@noaa.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the SSC Economics Subcommittee meeting is to review the economic analysis associated with sablefish gear switching alternatives being considered by the Pacific Council. The Pacific Council has been in discussions related to limiting the use of non-trawl gear to target sablefish north of 36° N latitude in the trawl individual fishing quota (IFQ) fishery (gear switching), since 2017. At this point in the process, the SSC Economics Subcommittee plans to review the economic analysis for the current version of alternatives, as they have been modified notably over time.

No management actions will be decided by the meeting participants. The participants' role will be the development of recommendations and reports for consideration by the SSC and the Pacific Council at a future Pacific Council meeting. The Pacific Council and Scientific and Statistical Committee are scheduled to consider the sablefish gear switching alternatives at their November 2023 meeting in Garden Grove, CA.

Although nonemergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent of the workshop participants to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 27, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–21729 Filed 9–29–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD430]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public joint hybrid meeting of its Skate Committee and Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This hybrid meeting will be held on Wednesday, November 15, 2023, at 8:30 a.m.

ADDRESSES:

Meeting address: This meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

Webinar registration URL information: https://attendee.gotowebinar.com/register/8193015235266560 94.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

Skate Committee and Advisory Panel will meet to discuss Framework Adjustment 12. They will receive a progress update on developing 2024–2025 specifications and possession limits, based on outcomes of the 2023 stock assessment and recommendations of the Scientific and Statistical Committee. They will review the preliminary impact analysis of alternatives and recommend final preferred alternatives to the Council. Other business may be discussed, as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 27, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–21726 Filed 9–29–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD396]

Fall Meeting of the Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of meeting.

SUMMARY: In preparation for the 2023 International Commission for the Conservation of Atlantic Tunas (ICCAT) meeting, the Advisory Committee to the

U.S. Section to ICCAT is announcing the convening of its fall meeting.

DATES: The meeting will be held on October 25–26, 2023. There will be an open session on Wednesday, October 25, 2023, from 9 a.m. through approximately 12 p.m. The remainder of the meeting will be closed to the public and is expected to end by 12 p.m. on October 26. Interested members of the public may present their views during the public comment session on October 25, 2023, or submit written comments by October 18, 2023 (see **ADDRESSES**).

ADDRESSES: The meeting will be held at the DoubleTree by Hilton Silver Spring DC North, 8777 Georgia Ave., Silver Spring, MD. Written comments should be sent via email to *bryan.keller@noaa.gov.* Comments may also be sent via mail to Bryan Keller at NMFS, Office of International Affairs, Trade, and Commerce, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Bryan Keller, Office of International Affairs, Trade, and Commerce, (301) 427–7725 or at *bryan.keller@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet October 25–26, 2023, first in an open session to consider information on the status of Atlantic highly migratory species and other scientific matters and then in a closed session to discuss sensitive matters related to their conservation and management. The open session will be from 9 a.m. to 12 p.m. on October 25, 2023, including an opportunity for public comment beginning at approximately 11:30 a.m. Comments may also be submitted in writing for the Advisory Committee's consideration. Interested members of the public can submit comments by mail or email; use of email is encouraged. All written comments must be received by October 18, 2023 (see **ADDRESSES**).

NMFS expects members of the public to conduct themselves appropriately at the open session of the Advisory Committee meeting. At the beginning of the public comment session, an explanation of the ground rules will be provided (*e.g.,* alcohol in the meeting room is prohibited, speakers will be called to give their comments in the order in which they registered to speak, each speaker will have an equal amount of time to speak and speakers should not interrupt one another). The session will be structured so that all attending members of the public are able to comment, if they so choose, regardless of the degree of controversy of the subject(s). Those not respecting the ground rules will be asked to leave the meeting.

After the open session, the Advisory Committee will meet in closed session to discuss sensitive information relating to upcoming international negotiations on the conservation and management of Atlantic highly migratory species and related matters.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Bryan Keller at *bryan.keller@noaa.gov* at least 5 days prior to the meeting date.

(Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*)

Dated: September 27, 2023.

Michael Brakke,

Deputy Director, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service.

[FR Doc. 2023–21709 Filed 9–29–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD431]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of the Scientific and Statistical Committee (SSC). See **SUPPLEMENTARY INFORMATION**.

DATES: The meeting will be held from 8:30 a.m. until 5 p.m., EDT on October 24, 2023; from 8:30 a.m. until 5 p.m. on October 25; and from 8:30 a.m. until 12 p.m. on October 26, 2023.

ADDRESSES:

Meeting address: The meetings will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: (843) 571–1000.

The meetings will also be available via webinar. Registration is required. Webinar registration, an online public comment form, and briefing book materials will be available two weeks prior to the meetings at: *https://safmc.net/scientific-and-statistical-committee-meeting/.*

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The SSC meeting agenda includes the review of the SEDAR (Southeast Data, Assessment, and Review) 76 Black Sea Bass Operational Assessment, Vermilion Snapper Interim Analysis, and terms of reference and schedule for SEDAR 94 Florida Hogfish. The SSC will review results from the Marine Recreational Information Program Fishing Effort Survey pilot study, changes to cumulative estimates, and available data for unassessed stocks. They will receive presentations from NOAA Fisheries on the National Standard 2: Best Scientific Information Available (BSIA) regional framework and modelling discards and ABC determination. The SSC will also receive updates on the Snapper Grouper Management Strategy Evaluation and the South Atlantic Deepwater Longline Survey. The SSC will discuss potential national SSC meeting topics, changes to the Yellowtail Snapper Overfishing Limit and Acceptable Biological Catch, Climate Change Scenario Planning and funding opportunities, and other business as needed.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 27, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–21728 Filed 9–29–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD432]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Groundfish Management Team (GMT) will hold a week-long in-person work session that is open to the public.

DATES: The GMT meeting will be held Monday, January 29, 2024, from 12:30 p.m., Pacific Standard Time, until business for the day has been completed. The GMT will reconvene Tuesday, January 30 through Friday, February 2, 2024, from 8:30 a.m. until business for each day has been completed.

ADDRESSES:

Meeting address: The meeting will be held at the Pacific Fishery Management Council Office, Large Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

This work session is being conducted in person with a web broadcast that provides the opportunity for remote public comment. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). Please contact Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Todd Phillips, Pacific Council; telephone: (503) 820–2426.

SUPPLEMENTARY INFORMATION: The primary purpose of this week-long work session is for the GMT to prepare for 2024 Pacific Council meetings. Specific agenda items will include: the 2025/2026 harvest specifications and management measure process, stock assessment and review planning, and GMT chair/vice chair elections. The GMT may also address groundfish management actions the Pacific Council has indicated on their Year-at-a-Glance calendar, such as: stock definitions, limited entry fixed gear marking and entanglement risk reduction, and groundfish workload and new management measure prioritization agenda items. A detailed agenda will be available on the Pacific Council's website prior to the meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 business days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 27, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–21727 Filed 9–29–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 230926–0233]

RIN 0660–XC059

Initiative To Protect Youth Mental Health, Safety & Privacy Online

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice, request for comment.

SUMMARY: Preventing and mitigating any adverse health effects from use of online platforms on minors, while preserving benefits such platforms have on minors' health and well-being, are critical priorities of the Biden-Harris Administration. On behalf of the Department of Commerce and in conjunction with the other members of the United States government's Task Force on Kids Online Health & Safety, the National Telecommunications and Information Administration (NTIA) seeks broad input and feedback from stakeholders on current and emerging risks of health (including mental health), safety, and privacy harms to minors arising from use of online platforms. This request also seeks information about potential health, safety and privacy benefits stemming from minors' use of online platforms. Finally, we seek input on current and future industry efforts to mitigate harms and promote the health, safety and well-being of minors who access these online platforms. The data gathered through this process will be used to inform the Biden-Harris Administration's work to advance the health, safety, and privacy of minors.

DATES: Written comments must be received on or before November 16, 2023.

ADDRESSES: All electronic public comments on this action, identified by *Regulations.gov* docket number NTIA–2023–0008, may be submitted through the Federal e-Rulemaking Portal at *http://www.regulations.gov.* The docket established for this request for comment can be found at *www.Regulations.gov,* NTIA–2023–0008. To make a submission, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. Additional instructions can be found in the ''Instructions'' section below after ''Supplementary Information.''

FOR FURTHER INFORMATION CONTACT: Please direct questions regarding this Request for Comment to Kids Online team at *KOHSrfc@ntia.gov* with ''Kids Online Request for Comment'' in the subject line. If submitting comments by U.S. mail, please address questions to Ruth Yodaiken, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. Questions submitted via telephone should be directed to (202)–482–4067. Please direct media inquiries to NTIA's Office of Public Affairs, telephone: (202) 482–7002; email: *press@ntia.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

On May 23, 2023, the Biden-Harris Administration announced several key actions to protect the health, safety, and privacy of young people online, including the formation of an interagency Kids Online Health and Safety Task Force (Task Force).[1] The Task Force was developed primarily in response to concerns about the role that online platforms have in the ''unprecedented youth mental health crisis'' in the United States today.[2]

In order to address health and safety concerns related to minors and the online environment, the Task Force will ''review the status of existing industry efforts and technologies to promote the health and safety of children and

[1] White House, Fact Sheet: Biden-Harris Administration Announces Actions to Protect Youth Mental Health, Safety & Privacy Online, The White House, (White House Fact Sheet) (May 23, 2023).*https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/23/fact-sheet-biden-harris-administration-announces-actions-to-protect-youth-mental-health-safety-privacy-online.*

[2] *Id.*

teenagers vis-à-vis their online activities, particularly with respect to their engagement in social media and other online platforms.'' [3] The Task Force is further charged with developing voluntary guidance, policy recommendations, and a toolkit on safety-, health- and privacy-by-design for industry in developing digital products and services.

The Task Force is led by the Department of Health and Human Services in close partnership with the Department of Commerce, through the National Telecommunications and Information Administration (NTIA). It is comprised of senior representatives from the Department of Education, the Department of Justice, the Department of Homeland Security, the Federal Trade Commission, the National Institute of Standards and Technology, the Office of the Surgeon General, the Centers for Disease Control and Prevention, the National Institutes of Health, the Office of the Assistant Secretary for Health, the Office of the Assistant Secretary for Children and Families, and the White House Domestic Policy Council, Office of Science and Technology Policy, the National Economic Council, and the Gender Policy Council.

In announcing the Task Force, the Administration referred to existing research and reports from news and medical sources, including an American Psychiatric Association poll finding that ''[m]ore than half of parents express concern over their children's mental well-being.'' [4] The Administration cited ''undeniable evidence that social media and other online platforms have contributed to our youth mental health crisis.'' [5]

Concurrently, the Surgeon General of the United States issued an Advisory that labeled the potential harm to American youth stemming from use of online platforms an ''urgent public health issue,'' citing ''increasing concerns among researchers, parents and caregivers, young people, healthcare experts, and others about the impact of social media on youth mental health,'' [6] and called for action by, among others, technology and online service providers.[7] Moreover, there is growing consensus about the need to fund research to more fully understand the complexity of the overall impact of social media, and technology use more generally on youth mental health and socio-emotional and cognitive development, including differential impacts by developmental stage and on certain populations of youth. Social media and other online platforms are nearly ubiquitous, and minors spend substantial amounts of time using them. Yet, technology and online service providers' practices, such as design choices and policies regarding data access, have remained opaque to varying degrees, leaving the scientific community unable to fully understand the scope and scale of the impact that social media and other online platforms have had, and continue to have, on youth mental health and well-being.[8] As the Surgeon General stated, action is needed now: ''[C]hildren and adolescents don't have the luxury of waiting years until we know the full extent of social media's impact. Their childhoods and development are happening now.'' [9]

1. Health, Safety and Privacy: Specific Areas of Concern

Minors' use of social media and other online platforms have produced an evolving and broad set of concerns, touching on, among other things, health, safety, and privacy. [10] These concerns include impacts upon mental health, brain development, attention span, sleep, addiction, anxiety, and depression.[11] These concerns stem from both the design of the social media environment and the specific types of content to which minors are exposed, often repeatedly over long periods of time. Exposure to self-harming and suicide-related content, for example, have been linked in some cases to deaths of minors.[12] Some online material appears to disproportionately affect subgroups of youth, including racial, ethnic, sexual and gender groups. For example, evidence shows that such sustained and high volume exposure to online materials negatively affect girls' self-esteem and body images.[13] Safety is also an area of concern related to use of online platforms, particularly the risk of predators targeting minors online for physical, psychological, and other forms of abuse, including sexual exploitation, extortion (or sextortion) [14] and cyberbullying.[15] Adult and children frequently use the same online platforms, particularly social media platforms, and that enables adults to readily engage children who are ill-equipped to understand the adults' intentions. Parents and guardians, who are called upon to regulate their children's use of online platforms, are often provided little to no information about these potential harms. Minors similarly lack the necessary information.

Social media and other online platforms also pose risks to minors of infringements on privacy, with concerns focused on the particularly sensitive nature of images and other personally identifiable information such as educational records, including misuse, minors' vulnerability to harms from those with access to such information, and, more generally, minors' exposure to comprehensive surveillance.[16] Concerns regarding minors' privacy are exacerbated by the rise of data analytics and tracking tools that collect and make use of large quantities of personal data,

[3] *Id.* For the purposes of this Request for Comment, the term ''social media'' and ''online platforms'' encompass a wide array of modern technology from video sharing networks, such as TikTok, Twitch and YouTube, to social networks such as Facebook, Instagram. It includes the many gaming networks in addition to Twitch, such as Discord, Roblox and Xbox, which allow individuals to interact with each other through, and adjacent to, games.

[4] American Psychiatric Association, New APA Poll Shows Sustained Anxiety Among Americans; More than Half of Parents are Concerned About the Mental Well-Being of Their Children (May 2, 2021), *https://www.psychiatry.org/newsroom/news-releases/new-apa-poll-shows-sustained-anxiety-among-americans-more-than-half-of-parents-are-concerned-about-the-mental-well-being-of-their-children.*

[5] White House Fact Sheet.

[6] Dept. Of Health and Human Services, Social Media and Youth Mental Health—Current Priorities of the U.S. Surgeon General (Advisory) (May 23, 2023), at 3–4, *https://www.hhs.gov/surgeongeneral/priorities/youth-mental-health/social-media/index.html.*

[7] Advisory at 13 –20.

[8] *See* Dept. of Health and Human Services, Social Media and Youth Mental health: The U.S. Surgeon General's Advisory (Executive Summary) (2023), *https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-summary.pdf.*

[9] Advisory at 13.

[10] The terms ''minors'' and ''youths'' are used in this document to describe people under 18 years of age.

[11] *See generally,* Advisory.

[12] *See, e.g.,* Advisory at 8–9; Southern District of Indiana | FBI and Partners Issue National Public Safety Alert on Sextortion Schemes, Department of Justice, (Jan. 19, 2023), *https://www.justice.gov/usao-sdin/pr/fbi-and-partners-issue-national-public-safety-alert-sextortion-schemes*

[13] *See, e.g.,* Advisory at 8 (noting the issue of social comparison).

[14] *See, e.g.,* Federal Bureau of Investigation, International Law Enforcement Agencies Issue Joint Warning About Global Financial Sextortion Crisis, Press Release, (Feb. 7, 2023), *https://www.fbi.gov/news/press-releases/international-law-enforcement-agencies-issue-joint-warning-about-global-financial-sextortion-crisis.*

[15] *See, generally,* StopBullying.gov, What Is Cyberbullying, Centers for Disease Control and Prevention, *https://www.stopbullying.gov/cyberbullying/what-is-it;* Centers for Disease Control and Prevention, Adolescent and School Health: Data & Statistics, *https://www.cdc.gov/healthyyouth/data/index.htm.*

[16] *See, e.g.,* Advisory at 9; National Telecommunications and Information Administration, Comments of NTIA Regarding Commercial Surveillance ANPR R1104 Before the Federal Trade Commission, FTC Docket 2022–0053, at 14–16, 20–21, *https://ntia.gov/sites/default/files/publications/ftc_commercial_surveillance_anpr_ntia_comment_final.pdf.*

often along with offering free or reduced-cost access to online services.[17] Youth are among those most affected by the state of the industry and can be targeted specifically.[18] In addition, as noted above, data — especially if not secured properly—can be misused by predators for criminal or other purposes. Ongoing developments in communications and information-processing technologies, including rapid advances in artificial intelligence capabilities and use, might produce new risks to minors' privacy, health and safety. For example, earlier this year, there were many news reports about an AI-powered chatbot that gave out what seemed to be harmful advice in response to inquiries about getting help for eating disorders.[19]

2. Benefits

While social media and other online platforms pose risks to minors, these offerings also can facilitate and provide immense benefits for minors. The Biden Administration, through NTIA and other agencies, is engaged in an historic initiative to bring robust and affordable internet access to all Americans. This project will allow greater youth participation in the modern digital economy, open access to increased digital learning opportunities and after-school activities, broaden access to health care (including telehealth), enhance civic engagement, help students participate in a wide range of activities, and more.[20] Health or other benefits that social media and related platforms offer to many youth include, for example, creating space for self-expression, developing and sustaining social connections, providing skill-building opportunities and buffering against negative conduct and speech, and providing online emergency services.[21] The Surgeon General's Advisory noted that access to online platforms is ''especially important for youth who are often marginalized, including racial, ethnic, and sexual and gender minorities.'' [22]

3. Efforts To Assess and Address Risks, and Mitigate Harms

The Task Force is charged with exploring ways to assess and address risks and harms to minors online. Among other things, the Task Force will evaluate how best to harness technology for these purposes and will consider best practices for social media and online platforms and their use.[23] For many years, individuals and organizations around the globe have been working to identify specific risks and harms posed by evolving technologies and to explore methods and mechanisms to mitigate such harms.[24] Congress has been exploring these issues through hearings and legislative proposals.[25] Similarly, legislators in states, such as California and Texas, have been adopting measures to try to spur changes among social media and other companies.[26] Provisions being explored include the use of default settings, adoption of particular privacy features, and further use of age gates (limiting access by age).

Many agencies represented on the Task Force have taken actions designed to advance minors' interests to protect their health, safety and privacy online. The Department of Commerce is working to ''promote efforts to prevent online harassment and abuse'' of youth by increasing awareness and support for youth victims, among other efforts.[27] While not targeted at youth, the National Institute of Standards and Technology has worked with industry to improve ID verification and authentication that might be relevant to age verification.[28] The Federal Trade Commission, which enforces the Childrens Online Privacy Protection Act (COPPA), is assessing data surveillance practices both generally and with specific regard to minors.[29] The Department of Education, which enforces the Family Educational Rights and Privacy Act (FERPA), is pursuing initiatives focused on privacy of students using digital technology for education.[30] The Department of Justice

[17] *See, e.g.,* Federal Trade Commission, Commercial Surveillance and Data Security Rulemaking, *https://www.ftc.gov/legal-library/browse/federal-register-notices/commercial-surveillance-data-security-rulemaking* (providing links to the Advance Notice of Proposed Rulemaking in that area and related material). For information about how design has been used to manipulate content generally, including to keep people engaged online and to influence online decisions, *see, e.g.,* Arunesh Mathur, et al., Dark Patterns at Scale: Findings from a Crawl of 11K Shopping websites, Proceedings of the ACM on Human-Computer Interaction, Vol 3, Issue CSCW, Article No.: 81 (Sept. 20, 2019), *https://dl.acm.org/doi/10.1145/3359183.*

[18] *See, e.g.,* Statement of Frances Haugen, United States Senate Committee on Commerce, Science and Transportation, (Oct. 4, 2021), *https://www.commerce.senate.gov/services/files/FC8A558E-824E-4914-BEDB-3A7B1190BD49; See, also,* Federal Trade Commission Proposes Blanket Prohibition Preventing Facebook from Monetizing Youth Data, Press Release (May 3, 2023), *https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-proposes-blanket-prohibition-preventing-facebook-monetizing-youth-data* (regarding FTC changes to a privacy order with Facebook after alleged violations).

[19] *See, e.g.,* Lauren McCarthy, A Wellness Chatbot is Offline After its 'Harmful'' Focus on Weight Loss, The New York Times (June. 8, 2023), *https://www.nytimes.com/2023/06/08/us/ai-chatbot-tessa-eating-disorders-association.html?smid=url-share;* Center for Countering Digital Hate, AI and Eating Disorders: How Generative AI Enables and Promotes Harmful Eating Disorder Content (Aug. 7, 2023), *https://counterhate.com/research/ai-tools-and-eating-disorders.*

[20] More on this topic can be found on the NTIA web page on High-Speed internet, *https://www.ntia.gov/category/high-speed-internet.*

[21] *See, e.g.,* Advisory at 6.

[22] *See, e.g., id.; see also* Common Sense Media, Teens and Mental Health: How Girls Really Feel About Social Media (Mar 30, 2023), *https://www.commonsensemedia.org/sites/default/files/research/report/how-girls-really-feel-about-social-media-researchreport_web_final_2.pdf.*

[23] White House Fact Sheet (''Children are subject to the platforms' excessive data collection, which they use to deliver sensational and harmful content and troves of paid advertising. And online platforms often use manipulative design techniques embedded in their products to promote addictive and compulsive use by young people to generate more revenue. Social media use in schools is affecting students' mental health and disrupting learning. Advances in artificial intelligence could make these harms far worse, especially if not developed and deployed responsibly. Far too often, online platforms do not protect minors who use their products and services, even when alerted to the abuses experienced online.'').

[24] *See, e.g.,* Pew Research Center, Teens, Social Media and Technology 2022, *https://www.pewresearch.org/internet/2022/08/10/teens-social-media-and-technology-2022.*

[25] *See, e.g.,* Kids Online Safety Act, S. 1409, 118th Cong. (2023), as amended and posted by the Senate Committee on Commerce, Science, and Transportation on July 27, 2023; *see, also,* Time Change: Protecting Our Children Online, Hearing Before the Senate Committee on the Judiciary (Feb. 14, 2023), *https://www.judiciary.senate.gov/committee-activity/hearings/protecting-our-children-online;* Kids Online During COVID: Child Safety in an Increasingly Digital Age, Hearing Before the House of Representatives Subcommittee on Consumer Protection and Commerce (Committee on Energy and Commerce), (Mar. 11, 2021), *https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=111298.*

[26] *See, e.g.,* California Age-Appropriate Design Code Act, AB 2273 (2022), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2273;* Securing Children Online through Parental Empowerment (SCOPE) Act, H.B. 18 (2023).

[27] White House Fact Sheet.

[28] *See, e.g.,* National Institute of Standards and Technology, Digital Identity Guidelines, Initial Public Draft SP 800–63–4 (Dec. 16, 2022), https://csrc.nist.gov/pubs/sp/800/63/4/ipd.

[29] *See, e.g.,* Federal Trade Commission, Trade Regulation Rule on Commercial Surveillance and Data Security; Advance Notice of Proposed Rulemaking, Request for Public Comment, Public Forum, 87 FR 51273 (Aug. 22, 2022), *https://www.federalregister.gov/documents/2022/08/22/2022-17752/trade-regulation-rule-on-commercial-surveillance-and-data-security;* Federal Trade Commission, FTC Seeks Comments on Children's Online Privacy Protection Act Rule, Press Release (July 25, 2019), *https://www.ftc.gov/news-events/news/press-releases/2019/07/ftc-seeks-comments-childrens-online-privacy-protection-act-rule;* Federal Trade Commission, FTC Extends Deadline for Comments on COPPA Rule until December 11, Press Release (Dec. 9, 2019), *https://www.ftc.gov/news-events/news/press-releases/2019/12/ftc-extends-deadline-comments-coppa-rule-until-december-11.*

[30] White House Fact Sheet (noting also that ''[s]ocial media use in schools is affecting students' mental health and disrupting learning''); *see also* The Washington Post, Students Can't Get Off Their

Continued

and the Department of Homeland Security are working to enhance their efforts to, among other things, (i) identify and prosecute those who sexually exploit children online, (ii) identify, rescue, and provide support to children who have been sexually victimized, (iii) provide some transparency and accountability concerning the online harms children face every day, and (iv) undertake education and prevention efforts to help children avoid becoming victims of sexual exploitation. [31] The National Institutes of Health, in accordance with the CAMRA Act, supports biomedical and behavioral science research to study the health impacts of digital media exposure on youth, which may include the positive and negative effects of exposure to and use of media, (such as social media, applications, websites), to better understand the relationships between media and technology use and individual differences and characteristics of children and to assess the impact of media on youth over time.[32]

All around the world, nation-states, civil society organizations, and researchers are working to determine how best to keep children and teens safe while maximizing the benefits of social media and other online platforms.[33] For example, the United Kingdom's age-appropriate design codes incorporate such elements as prohibiting the use of techniques to manipulate minors into agreeing to give up some privacy.[34] Parents, guardians, caregivers and advocates for youth have taken up the mantle.[35] In addition, researchers across a range of disciplines have identified methods and approaches to embedding and respecting societal values through the design, deployment, configuration, and regulation of technical systems.[36] In particular, researchers developed methods and tools to identify and define such values and account for potential harms, including physical and mental health concerns arising from design choices, and those efforts are relevant to children's wellbeing.[37] Businesses and associations, including those in the technology sector, have taken some steps to assess and address these problems.[38] For example, as the UK's age-appropriate design laws took effect, TikTok turned off nighttime notifications for children.[39] Other companies offer age-verification tools, parental controls,[40] and/or guidance for parents and guardians seeking to protect minors online.[41] YouTube offers a separate application for children under 13, which allows parents to limit minors' screen time and disable some search capabilities.[42] Industry can, however, do more to protect American children and teens online. Reports and recommendations focused on youth social media and online platforms often include recommendations for the tech sector.[43] The Surgeon General's Advisory included requests for more access to tech companies' data for health research and urged these companies to develop ''platforms, products, and tools that foster safe and healthy online environments for youth, keeping in mind the needs of girls, racial, ethnic, and sexual and gender minorities.'' [44]

II. Objectives of This Notice

This Notice offers an opportunity for all interested parties to provide vital input and recommendations for consideration in the Task Force's work.

Phones. Schools Have Had Enough: Administrators See Them As an Intensifying Distraction — Or, Worse, a Tax on Students' Mental Health, (May 9, 2023), *https://www.washingtonpost.com/education/2023/05/09/school-cellphone-ban-yondr*).

[31] White House Fact Sheet (highlighting DOJ and DHS effort with National Center for Missing and Exploited Children (NCMEC)).

[32] H.R.2161—117th Congress (2021–2022): CAMRA Act, *https://www.congress.gov/bill/117th-congress/house-bill/2161/text?r=16&s=1;* Senators Markey, Bipartisan Colleagues Celebrate Passage of CAMRA Act to Fund Research on Impact of Tech on Childhood Development (senate.gov), *https://www.markey.senate.gov/news/press-releases/senators-markey-bipartisan-colleagues-celebrate-passage-of-camra-act-to-fund-research-on-impact-of-tech-on-childhood-development*

[33] *See, e.g.,* (European Union) Digital Services Act, Regulation (EU) 2022/2065 of the European Parliament and of the Council on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), Oct. 19, 2022), (including prohibitions on targeted adverts to children), *https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment_en;* (UK) Information Commissioner's Office, Age Appropriate Design: A Code of Practice for Online Services, *https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/childrens-information/childrens-code-guidance-and-resources/age-appropriate-design-a-code-of-practice-for-online-services/executive-summary.*

[34] *See,* (UK) Information Commissioner's Office, Age Appropriate Design: A Code of Practice for Online Services, Code Standards, # 13, Nudge Techniques (''Do not use nudge techniques to lead or encourage children to provide unnecessary personal data or weaken or turn off their privacy protections''), *https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/childrens-information/childrens-code-guidance-and-resources/age-appropriate-design-a-code-of-practice-for-online-services/code-standards.*

[35] *See, e.g.,* The Student Data Privacy Project, *https://www.studentdataprivacyproject.com/*

[36] *See, e.g.,* Batya Friedman, Peter H. Kahn, and Alan Borning. 2008. Value Sensitive Design and Information Systems. In The Handbook of Information and Computer Ethics, Kenneth Einar Himma and Herman T. Tavani (eds.). John Wiley & Sons, Inc., Hoboken, NJ, USA, 69–101. DOI:*https://doi.org/10.1002/9780470281819.ch4;* Lara Houston, Steven J Jackson, Daniela K Rosner, Syed Ishtiaque Ahmed, Meg Young, and Laewoo Kang. 2016. Values in Repair. In *Proceedings of the 2016 CHI Conference on Human Factors in Computing Systems—CHI '16,* ACM Press, New York, New York, USA, 1403–1414. DOI:*https://doi.org/10.1145/2858036.2858470*

[37] *See, e.g.,* Jina Huh-Yoo, Afsaneh Razi, Diep N. Nguyen, Sampada Regmi, and Pamela J. Wisniewski. 2023. ''Help Me:'' Examining Youth's Private Pleas for Support and the Responses Received from Peers via Instagram Direct Messages. In *Proceedings of the 2023 CHI Conference on Human Factors in Computing Systems* (CHI '23), Association for Computing Machinery, New York, NY, USA, 1–14. DOI:*https://doi.org/10.1145/3544548.3581233;* Marie Louise Juul Søndergaard, Marianela Ciolfi Felice, and Madeline Balaam. 2021. Designing Menstrual Technologies with Adolescents. In *Proceedings of the 2021 CHI Conference on Human Factors in Computing Systems,* ACM, New York, NY, USA, 1–14. DOI:*https://doi.org/10.1145/3411764.3445471*

[38] *See, e.g.,* Microsoft, New Microsoft Research Illustrates the Online Risks and Value of Safety Tools to Keep Kids Safer in the Digital Environment, Microsoft On the Issues (Feb. 2, 2023), *https://blogs.microsoft.com/on-the-issues/2023/02/06/safer-internet-day-global-online-safety-survey-2023;* Instagram, Continuing to Make Instagram Safer for the Youngest Members of Our Community (Updated May 19, 2023), *https://about.instagram.com/blog/announcements/continuing-to-make-instagram-safer-for-the-youngest-members-of-our-community;* Snapchat, Family Center—Parental Control For Teens, Snapchat Safety, *https://values.snap.com/safety/family-center* (last visited Aug. 10, 2023) (noting it lets parents see who's on their child's friends list and who they kids are talking to, but not what they are saying); Twitch, Guide for Parents & Educators, *https://safety.twitch.tv/s/article/Guide-Parents-Educators?language=en_US* (last visited Aug. 10, 2023) (offering no parental controls, but, instead, guidance); Minecraft, Understanding Minecraft Social Features for Child Safety Online, Minecraft Help, *https://help.minecraft.net/hc/en-us/articles/360058605852-Understanding-Minecraft-Social-Features-for-Child-Safety-Online* (last visited Aug. 10, 2023) (noting that some versions of the game automatically censors swear words).

[39] *E.g.,* Alex Hern, Social Media Giants Increase Global Child Safety After UK Regulations Introduced, The Guardian (Sept. 5, 2021), *https://www.theguardian.com/media/2021/sep/05/social-media-giants-increase-global-child-safety-after-uk-regulations-introduced.*

[40] *See, e.g.,* Roblox, Experience Guidelines, Documentation—Roblox Creator Hub, *https://create.roblox.com/docs/production/promotion/experience-guidelines* (last visited Aug. 10, 2023).

[41] *See., e.g.,* Discord, Tips for Parents on Helping Your Teen Stay Safe on Discord, *https://discord.com/safety/360044153831-helping-your-teen-stay-safe-on-discord* (last visited Aug. 10, 2023); and Answering Parents' and Educators' Top Questions, Question 7—How C can I monitor what my teen is doing in Discord, *https://discord.com/safety/360044149591-answering-parents-and-educators-top-questions#title-7* (last visited Aug. 10, 2023).

[42] YouTube, YouTube Kids—Parent Resources: Tips and Tools for Your Family *https://www.youtube.com/intl/ALL_us/kids/parent-resources* (last visited Aug. 10, 2023).

[43] *See also,* Neil Richards and Oliver Khairallah, The Privacy Advisor: Digital Child Protection is Not Censorship, International Association of Privacy Professionals (June 15, 2023), *https://iapp.org/news/a/digital-child-protection-is-not-censorship.*

[44] Advisory at 15 (noting what policy makers can do about access to data) and 16 (listing what tech companies can do).

NTIA seeks public input and feedback from a wide array of stakeholders, including parents, guardians and caregivers; educators and administrators; scientists and technologists; youth advocates; regulators and law enforcement; civil advocates and those in the advertising and business communities, including influencers and those involved with social media and online platforms; experts on relevant medical, legal, and other matters pertinent to the Task Force's mandate; and other interested parties. This input will inform the Task Force's recommendations and future work.

III. Instructions for Commenters

NTIA welcomes input on any matter that commenters believe is important to the Kids Online Health and Safety Task Force's efforts to review how use of, and exposure to, social media and other online platforms impact the health and well-being (including safety and privacy) of youth. Further, NTIA seeks feedback on current industry practices, and ways that the private sector, parents and guardians, the U.S. government, and any other party might improve the current status quo.

Commenters are invited to comment on the full range of issues presented by this RFC and are encouraged to address any or all of the following questions, or to provide additional information relevant to the Task Force. As noted above, much work has been done in specific areas identified below. This Request for Comment seeks to supplement that work, rather than repeat it, and to draw out the works or ideas that might be useful for discussion.

This request particularly welcomes comment providing or advancing thinking as to: (1) identification of the health, safety and privacy risks and benefits for minors from the use of online platforms and services; (2) information on the status of industry efforts and technology, (3) practical solutions to the specific identified issues, and (4) guidance to parents, guardians, and caregivers that is based upon rigorous evaluation and has been shown to be effective in specific, articulated ways.

The term ''social media and other online platforms'' could encompass many services and technologies. These include, among others, platforms set up as social media, gaming platforms and interactive games (even if decentralized), online platforms or websites that host postings of video and other content, and even search engines could be viewed as advertising platforms. However, the relevant items for discussion are how the various types of social media and other online platforms are tied to minors' safety, health, and privacy. Similarly, commenters are asked to differentiate, where appropriate, the categories to be specific about the types of social media and other online platforms and the specific types of harm they are describing as they discuss various aspects of this topic, including which minors that they are referencing.

The questions below cover issues that could affect youth of all ages, from toddlers to adolescents. This Request for Comment is meant to be all-encompassing, and the terms ''minors'' and ''youths'' are used in this document to describe people under 18 years of age. However, it is helpful to note with some specificity if particular harms or solutions, for example, are more relevant to specific demographic or age groups or youths with accessibility requirements benefit in particular (for example, blind youth, low-income youth, or youth affiliated by gender, sexuality, race, or religion).

Commenters are not required to respond to all questions. When responding to one or more of the questions below, please note in the text of your response the number of the question to which you are responding. Commenters are welcome to provide specific actionable proposals, rationales, and relevant facts. Commenters should include a page number on each page of their submissions. Please note that for this comment, because of the volumes of material already available in this area, NTIA is requesting concise comments that are at most fifteen (15) single-spaced pages. Commenters are welcome to provide citations to other work detailing particular areas of concern, studies, or solutions.

Please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. All comments received are a part of the public record and will generally be posted to *Regulations.gov* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Information obtained as a result of this notice may be used by the federal government for program planning on a non-attribution basis.

Identifying Health, Safety, and Privacy Risks and Potential Benefits

1. What are the current and emerging risks of harm to minors associated with social media and other online platforms?

a. What harms or risks of harm do social media and other online platforms facilitate with respect to, or impose upon, minors?

b. What are the specific design characteristics that most likely lead to behavior modifications leading to harms or risks?

c. What information concerning platform safety is provided to parents, care givers, and children by providers? Where is that information found? Where could it be located that would provide the best avenue to reach parents, care givers, and children?

d. For each harm or risk identified, please note whether imposition of such harm or risk is currently subject to civil or criminal legal sanction, and, if so, whether these existing legal frameworks adequately deter and/or penalize such imposition.

e. Are these harms evenly distributed? Or do they accrue disproportionately to certain demographic or age groups or youths with accessibility requirements (for example, based on gender, sexuality, age, race, or religion)?

f. Is the likelihood of these harms enhanced, facilitated, incentivized, created, or alleviated by technical design characteristics, business arrangements, or other contingent factors?

g. Conversely, are the factors that facilitate harms and risks in this area inherent in social media and other online platforms' offerings?

h. Do specific applications of artificial intelligence and/or other emerging technologies exacerbate or help alleviate certain harms or risks of harm in this area? If so, which and how?

2. Are there particular market conditions or incentives built into the market structure that enhance or deter benefits and/or harms that should be addressed and/or encouraged?

3. What are the current and emerging health and other benefits—or potential benefits—to minors associated with social media and other online platforms (including to physical, cognitive, mental, and socio-emotional well-being)? [45]

a. Are these benefits generally available to most minors? Do minors in specific demographic or age groups or youths with accessibility requirements benefit in particular (for example, blind youth, low-income youth, or youth

[45] As the Instructions note, this Request for Comment seeks to supplement work that has already been done in this area, rather than repeat it, and to draw out the works or ideas that might be useful for discussion. Including references to existing work is helpful.

affiliated by gender, sexuality, race, or religion)?

b. Is there a particularly sensitive developmental period during which minors are more likely to obtain certain benefits?

4. Do particular technical design characteristics, business arrangements, or other contingent factors for some online platforms allow for or enhance the benefits referenced in Question 3?

a. Are those characteristics or factors inherent in social media and other online platforms' offerings?

b. Conversely, are there particular characteristics or factors that impede access to the beneficial aspects of social media and other online platforms? Are there barriers to making design elements available across multiple platforms?

5. Are there ways that young people have been or could be involved in making improvements to the health and safety of online platforms including social media that you think should be encouraged?

a. What are best practices in youth involvement in making improvements to the design and use of online platforms including social media? What roles did youth play? What roles did adults play? What has been the impact of these efforts?

b. What suggestions do you have for youth involvement in making improvements to online platforms including social media? Please be as specific as possible.

The Status of Current Practices

6. What practices and technologies do social media and other online platform providers employ today that exert a significant positive or negative effect on minors' health, safety, and privacy?

a. What practices and technologies do specific social media and other online platform providers employ today for assessing, preventing, and mitigating harms? What specific practices for being especially effective or ineffective?

b. Do the practices referenced in Queston [5a] impose unintended consequences? If so, what are they, and how can they be mitigated?

c. Have the practices of social media and other online platforms evolved over time to enhance or undercut minors' health and safety, including their privacy, in ways that should be taken into account for future efforts? If so, how? For example, what factors have been significant in shaping any such evolution that are likely to have similar bearing on the future of industry practices?

d. What are the relative roles played by shifts in norms, business and economic circumstances, legal mandates, scientific and social scientific consensus, and/or other relevant factors? Which of these factors shape practices the most and how?

7. What is the impact of dark patterns or design on minors' health and safety, including their privacy (for example, being addictive, extended online use, making wrong decisions, or taking incorrect actions)?

8. Do platform providers' practices or technologies disproportionately benefit or harm certain specific demographic or age groups or youths with accessibility requirements benefit in particular (for example, blind youth, low-income youth, or youth affiliated by gender, sexuality, race, or religion)? How should that be factored into any best practices and/or other recommendations that this Task Force might explore?

9. Do the practices currently employed by social media and other online platforms of relevance to this inquiry differ materially between organizations and entities or are they similar? If they are different what is the source of the disparities? If they mirror one another, what is the source of the similarities? For example, do differences and similarities stem principally from various business models, legal frameworks, commonly used technologies, key decision-makers, or other factors?

10. Among the practices currently employed by social media and other online platforms, which ones best maximize benefits to minors' health, safety, and/or privacy while minimizing the risk or imposition of harm? How do they do so?

a. Could these practices be adopted, in whole or in part, by other platforms?

b. What modifications, if any, would be required before they could be adopted by other platforms?

c. What are the most significant barriers to adoption and implementation of such practices by other platforms, and what are the most significant incentives for other platforms to adopt these practices?

d. How do these practices work in concert with other practices to protect and advance minors' online health, safety, and/or privacy?

11. Are there potential best practices (for example, practices related to design, testing, or configuration) or policies that are not currently employed by social media and other online platforms that should be considered?

12. How can such policies or best practices be best tailored in the future to different ages and stages of a child's emotional and cognitive development?

Identifying Technical Barriers to, and Enablers of, Kids' Online Health, Safety, and Privacy

13. Are there technical design choices employed by specific social media platforms and other online platforms or supported by research that should be adopted by other social media and other online platforms to advance minors' health, safety, and/or privacy online?

a. If so, what are the best ways to promote or ensure adoption of such practices?

b. Are new entrants able to offer innovation in this area or are there barriers (for example, relating to interoperability demands or the need for scale) that hamper such innovation?

14. Are there technical tools or supports that could be used by platforms to improve minors' health, safety, and/or privacy online, whether or not they are in use today?

a. What technical options or tools could be used to advance minors' health, safety, and/or privacy online? If available, why have they not previously been offered or facilitated by social media and/or other online platform providers? For example, are there factors other than health and safety at issue, or are there concerns about the effect on access to information?

b. What steps, if any, must be taken to facilitate platform providers' expanded use of technical solutions to improve minors' online health, safety, and/or privacy?

15. Are there technical options that could assist parents, guardians, caregivers, and minors by reducing potential for harm and/or increasing potential for beneficial aspects of social media and other online platforms?

Identifying Proposed Guidance and/or Policies

16. What guidance, if any, should the United States government issue to advance minors' health, safety, and/or privacy online?

a. What guidance, if any, might assist parents, guardians, caregivers and others in protecting the health, safety, and privacy of minors who use online platforms, including possible tools, their usage and potential drawbacks?

b. What type of guidance, if any, might be offered to social media or other online platforms either generally or to specific categories of such?

c. What are the benefits or downsides of the U.S. government offering such guidance, and which agencies or offices within the government are best positioned to do so?

d. How best can we ensure that such guidance reflects the evolving

consensus of experts across relevant fields, including the mental health and medical community, technical experts, child development experts, parents and caregiver groups, and other stakeholders dedicated to advancing the interests of minors, and so on?

e. How best can the U.S. government encourage compliance with any guidance issued to advance minors' health, safety, and/or privacy online?

17. What policy actions could be taken, whether by the U.S. Congress, federal agencies, enforcement authorities, or other actors, to advance minors' online health, safety, and/or privacy? What specific regulatory areas of focus would advance protections?

18. How best can the U.S. government establish long-term partnerships with social media and other online platform providers to ensure that evolving needs with respect to minors' online health, safety, and/or privacy are addressed as quickly as possible?

Identifying Unique Needs of Specific Communities

19. With respect to any of the questions posed above, are there ways in which the response would be different for specific demographic or age groups or youths with accessibility requirements (for example, blind youth, low-income youth, or youth affiliated by gender, sexuality, race, or religion)? If so, how?

Reliable Sources of Concrete Information

20. What are the best sources of scientifically sound evidence that should be consulted in any review of this topic, including those about benefits, risks, harms, and best practices with respect to social media and other online offerings?

a. In particular, what are the best sources for information regarding the relationship between platform providers' practices and minors' health, safety, and/or privacy?

b. Would it be helpful to have a particular trusted source for relevant information in this area? For example, would it be helpful if resources were provided by a medical association or a special government office?

c. What are the most effective ways for platforms to gather and provide useful information through transparency reports or audits related to online harms to the health, safety, and/or privacy of youth?

21. What scientifically sound evidence regarding the matters raised in this Request for Comment is lacking? What guidance that is not currently available would an expert expect or want for research?

a. What are areas we have not included here that are important for developing a research agenda regarding online harms and health benefits to minors?

22. Should platforms provide more data to researchers and, if so, what would that kind of data sharing look like, what kind of data would be most useful, how would it account for the privacy of users, and what are the best models for sharing data, while also safeguarding users and their privacy?

Additional Material

NTIA welcomes any additional input that stakeholders believe will prove useful to our efforts.

Dated: September 26, 2023.

Stephanie Weiner,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2023–21606 Filed 9–29–23; 8:45 am]

BILLING CODE 3510–60–P

CONSUMER FINANCIAL PROTECTION BUREAU

Publication of FY 2020 Service Contract Inventory

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice of public availability of FY 2020 service contract inventory.

SUMMARY: In accordance with section 734 of Division C of the Consolidated Appropriations Act of 2010, the Consumer Financial Protection Bureau (Bureau) is publishing this notice to advise the public of the availability of the FY 2020 service contract inventory. This inventory provides information on service contract actions over $25,000, which the Bureau funded during FY 2020. The information is organized by function to show how contracted resources were used by the agency to support its mission. The inventory has been developed in accordance with the guidance issued by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). The Bureau has posted its inventory on the Bureau's Open Government homepage at the following link: *https://www.consumerfinance.gov/open*. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

FOR FURTHER INFORMATION CONTACT: Nikki Burley, Senior Procurement Analyst, Office of Procurement, at 202–435–0329, or *Nikki.Burley@cfpb.gov*.

Jocelyn Sutton,

Deputy Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2023–21744 Filed 9–29–23; 8:45 am]

BILLING CODE 4810–AM–P

ELECTION ASSISTANCE COMMISSION

Agency Information Collection Activities

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice; request for comment.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the U.S. Election Assistance Commission (EAC) gives notice that it is requesting from the Office of Management and Budget (OMB) a modification of the previously approved information collection EAC Progress Report (EAC–PR).

DATES: Comments should be submitted by 5 p.m. Eastern on Thursday, November 2, 2023.

ADDRESSES: To view the proposed EAC–PR format, see: *https://www.eac.gov/grants/financial-progress-reports.* For information on the EAC–PR, contact Risa Garza, Office of Grants, Election Assistance Commission, *Grants@eac.gov.* Written comments and recommendations for the proposed information collection should be sent directly to *Grants@eac.gov.* All requests and submissions should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Previously Filed Under Title and OMB Number: EAC Progress Report (EAC–PR) OMB Control Number 3265–0021; 87 FR 12679 (Page 12679–12680, Document Number: 2022–04724)

Purpose

This proposed information collection was previously published in the **Federal Register** on August 1, 2023 (88 FR 50133) and allowed 60 days for public comment. In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act (PRA) of 1995, EAC has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. The purpose of this notice is to allow an additional 30 days for public comment from all interested individuals and organizations.

The EAC Office of Grants Management (EAC/OGM) is responsible

for distributing, monitoring and providing technical assistance to states and grantees on the use of federal funds. EAC/OGM also reports on how the funds are spent to Congress, negotiates indirect cost rates with grantees, and resolves audit findings on the use of HAVA funds.

The EAC Progress Report has been developed for both interim and final progress reports for grants issued under HAVA authority. This revised format builds upon that report for the various grant awards given by EAC and provides terminology clarification. The Progress Report will directly benefit award recipients by making it easier for them to administer federal grant and cooperative agreement programs through standardization of the types of information required in progress reports—thereby reducing their administrative effort and costs.

Public Comments

We are soliciting public comments to permit the EAC to:

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

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

OMB approval is requested for 3 years.

Respondents: All EAC grantees and states.

Annual Reporting Burden

ANNUAL BURDEN ESTIMATES

EAC Grant	Instrument	Total number of respondents	Total number of responses per year	Average burden hours per response	Annual burden hours
251	EAC–PR	29	2	1	58
101	EAC–PR	12	2	1	24
Election Security	EAC–PR	56	2	1	112
Total					194

The estimated cost of the annualized cost of this burden is: $4,677.34, which is calculated by taking the annualized burden (194 hours) and multiplying by an hourly rate of $24.11 (GS–8/Step 5 hourly basic rate).

Camden Kelliher,

Deputy General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2023–21683 Filed 9–29–23; 8:45 am]

BILLING CODE 4810–71–P

DEPARTMENT OF ENERGY

[DOE Docket No. 202–23–1]

Emergency Order Issued to the Electric Reliability Council of Texas, Inc. (ERCOT), to Operate Power Generating Facilities Under Limited Circumstances in Texas as a Result of Extreme Weather

AGENCY: Office of Cybersecurity, Energy Security, and Emergency Response, Department of Energy.

ACTION: Notice of emergency action.

SUMMARY: The U.S. Department of Energy (DOE or the Department) is issuing this Notice to document emergency actions that it has taken pursuant to the Federal Power Act. DOE issued an emergency order to the Electric Reliability Council of Texas, Inc. (ERCOT) to operate certain power generating facilities under limited circumstances as described further in this section. ERCOT is the independent system operator for over 26 million people in Texas (ERCOT Region). The State of Texas experienced a sustained heat wave that resulted in abnormally high electric demand. Because the additional generation required to serve the ERCOT Region was anticipated to result in a conflict with environmental standards and requirements, DOE authorized only the necessary additional generation for ERCOT to sufficiently supply the amount of energy needed to prevent electrical disruption. However, because no facilities operated above permitted levels during the emergency as authorized by the DOE order, no environmental impacts resulted from DOE issuing the order. Consequently, DOE has decided not to prepare a special environmental analysis.

ADDRESSES: Requests for more information should be addressed by electronic mail to *AskCR@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: For further information on this Notice, or for information on the emergency activities described herein, contact Kenneth Buell, (202) 586–3362, *Kenneth.Buell@hq.doe.gov,* to *AskCR@hq.doe.gov,* or by mail to the attention of Kenneth Buell, CR–30, 1000 Independence Ave. SW, Washington, DC 20585.

The Order and all related information are available here: *https://www.energy.gov/ceser/federal-power-act-section-202c-ercot-september-2023.*

SUPPLEMENTARY INFORMATION:

Background

Section 202(c) of the Federal Power Act

The Department is issuing this Notice pursuant to 10 CFR 1021.343(a) to document emergency actions taken in accordance with section 202(c) of the Federal Power Act (FPA) (16 U.S.C. 824a(c)). FPA section 202(c) provides that ''[d]uring the continuance of any war in which the United States is engaged, or whenever the [Secretary of Energy] determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, the [Secretary of Energy] shall have authority, either upon [her] own motion or upon complaint, with or without notice, hearing or report, to require by order such temporary connections of facilities and generation, delivery, interchange, or transmission of electric energy as in [her] judgment will best meet the emergency and serve the public interest.''

1. Request for Emergency Order From ERCOT

On September 7, 2023, ERCOT filed a Request for Emergency Order Under Section 202(c) of the Federal Power Act (Application) to allow ERCOT to operate certain electric generating units up to their maximum generation output levels to preserve the reliability of the bulk power system.

In its Application, ERCOT noted that the region was experiencing extreme heat conditions resulting in especially high electric demand. On September 6, 2023, ERCOT reported that it established a September load record, and, on the same day, it declared an Energy Emergency Alert (EEA) Level 2 due to low reserve margins coupled with a post-contingency transmission overload. ERCOT observed high loading on a certain transmission element in similar circumstances in the weeks preceding September 7, 2023, and assessed that a post-contingency overload could occur again during the later afternoon and evening hours of September 7, 2023, and September 8, 2023. Such an overload would have required ERCOT to reduce output of resources impacting the loading on that element, exacerbating ERCOT's scarcity concern. The extreme heat and high electric demand were expected to continue through September 8, 2023. ERCOT requested the authority to authorize the provision of additional energy from the units identified in Exhibit A of its Application, as well as any other generating units subject to emissions or other permit limitations, subject to the Order (''Specified Resources''). ERCOT stated that the emergency order it was requesting could result in exceedances of environmental limits. Given the permit limits of the Specified Resources, ERCOT anticipated that the additional capacity may not be made available absent an order under FPA section 202(c).

2. ERCOT Order

On September 7, 2023, the Secretary of Energy issued Order No. 202–23–1 (the ERCOT Order). As set forth in the ERCOT Order, the Secretary for Energy found that given the emergency nature of the expected load stress, the responsibility of ERCOT to ensure maximum reliability on its system, and the ability of ERCOT to identify and dispatch generation necessary to meet the additional load, the issuance of the Order would meet the emergency and serve the public interest.

The Order authorized ERCOT to dispatch the Specified Resources for the period beginning with the issuance of the Order on September 7, 2023, for the hours of 5 p.m. through 9 p.m. CDT and 5 p.m. and 9 p.m. CDT on Friday, September 8, 2023, under the conditions set forth in the Order, including the following:

(i) For any Generation Resource or Settlement Only Generator whose operator notifies ERCOT that the unit is unable, or expected to be unable, to produce at its maximum output due to an emissions or other limit in any Federal environmental permit, the unit would be allowed to exceed any such limit only between the hours of 5 p.m. and 9 p.m. CDT on Thursday, September 7, 2023, and 5 p.m. and 9 p.m. CDT on Friday, September 8, 2023, and only if ERCOT has declared an EEA Level 2 or Level 3 that remained in effect during all or any part of either such period. This incremental amount of restricted capacity would be offered at a price no lower than $1,500/MWh. Once ERCOT declares that it is no longer in an EEA Level 2 or 3, or at 9 p.m. CDT, whichever occurs first, the unit would be required to return to operation within its permitted limits as expeditiously as possible. And at all other times, the unit would be required to operate within its permitted limits.

(ii) For any Generation Resource whose operator notifies ERCOT that the unit will be offline at any point between the hours of 5 p.m. and 9 p.m. CDT Thursday, September 7, 2023, and 5 p.m. and 9 p.m. CDT Friday, September 8, 2023, or would need to go offline during either such period, due to an emissions or other limit in any Federal environmental permit, if ERCOT has declared or expects to declare an EEA Level 2 or Level 3 that is expected to be in effect during all or any part of that period, then ERCOT may issue a Reliability Unit Commitment (RUC) instruction in advance of that period or during that period directing the unit operator to bring the unit online, or to keep the unit online, and to operate at the minimum level at which the Resource can be sustainably operated. If ERCOT issues the instruction in advance of either such period, then ERCOT shall endeavor to commit the unit at a time that allows the unit to reach its low sustained limit no earlier than the beginning of that period or the start of any EEA Level 2, whichever is expected to occur last. An operator subject to RUC instruction described herein would be allowed to make all of the unit's capacity available to ERCOT for dispatch during any period between the hours of 5 p.m. and 9 p.m. CDT on Thursday, September 7, 2023, and 5 p.m. and 9 p.m. CDT Friday, September 8, 2023, for which ERCOT has declared an EEA Level 2 or Level 3. This capacity would be offered at a price no lower than $1,500/MWh. Once ERCOT issues a declaration indicating that it is no longer in an EEA Level 2 or 3, or at 9 p.m. CDT, whichever occurs first, the unit would be required to return to operation within its permitted limits as expeditiously as possible unless the unit is subject to a subsequent RUC instruction that complies with the terms specified herein.

The Order required that ERCOT provide a report by October 6, 2023, for the dates between September 7, 2023 and September 8, 2023, inclusive, on which the Specified Resources were operated, the hours of operation, and exceedance of permitting limits, including sulfur dioxide, nitrogen oxide, mercury, carbon monoxide, and other air pollutants, as well as exceedances of wastewater release limits. The report was required to include, (i) emissions data in pounds per hour for each Specified Resource unit, for each hour of the operational scenario, for CO, NO_X, PM_{10}, VOC, and SO_2; (ii) emissions data must have included emissions (lbs/hr) calculated consistent with reporting obligations pursuant to operating permits, permitted operating/emission limits, and the actual incremental emissions above the permit limits; (iii) the number and actual hours each day that each Specified Resource unit operated in excess of permit limits or conditions, *e.g.,* ''Generator #1; September 8, 2023; 4 hours; 04:00–08:00 CDT''; (iv) the amount, type and formulation of any fuel used by each Specified Resource; (v) all reporting provided under the Specified Resource's operating permit requirements over the last three years to the United States Environmental Protection Agency or local Air Quality Management District for the location of a Specified Resource that operates pursuant to the Order; (vi) additional information requested by DOE as it performs any environmental review relating to the issuance of the Order; and (vii) information provided by the Specified Resource complied with applicable environmental requirements to the maximum extent feasible while operating consistent with emergency conditions. The Order also required that ERCOT submit a final report by November 6, 2023, with any revisions to the information reported on October 6, 2023. However, because no facilities operated above permitted levels during the emergency as authorized by the DOE order, no environmental impacts resulted from DOE issuing the order. Consequently, DOE has decided not to

prepare a special environmental analysis.

Signing Authority

This document of the Department of Energy was signed on September 26, 2023, by Puesh M. Kumar, Director for the Office of Cybersecurity, Energy Security, and Emergency Response, 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 September 27, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–21719 Filed 9–29–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1962–225]

Pacific Gas and Electric Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for Temporary Variance of Flow Requirements.

b. *Project No:* 1962–225.

c. *Date Filed:* September 15, 2023.

d. *Applicant:* Pacific Gas and Electric Company (licensee).

e. *Name of Project:* Rock Creek-Cresta Hydroelectric Project.

f. *Location:* The project is located on the North Fork Feather River, upstream of Lake Oroville, near the Town of Tobin, in Butte and Plumas Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Chadwick McCready, License Coordinator; Pacific Gas and Electric Company, P.O. Box 28209, Oakland, CA 94604; Phone: (530) 685–5710.

i. *FERC Contact:* Katherine Schmidt, Phone: (415) 369–3348, *katherine.schmidt@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* October 11, 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–2107–054. 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 requests a temporary reduction in minimum instream flow in the Rock Creek Reach from 390 cubic feet per second (cfs) down to 200 cfs for the month of October and down to 150 cfs for the month of November, as measured at compliance point NF–70, to facilitate streambed restoration and repairs to Forest Service System Road 26N26 (also known as Caribou Road) following damage caused by summer thunderstorms and associated debris flows. The temporary variance would begin the date the variance is approved and end November 30, 2023. All reductions in flows would occur following previously approved ramping rates.

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: September 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–21696 Filed 9–29–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5261–023]

Green Mountain Power Corporation; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a subsequent license to continue to operate and maintain the Newbury Hydroelectric Project. The project is located on the Wells River, in the town of Newbury, Orange County, Vermont. Commission staff has prepared an Environmental Assessment (EA) for the project.

The EA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (*http://www.ferc.gov/*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

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.*

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments 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. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–5261–023.

For further information, contact Adam Peer at (202) 502–8449 or by email at *adam.peer@ferc.gov.*

Dated: September 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–21697 Filed 9–29–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–9853–000]

Smith, William L.; Notice of Filing

Take notice that on September 26, 2023, William L.Smith submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b) and part 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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 strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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.*

Comment Date: 5:00 p.m. Eastern Time on October 17, 2023.

Dated: September 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–21695 Filed 9–29–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC11–6–017]

North American Electric Reliability Corporation; Notice of Filing

Take notice that on September 26, 2023, the North American Electric Reliability Corporation submitted an annual report on the Find, Fix, Track and Compliance Exception programs, in accordance with the Federal Energy Regulatory Commission's (Commission) Orders.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[1] *See N. Am. Elec. Reliability Corp.,* 138 FERC ¶ 61,193 (2012); *N. Am. Elec. Reliability Corp.,* 143 FERC ¶ 61,253 (2013); *N. Am. Elec. Reliability Corp.,* 148 FERC ¶ 61,214 (2014); *N. Am. Elec. Reliability Corp.,* Docket No. RC11–6–004 (Nov. 13, 2015) (delegated letter order).

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.*

Comment Date: 5:00 p.m. Eastern Time on October 10, 2023.

Dated: September 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–21693 Filed 9–29–23; 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: PR23–73–000.

Applicants: Delaware-Permian Pipeline LLC.

Description: § 284.123(g) Rate Filing: Baseline new to be effective 9/25/2023.

Filed Date: 9/25/23.

Accession Number: 20230925–5071.

Comment Date: 5 p.m. ET 10/16/23.

Protest Date: 5 p.m. ET 11/24/23.

Docket Numbers: RP23–1051–000.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Agreement Housekeeping Filing to be effective 11/1/2023.

Filed Date: 9/22/23.

Accession Number: 20230922–5120.

Comment Date: 5 p.m. ET 10/4/23.

Docket Numbers: RP23–1052–000.

Applicants: ANR Pipeline Company.

Description: § 4(d) Rate Filing: ANR—Freepoint 139395 Negotiated Rate Agreement to be effective 9/23/2023.

Filed Date: 9/22/23.

Accession Number: 20230922–5128.

Comment Date: 5 p.m. ET 10/4/23.

Docket Numbers: RP23–1053–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreements Update (CIMA 2023) to be effective 11/1/2023.

Filed Date: 9/22/23.

Accession Number: 20230922–5130.

Comment Date: 5 p.m. ET 10/4/23.

Docket Numbers: RP23–1054–000.

Applicants: MRP Elgin LLC, Elgin Energy Center, LLC.

Description: Joint Petition for Temporary Waiver of Capacity Release Regulations, et al. of Elgin Energy Center, LLC, et al.

Filed Date: 9/22/23.

Accession Number: 20230922–5156.

Comment Date: 5 p.m. ET 10/4/23.

Docket Numbers: RP23–1055–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Non-Conforming—REA Interim Firm Service—OS Shippers to be effective 10/15/2023.

Filed Date: 9/25/23.

Accession Number: 20230925–5000.

Comment Date: 5 p.m. ET 10/10/23.

Docket Numbers: RP23–1056–000.

Applicants: Cheniere Corpus Christi Pipeline, L.P.

Description: Semi-Annual Transportation Retainage Adjustment Filing of Cheniere Corpus Christi Pipeline, L.P.

Filed Date: 9/25/23.

Accession Number: 20230925–5072.

Comment Date: 5 p.m. ET 10/10/23.

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.

Filings in Existing Proceedings

Docket Numbers: RP23–984–000.
Applicants: Boardwalk Storage Company, LLC.
Description: Report Filing: Type 620 Filing to Confirm Effective Date to be effective N/A.
Filed Date: 9/25/23.
Accession Number: 20230925–5038.
Comment Date: 5 p.m. ET 10/10/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at:*http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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: September 25, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–21571 Filed 9–29–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF23–7–000]

Bonneville Power Administration; Order Approving Rates on an Interim Basis and Providing Opportunity for Additional Comments

Before Commissioners: Willie L. Phillips, Acting Chairman; James P. Danly, Allison Clements, and Mark C. Christie.

1. In this order, we approve Bonneville Power Administration's (Bonneville) proposed fiscal years 2024–2025 wholesale power and transmission rates on an interim basis, pending our further review. We also provide an additional period of time for the parties to file comments.

I. Background

2. On July 28, 2023, Bonneville filed a request for interim and final approval of its proposed wholesale power [1] and transmission rates [2] in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) [3] and Subpart B of part 300 of the Commission's regulations.[4] Bonneville projects that the filed rates will produce average annual power revenues of $3.144 billion and average annual transmission revenues of $1.264 billion. Bonneville asserts that this level of annual revenues is sufficient to recover its costs for the fiscal years 2024–2025 rate approval period, while providing cash flow to assure at least a 95% probability of making all payments to the United States Treasury in full and on time for each year of the fiscal years 2024–2025 rate approval period.

II. Notice of Filing

3. Notice of Bonneville's application was published in the **Federal Register**, 88 FR 53,480 (Aug. 8, 2023), with interventions and protests due on or before August 28, 2023. Timely motions to intervene were filed by Public Power Council, M–S–R Public Power Agency, and Powerex Corp. The Confederated Tribes and Bands of the Yakama Nation and the Confederated Tribes of the Umatilla Indian Reservation (together, Treaty Tribes), along with the Columbia River Inter-Tribal Fish Commission (collectively, Tribal Parties) filed a motion to intervene. On September 5, 2023, Bonneville filed a request for leave to answer and an answer to the Tribal Parties' motion to intervene.

4. The Tribal Parties assert that Bonneville's rates during the 2024–2025 rate period are insufficient to assure repayment of the federal investment in the Federal Columbia River Power System, and are not based on Bonneville's total system costs.[5] The Tribal Parties contend that the Bonneville Administrator failed to take into account Bonneville's obligations under the Treaty Tribes' respective treaties as directly applicable to Bonneville and as incorporated through the Northwest Power Act.[6] The Tribal Parties further assert that, under the Northwest Power Act, the proposed fiscal years 2024–2025 rates fail to afford equal treatment between fish and wildlife and power interests, and are not consistent with the Northwest Power and Conservation Council (NPCC) Fish and Wildlife Program.[7]

5. In Bonneville's answer, Bonneville states that the Commission should approve Bonneville's proposed rates as requested.[8] Bonneville asserts that the Tribal Parties' arguments fall outside the Commission's limited jurisdiction over Bonneville's power and transmission rates established by section 7(a)(2) of the Northwest Power Act.[9] Bonneville argues that the Commission has previously concluded that the Commission does not second guess Bonneville's decisions on fish and wildlife issues, and that the Commission's review is not the proper forum to challenge Bonneville's cost projections.[10]

6. Bonneville contends that the Commission previously considered the issue of whether Bonneville's rates failed to afford ''equitable treatment'' to fish and wildlife under section 4(h)(11)(A) of the Northwest Power Act. Bonneville argues that the Commission correctly concluded that ''Bonneville's compliance with its environmental review and fish and wildlife protection obligation . . . is outside the scope of the Commission's review under section 7(a)(2).'' [11]

7. In response to the Tribal Parties' claim that Bonneville's rates are not

[1] The proposed wholesale power rates for which Bonneville seeks approval for fiscal years 2024–2025 are: Priority Firm Power Rate (PF–24); New Resource Firm Power Rate (NR–24); Industrial Firm Power Rate (IP–24); Firm Power and Surplus Products and Services Rate (FPS–24). Bonneville also seeks approval of related General Rates Schedule Provisions for the same period. Fiscal years 2024–2025 is the period October 1, 2023, through September 30, 2025.

[2] The proposed transmission and ancillary services rates (referred to collectively as transmission rates) for which Bonneville seeks approval for fiscal years 2024–2025 are: Formula Power Transmission Rate (FPT–24.1); Network Integration Rate (NT–24); Point-to-Point Rate (PTP–24); Southern Intertie Rate (IS–24); Montana Intertie Rate (IM–24); Use-of-Facilities Transmission Rate (UFT–24); Advance Funding Rate (AF–24); Townsend-Garrison Transmission Rate (TGT–24); Regional Compliance Enforcement and Regional Coordinator Rates (RC–24); Oversupply Rate (OS–24); Eastern Intertie Rate (IE–24); and Ancillary and Control Area Services Rates (ACS–24). Bonneville also seeks approval of related General Rates Schedule Provisions for the same period.

[3] 16 U.S.C. 839e(i).

[4] 18 CFR 300.10–300.14 (2022).

[5] Tribal Parties Motion to Intervene at 2 (citing 16 U.S.C. 839e(a)(2)(a)–(b)).

[6] *Id.* (citing 16 U.S.C. 839e(k)).

[7] *Id.*

[8] Bonneville Answer at 3.

[9] *Id.* (citing 16 U.S.C. 839e(a)(2)).

[10] *Id.* at 5 (citing *U.S. Dep't of Energy—Bonneville Power Admin.,* 105 FERC ¶ 61,068, at P 10 (2003)).

[11] *Id.* (citing *Bonneville Power Admin,* 178 FERC ¶ 61,211, at P 13 (2022)).

consistent with the NPCC Fish and Wildlife Program, Bonneville argues that this issue also concerns Bonneville's fish and wildlife cost projections and whether those projections are (or must be) consistent with the NPCC's Fish and Wildlife Program. Bonneville states that the Commission has previously addressed this issue, noting correctly that ''issues related to the amount of money [Bonneville] plans to spend on fish and wildlife under the [NPCC's] fish and wildlife [program]'' are outside of the Commission's scope of review.[12]

8. Bonneville further argues that the Tribal Parties misstate the procedures applicable to this proceeding when the Tribal Parties note that ''parties in the [Bonneville] rate proceedings 'shall be afforded an opportunity by the Commission for an additional hearing.''' [13] Bonneville argues that the Tribal Parties do not request such a hearing and explains that the referenced hearing opportunity in section 7(k) of the Northwest Power Act is inapplicable to the Commission's review of Bonneville's fiscal years 2024–2025 rates. Bonneville states that section 7(k) applies to the sale of ''nonfirm electric power within the United States, but outside the region,'' which is not at issue in this proceeding.[14]

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2022), the timely, unopposed motion to intervene serve to make the entities that filed them parties to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.213(a)(2), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Bonneville's answer because it has provided information that assisted us in our decision-making process.

B. Standard of Review

11. Under the Northwest Power Act, the Commission's review of Bonneville's proposed regional power and transmission rates is limited to determining whether Bonneville's proposed rates meet the three specific requirements of section 7(a)(2) of the Northwest Power Act:[15]

(A) they must be sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting Bonneville's other costs;

(B) they must be based upon Bonneville's total system costs; and

(C) insofar as transmission rates are concerned, they must equitably allocate the costs of the Federal transmission system between Federal and non-Federal power.

12. Commission review of Bonneville's non-regional, non-firm rates also is limited. Review is restricted to determining whether such rates meet the requirements of section 7(k) of the Northwest Power Act,[16] which requires that they comply with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act. Taken together, those statutes require that Bonneville's non-regional, non-firm rates:

(A) recover the cost of generation and transmission of such electric energy, including the amortization of investments in the power projects within a reasonable period;

(B) encourage the most widespread use of Bonneville power; and

(C) provide the lowest possible rates to consumers consistent with sound business principles.

13. Unlike the Commission's statutory authority under the Federal Power Act, the Commission's authority under sections 7(a) and 7(k) of the Northwest Power Act does not include the power to modify the rates. The responsibility for developing rates in the first instance is vested with Bonneville's Administrator. The rates are then submitted to the Commission for approval or disapproval. In this regard, the Commission's role can be viewed as an appellate one: to affirm or remand the rates submitted to it for review.[17]

14. Moreover, review at this interim stage is further limited. In view of the volume and complexity of a Bonneville rate application, such as the one now before the Commission in this filing, and the limited period in advance of the requested effective date in which to review the application,[18] the Commission generally defers resolution of issues on the merits of Bonneville's application until the order on final confirmation. Thus, the proposed rates, if not patently deficient, generally are approved on an interim basis and the parties are afforded an additional opportunity in which to raise issues with regard to Bonneville's application.[19]

15. The Commission declines at this time to grant final confirmation and approval of Bonneville's proposed wholesale power and transmission rates. The Commission's preliminary review nevertheless indicates that Bonneville's wholesale power and transmission rates application appears to meet the statutory standards and the minimum threshold filing requirements of part 300 of the Commission's regulations.[20] Moreover, the Commission's preliminary review of Bonneville's application indicates that it does not contain any patent deficiencies. The proposed rates therefore will be approved on an interim basis pending full review for final approval. We note, as well, that no one will be harmed by this decision because interim approval allows Bonneville's rates to go into effect subject to refund with interest; the Commission may order refunds with interest if the Commission later determines in its final decision not to approve the rates.[21]

16. In addition, we will provide an additional period of time for parties to file comments and reply comments on issues related to final confirmation and approval of Bonneville's proposed rates. This will ensure that the record in this proceeding is complete and fully developed.

The Commission orders:

(A) Interim approval of Bonneville's proposed wholesale power and transmission rates for fiscal years 2024–2025 is hereby granted, to be effective October 1, 2023, through September 30, 2025, subject to refund with interest as set forth in section 300.20(c) of the Commission's regulations,[22] pending final action and either their approval or disapproval.

(B) Within 30 days of the date of this order, parties who wish to do so may file additional comments regarding final confirmation and approval of Bonneville's proposed rates. Parties who wish to do so may file reply comments within 20 days thereafter.

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[12] *Id.* at 6 (citing *U.S. Dep't of Energy—Bonneville Power Admin.,* 32 FERC ¶ 61,014, at n.15 (1985)).

[13] *Id.* (citing Tribal Parties Motion to Intervene at 1 (citing 16 U.S.C. 839e(k))).

[14] *Id.* (quoting 16 U.S.C. 839e(k)).

[15] 16 U.S.C. 839e(a)(2). Bonneville also must comply with the financial, accounting, and ratemaking requirements in Department of Energy Order No. RA 6120.2.

[16] *Id.* § 839e(k).

[17] *See, e.g., U.S. Dep't of Energy—Bonneville Power Admin.,* 67 FERC ¶ 61,351, at 62,216–17 (1994); *Aluminum Co. of Am.* v. *Bonneville Power Admin.,* 903 F.2d 585, 592–93 (9th Cir. 1989).

[18] *See* 18 CFR 300.10(a)(3)(ii).

[19] *See, e.g., U.S. Dep't of Energy—Bonneville Power Admin.,* 160 FERC ¶ 61,113, at P 6 (2017).

[20] *See, e.g., id.* P 13.

[21] 18 CFR 300.20(c) (2022).

[22] *Id.*

(C) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Issued: September 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–21694 Filed 9–29–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–135–000.

Applicants: EGCO Compass II, LLC, Dighton Power, LLC, Marco DM Holdings, L.L.C., Marcus Hook Energy, L.P., Milford Power, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of EGCO Compass II, LLC, et al.

Filed Date: 9/26/23.

Accession Number: 20230926–5090.

Comment Date: 5 p.m. ET 10/17/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–301–000.

Applicants: Midland Wind, LLC.

Description: Midland Wind, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/26/23.

Accession Number: 20230926–5116.

Comment Date: 5 p.m. ET 10/17/23.

Docket Numbers: EG23–302–000.

Applicants: Sierra Estrella Energy Storage LLC.

Description: Sierra Estrella Energy Storage LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/26/23.

Accession Number: 20230926–5132.

Comment Date: 5 p.m. ET 10/17/23.

Docket Numbers: EG23–303–000.

Applicants: Superstition Energy Storage LLC.

Description: Superstition Energy Storage LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/26/23.

Accession Number: 20230926–5134.

Comment Date: 5 p.m. ET 10/17/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–100–000; QF86–765–006.

Applicants: THE DEXTER CORP., Algonquin Power Windsor Locks LLC.

Description: Algonquin Power Windsor Locks LLC submits Petition for Declaratory Order.

Filed Date: 9/20/23.

Accession Number: 20230920–5160.

Comment Date: 5 p.m. ET 10/18/23.

Docket Numbers: EL23–101–000.

Applicants: Mid-Atlantic Offshore Development, LLC.

Description: Petition for Declaratory Order of Mid-Atlantic Offshore Development, LLC.

Filed Date: 9/21/23.

Accession Number: 20230921–5184.

Comment Date: 5 p.m. ET 10/23/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–1598–002.

Applicants: Versant Power.

Description: Versant Power submits a Joint Offer of Settlement between itself, the Maine Public Utilities Commission and the Maine Office of the Public Advocate.

Filed Date: 9/22/23.

Accession Number: 20230922–5200.

Comment Date: 5 p.m. ET 10/13/23.

Docket Numbers: ER23–2929–000.

Applicants: Amcor Storage LLC.

Description: Baseline eTariff Filing: Baseline new to be effective 1/1/2024.

Filed Date: 9/26/23.

Accession Number: 20230926–5133.

Comment Date: 5 p.m. ET 10/17/23.

Take notice that the Commission received the following electric reliability filings

Docket Numbers: RD23–6–000.

Applicants: North American Electric Reliability Corporation.

Description: North American Electric Reliability Corporation submits Petition for Approval of Proposed Reliability Standards re IRO–010–5 and TOP–003–6.1.

Filed Date: 9/21/23.

Accession Number: 20230921–5183.

Comment Date: 5 p.m. ET 10/26/23.

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: September 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–21691 Filed 9–29–23; 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: RP23–1057–000.

Applicants: Rockies Express Pipeline LLC.

Description: Section 4(d) Rate Filing: REX 2023–09–25 Negotiated Rate Agreement to be effective 9/26/2023.

Filed Date: 9/25/23.

Accession Number: 20230925–5139.

Comment Date: 5 p.m. ET 10/10/23.

Docket Numbers: RP23–1058–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Section 4(d) Rate Filing: 9.26.23 Negotiated Rates—Citadel Energy Marketing LLC R–7705–15 to be effective 11/1/2023.

Filed Date: 9/26/23.

Accession Number: 20230926–5004.

Comment Date: 5 p.m. ET 10/10/23.

Docket Numbers: RP23–1059–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Section 4(d) Rate Filing: 9.26.23 Negotiated Rates—Citadel Energy Marketing LLC R–7705–16 to be effective 11/1/2023.

Filed Date: 9/26/23.
Accession Number: 20230926–5006.
Comment Date: 5 p.m. ET 10/10/23.
Docket Numbers: RP23–1060–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: Section 4(d) Rate Filing: Negotiated Rate Agreement Update (Hartree Oct 2023) to be effective 10/1/2023.
Filed Date: 9/26/23.
Accession Number: 20230926–5007.
Comment Date: 5 p.m. ET 10/10/23.
Docket Numbers: RP23–1061–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Section 4(d) Rate Filing: 9.26.23 Negotiated Rates—Citadel Energy Marketing LLC R–7705–17 to be effective 11/1/2023.
Filed Date: 9/26/23.
Accession Number: 20230926–5011.
Comment Date: 5 p.m. ET 10/10/23.
Docket Numbers: RP23–1062–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Section 4(d) Rate Filing: 9.26.23 Negotiated Rates—Emera Energy Services, Inc. R–2715–52 to be effective 11/1/2023.
Filed Date: 9/26/23.
Accession Number: 20230926–5020.
Comment Date: 5 p.m. ET 10/10/23.
Docket Numbers: RP23–1063–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Section 4(d) Rate Filing: 9.26.23 Negotiated Rates—Emera Energy Services, Inc. R–2715–53 to be effective 11/1/2023.
Filed Date: 9/26/23.
Accession Number: 20230926–5024.
Comment Date: 5 p.m. ET 10/10/23.
Docket Numbers: RP23–1064–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Section 4(d) Rate Filing: 9.26.23 Negotiated Rates—Emera Energy Services, Inc. R–2715–54 to be effective 11/1/2023.
Filed Date: 9/26/23.
Accession Number: 20230926–5029.
Comment Date: 5 p.m. ET 10/10/23.
Docket Numbers: RP23–1065–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: Section 4(d) Rate Filing: Non-Conforming Agreement Filing (Phillips 66) to be effective 10/27/2023.
Filed Date: 9/26/23.
Accession Number: 20230926–5060.
Comment Date: 5 p.m. ET 10/10/23.

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 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *https://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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Dated: September 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–21692 Filed 9–29–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11423–01–OAR]

Acid Rain Program: Excess Emissions Penalty Inflation Adjustments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of annual adjustment factors.

SUMMARY: The Acid Rain Program requires sources that do not meet their annual Acid Rain emissions limitations for sulfur dioxide (SO_2) or nitrogen oxides (NO_X) to pay inflation-adjusted excess emissions penalties. This document provides notice of the annual adjustment factors used to calculate excess emissions penalties for compliance years 2023 and 2024.

FOR FURTHER INFORMATION CONTACT: Jason Kuhns at (202) 564–3236 or *kuhns.jason@epa.gov.*

SUPPLEMENTARY INFORMATION: The Acid Rain Program limits SO_2 and NO_X emissions from fossil fuel-fired electricity generating units. All affected sources must hold allowances sufficient to cover their annual SO_2 mass emissions, and certain coal-fired units must meet annual average NO_X emission rate limits. Under 40 CFR 77.6, any source that does not meet these requirements must pay an excess emissions penalty without demand to the EPA Administrator. The automatic penalty is computed as the number of excess tons of SO_2 or NO_X emitted times a per-ton penalty amount of $2,000 times an annual adjustment factor, which must be published in the **Federal Register**.

The annual adjustment factor used to compute excess emissions penalties for compliance year 2023 is 2.377, resulting in an automatic penalty amount of $4,754 per excess ton of SO_2 or NO_X emitted in 2023. In accordance with 40 CFR 77.6(b) and 72.2, this annual adjustment factor is determined from values of the Consumer Price Index for All Urban Consumers (CPI–U) for August 1989 and August 2022.

The annual adjustment factor used to compute excess emissions penalties for compliance year 2024 is 2.464, resulting in an automatic penalty amount of $4,928 per excess ton of SO_2 or NO_X emitted in 2024. This annual adjustment factor is determined from values of the CPI–U for August 1989 and August 2023.

Rona Birnbaum,

Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 2023–21664 Filed 9–29–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0467; FRL–11410–01–OCSPP]

Pesticide Program Dialogue Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Environmental Protection Agency's (EPA's) Office of Pesticide Programs is announcing a public meeting of the Pesticide Program Dialogue Committee (PPDC) on November 15 and 16, 2023. The meeting will be held in person and limited opportunities for virtual participation will be offered.

DATES: The meeting will be held on Wednesday, November 15 from

approximately 9:30 a.m. to 5:00 p.m. and on Thursday, November 16, 2023, from approximately 9:00 a.m. to 3:00 p.m. Requests to participate in the meeting must be received on or before November 8, 2023.

To request accommodation of a disability, please contact the technical person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the U.S. Environmental Protection Agency Ruckelshaus Conference Center in the East West William Jefferson Clinton Building at 1201 Constitution Avenue NW, Washington, DC 20004.

Please visit *https://www.epa.gov/pesticide-advisory-committees-and-regulatory-partners/pesticide-program-dialogue-committee-ppdc* to find a link to register for the meeting.

FOR FURTHER INFORMATION CONTACT: Jeffrey Chang, telephone number: (202) 566–2213, email address: *chang.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you work in in agricultural settings or if you are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*); the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 *et seq.*); the Pesticide Registration Improvement Act (PRIA) (which amends FIFRA section 33); and the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*). Potentially affected entities may include but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farm worker groups; pesticide users and growers; animal rights groups; pest consultants; state, local, and tribal governments; academia; public health organizations; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2023–0467, is available online at *https://www.regulations.gov.* The docket will also be available in-person at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the EPA/DC, West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

II. Background

The PPDC is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. EPA established the PPDC in September 1995 to provide policy advice, information and recommendations to the EPA Administrator through the Director of the Office of Pesticide Programs, Office of Chemical Safety and Pollution Prevention. The PPDC provides a public forum to discuss a wide variety of pesticide regulatory developments and reform initiatives, evolving public policy and program implementation issues associated with evaluating and risks from the use of pesticides.

III. How can I request to participate in this meeting?

Please visit *https://www.epa.gov/pesticide-advisory-committees-and-regulatory-partners/pesticide-program-dialogue-committee-ppdc* to find a link to register to attend the meeting in person.

Requests to make brief oral comments to the PPDC during the meeting should be submitted to the individual listed under **FOR FURTHER INFORMATION CONTACT** on or before noon on the date set in the **DATES** section.

Authority: 5 U.S.C. Appendix 2 *et seq.* and 7 U.S.C. 136 *et seq.*

Dated: September 26, 2023.

Edward Messina,

Director, Office of Pesticide Programs.

[FR Doc. 2023–21647 Filed 9–29–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0430; FRL–11382–01–OCSPP]

Pesticides; Draft Guidance and Proposed Method for Antimicrobial Product Efficacy Claims Against Planktonic Legionella Pneumophila in Cooling Tower Water; Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of and soliciting public comment on a draft guidance document and proposed method for adding efficacy claims to antimicrobial products for use in cooling tower water to reduce the level of planktonic *Legionella pneumophila.* The draft guidance document describes efficacy testing for antimicrobial products to support claims for the reduction of planktonic *L. pneumophila* in water within cooling tower systems and how to prepare an application for registration. The proposed method is for evaluating the efficacy of antimicrobial products in water of cooling towers against planktonic *L. pneumophila.* The draft guidance does not address adherent or sessile bacteria that attach to a surface (*e.g.,* biofilm) of the cooling tower system or any other microorganism other than *L. pneumophila* which may be found in the water of cooling tower systems.

DATES: Comments must be received on or before December 1, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0430, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For information on the proposed method contact: Lisa S. Smith, Microbiology Laboratory Branch (7503M), Biological and Economic Analysis Division, Office of Pesticide Programs, Environmental Protection Agency, Environmental Science Center, 701 Mapes Road Ft. Meade, MD 20755–

5350; telephone number: (410) 305–2637; email address: *smith.lisas@epa.gov.*

For information on the draft guidance contact: César E. Cordero, Efficacy Branch (7510M), Antimicrobials Division, Office of Pesticide Programs, Environmental Protection Agency, William Jefferson Clinton East Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–3716; email address: *cordero.cesar@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general; although this action may be of particular interest to those persons who are or may be required to conduct efficacy testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not CBI to EPA through *https://www.regulations.gov* or email. If you wish to include CBI in your comment, please follow the applicable instructions at *https://www.epa.gov/dockets/commenting-epa-dockets#rules* and clearly mark the part or all of the information that you claim to be CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Background

Legionella pneumophila is a bacterium that is often identified as the causative agent of Legionnaires' Disease, which is a disease acquired by inhaling water droplets contaminated with *Legionella* bacteria. *Legionellae* are found naturally in freshwater environments but can become a health concern when they grow and spread in human-made building water systems like cooling towers. Cooling towers are a potential breeding ground for *L. pneumophila* and subsequent aerosolization of *L. pneumophila* can occur if cooling towers are not properly disinfected and maintained. Following a Legionnaires' disease outbreak in New York City in 2015, New York State began requiring cooling towers to be registered with the state and monitored and treated for *L. pneumophila.* However, EPA currently does not have guidance providing a framework for those seeking to register antimicrobial products with public health claims to reduce *Legionella* in cooling tower water. EPA received requests to develop a test method and guidance for registration of antimicrobial products intended to reduce *L. pneumophila* in water used in cooling tower systems. There is significant interest from stakeholders and the public in the availability of antimicrobial products with these claims.

III. Guidance Documents Do Not Contain Binding Requirements

As guidance, these documents are not binding on the Agency or any outside parties, and the Agency may depart from these documents where circumstances warrant and without prior notice. While EPA has made every effort to ensure the accuracy of the discussion in the guidance, the obligations of EPA and the regulated community are determined by statutes, regulations, or other legally binding documents. In the event of a conflict between the discussion in the guidance documents and any statute, regulation, or other legally binding document, the guidance documents will not be controlling.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 26, 2023.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2023–21643 Filed 9–29–23; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

[Agency Docket No: EEOC–2023–0005]

RIN: 3046–ZA02

Proposed Enforcement Guidance on Harassment in the Workplace

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of availability and request for comment.

SUMMARY: The Equal Employment Opportunity Commission (''EEOC'') is announcing that its proposed ''Enforcement Guidance on Harassment in the Workplace'' is available for public comment.

DATES: Comments must be received on or before November 1, 2023. Please see the sections below entitled **ADDRESSES** and **SUPPLEMENTARY INFORMATION** for additional information on submitting comments.

ADDRESSES: You may submit comments, identified by docket number EEOC–2023–0005 or Regulatory Information Number (RIN) 3046–ZA02, by any of the following methods—please use only one method:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–663–4114. Only comments of six or fewer pages will be accepted via FAX transmittal, in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at 202–921–2815 (voice), 1–800–669–6820 (TTY), or 1–844–234–5122 (ASL video phone).
- *Mail:* Raymond Windmiller, Executive Officer, Executive Secretariat, U.S. Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.
- *Hand Delivery/Courier:* Raymond Windmiller, Executive Officer, Executive Secretariat, U.S. Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.

Instructions: The Commission invites comments from all interested parties. All comment submissions must include the agency name and docket number (EEOC–2023–0005) or RIN (3046–ZA02) for this guidance. Comments need be submitted in only one of the above-listed formats. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information you provide. However, the EEOC reserves the right to refrain from posting libelous or otherwise inappropriate comments, including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race, color, sex, national origin, age, religion, disability, or genetic information; or that promote or endorse services or products.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and search for ''EEOC–2023–0005'' or ''RIN 3046–ZA02.'' The received comments also will be available for review at the Commission's library, 131 M Street NE, Suite 4NW08R, Washington, DC 20507, between the hours of 9:30 a.m. and 5:00 p.m., from November 1, 2023 until the Commission publishes the guidance in final form. You must make an appointment with library staff to review the comments in the Commission's library.

FOR FURTHER INFORMATION CONTACT: Lynn Davenport, Assistant Legal Counsel, *lynn.davenport@eeoc.gov*; Office of Legal Counsel, 202–856–7072 (voice), 1–800–669–6820 (TTY).

SUPPLEMENTARY INFORMATION:

Background

The EEOC is seeking public comments on all aspects of its proposed ''Enforcement Guidance on Harassment in the Workplace'' (proposed guidance) pursuant to 29 CFR part 1695. The proposed guidance presents a legal analysis of standards for harassment and employer liability applicable to claims of harassment under the equal employment opportunity statutes enforced by the Commission. The Commission posted and requested public input on a proposed guidance on workplace harassment in January 2017, which was not finalized.

The contents of the final guidance document will not have the force and effect of law and are not meant to bind the public in any way. The document is intended only to provide clarity to the public regarding Commission policies and existing requirements under the law. The standards discussed under EEOC-enforced laws will not necessarily apply to allegations of unlawful harassment under other Federal laws or under State or local laws.

For the Commission:

Charlotte A. Burrows,

Chair.

[FR Doc. 2023–21644 Filed 9–29–23; 8:45 am]

BILLING CODE 6570–01–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Board of Directors Meeting

SUMMARY: Notice of the forthcoming regular meeting of the Board of Directors of the Farm Credit System Insurance Corporation (FCSIC), is hereby given in accordance with the provisions of the Bylaws of the FCSIC.

DATES: 10 a.m., Wednesday, October 11, 2023.

ADDRESSES: You may observe the open portions of this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or virtually. If you would like to virtually attend, at least 24 hours in advance, visit *FCSIC.gov,* select ''News & Events,'' then select ''Board Meetings.'' From there, access the linked ''Instructions for board meeting visitors'' and complete the described registration process.

FOR FURTHER INFORMATION CONTACT: If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

SUPPLEMENTARY INFORMATION: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public. The following matters will be considered:

Portions Open to the Public

- Approval of Minutes for July 12, 2023
- Quarterly FCSIC Financial Reports
- Quarterly Report on Insured Obligations
- Quarterly Report on Annual Performance Plan
- Annual Performance Plan
- Budget 2024–2025

Portions Closed to the Public

- Confidential Report on Insurance Risk

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2023–21681 Filed 9–29–23; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than October 17, 2023.

A. Federal Reserve Bank of New York (Ivan J. Hurwitz, Head of Bank Applications) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *comments.applications@ny.frb.org:*

1. *The Goldman Sachs Group, Inc., New York, New York;* to engage in community development activities pursuant to section 225.28(b)(12) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–21737 Filed 9–29–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the Advisory Committee on Breast Cancer in Young Women (ACBCYW)

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) is seeking nominations for membership on the ACBCYW. The ACBCYW consists of 15 experts in fields associated with breast cancer, disease prevention, early detection, diagnosis, public health, social marketing, genetic screening and counseling, treatment, rehabilitation, palliative care, and survivorship in

young women, or in related disciplines with a specific focus on young women.

DATES: Nominations for membership on the ACBCYW must be received no later than November 10, 2023. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be mailed to Kimberly E. Smith, MBA, MHA. c/o ACBCYW Secretariat, Centers for Disease Control and Prevention, 3719 North Peachtree Road, Building 100, Chamblee, Georgia 30341 or emailed (recommended) to *acbcyw@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Kimberly E. Smith, MBA, MHA, Designated Federal Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway NE, Mailstop S107–4, Atlanta, Georgia 30341, Telephone: (404) 498–0073; *acbcyw@cdc.gov.*

SUPPLEMENTARY INFORMATION: Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives. Nominees will be selected based on expertise in the fields of breast health, breast cancer, disease prevention and risk reduction, survivorship (including metastatic breast cancer), hereditary breast and ovarian cancer (HBOC), or in related disciplines with a specific focus on young women. Persons with personal experience with early onset breast cancer are also eligible to apply. This includes but may not be limited to breast cancer survivors <45 years of age and caregivers of said persons. Federal employees will not be considered for membership. Members may be invited to serve up to four-year terms. Selection of members is based on candidates' qualifications to contribute to the accomplishment of ACBCYW objectives (*http://www.cdc.gov/maso/facm/facmacbcyw.html*).

The U.S. Department of Health and Human Services policy stipulates that committee membership be balanced in terms of points of view represented, and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning and annually during their terms. CDC reviews potential candidates for ACBCYW membership each year and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in November 2024, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year. SGE nominees must be U.S. citizens and cannot be full-time employees of the U.S. Government. Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address).
- At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services. (Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, NIH, FDA, etc.).
- A short biography (150 words or less).

Nominations may be submitted by the candidate him- or herself, or by the person/organization recommending the candidate.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–21568 Filed 9–29–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2023–0076]

Advisory Committee on Immunization Practices (ACIP); Amended Notice of Meeting

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), announces the following meeting of the Advisory Committee on Immunization Practices (ACIP). This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Stephanie Thomas, Committee Management Specialist, Advisory Committee on Immunization Practices, National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H24–8, Atlanta, Georgia 30329–4027. Telephone: (404) 639–8836; Email: *ACIP@cdc.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given of a change in the meeting of the Advisory Committee on Immunization Practices (ACIP); September 22, 2023, 10 a.m. to 5 p.m., EDT (times subject to change, see the ACIP website for updates: *https://www.cdc.gov/vaccines/acip/index.html*), in the original **Federal Register** notice.

Notice of the virtual meeting was published in the **Federal Register** on September 6, 2023, Volume 88, Number 171, pages 60945–60946.

Notice of the virtual meeting is being amended to add an additional agenda item in the matters to be considered, which should read as follows:

Matters to be Considered: The agenda will include discussions of maternal respiratory syncytial virus (RSV) vaccine, child/adolescent immunization schedules and adult immunization schedule. A recommendation vote for maternal RSV vaccine is scheduled. A Vaccines for Children vote is scheduled for maternal RSV vaccine. Agenda items are subject to change as priorities dictate. For more information on the meeting agenda, visit *https://www.cdc.gov/vaccines/acip/meetings/index.html.*

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease

Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–21566 Filed 9–29–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2023–0082]

Advisory Committee to the Director, Centers for Disease Control and Prevention

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for comment.

SUMMARY: In accordance with regulatory provisions, the Centers for Disease Control and Prevention (CDC) announces the following meeting of the Advisory Committee to the Director, Centers for Disease Control and Prevention (ACD, CDC). This is a hybrid meeting, accessible both in person and virtually (webcast live via the World Wide Web). It is open to the public and limited only by the space available. Time will be available for public comment.

DATES: The meeting will be held on November 14, 2023, from 9:00 a.m. to 4:00 p.m., EST (times subject to change).

Written comments must be received on or before October 27, 2023.

ADDRESSES:

Meeting address: CDC Roybal Campus, Building 19, Auditorium B3, 1600 Clifton Road NE, Atlanta, Georgia 30329–4027.

Please note that the meeting location, the CDC Roybal Campus, is a federal facility and in-person access is limited to United States citizens unless prior authorizations, taking up to 30 to 60 days, have been made. Visitors must follow all directions for access to CDC facilities. Directions for visitors to CDC, including safety requirements related to COVID–19; are available at *https://www.cdc.gov/screening/visitors.html.*

Registration: You must register to attend this meeting in person. If you wish to attend in person, please submit a request by email to *ACDirector@cdc.gov* or by telephone at (404) 345–1039 at least 5 business days in advance of the meeting. No registration is required to view the meeting via the World Wide Web. Information for accessing the webcast will be available at *https://www.cdc.gov/about/advisory-committee-director/.*

Written comments: You may submit comments, identified by Docket No. CDC–2023–0082, by either of the methods listed below. Do not submit comments for the docket by email. CDC does not accept comments for the docket by email.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Bridget Richards, MPH, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H21–10, Atlanta, Georgia 30329–4027. Attn: Docket No. CDC–2023–0082.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.* Written comments received in advance of the meeting will be included in the official record of the meeting.

FOR FURTHER INFORMATION CONTACT: Bridget Richards, MPH, Office of the Chief of Staff, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H21–10, Atlanta, Georgia 30329–4027; Telephone: (404) 345–1039; Email: *ACDirector@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The Advisory Committee to the Director, CDC, shall (1) make recommendations to the Director regarding ways to prioritize the activities of the agency in alignment with the CDC Strategic Plan required under section 305(c); H.R. 2617–1252; (2) advise on ways to achieve or improve performance metrics in relation to the CDC Strategic Plan, and other relevant metrics, as appropriate; (3) provide advice and recommendations on the development of the Strategic Plan, and any subsequent updates, as appropriate; (4) advise on grant, cooperative agreements, contracts, or other transactions, as applicable; (5) provide other advice to the Director, as requested, to fulfill duties under sections 301 and 311; and (6) appoint subcommittees. The Committee recommends ways to prioritize CDC's activities, improve results, and address health disparities. It also provides guidance to help CDC work more effectively with its various private and public sector constituents to make health protection a practical reality.

Matters to be Considered: The agenda will include an introduction of the new CDC Director, Dr. Mandy Cohen, and a discussion regarding agency updates and priorities. The agenda also includes updates on the progress made to date on the health equity, laboratory, and data and surveillance recommendation; discussion and vote on the Laboratory Workgroup final recommendations; and discussion and votes to sunset the Health Equity and Laboratory workgroups due to completion of their terms of reference. CDC's Senior Advisor for Health Strategy will present on supporting healthy families, and a Senior Counselor to the CDC Director will present on COVID–19 recission. Agenda items are subject to change as priorities dictate.

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted into the docket.

Written Public Comment: The docket will be opened to receive written comments on October 2, 2023 through October 27, 2023.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other

committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–21567 Filed 9–29–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2023–0080]

Guidelines for the Use of Doxycycline Post-Exposure Prophylaxis for Bacterial Sexually Transmitted Infection (STI) Prevention; Request for Comment and Informational Presentation

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) announces the opening of a docket to obtain comment on proposed guidelines for the use of doxycycline post-exposure prophylaxis (PEP) for prevention of bacterial sexually transmitted infections (STI). The proposed guidelines for bacterial STI prevention include post-exposure prophylaxis with doxycycline (doxycycline PEP) because it has demonstrated benefit in reducing chlamydia, gonorrhea, and syphilis infections and represents a new approach to addressing STI prevention in populations at increased risk for these infections. Doxycycline PEP, when offered, should be implemented in the context of a comprehensive sexual health approach including risk reduction counseling, STI screening and treatment, recommended vaccination, and linkage to HIV pre-exposure prophylaxis (PrEP), HIV care, or other services, as appropriate. The purpose of the proposed guidelines is to provide updated clinical guidance for healthcare providers to inform the use of doxycycline PEP for preventing bacterial STI infections. CDC has made available a pre-recorded informational presentation to provide information about the studies considered when developing the proposed guideline, explain the public comment process, and provide an overview of important monitoring for antibiotic use and antibiotic resistance that the agency will be considering to address potential risks.

DATES: Written comments must be received on or before November 16, 2023. An Informational Presentation has been pre-recorded and is available at *https://npin.cdc.gov/.*

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0080 by either of the methods listed below. Do not submit comments by email. CDC does not accept comments by email.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* [Division of STD Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop US12–2, Atlanta, GA 30329, Attn: Docket No. CDC–2023–0080].

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *http://regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

The informational presentation can be accessed at *https://npin.cdc.gov/.*

FOR FURTHER INFORMATION CONTACT: John R. Papp, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop U12–3, Atlanta, GA 30329; Telephone: 404–639–8000; Email: *jwp6@cdc.gov.*

SUPPLEMENTARY INFORMATION: CDC's proposed guidelines for the use of post-exposure prophylaxis with doxycycline for bacterial STI prevention in the United States is available under the Supporting and Related Materials tab in the docket for this notice, Docket No. CDC–2023–0080, on *http://www.regulations.gov.*

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. In addition, CDC invites comments specifically on the following questions proposed in this Notice:

- Based on the evidence presented in the full guidelines document (see the Supporting and Related Materials tab in the docket), does the evidence support the proposed guidelines for the use of post-exposure prophylaxis with doxycycline for bacterial STI prevention, including but not limited to risks and benefits? If not, please state the reason why and, if available, provide additional evidence for consideration.
- Are CDC's proposed guidelines for the use of post-exposure prophylaxis with doxycycline bacterial STI prevention clearly written? If not, what changes do you propose to make it clear?
- If implemented as currently drafted, do you believe the proposed guidelines for the use of post-exposure prophylaxis with doxycycline for bacterial STI prevention would result in improved prevention of bacterial STIs in the United States? If not, please provide an explanation and supporting data or evidence.
- How can these proposed guidelines most effectively reach and be received by populations who would benefit from this intervention?

Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign.

Background

Incidence of sexually transmitted infections (STIs) caused by *Neisseria gonorrhoeae* (causative agent of gonorrhea), *Chlamydia trachomatis* (causative agent of chlamydia), and *Treponema pallidum* (causative agent of syphilis) continues to increase in the United States. Novel approaches are needed to address the STI epidemic, especially for populations disproportionately affected (1). Post-exposure prophylaxis (PEP) involves taking a medication to prevent an infection after a possible exposure and is a common strategy for prevention of HIV and other infections. PEP is a form of chemoprophylaxis and distinct from pre-exposure prophylaxis (PrEP) which involves taking a medication before exposure occurs. Doxycycline, a broad-spectrum tetracycline antibiotic, is used as pre- or post-exposure prophylaxis to prevent infections such as malaria and Lyme disease (2). Doxycycline is well

absorbed and tolerated, with a half-life of approximately 12 hours (3). Adverse effects most associated with doxycycline are photosensitivity and gastrointestinal symptoms including esophageal erosion and ulceration (4). Most adverse effects resolve when the medication is stopped. Doxycycline is the recommended treatment regimen for chlamydia and an alternative treatment for syphilis in non-pregnant patients with severe penicillin allergy or when penicillin is not available (5).

The 2021 CDC STI Treatment Guidelines included a systematic review of the available literature on STI PEP and concluded that further studies were necessary to determine whether it would be an effective strategy for bacterial STI prevention (5). Since that time, promising results from several randomized trials on doxycycline PEP indicated the need to re-address this topic (6, 7). The new guidelines will offer an important resource for healthcare providers to inform the use of doxycycline PEP for preventing bacterial STI infections. CDC plans to use multiple surveillance systems to monitor impacts of the proposed guidelines including potential impacts on antibiotic use and antibiotic resistance in both STI and non-STI pathogens.

All comments received will be carefully reviewed and considered. The proposed guidelines are also undergoing peer review. All comments will be addressed in the final guidelines and the proposed guidelines will be revised as appropriate. CDC will publish another notice announcing the availability of the final guidelines.

References

1. STI National Strategic Plan, 2021–2025 [internet]. Available from: *www.hhs.gov/programs/topic-sites/sexually-transmitted-infections/plan-overview/index.html.*
2. Nadelman RB, Nowakowski J, Fish D, Falco RC, Freeman K, McKenna D, et al. Prophylaxis with single-dose doxycycline for the prevention of Lyme disease after an Ixodes scapularis tick bite. N Engl J Med. 2001 Jul 12;345(2):79–84.
3. Peyriere H, Makinson A, Marchandin H, Reynes J. Doxycycline in the management of sexually transmitted infections. J Antimicrob Chemother. 2018 Mar 1;73(3):553–63.
4. Sloan B, Scheinfeld N. The use and safety of doxycycline hyclate and other second-generation tetracyclines. Expert Opin Drug Saf. 2008 Sep;7(5):571–7.
5. Workowski K, Bachmann L, Chan P, Johnston C, Muzny C, Park I, et al. Sexually Transmitted Infections Treatment Guidelines, 2021. MMWR. 2021; 70:1–187.
6. Luetkemeyer AF, Donnell D, Dombrowski JC, Cohen S, Grabow C, Brown CE, et al. Postexposure Doxycycline to Prevent Bacterial Sexually Transmitted Infections. N Engl J Med. 2023 Apr 6;388(14):1296–306.
7. Jean-Michel Molina, Beatrice Bercot, Lambert Assoumou, Algarte-Genin Michele, Emma Rubenstein, Gilles Pialoux, et al. ANRS 174 DOXYVAC: An Open-Label Randomized Trial to Prevent STIs in MSM on PrEP. CROI [internet]. 2023 Feb 19; Seattle, Washington. Available from: *https://www.croiconference.org/abstract/anrs-174-doxyvac-an-open-label-randomized-trial-to-prevent-stis-in-msm-on-prep/.*

Dated: September 27, 2023.

Kathryn L. Wolff,

Chief of Staff, Centers for Disease Control and Prevention.

[FR Doc. 2023–21725 Filed 9–29–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–26, CMS–R–185, CMS–116, CMS–2746 and CMS–10261]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice; partial withdrawal.

SUMMARY: On Monday, September 25, 2023, the Centers for Medicare & Medicaid Services (CMS) published a notice document entitled, ''Agency Information Collection Activities: Submission for OMB Review; Comment Request.'' That notice invited public comments on five separate information collection requests, under Document Identifiers: CMS–R–26, CMS–R– 185, CMS–116, CMS–2746 and CMS–10261. Through the publication of this document, we are withdrawing the portion of the notice requesting public comment on the information collection request titled, ''Clinical Laboratory Improvement Amendments (CLIA) Regulations.'' Form number: CMS–R–26 (OMB control number: 0938–0612). We are also withdrawing the portion of the notice requesting public comment on the information collection request titled, ''Granting and Withdrawal of Deeming Authority to Private Nonprofit Accreditation Organizations and CLIA Exemption Under State Laboratory Programs.'' Form number: CMS–R–185 (OMB control number 0938–0686).

DATES: The original comment period for the document that published on September 25, 2023, remains in effect and ends October 25, 2023.

SUPPLEMENTARY INFORMATION:

In FR document, 2023–20739, published on September 25, 2023 (88 FR 65689), we are withdrawing item 1 '' Clinical Laboratory Improvement Amendments (CLIA) Regulations'' which begins on page 65689. We are also withdrawing item 2 '' Granting and Withdrawal of Deeming Authority to Private Nonprofit Accreditation Organizations and CLIA Exemption Under State Laboratory Programs.'' which begin on page 65690. These items were published in error. Both items will be republished at a later date, thereby providing the public a full 30-day comment period as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: September 27, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–21669 Filed 9–29–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3443–FN]

Medicare and Medicaid Programs; Application From the Center for Improvement in Healthcare Quality for Initial CMS Approval of Its Psychiatric Hospital

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces our decision to approve the Center for Improvement in Healthcare Quality (CIHQ) as a national accrediting organization (AO) for psychiatric hospitals that wish to participate in the Medicare or Medicaid programs.

DATES: The decision announced in this notice is applicable on November 1, 2023 through November 1, 2027.

FOR FURTHER INFORMATION CONTACT: Donald Howard, (410) 786–6764 or Lillian Williams, (410) 786–8636.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a psychiatric hospital

provided certain requirements established by the Secretary of the Department of Health and Human Services (the Secretary) are met. Section 1861(f) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as a psychiatric hospital under Medicare. Regulations concerning provider agreements and supplier approval are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 482 subpart A, B, C, and E, specify the minimum conditions that a psychiatric hospital must meet to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for psychiatric hospitals.

Generally, to enter into a provider agreement with the Medicare program, a psychiatric hospital must first be certified by a State Survey Agency as complying with the conditions or requirements set forth in part 482 subpart A, B, C, and E of our regulations. Thereafter, the psychiatric hospital is subject to regular surveys by a State Survey Agency to determine whether it continues to meet the Medicare requirements. There is an alternative, however, to surveys by State agencies. Certification by a nationally recognized accreditation program can substitute for ongoing State review.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization (AO) that all applicable Medicare conditions are met or exceeded, we may treat the provider entity as having met those conditions, that is, we may ''deem'' the provider entity as having met the requirements. Accreditation by an AO is voluntary and is not required for Medicare participation.

If an AO is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program may be deemed to meet the Medicare conditions. A national AO applying for approval of its accreditation program under part 488, subpart A, must provide CMS with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of AOs are set forth at § 488.5. The regulations at § 488.5(e)(2)(i) require the AO to reapply for continued approval of its accreditation program every 6 years or sooner as determined by CMS.

II. Application Approval Process

Section 1865(a)(2) of the Act and our regulations at § 488.5 require that our findings concerning review and approval of an AO's requirements consider, among other factors, the applying AO's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities that were not in compliance with the conditions or requirements; and their ability to provide us with the necessary data for validation.

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for CMS-approval of an accreditation program is conducted in a timely manner. The Act provides us 210 days after the date of receipt of a complete application, with any documentation necessary to make the determination, to complete our survey activities and application process. Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accrediting body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

III. Provisions of the Proposed Notice

On May 22, 2023 **Federal Register** (88 FR 32772), we published a proposed notice announcing CIHQ's request for approval of its Medicare psychiatric hospital accreditation program. In the proposed notice, we detailed our evaluation criteria. In accordance with section 1865(a)(2) of the Act and regulations at § 488.5, we conducted a review of CIHQ's Medicare psychiatric hospital accreditation application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- *An onsite administrative review of CIHQ's:* (1) Corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its psychiatric hospital surveyors; (4) ability to investigate and respond appropriately to complaints against accredited psychiatric hospitals; and (5) survey review and decision-making process for accreditation.
- The comparison of CIHQ's Medicare psychiatric hospital accreditation program standards to our current Medicare hospitals Conditions of Participation (CoPs) and psychiatric hospital special CoPs.
- A documentation review of CIHQ's psychiatric hospital survey process to do the following:

++ Determine the composition of the survey team, surveyor qualifications, and CIHQ 's ability to provide continuing surveyor training.

++ Compare CIHQ's processes to those we require of State Survey Agencies, including periodic re-survey and the ability to investigate and respond appropriately to complaints against accredited psychiatric hospitals.

++ Evaluate CIHQ's procedures for monitoring psychiatric hospitals it has found to be out of compliance with CIHQ's program requirements. (This pertains only to monitoring procedures when CIHQ identifies non-compliance. If noncompliance is identified by a State Survey Agency through a validation survey, the State Survey Agency monitors corrections as specified at § 488.9(c)(1)).

++ Assess CIHQ's ability to report deficiencies to the surveyed hospital and respond to the psychiatric hospital's plan of correction in a timely manner.

++ Establish CIHQ's ability to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ Determine the adequacy of CIHQ's staff and other resources.

++ Confirm CIHQ's ability to provide adequate funding for performing required surveys.

++ Confirm CIHQ's policies with respect to surveys being unannounced.

++ Confirm CIHQ's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

++ Obtain CIHQ's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

++ As authorized under § 488.8(h), CMS reserves the right to conduct onsite observations of accrediting organization operations at any time as part of the ongoing review and continuing oversight of an AO's performance.

In accordance with section 1865(a)(3)(A) of the Act, the May 22, 2023 proposed notice also solicited public comments regarding whether CIHQ's requirements met or exceeded the Medicare CoPs for psychiatric

hospitals. No comments were received in response to the proposed notice.

IV. Provisions of the Final Notice

A. Differences Between CIHQ's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements

We compared CIHQ's psychiatric hospital accreditation program requirements and survey process with the Medicare CoPs at 42 CFR part 482 subpart A, B, C and E, and the survey and certification process requirements of parts 488 and 489. Our review and evaluation of CIHQ's psychiatric hospital application, which were conducted as described in section III of this final notice, yielded the following areas where, as of the date of this final notice, CIHQ has revised its standards and certification processes in order to meet the requirements at § 488.26(b). CIHQ revised its requirements to provide additional guidance and instruction to surveyors on determining the appropriate level of citation for Life Safety Code deficiencies.

B. Term of Approval

Based on our review and observations described in section III of this final notice, we have determined that CIHQ's psychiatric hospital accreditation program requirements meet or exceed our requirements, and its survey processes are also comparable. Therefore, we approve CIHQ as a national AO for psychiatric hospitals that request participation in the Medicare program, effective November 1, 2023 through November 1, 2027.

V. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Chyana Woodyard, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: September 22, 2023.

Chyana Woodyard,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2023–21724 Filed 9–29–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9892–N]

Meeting Date for Ground Ambulance and Patient Billing (GAPB) Advisory Committee—October 31 and November 1, 2023

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: This notice announces that the date for the third public meeting of the Ground Ambulance and Patient Billing (GAPB) Advisory Committee is October 31, 2023 and November 1, 2023. The GAPB Advisory Committee will make recommendations with respect to the disclosure of charges and fees for ground ambulance services and insurance coverage, consumer protection and enforcement authorities of the Departments of Labor, Health and Human Services, and the Treasury (the Departments) and relevant States, and the prevention of balance billing to consumers. The recommendations shall address options, best practices, and identified standards to prevent instances of balance billing; steps that can be taken by State legislatures, State insurance regulators, State attorneys general, and other State officials as appropriate, consistent with current legal authorities regarding consumer protection; and legislative options for Congress to prevent balance billing.

DATES:

Virtual Meeting Date: The GAPB Advisory Committee will hold a virtual meeting on Tuesday, October 31, 2023 and Wednesday, November 1, 2023 from 9:30 a.m. to 5:30 p.m., Eastern Daylight Time.

Registration Link: The virtual meeting will be open to the public and held via the Zoom webinar platform. Virtual attendance information will be provided upon registration. To register for this virtual meeting, please visit: *https://priforum.zoomgov.com/webinar/register/WN_n40NyMM_Q0u3UFXul1IWTw.* Attendance is open to the public subject to any technical or capacity limitations.

Deadline for Registration: All individuals who plan to attend the virtual public meeting must register to attend. The deadline to register for the public meeting is Monday, October 30, 2023. Interested parties are encouraged to register as far in advance of the meeting as possible.

A detailed agenda and materials will be available prior to the meeting on the GAPB Advisory Committee website at: *https://www.cms.gov/medicare/regulations-guidance/advisory-committees/ground-ambulance-patient-billing-gapb.*

A recording and a summary of the meeting will be made available on the GAPB Advisory Committee website approximately 45 calendar days after the meeting.

ADDRESSES: *Virtual Meeting Location:* The October 31, 2023 and November 1, 2023 public meeting will be held virtually via Zoom only.

FOR FURTHER INFORMATION CONTACT: Shaheen Halim, (410) 786–0641 or via email at gapbadvisorycommittee@*cms.hhs.gov.*

Press inquiries may be submitted by phone at (202) 690–6145 or via email at *press@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 117(a) of the No Surprises Act, enacted as part of the Consolidated Appropriations Act, 2021, div. BB, tit. I, Public Law 116–260 (December 27, 2020), requires the Secretaries of Labor, Department of Health and Human Services (HHS), and the Treasury to establish and convene an advisory committee for the purpose of reviewing options to improve the disclosure of charges and fees for ground ambulance services, better inform consumers of insurance options for such services, and protect consumers from balance billing. The Ground Ambulance and Patient Billing (GAPB) Advisory Committee is governed by the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463 (October 6, 1972), as amended, 5 U.S.C. app. 2. Information on past and current Committee activity can be found at: *https://www.cms.gov/medicare/regulations-guidance/advisory-committees/ground-ambulance-patient-billing-gapb.*

II. Advisory Committee Membership Roster

On November 23, 2021, HHS published a Notice of Charter and Invitation for Member Nominations in the **Federal Register** for the GAPB Advisory Committee (86 FR 66565 through 66566). On December 16, 2022, HHS published a **Federal Register** Notice Announcing the 17 Members of the GAPB Advisory Committee (87 FR 77122 through 77123). A subsequent update to the Committee Roster was published on April 14, 2023 (88 FR 23046).

The 17 Members of the GAPB Advisory Committee are as follows:

- Asbel Montes—Committee Chairperson; Additional Representative determined necessary and appropriate by the Secretaries.
- Ali Khawar—Secretary of Labor's Designee.
- Carol Weiser—Secretary of the Treasury's Designee.
- Rogelyn McLean—Secretary of Health and Human Services' Designee.
- Gamunu Wijetunge—Department of Transportation—National Highway Traffic Safety Administration.
- Suzanne Prentiss—State Insurance Regulators.
- Adam Beck—Health Insurance Providers.
- Patricia Kelmar—Consumer Advocacy Groups.
- Gary Wingrove—Patient Advocacy Groups.
- Ayobami Ogunsola—State and Local Governments.
- Ritu Sahni—Physician specializing in emergency, trauma, cardiac, or stroke.
- Peter Lawrence—State Emergency Medical Services Officials.
- Shawn Baird—Emergency Medical Technicians, Paramedics, and Other Emergency Medical Services Personnel.
- Edward Van Horne—Representative of Various Segments of the Ground Ambulance Industry.
- Regina Godette-Crawford—Representative of Various Segments of the Ground Ambulance Industry.
- Rhonda Holden—Representative of Various Segments of the Ground Ambulance Industry.
- Loren Adler—Additional Representative determined necessary and appropriate by the Secretaries.

The GAPB Advisory Committee Roster is also available on the GAPB Advisory Committee website at: *https://www.cms.gov/medicare/regulations-guidance/advisory-committees/ground-ambulance-patient-billing-gapb.* All future updates to the Advisory Committee Roster will be published on this website.

III. Meeting Agenda

The third public meeting of the GAPB Advisory Committee will take place on October 31, 2023 and November 1, 2023. On October 31, 2023, the Committee will be presented with findings and recommendations from its subcommittees for discussion and deliberation. On November 1, 2023, the Committee will formally vote on which recommendations to adopt in its Report to the Secretaries. A more detailed agenda and materials will be made available prior to the meeting on the GAPB Advisory Committee website (listed previously).

IV. Public Participation

The October 31, 2023 and November 1, 2023 GAPB Advisory Committee meeting will be open to the public. Attendance may be limited due to virtual meeting constraints. Interested parties are encouraged to register as far in advance of the meeting as possible. To register for the meeting, visit: *https://www.cms.gov/medicare/regulations-guidance/advisory-committees/ground-ambulance-patient-billing-gapb.* The Centers for Medicaid Services (CMS) is committed to providing equal access to this meeting for all participants and to ensuring Section 508 compliance. Closed captioning will be provided. To request alternative formats or services because of a disability, such as sign language interpreters or other ancillary aids, refer to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section.

V. Submitting Written Comments

Members of the public may submit written comments for consideration by the Committee at any time via email to *gapbadvisorycommittee@cms.hhs.gov.* Additionally, members of the public will have the opportunity to submit comments during the October 31, 2023 and November 1, 2023 virtual meeting through the chat feature of the Zoom webinar platform. Members of the public are encouraged to submit lengthy written comments (more than 3 sentences) to the email address above.

VI. Viewing Documents

You may view the documents discussed in this notice at: *https://www.cms.gov/medicare/regulations-guidance/advisory-committees/ground-ambulance-patient-billing-gapb.*

The Administrator of CMS, Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Chyana Woodyard, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Chyana Woodyard,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2023–21676 Filed 9–29–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: [93.569]]

Announcement of the Intent To Award Three Supplements to Community Services Block Grant Award Recipients

AGENCY: Office of Community Services (OCS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of issuance of supplements.

SUMMARY: OCS announces the intent to award a supplement in the amount of up to $3.6 million ($1.2 million per year for 3 fiscal years at $400,000 per individual award) to three Community Services Block Grant (CSBG) award recipients under Notice of Funding Opportunity (NOFO): Regional Performance and Innovation Consortia (RPIC) (HHS–2019–ACF–OCS–ET–1582, HHS–2019–ACF–OCS–ET–1586, and HHS–2019–ACF–OCS–ET–1587). The purpose of the RPIC awards is to support robust regional training and technical (T/TA) strategies for the CSBG Network—states, territories, directly-funded tribes and tribal organizations, and CSBG-eligible entities, and state associations within the 10 ACF regions. The RPICs are designed to assist in meeting high organizational standards in the areas of consumer input and involvement, community engagement, community assessment, organizational leadership, board governance, strategic planning, human resource management, financial operations and oversight, and data and analysis. In addition, the RPICs identify, promote, and support multiyear T/TA efforts to ensure high-quality programs and services and impactful outcomes for individuals, families, and communities.

DATES: The proposed period of performance is September 30, 2023, to September 29, 2026.

FOR FURTHER INFORMATION CONTACT: Dr. Lanikque Howard, Ph.D., Director, Office of Community Services, 330 C Street SW, Washington, DC 20201.

Telephone: (202) 740–5951; Email: *lanikque.howard@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: In Fiscal Year 2023, OCS published a total of 11 separate new competitive grant opportunities for the RPIC, each corresponding to a specific ACF region.[1] Each NOFO mandated that applicants must be physically located in the ACF region of their application. As the merit review process was initiated, OCS identified that Regions 3, 6, and 7 were not represented by eligible applicants due to their inadvertent error of applying for a different region's NOFO rather than their own. This supplement will enable the current award recipients to support and sustain the continuance of vital regional CSBG T/TA strategies and activities to align the period of performance, activities, timelines, and OCS oversight among all CSBG regional T/TA award recipients.

OCS announces the intent to award the following supplement awards:

Recipient	Award amount
Maryland Association of Community Action Agencies, Annapolis, Maryland	$1,200,000
Oklahoma Association of Community Action Agencies, Inc., Edmond, Oklahoma	1,200,000
Kansas Association of Community Action Program, Inc., Topeka, Kansas	1,200,000

Statutory Authority: Sections 674(b)(2)(A) and 678A of the CSBG Act, as amended (42 U.S.C. 9903(b)(2)(A) and 9913).

Karen D. Shields,

Senior Grants Policy Specialist, Office of Grants Policy, Office of Administration.

[FR Doc. 2023–21779 Filed 9–28–23; 4:15 pm]

BILLING CODE 4184–XX–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Home-Based Child Care Toolkit for Nurturing School-Age Children Study (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) Office of Planning, Research, and Evaluation (OPRE) at the U.S. Department of Health and Human Services (HHS) is proposing to collect information to examine a toolkit of new measures designed to assess and strengthen the quality of child care, the Home-Based Child Care Toolkit for Nurturing School-Age Children (HBCC–NSAC Toolkit). This study aims to build evidence about the English version of the HBCC–NSAC Toolkit for use by/with providers caring for children in a residential setting (*i.e.,* home-based child care [HBCC]).

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The HBCC–NSAC Toolkit is designed for home-based providers who regularly care for at least 1 school-age child who is not their own. The purpose of the HBCC–NSAC Toolkit is to help home-based providers identify their caregiving strengths and areas for growth. The HBCC–NSAC Toolkit consists of a self-administered provider questionnaire (composed of multiple newly developed measures) and a family communication questionnaire (composed of 1 communication tool). For validation purposes, the study will include the provider questionnaire from the HBCC–NSAC Toolkit with additional items from existing measures and a separate family survey with child and family background information items and items from an existing measure. A subset of providers will be observed with an existing observation measure. Study participants will include home-based providers who can complete the provider questionnaire in English. They must currently care for at least 1 school-age child (age 5 and in kindergarten, or ages 6 through 12) in a home for at least 10 hours per week and for at least 8 weeks in the past year. These providers may also care for younger children (ages birth through 5 and not yet in kindergarten). Families (a parent or guardian of school-age children receiving care in the HBCC setting) who can complete the family survey in English will also be included in the study. The study will be based on a purposive sample of home-based providers in at least 10 geographic locations to maximize variation in the sample. OPRE proposes to collect survey and observational data from home-based providers who are licensed or regulated by states to provide child care and early education (CCEE) and providers who are unlicensed or legally exempt from state regulations for CCEE. Study participants may or may not participate in the child care subsidy program. The data collection activities are designed to provide critical information that is needed to analyze the reliability and validity of the HBCC–NSAC Toolkit's provider questionnaire. The resulting data will help ACF understand if the HBCC–NSAC Toolkit's provider questionnaire can be used to support home-based providers in identifying and reflecting on their caregiving strengths and areas for growth.

Respondents: Home-based providers; families of the children cared for by the providers.

[1] *Note:* Due to the size of Region 4, OCS funds two RPICs in the region (4a and 4b).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total/annual burden (in hours)
1. Provider telephone script and recruitment information collection	204	1	0.33	67
2. Provider telephone script and recruitment information collection including observations	150	1	.42	63
3. HBCC–NSAC Toolkit provider questionnaire	150	1	.75	113
4. Family survey	166	1	0.25	42

Estimated Total Annual Burden Hours: 285.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 9858.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–21649 Filed 9–29–23; 8:45 am]

BILLING CODE 4184–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Application Requirements for the Low Income Home Energy Assistance Program (LIHEAP) Model Plan Application (Office of Management and Budget #0970–0075)

AGENCY: Office of Community Services, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Community Services (OCS), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is requesting to extend the currently approved Low Income Home Energy Assistance Program (LIHEAP) Model Plan Application (OMB #0970–0075, expiration 12/31/2023) through August 31, 2024, and then making significant revisions to the FY 2025 application to be effective September 1, 2024. This notice outlines the proposed revisions for FY 2025.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: States, including the District of Columbia, tribes, tribal organizations, and U.S. territories applying for LIHEAP block grant funds must, prior to receiving federal funds, submit an annual application (Model Plan) that meets the LIHEAP statutory and regulatory requirements. In addition to the Model Plan, grant recipients are also required to complete the Mandatory Grant Application, SF–424—Mandatory, which is included as the first section of the Model Plan.

The LIHEAP Model Plan is an electronic form and is submitted to ACF/OCS through the On-Line Data Collection (OLDC) system within GrantSolutions, which is currently being used by all LIHEAP grant recipients to submit other required LIHEAP reporting forms. To reduce the reporting burden, all data entries from each grant recipient's prior year's submission of the Model Plan in OLDC are saved and re-populated into the form for the following fiscal year's application.

OCS is requesting the current LIHEAP Model Plan form to be extended through August 31, 2024. The currently approved form and justification package can be reviewed here: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202009-0970-011*).

OCS proposes the following changes to the LIHEAP Model Plan form beginning with FY 2025 reporting effective September 1, 2024:

SF–424 Model Plan

- *4a:* Change from ''Federal Entity Identifier'' to ''Unique Entity Identifier (UEI).''
- *7b and c:* Remove UEI is requested in 4a.
- *7f:* Add after current language ''(This person will be listed on Notice of Funding Awards and on the U.S. Department of Health and Human Services' LIHEAP contact list web page)''
  - Remove Prefix, Suffix, Middle Name and Organizational Affiliation.
- *8a:* Remove the ''a'' after 8 ''Type of Applicant''
- *Add:* 8a Is the applicant a Tribal Consortium?
  - *Add:* 8b If yes, please attach at least one the following documentation:
  - (1) Current State-Tribe Agreement between their state and the Consortium, signed by the State Chief Executive Officer (such as a Governor or the delegate) and the Consortium President;
  - (2) Consortium letter listing the Tribes and signed by the elected Tribal Chief or President of each Tribe in the Consortium and signed by the Consortium President;
  - (3) A current resolution letter from each tribe in the Consortium, signed by the elected Tribal Chief or President of that Tribe. Each resolution letter needs to state that the Consortium has the Tribes' permission to apply for, and administer, LIHEAP on their behalf; needs to designate a time period for the permission or until rescinded or revoked.
- *8b:* Remove, not utilized.
- *9:* Remove ''Name of Federal Agency''—not used.
- *13:* Change to ''CONGRESSIONAL DISTRICTS OF APPLICANT''
  - Eliminate 13a and b.—Already answered in #7; and Eliminate ''Attach

an additional list of Program/Project Congressional Districts, if needed.''

- *15 a and b:* Remove.
- *17:* At the end of the question, change ''explanation'' to ''If Yes, explain.''

Section 1—Program Components

Introduction: Remove reference to grant recipient filing abbreviated plan. LIHEAP does not use abbreviated plans any longer.

- *1.1 Crisis assistance:* Create one question for ''Summer crisis assistance,'' one question for ''Winter crisis assistance,'' and one for ''Year-round assistance.'' We are receiving increase data request to understand the type of crisis programs provided.
- *1.2:*
  - Add a data entry column and provide the breakdown of funding from the previous year's plan. This information is useful for the data dashboard.
  - Add language for ''Tribal grant recipients: direct-grant tribes, tribal organizations, or territories with allotments of $20,000 or less may use for planning and administration up to 20% of the funds payable. Grant recipients that are direct-grant tribes, tribal organizations, or territories with allotments over $20,000 may use for planning and administration purposes up to 20% of the first $20,000 (or $4,000) plus 10% of the funds payable that exceeds $20,000. Any administrative costs in excess of these limits must be paid from non-Federal sources.''
  - Change ''Crisis Assistance'' to ''Summer crisis assistance,'' one question for ''Winter crisis assistance,'' and one for ''Year-round assistance.''
- *1.4:*
  - Remove Other and entire column. All allowable options are listed, other is not applicable.
  - Insert ''at least'' before the word ''one'' in two places in this question. The edited question would be ''Do you consider households categorically eligible if at least one household member receives at least one of the following categories of benefits in the left column below?''
- 1.4a—Add a text box ''Provide your definition of categorical eligibility. Please explain how households are categorically eligible (*i.e.,* do all household members need to receive the benefits or just one member, is there a data exchange in place?) and how categorical eligibility streamlines the LIHEAP application process.'' This will ensure grant recipients understand categorical eligibility and answer the question appropriately.
- If 1.4 is answered no, do not allow the table to be completed. Caused data inconsistencies in the data dashboard and requires manual review.
- *1.7:*
  - Hyperlink the word ''nominal'' to a description of the word: Nominal benefits are LIHEAP payments over $20 made to SNAP households with an energy burden that allow the household to claim the SNAP ''heating/cooling standard utility allowance'' (SUA).
- 1.8—Add ''Other—Describe.'' Grant recipients indicated there are exceptions and this box will allow those exceptions to be described and understood more clearly.
- 1.9—Remove SNAP and WIC as they cannot be counted as income.
- *Add:* 1.10 Do you have an online application process (Yes/No)?
- *Add:* 1.10a If yes, describe the type of online application (Select all boxes that apply).
  - A PDF version of the application is available online and can be downloaded, filled out, and mailed in for processing.
  - A state-wide online application that allows a customer to complete data entry and submit an application electronically for processing.
  - One or more locally available online applications that allows a customer to complete data entry and submit an application electronically for processing.
  - Online application that is also mobile friendly.
  - Other, please describe.
  - If any of the above boxes are checked, please include a link here:
- *Add:* 1.10b Can all program components be applied for online (Yes/No)? If no, explain which components can and cannot be applied for online.
- 1.11 Do you have a process for conducting and completing applications by phone (Yes/No)?
- 1.12 Do you or any of your subrecipients require in-person appointments in order to apply (Yes/No)? If yes, please provide more information.
- 1.13 How can applicants submit documentation for verification? Select all that apply (in-person, mail, email, portal application, other-describe).

Section 2—Heating Assistance

- 2.2—Correct the spelling of ''assistance''
- 2.3—Change ''Elderly'' to ''Older Adults'' (60 years or older)
- 2.3—Change ''Disabled'' to ''Individuals with a disability''
- 2.4—Add space between ''to'' and ''vulnerable''
- 2.6—Add the following sentence: ''Please note: the maximum and minimum benefits must be shown in the payment matrix.''

Section 3—Cooling Assistance

- 3.3—Change ''Elderly'' to ''Older Adults''
- 3.3—Change ''Disabled'' to ''Individuals with a disability''
- 3.4—Add space between ''to'' and ''vulnerable''
- 3.6—Add the following sentence: ''Please note: the maximum and minimum benefits must be shown in the payment matrix.''

Section 4—Crisis Assistance

- 4.2—Add to narrative, ''If you administer multiple crisis assistance programs (winter, summer, and/or year-round), include all program definitions.''
- 4.6–4.7 and 4.10–4.13—Modify so that it is no longer ''yes or no'' but mirrors question 4.15 so they can select which program the response is applicable. If the component is not selected under 1.2, the boxes will be grayed out so they cannot select that option. Modify the instructions for the section to be ''Check appropriate boxes below to indicate type(s) of assistance provided''
- 4.6—Remove all CAPS from Crisis Assistance
- 4.7—Change ''Elderly'' to ''Older Adults''
- 4.7—Change ''Disabled'' to ''Individuals with a disability''
- 4.8—Modify ''Fast Track'' to ''Benefit Fast Track, no separate amount of crisis funds is issued. Rather benefits are issued to crisis customers within crisis response time frames''
- 4.9—Add a box next to the question, ''Amount to resolve crisis, up to a maximum amount''
- 4.11—Change ''Physically Disabled'' to ''Individuals with a disability''
- 4.18—Add question that says, ''Do you intend to utilize LIHEAP crisis funds to address disaster related crisis situations? ''Yes'' or ''No'' If yes, describe.'' Add hover over box that states ''OCS' block grant funding has built in flexibility to support grant recipients in disaster response. Please visit *https://ocs-emergency-assistance-hhs-acf.hub.arcgis.com/* for additional information'' (508 compliant hyperlink).

Section 5—Weatherization

- 5.3—Modify to ''If yes, name the agency and attach a copy of the Internal Agreement or Contract.''
- 5.8—Change ''Elderly'' to ''Older Adults''
- 5.8—Change ''Disabled'' to ''Individuals with a Disability''

- 5.9—Add a 5.9a replace with current 5.10 ''If yes, what is the maximum''
- 5.10—Change to ''Do you use an Average Cost per Unit (ACPU).''
  - 5.10a If so, what is the ACPU amount?
- 5.11—This section needs two boxes for roof top solar and community solar projects.

Section 6—Outreach

- 6.1—This section needs to include other outreach including web posting, email, texting, events, and social media.

Section 7—Coordination

- 7.1—This section needs to include data entry field next to the first two boxes.
- Joint application for multiple programs (indicate programs included)
- Intake referrals to/from other programs (indicate programs)

Section 8—Agency Designation

- 8.1—
  - Add ''Economic Development Agency''
  - Change ''Welfare'' to ''State Department of Welfare (administers TANF, SNAP, and/or Medicaid)''
  - Eliminate space between ''Energy'' and ''/'' and ''Environment Agency''
- *New Attachment:* Include current list of subrecipient name, main office address (do not list P.O. Box), phone number, county(s) served, Congressional District, and UEI number. Used for Near hotline and OCS Service Provider Tool and clearinghouse.
- *Add 8.10:* ''If an agency is no longer providing LIHEAP, are you aware of prior-year LIHEAP funds being mismanaged or misspent? Yes or No''
- 8.10a ''If yes, please explain.''
- 8.10b ''Were other federal programs impacted such as CSBG, SSBG, Head Start, TANF, and Dept. of Energy Weatherization funding, etc.? Yes or No''
- 8.10c ''If yes, please explain.''
  - Questions added due to previous situations and questions needing a response to these specific items.

Section 9—Energy Suppliers

- Add option at the end of the section to attach a copy of the vendor agreement.

Section 10—Program, Fiscal Monitoring and Audit

- 10.1—Revise the question as, ''How do you ensure proper fiscal accounting and tracking of funds?'' Add the following instructional sentence: ''Be specific about tracking of grant award, tracking of expenditures, tracking vendor (benefit) refunds, fiscal reporting process, and fiscal software system being used.'' Clarification for grant recipients.
- *10.1a—New Question:* ''Provide your definitions of the following:
  - Obligation (insert explanation box)
  - Expenditures (insert explanation box)
  - Expenditure timeframe (insert explanation box)
  - Administrative costs (insert explanation box)''
- *10.2a—Add question:* ''If yes, describe your auditor selection process.''
- 10.3—Change wording to ''Describe any audit findings of the grant recipient (*i.e.,* State/Tribe/Territory) rising to the level of material weakness or reportable condition cited in the single audits, inspector general reviews, or other government agency reviews from the most recently audited fiscal year.''
- 10.5—Change question to ''Describe your monitoring process for compliance at each level below.''
  - Change ''Grant recipient employees'' check box to state:
- Grant recipients have a policy in place for appropriate separation of duties and internal controls
- Other, describe
- 10.7—Rewrite the question as ''Describe how you select local agencies for monitoring reviews. Attach a risk assessment if subrecipients are utilized.''
- 10.8—Add boxes ''Annually,'' ''Bi-annually,'' ''Tri-annually,'' and ''Other.'' Please attach a monitoring schedule if one has been developed.
- 10.9 and 10.10—Remove.
- 10.11—Revise the question to, ''How many local agencies are currently on corrective action plans?''
- 10.12—Remove.

Section 11—Timely and Meaningful Public Participation

- 11.1—Add explanation that Tribes do not need to hold a public hearing but must ensure participation through other means.
- 11.2—Remove. Removing because question is duplicative of 11.6.
- 11.3—Insert an option to add rows for additional dates and locations that they held public hearings on the proposed use and distribution of their LIHEAP funds.
- 11.6—Revise the question as follows: ''What changes did you make to your LIHEAP plan as a result of public participation and solicitation of input?''

Section 12—Fair Hearing

- *12.4—Change question:* ''Describe your fair hearing procedures for households whose applications are denied and/or not acted upon in a timely manner.''
- 12.5—Remove.
- 12.6—Remove.

Section 13—Reduction of Home Energy Needs

- 13.3—Add the following instructional sentence: ''Impact can be measured in many different ways by using: logic model, data tracking system, process evaluation, impact evaluation, number of households served vs applied, and performance management, etc.''
- 13.4—Add a space between ''of'' and ''direct''
- 13.5—Remove.

Section 14—Leveraging Incentive Program

- 14.3—Add a space between ''of'' and ''45''

Section 15—Training

- 15.1a–c—Change question to be consistent with each entity type (grant recipient, local agency, vendor)
  - Formal training provided virtually, on-site, and/or formal training conference
- Annually
- Biannually
- As needed
- Other, describe

Section 17—Program Integrity

- 17.1b—Add ''Posted in local administering agencies offices.''
- 17.4—Change ''aliens'' to ''qualified non-citizens'' in intro text. The second option in the question is phrased as ''legal residence'' but it needs to be changed to ''U.S. Citizen or Qualified Non-Citizen.'' The second box option should read ''Client's submission of certain Social Security Administration cards is accepted as proof of U.S. Citizen or Qualified Non-Citizen.''
- 17.4—Rewrite the question as ''What are your procedures for ensuring LIHEAP recipients are U.S. citizens or qualified non-citizens who are eligible to receive LIHEAP benefits?''
- 17.6—Should also include how electronic files are protected in a secure location.

Section 19—Certification Regarding Drug-Free Workplace Requirements

- 19.1—Place of Performance: Add instructional sentence that this must be physical address. No PO Boxes allowed.

Section 21—New Change Assurances to Section 21

- 21.1—Add the following acknowledgment statement and a check

box: ''By checking this box, the prospective primary participant is agreeing to the Assurances set out above.''

Section 22—Attachments

• Add optional attachment section for the following items: Policy Manual; Subrecipient Contract; Model Plan Participation Notes for Tribes.

Respondents: States, the District of Columbia, U.S. territories, and tribal governments.

Annual Burden Estimates

The estimated time per response for the FY 2025 Model Plan has been increased based on the revisions. The estimated time per response for the FY 2026 Model Plan will reduce back after revisions are in place and respondents can duplicate response in OLDC.

Instrument	Total annual number of respondents	Total annual number of responses per respondent	Average burden hours per response	Annual burden hours for each form
LIHEAP Detailed Model Plan—FY24	210	1	.5	105
LIHEAP Detailed Model Plan—FY25	206	1	1	206
LIHEAP Detailed Model Plan FY26	206	1	.5	103
Estimated Total Burden Hours:				414
Average Annual Burden Hours:				138

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 8621.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–21663 Filed 9–29–23; 8:45 am]

BILLING CODE 4184–80–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–3976]

Support for Clinical Trials Advancing Rare Disease Therapeutics Pilot Program; Program Announcement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA or Agency) Center for Biologics Evaluation and Research's (CBER) Office of Therapeutic Products (OTP) and Center for Drug Evaluation and Research's (CDER) Office of New Drugs are announcing the opportunity for a limited number of development programs to participate in the Support for clinical Trials Advancing Rare disease Therapeutics (START) Pilot Program, with the goal of further accelerating the pace of development of certain CBER- and CDER-regulated products (novel drug and biological products) that are intended to treat a rare disease. Because each Center has identified specific needs concerning regulated products for rare diseases, the eligibility criteria for the pilot differ between CBER and CDER. This pilot would augment the currently available formal meetings between FDA and sponsors by addressing issues related to the development of individual products through more rapid, ad-hoc communication mechanisms. Sponsors, if selected for the pilot, would receive more frequent advice related to such specific issues through additional interactions to facilitate novel drug and biological product program development and generate high quality and reliable data intended to support a Biologics License Application (BLA) or New Drug Application (NDA). This notice outlines the eligibility criteria, what to submit in a request to participate in the pilot, selection criteria, process, and FDA-Sponsor interactions expected to occur for programs participating in the pilot.

DATES: From January 2, 2024, to March 1, 2024, FDA will accept requests to participate in the START Pilot Program and select no more than three participants from each Center (CBER and CDER). See the ''Participation'' section for eligibility criteria, instructions on how to submit a request to participate, and information regarding the selection process.

FOR FURTHER INFORMATION CONTACT: Andrew Harvan, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7268, Silver Spring, MD 20993–0002, 240–402–7911; or Quyen Tran, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6301, Silver Spring, MD 20993–0002, 301–796–2771.

For general questions about the START Pilot Program for CBER: Industry.biologics@fda.hhs.gov. For general questions about the START Pilot Program for CDER: CDER.STARTProgram@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the START Pilot Program is to further accelerate the pace of development of novel drug and biological products that are intended to address an unmet medical need as a treatment for a rare disease. The pilot is designed to be milestone-driven (*i.e.,* to facilitate the progression of a development program to pivotal clinical study stage or the pre-BLA or pre-NDA meeting stage) where product development programs selected would benefit from enhanced communications with FDA. Participation in the pilot will be considered concluded when the development program has reached a significant regulatory milestone such as initiation of the pivotal clinical study stage or the pre-BLA or pre-NDA meeting stage as agreed upon with the sponsor. Pilot participants will be selected based on demonstrated development program readiness. The START Pilot Program is intended to provide a mechanism for addressing clinical development issues that otherwise would delay or prevent a promising novel drug or biological product from progressing to the pivotal

clinical trial stage or pre-BLA/pre-NDA meeting stage.

The pilot would augment the currently available formal meetings between FDA and sponsors (see FDA's draft guidance for industry entitled ''Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products'' ((September 2023) (Ref. 1))) through more rapid, ad-hoc communications with FDA by addressing issues with specific programmatic needs for individual products. For example, these issues can be related to clinical study design, choice of control group, fine-tuning the choice of patient population, selecting appropriate endpoints for efficacy trials to support marketing approval, selecting statistical methodology, leveraging nonclinical information, or product characterization. For eligible development programs sponsors and FDA could benefit from such additional communication beyond the currently available formal meeting mechanisms to address specific programmatic needs that require in-depth discussions. The increased communication between FDA review staff and sponsors is intended to facilitate program development for specific products and to help generate high quality and reliable data intended to support a BLA or NDA.

II. Participation

From January 2, 2024, to March 1, 2024, FDA will accept requests to participate in the START Pilot Program and will initially select up to three participants in each Center. Taking into consideration lessons and sponsors' experiences from the initial iteration of this program, a second iteration of the pilot may be conducted to include more participants in the future. At a later date, FDA may also publish another notice in the **Federal Register** to announce a second iteration of the program.

Sponsors who are interested in participating in the START Pilot Program should submit a request to participate as an amendment to their Investigational New Drug (IND) application.

A. Eligibility Criteria

To be considered for the START Pilot Program, participants must meet the following eligibility criteria:

1. Joint CBER and CDER Eligibility Criteria

- IND has been submitted in or converted to Electronic Common Technical Document (eCTD) format, unless the IND is of a type granted a waiver from eCTD format (see FDA's guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions using the eCTD Specifications'' ((February 2020) (Ref. 2))) and remains in active status.
- Sponsor has demonstrated substantial effort to ensure that that Chemistry, Manufacturing, and Controls (CMC) development aligns with clinical development, for example, through documented control of manufacturing and testing procedures to ensure clinical and CMC development timeline are in alignment.

Given the specific identified needs for the products regulated by each Center for rare diseases, the following eligibility criteria differ between CBER and CDER:

2. CBER-Specific Eligibility Criteria

- Existing OTP-regulated IND for a cellular or gene therapy under which the product is being developed toward a marketing application.
- Such product is intended to address an unmet medical need as a treatment for a rare disease [1] or serious condition, which is likely to lead to significant disability or death within the first decade of life.

3. CDER-Specific Eligibility Criteria

- Such product is intended to treat rare neurodegenerative conditions (including those of rare genetic metabolic etiology).

B. What To Submit in a Request To Participate in the START Pilot

To participate in the START Pilot Program, sponsors should submit a written request as an amendment to the IND. The cover letter should (1) state ''Request to participate in the START Pilot Program'', (2) note whether there is a breakthrough therapy (BT) designation for the product and for CBER-regulated products only—whether there is a BT designation and/or regenerative medicine advanced therapy (RMAT) designation, and (3) provide a point of contact.

The request should include the initial specific development issue(s) for a given product for enhanced communication and a proposed communication plan between the sponsor and review staff. In addition, the following information should be provided:

1. Program development plan.

The plan should describe the current state of program development, including any ongoing activities not already detailed in the IND.

- CMC development plan and current status.
- Nonclinical development plan and current status.
- Clinical development plan and current status.

2. Any specific issue(s) (grouped by review disciplines) for which the prospective applicants are seeking enhanced communications with FDA review staff to facilitate program development, including, for example, to ensure a mutual understanding of information needed to facilitate initiating the pivotal clinical study or to the pre-BLA/pre-NDA meeting stage.

3. The planned timeline for initiation of the clinical study(ies) intended to provide the primary evidence of effectiveness to support a marketing application or for a pre-BLA/pre-NDA meeting request.

4. The proposed communication plan for interactions between FDA review staff and the sponsor, including the proposed timing (*i.e.,* month and year) for the initial teleconference and format (*e.g.,* email or teleconference) of the subsequent communications on a scheduled and/or as needed basis.

C. Selection Criteria and Process

FDA intends to select participant CBER and CDER INDs based on the criteria outlined below. FDA will make its determination of participants following the close of the application period. FDA intends to issue a letter to notify each sponsor of FDA's decision on sponsor requests to participate within 90 days of the application deadline.

For the initial selection of up to three INDs from each Center for the START Pilot Program from eligible applicants, FDA intends to consider factors such as: (1) potential clinical benefits of the product, (2) whether resolution of the specific issues noted by the sponsor in their request to participate in the pilot could be facilitated through enhanced communication to improve efficiency of program development, (3) whether there is an BT or RMAT designation for the product, (4) whether CMC development timeline aligns with clinical development plans, and (5) while INDs for combination products (21 CFR 3.2(e)(1)) may be eligible, products that require significant cross-Center interactions (*e.g.,* complex combination products) may be less likely to be

[1] A rare disease or condition ''means any disease or condition which affects less than 200,000 persons in the United States . . .'' (Section 526(a)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bb(a)(2))). The START Pilot Program in CBER is not intended to encompass all rare diseases, but only a subset of rare diseases that are likely to lead to significant disability or death within the first decade of life.

selected for the pilot. Overall, pilot participants will be selected based on application readiness (*e.g.,* sponsors who demonstrate having the ability to move the program forward towards a marketing application).

D. FDA-Sponsor Interactions During the START Pilot Program

If selected for the START Pilot Program, sponsors will receive enhanced communications with FDA review staff. These enhanced communications may vary between CBER and CDER but will include at a minimum an initial meeting to review features of the pilot, discuss a pathway intended to support a marketing application, and to discuss specific issues for which a sponsor requests enhanced communication with FDA. Additional communications will include ongoing interactions via email or teleconference that take place on a scheduled and/or as needed basis as agreed upon by the sponsor and FDA.

III. Paperwork Reduction Act of 1995

This notice refers to previously approved FDA collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014 and the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

IV. References

The following references are on display at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. FDA Draft Guidance for Industry ''Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products'' (September 2023): *https://www.fda.gov/media/172311/download.*

2. FDA Guidance for Industry ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions using the eCTD Specifications'' (February 2020): *https://www.fda.gov/media/135373/download.*

Dated: September 25, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–21235 Filed 9–29–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0219]

Human Prescription Drug and Biological Products—Labeling for Dosing Based on Weight or Body Surface Area for Ready-to-Use Containers—''Dose Banding''; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Human Prescription Drug and Biological Products—Labeling for Dosing Based on Weight or Body Surface Area for Ready-to-Use Containers—'Dose Banding.' '' The guidance is intended to assist applicants in incorporating dose banding information, based on dosing information of a previously approved drug product that is based on weight or body surface area (BSA), into the proposed labeling of injectable drug products that are the subject of certain marketing applications submitted to FDA. This guidance finalizes the draft guidance of the same title issued on July 21, 2022.

DATES: The announcement of the guidance is published in the **Federal Register** on October 2, 2023.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–0219 for ''Human Prescription Drug and Biological Products—Labeling for Dosing Based on Weight or Body Surface Area for Ready-to-Use Containers—'Dose Banding.' '' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly

available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Chris Wheeler, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3330, Silver Spring, MD 20993–0002, 301–796–0151; or Anne Taylor, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Human Prescription Drug and Biological Products—Labeling for Dosing Based on Weight or Body Surface Area for Ready-to-Use Containers—'Dose Banding.' '' This guidance provides recommendations for incorporating dose banding information into the labeling of an injectable drug product that is seeking approval through a new drug application submitted under section 505(b) of the FD&C Act (21 U.S.C. 355(b)), a biologics license application submitted under section 351(a) of the PHS Act (42 U.S.C. 262(a)), or a supplement to one of these approved applications. The recommendations and examples in this guidance are relevant to situations in which an applicant (1) proposes to develop ready-to-use containers with a range of different strengths for an injectable drug product and (2) seeks to incorporate dose banding information into the prescribing information based on dosing information of a previously approved drug product that is based on weight or BSA.

This guidance finalizes the draft guidance entitled ''Human Prescription Drug and Biological Products—Labeling for Dosing Based on Weight or Body Surface Area for Ready-to-Use Containers—'Dose Banding' '' issued on July 21, 2022 (87 FR 43533). FDA considered comments received on the draft guidance as it developed the final guidance. Changes from the draft guidance are primarily intended to improve clarity.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Human Prescription Drug and Biological Products—Labeling for Dosing Based on Weight or Body Surface Area for Ready-to-Use Containers—'Dose Banding.' '' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by Office of Management Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 201 have been approved under OMB control number 0910–0572; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; and the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: September 26, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–21558 Filed 9–29–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Regional Pediatric Pandemic Network

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Announcing supplemental funding for Regional Pediatric Pandemic Network award recipients in Maryland and Ohio.

SUMMARY: HRSA provided additional award funds to the two Regional Pediatric Pandemic Network (RPPN) Program recipients in Maryland and Ohio with periods of performance ending in fiscal year 2024.

FOR FURTHER INFORMATION CONTACT: Sara Kinsman, MD, Director, Division of Child, Adolescent and Family Health, Maternal and Child Bureau, Health Resources and Services Administration, at *SKinsman@hrsa.gov* and 301–443–2250.

SUPPLEMENTARY INFORMATION:

Intended Recipient(s) of the Award: The two award recipients of the HRSA Regional Pediatric Pandemic Network Program are Children's National Medical Center in Maryland, and University Hospitals Cleveland Medical Center in Ohio, as listed in Table 1.

TABLE 1—RECIPIENTS AND SUPPLEMENT AWARD AMOUNTS

Grant No.	Award recipient name	City, state	Award amount
U1IMC45814	Children's National Medical Center	MD	$400,000
U1IMC43532	University Hospitals Cleveland Medical Center	OH	400,000

Amount of Non-Competitive Award(s): Two awards at $400,000 per grant recipient totaling $800,000.

Project Period: September 1, 2023, to August 31, 2024.

Assistance Listing (CFDA) Number: 93.110.

Award Instrument: Supplement for RPPN support services.

Justification: Approximately $400,000 in supplemental funding has been awarded to each RPPN cooperative agreement recipient to increase activities to coordinate among the nation's pediatric hospitals and their communities to prepare for and respond to global health threats and coordinate research-informed responses to future pandemics. Projects approved by HRSA under this supplement are to be performed from the date of award through August 31, 2024.

Carole Johnson,

Administrator.

[FR Doc. 2023–21670 Filed 9–29–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Charter Renewal for the Advisory Committee on Infant and Maternal Mortality

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Department of Health and Human Services is giving notice that the Advisory Committee on Infant and Maternal Mortality (ACIMM or Committee) is renewed. The effective date of the charter renewal is September 30, 2023.

FOR FURTHER INFORMATION CONTACT: Vanessa Lee, MPH, Designated Federal Official, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18N84, Rockville, Maryland 20857; 301–443–0543; or *VLee1@hrsa.gov.*

SUPPLEMENTARY INFORMATION: ACIMM is authorized by section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended. The Committee is governed by provisions of Public Law 92–463, as amended (5 U.S.C. 10), which sets forth standards for the formation and use of Advisory Committees. ACIMM advises the Secretary of Health and Human Services on department activities, partnerships, policies, and programs directed at reducing infant mortality, maternal mortality and severe maternal morbidity, and improving the health status of infants and women before, during, and after pregnancy. The Committee provides advice on how best to coordinate Federal, State, local, Tribal, and Territorial governmental efforts designed to improve infant mortality, related adverse birth outcomes, and maternal health, as well as influence similar efforts in the private and voluntary sectors. The Committee provides guidance and recommendations on the policies, programs, and resources required to address the disparities and inequities in infant mortality, related adverse birth outcomes and maternal health outcomes, including maternal mortality and severe maternal morbidity. With its focus on underlying causes of the disparities and inequities seen in birth outcomes for women and infants, the Committee advises the Secretary of Health and Human Services on the health, social, economic, and environmental factors contributing to the inequities and proposes structural, policy and/or systems level changes.

The charter renewal for ACIMM was approved on September 8, 2023. The filing date is September 30, 2023. Renewal of the ACIMM charter gives authorization for the committee to operate until September 30, 2025.

A copy of the ACIMM charter is available on the ACIMM website at *https://www.hrsa.gov/advisory-committees/infant-mortality/index.html.* A copy of the charter also can be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The website address for the FACA database is *http://www.facadatabase.gov/.*

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–21716 Filed 9–29–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group, Therapeutic Development and Preclinical Studies Study Section.

Date: October 25–26, 2023.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Richard D Schneiderman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, Bethesda, MD 20817, 301–402–3995, *richard.schneiderman@nih.gov.*

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group, Cellular and Molecular Technologies Study Section.

Date: October 25–26, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tatiana V Cohen, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, 301–455–2364, *tatiana.cohen@nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group, Integrative Myocardial Physiology/Pathophysiology A Study Section.

Date: October 25–26, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Abdelouahab Aitouche, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7814, Bethesda, MD 20892, 301–435–2365, *aitouchea@csr.nih.gov.*

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group, Molecular and Cellular Biology of Virus Infection Study Section.

Date: October 25–26, 2023.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kenneth M Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7808, Bethesda, MD 20892, (301) 496–6980, *izumikm@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel, Member Conflict: Topics in Biobehavioral Processes.

Date: October 25, 2023.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Courtney M Pollack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3671, *courtney.pollack@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Sensory and Motor Neurosciences, Cognition and Perception.

Date: October 25–26, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John N Stabley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0566, *stableyjn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special Topics: Brain Imaging, Vision, Bioengineering and Low Vision Technology Development.

Date: October 26–27, 2023.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Capitol, 550 C Street, SW Washington, DC 20024.

Contact Person: Susan Gillmor, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (240) 762–3076, *susan.gillmor@nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Emerging Imaging Technologies and Applications Study Section.

Date: October 26–27, 2023.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: North Bethesda Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Zheng Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–3385, *zheng.li3@nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Chemical Synthesis and Biosynthesis Study Section.

Date: October 26–27, 2023.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Shan Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–4390, *shan.wang@nih.gov.*

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group, Cellular and Molecular Immunology—A Study Section.

Date: October 26–27, 2023.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

Contact Person: Mohammad Samiul Alam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 809D, Bethesda, MD 20892, (301) 435–1199, *alammos@csr.nih.gov.*

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group Cellular and Molecular Immunology—B Study Section

Date: October 26–27, 2023

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications

Place: The William F. Bolger Center 9600 Newbridge Drive Potomac, MD 20854

Contact Person: Liying Guo, Ph.D. Scientific Review Officer Center for Scientific Review National Institutes of Health 6701 Rockledge Drive, Room 4198, MSC 7812 Bethesda, MD 20892 (301) 827–7728 *lguo@mail.nih.gov.*

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section.

Date: October 26–27, 2023.

Time: 8:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza National Airport, 1480 Crystal Drive, Arlington, VA 22202.

Contact Person: Xinrui Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–2084, *xinrui.li@nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Pathophysiology of Obesity and Metabolic Disease Study Section.

Date: October 26–27, 2023.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria, Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Heather Marie Brockway, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 813H, Bethesda, MD 20892, (301) 594–5228, *brockwayhm@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group Hepatobiliary Pathophysiology Study Section.

Date: October 26–27, 2023.

Time: 9:00 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jianxin Hu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2156, Bethesda, MD 20892, 301–827–4417, *jianxinh@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neuronal Communications Study Section.

Date: October 26–27, 2023.

Time: 9:00 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Prithi Rajan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1042, *prithi.rajan@nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Imaging Technology Development Study Section.

Date: October 26–27, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, (301) 237–9870, *xuguofen@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Maximizing Investigators' Research Award—D Study Section.

Date: October 26–27, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Linda MacArthur, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, 301–537–9986, *macarthurlh@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Acute Neural Injury and Epilepsy Study Section.

Date: October 26–27, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Paula Elyse Schauwecker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5201, Bethesda, MD 20892, 301–760–8207, *schauweckerpe@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group, Organization and Delivery of Health Services Study Section.

Date: October 26–27, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Catherine Hadeler Maulsby, Ph.D., MPH Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1266, *maulsbych@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Motor Function, Speech and Rehabilitation Study Section.

Date: October 26–27, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Stephanie Nagle Emmens, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–6604, *nagleemmenssc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21590 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Medical Imaging Investigations.

Date: November 6, 2023.

Time: 9 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Khalid Masood, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *masoodk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biobehavioral Processes.

Date: November 6–7, 2023.

Time: 10 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jeanne M. McCaffery, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–3854, *jeanne.mccaffery@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Vaccines Against Infectious Diseases and Vector-Borne and Zoonotic Diseases.

Date: November 6, 2023.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shinako Takada, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–5997, *shinako.takada@nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Cardiovascular and Respiratory Diseases Study Section.

Date: November 7–8, 2023.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Hybrid Meeting).

Contact Person: Mohammed F.A. Elfaramawi, Ph.D., MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007F, Bethesda, MD 20892, (301) 480–1142, *elfaramawimf@csr.nih.gov.*

Name of Committee: Applied Immunology and Disease Control Integrated Review Group; Drug Discovery and Molecular Pharmacology A Study Section.

Date: November 7–8, 2023.

Time: 8:30 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree by Hilton McLean Tysons, 1960 Chain Bridge Road, Mclean, VA 22102.

Contact Person: Bidyottam Mittra, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (301) 435–0000, *bidyottam.mittra@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Oncology.

Date: November 7–8, 2023.

Time: 10 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6189, MSC 7804, Bethesda, MD 20892, 301–408–9916, *sizemoren@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Aging, Infection, and Cellular Signaling.

Date: November 7, 2023.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jimok Kim, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6107 Rockledge Drive, Bethesda, MD 20892, (301) 402–8559, *jimok.kim@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Medical Imaging.

Date: November 8–9, 2023.

Time: 9 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Krystyna H. Szymczyk, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–4198, *szymczykk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biomedical Technology Optimization and Dissemination Center (BTOD).

Date: November 8, 2023.

Time: 10 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Joseph Thomas Peterson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9694, *petersonjt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–23–002: Integration and Coordination Center for the Common Fund Data Ecosystem.

Date: November 9, 2023.

Time: 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Linda MacArthur, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, 301–537–9986, *macarthurlh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Bioengineering, Biodata, and Biomodeling Technologies.

Date: November 9, 2023.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David R. Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *filpuladr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21589 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute Of Arthritis And Musculoskeletal And Skin Diseases; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel: NIAMS P30 Bone, Muscle and Orthopaedic Research Research-Based Centers Review Meeting.

Date: November 2–3, 2023.

Time: 9:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yasuko Furumoto, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 820, Bethesda, MD 20892, 301–827–7835, *yasuko.furumoto@nih.gov.*

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel: NIAMS Ancillary Studies Review Meeting.

Date: November 20, 2023.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sushmita Purkayastha, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH 6701 Democracy Boulevard, Suite 814, Bethesda, MD 20892, (301) 201–7600, *sushmita.purkayastha@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21611 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Research and Development of Vaccines and Monoclonal Antibodies for Pandemic Preparedness (ReVAMPP) Centers for Bunyavirales, Paramyxoviridae and Picornoviridae (U19 Clinical Trial Not Allowed).

Date: November 7–9, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Frank S. De Silva, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, MSC 9823, Rockville, MD 20892–9823, (240) 669–5023, *fdesilva@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 26, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21640 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR22–069 RC2 Review: Biomimetic MPS to Enable Precision Medicine.

Date: November 17, 2023.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Boulevard, Room 7119, Bethesda, MD 20892–2542, (301) 594–2242, *jerkinsa@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21593 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Member Conflict Applications—Neuroscience and Behavior.

Date: November 3, 2023.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700B Rockledge Drive, Room 2116, MSC 6902, Bethesda, MD 20892, (301) 443–0800, *bbuzas@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Member Conflict Applications—Biomedical Sciences.

Date: November 17, 2023.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ranga Srinivas, Ph.D., Chief Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700 B Rockledge Drive, Room 2114, MSC 6902, Bethesda, MD 20892, (301) 451–2067, *srinivar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs, National Institutes of Health, HHS)

Dated: September 26, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21600 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; ME/CFS Centers Without Walls.

Date: November 2–3, 2023.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: W. Ernest Lyons, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–4056, *lyonse@ninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trials and Biomarker Studies in Stroke.

Date: November 17, 2023.

Time: 10:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Nilkantha Sen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–9223, *nilkantha.sen@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the

Neurosciences, National Institutes of Health, HHS.)

Dated: September 26, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21642 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Machine Learning.

Date: October 27, 2023.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kimberly Firth, Ph.D., National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *firthkm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21594 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Research Training.

Date: November 2, 2023.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building 7201, Wisconsin Avenue, Bethesda, 0MD 20892 (Virtual Meeting).

Contact Person: Dario Dieguez, Ph.D., Scientific Review Officer ,National Institute on Aging, Scientific Review Branch, Gateway Building 7201, Wisconsin Avenue, (2W218), Bethesda, MD 20892, (301) 827–3101, *dario.dieguez@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21604 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center For Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; Research Resource for Systematic Reviews of Complementary and Integrative Health (R24 Clinical Trial Not Allowed).

Date: November 17, 2023.

Time: 11 a.m. to 1:30 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Center for Complementary and Integrative Health, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shiyong Huang, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20817 *shiyong.huang@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: September 26, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21615 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; IDeA Networks of Biomedical Research Excellence (INBRE).

Date: December 1, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Person: Lisa A. Dunbar, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Room 3AN18D, Bethesda, Maryland 20892, 301–594–2849, *dunbarl@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Conferences and Scientific Meetings Award (R13) applications.

Date: December 13, 2023.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Person: Isaah S. Vincent, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12L, Bethesda, Maryland 20892, 301–594–2948, *isaah.vincent@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21610 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Cell Biology, Developmental Biology, and Bioengineering.

Date: October 30–31, 2023.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander Gubin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR Panel: High-end and Shared Instrumentation Grants.

Date: October 30–31, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, (301) 435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group Etiology, Diagnostic, Intervention and Treatment of Infectious Diseases Study Section.

Date: November 2–3, 2023.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–996–5819, *zhengli@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21609 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Cooperative Agreement (U01 Clinical Trial Required).

Date: October 30, 2023.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E71, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Ann Marie M. Brighenti, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E71, Rockville, MD 20852, 301–761–3100, *AnnMarie.Cruz@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 26, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21641 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below. Individuals who plan to attend in-person or view the virtual meeting and need special assistance or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting

can be accessed from the NIH Videocast at the following link: *https://videocast.nih.gov/.*

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: January 30, 2024.

Open: 9 a.m. to 1 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institutes of Health, Building 31, 6C Room A & B 31, Center Drive, Bethesda, MD 20892, (Hybrid Meeting).

Closed: 2 to 4 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 6C Room A & B 31, Center Drive, Bethesda, MD 20892.

Contact Person: Darren D. Sledjeski, Ph.D., Director Division of Extramural Activities (DEA), National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy BLVD, Bethesda, MD 20892, (301) 451–7766, *darren.sledjeski@nih.gov.*

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *https://www.niams.nih.gov/about/working-groups/advisory-council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21588 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Drug Abuse Special Emphasis Panel, October 31, 2023, 12:00 p.m. to October 31, 2023, 2:00 p.m., National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 which was published in the **Federal Register** on September 25, 2023, FR Doc 2023–20693, 88–FR 65696.

This notice is being amended to change the agenda from reviewing and evaluating grant applications to reviewing and evaluating contract proposals. The meeting date, time and location will remain the same. The meeting is closed to the public.

Dated: September 26, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21645 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; ADRD Etiology.

Date: October 31, 2023.

Time: 10:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sandhya Sanghi, Ph.D., Scientific Research Officer, 7201 Wisconsin Avenue (2N230), NIA/SRB, Bethesda, MD 20814, (301) 496–2879, *sandhya.sanghi@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21616 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be held as a virtual meeting and will be open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: *https://videocast.nih.gov/.*

Name of Committee: Office of AIDS Research Advisory Council.

Date: October 26, 2023.

Time: 12:15 p.m. to 5:00 p.m.

Agenda: The 64th meeting of the Office of AIDS Research Advisory Council (OARAC) will focus on HIV and health disparities, guest speakers and a discussion panel. The agenda will include OAR Director's Report; updates on the Clinical Guidelines Working Groups of OARAC; updates on NIH HIV-related advisory councils; the NIH HIV Strategic Plan for HIV and HIV-related Research report out; and public comment.

Place: Office of AIDS Research, Office of the Director, NIH, 5601 Fishers Lane, Rockville, MD 20852 (Virtual Meeting), *https://videocast.nih.gov/watch=49574.*

Contact Person: RDML Timothy H. Holtz, MD, MPH, Office of AIDS Research, Office of the Director, NIH, 5601 Fishers Lane, Room 2E61, Rockville, MD 20852, (301) 496–0357, *OARACinfo@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.oar.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 27, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21686 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Research and Development of Vaccines and Monoclonal Antibodies for Pandemic Preparedness (ReVAMPP) Centers for Bunyavirales, Paramyxoviridae and Picornoviridae (U19 Clinical Trial Not Allowed).

Date: November 7–9, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Frank S. De Silva, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, MSC 9823, Rockville, MD 20892–9823, (240) 669–5023, *fdesilva@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 26, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21740 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; ABCD Study® Audience Feedback Teams (National Institute on Drug Abuse)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institute on Drug Abuse (NIDA) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Kimberly LeBlanc Scientific Program Manager, Division of Extramural Research, National Institute on Drug Abuse, C/O NIH Mail Center/Dock 11, 3WFN Room 09C77 MSC 6021, Gaithersburg, MD 20877 (20892 for USPS), or call non-toll-free number (301) 827–4102, or Email your request, including your address, to: *kimberly.leblanc@nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimizes the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Adolescent Brain & Cognitive Development (ABCD) Study℠—Audience Feedback Teams, 0925 –NEW, exp., date XX/XX/XXXX, National Institute on Drug Abuse (NIDA), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose of this information collection request is to solicit audience feedback to improve the data collection process for the Adolescent Brain Cognitive Development (ABCD) Study. Started in 2015, the ABCD Study® follows a cohort of over 10,000 young people from pre-adolescence into adulthood to understand how growing brains are shaped by experiences and biology. To prepare for each year's Study data collection, the National Institute of Health is collecting audience feedback on a selection of survey questions and research protocols. Parents/caregivers and teens who are the same age as the study cohort members but who are not Study participants will review proposed questions and give feedback on questions' clarity and acceptability. Recommendations from these findings help the ABCD Study team improve their protocol for a more-successful data collection.

Audience feedback activities will include a mix of asynchronous and scheduled, live data collection: web-based survey activities, virtual discussion boards, individual interviews, and discussions groups. Assembling a cohort of audience feedback participants who are familiar with the ABCD Study and participate in multiple data collection activities minimizes the burden required to familiarize new participants with the purpose of the Study and the expectations for audience feedback.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 172.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Individuals (Teen Phone Screener)	72	1	5/60	6
Individuals (Teen Assent or Consent)	36	1	10/60	6
Individuals (Teen Web Survey)	36	2	30/60	36
Individuals (Teen Virtual Group Discussion or Online Bulletin Board)	36	2	1	72
Individuals (Parent/Caregiver Phone Screener)	72	1	5/60	6
Individuals (Parent/Caregiver Permission for Teen Participation)	36	1	5/60	3
Individuals (Parent/Caregiver Consent)	15	1	5/60	1
Individuals (Parent/Caregiver Web Survey)	15	2	30/60	15
Individuals (Parent/Caregiver Virtual Interview)	15	1	30/60	8
Individuals (Parent/Caregiver Online Bulletin Board)	15	1	1	15
Individuals (Parent/Caregiver "At-Home" Materials Review)	15	1	15/60	4
Total		450		172

Lanette A. Palmquist,

Project Clearance Liaison, National Institute on Drug Abuse, National Institutes of Health.

[FR Doc. 2023–21698 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group, Community Influences on Health Behavior Study Section.

Date: October 24–25, 2023.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW Washington, DC 20005.

Contact Person: Annie Laurie McRee, DRPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 100, Bethesda, MD 20892, (301) 827–7396, *mcreeal@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special Topics: Neuroimaging Technologies.

Date: October 25, 2023.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mufeng Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (240) 507–9155, *mufeng.li@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR Panel: Research on Current Topics in Alzheimer's Disease and its Related Dementias.

Date: October 26–27, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mei Qin, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, 301–875–2215, *qinmei@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21608 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

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Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; HIV Molecular Virology, Cell Biology, and Drug Development Study Section.

Date: November 13–14, 2023.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Kenneth A. Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nucleic Acid Therapeutic Delivery (NATD).

Date: November 14–15, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jingwu Xie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–8625, *jingwu.xie@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cell and Molecular Biology.

Date: November 14–15, 2023.

Time: 9:30 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Megan L. Goodall, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–8334, *megan.goodall@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Applied Immunology and Vaccine Development.

Date: November 15–16, 2023.

Time: 8:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dayadevi Jirage, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4422, Bethesda, MD 20892, (301) 867–5309, *jiragedb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Population Sciences and Epidemiology

Date: November 15–16, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rebecca I. Tinker, MS, Ph.D., Scientific Review Officer, Center For Scientific Review, National Institutes of Health, Bethesda, MD 20817, (301) 435–0637, *tinkerri@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Transducers of Physical Activity (Bioinformatics Center and Chemical Analysis Site).

Date: November 15, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, (301) 435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Aging and Development, Auditory Vision and Low Vision Technologies.

Date: November 16–17, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Barbara Susanne Mallon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–8992, *mallonb@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Diagnostics and Treatments (CDT).

Date: November 16–17, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Victor A. Panchenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 802B2, Bethesda, MD 20892, (301) 867–5309, *victor.panchenko@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering, Surgery, Anesthesiology, and Trauma.

Date: November 16, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Donald Scott Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–8363, *wrightds@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: Flow Cytometry.

Date: November 16, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21592 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

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Name of Committee: Center for Scientific Review Special Emphasis Panel, Special Topics: Molecular and Cellular Sciences and Technologies.

Date: October 31, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Megan L Goodall, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–8334, *megan.goodall@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Cancer Immunology and Immunotherapy.

Date: November 1–2, 2023.

Time: 8:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ola Mae Zack Howard, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, 301–451–4467, *howardz@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurovascular and Metabolic Factors Involved in the Pathophysiology of Alzheimer's Disease and Related Dementias (ADRD).

Date: November 1, 2023.

Time: 9:00 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892–7846, 301–827–7238, *zhaow@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special Topics in Biomaterials, Biointerfaces, Gene and Drug Delivery.

Date: November 1, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jingwu Xie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–8625, *jingwu.xie@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Cell Biology, Developmental Biology, and Bioengineering.

Date: November 2–3, 2023.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: North Bethesda Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Mufeng Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–5653, *limuf@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR Panel: The Cellular and Molecular Biology of Complex Brain Disorders.

Date: November 2, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Adem Can, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, (301) 435–1042, *cana2@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21598 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

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Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neuroscience of Interoception and Chemosensation Study Section.

Date: October 26, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: AC Hotel by Bethesda Downtown, 4646 Montgomery Ave., Bethesda, MD 20814.

Contact Person: Myongsoo Matthew Oh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1011F, Bethesda, MD 20892, (301) 435–1042, *ohmm@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Respiratory Integrative Biology and Translational Research Study Section.

Date: October 26–27, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC7814, Bethesda, MD 20892, (301) 451–8754, *nussb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Biophysical, Physiological, Pharmacological and Bioengineering Neuroscience, and Vision.

Date: October 26–27, 2023.

Time: 9:00 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jennifer Kielczewski, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1042, *jennifer.kielczewski@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Galvanizing Health Equity Through Novel and Diverse Educational Resources—GENDER.

Date: October 26, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Pamela Jeter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 10J08, Bethesda, MD 20892, (301) 827–6401, *pamela.jeter@nih.gov.*

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; Viral Dynamics and Transmission Study Section.

Date: October 26–27, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sharon Isern, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 810J, Bethesda, MD 20892, (301) 435–0000, *iserns2@mail.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group; Mechanisms of Cancer Therapeutics C Study Section.

Date: October 26–27, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Gloria Huei-Ting Su, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–496–0465, *gloria.su@nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Tissue Engineering Study Section.

Date: October 26–27, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Thomas Zeyda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–6921, *thomas.zeyda@nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Digestive System Host Defense, Microbial

Interactions and Immune and Inflammatory Disease Study Section.
Date: October 26–27, 2023.
Time: 9:00 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Aiping Zhao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, Bethesda, MD 20892–7818, (301) 435–0682, *zhaoa2@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Prevention Study Section.
Date: October 26–27, 2023.
Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Hybrid meeting).
Contact Person: Byung Min Chung, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–4056, *justin.chung@nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Drug Discovery and Molecular Pharmacology B Study Section.
Date: October 26–27, 2023.
Time: 9:00 a.m. to 7:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Razvan Cornea, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 904L, Bethesda, MD 20892, (301) 480–1955, *corneari@csr.nih.gov*.

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; Immunity and Host Defense Study Section.
Date: October 26–27, 2023.
Time: 9:30 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20876 (Virtual Meeting).
Contact Person: Alok Mulky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4203, Bethesda, MD 20892, (301) 435–3566, *mulkya@mail.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics Study Section.
Date: October 26–27, 2023.
Time: 9:30 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Altaf Ahmad Dar, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–2680, *altaf.dar@nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Kidney Endocrine and Digestive Disorders Study Section.
Date: October 26–27, 2023.
Time: 10:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Cynthia C McOliver, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007G, Bethesda, MD 20892, (301) 594–2081, *mcolivercc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–23–122: Research with Activities Related to Diversity (ReWARD)—1.
Date: October 26, 2023.
Time: 11:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Heidi B. Friedman, Ph.D., Senior Scientific Review Officer, Office of the Director Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 907–H, Bethesda, MD 20892, (301) 379–5632, *hfriedman@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21595 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

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Name of Committee: Population Sciences and Epidemiology Integrated Review Group, Population based Research in Infectious Disease Study Section.
Date: October 30–31, 2023.
Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Allison Kurti, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007J, Bethesda, MD 20892, (301) 594–1814, *kurtian@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group, Analytics and Statistics for Population Research Panel A Study Section.
Date: October 30–31, 2023.
Time: 10:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Victoriya Volkova, Ph.D., DVM Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (301) 594–7781, *volkovav2@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Addiction Risks and Mechanisms Study Section.
Date: October 30–31, 2023.
Time: 10:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, (301) 496–0726, *prenticekj@mail.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Development and Disease Study Section.
Date: October 31-November 1, 2023.
Time: 10:00 a.m. to 7:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Vanessa Dawn Sherk, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 801C, Bethesda, MD 20892, (301) 594–3218, *sherkv2@csr.nih.gov.*

Name of Committee: Oncology 1-Basic Translational Integrated Review Group, Tumor Evolution, Heterogeneity and Metastasis Study Section.

Date: October 31-November 1, 2023.
Time: 10:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Rolf Jakobi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7806, Bethesda, MD 20892, 301–435–1718, *jakobir@mail.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neural Oxidative Metabolism and Death Study Section.
Date: November 1–2, 2023.
Time: 9:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Christine Jean DiDonato, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1014J, Bethesda, MD 20892, (301) 435–1042, *didonatocj@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Drug and Biologic Disposition and Toxicity Study Section.
Date: November 2, 2023.
Time: 8:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Stacey Nicole Williams, Ph.D. Scientific Review Officer Center for Scientific Review National Institutes of Health 6701 Rockledge Drive Bethesda, MD 20892, (301) 867–5309, *stacey.williams@nih.gov.*

Name of Committee: Applied Immunology and Disease Control Integrated Review Group, Vaccines Against Infectious Diseases Study Section.
Date: November 2–3, 2023.
Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency, Bethesda One, Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Jian Wang, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892, (301) 213–9853, *wangjia@csr.nih.gov.*

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group, Bacterial-Host Interactions Study Section.
Date: November 2–3, 2023.
Time: 9:30 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Uma Basavanna, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–1398, *uma.basavanna@nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Environmental Determinants of Disease Study Section.
Date: November 2–3, 2023.
Time: 9:30 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Jodie Michelle Fleming, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 812R, Bethesda, MD 20892, (301) 867–5309 *flemingjm@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Modeling and Analysis of Biological Systems Study Section.
Date: November 2–3, 2023.
Time: 10:00 a.m. to 7:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Zarana Patel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–9295, *zarana.patel@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21603 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review, Special Emphasis Panel, Small Business: Radiation Therapy, Radiation Biology and Nanoparticle Based Therapeutics.
Date: November 14, 2023.
Time: 10:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Jennifer Ann Sanders, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–3553, *jennifer.sanders@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Respiratory, Cardiac and Circulatory Sciences.
Date: November 15, 2023.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Richard D Schneiderman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, Bethesda, MD 20817, 301–402–3995, *richard.schneiderman@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Digestive sciences.
Date: November 16–17, 2023.
Time: 8:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: EVEN Hotel Rockville Previously Holiday Inn, 1775 Rockville Pike Rockville, MD 20852.
Contact Person: Ganesan Ramesh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–827–5467, *ganesan.ramesh@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Immunology and Infectious Diseases C.
Date: November 16–17, 2023.
Time: 8:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.
Contact Person: Frederique Yiannikouris, Ph.D., Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–3313, *frederique.yiannikouris@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Cardiovascular and Surgical Devices.
Date: November 16–17, 2023.

Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Willard Wilson, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–867–5309, *willard.wilson@nih.gov.*
Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA–OD–23–015: Cessation of Menthol Cigarette Use in Populations with Health Disparities.
Date: November 16, 2023.
Time: 9:30 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Izabella Zandberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0359, *izabella.zandberg@nih.gov.0*
(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 2023.

Patricia B. Hansberger,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21576 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Advisory Committee to the Deputy Director for Intramural Research.

The meeting will be open to the public as a virtual meeting. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

Name of Committee: Advisory Committee on Research on Women's Health.
Date: October 18, 2023.
Time: 9:30 a.m. to 4:00 p.m.
Agenda: ORWH Director's Report, Presentation from the Director of the National Institute of General Medical Sciences (NIGMS), Panel discussion with Institutional Development Award (IDeA) Program participants, Presentation of five concepts for Advisory Committee clearance including ORWH Office of Autoimmune Disease Research (ORWH–OADR); Understudied, Underrepresented, and Underreported (U3) Administrative Supplement Program; Gender as a Social and Structural Variable; Women and HIV; and; the Building Interdisciplinary Research Careers in Women's Health (BIRCWH) Program Request for Applications (RFA).
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Samia Noursi, Ph.D., Associate Director Science Policy, Planning, and Analysis, Office of Research on Women's Health, National Institutes of Health, 6707 Democracy Blvd., Room 402, Bethesda, MD 20892, 301–496–9472, *samia.noursi@nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meetings. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://orwh.od.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: August 16, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21742 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel NIH-DoD-VA Pain Management Collaboratory Pragmatic and/or Implementation Science Demonstration Projects.
Date: December 5, 2023.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate cooperative agreement applications.
Place: National Center for Complementary and Integrative Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).
Contact Person: MARTA V Hamity, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, *marta.hamity@nih.gov.*
(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: September 26, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21575 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–22–233: Time-Sensitive Opportunities for Health Research.

Date: November 1, 2023.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–806–6596, *rubertm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Risk Prediction and Clinical Decision Support.

Date: November 2–3, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mary Kate Baker, DRPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–5117, *katie.baker2@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Medical Scientist Partnership Program.

Date: November 2–3, 2023.

Time: 2:00 p.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Raj K. Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, (301) 435–1047, *kkrishna@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Infectious Disease and Immunology A.

Date: November 7–8, 2023.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Georgetown, 2350 M Street NW, Washington, DC 20037.

Contact Person: Deanna C. Bublitz, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–4005, *deanna.bublitz@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: HIV Clinical Care and Health Interventions.

Date: November 21, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Hoa Thi Vo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1002B2, Bethesda, MD 20892, (301) 594–0776, *voht@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 2023.

Patricia B. Hansberger,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21572 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Support for Conferences and Scientific Meetings (R13).

Date: November 8, 2023.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Beverly W. Duncan, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 530 Davis Drive, Room 3130, Durham, NC 27713, (240) 353–6598, *beverly.duncan@nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Novel Approach Methods in Neurotoxicity During Development.

Date: November 9, 2023.

Time: 10:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (984) 287–3340, *worth@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Early Career Development Applications.

Date: November 15, 2023.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (984) 287–3340, *worth@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: NIEHS Support for the Data and Metadata in the Environmental Health and Sciences.

Date: November 16, 2023.

Time: 10 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Beverly W. Duncan, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 530 Davis Drive, Room 3130, Durham, NC 27713 (240), 353–6598 *beverly.duncan@nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Research/Clinical Scientist Career Development Applications,

Date: November 16, 2023.

Time: 10:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (984) 287–3340, *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21607 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel; E-Curation for Biomedical Research.

Date: November 30, 2023.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Bethesda, MD 20892, (Video Assisted Meeting).

Contact Person: Ali Sharma, Ph.D., Scientific Review Officer, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 500, Bethesda, MD 20892–7968, *ali.sharma@nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21612 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: October 27, 2023.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Maryam Rohani, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20852, (301) 761–6656, *maryam.rohani@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: November 1, 2023.

Time: 8:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Maryam Rohani, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20852, (301) 761–6656, *maryam.rohani@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: November 22, 2023.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Maryam Rohani, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20852, (301) 761–6656, *maryam.rohani@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 26, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21646 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; TRND 3 Chemistry Manufacturing and Controls for Drug Products.

Date: November 29–30, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Blvd., Room 1068, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Blvd., Room 1068, Bethesda, MD 20892, (301) 827–9087, *mooremar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 26, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21597 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group, Clinical Oncology Study Section.

Date: October 23–24, 2023.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street, NW Washington, DC 20001.

Contact Person: Laura Asnaghi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockville Drive, Room 6200, MSC 7804, Bethesda, MD 20892, (301) 443–1196, *laura.asnaghi@nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: October 23–24, 2023.

Time: 8:30 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Brittany L. Mason-Mah, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000A, Bethesda, MD 20892, (301) 594–3163, *masonmahbl@mail.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group, Integrative Vascular Physiology and Pathology Study Section.

Date: October 23–24, 2023.

Time: 9:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bukhtiar H Shah, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 806–7314, *shahb@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, Radiation Therapeutics and Biology Study Section.

Date: October 23–24, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov.*

Name of Committee: Applied Immunology and Disease Control Integrated Review Group, Interspecies Microbial Interactions and Infectious Study Section.

Date: October 23, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Subhamoy Pal, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–0926, *subhamoy.pal@nih.gov.*

Name of Committee: Oncology 1-Basic Translational Integrated Review Group, Cancer Genetics Study Section.

Date: October 23–24, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Juraj Bies, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301 435 1256, *biesj@mail.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Maximizing Investigators' Research Award C Study Section.

Date: October 23–24, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jimok Kim, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–8559, *jimok.kim@nih.gov.*

Name of Committee: Oncology 1-Basic Translational Integrated Review Group, Biochemical and Cellular Oncogenesis Study Section.

Date: October 24–25, 2023.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Jian Cao, MD Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–5902, *caojn@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Muscle and Exercise Physiology Study Section.

Date: October 24–25, 2023.

Time: 8:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carmen Bertoni, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 805B, Bethesda, MD 20892, (301) 867–5309, *bertonic2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Topics in Clinical Informatics and Data Analytics.

Date: October 24, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lauren Susan Penney, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–1968, *penneyls@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group, Cancer and Hematologic Disorders Study Section.

Date: October 24–25, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Steven M Frenk, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141,

Bethesda, MD 20892, (301) 480–8665, *frenksm@mail.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Pregnancy and Neonatology Study Section.

Date: October 24–25, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Hybrid Meeting).

Contact Person: Andrew Maxwell Wolfe, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, (301) 402–3019, *andrew.wolfe@nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genetics of Health and Disease Study Section.

Date: October 24–25, 2023.

Time: 9:30 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Christopher Payne, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 2208, Bethesda, MD 20892, 301–402–3702, *christopher.payne@nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function B Study Section.

Date: October 24–25, 2023.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexei A Yeliseev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 3014430552 *yeliseeva@mail.nih.gov*

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group, Pathogenic Eukaryotes Study Section.

Date: October 24–25, 2023.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jennifer Chien Villa, Ph.D., Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–496–5436, *jennifer.villa@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21591 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Human Genome Research Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Human Genome Research Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Human Genome Research Institute.

Date: November 28–29, 2023.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators

Place: National Human Genome Research Institute, National Institutes of Health, Building 50, Room 5222C, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Paul Liu, Ph.D., MD, Deputy Scientific Director, National Human Genome Research Institute, National Institutes of Health, Building 50, Room 5222C, Bethesda, MD 20892, (301) 402–2529, *pliu@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 26, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21596 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function A Study Section.

Date: October 3–4, 2023.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Ian Frederick Thorpe, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 903K, Bethesda, MD 20892, (301) 480–8662, *ian.thorpe@nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Language and Communication Study Section.

Date: October 5–6, 2023.

Time: 10 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rochelle Francine Hentges, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000C, Bethesda, MD 20892, (301) 402–8720, *hentgesrf@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 6, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21602 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; TRND 5: Pharmacology Studies, Animal Model Development & Related Services for Drug Development..

Date: November 15, 2023.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Blvd., Room 1073, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: M. Lourdes Ponce, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Blvd., Room 1073, Bethesda, MD 20892, 301–435–0810, *lourdes.ponce@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 26, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–21599 Filed 9–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

FOR FURTHER INFORMATION CONTACT: Anastasia Flanagan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Flanagan@samhsa.hhs.gov* (email).

SUPPLEMENTARY INFORMATION: In accordance with Section 9.19 of the Mandatory Guidelines, a notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list.*

The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum

standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Desert Tox, LLC, 5425 E Bell Rd, Suite 125, Scottsdale, AZ 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088. Testing for Veterans Affairs (VA) Employees Only

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anastasia D. Flanagan,

Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2023–21689 Filed 9–29–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
California: Ventura (FEMA Docket No.: B–2352).	City of Thousand Oaks (23–09–0130P).	The Honorable Kevin McNamee, Mayor, City of Thousand Oaks, 2100 Thousand Oaks Boulevard, Thousand Oaks, CA 91362.	Public Works Department, 2100 Thousand Oaks Boulevard, Thousand Oaks, CA 91362.	Sep. 6, 2023	060422
Colorado:					
Adams (FEMA Docket No.: B–2352).	City of Northglenn (22–08–0686P).	The Honorable Meredith Leighty, Mayor, City of Northglenn, 11701 Community Center Drive, Northglenn, CO 80233.	City Hall, 11701 Community Center Drive, Northglenn, CO 80233.	Sep. 8, 2023	080257
Adams (FEMA Docket No.: B–2352).	City of Thornton (22–08–0686P).	The Honorable Jan Kulmann, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, CO 80229.	City Hall, 9500 Civic Center Drive, Thornton, CO 80229.	Sep. 8, 2023	080007
Boulder (FEMA Docket No.: B–2348).	Town of Superior (22–08–0512P).	The Honorable Mark Lacis, Mayor, Town of Superior, 124 East Coal Creek Drive, Superior, CO 80027.	Town Hall, 124 East Coal Creek Drive, Superior, CO 80027.	Aug. 28, 2023	080203
Broomfield (FEMA Docket No.: B–2348).	City and County of Broomfield (22–08–0512P).	The Honorable Guyleen Castriotta, Mayor, City and County of Broomfield, 1 DesCombes Drive, Broomfield, CO 80020.	Engineering Department, 1 DesCombes Drive, Broomfield, CO 80020.	Aug. 28, 2023	085073
Connecticut: Fairfield (FEMA Docket No.: B–2352).	Town of Wilton (22–01–0739P).	Lynne Vanderslice, First Selectperson, Town of Wilton, 238 Danbury Road, Wilton, CT 06897.	Town Hall, 238 Danbury Road, Wilton, CT 06897.	Aug. 25, 2023	090020
Delaware: New Castle (FEMA Docket No.: B–2352).	Unincorporated areas of New Castle County (23–03–0350P).	Matthew Meyer, New Castle County Executive, 87 Reads Way, New Castle, DE 19720.	New Castle County Land Use Department, 87 Reads Way, New Castle, DE 19720.	Sep. 7, 2023	105085
Florida:					
Charlotte (FEMA Docket No.: B–2352).	Unincorporated areas of Charlotte County (22–04–5489P).	Bill Truex, Chair, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Building Department, 18400 Murdock Circle, Port Charlotte, FL 33948.	Sep. 6, 2023	120061
Monroe (FEMA Docket No.: B–2348).	Unincorporated areas of Monroe County (23–04–1583P).	The Honorable Craig Cates, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Aug. 28, 2023	125129
Monroe (FEMA Docket No.: B–2361).	Unincorporated areas of Monroe County (23–04–2258P).	The Honorable Craig Cates, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Sep. 11, 2023	125129
Monroe (FEMA Docket No.: B–2348).	Village of Islamorada (23–04–1953P).	The Honorable Joseph Buddy Pinder III, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Building Department, 86800 Overseas Highway, Islamorada, FL 33036.	Sep. 5, 2023	120424
Polk (FEMA Docket No.: B–2352).	Unincorporated areas of Polk County (22–04–3447P).	Bill Beasley, Polk County Manager, 330 West Church Street, Bartow, FL 33831.	Polk County Land Development Division, 330 West Church Street, Bartow, FL 33831.	Sep. 7, 2023	120261
Sumter (FEMA Docket No.: B–2352).	City of Coleman (22–04–4974P).	The Honorable Milton Hill, Mayor, City of Coleman, P.O. Box 456, Coleman, FL 33521.	Water Department, 3502 East Warm Springs Avenue, Coleman, FL 33521.	Sep. 1, 2023	120616

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Sumter (FEMA Docket No.: B–2352).	City of Wildwood (22–04–4974P).	The Honorable Ed Wolf, Mayor, City of Wildwood, 100 North Main Street, Wildwood, FL 34785.	City Hall, 100 North Main Street, Wildwood, FL 34785.	Sep. 1, 2023	120299
Georgia: Fulton (FEMA Docket No.: B–2348).	City of Hapeville (22–04–5158P).	The Honorable Alan Hallman, Mayor, City of Hapeville, 3468 North Fulton Avenue, Hapeville, GA 30354.	Public Services Department, 3474 North Fulton Avenue, Hapeville, GA 30354.	Aug. 24, 2023	130502
Massachusetts:					
Barnstable (FEMA Docket No.: B–2352).	Town of Falmouth (23–01–0305P).	Nancy R. Taylor, Chair, Town of Falmouth Select Board, 59 Town Hall Square, Falmouth, MA 02540.	Building Department, 59 Town Hall Square, Falmouth, MA 02540.	Sep. 11, 2023	255211
Suffolk (FEMA Docket No.: B–2341).	City of Boston (22–01–0360P).	The Honorable Michelle Wu, Mayor, City of Boston, 1 City Hall Square, Suite 500, Boston, MA 02201.	City Hall, 1 City Hall Square, Suite 500, Boston, MA 02201.	Aug. 25, 2023	250286
Mississippi: Hancock (FEMA Docket No.: B–2348).	City of Bay St. Louis (23–04–1766P).	The Honorable Michael Favre, Mayor, City of Bay St. Louis, 688 Highway 90, Bay Saint Louis, MS 39520.	Chiniche Engineering and Surveying, 407 Highway 90, Bay Saint Louis, MS 39520.	Aug. 25, 2023	285251
North Carolina: Durham (FEMA Docket No.: B–2348).	Unincorporated areas of Durham County (22–04–5172P).	Brenda Howerton, Chair, Durham County, Board of Commissioners, 101 City Hall Plaza, Durham, NC 27701.	Durham City-County, Planning Department, 101 City Hall Plaza, Durham, NC 27701.	Sep. 1, 2023	370085
Pennsylvania:					
Dauphin (FEMA Docket No.: B–2352).	Township of South Hanover (22–03–1207P).	Lynn Wuestner, Township of South Hanover Manager, 161 Patriot Way, Hershey, PA 17033.	Township Hall, 161 Patriot Way, Hershey, PA 17033.	Sep. 1, 2023	420395
Montgomery (FEMA Docket No.: B–2352).	Township of Upper Dublin (22–03–0783P).	Kurt Ferguson, Township of Upper Dublin Manager, 370 Commerce Drive, Fort Washington, PA 19034.	Community Planning and Zoning Department, 370 Commerce Drive, Fort Washington, PA 19034.	Sep. 11, 2023	420708
Tennessee: Hamilton (FEMA Docket No.: B–2352).	Unincorporated areas of Hamilton County (22–04–4850P).	The Honorable Weston Wamp, Mayor, Hamilton County, 625 Georgia Avenue, Chattanooga, TN 37402.	Hamilton County Engineering Department, 1250 Market Street, Suite 3046, Chattanooga, TN 37402.	Aug. 28, 2023	470071
Texas:					
Bexar (FEMA Docket No.: B–2352).	Unincorporated areas of Bexar County (22–06–1980P).	The Honorable Peter Sakai, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78205.	Aug. 28, 2023	480035
Collin (FEMA Docket No.: B–2352).	City of Lowry Crossing (22–06–2654P).	The Honorable Bob Petitt, Mayor, City of Lowry Crossing, 1405 South Bridgefarmer Road, Lowry Crossing, TX 75069.	City Hall, 1405 South Bridgefarmer Road, Lowry Crossing, TX 75069.	Aug. 28, 2023	481631
Collin (FEMA Docket No.: B–2352).	City of Melissa (22–06–2373P).	The Honorable Jay Northcut, Mayor, City of Melissa, 3411 Barker Avenue, Melissa, TX 75454.	City Hall, 3411 Barker Avenue, Melissa, TX 75454.	Sep. 5, 2023	481626
Collin (FEMA Docket No.: B–2361).	Town of Prosper (22–06–2792P).	The Honorable David F. Bristol, Mayor, Town of Prosper, 250 West 1st Street, Prosper, TX 75078.	Town Hall, 250 West 1st Street, Prosper, TX 75078.	Sep. 11, 2023	480141
Collin (FEMA Docket No.: B–2352).	Unincorporated areas of Collin County (22–06–2373P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Administration Building, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Sep. 5, 2023	480130
Collin (FEMA Docket No.: B–2352).	Unincorporated areas of Collin County (22–06–2654P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Engineering Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	Aug. 28, 2023	480130
Dallas (FEMA Docket No.: B–2352).	City of Mesquite (22–06–2973P).	The Honorable Daniel Aleman, Jr., Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185.	George A. Venner Sr. Municipal Center, 1515 North Galloway Avenue, Mesquite, TX 75149.	Sep. 5, 2023	485490
Denton (FEMA Docket No.: B–2348).	City of Justin (22–06–2978P).	The Honorable Elizabeth Woodall, Mayor, City of Justin, P.O. Box 129, Justin, TX 76247.	Department of Development Services, 415 North College Avenue, Justin, TX 76247.	Sep. 1, 2023	480778
Denton (FEMA Docket No.: B–2348).	Unincorporated areas of Denton County (22–06–2978P).	The Honorable Andy Eads, Denton County Judge, 1 Courthouse Drive, Suite 3100, Denton, TX 76208.	Denton County Development Services Department, 3900 Morse Street, Denton, TX 76208.	Sep. 1, 2023	480774
El Paso (FEMA Docket No.: B–2348).	City of El Paso (22–06–2670P).	The Honorable Oscar Leeser, Mayor, City of El Paso, 300 North Campbell Street, El Paso, TX 79901.	Development Department, 801 Texas Avenue, El Paso, TX 79901.	Sep. 1, 2023	480214
El Paso (FEMA Docket No.: B–2348).	Unincorporated areas of El Paso County (22–06–2670P).	The Honorable Ricardo A. Samaniego, El Paso County Judge, 500 East San Antonio Avenue, Suite 301, El Paso, TX 79901.	El Paso County Public Works Department, 800 East Overland Avenue, Suite 200, El Paso, TX 79901.	Sep. 1, 2023	480212

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Montgomery (FEMA Docket No.: B–2352).	Unincorporated areas of Montgomery County (23–06–0661P).	The Honorable Mark J. Keough, Montgomery County Judge, 501 North Thompson, Suite 401, Conroe, TX 77301.	Montgomery County Alan B. Sadler Commissioners Court Building, 501 North Thompson, Suite 100, Conroe, TX 77301.	Aug. 24, 2023	480483
Tarrant (FEMA Docket No.: B–2352).	City of Fort Worth (22–06–2756P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	T/PW Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	Sep. 11, 2023	480596
Tarrant (FEMA Docket No.: B–2352).	Unincorporated areas of Tarrant County (22–06–2756P).	The Honorable Tim O'Hare, Tarrant County Judge, 100 East Weatherford Street, Suite 501, Fort Worth, TX 76196.	Tarrant County Administration Building, 100 East Weatherford Street, Fort Worth, TX 76196.	Sep. 11, 2023	480582
Travis (FEMA Docket No.: B–2352).	Unincorporated areas of Travis County (22–06–2414P).	The Honorable Andy Brown, Travis County Judge, P.O. Box 1748, Austin, TX 78767.	Travis County Transportation and Natural Resources Department, 700 Lavaca Street, 5th Floor, Austin, TX 78701.	Aug. 28, 2023	481026
Virginia:					
Loudoun (FEMA Docket No.: B–2348).	City of Leesburg (22–03–0973P).	The Honorable Kelly Burk, Mayor, Town of Leesburg, 25 West Market Street, Leesburg, VA 20176.	Town Hall, 25 West Market Street, Leesburg, VA 20176.	Aug. 28, 2023	510091
Prince William (FEMA Docket No.: B–2352).	City of Manassas (22–03–1152P).	W. Patrick Pate, City of Manassas Manager, 9027 Center Street, Manassas, VA 20110.	City Hall, 9027 Center Street, Manassas, VA 20110.	Sep. 1, 2023	510122

[FR Doc. 2023–21699 Filed 9–29–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2023–0025]

Notice of the Establishment of the Federal School Safety Clearinghouse External Advisory Board; Solicitation of Inaugural Members

AGENCY: Department of Homeland Security (DHS), Cybersecurity and Infrastructure Security Agency (CISA).

ACTION: Notice of new advisory board establishment; solicitation of inaugural members.

SUMMARY: The Secretary of Homeland Security (Secretary), in coordination with the Secretary of Education, the Secretary of Health and Human Services, and the Attorney General, has established the Federal School Safety Clearinghouse External Advisory Board (FSSC EAB or Board). The FSSC EAB will provide advice to the Secretary of DHS, through the Director of CISA, regarding the Federal Clearinghouse on School Safety Evidence-Based Practices (Clearinghouse). DHS is announcing the establishment of the FSSC EAB, a new advisory board and seeks inaugural members of the FSSC EAB.

DATES: Applications to seek membership appointment on the FSSC EAB will be accepted until 11:59 p.m., Eastern Daylight Time, on October 23, 2023.

ADDRESSES: Nominations may be submitted via email to *SchoolSafety@hq.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Lindsay Burton, *SchoolSafety@hq.dhs.gov,* 202–447–4686.

SUPPLEMENTARY INFORMATION: In response to taskings from the Secretary of DHS to meet the statutory requirements of the Bipartisan Safer Communities Act, the FSSC EAB will: (a) Provide feedback on the implementation of evidence-based practices and recommendations of the Clearinghouse (6 U.S.C. 665k(d)(2)(B)(i)); (b) Propose additional recommendations for evidence-based practices for inclusion in the Clearinghouse, provided such recommendations meet evidence-based criteria (6 U.S.C. 665k(d)(2)(B)(ii))); (c) Assist the Departments of Education, Health and Human Services, Homeland Security, and Justice in identifying evidence-based practices (6 U.S.C. 665k(b)(1)(A)); (d) Assist the Departments of Education, Health and Human Services, Homeland Security, and Justice in reviewing past practices and recommendations for inclusion in the Clearinghouse (6 U.S.C. 665k(b)(3)); and (e) Provide user feedback on the implementation of resources, evidence-based practices, and recommendations identified by the Clearinghouse (6 U.S.C. 665k(d)(1)(B)). The FSSC EAB is exempt from the requirements of the Federal Advisory Committee Act, (Pub. L. 92–463).

Membership: The FSSC EAB will consist of a minimum of 15 members and a maximum of 28 members who are appointed by and serve at the pleasure of the Secretary of DHS. Ex-officio members are not included in the total number of members. In order for DHS to fully leverage broad-ranging experience and education, the Board must be diverse with regard to professional and technical expertise. DHS is committed to pursuing opportunities, consistent with applicable law, to compose a committee that reflects the diversity of the nation's people.

Members of the Board will serve as Representatives of their respective interest or sector. Members must be U.S. citizens or legal permanent residents of the United States. Members must be specially qualified to serve on the FSSC EAB by virtue of their education, training, and experience in the fields relevant to school safety, including, but not limited to, education, cybersecurity, law enforcement, public safety, public health, civil rights, developmental psychology, child and adolescent health, social work, and/or emerging technologies.

Members shall be comprised of representatives from the following:

- State government
- Local government
- Educators
- Tribal or Territorial governments
- Organizations representing elementary and secondary school parents and students
- Civil Rights Organizations
- Disability Rights Organizations
- Law Enforcement Organizations
- Non-Profit School Safety and Security Organizations
- Private Sector
- At-Large Members, as determined by the Secretary of DHS

Members will be required to sign a nondisclosure agreement and gratuitous service agreement.

DHS will consider a number of factors to determine each applicant's qualifications as they relate to school safety that would be useful to the Board, such as:

a. Educational background (*e.g.,* education, architecture, administration policy, homeland security, or public policy);

b. Leadership, experience, and accomplishments (*e.g.,* presidents, directors, elected officials); and

c. Employment and membership in associations (*e.g.,* active in school associations or groups).

With the establishment of the FSSC EAB, CISA is accepting submissions of interest to be members of the Board.

When submitting nominations, please do not provide any sensitive personal information. Nominations should be submitted via email, with the required information in the body of the email or in an attachment. Nominations must include the following:

1. The nominee's name, contact information (*i.e.,* email and phone number), location, and organization or institution of employment or volunteering

2. A summary resume that describes the individual's qualifications and experience with respect to the subject matter areas listed above (not to exceed five pages); and

3. A statement acknowledging that support from the representing organization will be required if selected. (Support meaning the organization agrees with the individual's participation.)

Do not include sensitive personal information, such as dates of birth, home addresses, Social Security numbers, etc. Note too, that Nominees will be vetted for national security and public safety considerations. Public trust level security reviews will be conducted before members may serve.

Please submit nominations no later than October 23, 2023 via email to the address in the **ADDRESSES** section above.

Kaitlin Ross,

Program Specialist, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2023–21633 Filed 9–29–23; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–64]

30-Day Notice of Proposed Information Collection: Ginnie Mae Multiclass Securities Program Documents, OMB Control No.: 2503–0030

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* November 1, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410; phone number 202–402–5535 or email: *PaperworkReductionActOffice@hud.gov.* 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. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on May 4, 2023 at 88 FR 28598.

A. Overview of Information Collection

Title of Information Collection: Ginnie Mae Multiclass Securities Program.

OMB Approval Number: 2503–0030.

Type of Request: Revision of a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: The Ginnie Mae Multiclass Securities program consists of Ginnie Mae Real Estate Mortgage Investment Conduit (''REMIC'') and Platinum. The Multiclass Securities program provides an important adjunct to Ginnie Mae's secondary mortgage market activities, allowing the private sector to combine and restructure cash flows from Ginnie Mae MBS into securities that meet unique investor requirements in connection with yield, maturity, and call-option protection. The Multiclass Securities program intends to increase liquidity in the secondary mortgage market and to attract new sources of capital for federally insured or guaranteed residential loans. Under this program, Ginnie Mae guarantees, with the full faith and credit of the United States, the timely payment of principal and interest on Ginnie Mae REMIC and Platinum. Ginnie Mae's powers are prescribed by Title III of the National Housing Act, as amended, 12 U.S.C. 1716, *et seq.*

Respondents: Public.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
A	B	C	D	E	F	G	H
Pricing Letter	25	10	250	0.5	125	$45.56	$5,695.00
Structured Term Sheet	25	10	250	3	750	45.56	34,170.00
Trust (REMIC) Agreement	25	10	250	1	250	45.56	11,390.00
Trust Opinion	25	10	250	4	1000	45.56	45,560.00
MX Trust Agreement	25	10	250	0.16	40	45.56	1,822.40
MX Trust Opinion	25	10	250	4	1000	45.56	45,560.00
RR Certificate	25	10	250	0.08	20	45.56	911.20

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
A	B	C	D	E	F	G	H
Sponsor Agreement	25	10	250	0.05	12.5	45.56	569.50
Table of Contents	25	10	250	0.33	82.5	45.56	3,758.70
Issuance Statement	25	10	250	0.05	12.5	45.56	569.50
Tax Opinion	25	10	250	4	1000	45.56	45,560.00
Transfer Affidavit	25	10	250	0.08	20	45.56	911.20
Supplemental Statement	25	0.25	6.25	1	6.25	45.56	284.75
Final Data Statements (attached to closing letter)	25	10	250	32	8000	45.56	364,480.00
Accountants' Closing Letter	25	10	250	8	2000	45.56	91,120.00
Accountants' OSC Letter	25	10	250	8	2000	45.56	91,120.00
Structuring Data	25	10	250	8	2000	45.56	91,120.00
Financial Statements	25	10	250	1	250	45.56	11,390.00
Principal and Interest Factor File Specifications	25	10	250	16	4000	45.56	182,240.00
Distribution Dates and Statement	25	10	250	0.42	105	45.56	4,783.80
Term Sheet	25	10	250	2	500	45.56	22,780.00
New Issue File Layout	25	10	250	4	1000	45.56	45,560.00
Flow of Funds	25	10	250	0.16	40	45.56	1,822.40
Trustee Receipt	25	10	250	2	500	45.56	22,780.00
Subtotal	.....	.....	5,756.25	.....	24,713.75	.....	1,125,958.45
Deposit Agreement	70	10	700	1	700	45.56	31,892.00
MBS Schedule	70	10	700	0.16	112	45.56	5,102.72
New Issue File Layout	70	10	700	4	2,800	45.56	127,568.00
Principal and Interest Factor File Specifications	70	10	700	16	11200	45.56	510,272.00
Subtotal	.....	.....	2,800	.....	14,812.00	.....	674,834.72
Total Cost	.....	.....	8,556.25	.....	39,525.75	.....	1,800,793.17

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Anna P. Guido,

Department Reports Management Office, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–21587 Filed 9–29–23; 8:45 am]

BILLING CODE 4210–67–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meetings

TIME AND DATE October 10, 2023, ET, 2:00 p.m.–3:00 p.m.

PLACE: Via Zoom.

STATUS: Meeting of the Board of Directors, open to the public.

MATTERS TO BE CONSIDERED:

- Call to Order
- Overview of Meeting Rules by General Counsel
- Approval of Minutes from June 6, 2023 meeting
- 2024 Strategic Priorities Review
- Adjournment

CONTACT PERSON FOR MORE INFORMATION: Nicole Stinson, Associate General Counsel, (202) 683–7117 or *nstinson@iaf.gov.*

For Dial-in Information Contact: Nicole Stinson, Associate General Counsel, *nstinson@iaf.gov.*

The Inter-American Foundation is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552b.

Nicole Stinson,

Associate General Counsel.

[FR Doc. 2023–21862 Filed 9–28–23; 4:15 pm]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–NWRS–2023–0126; FXRS126109HD000–234–FF09R23000; OMB Control Number 1018–New]

Agency Information Collection Activities; Programmatic Clearance for U.S. Fish and Wildlife Service Social Science Research

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before December 1, 2023.

ADDRESSES: Send your comments on the information collection request (ICR) by

one of the following methods (reference Office of Management and Budget (OMB) Control Number 1018—Programmatic in the subject line of your comment):

• *Internet (preferred): https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–NWRS–2023–0126.

• *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.

We will not accept email or faxes. Comments and materials we receive, as well as supporting documentation, will be available for public inspection on *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

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

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Monitoring and evaluating U.S. Fish and Wildlife Service (Service) activities, including the activities National Wildlife Refuge System (Refuge System), is an essential component of strategic and adaptive management. The collection of information is necessary to enable the Service to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improved service delivery and customer experience. In particular, collection of information and rigorous social science inquiries are necessary to fulfil the goals of the President's Executive Order 14008—Tackling the Climate Crisis at Home and Abroad, the principles of the Service's community-focused Urban Wildlife Conservation Program, a commitment to serving a broader and more diverse public, and allowing the Service to better understand the needs and perspectives of Tribal Nations and Native communities.

The proposed programmatic clearance would cover social science surveys, interviews, and focus groups designed to provide information to Service managers and practitioners to improve quality and utility of agency programs, services, and planning efforts. To ensure continuous improvement, Service activities and projects require ongoing systematic assessment of their design, implementation, and outcomes. Data from collections undertaken through the proposed programmatic clearance would provide information for planning, monitoring, and evaluating Refuge System efforts, as well as efforts of other Service programs. The scope of this programmatic clearance includes individual surveys, focus groups, and interviews of refuge visitors, potential visitors, and residents of communities near Service-managed units, and stakeholders and partners, including Tribal interests.

The President's Executive Order 14008 sets the goal of conserving ''at least 30 percent of our lands and waters by 2030'' through the Conserving and Restoring America the Beautiful campaign. A collaborative approach is needed to achieve the principles for locally led efforts and better understand the patterns and trends occurring across public lands and waters. The Service's national visitor survey is one approach to collecting information from the public related to visitation across the Refuge System. The national visitor survey seeks to understand the recreation trends and experiences of visitors at refuges to better manage for future visitation that aligns with national conservation goals. One of the recommendations for early focus and progress in the America the Beautiful campaign specifically recommends increasing access for outdoor recreation, a management objective the monitoring data from the visitor survey can help to inform.

The Service's Urban Wildlife Conservation program (Urban program) was established as a means to engage with urban communities more meaningfully in fish and wildlife conservation. It enumerates designation criteria for urban wildlife refuges (urban refuges), partnerships, and bird treaty cities, and describes how the standards of excellence apply to urban refuges and other urban activities. The Urban program aligns particularly well with the Department of the Interior's focus on equity and environmental justice, work that helps to achieve one of the President's Four Pillars (Racial Equity). Another recommendation outlined in the Conserving and Restoring America the Beautiful campaign includes creating safe outdoor opportunities in nature-deprived communities, a goal of which the Urban program is helping to achieve.

The Service is required to ''evaluate and adapt'' the practices of the Urban program through internal review of the urban entities by the Division of Visitor Services and Communications every 5 years, including an expanded visitor services review for the Urban Refuges as per Policy 110 FW 1. The Division

''must analyze the people they are reaching and conduct approved visitor use surveys to monitor the changes and track audience engagement.'' In addition, the Service is committed to evaluating progress and measuring success of the Urban Program's standards of excellence, such as ''know and relate to the community; connect urban residents with nature through the steppingstones of engagement; and ensure visitors feel safe and welcome.''

The Service's Human Dimensions (HD) Branch, programmatically aligned within the National Wildlife Refuge System, will serve as the office of control for the programmatic clearance. The role of the HD Branch is to build conservation social science understanding, capacity and integration within the Service. A suite of questions will serve as the basis for all information collections under this programmatic clearance. The suite of questions will be used to develop surveys to respond to the above-named Presidential Priorities as well as adaptively ensure improved customer experience and satisfaction. As the office of control, the HD branch ICR Coordinator will conduct the necessary quality control, including assuring that each survey instrument comports with the guidelines of the programmatic clearance.

We developed the following topic areas within the suite of questions to streamline the ICR process:

(1) *Respondent Characteristics* (*e.g.,* demographics, land and property characteristics, and visits to other public lands). This topic area allows us to understand customer demographic profiles and track visitation trends more holistically over time.

(2) *Communication* (*e.g.,* languages spoken, sources of information used, and use of social media and other web-based outlets). This topic area allows us to understand customer preferences for finding information.

(3) *Trip Planning and Logistics* (*e.g.,* purpose of trip, information on wayfinding used, and various trip characteristics). This topic area allows us to understand the logistics and information involved with a customer's trip planning experience and make strategic transportation decisions.

(4) *Recreation Activities, Experiences, and Preferences* (*e.g.,* recreation activity preferences, experience, and satisfaction). This topic area allows us to better why customers visit, understand preferences for wildlife-dependent recreation, and provide a quality customer experiences at specific sites.

(5) *Knowledge, Attitudes, and Beliefs* (*e.g.,* understanding and opinions around nature, the outdoors, climate change, and the agency). This topic area allows us to improve future programming and communications with customers.

(6) *Resource Management Perceptions and Preferences* (*e.g.,* attitudes around resource protection, transportation needs, and other management decisions). This topic area allows us to understand current customer perceptions and anticipate as how customers would most likely react to future management actions.

(7) *Visitor Expenditures and Economic Inputs* (*e.g.,* trip expenses, information on local businesses, and landowner contributions). This topic area allows us to gather economic data related to conservation goals of the agency.

(8) *Public, Stakeholder, and Partner Engagement* (*e.g.,* participation in programs, partnerships, and various conservation actions). This topic area allows us to understand if and how the customer dedicates their time to conservation-related actions.

(9) *Program Evaluation* (*e.g.,* learning outcomes, program experience rating, and satisfaction). This topic area allows to better assess overall program outcomes and performance to improve future programming.

To qualify for the generic programmatic review process, each individual collection under this programmatic clearance must be well-defined in terms of its sample or respondent pool and research methodology; it should clearly fit within the overall plan and scope of the approved ICR; and the survey questions must show a clear tie to Service management needs. Individual collections may not raise any controversial policy issues, include topics of significant public interest, or go beyond the methods specified and approved by OMB in this programmatic ICR. Any individual collection that requests non-agency goal-related data or information on controversial topics would be inappropriate for expedited review under this programmatic clearance and must go through the full PRA clearance process to solicit public feedback. In instances where HD Branch staff are involved with the development of the individual information collection, other uninvolved staff in the HD Branch or a member of the ICR review team would review the ICR.

We will obtain OMB approval of all individual survey submissions developed using the pre-approved suite of questions before the survey can be initiated. If, after consultation with the principal investigator, the ICR coordinator recommends a proposed survey for approval, both the Service and Departmental Information Collection Clearance Officers (ICCO) will review the ICR before it is formally transmitted to OMB for review and approval.

A copy of the draft suite of questions is available to the public for viewing in the docket on the *https://www.regulations.gov* website, or by submitting an email request to the Service ICCO as provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Title of Collection: Programmatic Clearance for U.S. Fish and Wildlife Service Social Science Research.

OMB Control Number: 1018–New.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Persons visiting units managed by the Service; potential visitors, including ''virtual visitors'' who access content from a Service website; local community members; educators taking part in programs both on and off Service lands; government officials representing the local area; landowners; partners; stakeholders; and Tribal interests.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Mode	Annual estimates		
	Number of respondents	Completion time per response (avg. minutes)	Burden hours **
On-site, mail, internet surveys *	20,333	20	6,778
Telephone surveys	833	25	347

Mode	Annual estimates		
	Number of respondents	Completion time per response (avg. minutes)	Burden hours **
All non-response surveys	784	5	65
Focus groups/In-person interviews	59	60	59
Annual Total	22,009		7,249
3 Year Total	66,027		21,747

* Includes 2-minute contact time for some surveys, interviews, and focus groups, and approximately 2,500 electronic surveys.
** All figures are 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. 2023–21665 Filed 9–29–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_HQ_FRN_MO4500173718]

Call for Nominations for the National Wild Horse and Burro Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for three positions on the Wild Horse and Burro Advisory Board (Board) that will become vacant on January 11, 2024. The Board provides advice concerning the management, protection, and control of wild free-roaming horses and burros on public lands administered by the Department of the Interior, through the Bureau of Land Management (BLM), and the Department of Agriculture, through the U.S. Forest Service.

DATES: Nominations must be post marked or submitted to the following addresses no later than November 16, 2023.

ADDRESSES: All mail sent via the U.S. Postal Service should be addressed as follows:

Wild Horses and Burro Division, U.S. Department of the Interior, Bureau of Land Management, Attn: Dorothea Boothe, HQ–260, 9828 31st Avenue; Phoenix, AZ 85051.

All packages that are sent via FedEx or UPS should be addressed as follows:

U.S. Department of the Interior, Bureau of Land Management, Wild Horse and Burro Division, Attn: Dorothea Boothe, 9828 31st Avenue, Phoenix, AZ 85051. Please consider emailing PDF documents to Ms. Boothe at *dboothe@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Dorothea Boothe, Wild Horse and Burro Program Coordinator, telephone: 602–906–5543, email: *dboothe@blm.gov.* 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: Members of the Board serve without compensation; however, while away from their homes or regular places of business, Board and subcommittee members engaged in Board or subcommittee business approved by the Designated Federal Officer (DFO) may be allowed travel expenses, including per diem in lieu of subsistence under 5 U.S.C. 5703, in the same manner as persons employed intermittently in government service. Nominations for a term of 3 years are needed to represent the following categories of interest:

- Natural Resource Management;
- Public Interest (Equine Behavior); and
- Wild Horse and Burro Research.

The Board will meet one to four times annually. The DFO may call additional meetings in connection with special needs for advice. Individuals may nominate themselves or others. Any individual or organization may nominate one or more persons to serve on the Board.

Nominations should include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Departments of the Interior and Agriculture to make an informed decision regarding meeting the membership requirements of the Board and permit the Departments to contact a potential member. Nominations are to be sent to the address listed under **ADDRESSES**. To assist nominees in developing nominations packets, please visit the BLM website at *https://www.blm.gov/programs/wild-horse-and-burro/get-involved/advisory-board* and use the document template, *Applying to Serve on the Advisory Board.*

As appropriate, certain Board members may be appointed as special government employees (SGEs). Please be aware that applicants selected to serve as SGEs will be required, prior to appointment, to file a Confidential Financial Disclosure Report in order to avoid involvement in real or apparent conflicts of interest. You may find a copy of the Confidential Financial Disclosure Report at the following Web site: *https://www.doi.gov/ethics/financial-disclosure.* Additionally, after appointment, members appointed as SGEs will be required to meet applicable financial disclosure and ethics training requirements. Please contact (202) 202–208–7960 or *DOI_Ethics@sol.doi.gov* with any questions about the ethics requirements for members appointed as SGEs.

Membership Selection: Individuals shall qualify to serve on the Board because of their education, training, or experience that enables them to give informed and objective advice regarding the interest they represent. They should demonstrate experience or knowledge of the area of their expertise and a commitment to collaborate in seeking solutions to resource management issues. The Board is structured to provide fair membership and balance, both geographic and interest specific, in terms of the functions to be performed and points of view to be represented.

Members are selected with the objective of providing representative counsel and advice about public land and resource planning.

Pursuant to section 7 of the Wild Free-Roaming Horses and Burros Act, members of the Board cannot be employed by the State or Federal Government.

(Authority: 43 CFR 1784.4–1)

Brian St George,

Acting Assistant Director, Resources and Planning.

[FR Doc. 2023–21721 Filed 9–29–23; 8:45 am]

BILLING CODE 4331–27–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–GATE–36563; PPNEGATEB0, PPMVSCS1Z.Y00000]

Notice of Cancellation and Rescheduling of the Public Meeting of the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the National Park Service (NPS) is hereby giving notice that the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee (Committee) has rescheduled a public meeting originally scheduled for September 19, 2023.

DATES: The virtual meeting will take place on Thursday, November 16, 2023. The meeting will begin at 9 a.m. until 2 p.m., with a public comment period at 11:30 a.m. to 12 p.m. (eastern), with advance registration required. Individuals that wish to participate must contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than November 11, 2023, to receive instructions for accessing the meeting.

FOR FURTHER INFORMATION CONTACT: This will be a virtual meeting. Anyone interested in attending should contact Daphne Yun, Acting Public Affairs Officer, Gateway National Recreation Area, 210 New York Avenue, Staten Island, New York 10305, by telephone (718) 815–3651, or by email *daphne_yun@nps.gov.* 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: The Committee was established on April 18, 2012, by authority of the Secretary of the Interior (Secretary) under 54 U.S.C. 100906(a) and is regulated by the Federal Advisory Committee Act. The Committee provides advice to the Secretary, through the Director of the NPS, on matters relating to the Fort Hancock Historic District of Gateway National Recreation Area. All meetings are open to the public.

Purpose of the Meeting: The Gateway National Recreation Area will discuss leasing updates, working group updates, social equity related to leasing, and general park updates. The final agenda will be posted on the Committee's website at *https://www.nps.gov/gate/learn/management/forthancock21.htm.* The website includes meeting minutes from all prior meetings.

Interested persons may present, either orally or through written comments, information for the Committee to consider during the public meeting. Written comments will be accepted prior to, during, or after the meeting. Members of the public may submit written comments by mailing them to the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Due to time constraints during the meeting, the Committee is not able to read written public comments submitted into the record. Individuals or groups requesting to make oral comments at the public Committee meeting will be limited to no more than three minutes per speaker. All comments will be made part of the public record and will be electronically distributed to all Committee members. Detailed minutes of the meeting will be available for public inspection within 90 days of the meeting.

Meeting Accessibility/Special Accommodations: The meeting is open to the public. Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your written comments, you should be aware that your entire comment including your personal identifying information will be publicly available. 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.

Authority: 5 U.S.C. ch. 10.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2023–21579 Filed 9–29–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SERO–NCPTT–36535; PPWOCRADS2, PCU00PT14.GT0000]

Request for Nominations for the Preservation Technology and Training Board

AGENCY: National Park Service, Interior.

ACTION: Request for nominations.

SUMMARY: The National Park Service (NPS), U.S. Department of the Interior, is requesting nominations for qualified persons to serve as members of the Preservation Technology and Training Board (Board).

DATES: Written nominations must be postmarked by November 1, 2023.

ADDRESSES: Nominations should be sent to Kirk A. Cordell, Executive Director, National Center for Preservation Technology and Training, National Park Service, 645 University Parkway, Natchitoches, Louisiana 71457, or email at *ncptt@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Kirk A. Cordell, via telephone (318) 356–7444. 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: Established within the Department of the Interior, the National Center for Preservation Technology and Training (Center) is located at Northwestern State University of Louisiana in Natchitoches, Louisiana. Title IV, section 404 of Public Law 102–575, October 30, 1992, established the Board to provide advice and professional oversight to the Secretary of the Interior and the Center regarding the activities of the Center and to submit an annual report to the President and the Congress.

The Board is comprised of 13 members appointed for 4-year terms, as follows: (a) one member serving as the Secretary's designee; (b) six members who represent appropriate Federal, State, and local agencies, State and local historic preservation commissions, and other public and international organizations; and (c) six members on the basis of outstanding professional qualifications who represent major organizations in the fields of archeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education.

We are currently seeking members in category (c). Nominations should be typed and should include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Board and permit the Department to contact a potential member. All documentation, including letters of recommendation, must be compiled and submitted in one complete package. All those interested in membership, including current members whose terms are expiring, must follow the nomination process. Members may not appoint deputies or alternates.

Members of the Board serve without compensation. However, while away from their homes or regular places of business in the performance of services for the Board as approved by the NPS, members may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed such expenses under section 5703 of Title 5 of the United States Code.

Authority: 5 U.S.C. ch. 10

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2023–21580 Filed 9–29–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–PCE–LWCF–NPS0036373; PPWOSLAD00 PGWS1S181.Y00000 XXXP503581 PS.SSLAD0R21.00.1 (223); OMB Control Number 1024–0031]

Agency Information Collection Activities; Land and Water Conservation Fund State Assistance Program

AGENCY: National Park Service, Interior.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 we, the National Park Service (NPS), are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before November 1, 2023.

ADDRESSES: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to *http://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Phadrea Ponds, NPS Information Collection Clearance Officer (ADIR–ICCO), 13461 Sunrise Valley Drive (MS–244) Reston, VA 20192 (mail); or *phadrea_ponds@nps.gov* (email). Please include 1024–0031 (LWCF) in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Elisabeth Morgan, Recreation Grant Branch Chief by email at *elisabeth_fondriest@nps.gov* (email); or by telephone at 202–354–6916. Please reference OMB Control Number 1024–0031(LWCF) in the subject line of your comments. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published (87 FR 55843) on September 12, 2022. We received written comments from Washington State Recreation and Conservation Office and Oregon Parks and Recreation Department. The comments and NPS responses are summarized below.

Washington State Recreation and Conservation Office:

It would be most helpful if NPS revised and expanded A&R questions to clarify the information sought. In our experience, incomplete information provided on this form (often due to misunderstanding what is required) creates additional work, expense and time lags for RCO's subgrantees as well as NPS. We all share the same goal of wanting to provide a complete accurate initial application, within reason of what information that an applicant would have without promise of any grant funding. The commenter also provided specific feedback on ways to provide clarity to the instructions in each section.

NPS Response/Action Taken: The comments and suggestions for rewording to improve the clarity and to remove duplication of questions were accepted. To accommodate the request proposing additional instructions for questions the NPS will create annotated versions of the A&R and C&S forms to provide additional guidance.

Oregon Parks and Recreation Department:

The comments from this respondent were mainly technical in nature, addressing the wording of some questions on both the A&R and C&S Forms, as well as describing issues with formatting on these forms that make the forms more difficult for applicants to use, including ''an unnecessary amount of time to correct.'' The respondent also noted that Section 3.0, Subsection C. Environmental Resources Survey should be improved. The respondent recommended that Tables 1 and 2 have a column added to indicate neutral impacts (impacts that are neither positive or negative) and a Not Applicable column (resource does not exist).

NPS Response/Action Taken:

- We will revisit the forms to try to address the issues the commenter identified, such as possibly placing form fields in the document for responses so that applicants don't feel the need to enter their responses in colored text. We note that some of the issues the commenter described can be caused by how these documents are saved and shared for use, which may erase formatting.
- The tables in Section 3.C were revised to remove the response indicating more research is needed and to restore a ''not present or N/A'' option in Table 1. (Conforming changes were

made to the same tables in Section 3.A of the C&S Form.)

• To accommodate the request proposing additional instructions for questions the NPS will create annotated versions of the forms to provide additional guidance.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

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

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Land and Water Conservation Fund Act of 1965, as amended (LWCF Act) (54 U.S.C. 200305 et. seq.) was enacted to help preserve, develop, and ensure access for the public to outdoor recreation opportunities. Among other programs, the LWCF Act provides funds for and authorizes federal assistance to the States for planning, acquisition, and development of needed land and water areas and facilities for outdoor recreation purposes. In accordance with the LWCF Act, the National Park Service (we, NPS) administers the LWCF State Assistance Program, which provides matching grants to States,

LWCF grants are provided to states (including the 50 states; the Commonwealths of Puerto Rico and the Northern Mariana Islands; the District of Columbia; and the Territories of Guam, the U.S. Virgin Islands, and American Samoa) on a matching basis for up to 50 percent of the total project-related allowable costs. Grants to eligible insular areas may be for 100 percent assistance. Payments for all projects are made to the state organization that is authorized to accept and administer funds paid for approved projects. Local units of government participate in the program as sub-grantees of the state with the state retaining primary grant compliance responsibility. The following updates are included as revisions to this collection:

1. *New Requirement—Standard Form SF–429.* In accordance with DOI's regulations at 2 CFR 1402, the SF–429 Real Property Status Report Cover Sheet and Attachment B, Request to Acquire, Furnish, or Improve, is required for projects requesting LWCF assistance for land acquisition. For post-grant completion stewardship reporting, the Cover Sheet and Attachment A, General Reporting are required.

Title of Collection: Land and Water Conservation Fund State Assistance Program.

OMB Control Number: 1024–0031.

Form Number: NPS Forms 10–902A, 10–903, 10–904, 10–904A, 10–905 and Standard Form SF429.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: States Governments; the Commonwealths of Puerto Rico and the Northern Mariana Islands; the District of Columbia; and the territories of Guam, U.S. Virgin Islands, and American Samoa.

Total Estimated Number of Annual Respondents: 423.

Total Estimated Number of Annual Responses: 7,797.

Total Estimated Number of Annual Burden Hours: 56,249.

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

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2023–21680 Filed 9–29–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Notice of Availability of the 2024–2029 National Outer Continental Shelf Oil and Gas Leasing Proposed Final Program and Final Programmatic Environmental Impact Statement

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of availability.

SUMMARY: BOEM is announcing the availability of the Proposed Final Program (PFP) for the 2024–2029 National Outer Continental Shelf (OCS) Oil and Gas Leasing Program (2024–2029 Program, National OCS Program, or Program), as well as the Final Programmatic Environmental Impact Statement for the 2024–2029 Program (Final Programmatic EIS).

FOR FURTHER INFORMATION CONTACT: For information on the 2024–2029 Program process or BOEM's policies associated with this notice, please contact Ms. Kelly Hammerle, Chief, National OCS Oil and Gas Leasing Program Development and Coordination Branch, at (703) 787–1613 or *Kelly.Hammerle@boem.gov.* For information on the 2024–2029 Final Programmatic EIS, please contact Jennifer Bosyk, Chief, Branch of Environmental Coordination, at (703) 787–1834 or *Jennifer.Bosyk@boem.gov.*

SUPPLEMENTARY INFORMATION: BOEM is responsible for administering the leasing program for oil and gas resources on the OCS and advising the Secretary of the Interior on the National OCS Program. The PFP is the last in a series of three proposals made by the Secretary, pursuant to section 18 of the OCS Lands Act, before final action may be taken to approve the 2024–2029 National OCS Program. The three analytical phases used to develop a new National OCS Program are the (1) Draft Proposed Program (DPP); (2) Proposed Program; and (3) PFP.

The first proposal, the DPP, was published on July 3, 2017 (82 FR 30886), and was followed by a 60-day comment period. The second proposal, the Proposed Program, was published

on January 8, 2018 (83 FR 829). A notice of availability announcing the Proposed Program was published in the **Federal Register** on July 8, 2022, initiating a 90-day public comment period (87 FR 40859). Following publication of the Proposed Program, BOEM received more than 760,000 comments from interested parties including governors, Federal agencies, State agencies, local agencies, energy and non-energy industries, Tribal governments, non-governmental organizations, and the general public (see Appendix A of the PFP document for more information).

After careful consideration of the OCS Lands Act section 18(a) factors, as well as input from governors and the public, the Secretary's final proposal, the PFP, includes three potential lease sales in the Gulf of Mexico (GOM) Program Area (which contains the Western GOM Planning Area and the portions of the Central and Eastern GOM planning areas not currently under Presidential withdrawal—see Figure 1). An option for a potential lease sale in the northern portion of the Cook Inlet Planning Area was identified in the Proposed Program and analyzed as part of the PFP. Based on careful consideration of section 18 requirements and factors, no Cook Inlet sale is included in the PFP.

In the PFP, the Secretary has decided to require that all leases issued under the 2024–2029 Program will include, as lease stipulations, programmatic mitigation measures to protect topographic features and pinnacle trends. Applying these stipulations at the National OCS Program development stage is consistent with current practice and continues the effective protection of these biologically sensitive areas, should they be offered in the three potential lease sales scheduled under this PFP.

The schedule shown in Table 1 reflects the potential lease sales for the 2024–2029 PFP. Figure 1 depicts the program area included in the 2024–2029 PFP.

TABLE 1—2024–2029 PROPOSED PROGRAM LEASE SALE SCHEDULE

Count	Sale No.	Year	OCS region and program area
1	262	2025	Gulf of Mexico: GOM Program Area.
2	263	2027	Gulf of Mexico: GOM Program Area.
3	264	2029	Gulf of Mexico: GOM Program Area.

The Secretary's final proposal, as described in the PFP, is the proposed action evaluated in the Final Programmatic EIS. BOEM has elected to prepare the Programmatic EIS to help describe and analyze the potential environmental impacts that could result from leasing, exploration, production, and decommissioning associated with lease sales under the National OCS Program for 2024–2029. The National Aeronautics and Space Administration and the National Park Service are Cooperating Agencies on the Final Programmatic EIS.

Please go to *https://www.boem.gov/oil-gas-energy/national-program/* for additional information about the Final Programmatic EIS and the National OCS Program for 2024–2029.

Next Steps in the Process: BOEM will submit the PFP and Final Programmatic EIS to the President and Congress at least 60 days prior to Secretarial approval of the 2024–2029 Program.

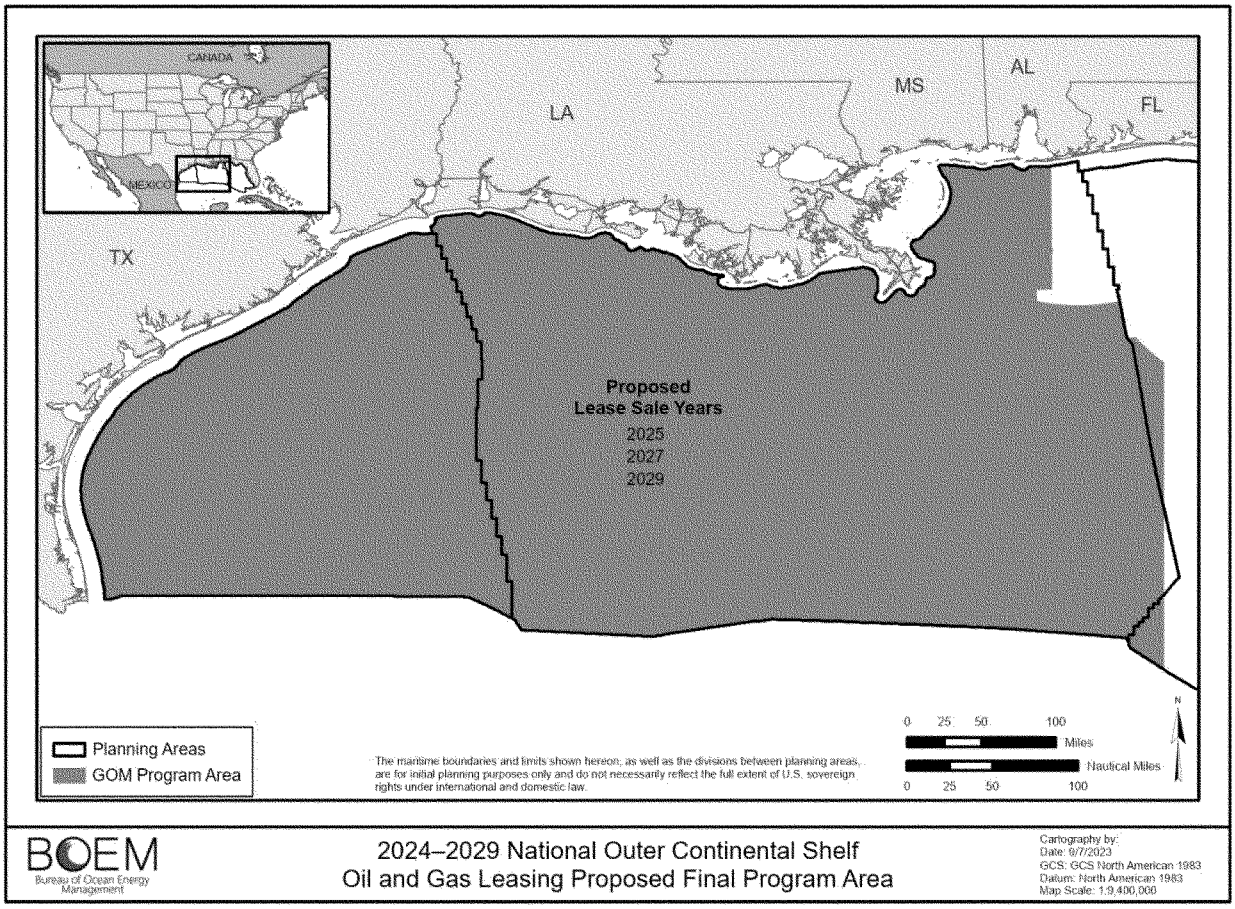
Authority: This Notice of Availability for the 2024–2029 PFP is published in accordance with section 18 of the OCS Lands Act and its implementing regulations (30 CFR part 556 subpart B). This Notice of Availability for the 2024–2029 Final Programmatic EIS is published pursuant to the regulation (40 CFR 1506.20 and 43 CFR 46.415) implementing the provisions of the National Environmental Policy Act.

Elizabeth Klein,

Director, Bureau of Ocean Energy Management.

BILLING CODE 4310–MR–P

Figure 1: Proposed Final Program Map - Gulf of Mexico Program Area



[FR Doc. 2023–21678 Filed 9–29–23; 8:45 am]
BILLING CODE 4310–MR–C

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2023–0013]

Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sale 261

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of delay of sale.

SUMMARY: With this notice, the Bureau of Ocean Energy Management (BOEM) is announcing the rescheduling of Gulf of Mexico Lease Sale 261. Instead of holding the sale on September 27, 2023, as originally planned, BOEM will open and publicly announce bids received for blocks offered in the sale on November 8, 2023, in accordance with the order issued by the United States Court of Appeals for the Fifth Circuit on September 25, 2023. Additional information regarding the sale and a new Final Notice of Sale (NOS) package will be available on BOEM's website at least 30 days prior to the sale date at *https://www.boem.gov/oil-gas-energy/leasing/lease-sale-261.*

FOR FURTHER INFORMATION CONTACT: The New Orleans Office Lease Sale Coordinator, Greg Purvis, at *BOEMGOMRLeaseSales@boem.gov* or 504–736–1729.

SUPPLEMENTARY INFORMATION: On August 25, 2023, BOEM published in the **Federal Register** the Final NOS for Lease Sale 261. See 88 FR 58310. In that Final NOS, BOEM announced that the sale would be held on September 27, 2023. Two lawsuits then challenged the Final NOS in the U.S. District Court for the Western District of Louisiana, and plaintiffs in those cases sought preliminary injunctions to force BOEM to (1) include lease blocks previously excluded to protect the Rice's whale and (2) remove provisions in Stipulation No. 4, ''Protected Species'' that BOEM had added to protect the Rice's whale from certain oil and gas activities while BOEM engaged in a reinitiated consultation under the Endangered Species Act. On September 21, 2023, six days before the planned sale, the district court issued a preliminary injunction (Case No. 2:23–CV–01157) requiring BOEM to include the previously excluded blocks and modify the stipulation by removing the new Rice's whale protections. The court also ordered BOEM to hold the sale on or before September 30, 2023. On September 22, 2023, the government filed an emergency motion in the U.S. Court of Appeals for the Fifth Circuit, requesting an extension of time to allow BOEM to take the administrative steps necessary to hold the modified sale and provide the statutorily required notice to the public of the revised sale terms. On September 25, 2023, the Fifth Circuit issued an order (Case No. 23–30666) directing BOEM to hold Lease Sale 261 as required by the district court, but permitting BOEM until November 8, 2023, to hold the sale. The Fifth Circuit's order stated that no further extensions will be granted.

BOEM is returning all bids submitted by bidders under the previously issued Final NOS and is rescheduling Lease Sale 261 for November 8, 2023. Bidders wishing to participate in Lease Sale 261

must re-submit bids in accordance with the terms and conditions contained in the revised Final NOS which, in accordance with the Outer Continental Shelf Lands Act, BOEM will publish at least 30 days prior to the sale date.

BOEM intends to publish the revised Final NOS in the **Federal Register** and on its website. The public and interested bidders are advised that a lapse in appropriations may preclude BOEM from publishing the Final NOS in the **Federal Register**. In the event of a partial or full government shutdown, BOEM will still publish the Final NOS package (*e.g.,* Final Notice of Sale, Lease Stipulations, and Information to Lessees) on its website at least 30 days prior to the sale date, and that notice will serve as the official notice of the sale.

Authority: 43 U.S.C. 1337; 30 CFR part 556.

Elizabeth Klein,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2023–21714 Filed 9–29–23; 8:45 am]

BILLING CODE 4340–98–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket Number: BOEM–2023–0053]

Call for Information and Nominations for Western, Central, and Eastern Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sales for 2024–2029

AGENCY: Bureau of Ocean Energy Management, Interior

ACTION: Call for information and nominations, request for comments.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) issues this Call for Information and Nominations (Call) covering proposed Gulf of Mexico oil and gas lease sales in the available portions of the Western, Central, and Eastern Gulf of Mexico Planning Areas (WPA, CPA, and EPA, respectively). Those sales are described in the 2024–2029 National Outer Continental Shelf (OCS) Oil and Gas Leasing Program (2024–2029 National OCS Program), which BOEM announced on September 29, 2023. This Call solicits industry nominations of acreage for possible inclusion in future sales and requests information from the public on the Call Area for lease sale planning. Specifically, BOEM seeks information on geological conditions, archaeological sites, potential use conflicts, areas of special concern, and other socioeconomic, biological, and environmental information. This Call is not a final decision to lease and does not prejudge any future secretarial decisions concerning leasing in the Gulf of Mexico.

DATES: All nominations and comments must be received by BOEM or postmarked no later than November 1, 2023.

ADDRESSES:

Public Comment Procedures: All public comments should be submitted through one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. In the field entitled, ''Search,'' enter ''BOEM–2023–0053'' and then click ''search.'' Follow the instructions to submit public comments and to view supporting and related materials available for this notice.

2. *U.S. Postal Service or other delivery service to the following address:* Chief of Leasing and Financial Responsibility Section, BOEM, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, Mail Stop GM 266A, New Orleans, Louisiana 70123–2394, telephone (504) 736–7502. Send your comments in an envelope clearly labeled ''Comments on the Call for Information and Nominations for 2024–2029 Gulf of Mexico Lease Sales.''

3. *Email: BOEMGOMRLeaseSales@boem.gov*

Nominations and Indications of Interest Procedures: To ensure security and confidentiality of proprietary information to the maximum extent possible, please send nominations, indications of interest, and other proprietary information to: Chief of Leasing and Financial Responsibility Section, BOEM, Gulf of Mexico OCS Region, 1201 Elmwood Park Blvd., Mail Stop GM 266A, New Orleans, LA 70123–2394, telephone (504) 736–7502. Consistent with subsection 6 in the ''Call for Information and Nominations'' section of this Call below, you should mark all documents and every page containing such information with ''Confidential—Contains Proprietary Information.'' Send your nominations in an envelope clearly labeled ''Nominations for 2024–2029 Gulf of Mexico Lease Sales.'' Do not send nominations, indications of interest, or other proprietary information through the Federal eRulemaking Portal or to the email address provided above.

FOR FURTHER INFORMATION CONTACT: Bridgette Duplantis, Chief of Leasing and Financial Responsibility Section, BOEM, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, Mail Stop GM 266A, New Orleans, Louisiana 70123–2394, telephone (504) 736–7502, email: *BOEMGOMRLeaseSales@boem.gov*.

SUPPLEMENTARY INFORMATION:

2024–2029 National OCS Program Development: Information on the development of the 2024–2029 National OCS Program and its programmatic environmental impact statement (PEIS) is available on BOEM's website at: *https://www.boem.gov/National-OCS-Program/*.

Environmental Review Process: BOEM intends to prepare a PEIS, in accordance with the National Environmental Policy Act (NEPA), analyzing a representative Gulf of Mexico proposed lease sale and reasonable alternatives. The PEIS will be supplemented as necessary for individual decisions on all future Gulf of Mexico lease sales included in the 2024–2029 National OCS Program.

The PEIS will evaluate the potential effects that oil and gas activities resulting from a lease sale could have on the human, marine, and coastal environments. The PEIS may propose measures and lease stipulations to mitigate adverse impacts for the alternatives being analyzed. Consultations will be conducted, as appropriate. Consultation with Tribal Nations, States, and Federal agencies address BOEM obligations under the Coastal Zone Management Act, Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, section 106 of the National Historic Preservation Act, and Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' The results of these consultations assist the Secretary in leasing decisions.

BOEM's Leasing Process: BOEM's regulations for planning and holding an oil and gas lease sale are found at 30 CFR 556.300-.309. These regulations include the following steps:

(1) Call for Information and Nominations: See section below.

(2) Area Identification: Based on the information and nominations submitted in response to this Call, BOEM will recommend an area for further leasing consideration and environmental analysis. Upon approval by the Secretary, BOEM will announce the proposed area identified for leasing in the **Federal Register**, in accordance with 30 CFR 556.302(a)(3).

(3) Proposed Notice of Sale (PNOS): If BOEM proceeds with the leasing process after Area Identification and environmental analysis, it will publish a Notice of Availability of a PNOS in the **Federal Register**. BOEM also will send the PNOS to the Governors of affected States for comment and

recommendations on the size, timing, and location of the proposed sale. The PNOS describes the size, timing, and location of the proposed sale; provides additional information on the areas proposed for leasing; lists proposed lease terms and conditions of the sale; and provides proposed stipulations to mitigate potential adverse impacts on the environment and other uses of the area.

(4) Final Notice of Sale (FNOS): If BOEM decides to proceed with leasing, it will publish a FNOS in the **Federal Register** at least 30 days before the date of the lease sale. The FNOS describes the place, time, and methods for filing, opening, and publicly announcing bids. It also contains a description of the areas offered for lease, the lease terms and conditions of the sale, and stipulations to mitigate potential adverse impacts on the environment and other uses of the area.

Call for Information and Nominations

1. Authority

This Call is published pursuant to the Outer Continental Shelf Lands Act (OCSLA), as amended (43 U.S.C. 1331–1356) and the implementing regulation at 30 CFR 556.301.

2. Purpose of the Call

The purpose of this Call is twofold. First, this Call solicits industry nominations for areas of leasing interest. Second, this Call requests comments and information from the public on the areas that should be included in the proposed oil and gas lease sales in the Gulf of Mexico included in the 2024–2029 National OCS Program. Pursuant to 30 CFR 556.301, BOEM seeks comments from industry and the public on:

(a) industry interest in the Call Area, including nominations or indications of interest in specific blocks within the Call Area;

(b) geological conditions, including bottom hazards;

(c) archaeological sites on the seabed or near shore;

(d) potential use conflicts in the Call Area, including navigation, recreation, and fisheries;

(e) areas that should receive special concern and analysis; and

(f) other socioeconomic, biological, and environmental information.

BOEM will consider information submitted in response to this Call to:

- inform the Area Identification process under 30 CFR 556.302;
- prioritize areas with higher potential for oil and gas development;
- develop potential lease terms and conditions;
- identify potential use conflicts and potential mitigation measures; and
- assist in BOEM's planning and environmental review process.

3. Description of the Call Area

The Call Area is identical to the Gulf of Mexico (GOM) area included in the 2024–2029 National OCS Program and includes the entire WPA, CPA, and EPA, except areas withdrawn by the President. The Call Area excludes areas withdrawn pursuant to section 12 of OCSLA (43 U.S.C. 1341) by Presidential memoranda dated September 8, 2020, (withdrawing the bulk of the EPA and a portion of the CPA) and July 17, 2008, (withdrawing the Flower Garden Banks National Marine Sanctuary within the boundaries that existed on July 14, 2008).

The WPA is bound on the west and north by the Federal-State boundary offshore Texas. The eastern boundary begins at the offshore boundary between Texas and Louisiana and proceeds southeasterly to 28.43° N latitude, thence south-southwesterly to 27.49° N latitude, thence south-southeasterly to 25.80° N latitude. The WPA is bound on the south by the maritime boundary with Mexico as established by treaties between the United States and Mexico. BOEM is seeking nominations and comments on the entire WPA, which consists of approximately 28.58 million acres, of which approximately 26.45 million acres are currently unleased.

The CPA is bound on the west by the WPA's eastern boundary and on the north by the Federal-State boundaries offshore Louisiana, Mississippi, and Alabama. The eastern boundary of the CPA begins at the offshore boundary between Alabama and Florida and proceeds southeasterly to 26.19° N latitude, thence southwesterly to 25.6° N latitude. The CPA is bound on the south by the maritime boundary with Mexico as established by the ''Treaty between the Government of the United States of America and the Government of the United Mexican States on the Delimitation of the Continental Shelf in the Western Gulf of Mexico beyond 200 Nautical Miles,'' which took effect in January 2001. BOEM is seeking nominations and comments on the area within the CPA not subject to Presidential withdrawal (approximately 64.47 million acres, of which approximately 56.86 million acres are currently unleased).

The Call Area includes two small sections of the EPA not subject to the 2020 Presidential withdrawal. See *https://www.boem.gov/oil-gas-energy/leasing/areas-under-restriction/* for a map and description of the areas under restriction. The first section of the EPA included in the Call and not subject to withdrawal is bound on the west and north by the CPA, on the east by the Military Mission Line (86.68° W longitude), and on the south by blocks that are beyond the U.S. Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap. The second section of the EPA included in the Call and not subject to withdrawal is a triangular-shaped area bound on the north by the southern boundary of the Lease Sale 181 area, on the east by the Military Mission Line (86.68° W longitude), and to the south and west by the CPA boundary. All blocks in both sections are more than 125 miles offshore. BOEM is seeking nominations and comments on these two sections of the EPA. Together, these two sections comprise approximately 1.05 million acres, all of which are currently unleased.

A map depicting the Call Area is available for download on the BOEM website at: *http://www.boem.gov/2024-2029/Call-for-Information/*. Copies of Official Protraction Diagrams (OPDs) also are available for download on the BOEM website at: *https://www.boem.gov/Maps-and-GIS-Data/*.

4. Targeted Leasing

BOEM requests comments and nominations for the entire Call Area. However, the GOM hosts many other uses of the OCS, some of which may conflict with oil and gas leasing or associated activities. Therefore, consideration of a targeted leasing approach is warranted.

Under a targeted leasing approach, GOM areas proposed for leasing could be further refined and narrowed based on public input and analysis during the planning and environmental review stages. A targeted leasing approach could, for example, remove biologically sensitive areas, areas that serve as unique habitat, and areas that conflict with other uses of the marine environment, such as those areas used for commercial fishing, sand resources, or future wind energy development. This targeted approach could also offer lease sales in areas with the highest resource potential while appropriately weighing environmental protection and other uses of the ocean and seabed, consistent with OCSLA. A targeted approach could also be considered in light of section 50265(b)(2) of the Inflation Reduction Act. That section requires BOEM to offer at least 60 million OCS acres for oil and gas leasing within the 12 months prior to issuing an offshore wind lease.

BOEM seeks comments on implementing targeted leasing and information on areas of specific interest within the Call Area as it continues analyzing areas most suitable for oil and gas leasing.

5. Instructions on Responding to the Call

BOEM requests parties interested in leasing any whole or partial blocks within the Call Area to indicate their interest in, and comment on, blocks that they would like included in a proposed lease sale. Parties should explicitly nominate whole or partial blocks and rank them using the following indicators: 1 [high], 2 [medium], or 3 [low]. Parties are encouraged to be as specific as possible in prioritizing blocks and supporting nominations with detailed information, such as relevant geologic, geophysical, and economic data. BOEM will consider as low priority areas where interest has been indicated but not prioritized.

Parties may also nominate blocks by OPD and leasing map designations to ensure correct interpretation of their nominations. OPDs and leasing maps are available on BOEM's website at *https://www.boem.gov/Maps-and-GIS-Data/*.

See subsection 6, ''Protection of Privileged, Proprietary, and Personal Information,'' regarding protection and release of information and how to submit proprietary information.

BOEM also seeks comments from the public regarding particular geological, environmental, biological, archaeological, and socioeconomic conditions, potential use conflicts, or other information about conditions that could affect the potential leasing and development of particular areas. Comments may refer to broad areas or particular OCS blocks.

6. Protection of Privileged, Proprietary, and Personal Information

BOEM will protect privileged or proprietary information in accordance with the Freedom of Information Act (FOIA) and OCSLA requirements. To avoid inadvertent release of such information, you should mark all documents and every page containing such information with ''Confidential—Contains Proprietary Information.'' To the extent a document contains a mix of proprietary and nonproprietary information, you should clearly mark the document to indicate which portion of the document is proprietary and which is not. Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. BOEM considers nominations of specific blocks to be proprietary. Therefore, BOEM will not release information that identifies any particular nomination with any particular party, so as not to compromise the competitive position of any participants.

Please be aware that BOEM's practice is to make all other comments, including the names and addresses of individuals, available for public inspection. Before including your address, phone number, email address, or other personally identifiable information in your comment, please be advised that your entire comment, including your personally identifiable information, may be made publicly available at any time. For BOEM to consider withholding from disclosure your personally identifiable information, you must identify, in a cover letter, any information contained in your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm.

Even if BOEM withholds your information in the context of this Call, your submission is subject to the FOIA. If your submission is requested under the FOIA, your information will only be withheld if BOEM determines that one of the FOIA exemptions to disclosure applies. Such a determination will be made in accordance with the Department's FOIA regulations and applicable law.

BOEM will make available for public inspection all comments, in their entirety, submitted by organizations and businesses (except as provided above for proprietary information) or by individuals identifying themselves as representatives of organizations or businesses.

Elizabeth Klein,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2023–21679 Filed 9–29–23; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2023–0046]

Notice of Intent To Prepare a Gulf of Mexico Regional Outer Continental Shelf Oil and Gas Programmatic Environmental Impact Statement

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of intent (NOI) to prepare a programmatic environmental impact statement (PEIS); request for comments.

SUMMARY: Consistent with the regulations implementing the National Environmental Policy Act (NEPA), BOEM announces its intent to prepare a Gulf of Mexico (GOM) Regional Outer Continental Shelf (OCS) Oil and Gas Programmatic Environmental Impact Statement (GOM Oil and Gas PEIS). The GOM Oil and Gas PEIS will analyze the potential impacts of a representative oil and gas lease sale in available OCS areas of the Western, Central, and Eastern Planning Areas (Proposed Action) and the associated potential site and activity-specific approvals resulting from a sale. This NOI announces the scoping process BOEM will use to identify significant issues and potential alternatives for consideration in the GOM Oil and Gas PEIS. The draft PEIS will include a summary of all alternatives, information, and analyses submitted during the scoping process for consideration by BOEM and the cooperating agencies.

DATES: BOEM will consider comments received by November 1, 2023. BOEM will hold two virtual public scoping meetings for the GOM Oil and Gas PEIS. The first will be held on October 17, 2023, at 6 p.m. CDT, and the second on October 19, 2023, at 1 p.m. CDT.

Additional information and registration for the public meetings may be found here: *https://www.boem.gov/Gulf-of-Mexico-Oil-and-Gas-PEIS* or by calling 1–800–200–4853.

ADDRESSES: Detailed information can be found on BOEM's website at: *https://www.boem.gov/Gulf-of-Mexico-Oil-and-Gas-PEIS.*

Written comments can be submitted through the *regulations.gov* web portal: Navigate to *https://www.regulations.gov* and search for Docket No. BOEM–2023–0046. Select the document in the search results on which you want to comment, click on the ''Comment'' button, and follow the online instructions for submitting your comment. A commenter's checklist is available on the comment web page. Enter your information and comment, then click ''Submit.''

FOR FURTHER INFORMATION CONTACT: Helen Rucker, BOEM New Orleans Office, Office of Environment, 1201 Elmwood Park Blvd., New Orleans, Louisiana 70123, telephone (504) 736–2421, or email *helen.rucker@boem.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of and Need for the Proposed Action

The purpose of the Federal Proposed Action is to offer for lease, and ultimately to allow for potential post-lease development through plan and permit approvals (subject to additional environmental review and regulatory oversight), those areas that may contain economically recoverable oil and gas. This purpose is consistent with BOEM's mandate to further the orderly development of OCS oil and gas resources under the OCS Lands Act. Each individual proposed lease sale would provide qualified bidders the opportunity to bid upon and lease available acreage in the GOM OCS in order to explore, develop, and produce oil and natural gas.

The need for the Proposed Action is to manage the development of OCS oil and gas resources in an environmentally and economically responsible manner. Oil from the GOM OCS contributes to meeting domestic demand; however, combustion of oil and natural gas from the GOM OCS creates greenhouse gas (GHG) emissions, fueling climate change, which poses a significant global threat. The long-term goal of the Biden administration is to reach net-zero GHG emissions by 2050 and to limit global warming to less than 1.5° Celsius. The administration also established goals of a 50 percent reduction of 2005 GHG emissions by 2030 and a carbon pollution-free power sector by 2035 (*https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/*).

To meet these targets, the United States would have to drastically change the way it both consumes and supplies energy. An increase in renewable energy production, electrification, energy efficiency, and reduced consumption leads to less reliance on oil and gas resources and reduced demand. Refer to chapters 1.2 and 6 of the 2024–2029 National OCS Oil and Gas Leasing Proposed Final Program (2024–2029 National OCS Proposed Final Program) for details on U.S. energy needs and national and regional energy markets, respectively. Additionally, under the Inflation Reduction Act of 2022 (Pub. L. 117–169, enacted Aug. 16, 2022), Congress directed that the Secretary of the Interior must hold an offshore oil and gas lease sale(s) totaling 60 million acres in the year prior to issuing any wind energy leases.

Proposed Action and Preliminary Alternatives

The Proposed Action evaluated in this PEIS is to hold an oil and gas lease sale on the U.S. GOM OCS. This PEIS is expected to be used to inform the decision for the first GOM lease sale proposed in the 2024–2029 National OCS Oil and Gas Leasing Program. It also is expected to be used and supplemented as appropriate for decisions on future proposed GOM lease sales. In addition, this PEIS will be used for tiering of associated post-lease site and activity-specific OCS oil- and gas-related activity analyses and approvals.

In this PEIS, BOEM will analyze four alternatives to the Proposed Action: a no action alternative and three action alternatives. Because this PEIS analyzes a representative lease sale, Alternative A (No Action) is the cancellation of a single proposed GOM lease sale.

The first action alternative (Alternative B) offers all available unleased acreage in the U.S. GOM OCS, including the Western and Central Planning Areas and the portion of the Eastern Planning Area not subject to Presidential withdrawal. Alternative B correlates to Program Area 1 from the 2024–2029 National OCS Proposed Final Program and would satisfy the requirement in the Inflation Reduction Act to offer an aggregate of at least 60 million acres for offshore oil and gas leasing within a 12-month period prior to issuing offshore wind energy leases. Alternative B analyzes lease stipulations and other mitigation measures for environmental protection.

The second action alternative (Alternative C) would allow for a proposed lease sale excluding targeted portions of the Central, Western, and Eastern Planning Areas within the U.S. GOM OCS. Alternative C would satisfy the requirement in the Inflation Reduction Act to offer an aggregate of at least 60 million acres for offshore oil and gas leasing within a 12-month period prior to issuing offshore wind energy leases. Alternative C would exclude several areas for environmental protection purposes and to avoid conflicts with other ocean uses. Under this alternative, BOEM would analyze the effects of a single oil and gas sale offering at least the aggregate area required by the Inflation Reduction Act to allow wind energy leases to be issued.

The final action alternative (Alternative D) would allow for a proposed lease sale excluding even more targeted portions than Alternative C in the Central and Western Planning Areas within the U.S. GOM OCS. Alternative D would exclude more of the OCS for environmental considerations and to avoid conflicts with other ocean uses. However, this Alternative would not on its own satisfy the aggregate lease acreage requirements of the Inflation Reduction Act to issue offshore wind energy leases. Selection of this alternative would require at least one additional lease sale within a 12-month period in order to satisfy the requirements of the Inflation Reduction Act.

A complete description of the alternatives considered may be found here: *https://www.boem.gov/Gulf-of-Mexico-Oil-and-Gas-PEIS.*

Summary of Potential Impacts

Potential impacts to resources may include adverse or beneficial impacts on air quality; water quality; coastal communities and habitats; benthic communities and habitats (including protected corals); pelagic communities and habitats; fishes and invertebrates; birds; marine mammals; sea turtles; commercial fisheries; recreational fishing; recreational resources; land use and coastal infrastructure; social factors (including environmental justice); economic factors; and cultural, historical, and archaeological resources. These potential impacts will be analyzed in the draft and final GOM Oil and Gas PEIS.

Based on a preliminary evaluation of these resources, previous NEPA analyses, and BOEM's extensive history of leasing in the GOM, BOEM expects potential impacts on the resources listed above from routine air emissions, discharges and wastes, bottom disturbance, noise, coastal land use or modification, lighting and visual impacts, offshore habitat modification or space use, and socioeconomic changes. Additional impacts may occur from accidental events such as unintentional releases into the environment, response activities, or strikes and collisions. Past GOM oil and gas NEPA analyses (assuming analyzed mitigation measures are adopted) have shown that impacts range from negligible to moderate with most being negligible or minor and some beneficial.

Post-Lease Plan/Permit Approvals and Tiering

If the Department of the Interior ultimately decides to move forward with an individual lease sale, neither this PEIS nor the resulting individual lease sale record of decision (ROD) will authorize any immediate activities (beyond ancillary activities under a lease) or approve any individual applications for plans or permits. The

GOM Oil and Gas PEIS will provide a programmatic environmental analysis and framework to support future decision-making on individual plan and permit submittals.

When plans or permit applications are submitted to BOEM or the Bureau of Safety and Environmental Enforcement, the site-specific characteristics of the project will be evaluated by preparing additional environmental analyses that may tier from this PEIS or incorporate it by reference. Based on the site-specific applications and evaluations, BOEM may then reach a site-specific determination and approve, approve with modifications, or disapprove individual plans or permits. This PEIS may inform future BOEM decision-making on plan submittals but does not approve or authorize any applications or plans. Therefore, neither this PEIS nor a resulting lease sale ROD constitutes a final agency action authorizing or approving any individual plan(s) or permit(s).

Anticipated Authorizations and Consultations

In conjunction with this PEIS, BOEM may undertake various consultations or coordination in accordance with applicable Federal laws, such as the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, National Historic Preservation Act (NHPA), and Coastal Zone Management Act, as appropriate. BOEM will also conduct government-to-government Tribal consultations.

Decision-Making Schedule

After the draft PEIS is completed, the U.S. Environmental Protection Agency will publish a notice of availability (NOA). BOEM will request public comments on the draft PEIS through its own NOA for the draft PEIS. BOEM currently expects both NOAs for the draft PEIS to be published in summer 2024. After the public comment period ends, BOEM will review and respond to comments received and will develop the final PEIS. BOEM will make the final PEIS available to the public at least 30 days prior to issuance of any ROD. If the decision is to hold a sale, the ROD will document the final decision on the area and terms to be offered in the sale, including any required mitigation (*e.g.,* through lease stipulations).

Scoping Process

This NOI commences the public scoping process to identify issues and potential alternatives for consideration in the GOM Oil and Gas PEIS. BOEM will hold two virtual public scoping meetings as described above under the ''Dates'' caption and at *https://www.boem.gov/Gulf-of-Mexico-Oil-and-Gas-PEIS.* Throughout the scoping process, Federal agencies, Tribal, State, and local governments, and the public have the opportunity to help BOEM identify significant resources and issues, impact-producing factors, mitigation measures, and reasonable alternatives to be analyzed in the PEIS, as well as to provide additional information.

BOEM will also use the NEPA comment process to initiate the section 106 consultation process under the NHPA (54 U.S.C. 300101 *et seq.*), as permitted by 36 CFR 800.2(d)(3). To inform the section 106 consultation, through this notice BOEM seeks public input regarding the identification of historic properties affected by or potential effects to historic properties from activities associated with approval of oil and gas development in the GOM.

NEPA Cooperating Agencies

BOEM, as the lead agency, invites other Federal agencies and Tribal, State, and local governments to consider becoming cooperating agencies in the preparation of this PEIS. The Council on Environmental Quality (CEQ) NEPA regulations specify that qualified agencies and governments are those with ''jurisdiction by law or special expertise.'' Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and should be aware that an agency's role in the environmental analysis neither enlarges nor diminishes the final decision-making authority of any other agency involved in the NEPA process.

Upon request, BOEM will provide potential cooperating agencies with a written summary of expectations for cooperating agencies, including schedules, milestones, responsibilities, scope and detail of cooperating agencies' expected contributions, and availability of pre-decisional information. BOEM anticipates this summary will form the basis for a memorandum of agreement between BOEM and any non-Department of the Interior cooperating agency; a memorandum of understanding is required in the case of non-Federal agencies. *See* 43 CFR 46.225(d). Agencies also should consider the factors for determining cooperating agency status in the CEQ memorandum entitled ''Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act,'' dated January 30, 2002. This document is available on the internet at: *www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-CoopAgenciesImplem.pdf.*

BOEM does not provide financial assistance to cooperating agencies. Governmental entities that are not cooperating agencies will have opportunities to provide information and comments to BOEM during the public input stages of the NEPA process.

Comments

Federal agencies, Tribal, State, and local governments, and other interested parties are requested to comment on the scope of this PEIS, significant issues that should be addressed, and alternatives that should be considered. For information on how to submit comments, see the ''Addresses'' section above.

BOEM does not consider anonymous comments. Please include your name and address as part of your comment. Comments submitted in response to this notice are a matter of public record. You should be aware that your entire comment—including your address, phone number, email address, and other personally identifiable information included in your comment—may be made publicly available.

You may request that BOEM withhold your personally identifiable information from public disclosure. For BOEM to consider withholding from disclosure your personally identifying information, you must identify, in a cover letter, any information contained in the submittal of your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences from disclosing your information, such as embarrassment, injury, or other harm.

Even if BOEM withholds your information in the context of this NOI, your submission is subject to the Freedom of Information Act (FOIA). If your submission is requested under the FOIA, BOEM can only withhold your information if it determines that one of the FOIA's exemptions to disclosure applies. Such a determination will be made in accordance with the Department of the Interior's FOIA regulations and applicable law.

Additionally, under section 304 of the NHPA, BOEM is required, after consultation with the Secretary of the Interior, to withhold the location, character, or ownership of historic property if it determines that disclosure may, among other things, cause a significant invasion of privacy, risk harm to the historic property, or impede the use of a traditional religious site by practitioners. Tribal entities and other

parties providing information on historic resources should designate information that they wish to be held as confidential and provide the reasons why BOEM should do so.

All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

BOEM requests data, traditional and indigenous knowledge, comments, views, information, analysis, alternatives, or suggestions relevant to the analysis of the Proposed Action from the public; affected Federal, Tribal, State, and local governments, agencies, and offices; the scientific community; industry; or any other interested party. Specifically, BOEM requests information on the following topics:

1. Potential mitigation measures, including GOM oil and gas development alternatives, and the effects these could have on:

a. Biological resources, including birds, coastal communities, benthic communities, pelagic communities, fish, invertebrates, essential fish habitat, marine mammals, and sea turtles;

b. Physical resources and conditions, including air quality, water quality, coastal habitats, benthic habitats, and pelagic habitats; and

c. Socioeconomic and cultural resources, including commercial fishing, recreational fishing, demographics, employment, economics, environmental justice, land use and coastal infrastructure, navigation and vessel traffic, other uses (such as marine minerals, military use, and aviation), recreation and tourism, and scenic and visual resources.

2. The identification of historic properties within the GOM, the potential effects on those historic properties from GOM oil and gas development, and any information that supports identification of historic properties under the NHPA. BOEM also solicits proposed measures to avoid, minimize, or mitigate any adverse effects on historic properties. If any historic properties are identified, a potential effects analysis will be available for public and NHPA consulting party comment in the draft PEIS.

3. Information on other current or planned activities in the GOM, including any mitigation measures, their possible impacts on the alternatives, and the alternatives' possible impacts on those activities.

4. Other information relevant to impacts on the human environment from potential GOM oil and gas development alternatives, including any mitigation measures.

To promote informed decision-making, comments should be as specific as possible and should provide as much detail as necessary to meaningfully and fully inform BOEM of the commenter's position. Comments should explain why the issues raised are important for consideration of the Proposed Action, as well as economic, employment, and other impacts affecting the quality of the human environment.

Authority: 42 U.S.C. 4321 *et seq.,* and 40 CFR 1501.9.

James J. Kendall,

Regional Director, New Orleans Office, Bureau of Ocean Energy Management.

[FR Doc. 2023–21675 Filed 9–29–23; 8:45 am]

BILLING CODE 4340–98–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04084000, XXXR4081X1, RN.20350010.REG0000]

Public Meeting of the Colorado River Basin Salinity Control Advisory Council

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Reclamation is publishing this notice to announce that a Federal Advisory Committee meeting of the Colorado River Basin Salinity Control Advisory Council (Council) will take place. This meeting is open to the public.

DATES: The meeting will take place in-person and virtually on the following two days: Tuesday, October 24, 2023, from 1:30 p.m. to approximately 5:00 p.m. (MDT), and Wednesday, October 25, 8:30 a.m. to 10:30 a.m. (MDT).

ADDRESSES: The in-person meeting will be held at the New Mexico State Capitol Building at 411 S Capitol Street, Santa Fe, New Mexico 87501.

To access the meeting virtually, please contact Clarence Fullard; see **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Clarence Fullard, telephone (303) 253–1042; email at *cfullard@usbr.gov.* Individuals 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: The meeting of the Council is being held under the provisions of the Federal Advisory Committee Act of 1972. The Council was established by the Colorado River Basin Salinity Control Act of 1974 (Pub. L. 93–320) (Act) to receive reports and advise Federal agencies on implementing the Act.

Purpose of the Meeting: The purpose of the meeting is to discuss the accomplishments of Federal agencies and make recommendations on future activities to control salinity.

Agenda: Council members will be briefed on the status of salinity control activities. The Bureau of Reclamation, Bureau of Land Management, U.S. Fish and Wildlife Service, and United States Geological Survey of the Department of the Interior; the Natural Resources Conservation Service of the Department of Agriculture; and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss salinity control activities, the contents of the reports, and the Basin States Program created by Public Law 110–246, which amended the Act. A final agenda will be posted online at *https://www.usbr.gov/uc/progact/salinity/* at least one week prior to the meeting.

Meeting Accessibility/Special Accommodations: The meeting is open to the public. Individuals wanting virtual access to the meeting should contact Clarence Fullard (see **FOR FURTHER INFORMATION CONTACT**) no later than October 16, 2023, to receive instructions. Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Comments: The Council chairman will provide time for oral comments from members of the public at the meeting. Individuals wanting to make an oral comment should contact Clarence Fullard (see **FOR FURTHER INFORMATION CONTACT**) to be placed on

the public comment list. Depending on the number of people wishing to comment and the time available, the amount of time for oral comments may be limited. Members of the public may also file written statements with the Council before, during, or up to 30 days after the meeting either in person or by mail. To allow full consideration of information by Council members at this meeting, written comments must be provided to Clarence Fullard (see **FOR FURTHER INFORMATION CONTACT**) by October 16, 2023.

Public Disclosure of Personal Information: 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.

Authority: 5 U.S.C. ch. 10.

Wayne Pullan,

Regional Director, Upper Colorado Basin—Interior Region 7, Bureau of Reclamation.

[FR Doc. 2023–21687 Filed 9–29–23; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–590 and 731–TA–1397 (Review)]

Sodium Gluconate, Gluconic Acid, and Derivative Products From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on sodium gluconate, gluconic acid, and derivative products from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted October 2, 2023. To be assured of consideration, the deadline for responses is November 1, 2023. Comments on the adequacy of responses may be filed with the Commission by December 12, 2023.

FOR FURTHER INFORMATION CONTACT: Lawrence Jones (202–205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 13, 2018, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of sodium gluconate, gluconic acid, and derivative products from China (83 FR 56299). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* corresponding to the range of sodium gluconate, gluconic acid, and derivative products within Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as PMP Fermentation Products, the sole domestic producer of the *Domestic Like Product* during the original investigations.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is November 13, 2018.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the

corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is on or before 5:15 p.m. on November 1, 2023. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is on or before 5:15 p.m. on December 12, 2023. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*, elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–580, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2022, except as noted (report quantity data in dry pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in dry pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in dry pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 25, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–21290 Filed 9–29–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1203 (Second Review)]

Xanthan Gum From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on xanthan gum from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice

by submitting the information specified below to the Commission.

DATES: Instituted October 2, 2023. To be assured of consideration, the deadline for responses is November 1, 2023. Comments on the adequacy of responses may be filed with the Commission by December 12, 2023.

FOR FURTHER INFORMATION CONTACT: Alec Resch (202–708–1448), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On July 19, 2013, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of xanthan gum from China (78 FR 43143). Following the five-year reviews by Commerce and the Commission, effective November 30, 2018, Commerce issued a continuation of the antidumping duty order on imports of xanthan gum from China (83 FR 61602). The Commission is now conducting a second review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited five-year review determination, the Commission defined a single *Domestic Like Product* as all xanthan gum, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited five-year review determination, the Commission defined a single *Domestic Industry,* consisting of all U.S. producers of xanthan gum.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is 5:15 p.m. on November 1, 2023. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy

of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is 5:15 p.m. on December 12, 2023. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–581, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be Provided in Response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2017.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2022, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s')

operations on that product during calendar year 2022 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2017, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 25, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–21373 Filed 9–29–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1593 (Final)]

Certain Freight Rail Couplers and Parts Thereof From Mexico; Supplemental Schedule for the Final Phase of Antidumping Duty Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: September 21, 2023.

FOR FURTHER INFORMATION CONTACT: Lawrence Jones ((202) 205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: Effective March 3, 2023, the Commission established a general schedule for the conduct of the final phase of its antidumping duty investigation and countervailing duty investigation on certain freight rail couplers and parts thereof (''FRCs'') from China and Mexico (88 FR 16031, March 15, 2023), following a preliminary determination by the U.S. Department of Commerce (''Commerce'') that imports of FRCs from China were being subsidized by the government of China (88 FR 13425, March 3, 2023), and sold in the United States at less than fair value (''LTFV'') (88 FR 15372, March 13, 2023). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on March 15, 2023 (88 FR 16031). The Commission conducted its hearing through in-person on May 18, 2023. All persons who requested the opportunity were permitted to participate.

Commerce issued final affirmative countervailing and antidumping duty determinations with respect to imports of FRCs from China (88 FR 32184, May 19 2023; 88 FR 34485, May 30, 2023). The Commission subsequently issued Its final determination that an industry in the United States was materially injured by reason of imports of FRCs from China, provided for in subheadings 8607.30.10 and 7326.90.86 of the Harmonized Tariff Schedule of the United States, that have been found by Commerce to be sold in the United States at LTFV and subsidized by the government of China (88 FR 43398, June 7, 2023).

Commerce issued a final affirmative antidumping duty determination with respect to imports of FRCs from Mexico (88 FR 65153, September 21, 2023). Accordingly, the Commission currently is issuing a supplemental schedule for its antidumping duty investigation on imports of FRCs from Mexico.

This supplemental schedule is as follows: the deadline for filing supplemental party comments on Commerce's final antidumping duty determination is 5:15 p.m. on October 4, 2023. Supplemental party comments may address only Commerce's final antidumping duty determination regarding imports of FRCs from Mexico. These supplemental final comments may not contain new factual information and may not exceed five (5) pages in length. The supplemental staff report in the final phase of the current investigation will be placed in the nonpublic record on October 16, 2023, and a public version will be issued thereafter.

For further information concerning this proceeding see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 26, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–21573 Filed 9–29–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–921 (Fourth Review)]

Folding Gift Boxes From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on folding gift boxes from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: September 5, 2023.

FOR FURTHER INFORMATION CONTACT: (Alexis Yim 202–708–1446), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On September 5, 2023, the Commission determined that the domestic interested party group response to its notice of institution (88 FR 35917, June 1, 2023) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act (19 U.S.C. 1675(c)(3)).[2]

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for this review on October 4, 2023. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before 5:15 p.m. on October 12, 2023, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by October 12, 2023. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] Chairman Johanson voted to conduct a full review.

[3] The Commission has found the response submitted on behalf of Hallmark Cards, Inc. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

Determination.—The Commission has determined this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Act; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 26, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–21562 Filed 9–29–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0090]

Agency Information Collection Activities; Proposed eCollection eComments Requested; National Firearms Act (NFA)—Special Occupational Taxes (SOT)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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 July 20, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until November 1, 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: Melissa Mason, either by mail at mailing address, or by email at *NFAOMBCOMMENTS@ATF.GOV* or telephone at 304–616–4500.

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 1140–0090. 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 previously approved collection.

2. *Title of the Form/Collection:* National Firearms Act (NFA)—Special Occupational Taxes (SOT).

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF Form 5630.7.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected Public: Private Sector—businesses or other for-profit.

Abstract: ATF has been collecting Special Occupational Taxes (SOT) under the National Firearms Act (NFA) (Title 26, U.S.C. Chapter 53). Firearms dealers, manufacturers, and importers must pay this tax in order to conduct multiple transfers of specified weapons (such as machine guns) within the tax year. The Information Collection (IC) OMB 1140–0090 is being revised due to the removal of the previously corresponding ATF Forms 5630.5R and 5630.5RC. These forms will no longer be required going forward. ATF Form 5630.7 will be the only form necessary to fulfill the requirement for this IC.

5. *Obligation To Respond:* The obligation to respond is mandatory per title 26, U.S.C. 5801, chapter 53.

6. *Total Estimated Number of Respondents:* 16,659 respondents.

7. *Estimated Time per Respondent:* 15 minutes.

8. *Frequency:* Once annually.

9. *Total Estimated Annual Time Burden:* 4,164 hours.

10. *Total Estimated Annual Other Costs Burden:* The estimated cost for all 16,659 respondents to mail the SOT form (ATF Form 5630.7) is $.63 per person. Therefore the public cost associated with this IC is $10,495.

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: September 26, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–21585 Filed 9–29–23; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

219th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Teleconference Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 219th open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held via a teleconference on Monday, October 30, 2023.

The meeting will begin at 12:00 p.m. and end at approximately 6:00 p.m. The purpose of the open meeting is for the members of the ERISA Advisory Council to discuss potential recommendations for the Secretary of Labor on the issues of: (1) Long-Term Disability Benefits and Mental Health Disparity, and (2) Recordkeeping in the Electronic Age. Descriptions of the 2023 study topics are available on the ERISA Advisory Council's web page at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council*.

Instructions for public access to the teleconference meeting will be available on the ERISA Advisory Council's web page at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council* prior to the meeting.

Organizations or members of the public wishing to submit a written statement on the 2023 study topics may do so on or before Monday, October 23, 2023, to Christine Donahue, Executive Secretary, ERISA Advisory Council. Statements should be transmitted electronically as an email attachment in text or pdf format to *donahue.christine@dol.gov*. Statements transmitted electronically that are included in the body of the email will not be accepted. Relevant statements received on or before Monday, October 23, 2023, will be included in the record of the meeting and made available through the Employee Benefits Security Administration Public Disclosure Room. No deletions, modifications, or redactions will be made to the statements received as they are public records. *Warning:* Do not include any personally identifiable or confidential business information that you do not want publicly disclosed.

Individuals or representatives of organizations interested in addressing the ERISA Advisory Council at the public meeting should forward their requests to the Executive Secretary on or before Monday, October 23, 2023, via email to *donahue.christine@dol.gov*. Any oral presentation to the Council will be limited to ten minutes, but as indicated above, an extended written statement may be submitted for the record on or before October 23, 2023.

Individuals who need special accommodations should contact the Executive Secretary on or before Monday, October 23, 2023, via email to *donahue.christine@dol.gov* or by telephoning (202) 693–8641.

For more information about the meeting, contact the Executive Secretary at the address or telephone number above.

Signed at Washington, DC, this 27th day of September, 2023.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2023–21688 Filed 9–29–23; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2023–20; Exemption Application Nos. D–12032 and D–12033]

Exemption From Certain Prohibited Transaction Restrictions Involving the Occidental Petroleum Corporation Savings Plan and the Anadarko Employee Savings Plan Located in Houston, TX

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of exemption.

SUMMARY: This document contains a notice of exemption issued by the Department of Labor (the Department) from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974. The exemption permits: (1) the acquisition, on August 3, 2020, by the Occidental Petroleum Corporation Savings Plan (the Oxy Plan) and the Anadarko Employee Savings Plan (the Anadarko Plan; together, the Plans), of stock warrants (the Warrants) issued by Occidental Petroleum Company, a party in interest with respect to the Plans; and (2) the holding of the Warrants.

DATES: This exemption will be in effect for the period beginning August 3, 2020, through August 12, 2027.

FOR FURTHER INFORMATION CONTACT: Mrs. Blessed Chuksorji-Keefe of the Department at (202) 693–8567. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Plans requested an exemption pursuant to ERISA Section 408(a) and supplemented the request with certain additional information that has been made a part of the public record.[1] On February 9, 2023, the Department published a notice of proposed exemption in the **Federal Register** at 88 FR 8472.

Based on the record, the Department has determined to grant the proposed exemption. This exemption provides only the relief specified herein. It provides no relief from violations of any law other than the prohibited transaction provisions of ERISA, as expressly stated herein.

The Department makes the requisite findings under ERISA Section 408(a) based on the Applicants' adherence to all the conditions of the exemption. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken individually and as a whole, necessary for the Department to grant the relief requested by the Applicants. Absent these conditions, the Department would not have granted this exemption.

Background

As discussed in greater detail in the proposed exemption, the Applicants are: (a) the Occidental Petroleum Corporation (Occidental or Oxy); (b) the Anadarko Petroleum Corporation (Anadarko), a wholly owned subsidiary of Oxy; and (c) the Plans, which are sponsored by Oxy and Anadarko, respectively.

On June 26, 2020, Oxy announced that its Board of Directors had declared a distribution of Warrants to holders of Oxy common stock on the record date (Record Date) of July 6, 2020. The Warrants have a seven-year term and expire on August 3, 2027. Recipients may exercise the Warrants to purchase additional shares of Oxy common stock at the exercise price of $22 per share or sell the Warrants at the prevailing market price on the NYSE.[2]

On August 3, 2020, Oxy distributed the Warrants. Stockholders of record, including the Plans, received 1/8th (12.5%) of a Warrant for each share of Oxy common stock they held as of July 6, 2020. Each Oxy common stockholder, including the Plans, received the same proportionate number of Warrants based on the number of shares of Oxy common stock held as of July 6, 2020. The Plans and the other stockholders received the Warrants automatically, without any action on their part, because of Oxy's unilateral and independent corporate act.

The Oxy Plan received 1,476,172 Warrants based on its holding of 11,809,376 shares of Oxy common stock. The Anadarko Plan received 26,601 Warrants based on its holding of 212,813 shares of Oxy common stock. Each Plan established a Warrant account to reflect their respective participants' proportionate interest in the Warrants. All stockholders, including each Plan participant, received 1/8th of a Warrant for every share of common stock of

[1] The procedures for requesting an exemption are set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

[2] As of the Record Date, July 6, 2020, the closing price for Oxy common stock on the NYSE was $18.18 per share.

which they were the record holder as of July 6, 2020.

The Applicants represent that all decisions regarding whether to hold, sell, or exercise the Warrants by the Plans were made by Fiduciary Counselors Inc. (FCI), a qualified independent fiduciary within the meaning of 29 CFR 2570.31(j), while acting solely in the interests of the Plans and their participants and beneficiaries and in accordance with the Plans' provisions.

As described in the proposed exemption, FCI sold the Oxy Plan's 1,476,172 Warrants in ''blind transactions'' on the NYSE over the course of five trading dates (August 6, 7, 10, 11, and 12, 2020) for gross proceeds of $6,332,184.28 which were proportionately allocated to the Plan accounts of the affected participants in the Oxy Stock Fund (and reinvested in such participants' accounts in the Oxy Stock Fund). FCI sold the Anadarko Plan's 26,601 Warrants in ''blind transactions'' on the NYSE on August 10, 2020, for proceeds of $115,538.88. Because the Anadarko Plan was frozen to new investments, the proceeds from the sale were proportionately credited to the affected participants through the Anadarko Plan's qualified designated investment alternative. At the time of the sales of the Warrants by FCI, a share of Oxy Stock ranged from $15.23 on August 6, 2020 to $14.71 on August 12, 2020. The Warrants had an exercise price of $22.00 per share.

The Applicants requested an exemption to permit the acquisition and holding by the Plans of the Warrants that were issued by Oxy, a party in interest with respect to the Plans. An exemption is necessary because the acquisition and holding of the Warrants by the Plans is prohibited under ERISA and the Code.

On February 9, 2023, the Department published a notice of proposed exemption in the **Federal Register** that would permit the Plans' acquisition and holding of the Warrants. The exemption's protective conditions include a requirement that FCI represent the Plans' interests for all purposes with respect to the acquisition and holding of the Warrants, and that no brokerage fees, commissions, subscription fees, or other charges were paid by the Plans with respect to the acquisition and holding of the Warrants. In addition, FCI's responsibilities included determining whether and when to exercise or sell each Warrant held by the Plans.

As discussed below, the Department finds that the favorable terms of the acquisition and holding of the Warrants by the Plans, combined with the protective conditions included in this exemption, are appropriately protective and in the interest of the Plans and their participants to support the granting of this exemption.

Comments Received Regarding the Proposed Exemption

In the proposed exemption, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the proposed exemption by March 27, 2023. During the comment period, the Department received nine written comments from seven Plan participants (and a comment from FCI that is part of an email exchange between FCI and one of the aforementioned commenters, a retired Plan participant). The Department did not receive a request for a public hearing from any Plan participant.

Comments

1. Commenter Requests That the Oxy Warrants Be Returned to His Account

One Plan participant submitted three of the nine comments, in which they expressed their opposition to the sale of the Warrants from the participant's 401(k) account. The Plan participant insisted that they ''had no intention of selling these [W]arrants as they had a 7-year time value,'' and demanded that the Warrants be returned to his account. After it received this comment, the Department requested that the Plans' representative submit a response to these three comments to the Department. The Department also requested that FCI contact the Plan participant directly to address his concerns.

Applicant's Response: The Plans' representative, an attorney for the Plan, reported to the Department that the participant's concerns were related to FCI's decision to sell the Warrants. The representative stated that she believes the commenter's concerns were appropriately addressed in the exemption application and FCI's report. Specifically, as explained in the application, the Oxy Stock Fund in each of the Plans is a unitized fund in which contributions allocated to participants' Oxy Stock Fund accounts reflect their unit interest in the Oxy common stock held by the Oxy Plan; *i.e.,* the Plans own the stock and the participants receive an allocated interest in the value of the Fund. According to the representative the Plans were amended to provide that participants invested in the Stock Fund were to receive an allocated proportionate interest in the warrants received by the Plans based on the participant's Oxy Stock Fund units on July 6, 2020, the record date. The Plans were also amended to provide that an independent fiduciary would make decisions with respect to whether to sell or exercise the warrants and if the decision were to sell, the proceeds would be allocated to the participant's account and invested in the Stock Fund (for the Oxy Plan) or invested in the then-designated qualified default investment alternative applicable for such Participants (for the Anadarko Plan in light of its termination).'' The representative also stated that FCI's report, which was summarized in the proposed exemption and discussed with the Department before the proposal was published, explains FCI's decision-making process with respect to its decision to sell the warrants.

FCI's Response: FCI contacted the Plan participant directly by sending a letter explaining that the Plans' decision to require FCI to make decisions concerning the Warrants rather than passing-through that decision to each of the participants is supported by administrative and cost reasons. The letter also explained FCI's decision-making process with respect to the decision to sell the Warrants and acknowledged that while the participant may have made a different decision regarding the Warrants received as a result of its holdings in the Oxy Stock Fund in the Oxy Plan, FCI's fiduciary responsibility was to make a prudent decision in the interest of all participants with respect to the Warrants received as a result of their holdings in the Oxy Stock Fund through the Plan. FCI said that it made a prudent decision that considered all of the factors involved, including the terms of the Plans, the fact that the Warrants were more volatile than Oxy stock and thus less appropriate as a plan investment, and the fact that the proceeds of the sale of the Warrants held by the Oxy Plan were to be reinvested in the Oxy Stock Fund.

Department's Response: After reviewing the Commenter's request and the Applicant's response, the Department concurs that the application and FCI's Report addresses the issues raised by the commenter. The Department also notes that it considered the information contained in the application and FCI's Report, in their totality, in order to make the Department's requisite findings under ERISA Section 408(a). This includes a finding that the acquisition and holding by the Plans of the Warrants was in the interest of, and protective of, the Plans. However, the relief in this exemption

does not extend to ERISA Section 404, and no inference should be drawn from the fact that the Department is not opining on FCI's statement that it acted prudently on behalf of the Plans.

2. Plan Participants Seek Clarification or Express Their Opinions Regarding the Proposed Exemption

Four comments were submitted anonymously. Six commenters, including the four anonymous commenters, either expressed their opinions about whether the proposed exemption should be granted, or they sought clarification regarding how the exemption would affect their benefits.

Department's Response: The Department explained the proposed exemption to each of the non-anonymous commenters, via phone or email. However, the Department was unable to directly respond to the four Plan participants who submitted their comments anonymously.

The complete application files (D–12032 and D–12033) are available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption.[3]

Accordingly, after considering the entire record developed in connection with the Applicants' exemption application, the Department has determined to grant the exemption described below.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA Section 408(a) does not relieve a fiduciary or other party in interest from certain requirements of other ERISA provisions, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with ERISA Section 404(a)(1)(B).

(2) As required by ERISA Section 408(a), the Department hereby finds that the exemption is: (a) administratively feasible; (b) in the interests of affected plans and of their participants and beneficiaries; and (c) protective of the rights of participants and beneficiaries of the plans.

(3) This exemption is supplemental to and not in derogation of any other ERISA provisions, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive to determining whether the transaction is in fact a prohibited transaction.

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transactions that are the subject of the exemption.

Accordingly, the Department grants the following exemption under the authority of ERISA Section 408(a)in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011):

Exemption

Section I. Covered Transactions

The restrictions of ERISA Sections 406(a)(1)(E), 406(a)(2) and 407(a)(1)(A), does not apply to the acquisition and holding by the Plans of Warrants, issued by Oxy, provided the conditions set forth in Section II below have been met.

Section II. Conditions

(a) The Warrants were issued by Oxy to all Oxy common stockholders, including the Plans;

(b) All Oxy common stockholders, including the Plans, were treated in the same manner with respect to the acquisition and holding of the Warrants;

(c) All Oxy common stockholders, including the Plans, were issued the same proportionate number of Warrants based on the number of shares of Oxy common stock held by such stockholder;

(d) The Plans' acquisition of the Warrants was a result of a unilateral and independent corporate act of Oxy without any participation by the Plans;

(e) All decisions regarding whether to hold, sell, or exercise the Warrants by the Plans were made by FCI while acting solely in the interests of the Plans and their participants and beneficiaries and in accordance with the Plan's provisions;

(f) FCI determined that it was protective and in the interests of the Plans and their participants and beneficiaries to sell all of the Warrants received by the Plans in blind transactions on the NYSE;

(g) FCI will provide a written statement to the Department demonstrating that the covered transactions have met all of the exemption conditions within 90 days after the exemption is granted;

(h) No brokerage fees, commissions, subscription fees, or other charges were paid by the Plans to Oxy with respect to the acquisition and holding of the Warrants, nor were they paid to any affiliate of Oxy or FCI with respect to the sale of the Warrants;

(i) No party related to this exemption application has or will indemnify FCI, in whole or in part, for negligence and/or any violation of state or federal law that may be attributable to FCI in performing its duties overseeing the transaction. In addition, no contract or instrument may purport to waive FCI's liability under state or federal law for any such violations; and

(j) Each Plan participant received the entire amount they were due with respect to the acquisition of the Warrants and the sale of the Warrants.

Effective Date: This exemption will be in effect for the period beginning August 3, 2020, through August 12, 2027.

George Christopher Cosby,

Director Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2023–21732 Filed 9–29–23; 8:45 am]

BILLING CODE 4510–29–P

[3] 88 FR 8472 (2/9/2023).

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2023–19; Exemption Application No. D–12003]

Exemption From Certain Prohibited Transaction Restrictions Involving the Mitsubishi UFJ Trust and Banking Corporation Located in New York, NY

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of exemption.

SUMMARY: This document contains a notice of an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act). The exemption permits certain transactions arising from credit arrangements involving Mitsubishi UFJ Trust and Banking Corporation (the Applicant or MUTB) and investment funds in which employee benefit plans invest.

DATES: This exemption will be in effect on the date that this grant notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Gonzalez of the Department at (202) 693–8553. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Applicant requested an exemption pursuant to ERISA Section 408(a) and supplemented the request with certain additional information (collectively, this information is referred to as ''the Initial Application'').[1] On June 28, 2021, the Department published a notice of proposed exemption in the **Federal Register** at 86 FR 34048 (Proposed Exemption).

Based on the record, the Department has determined to grant the Proposed Exemption. This exemption provides only the relief specified herein. It provides no relief from violations of any law other than the prohibited transaction provisions of ERISA, as expressly stated herein.

The Department makes the requisite findings under ERISA Section 408(a) based on the Applicants' adherence to all the conditions of the exemption. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken individually and as a whole, necessary for the Department to grant the relief requested by the Applicants. Absent these conditions, the Department would not have granted this exemption.

Background

The Applicant seeks to provide secured revolving lines of credit (a Credit Facility or Credit Facilities) for certain funds (Fund(s)). The Funds invest directly or indirectly in private equity investments, real estate investments, non-real estate operating company ventures, or other investments. The Funds are formed and operated through the Funds' organizing and governing documents (Fund Agreements).

A Credit Facility provides a Fund with access to direct or indirect borrowing, letters of credit and similar forms of credit arrangements without the Fund having to seek permanent or interim financing before making an investment. The Credit Facility eliminates the delay that a Fund will encounter in obtaining capital if it makes capital calls to Investors. Covered plans may invest in the Funds, as may endowment funds, private or public persons, insurance companies, public or private corporations, trusts, and individuals (collectively, Investors).

The Credit Facility's collateral security includes the right to make capital calls on Investors, including in the event of a Fund's default, and apply the proceeds to the repayment of the Fund's obligations, a secured interest in an account (Collateral Account) the Fund maintains in a financial institution into which capital contributions can be made, and the Investor's acknowledgement of the Fund's assignment of rights to the Lender (Investor Consent). The Investor Consent may include an agreement between the Investor and MUTB in which the Investor: (1) acknowledges the Credit Facility, including, amongst others, that the Investor will make capital contributions only to the Collateral Account (except in limited circumstances); and (2) will make Capital Contributions to the Fund without setoff, reduction, counterclaim, or defense of any kind or nature, for the purpose of repayment of the Credit Facility (Agreement to Fund). The Agreement to Fund does not limit the Investor's right to assert a claim or defense in a separate action against the Fund, and keeps the risk of the Fund mismanagement or fraud between the Investors and the Funds.

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the Proposed Exemption. On August 12, 2021, the Department received one written comment, which came from the Applicant, and raised a number of issues regarding the accuracy of the Proposed Exemption.[2] On March 10, 2022, the Department held a tentative denial conference with the Applicant to address these accuracy issues.

On April 1, 2022, the Applicant submitted additional information to the Department. The material issues that the Applicant raised and the material information it submitted to the Department are discussed below.[3]

Written Comments

Comments From the Applicant

As a general comment, the Applicant states that its primary goal is to obtain a credit facility exemption that is substantially similar (if not identical in all material respects) to the Prior Credit Facility Exemptions,[4] and thereby to have equal footing with other financial institutions that have received the Prior Credit Facility Exemptions. The Applicant maintains it is critical for the final exemption to be substantially similar to the Prior Credit Facility Exemptions.

The Department notes that the existence of previously issued administrative exemptions is not determinative of whether the Department will propose future exemption applications with the same or similar facts, or whether a proposed exemption will contain the same conditions as a similar previously issued administrative exemption. The Department has the sole authority to issue exemptions and is not bound by the facts or conditions of prior exemptions in making determinations with respect to an exemption application. This policy allows the Department to retain sufficient flexibility to grant exemptions that are appropriate in an ever-changing business, legislative, and regulatory policy environment.

I. Section I(e) of the Proposed Exemption

Section I(e) states that: ''A Covered Plan's execution of an agreement (the Investor Consent) consenting to the assignment by the Fund and General Partner (or Manager) to Mitsubishi Bank, as sole Lender or Agent, of their right to make Capital Calls.''

Applicant's Request: The Applicant seeks to add the following new language to Section I(e), as it relates to the Investor Consent. According to the Applicant, Covered Plans generally expect to see and take comfort in seeing the list of items that may be included in the Investor Consent, and it reduces ambiguity for the Covered Plan Investors and improves administrative efficiency and negotiation with the Covered Plan Investors:

''(e) The execution by a Covered Plan of an agreement (''Investor Consent'') consenting to the assignment by the Fund and General Partner (or Manager) to Mitsubishi Bank, as sole Lender or

[1] The procedures for requesting an exemption are set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under the Code Section 4975(c)(2) to the Secretary of Labor. Accordingly, the Department grants this exemption under its sole authority.

[2] Applicants and recipients of an exemption are strongly cautioned to immediately alert the Department regarding any material statement in an application or proposed exemption that may not be, or may no longer be, completely and factually accurate.

[3] All information submitted by the Applicant to the Department in connection with this exemption is available through the Department's Public Disclosure Office, by referencing D–12003.

[4] The term Prior Credit Facility Exemptions refers to similar exemptions that the Department has either granted or authorized; see PTE 2004–02, FAN 2005–19E, FAN 2006–04E, FAN 2007–07E, and FAN 2008–01E.

the Agent, of their right to make Capital Calls, which may contain, among other things: (i) an acknowledgment of the Covered Plan's obligation to deliver the Covered Plan's financial information statements to Mitsubishi Bank, as sole Lender or the Agent; (ii) an acknowledgment of the Covered Plan's unpaid and owing capital commitment amount and the Covered Plan's obligation to make Capital Contributions (up to its unfunded Capital Commitment amount) to satisfy the indebtedness incurred by the Fund under the Credit Facility; (iii) an acknowledgment by the Covered Plan of the Fund's assignment to Mitsubishi Bank, as sole Lender or the Agent, of the right to make Capital Calls upon the Covered Plan, enforce the Capital Calls, collect the Capital Contributions, and apply them to any amount due under the Credit Facility; (iv) a consent (as either part of the Fund Agreements or as a separate agreement) by the Covered Plan to make Capital Contributions to the Fund without setoff, reduction, counterclaim, or defense of any kind or nature, for the purpose of repayment of the Credit Facility; (v) a representation that the Covered Plan has no knowledge of claims, offsets or defenses that would adversely affect its obligation to fund Capital Contributions under the Fund Agreements, or events which, with the passage of time would constitute a default or would constitute a defense to, or right of offset against the Covered Plan's obligation to fund its Capital Commitment to the Fund; and (vi) an agreement that the Covered Plan will fund Capital Contributions only into the Collateral Account; provided that with respect to all transactions described above, the conditions set forth below in Section III are met.''

Department's Response: The Department has revised the condition consistent with the Applicant's request.

II. Section III(i) of the Proposed Exemption

Section III(i) of the Proposed Exemption states that: ''The Funds will not hold 'plan assets' for purposes of ERISA or Code section 4975.''

Applicant's Request: The Applicant objects to the inclusion of the condition in Section III(i). The Applicant states that no ''Covered Transaction'' is impacted by, or has any relationship to, the ''plan asset'' status of the Fund. Further, the Applicant states that it does not have any control over the ''plan asset'' status of the Fund.

According to the Applicant, to condition the availability of the exemption on a condition for which the Applicant has no control, and for which the condition has no impact on the relationship between the Covered Plan and the Applicant, would be arbitrary and lead to inequitable consequences to the Covered Plan and the Applicant. Although the Prior Credit Facility Exemptions note that the Funds typically do not hold ''plan assets,'' the operative language in those exemptions does not expressly make this status a condition. Requiring that the Funds will not hold ''plan assets'' for purposes of ERISA or Code section 4975 would place the Applicant at a significant competitive disadvantage because Fund Managers of Plan Asset Entities would seek to borrow from Agent/Lenders that have a less restrictive exemption that does not discriminate against them based on their ''plan asset'' status.

Department's Response: The Department notes that the Applicant made the following representation in its application: ''. . . [i]n certain rare instances, a Fund's underlying assets may constitute plan assets for purposes of the [Department's] Plan Assets Regulation.[5] However, in such cases, the Applicant would not enter into a Credit Facility with such Fund unless the Fund was managed by a QPAM [qualified professional asset manager] and the extension of credit under the Credit Facility to the Fund and the Fund's pledge of collateral would be covered by the QPAM Exemption, or unless another exemption was applicable.'' The Department has revised Section III(i) of this exemption for consistency with that representation.

III. Section III(j) of the Proposed Exemption

Section III(j) of the Proposed Exemption states that: ''Any service covered by the exemption must be necessary for the establishment or operation of the plan, and no more than reasonable compensation may be paid.''

Applicant's Request: The Applicant objects to this condition. The Applicant states that this condition improperly implies that there is some form of service relationship between the Applicant/Lenders and the Covered Plan Investors. The condition is therefore likely to confuse Covered Plan Investors and add additional costs and delays if the Covered Plan expends additional resources to evaluate this condition since it does not appear in the Prior Credit Facility Exemptions.

The Applicant states that while it is possible that a Covered Plan Investor may inquire about the status of, or request information from the Applicant or a Lender, with respect to a credit facility, including outstanding obligations thereunder, these communications would be relayed by the Covered Plan Investors through the Fund to the Applicant/Lenders, and not made directly.

The Applicant represents that these would be ''incidental interactions'' that would not cause the Applicant or a Lender, to be a ''covered service provider'' for purposes of ERISA Section 408(b)(2), particularly where no compensation is being paid for any services. The Applicant states that, to the extent there is any ''service'' relationship between the Applicant/Lenders and the Covered Plans, it would be appropriate for the Applicant to rely on ERISA Section 408(b)(2) and not the credit facility exemption.

Department's Response: In a letter to the Department dated August 7, 2020, the Applicant stated that ''. . . from time to time, there may be interactions between [the Applicant/Lenders] and the Covered Plan Investors which may be construed as a service. For example, Covered Plan Investors may inquire about the status and/or request information from [the Applicant/Lenders] with respect to the Credit Facility and the outstanding obligations thereunder, although, typically, such communication would be relayed by the Covered Plan Investors through the Fund to [the Applicant/Lenders], and not made directly.''

Although the Department has not made any determination regarding whether any transaction permitted by this exemption falls within the scope of ERISA Section 408(b)(2), this exemption is not intended to provide exemptive relief for any transaction that is within the scope of ERISA Section 408(b)(2). Accordingly, the Department has decided not to delete the condition as requested. However, based on the Applicant's representations, the Department is revising the condition as follows: ''The relief in this exemption does not extend to any transaction that is within the scope of ERISA Section 408(b)(2).''

IV. Section III(k) of the Proposed Exemption

Section III(k) of the Proposed Exemption states that: ''No Lender will have any influence, authority, or control over a Client Plan's investment in the Fund.''

Applicant's Request: The Applicant requests that the Department delete this condition. The Applicant states that the relationship between a Covered Plan and the Applicant/Lenders is set forth

[5] See the Department's Plan Assets Regulation, 29 CFR part 2510.3–101 (51 FR 41280, Nov. 13, 1986), as amended at 51 FR 47226, (Dec. 31, 1986).

in Section III(a), which provides that: ''The decision to invest in the Fund on behalf of each Covered Plan and to execute an Investor Consent in favor of Mitsubishi Bank, as sole Lender or Agent, is made by fiduciaries of the Covered Plan that are not included among and are independent of and unaffiliated with, the Lenders (including Mitsubishi Bank) and the Fund.''

Department's Response: Given the similarity between Section III(k) and Section III(a), the Department is deleting Section III(k). The Department has also redesignated Section III(l) of the Proposed Exemption (further discussed below) as Section III(k) in the final exemption.

Department's Note: Recipients of any administrative exemption from the Department, including any Prior Credit Facility Exemption, are strongly cautioned to immediately alert the Department regarding any statement in an application or proposed exemption that may not be, or may no longer be, completely and factually accurate. The Department is granting this exemption with the expectation that all of the material representations that the Applicant made in its exemption application, including all factual information it submitted to the Department subsequent to the Proposed Exemption's publication and all of the statements set forth in the Proposed Exemption's Summary of Facts and Representations, and in this exemption, are factually complete and accurate, and will be fully complied with and adhered to.

For greater consistency with the Department's most recent individual administrative exemptions, the Department has revised condition (k) of the Proposed Exemption as follows: ''All of the material facts and representations set forth in the Summary of Facts and Representations are true and accurate. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described by the Applicant in the application, the exemption will cease to apply as of the date of the change.'' [6]

After considering the entire record developed in connection with the Applicant's exemption application, along with the Applicant's comment letter and the additional factual information it submitted subsequent to the Proposed Exemption, the Department has determined to grant the exemption described below.

The complete application file (D–12003) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 28, 2021, at 86 FR 34048.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA Section 408(a) does not relieve a fiduciary or other party in interest from certain requirements of other ERISA provisions, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with ERISA Section 404(a)(1)(B).

(2) As required by ERISA Section 408(a), the Department hereby finds that the exemption is (1) administratively feasible, (2) in the interests of affected plans and of their participants and beneficiaries, and (3) protective of the rights of participants and beneficiaries of such plans;

(3) The exemption is supplemental to, and not in derogation of, any other ERISA provisions, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of determining whether the transaction is in fact a prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction that are the subject of the exemption.

Accordingly, the following exemption is granted under the authority of ERISA Section 408(a) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011):

Exemption

Section I. Covered Transactions

The restrictions of ERISA Sections 406(a)(1)(A)–(D), and the sanctions resulting from the application of Code Section 4975, by reason of Code Sections 4975(c)(l)(A)–(D), shall not apply to:

(a) The granting by the Funds to Mitsubishi UFJ Trust and Banking Corporation (Mitsubishi Bank), as an agent (Agent) for one or more financial institutions (Lender(s)), which may include, without limitation, Mitsubishi Bank) or as sole Lender, that will fund a credit facility (Credit Facility) providing credit to certain investment funds (Fund(s)), of a security interest in and lien on the capital commitments (Capital Commitments), reserve amounts, and capital contributions (Capital Contributions) of certain investors (Investors) that are employee benefit plans (Covered Plan(s), as defined in Section II(a)), investing in the Fund;

(b) Any Fund's collateral assignment and pledge to Mitsubishi Bank, as sole Lender or Agent, of the Fund's security interest in an Investor Covered Plan's equity interest in such Fund;

(c) The Fund's grant to Mitsubishi Bank, as sole Lender or Agent, of a security interest in a collateral account (Collateral Account) to which all Capital Contributions in the Fund will be deposited when paid (except in certain limited circumstances that do not involve Covered Plans);

(d) The granting by the Fund and/or its general partner (General Partner) or manager (Manager) to Mitsubishi Bank, as sole Lender or Agent, of its right to make calls on Covered Plan Investors for Capital Contributions (the Capital Call), which shall be in cash, under the operative Fund Agreements (as defined in Section II(d)), enforce the Capital Calls, collect the Capital Contributions, and apply them to any amount due under the Credit Facility; and

(e) The execution by a Covered Plan of an agreement (''Investor Consent'') consenting to the assignment by the Fund and General Partner (or Manager) to Mitsubishi Bank, as sole Lender or the Agent, of their right to make Capital Calls, which may contain, among other things: (i) an acknowledgment of the Covered Plan's obligation to deliver the Covered Plan's financial information statements to Mitsubishi Bank, as sole Lender or the Agent; (ii) an acknowledgment of the Covered Plan's unpaid and owing capital commitment amount and the Covered Plan's obligation to make Capital Contributions (up to its unfunded Capital

[6] In determining whether a specific fact or representation within the application is material, the Applicant is urged to contact the Department's Office of Exemption Determinations prior to such fact or representation being changed.

Commitment amount) to satisfy the indebtedness incurred by the Fund under the Credit Facility; (iii) an acknowledgment by the Covered Plan of the Fund's assignment to Mitsubishi Bank, as sole Lender or the Agent, of the right to make Capital Calls upon the Covered Plan, enforce the Capital Calls, collect the Capital Contributions, and apply them to any amount due under the Credit Facility; (iv) a consent (as either part of the Fund Agreements or as a separate agreement) by the Covered Plan to make Capital Contributions to the Fund without setoff, reduction, counterclaim, or defense of any kind or nature, for the purpose of repayment of the Credit Facility; (v) a representation that the Covered Plan has no knowledge of claims, offsets or defenses that would adversely affect its obligation to fund Capital Contributions under the Fund Agreements, or events which, with the passage of time would constitute a default or would constitute a defense to, or right of offset against the Covered Plan's obligation to fund its Capital Commitment to the Fund; and (vi) an agreement that the Covered Plan will fund Capital Contributions only into the Collateral Account; provided that with respect to all transactions described above, the conditions set forth below in Section III are met.

Section II. Definitions

(a) The terms ''Covered Plan'' or ''Covered Plans'' means an investor in a Fund (as defined below) that is an employee benefit plan, as defined in ERISA Section 3(3) and that is covered by Title I, Part 4 of ERISA, and/or a plan defined in Code Section 4975, that satisfies the conditions set forth herein in Section II.

(b) The terms ''Covered Transaction'' or ''Covered Transactions'' mean any combination of transactions described in Section I(a) through (d), in conjunction with the Investor Consent described in Section I(e).

(c) The terms ''Fund'' or ''Funds'' means an investment or venture capital fund (organized as a corporation, limited partnership, limited liability company, or another business entity authorized by applicable law) in which one or more investors invest, including employee benefit plans or special purpose entities holding ''plan assets'' subject to ERISA, as described herein, by making capital contributions in cash to such Fund, pursuant to specific Capital Commitments as established by the Fund Agreement(s) and other operative documents executed by the parties, for purposes of making certain real estate investments (including real estate-related investments, such as venture capital investments) or non-real estate investments (including, without limitation, assets and/or interests relating to infrastructure, maritime, energy, etc.).

Each Covered Plan investing in such special purpose entity must satisfy the conditions set forth herein in Section III. The term ''Fund'' includes an entity created by the Fund that may borrow, or receive, funds from the Credit Facility, provided that such entity is considered an affiliate of the Fund as a subsidiary or other controlled entity.

(d) The terms ''Fund Agreement'' or ''Fund Agreements'' mean the written agreements under which a Fund (as defined above) is formed (such as a limited partnership agreement, a limited liability company agreement, trust agreement, or articles of incorporation, together with ancillary related agreements, such as subscription agreements) that obligate each Investor to make cash contributions of capital with respect to Capital Commitments, upon receipt of a call for Capital Contributions.

(e) The term ''officer'' means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

(f) The term ''Mitsubishi Bank'' means Mitsubishi UFJ Trust and Banking Corporation, which is a foreign banking corporation organized under the laws of Japan, and its indirectly wholly-owned subsidiary named MUFG Alternative Fund Services (Cayman) Limited, an ordinary resident company incorporated and existing under the laws of the Cayman Islands. This exemption is intended to cover Mitsubishi Bank, and all of its current and future branches.

(g) For purposes of determining whether a fiduciary is not included among, is independent of, and unaffiliated with, a Fund, the term Fund shall be deemed, as appropriate, to include the governing entity of the Fund, or a member of the governing body of the Fund, as appropriate, *e.g.,* a general partner of a partnership, a manager of a limited liability company, a member of a member-managed limited liability company, or a member of the board of directors of a corporation. For purposes of this exemption request, a fiduciary of a Covered Plan is not included among, is independent of, and unaffiliated with, a Lender (including Mitsubishi Bank) or a Fund, as applicable, if:

(i) The fiduciary is not, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such Lender or Fund;

(ii) The fiduciary is not an officer, director, employee or relative of, or partner in, such Lender or Fund; and

(iii) No officer, director, highly-compensated employee (within the meaning of Code Section 4975(e)(2)(H)), or partner of the Fund, or any officer, director or highly-compensated employee, or partner of the Lender who is involved in the transactions described in Section I of the exemption request, is also an officer, director, highly-compensated employee, or partner of the fiduciary. However, if such individual is a director of the Lender, and if they abstain from participation in, and is not otherwise involved with, the decision made by the Covered Plan to invest in the Fund, then this condition shall be deemed satisfied.

Section III. Conditions

(a) The decision to invest in the Fund on behalf of each Covered Plan and to execute an Investor Consent in favor of Mitsubishi Bank, as sole Lender or Agent, is made by fiduciaries of the Covered Plan that are not included among and are independent of and unaffiliated with, the Lenders (including Mitsubishi Bank) and the Fund;

(b) The transaction is on terms that are no less favorable to the Covered Plans than those which the Covered Plans could obtain in arm's-length transactions with unrelated parties;

(c) At the time of the execution of an Investor Consent, the Covered Plan has assets of not less than $100 million. In the case of multiple plans maintained by the same employer, or by members of a controlled group of corporations (within the meaning of Code Section 4l4(b)), or members of a group of trades or businesses under common control (within the meaning of Code Section 414(c)) (hereafter, referred to as ''members of a controlled group''), whose assets are invested on a commingled basis (*e.g.,* through a master trust), this $100 million threshold applies to the aggregate assets of the commingled entity;

(d) Not more than 5% of the assets of any Covered Plan, measured at the time of the execution of an Investor Consent, is invested in the Fund. In the case of multiple plans maintained by the same employer, or by members of a controlled group, whose assets are invested on a commingled basis (*e.g.,* through a master trust), the 5% limit applies to the aggregate assets of the commingled entity;

(e) Neither Mitsubishi Bank, nor any Lender, has discretionary authority or

control with respect to a Covered Plan's investment in the Fund nor renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to such investment;

(f) Upon request, the Covered Plan fiduciaries must receive from Mitsubishi Bank, a copy of this notice of proposed exemption and a copy of the final exemption, as published in the **Federal Register**;

(g) Mitsubishi Bank receives from the Covered Plan fiduciaries a written representation, or a written authorization, that permits Mitsubishi Bank to rely on a written representation made to the Fund, that the conditions set forth above in Section III(a), (c), and (d) are satisfied for such transaction with respect to the Covered Plan for which they are fiduciaries;

(h) No Covered Transaction is part of an arrangement, agreement or understanding, designed to benefit a party in interest or disqualified person with respect to a Covered Plan;

(i) In the event that a Fund's underlying assets constitute plan assets for purposes of the Department's Plan Assets Regulation, Mitsubishi Bank or any Lender will not enter into a Credit Facility with such Fund unless the Fund is managed by a QPAM, and the extension of credit under the Credit Facility to the Fund and the Fund's pledge of collateral would be covered by the QPAM Exemption or another applicable exemption; [7]

(j) The relief in this exemption does not extend to any transaction that is within the scope of ERISA Section 408(b)(2); and

(k) All of the material facts and representations set forth in the Summary of Facts and Representations are true and accurate. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described by the Applicant in the application, the exemption will cease to apply as of the date of the change.

Effective Date: This exemption will be in effect on the date that this grant notice is published in the **Federal Register**.

George Christopher Cosby,

Director Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2023–21731 Filed 9–29–23; 8:45 am]

BILLING CODE 4510–29–P

[7] See the Department's Plan Assets Regulation. 29 CFR part 2510.3–101 (51 FR 41280, Nov. 13, 1986), as amended at 51 FR 47226, (Dec. 31, 1986).

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Information Advisory Council

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of a virtual WIAC meeting November 6, 2023.

SUMMARY: Notice is hereby given that the Workforce Information Advisory Council (WIAC or Advisory Council) will meet virtually November 6, 2023. Information for public attendance at the virtual meetings will be posted at *www.dol.gov/agencies/eta/wioa/wiac/meetings* several days prior to each meeting date. The meetings will be open to the public.

DATES: The meeting will take place November 6, 2023. The meeting will begin at 2 p.m. EST and conclude at approximately 4 p.m. EST. Public statements and requests for special accommodations or to address the Advisory Council must be received by October 23, 2023.

ADDRESSES: Information for public attendance at the virtual meetings will be posted at *www.dol.gov/agencies/eta/wioa/wiac/meetings* several days prior to each meeting date. If problems arise accessing the meetings, please contact Donald Haughton, Unit Chief in the Division of National Programs, Tools, and Technical Assistance, Employment and Training Administration, U.S. Department of Labor, at 202–693–2784.

FOR FURTHER INFORMATION CONTACT: Steven Rietzke, Chief, Division of National Programs, Tools, and Technical Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–4510, 200 Constitution Ave. NW, Washington, DC 20210; Telephone: 202–693–3912; Email: *WIAC@dol.gov.* Mr. Rietzke is the WIAC Designated Federal Officer.

SUPPLEMENTARY INFORMATION:

Background: This meeting is being held pursuant to sec. 308 of the Workforce Innovation and Opportunity Act of 2014 (WIOA) (Pub. L. 113–128), which amends sec. 15 of the Wagner-Peyser Act of 1933 (29 U.S.C. 491–2). The WIAC is an important component of WIOA. The WIAC is a federal advisory committee of workforce and labor market information experts representing a broad range of national, State, and local data and information users and producers. The WIAC was established in accordance with provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. app.) and will act in accordance with the applicable provisions of FACA and its implementing regulation at 41 CFR 102–3. The purpose of the WIAC is to provide recommendations to the Secretary of Labor (Secretary), working jointly through the Assistant Secretary for Employment and Training and the Commissioner of Labor Statistics, to address: (1) the evaluation and improvement of the nationwide workforce and labor market information (WLMI) system and statewide systems that comprise the nationwide system; and (2) how the Department and the States will cooperate in the management of those systems. These systems include programs to produce employment-related statistics and State and local workforce and labor market information.

The Department of Labor anticipates the WIAC will accomplish its objectives by: (1) studying workforce and labor market information issues; (2) seeking and sharing information on innovative approaches, new technologies, and data to inform employment, skills training, and workforce and economic development decision making and policy; and (3) advising the Secretary on how the workforce and labor market information system can best support workforce development, planning, and program development. Additional information is available at *www.dol.gov/agencies/eta/wioa/wiac/meetings.*

Purpose: The WIAC is continually identifying and reviewing issues and aspects of the WLMI system and statewide systems that comprise the nationwide system and how the Department and the States will cooperate in the management of those systems. As part of this process, the Advisory Council meets to gather information and to engage in deliberative and planning activities to facilitate the development and provision of its recommendations to the Secretary in a timely manner.

Agenda: The agenda topics for the November 6, 2023, meeting are: (1) introduce all members of the WIAC for this three-year membership cycle; (2) review DOL and FACA ethics and codes of conduct as they pertain to WIAC members, and, time permitting; (3) discuss previous WIAC recommendations and determine focus areas for this WIAC to explore. Additionally, future meeting dates will be discussed and tentative dates set. A detailed agenda will be available at *www.dol.gov/agencies/eta/wioa/wiac/meetings* shortly before the meetings commence.

The Advisory Council will open the floor for public comment at approximately 3:30 p.m. EST for

approximately 10 minutes. However, that time may change at the WIAC chair's discretion.

Attending the meetings: Members of the public who require reasonable accommodations to attend any of the meetings may submit requests for accommodations via email to the email address indicated in the **FOR FURTHER INFORMATION CONTACT** section with the subject line ''November 2023 WIAC Meeting Accommodations'' by the date indicated in the **DATES** section. Please include a specific description of the accommodations requested and phone number or email address where you may be contacted if additional information is needed to meet your request.

Public statements: Organizations or members of the public wishing to submit written statements may do so by mailing them to the person and address indicated in the **FOR FURTHER INFORMATION CONTACT** section by the date indicated in the **DATES** section or transmitting them as email attachments in PDF format to the email address indicated in the **FOR FURTHER INFORMATION CONTACT** section with the subject line ''November 2023 WIAC Meeting Public Statements'' by the date indicated in the **DATES** section. Submitters may include their name and contact information in a cover letter for mailed statements or in the body of the email for statements transmitted electronically. Relevant statements received before the date indicated in the **DATES** section will be included in the record of each meeting. No deletions, modifications, or redactions will be made to statements received, as they are public records. Please do not include personally identifiable information in your public statement.

Requests to Address the Advisory Council: Members of the public or representatives of organizations wishing to address the Advisory Council should forward their requests to the contact indicated in the **FOR FURTHER INFORMATION CONTACT** section, or contact the same by phone, by the date indicated in the **DATES** section. Oral presentations will be limited to 10 minutes, time permitting, and shall proceed at the discretion of the Advisory Council chair. Individuals with disabilities, or others who need special accommodations, should indicate their needs along with their request.

Brent Parton,

Principle Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–21733 Filed 9–29–23; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Department of Labor Generic Clearance for the Collection of Feedback on Agency Service Delivery

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of the Assistant Secretary for Administration and Management (OASAM)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before November 1, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: . 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. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 26, 2023 (88 FR 48265).

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.

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.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Acting Departmental Clearance Officer.

[FR Doc. 2023–21659 Filed 9–29–23; 8:45 am]

BILLING CODE 4510–04–P

DEPARTMENT OF LABOR

Wage and Hour Division

Notice of Approved Agency Information Collection; Information Collection: Davis-Bacon Certified Payroll

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA), the Wage and Hour Division (WHD) is providing notice to the public that the WHD sponsored information collection request (ICR) titled, ''Davis-Bacon Certified Payroll,'' has been approved by the Office of Management and Budget (OMB). WHD is notifying the public that the information collection has been revised and extended effective immediately through September 30, 2026.

DATES: The OMB approval of the revision of this information collection is effective immediately with an expiration date of September 30, 2026.

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number) or by sending an email to *WHDPRAComments@dol.gov*. Alternative formats are available upon request by calling 1–866–487–9243. If you are deaf, hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: The Department of Labor submitted a proposed revision to the information collection titled: Davis-Bacon Certified Payroll (OMB Control Number 1235–0008), in conjunction with a proposed rule published in the **Federal Register** on March 18, 2022 (87 FR 15698) and a final rule. The final rule titled, ''Updating the Davis-Bacon and Related Acts Regulations,'' published in the **Federal Register** on August 23, 2023 (88 FR 57526). OMB issued a Notice of Action (NOA) on September 22, 2023, approving the collection and extending the expiration of the collection to September 30, 2026, under OMB Control Number 1235–0008.

Section (k) of 5 CFR 1320.11, ''Clearance of Collections of Information in Proposed Rules'' states, ''After receipt of notification of OMB's approval, instruction to make a substantive or material change to, disapproval of a collection of information, or failure to act, the agency shall publish a notice in the **Federal Register** to inform the public of OMB's decision.'' This notice fulfills the Department's obligation to notify the public of OMB's approval of the information collection request.

Dated: September 26, 2023.

Amy Hunter,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2023–21658 Filed 9–29–23; 8:45 am]

BILLING CODE 4510–27–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 23–07]

Notice of Open Meeting

AGENCY: Millennium Challenge Corporation

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, the Millennium Challenge Corporation (MCC) Advisory Council was established as a discretionary advisory committee on July 14, 2016. Its charter was most recently renewed for a fourth term on July 7, 2022. The MCC Advisory Council serves MCC solely in an advisory capacity and provides insight regarding innovations in infrastructure, technology, and sustainability; perceived risks and opportunities in MCC partner countries; new financing mechanisms for developing country contexts; and shared value approaches. The MCC Advisory Council provides a platform for systematic engagement with the private sector and other external stakeholders and contributes to MCC's mission—to reduce poverty through sustainable economic growth.

DATES: Wednesday, October 25, 2023, from 8:30 a.m.–12:00 p.m. EDT.

ADDRESSES: The meeting will be held in a hybrid format, both in-person at 1099 14th Street NW, Suite 700, Washington, DC 20005, and via conference call.

FOR FURTHER INFORMATION CONTACT: Email *MCCAdvisoryCouncil@mcc.gov,* contact Bahgi Berhane at (202) 772–6362, or visit *https://www.mcc.gov/about/org-unit/advisory-council* for more information.

SUPPLEMENTARY INFORMATION:

Agenda. During the Fall 2023 meeting of the MCC Advisory Council, members will engage with MCC leadership. Additionally, Advisory Council members will discuss highlights from the Blended Finance/Energy and Climate subcommittee meetings and provide advice on the compact development process related to MCC's investment strategy in Zambia.

Public Participation. The meeting will be open to the public. Members of the public may file written statements before or after the meeting. If you plan to attend, please submit your name and affiliation no later than Friday, October 20, 2023, to *MCCAdvisoryCouncil@mcc.gov* to receive instructions on how to attend.

(Authority: Federal Advisory Committee Act, 5 U.S.C. app.)

Dated: September 27, 2023.

Gina Porto Spiro

Acting Vice President, General Counsel, and Corporate Secretary.

[FR Doc. 2023–21668 Filed 9–29–23; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 23–100]

Earth Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Advisory Committee (ESAC). This Committee functions in an advisory capacity to the Director, Earth Science Division, in the NASA Science Mission Directorate. The meeting will be held for the purpose of soliciting, from the science community and other persons, scientific and technical information relevant to program planning.

DATES: Thursday, October 19, 2023, 1 p.m.–3:30 p.m., eastern time.

FOR FURTHER INFORMATION CONTACT: KarShelia Kinard, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355 or *karshelia.kinard@nasa.gov*.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial +1–415–527–5035 United States Toll+1–312–500–3163 United States Toll. Access code: 276 120 37516, to participate in this meeting by telephone.

The WebEx link is: *https://nasaevents.webex.com/nasaevents/*

j.php?MTID=mb3a302e212e04a4f326f3a71822524c1 the event number is 2761 203 7516 and the event password: W73Je3Szjza (case sensitive) (97353379 from phones and video systems).

The agenda for the meeting includes the following topics:

—Earth Science Program Annual Performance Review According to the Government Performance and Results Act Modernization Act

—Final Report of the ESAC Subcommittee Unidentified Anomalous Phenomena (UAP) Independent Study Team.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2023–21672 Filed 9–29–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 1, 2023. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or *ACApermits@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703–292–4479.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671, as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

1. Applicant

Permit Application: 2024–011.
Alia Khan, 516 High St. M.S. 9181 Bellingham, WA 98225.

Activity for Which Permit Is Requested

Harmful Interference. The applicant proposes to collect snow samples across the West Antarctic Peninsula region for scientific purposes. Collecting samples adjacent to high density penguin areas is critical to the study. There is the potential for slight disturbance of penguin species during sampling and installation of time lapse cameras. This permit would address the potential for harmful interference of the following species: Adelie penguin (*Pygoselis adeliae*), chinstrap penguin (*P. antarctica*), and the gentoo penguin, (*P. papua*). The applicant would not directly enter penguin colonies, or approach penguins within 5 meters.

Location

Antarctica Peninsula Region, Palmer Station area; Booth Island, and Petermann Island.

Dates of Permitted Activities

November 24, 2023–March 31, 2028.

Kimiko S. Bowens-Knox,

Program Analyst, Office of Polar Programs.

[FR Doc. 2023–21703 Filed 9–29–23; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0104]

Information Collection: NRC Form 64, Travel Voucher

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, NRC Form 64, ''Travel Voucher.''

DATES: Submit comments by December 1, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0104. 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.
- *Mail comments to:* David C. Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0104 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0104. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2023–0104 on this website.
- *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 supporting statement and NRC Form 64 are available in ADAMS under Accession Nos. ML23236A453 and ML23236A454.

- *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.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2023–0104, in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 64, Travel Voucher.
2. *OMB approval number:* 3150–0192.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 64.
5. *How often the collection is required or requested:* On occasion, to apply for reimbursement for travel.
6. *Who will be required or asked to respond:* Agreement State personnel, State Liaison officers and other representatives traveling in the course of conducting business with and for the NRC. Travelers conduct reviews, inspections, attend conferences, and NRC-sponsored training.
7. *The estimated number of annual responses:* 700.
8. *The estimated number of annual respondents:* 700.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 700.
10. *Abstract:* Agreement State personnel traveling to participate in NRC-sponsored training, participate with the NRC Integrated Materials Performance Evaluation Program, and other business with the NRC, must file travel vouchers on NRC Form 64 and 64A in order to be reimbursed for their travel expenses. The information collected includes the name, address, the amount to be reimbursed, and the traveler's signature. Travel expenses that are reimbursed are confined to those expenses essential to the transaction of official business for an approved trip.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your answer.
2. Is the estimate of the burden of the information collection accurate? Please explain your answer.
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: September 26, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–21617 Filed 9–29–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of October 2, 9, 16, 23, 30, November 6, 2023. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Betty.Thweatt@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of October 2, 2023

There are no meetings scheduled for the week of October 2, 2023.

Week of October 9, 2023—Tentative

There are no meetings scheduled for the week of October 9, 2023.

Week of October 16, 2023—Tentative

Thursday, October 19, 2023

9:00 a.m. Hearing on Construction Permit for Kairos Hermes Non-Power Test Reactor: Section 189a of the Atomic Energy Act Proceeding (Public Meeting), (Contact: Matthew Hiser: 301–415–2454; Tami Dozier: 301–415–2272).

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of October 23, 2023—Tentative

There are no meetings scheduled for the week of October 23, 2023.

Week of October 30, 2023—Tentative

Thursday, November 2, 2023

9:00 a.m. Strategic Programmatic Overview of the Operating Reactors and New Reactors Business Lines (Public Meeting) (Contact: Jennie Rankin: 301–415–1530)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/*

Week of November 6, 2023—Tentative

There are no meetings scheduled for the week of November 6, 2023.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: September 28, 2023.

For the Nuclear Regulatory Commission.

Wesley W Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–21819 Filed 9–28–23; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0099]

Information Collection: Material Control and Accounting of Special Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Material Control and Accounting of Special Nuclear Material.''

DATES: Submit comments by December 1, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0099. 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.
- *Mail comments to:* David C. Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0099 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0099.
- *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 supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML23184A056 and ML23184A055.
- *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.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2023–0099, in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 74, Material Control and Accounting of Special Nuclear Material.
2. *OMB approval number:* 3150–0123.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* Submission of fundamental nuclear material control plans is a one-time requirement which has been completed by all current licensees as required. However,

licensees may submit amendments or revisions to the plans as necessary. Reports are submitted as events occur.

6. *Who will be required or asked to respond:* Persons licensed under part 74 of title 10 of the *Code of Federal Regulations* (10 CFR), who possess and use certain forms and quantities of special nuclear material (SNM).

7. *The estimated number of annual responses:* 183.

8. *The estimated number of annual respondents:* 163.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 9,439 hours (939 reporting + 8,500 recordkeeping).

10. *Abstract:* 10 CFR part 74 establishes requirements for material control and accounting of SNM, and specific performance-based regulations for licensees authorized to possess, use, or produce strategic SNM, SNM of moderate strategic significance, or SNM of low strategic significance. The information is used by the NRC to make licensing and regulatory determinations concerning material control of SNM and to satisfy obligations of the United States to the International Atomic Energy Agency. Submission or retention of the information is mandatory for persons subject to the requirements.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your answer.

2. Is the estimate of the burden of the information collection accurate? Please explain your answer.

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: September 26, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–21613 Filed 9–29–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8903–LA; ASLBP No. 23–980–03–LA–BD01]

Order; (Providing Notice of Hearing)

AGENCY: Atomic Safety and Licensing Board, Nuclear Regulatory Commission.

This proceeding concerns the Nuclear Regulatory Commission (NRC) Staff's August 15, 2023 denial of Homestake Mining Company of California's (HMC) December 10, 2020, license amendment application to make changes to the monitoring station configuration at HMC's Grants, New Mexico reclamation project site.[1] On September 5, 2023, HMC filed a hearing demand challenging the denial of its license amendment application.[2] On September 20, 2023, the Board held a status conference with the parties to discuss matters relating to this 10 CFR part 2, subpart L proceeding.[3] At this status conference, the NRC Staff indicated that it did not oppose HMC's hearing demand.[4] Thus, on September 25, 2023, the Board granted HMC's hearing demand.[5]

In light of the foregoing, a hearing will be conducted in this proceeding at a date to be determined. The hearing will be governed by the informal hearing procedures set forth in 10 CFR part 2, subparts C and L, 10 CFR 2.300–2.390, 2.1200–2.1213.

It is so ordered.

For the Atomic Safety and Licensing Board.

Dated: September 26, 2023.

Rockville, Maryland.

Michael M. Gibson,

Chair, Administrative Judge.

[FR Doc. 2023–21577 Filed 9–29–23; 8:45 am]

BILLING CODE 7590–01–P

[1] *See* Letter from Jane Marshall, Division Director, Office of Nuclear Material Safety and Safeguards, NRC, to Brad R. Bingham, Closure Manager, HMC (Aug. 15, 2023) (ADAMS Accession No. ML23186A150); Letter from Brad. R. Bingham, Closure Manager, HMC, to NRC Document Control Desk (Dec. 18, 2020) (ADAMS Accession No. ML20356A288).

[2] *See* [HMC]'s Demand for Hearing on the NRC Staff's Denial of the License Amendment Request to Change the Background Monitoring Location for Radon and Ambient Gamma Radiation for Source Materials License No. SUA–1471 (Sept. 5, 2023).

[3] *See* Tr. at 3.

[4] *See id.* at 4–5.

[5] *See* Licensing Board Order (Granting Hearing Demand; Deferring Scheduling Conference) (Sept. 25, 2023) (unpublished).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–284 and CP2023–287]

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:* October 4, 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).:* MC2023–284 and CP2023–287; *Filing Title:* USPS Request to Add Priority Mail Contract 787 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 26, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christoher C. Mohr; *Comments Due:* October 4, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–21661 Filed 9–29–23; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98539; File No. SR–ICEEU–2023–022]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Clearing Membership Policy and Clearing Membership Procedures

September 26, 2023.

On August 8, 2023, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICEEU–2023–022 pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4[2] thereunder to modify its Clearing Membership Policy and amend its Clearing Membership Procedures. On August 22, 2023, ICE Clear Europe filed Amendment No. 1 to the proposed rule change to make certain changes to the Exhibits 5A and 5B.[3] The proposed rule change, as modified by Amendment No. 1 (hereafter ''the Proposed Rule Change''), was published for public comment in the **Federal Register** on August 29, 2023.[4] The Commission has not received comments regarding the proposal described in the Proposed Rule Change.

Section 19(b)(2) of the Exchange Act[5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the Notice of Filing is October 13, 2023. The Commission is extending this 45-day time period.

In order to provide the Commission with sufficient time to consider the Proposed Rule Change, the Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,[6] designates November 27, 2023, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–ICEEU–2023–022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–21628 Filed 9–29–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98531; File No. SR–CboeBZX–2023–058]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the Global X Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

September 26, 2023.

On August 4, 2023, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Global X Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on August 23, 2023.[3]

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 7, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 amends the Exhibit 5A and Exhibit 5B to correctly reflect the addition of the Document Handling subsection to each document's Table of Contents. The proposed rule change includes and Exhibit 4A and Exhibit 4B. Exhibit 4A shows the change that Amendment No. 1 makes to Exhibit 5A and Exhibit 4B does the same with respect to Exhibit 5B.

[4] Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Clearing Membership Policy and Clearing Membership Procedures, Exchange Act Release No. 34–98207 (August 23, 2023); 88 FR 59547 (August 29, 2023) (SR–ICEEU–2023–022) (''Notice'').

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98156 (Aug. 17, 2023), 88 FR 57490. Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-cboebzx-2023-058/srcboebzx2023058.htm.*

[4] 15 U.S.C. 78s(b)(2).

to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates November 21, 2023, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeBZX–2023–058).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–21623 Filed 9–29–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98534; File No. SR–MIAX–2023–36]

Self-Regulatory Organizations: Miami International Securities Exchange LLC; Notice of Filing of a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading

September 26, 2023.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 14, 2023, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 404, Series of Option Contracts Open for Trading.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 404, Series of Option Contracts Open for Trading. Specifically, the Exchange proposes to adopt new Interpretations and Policies .12 to Rule 404 to implement a new strike interval program for stocks that are priced less than $2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months. The Exchange also proposes to amend the table in Interpretations and Policies .11 of Rule 404 to harmonize the table to the propose change.

Background

Currently, Exchange Rule 404, Series of Option Contracts Open for Trading, describes the process and procedures for listing and trading series of options[3] on the Exchange. Rule 404 provides for a $2.50 Strike Price Program, where the Exchange may select up to 60 option classes[4] on individual stocks for which the interval of strike prices will be $2.50 where the strike price is greater than $25.00 but less than $50.00.[5] Rule 404 also provides for a $1 Strike Price Interval Program, where the interval between strike prices of series of options[6] on individual stocks may be $1.00 or greater provided the strike price is $50.00 or less, but not less than $1.00.[7] Additionally, Rule 404 provides for a $0.50 Strike Program.[8] The interval of strike prices of series of options on individual stocks may be $0.50 or greater beginning at $0.50 where the strike price is $5.50 or less, but only for options classes whose underlying security closed at or below $5.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months. The listing of $0.50 strike prices is limited to options classes overlying no more than 20 individual stocks (the ''$0.50 Strike Program'') as specifically designated by the Exchange. The Exchange may list $0.50 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar $0.50 Strike Program under their respective rules. A stock shall remain in the $0.50 Strike Program until otherwise designated by the Exchange.[9]

Proposal

At this time, the Exchange proposes to adopt a new strike interval program for underlying stocks that are not in the aforementioned $0.50 Strike Program (or the Short Term Option Series Program)[10] and that close below $2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months. The $0.50 Strike Program considers stocks that have a closing price at or below $5.00 whereas the Exchange's proposal will consider stocks that have a closing price below $2.50. Currently, there is a subset of stocks that are not included in the $0.50 Strike Program as a result of the limitations of that program which provides that the listing of $0.50 strike prices shall be limited to option classes overlying no more than 20 individual stocks as specifically designated by the Exchange and requires a national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months.[11] Therefore, the Exchange is proposing to implement a new strike interval program termed the ''Low Priced Stock Strike Price Interval Program.''

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''option contract'' means a put or a call issued, or subject to issuance, by the Clearing Corporation pursuant to the Rules of the Clearing Corporation. *See* Exchange Rule 100.

[4] The terms ''class of options'' or ''option class'' means all option contracts covering the same underlying security. *See* Exchange Rule 100.

[5] *See* Exchange Rule 404(f).

[6] The term ''series of options'' means all option contracts of the same class having the same exercise price and expiration date. *See* Exchange Rule 100.

[7] *See* Interpretations and Policies .01(a) of Rule 404.

[8] *See* Interpretations and Policies .04 of Rule 404.

[9] *Id.*

[10] *See* Interpretations and Policies .02 of Rule 404.

[11] *See* Interpretations and Policies .04 of Rule 404.

To be eligible for the inclusion in the Low Priced Stock Strike Price Interval Program, an underlying stock must (i) close below $2.50 in its primary market on the previous trading day; and (ii) have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months. The Exchange notes that there is no limit to the number of classes that will be eligible for inclusion in the proposed program, provided, of course, that the underlying stocks satisfy both the price and average daily trading volume requirements of the proposed program.

The Exchange also proposes that after a stock is added to the Low Priced Stock Strike Price Interval Program, the Exchange may list $0.50 strike price intervals from $0.50 up to $2.00.[12] For the purpose of adding strikes under the Low Priced Stock Strike Price Interval Program, the ''price of the underlying stock'' shall be measured in the same way as ''the price of the underlying security'' as set forth in Rule 404A(b)(1).[13] Further, no additional series in $0.50 intervals may be listed if the underlying stock closes at or above $2.50 in its primary market. Additional series in $0.50 intervals may not be added until the underlying stock again closes below $2.50.

The Exchange's proposal addresses a gap in strike coverage for low priced stocks. The $0.50 Strike Program considers stocks that close below $5.00 and limits the number of option classes listed to no more than 20 individual stocks (provided that the open interest criteria is also satisfied). Whereas, the Exchange's proposal has a narrower focus, with respect to the underlying's stock price, and is targeted to those stocks that close below $2.50 and does not limit the number of stocks that may participate in the program (provided that the average daily trading volume is also satisfied). The Exchange does not believe that any market disruptions will be encountered with the addition of these new strikes. The Exchange represents that it has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Low Priced Stock Strike Price Interval Program.

The Exchange believes that its average daily trading volume requirement of 1,000,000 shares is a reasonable threshold to ensure adequate liquidity in eligible underlying stocks as it is substantially greater than the thresholds used for listing options on equities, American Depository Receipts, and broad-based indexes. Specifically, underlying securities with respect to which put or call option contracts are approved for listing and trading on the Exchange must meet certain criteria as determined by the Exchange. One of those requirements is that trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding twelve (12) months.[14] Rule 402(f) provides the criteria for listing options on American Depositary Receipts (''ADRs'') if they meet certain criteria and guidelines set forth in Exchange Rule 402. One of the requirements is that the average daily trading volume for the security in the U.S. markets over the three (3) months preceding the selection of the ADR for options trading is 100,000 or more shares.[15] Finally, the Exchange may trade options on a broad-based index pursuant to Rule 19b–4(e) of the Securities Exchange Act of 1934 provided a number of conditions are satisfied. One of those conditions is that each component security that accounts for at least one percent (1%) of the weight of the index has an average daily trading volume of at least 90,000 shares during the last six month period.[16]

Additionally, the Exchange proposes to amend the table in Interpretations and Policies .11 of Rule 404 to insert a new column to harmonize the Exchange's proposal to the strike intervals for Short Term Options Series as described in Interpretations and Policies .02 of Rule 404. The table in Interpretations and Policies .11 is intended to limit the intervals between strikes for multiply listed equity options within the Short Term Options Series program that have an expiration date more than twenty-one days from the listing date. Specifically, the table defines the applicable strike intervals for options on underlying stocks given the closing price on the primary market on the last day of the calendar quarter, and a corresponding average daily volume of the total number of options contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter.[17] However, the lowest share price column is titled ''Less than $25.'' The Exchange now proposes to insert a column titled ''Less than $2.50'' and to set the strike interval at $0.50 for each average daily volume tier represented in the table. Also, the Exchange proposes to amend the heading of the column currently titled ''Less than $25,'' to ''$2.50 to less than $25'' as a result of the adoption of the new proposed column, ''Less than $2.50.'' The Exchange believes this change will remove any potential conflict between the strike intervals under the Short Term Options Series Program and those described herein under the Exchange's proposal.

Impact of Proposal

The Exchange recognizes that its proposal will introduce new strikes in the marketplace and further acknowledges that there has been significant effort undertaken by the industry to curb strike proliferation. This initiative has been spearheaded by the Nasdaq BX who filed an initial proposal focused on the removal, and prevention of the listing, of strikes which are extraneous and do not add value to the marketplace (the ''Strike Interval Proposal'').[18] The Strike Interval Proposal was intended to remove repetitive and unnecessary strike listings across the weekly expiries. Specifically, the Strike Interval Proposal aimed to reduce the density of strike intervals that would be listed in the later weeks, by creating limitations for intervals between strikes which have an expiration date more than twenty-one days from the listing date.[19] The Strike Interval Proposal took into account OCC customer-cleared volume, using it as an appropriate proxy for demand. The Strike Interval Proposal was designed to maintain strikes where there was customer demand and eliminate strikes where there wasn't. At the time of its proposal Nasdaq BX estimated that the Strike Interval Proposal would reduce the number of strikes it listed by 81,000.[20] The

[12] While the Exchange may list new strikes on underlying stocks that meet the eligibility requirements of the new program the Exchange will exercise its discretion and will not list strikes on underlying stocks the Exchange believes are subject to imminent delisting from their primary exchange.

[13] The Exchange notes this is the same methodology used in the $1 Strike Price Interval Program. *See* Interpretations and Policies .01(c)(3) of Rule 404.

[14] *See* Exchange Rule 402(b)(4).

[15] *See* Exchange Rule 402(f)(3)(ii).

[16] *See* Exchange Rule 1802(d)(7).

[17] *See* Securities Exchange Release Act No. 91125 (February 21, 2021), 86 FR 10375 (February 19, 2021) (SR–BX–2020–032) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Options 4, Section 5, To Limit Short Term Options Series Intervals Between Strikes That Are Available for Quoting and Trading on BX).

[18] *See* Securities Exchange Act No. 91225 (February 12, 2021), 86 FR 10375 (February 12, 2021) (SR–BX–2020–032) (BX Strike Approval Order); *see also* BX Options Strike Proliferation Proposal (February 25, 2021) available at: *https://www.nasdaq.com/solutions/bx-options-strike-proliferation-proposal*).

[19] *See* Securities Exchange Act No. 91225 (February 12, 2021), 86 FR 10375 (February 12, 2021) (SR–BX–2020–032).

[20] *See id.*

Exchange proposes to amend the table to define the strike interval at $0.50 for underlying stocks with a share price of less than $2.50. The Exchange believes this amendment will harmonize the Exchange's proposal with the Strike Interval Proposal described above.

The Exchange recognizes that its proposal will moderately increase the total number of option series available on the Exchange. However, the Exchange's proposal is designed to only add strikes where there is investor demand [21] which will improve market quality. Under the requirements for the Low Priced Stock Strike Price Interval Program as described herein, the Exchange determined that as of August 9, 2023, 106 symbols met the proposed criteria. Of those symbols 36 are currently in the $1 Strike Price Interval Program with $1.00 and $2.00 strikes listed. Under the Exchange's proposal the Exchange would add the $0.50 and $1.50 strikes for these symbols for the current expiration terms. The remaining 70 symbols eligible under the Exchange's proposal would have $0.50, $1.00, $1.50 and $2.00 strikes added to their current expiration terms. Therefore, for the 106 symbols eligible for the Low Priced Stock Strike Price Interval Program a total of approximately 3,250 options would be added. As of August 9, 2023, the Exchange listed 1,106,550 options, therefore the additional options that would be listed under this proposal would represent a very minor increase of 0.294% in the number of options listed on the Exchange.

The Exchange does not believe that its proposal contravenes the industry's efforts to curtail unnecessary strikes. The Exchange's proposal is targeted to only underlying stocks that close at less than $2.50 and that also meet the average daily trading volume requirement. Additionally, because the strike increment is $0.50 there are only a total of four strikes that may be listed under the program ($0.50, $1.00, $1.50, and $2.00) for an eligible underlying stock. Finally, if an eligible underlying stock is in another program (*e.g.,* the $0.50 Strike Program or the $1 Strike Price Interval Program) the number of strikes that may be added is further reduced if there are pre-existing strikes as part of another strike listing program. Therefore, the Exchange does not believe that it will list any unnecessary or repetitive strikes as part of its program, and that the strikes that will be listed will improve market quality and satisfy investor demand.

The Exchange further believes that the Options Price Reporting Authority (''OPRA''), has the necessary systems capacity to handle any additional messaging traffic associated with this proposed rule change. The Exchange also believes that Members [22] will not have a capacity issue as a result of the proposed rule change. Finally, the Exchange believes that the additional options will serve to increase liquidity, provide additional trading and hedging opportunities for all market participants, and improve market quality.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act,[23] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section (6)(b)(5) [24] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system as the Exchange has identified a subset of stocks that are trading under $2.50 and do not have meaningful strikes available. For example, on August 9, 2023, symbol SOND closed at $0.50 and had open interest of over 44,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.[25] Currently the lowest strike listed is for $2.50, making the lowest strike 400% away from the closing stock price. Another symbol, CTXR, closed at $0.92 on August 9, 2023, and had open interest of over 63,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.[26] Similarly, the lowest strike listed is for $2.50, making the lowest strike more than 170% away from the closing stock price. Currently, such products have no at-the-money options, as well as no in-the-money calls or out-of-the-money puts. The Exchange's proposal will provide additional strikes in $0.50 increments from $0.50 up to $2.00 to provide more meaningful trading and hedging opportunities for this subset of stocks. Given the increased granularity of strikes as proposed under the Exchange's proposal out-of-the-money puts and in-the-money calls will be created. The Exchange believes this will allow market participants to tailor their investment and hedging needs more effectively.

The Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by adding strikes that improves market quality and satisfies investor demand. The Exchange does not believe that the number of strikes that will be added under the program will negatively impact the market. Additionally, the proposal does not run counter to the efforts undertaken by the industry to curb strike proliferation as that effort focused on the removal and prevention of extraneous strikes where there was no investor demand. The Exchange's proposal requires the satisfaction of an average daily trading volume threshold in addition to the underlying stock closing at a price below $2.50 to be eligible for the program. The Exchange believes that the average daily trading volume threshold of the program ensures that only strikes with investor demand will be listed and fills a gap in strike interval coverage as described above. Further, being that the strike interval is $0.50, there are only a maximum of four strikes that may be added ($0.50, $1.00, $1.50, and $2.00). Therefore, the Exchange does not

[21] *See* proposed Interpretations and Policies .12(a) of Rule 404 which requires that an underlying stock have an average daily trading volume of 1,000,000 shares for the three (3) preceding months to be eligible for inclusion in the Low Priced Stock Strike Price Interval Program.

[22] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78(f)(b)(5).

[25] *See* Yahoo! Finance, *https://finance.yahoo.com/quote/SOND/history?p=SOND* (last visited August 10, 2023).

[26] *See* Yahoo! Finance, *https://finance.yahoo.com/quote/CTXR/history?p=CTXR* (last visited August 10, 2023).

believe that its proposal will undermine the industry's efforts to eliminate repetitive and unnecessary strikes in any fashion.

The Exchange believes that its average daily trading volume threshold promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest as it is designed to permit only those stocks with demonstrably high levels of trading activity to participate in the program. The Exchange notes that its average daily trading volume requirement is substantially greater that the average daily trading requirement currently in place on the Exchange for options on equity underlyings,[27] ADRs,[28] and broad-based indexes.[29]

The Exchange believes that the proposed rule change is consistent with Section 6(b)(1) of the Act, which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change allows the Exchange to respond to customer demand to provide meaningful strikes for low priced stocks. The Exchange does not believe that the proposed rule would create any capacity issue or negatively affect market functionality. Additionally, the Exchange represents that it has the necessary systems capacity to support the new options series and handle additional messaging traffic associated with this proposed rule change. The Exchange also believes that its Members will not experience any capacity issues as a result of this proposal. In addition, the Exchange represents that it believes that additional strikes for low priced stocks will serve to increase liquidity available as well and improve price efficiency by providing more trading opportunities for all market participants. The Exchange believes that the proposed rule change will benefit investors by giving them increased opportunities to execute their investment and hedging decisions.

Finally, the Exchange believes its proposal is designed to prevent fraudulent and manipulative acts and practices as options may only be listed on underlyings that satisfy the listing requirements of the Exchange as described in Exchange Rule 402, Criteria for Underlying Securities. Specifically, Rule 402 requires that underlying securities for which put or call option contracts are approved for listing and trading on the Exchange must meet the following criteria: (1) the security must be registered and be an ''NMS stock'' as defined in Rule 600 of Regulation NMS under the Exchange Act; (2) the security shall be characterized by a substantial number of outstanding shares that are widely held and actively traded.[30] Additionally, Rule 402 provides that absent exceptional circumstances, an underlying security will not be selected for options transactions unless: (1) there are a minimum of seven (7) million shares of the underlying security which are owned by persons other than those required to report their stock holdings under Section 16(a) of the Exchange Act; (2) there are a minimum of 2,000 holders of the underlying security; (3) the issuer is in compliance with any applicable requirements of the Exchange Act; and (4) trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding twelve (12) months.[31] The Exchange's proposal does not impact the eligibility of an underlying stock to have options listed on it, but rather addresses only the listing of new additional option classes on an underlying listed on the Exchange in accordance to the Exchange's listings rules. As such, the Exchange believes that the listing requirements described in Exchange Rule 402 address potential concerns regarding possible manipulation. Additionally, in conjunction with the proposed Average Daily Volume requirement described herein, the Exchange believes any possible market manipulation is further mitigated.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (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–MIAX–2023–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MIAX–2023–36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MIAX–2023–36 and should be submitted on or before October 23, 2023.

[27] *See supra* note 14.

[28] *See supra* note 15.

[29] *See supra* note 16.

[30] *See* Exchange Rule 402(a)(1) and (2).

[31] *See* Exchange Rule 402(b)(1),(2),(3) and (4).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–21626 Filed 9–29–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98536; File No. SR–ICEEU–2023–011]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Wind Down Framework and Plan

September 26, 2023.

On August 11, 2023, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICEEU–2023–011 pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4[2] thereunder to amend its Wind Down Framework and Plan to make certain updates and enhancements.[3] On August 22, 2023, ICE Clear Europe filed Amendment No. 1 to the proposed rule change to make certain changes to the Exhibits 5.[4] The proposed rule change, as modified by Amendment No. 1 (hereafter ''the Proposed Rule Change''), was published for public comment in the **Federal Register** on August 30, 2023.[5] The Commission has not received comments regarding the proposal described in the Proposed Rule change.

Section 19(b)(2) of the Exchange Act[6] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the Notice of Filing is October 14, 2023. The Commission is extending this 45-day time period.

In order to provide the Commission with sufficient time to consider the Proposed Rule Change, the Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,[7] designates November 28, 2023, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–ICEEU–2023–011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–21621 Filed 9–29–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98541; File No. SR–MIAX–2023–19]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Amend Exchange Rule 307, Position Limits

September 26, 2023.

On April 21, 2023, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 307, Position Limits, to establish a process for adjusting option position limits following a stock split or reverse stock split in the underlying security. The proposed rule change was published for comment in the **Federal Register** on May 8, 2023.[3] On June 14, 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 approve or disapprove the proposed rule change.[5] The Commission has received one comment regarding the proposal.[6] On August 2, 2023, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change.[8]

Section 19(b)(2) of the Act[9] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of 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 the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on May 8, 2023.[10] The 180th day after the date of the publication of the proposed rule is November 4, 2023. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is 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, as well as the comment received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[11] designates January 3, 2024, as the date by which the Commission shall either approve or

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 5, 88 FR 60001.

[4] Amendment No. 1 updates the Exhibit 5 to correct the presentation of three of the proposed changes to the Wind Down Framework and Plan that were filed with the Commission on August 11, 2023. The proposed rule change includes an Exhibit 4. Exhibit 4 shows the change that Amendment No. 1 makes to the Exhibit 5.

[5] Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Wind Down Framework and Plan, Exchange Act Release No. 34–98217 (August 24, 2023); 88 FR 60001 (August 30, 2023) (SR–ICEEU–2023–011) (''Notice'').

[6] 15 U.S.C. 78s(b)(2).

[7] *Id.*

[8] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97421 (May 2, 2023), 88 FR 29725 (May 8, 2023).

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 97727 (June 14, 2023), 88 FR 40366 (June 21, 2023). The Commission designated August 6, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] *See* letter from Ellen Greene, Managing Director, Equities & Options Market Structure, SIFMA, to Vanessa Countryman, Secretary, Commission, dated July 5, 2023 (''SIFMA Letter'').

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 98045 (August 2, 2023), 88 FR 53555 (August 8, 2023).

[9] 15 U.S.C. 78s(b)(2).

[10] *See supra* note 3.

[11] 15 U.S.C. 78s(b)(2).

disapprove the proposed rule change (File No. SR–MIAX–2023–19).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–21629 Filed 9–29–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98535; File No. SR–PEARL–2023–47]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC To Renumber the MIAX Pearl Equities Rulebook

September 26, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 22, 2023, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 2614, Orders and Order Instructions, Rule 2615, Opening Process for Equity Securities, Rule 2616, Priority of Orders, Rule 2617, Order Execution and Routing, Rule 2622, Limit Up-Limit Down Plan and Trading Halts, and Rule 2623, Short Sales, to make minor, non-substantive edits and clarifying changes to the rule text applicable to MIAX Pearl Equities (''MIAX Pearl Equities''),[3] an equities trading facility of the Exchange.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-equities/pearl-equities/rule-filings,* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the hierarchical headings in Exchange Rule 2614 as follows: subparagraphs (a)(1)(A)–(J) will be renumbered as (a)(1)(i)–(x); subparagraph (a)(1)(A)(i) will be renumbered as (a)(1)(i)(A); subparagraphs (a)(1)(E)(i)–(ii) will be renumbered as (a)(1)(v)(A)–(B); subparagraphs (a)(1)(I)(i)–(iv) will be renumbered as (a)(1)(ix)(A)–(D); subparagraphs (a)(1)(I)(i)(a)–(c) will be renumbered as (a)(1)(ix)(A)1.–3.; subparagraphs (a)(2)(A)–(F) will be renumbered as (a)(2)(i)–(vi); subparagraphs (a)(3)(A)–(E) will be renumbered as (a)(3)(i)–(v); subparagraphs (a)(3)(A)(i)–(ii) will be renumbered as (a)(3)(i)(A)–(B); subparagraphs (a)(3)(A)(i)(a)–(b) will be renumbered as (a)(3)(i)(A)1.–2.; subparagraphs (a)(3)(A)(ii)(a)–(h) will be renumbered as (a)(3)(i)(B)1.–8.; subparagraphs (c)(2)(A)–(B) will be renumbered as (c)(2)(i)–(ii); subparagraphs (c)(2)(A)(i)–(ii) will be renumbered as (c)(2)(i)(A)–(B); subparagraphs (c)(7)(A)–(D) will be renumbered as (c)(7)(i)–(iv); subparagraph (c)(7)(A)(i) will be renumbered as (c)(7)(i)(A); subparagraphs (c)(7)(B)(i)–(iv) will be renumbered as (c)(7)(ii)(A)–(D); and subparagraphs (c)(7)(B)(i)(1)–(2) will be renumbered as (c)(7)(ii)(A)1.–2.; subparagraphs (c)(7)(B)(iii)(1)–(2) will be renumbered as (c)(7)(ii)(C)1.–2.; subparagraphs (c)(7)(C)(i)–(ii) will be renumbered as (c)(7)(iii)(A)–(B); subparagraphs (c)(8)(A)–(D) will be renumbered as (c)(8)(i)–(iv); subparagraphs (c)(8)(A)(i)–(iii) will be renumbered as (c)(8)(i)(A)–(C); subparagraphs (c)(8)(A)(i)(1)–(2) will be renumbered as (c)(8)(i)(A)1.–2.; subparagraphs (c)(8)(B)(i)–(ii) will be renumbered as (c)(8)(ii)(A)–(B); subparagraphs (d)(1)(A)–(B) will be renumbered as (d)(1)(i)–(ii); subparagraphs (g)(1)(A)–(E) will be renumbered as (g)(1)(i)–(v); and subparagraphs (g)(3)(A)–(E) will be renumbered as (g)(3)(i)–(v).

The Exchange proposes to amend the hierarchical headings in Exchange Rule 2615 as follows: subparagraphs (e)(1)(A)–(B) will be renumbered as (e)(1)(i)–(ii).

The Exchange proposes to amend the hierarchical headings in Exchange Rule 2616 as follows: subparagraphs (a)(2)(A)–(B) will be renumbered as (a)(2)(i)–(ii); subparagraphs (a)(2)(A)(i)–(ii) will be renumbered as (a)(2)(i)(A)–(B); subparagraph (a)(2)(B)(i) will be renumbered as (a)(2)(ii)(A); subparagraphs (a)(3)(A)–(B) will be renumbered as (a)(3)(i)–(ii); and subparagraphs (a)(3)(A)(i)–(ii) will be renumbered as (a)(3)(i)(A)–(B).

The Exchange proposes to amend the hierarchical headings in Exchange Rule 2622 as follows: subparagraphs (e)(1)(A)–(D) will be renumbered as (e)(1)(i)–(iv); subparagraphs (h)(1)(A)–(M) will be renumbered as (h)(1)(i)–(xiii); subparagraphs (h)(1)(A)(i)–(iv) will be renumbered as (h)(1)(i)(A)–(D); subparagraphs (h)(2)(A)–(B) will be renumbered as (h)(2)(i)–(ii); subparagraphs (h)(2)(A)(i)–(iii) will be renumbered as (h)(2)(i)(A)–(C); subparagraphs (h)(2)(A)(i)(a)–(e) will be renumbered as (h)(2)(i)(A)1.–5.; subparagraphs (h)(2)(A)(i)(a)1.–2. will be renumbered as (h)(2)(i)(A)1.a.–b.; subparagraphs (h)(2)(A)(i)(e)1.–4. will be renumbered as (h)(2)(i)(A)5.a.–d.; subparagraph (h)(2)(A)(iii)(a) will be renumbered as (h)(2)(i)(C)1.; subparagraphs (h)(2)(A)(iii)(a)1.–3. will be renumbered as (h)(2)(i)(C)1.a.–c.; subparagraphs (h)(2)(B)(i)–(iii) will be renumbered as (h)(2)(ii)(A)–(C); subparagraph (h)(2)(B)(i)(a) will be renumbered as (h)(2)(ii)(A)1.; subparagraph (h)(2)(B)(ii)(a) will be renumbered as (h)(2)(ii)(B)1.; subparagraphs (h)(3)(A)–(C) will be renumbered as (h)(3)(i)–(iii); subparagraphs (h)(3)(A)(i)–(ii) will be renumbered as (h)(3)(i)(A)–(B); and subparagraphs (h)(3)(C)(i)–(iii) will be renumbered as (h)(3)(iii)(A)–(C).

Next, the Exchange proposes to amend proposed renumbered subparagraph (a)(1)(vi) of Exchange Rule 2614 to replace certain internal cross references to another subparagraph of Exchange Rule 2614 in light of the proposed hierarchical heading changes described above. In particular, the Exchange proposes to amend the cross references contained in proposed renumbered Exchange Rule 2614(a)(1)(vi), that are to subparagraph

[12] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''MIAX Pearl Equities'' shall mean MIAX Pearl Equities, a facility of MIAX PEARL, LLC. *See* Exchange Rule 1901.

2614(g)(3)(A), to now be to proposed renumbered subparagraph 2614(g)(3)(i). Accordingly, with all the proposed changes, Exchange Rule 2614(a)(1)(vi) will provide as follows:

(vi) Re-Pricing to Comply with Rule 201 of Regulation SHO. During a Short Sale Period, as defined in Exchange Rule 2614(g)(3)(i), a Limit Order to sell that is designated as short and cannot be executed or displayed on the MIAX Pearl Equities Book at its limit price pursuant to Rule 201 of Regulation SHO will be re-priced to a Permitted Price, as defined in Exchange Rule 2614(g)(3)(i), pursuant to the Short Sale Price Sliding Process, unless the User affirmatively elects to have the order immediately cancelled.

During a Short Sale Period, as defined in Exchange Rule 2614(g)(3)(i), the System will immediately cancel any portion of an incoming Limit Order designated as ISO and short that includes a time-in-force instruction RHO that cannot be executed or displayed at its limit price at the time of entry pursuant to Rule 201 of Regulation SHO.

Next, the Exchange proposes to amend proposed renumbered subparagraphs (a)(1)(ix)(A)1.–3. of Exchange Rule 2614 to replace certain internal cross references to other subparagraphs of Exchange Rule 2614 in light of the hierarchical heading changes described above. In particular, the Exchange proposes to amend the cross references contained in proposed renumbered Exchange Rule 2614(a)(1)(ix)(A) that are to subparagraphs (a) and (b), to now be to subparagraphs 1. and 2., respectively. Accordingly, with all the proposed changes, Exchange Rule 2614(a)(1)(ix)(A)1.–3. will provide as follows:

1. PBO for Limit Orders to buy, the PBB for Limit Orders to sell;

2. if 1. is unavailable, consolidated last sale price disseminated during the Regular Trading Hours on trade date; or

3. if neither 1. or 2. are available, the prior day's Official Closing Price identified as such by the primary listing exchange, adjusted to account for events such as corporate actions and news events.

Next, the Exchange proposes to amend proposed renumbered subparagraph (a)(1)(ix)(C) of Exchange Rule 2614 to replace certain internal cross references to other subparagraphs of Exchange Rule 2614 in light of the hierarchical heading changes described above. In particular, the Exchange proposes to amend the cross references contained in proposed renumbered Exchange Rule 2614 (a)(1)(ix)(C)that are to subparagraphs (a)(1)(I)(i)(a), (b), and (c), to now be to subparagraphs (a)(1)(ix)(A)1., 2., and 3., respectively. Accordingly, with all the proposed changes, Exchange Rule 2614 (a)(1)(ix)(C) will provide as follows:

(C) Applicability. Limit Order Price Protection will be applied when an order is first eligible to trade. A Limit Order entered before the Regular Trading Session that becomes eligible to trade in the Regular Trading Session will become subject to Limit Order Price Protection when the Regular Trading Session begins. Limit Order Price Protection will not be applied if the prices listed under paragraphs (a)(1)(ix)(A)1., 2., or 3. of this Exchange Rule 2614 are unavailable or if the price listed under paragraph (a)(1)(ix)(A)3. is to be applied and a regulatory halt has been declared by the primary listing market during that trading day.

Next, the Exchange proposes to amend proposed renumbered subparagraph (a)(2)(v) of Exchange Rule 2614 to replace certain internal cross references to another subparagraph of Exchange Rule 2614 in light of the hierarchical heading changes described above. In particular, the Exchange proposes to amend the cross references contained in proposed renumbered Exchange Rule 2614 (a)(2)(v) that are to subparagraph (g)(3)(A) to now be to subparagraph (g)(3)(i). Accordingly, with all the proposed changes, Exchange Rule 2614 (a)(2)(v) will provide as follows:

(v) Short Sales. During a Short Sale Period, as defined in Exchange Rule 2614(g)(3)(i), a Market Order to sell that is marked short will be cancelled upon entry if it cannot be executed at a Permitted Price or better, as defined in Exchange Rule 2614(g)(3)(i).

Next, the Exchange proposes to amend proposed renumbered subparagraph (a)(3)(i)(B)6. of Exchange Rule 2614 to replace certain internal cross references to another subparagraph of Exchange Rule 2614 in light of the hierarchical heading changes described above. In particular, the Exchange proposes to amend the cross references contained in proposed renumbered Exchange Rule 2614 (a)(3)(i)(B)6. that are to subparagraph (g)(3)(A) to now be to subparagraph (g)(3)(i). Accordingly, with all the proposed changes, Exchange Rule 2614 (a)(3)(i)(B)6. will provide as follows:

6. Re-Pricing to Comply with Rule 201 of Regulation SHO. During a Short Sale Period, as defined in Exchange Rule 2614(g)(3)(i), a Primary Peg Order to sell that is designated as short and cannot be executed or displayed on the MIAX Pearl Equities Book at its pegged price pursuant to Rule 201 of Regulation SHO will be re-priced multiple times to a Permitted Price, as defined in Exchange Rule 2614(g)(3)(i), pursuant to the Short Sale Price Sliding Process.

Next, the Exchange proposes to amend proposed renumbered subparagraph (a)(3)(ii) of Exchange Rule 2614 to replace a certain internal cross reference to another subparagraph of Exchange Rule 2614 in light of the hierarchical heading changes described above. In particular, the Exchange proposes to amend the cross reference contained in proposed renumbered Exchange Rule 2614 (a)(3)(ii) that is to subparagraph (B), to now be to subparagraph (ii). Accordingly, with all the proposed changes, Exchange Rule 2614 (a)(3)(ii) will provide as follows:

(ii) A Midpoint Peg Order will be accepted but will not be eligible for execution when the PBB and/or PBO is not available. A Primary Peg Order will be accepted but will not be eligible for execution when the PBB or PBO it is pegged to is not available. All Pegged Orders will be accepted but will not be eligible for execution when the PBBO is crossed, and, if instructed by the User, when the PBBO is locked. A Pegged Order that is eligible for execution when the PBBO is locked will be executable at the locking price. A Pegged Order will become eligible for execution and receive a new timestamp when the PBBO uncrosses. A Pegged Order that was not eligible for execution during a locked market will become eligible for execution and receive a new timestamp when the PBBO unlocks. A Primary Peg Order will become eligible for execution and receive a new timestamp when the PBB or PBO it is pegged to becomes available. A Midpoint Peg Order will become eligible for execution and receive a new timestamp when a new midpoint of the PBBO is established. In each of the above cases, pursuant to Exchange Rule 2616, all such Pegged Orders will retain their priority as compared to each other based upon the time priority of such orders immediately prior to being deemed not eligible for execution as set forth in this subparagraph (ii).

Next, the Exchange proposes to amend proposed renumbered subparagraph (c)(8)(iv) of Exchange Rule 2614 to replace a certain internal cross reference to another subparagraph of Exchange Rule 2614 in light of the hierarchical heading changes described above. In particular, the Exchange proposes to amend the cross reference contained in proposed renumbered Exchange Rule 2614 (c)(8)(iv) that is to subparagraph (c)(8)(A)(i) to now be to subparagraph (c)(8)(i)(A). Accordingly, with all the proposed changes, Exchange Rule 2614 (c)(8)(iv) will provide as follows:

(iv) Routing. Any quantity of an order with a Reserve Quantity that is returned unexecuted will join the Reserve Quantity. If there is no Reserve Quantity to join, the returned quantity will be assigned a new time stamp as the Reserve Quantity. In either case, such Reserve Quantity will replenish the Displayed Quantity as provided for in paragraph (c)(8)(i)(A) of this Rule.

Next, the Exchange proposes to amend proposed renumbered subparagraph (e)(2)of Exchange Rule 2615 to replace a certain internal cross

reference to another subparagraph of Exchange Rule 2615 in light of the changes described above. In particular, the Exchange proposes to amend the cross reference contained in proposed renumbered Exchange Rule 2615 (e)(2) that is to subparagraph (e)(1)(B) to now be to subparagraph (e)(1)(ii). Accordingly, with all the proposed changes, Exchange Rule 2615 (e)(2) will provide as follows:

(2) Where neither of the conditions required to establish the price of the Re-Opening Process in paragraph (e)(1)(ii) above have occurred, the equity security may be opened for trading at the discretion of the Exchange. In such case, all orders will be handled in time sequence, beginning with the order with the oldest timestamp, and be placed on the MIAX Pearl Equities Book, cancelled, executed, or routed to away Trading Centers in accordance with the terms of the order.

Next, the Exchange proposes to amend proposed renumbered subparagraph (a)(2)(ii) of Exchange Rule 2616 to replace a certain internal cross reference to another subparagraph of Exchange Rule 2616 in light of the hierarchical heading changes described above. In particular, the Exchange proposes to amend the cross reference contained in proposed renumbered Exchange Rule 2616 (a)(2)(ii) that is to subparagraph (A) to now be to subparagraph (i). Accordingly, with all the proposed changes, Exchange Rule 2616 (a)(2)(ii) will provide as follows:

(ii) For purposes of paragraph (i) above.

Next, the Exchange proposes to amend proposed renumbered subparagraph (e)(2)of Exchange Rule 2622 to replace certain internal cross references to other subparagraphs of Exchange Rule 2622 in light of the hierarchical heading changes described above. In particular, the Exchange proposes to amend the cross references contained in proposed renumbered Exchange Rule 2622(e)(2) that are to subparagraphs (e)(1)(A)–(D) to now be to subparagraphs (e)(1)(i)–(iv). Accordingly, with all the proposed changes, Exchange Rule 2622(e)(2) will provide as follows:

(2) To the extent that an Equity Member participating in a MWCB test is unable to receive and process any of the messages identified in paragraph (e)(1)(i)–(iv) of this Rule, its attestation should notify the Exchange which messages it was unable to process and, if known, why.

Next, the Exchange proposes to amend proposed renumbered subparagraph (h)(2)(i)(A)5.b. of Exchange Rule 2622 to replace certain internal cross references to another subparagraph of Exchange Rule 2622 in light of the hierarchical heading changes described above. In particular, the Exchange proposes to amend the cross references contained in proposed renumbered Exchange Rule 2622 (h)(2)(i)(A)5.b. that are to subparagraph (e) to now be to subparagraph 5. Additionally, the Exchange proposes to amend proposed renumbered subparagraph (h)(2)(i)(A)5.b. of Exchange Rule 2622 to replace a certain internal cross reference to another rule in light of the hierarchical heading changes described above. In particular, the Exchange proposes to amend the cross reference contained in Exchange Rule 2622 (h)(2)(i)(A)5.b. that is to current Exchange Rule 2614(g)(1)(C), to now be to proposed renumbered Exchange Rule 2614(g)(1)(iii). Accordingly, with all the proposed changes, Exchange Rule 2622 (h)(2)(i)(A)5.b. will provide as follows:

b. Limit-Priced Interest. Limit-priced interest will be cancelled if a User has entered instructions not to use the re-pricing process under this paragraph 5. and such interest to buy (sell) is priced above (below) the Upper (Lower) Price Band. If re-pricing is permitted based on a User's instructions, both displayable and non-displayable incoming limit-priced interest to buy (sell) that is priced above (below) the Upper (Lower) Price Band shall be re-priced to the Upper (Lower) Price Band. The System shall re-price resting limit-priced interest to buy (sell) to the Upper (Lower) Price Band if Price Bands move such that the price of resting limit-priced interest to buy (sell) would be above (below) the Upper (Lower) Price Band. If the Price Bands move again and a User has opted into the Exchange's optional multiple price sliding process, as described in Exchange Rule 2614(g)(1)(iii), the System shall reprice such limit-priced interest to the most aggressive permissible price up to the order's limit price. All other displayed and non-displayed limit interest repriced pursuant to this paragraph 5. will remain at its new price unless the Price Bands move such that the price of resting limit-priced interest to buy (sell) would again be above (below) the Upper (Lower) Price Band.

Next, the Exchange proposes to amend proposed renumbered subparagraph (c)(8)(ii)(A) of Exchange Rule 2614 to replace certain internal cross references to other rules in light of the hierarchical heading changes described above. In particular, the Exchange proposes to amend the cross references contained in Exchange Rule 2614 (c)(8)(ii)(A) that are to current Exchange Rule 2616 (a)(2)(A)(i) and Rule 2616 (a)(2)(A)(ii) to now be to proposed renumbered Exchange Rule 2616 (a)(2)(i)(A) and Rule 2616 (a)(2)(i)(B), respectively.

Similarly, the Exchange proposes to amend subparagraph (a)(5) of Exchange Rule 2616 to replace a certain internal cross reference to another rule in light of the changes described above. In particular, the Exchange proposes to amend the cross reference contained in Exchange Rule 2616 (a)(5) that is to current Exchange Rule 2614 (g)(3)(A), to now be to proposed renumbered Exchange Rule 2614 (g)(3)(i).

Similarly, the Exchange proposes to amend subparagraph (a)(1) of Exchange Rule 2617 to replace a certain internal cross reference to another rule in light of the changes described above. In particular, the Exchange proposes to amend the cross reference contained in Exchange Rule 2617 (a)(1) that is to current Exchange Rule 2614 (g)(3)(A), to now be to proposed renumbered Exchange Rule 2614(g)(3)(i).

Similarly, the Exchange proposes to amend subparagraph (b)(2) of Exchange Rule 2617 to replace certain internal cross references to another rule in light of the changes described above. In particular, the Exchange proposes to amend the cross references contained in Exchange Rule 2617 (b)(2) that is to current Exchange Rule 2614 (g)(3)(A), to now be to proposed renumbered Exchange Rule 2614 (g)(3)(i).

Similarly, the Exchange proposes to amend subparagraph (h)(2)(i)(A)5.d. of Exchange Rule 2622 to replace certain internal cross references to another rule in light of the changes described above. In particular, the Exchange proposes to amend the cross references contained in Exchange Rule 2622 (h)(2)(i)(A)5.d. that are to current Exchange Rule 2614(g)(3)(A), to now be to proposed renumbered Exchange Rule 2614(g)(3)(i).

Similarly, the Exchange proposes to amend Exchange Rule 2623 to replace a certain internal cross reference to another rule in light of the changes described above. In particular, the Exchange proposes to amend the cross reference contained in Exchange Rule 2623 that is to current Exchange Rule 2614(g)(3)(A), to now be to proposed renumbered Exchange Rule 2614(g)(3)(i).

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act [4] in general, and furthers the objectives of Section 6(b)(1) of the Act [5] in particular, in that they are designed to enforce compliance by the Exchange's Equity Members [6] and persons associated with its Equity

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(1).

[6] The term ''Equity Member'' is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. *See* Exchange Rule 1901.

Members, with the provisions of the rules of MIAX Pearl Equities. In particular, the Exchange believes that the proposed rule changes will provide greater clarity to Equity Members and the public regarding the Exchange's Rules by providing consistency within the Exchange's Rulebook. The proposed changes will ensure the hierarchical heading scheme aligns throughout the Exchange's Rulebook. The proposed changes will also make it easier for Equity Members to interpret the Exchange's Rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes the proposed changes will not impose any burden on intra-market competition as there is no functional change to the Exchange's System [7] and because the rules of the Exchange apply to all MIAX Pearl Equities participants equally. The proposed rule change will have no impact on competition as it is not designed to address any competitive issue but rather is designed to remedy minor non-substantive issues and provide added clarity to the rule text of Exchange Rules 2614, 2615, 2616, 2617, 2622, and 2623. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency regarding the Exchange's functionality.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) [9] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–PEARL–2023–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–PEARL–2023–47. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–PEARL–2023–47 and should be submitted on or before October 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–21627 Filed 9–29–23; 8:45 am]

BILLING CODE 8011–01–P

[7] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98527; File No. SR–PEARL–2023–46]

Self-Regulatory Organizations; MIAX PEARL LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Options Fee Schedule

September 26, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 12, 2023, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Pearl Options Fee Schedule (''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

us-options/pearl-options/rule-filings at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange originally filed this proposal on August 31, 2023 (SR–PEARL–2023–41). On September 12, 2023, the Exchange withdrew SR–PEARL–2023–41 and refiled this proposal. The Exchange proposes to amend Section 1)a) of the Fee Schedule, Exchange Rebates/Fees—Add/Remove Tiered Rebates/Fees, that applies to the MIAX Pearl Market Maker [3] origin, to modify the volume criteria thresholds applicable to Tier 5 and Tier 6.

Background

The Exchange currently assesses transaction rebates and fees to all market participants which are based upon the total monthly volume executed by the Member [4] on MIAX Pearl in the relevant, respective origin type (not including Excluded Contracts) [5] (as the numerator) expressed as a percentage of (divided by) TCV [6] (as the denominator). In addition, the per contract transaction rebates and fees are applied retroactively to all eligible volume for that origin type once the respective threshold tier (''Tier'') has been reached by the Member. The Exchange aggregates the volume of Members and their Affiliates.[7] Members that place resting liquidity, *i.e.,* orders resting on the book of the MIAX Pearl System,[8] are paid the specified ''maker'' rebate (each a ''Maker''), and Members that execute against resting liquidity are assessed the specified ''taker'' fee (each a ''Taker''). For opening transactions and ABBO [9] uncrossing transactions, per contract transaction rebates and fees are waived for all market participants. Finally, Members are assessed lower transaction fees and receive lower rebates for order executions in standard option classes in the Penny Interval Program [10] (''Penny Classes'') than for order executions in standard option classes which are not in the Penny Interval Program (''Non-Penny Classes''), where Members are assessed higher transaction fees and receive higher rebates.

Proposal To Amend the Volume Criteria Thresholds in Tier 5 and Tier 6 for the Market Maker Origin

The Exchange proposes to amend the Add/Remove Tiered Rebates/Fees set forth in Section 1)a) of the Fee Schedule that apply to the MIAX Pearl Market Maker origin, to modify the volume criteria thresholds for Tiers 5 and 6. The Market Maker origin currently provides certain volume criteria thresholds in Tier 5 that is based upon the total monthly volume executed in all option classes by a Market Maker on MIAX Pearl as a percent of TCV. Pursuant to the Market Maker origin table, Market Makers will qualify for the following Maker rebates and Taker fees in Tier 5 if the Market Maker executes above 1.25% to at least 1.50% of TCV: (i) Maker rebates of ($0.48), against origins other than Priority Customer in Penny Classes; (ii) Maker rebates of ($0.45), against the Priority Customer origin in Penny Classes; (iii) Taker fees of $0.50, against origins other than Priority Customer in Penny Classes; (iv) Taker fees of $0.50, against the Priority Customer origin in Penny Classes; (v) Maker rebates of ($0.70), against all origins in Non-Penny Classes; and (vi) Taker fees of $1.08, against all origins in Non-Penny Classes.

The Market Maker origin currently provides certain volume criteria thresholds in Tier 6 that is based upon the total monthly volume executed in all option classes by a Market Maker on MIAX Pearl as a percent of TCV. Pursuant to the Market Maker origin table, Market Makers will qualify for the following Maker rebates and Taker fees in Tier 6 if the Market Maker executes above 1.50% of TCV: (i) Maker rebates of ($0.48), against origins other than Priority Customer in Penny Classes; (ii) Maker rebates of ($0.46), against the Priority Customer origin in Penny Classes; (iii) Taker fees of $0.50, against origins other than Priority Customer in Penny Classes; (iv) Taker fees of $0.50, against the Priority Customer origin in Penny Classes; (v) Maker rebates of ($0.85), against all origins in Non-Penny

[3] ''Market Maker'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. *See* the Definitions Section of the Fee Schedule.

[4] ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[5] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[6] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period time in which the Exchange experiences an ''Exchange System Disruption'' (solely in the option classes of the affected Matching Engine (as defined below)). The term ''Exchange System Disruption,'' which is defined in the Definitions section of the Fee Schedule, means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours. The term ''Matching Engine,'' which is also defined in the Definitions section of the Fee Schedule, is a part of the MIAX Pearl electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. The Exchange believes that it is reasonable and appropriate to select two consecutive hours as the amount of time necessary to constitute an Exchange System Disruption, as two hours equates to approximately 1.4% of available trading time per month. The Exchange notes that the term ''Exchange System Disruption'' and its meaning have no applicability outside of the Fee Schedule, as it is used solely for purposes of calculating volume for the threshold tiers in the Fee Schedule. *See* the Definitions Section of the Fee Schedule.

[7] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX PEARL Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the process described in the Fee Schedule. *See* the Definitions Section of the Fee Schedule.

[8] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[9] ''ABBO'' means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g) and calculated by the Exchange based on market information received by the Exchange from OPRA. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[10] *See* Securities Exchange Act Release No. 88992 (June 2, 2020), 85 FR 35142 (June 8, 2020) (SR–PEARL–2020–06).

Classes; and (vi) Taker fees of $1.07, against all origins in Non-Penny Classes.

The Exchange proposes to reduce the upper threshold for the volume criteria in Tier 5 of the Market Maker origin from 1.50% to 1.40%. Accordingly, with the proposed change, Market Makers will qualify for the following Maker rebates and Taker fees in Tier 5 if the Market Maker executes above 1.25% to at least 1.40% of TCV: (i) Maker rebates of ($0.48), against origins other than Priority Customer in Penny Classes; (ii) Maker rebates of ($0.45), against the Priority Customer origin in Penny Classes; (iii) Taker fees of $0.50,against origins other than Priority Customer in Penny Classes; (iv) Taker fees of $0.50, against the Priority Customer origin in Penny Classes; (v) Maker rebates of ($0.70), against all origins in Non-Penny Classes; and (vi) Taker fees of $1.08, against all origins in Non-Penny Classes.

The Exchange also proposes to modify the volume criteria threshold for Tier 6 of the Market Maker origin from above 1.50% to now be above 1.40% in light of the proposed change to the volume criteria in Tier 5, above. Accordingly, with the proposed change to the volume criteria in Tier 6, Market Makers will qualify for the following Maker rebates and Taker fees in Tier 6 if the Market Maker executes above 1.40% of TCV: (i) Maker rebates of ($0.48),against origins other than Priority Customer in Penny Classes; (ii) Maker rebates of ($0.46), against the Priority Customer origin in Penny Classes; (iii) Taker fees of $0.50, against origins other than Priority Customer in Penny Classes; (iv) Taker fees of $0.50, against the Priority Customer origin in Penny Classes; (v) Maker rebates of ($0.85), against all origins in Non-Penny Classes; and (vi) Taker fees of $1.07, against all origins in Non-Penny Classes.

The purpose of this proposed change is for business and competitive reasons. With the proposed change, Market Makers should more easily qualify for the higher rebates and lower fees associated with obtaining the volume criteria in Tier 6. The Exchange believes the proposed change would incentivize Market Makers to improve their posted liquidity to the benefit of the entire market, which should increase order flow sent to the Exchange, benefitting all market participants through increased liquidity, tighter markets and order interaction. Additionally, as the amount and type of volume that is executed on the Exchange has shifted since it first established the volume criteria thresholds for Tiers 5 and 6, the Exchange has determined to level-set this threshold amount so that it is more reflective of the current type and amount of volume executed on the Exchange.

The Exchange has designated these changes to be immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(4) of the Act [12] in that it is an equitable allocation of reasonable dues, fees, and other charges among its Exchange members and issuers and other persons using its facilities.

The Exchange believes its proposal to modify the volume criteria thresholds for Tiers 5 and 6 of the Market Maker origin provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13] There are currently 16 registered options exchanges competing for order flow. Based on publicly available information, and excluding index-based options, no single exchange has more than approximately 13–14% of the market share of executed volume of multiply listed equity and exchange-traded fund (''ETF'') options trades as of August 23, 2023, for the month of August 2023.[14] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of August 23, 2023, the Exchange had a market share of approximately 6.21% of executed volume of multiply-listed equity and ETF options for the month of August 2023.[15]

The Exchange believes that the ever-shifting market shares among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to transaction and/or non-transaction fee changes. For example, on February 28, 2019, the Exchange filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).[16] The Exchange experienced a decrease in total market share between the months of February and March of 2019, after the fees were in effect. Accordingly, the Exchange believes that the March 1, 2019 fee change may have contributed to the decrease in the Exchange's market share and, as such, the Exchange believes competitive forces constrain options exchange transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes its proposal to modify the volume criteria thresholds for Tiers 5 and 6 of the Market Maker origin is reasonable, equitable, and not unfairly discriminatory because Market Makers should more easily qualify for the higher Maker rebates and lower Taker fees associated with those tiers. The Exchange believes the proposed change is reasonable because it should incentivize Market Makers to increase order flow sent to the Exchange, benefiting all market participants through increased liquidity, tighter markets and order interaction. Additionally, as the amount and type of volume that is executed on the Exchange has shifted since it first established the volume criteria thresholds for Tiers 5 and 6 of the Market Maker origin, the Exchange has determined to level-set this threshold amount so that it is more reflective of the current type and amount of volume executed on the Exchange. The Exchange also believes the proposed change is not unfairly discriminatory because it is designed to encourage Market Makers to increase their order flow to the Exchange in order to qualify for the higher Maker rebates and lower Taker fees in Tier 6, which should benefit all Members by providing greater execution opportunities on the Exchange and contribute to a deeper, more liquid market, to the benefit of all investors and market participants.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[14] *See* the ''Market Share'' section of the Exchange's website, *available at https://www.miaxglobal.com/* (last visited August 23, 2023).

[15] *See id.*

[16] *See* Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR–PEARL–2019–07).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes its proposal to modify the volume criteria thresholds for Tiers 5 and 6 of the Market Maker origin will not impose any burden on intra-market competition because the Exchange believes that it will not place any category of Exchange market participant at a competitive disadvantage because it will apply to all Market Makers equally. The proposal to modify the volume criteria thresholds for Tiers 5 and 6 of the Market Maker origin is intended to improve market quality. The Exchange believes that its proposal will encourage Market Makers to improve market quality by making it easier for Market Makers to achieve higher tiers, resulting in higher rebates and lower fees, which should result in narrower bid-ask spreads and increased depth of liquidity. This in turn will attract additional order flow to the Exchange, increasing trading opportunities to the benefit of all market participants. Accordingly, the Exchange believes that the proposed changes will continue to attract order flow to the Exchange, thereby encouraging additional volume and liquidity to the benefit of all market participants.

Inter-Market Competition

The Exchange believes its proposal will not impose any burden on inter-market competition because, as described above, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. The Exchange believes that the proposed rule changes reflect this competitive environment because they modify the Exchange's fees in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[17] and Rule 19b–4(f)(2) [18] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–PEARL–2023–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–PEARL–2023–46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–PEARL–2023–46 and should be submitted on or before October 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–21618 Filed 9–29–23; 8:45 am]

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[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98529; File No. SR–PEARL–2023–48]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 2614(f) of the MIAX Pearl Equities Rulebook To Allow Self-Trade Protection Between Users That Access the Exchange Through a Direct Connection and Sponsored Access

September 26, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 22, 2023, MIAX PEARL, LLC (''MIAX Pearl'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 2614(f) to permit individual firms with Users [3] that access the Exchange through a direct connection and also access the Exchange through Sponsored Access to enable Self-Trade Protection (''STP'') modifiers at the firm level on the Exchange's equity trading platform (referred to herein as ''MIAX Pearl Equities'').[4]

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-equities/pearl-equities/rule-filings,* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 2614(f) to permit individual firms with Users that access the Exchange through a direct connection and also access the Exchange through Sponsored Access [5] to enable STP modifiers at the firm level on MIAX Pearl Equities, if they choose.

The Exchange offers optional anti-internalization functionality to Users in the form of STP modifiers that enable a User to prevent two of its orders from executing against each other. The Exchange offers the following four (4) STP modifiers to Equity Members: Cancel Newest, Cancel Oldest, Decrement and Cancel, and Cancel Both. An order marked with the Cancel Newest modifier will not execute against a contra-side order marked with any STP modifier originating from the same Unique Identifier (as currently defined) and the order with the most recent time stamp marked with the Cancel Newest modifier will be cancelled. The contra-side order with the older timestamp marked with an STP modifier will remain on the MIAX Pearl Equities Book.[6] An order marked with the Cancel Oldest modifier will not execute against a contra-side order marked with any STP modifier originating from the same Unique Identifier and the order with the older time stamp marked with the STP modifier will be cancelled. The contra-side order with the most recent timestamp marked with the STP modifier will remain on the MIAX Pearl Equities Book. An order marked with the Decrement and Cancel modifier will not execute against contra-side interest marked with any STP modifier originating from the same Unique Identifier. If both orders are equivalent in size, both orders will be cancelled. If both orders are not equivalent in size, the equivalent size will be cancelled and the larger order will be decremented by the size of the smaller order, with the balance remaining on the MIAX Pearl Equities Book. Finally, an order marked with the Cancel Both modifier will not execute against contra-side interest marked with any STP modifier originating from the same Unique Identifier and the entire size of both orders will be cancelled.

Currently, Users can set the STP modifier to apply at the market participant identifier (''MPID''), Exchange Member [7] identifier, trading group identifier, or Equity Member Affiliate identifier level (any such existing identifier, a ''Unique Identifier'').[8] The STP modifier on the order with the most recent time stamp controls the interaction between two orders marked with STP modifiers. STP functionality assists market participants in reducing trading costs from unwanted executions potentially resulting from the interaction of executable buy and sell trading interest from the same firm.

The Exchange now proposes to amend Rule 2614(f) and enhance its existing STP functionality by introducing a fifth Unique Identifier, Multiple Access identifier, which will allow a User to prevent orders entered via its direct connection from interacting with the User's orders entered via Sponsored Access. Currently, STP is only available to individual and affiliated [9] Users. However, there are certain situations (discussed *infra*) in which an individual firm may access the Exchange through different methods (*i.e.,* through a direct connection and through Sponsored Access) and therefore desires to enable STP in order to prevent orders submitted through its direct connection from interacting with those orders submitted through Sponsored Access.

The Multiple Access identifier is similar to the affiliate identifier that is already in place, as it will enable firms that currently enter orders on the Exchange under two different Unique Identifiers to assign the same Unique Identifier to orders entered via its direct connection and to orders entered via Sponsored Access. This will permit the firm to enable STP and prevent contra side orders from executing. While the affiliate identifier requires Users to prove that an affiliate relationship exists between the two Users, the proposed Multiple Access identifier will only require a User to demonstrate: (i) it maintains a Membership as an Equity Member on the Exchange through which it directly submits orders to the System; [10] and (ii) it also operates as a pponsored [sic] participant and submits

[3] The term ''User'' means any Member or sponsored participant who is authorized to obtain access to the System pursuant to Exchange Rule 2602. *See* Exchange Rule 1901.

[4] This proposed rule change is based on recent proposed rule changes by other national securities exchanges that were filed for immediate effectiveness pursuant to Section 19(b)(3)(A)(iii) of the Act, 15 U.S.C. 78s(b)(3)(A)(iii), and Rule 19b–4(f)(6), 17 CFR 240.19b–4(f)(6), thereunder. *See* Securities Exchange Act Release Nos. 98021 (July 28, 2023), 88 FR 51386 (August 3, 2023) (SR–CboeEDGX–2023–049); 98020 (July 28, 2023), 88 FR 51361 (August 3, 2023) (SR–CboeEDGA–2023–013); 98019 (July 28, 2023), 88 FR 51379 (August 3, 2023) (SR–CboeBYX–2023–012); *and* 98022 (July 28, 2023), 88 FR 51383 (August 3, 2023) (SR–CboeBZX–2023–054).

[5] *See* Exchange Rule 210.

[6] Exchange Rule 1901 defines the term ''MIAX Pearl Equities Book'' as ''the electronic book of orders in equity securities maintained by the System.''

[7] The term ''Equity Member'' is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. *See* Exchange Rule 1901.

[8] *See* Exchange Rule 2614(f).

[9] The term ''affiliate'' of or person ''affiliated with'' another person means a person who, directly, or indirectly, controls, is controlled by, or is under common control with, such other person. *See* Exchange Rule 100. The term ''person'' refers to a natural person, corporation, partnership (general or limited), limited liability company, association, joint stock company, trust, trustee of a trust fund, or any organized group of persons whether incorporated or not and a government or agency or political subdivision thereof. *Id. See also* 17 CFR 230.405. An *affiliate* of, or person *affiliated* with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

[10] The term ''System'' is the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

orders to the System through Sponsored Access. The proposed addition of the Multiple Access identifier does not present any new or novel STP functionality, but rather would extend existing STP functionality to firms that already access the Exchange through multiple formats and therefore have different Unique Identifiers appended to their orders.[11]

There are situations where an individual firm would choose to submit orders to the Exchange through different mechanisms. For instance, a firm may employ different trading strategies across different trading desks and choose to send orders for one strategy to the Exchange through a direct connection while the other strategy is sent through Sponsored Access. The proposed functionality would serve as an additional tool that Users may enable in order to assist with compliance with the various securities laws relating to potentially manipulative trading activity such as wash sales [12] and self-trades.[13] Additionally, the proposed functionality would provide firms an additional solution to manage order flow by preventing undesirable executions where the firm submits orders in multiple formats (*i.e.,* direct connection or Sponsored Access). As is the case with the existing risk tools, Users, and not the Exchange, have full responsibility for ensuring that their orders comply with applicable securities rules, laws, and regulations. Furthermore, as is the case with the existing risk settings, the Exchange does not believe that the use of the proposed STP functionality can replace User-managed risk management solutions.

The Exchange is proposing to allow firms that submit orders to the Exchange through both a direct connection and through Sponsored Access to utilize STP by utilizing the Multiple Access identifier.[14] Specifically, the Exchange is proposing to allow individual firms who choose to access the System through both a direct connection and through Sponsored Access to use STP functionality in order to prevent executions from occurring between those separate Users that are associated with the direct connection and Sponsored Access. When a firm requests STP using the Multiple Access identifier and the Exchange confirms that the individual firm is both a Member that accesses the Exchange through a direct connection and maintains a sponsored participant relationship on the Exchange, the Exchange will assign an identical Multiple Access identifier to each User. This Multiple Access identifier will be used to prevent executions between contra side orders entered by the Users assigned the same Multiple Access identifier. The purpose of this proposed change is to extend STP functionality to separate Users originating from the same individual firm in order to prevent transactions between the firm's orders submitted directly to the System and through Sponsored Access.

The Exchange includes the below examples to demonstrate how STP will operate with the proposed Multiple Access identifier. For all examples below, User A represents Firm 1 accessing the System through a direct connection. User B also represents Firm 1 but where Firm 1 is accessing the System as a sponsored participant through a Sponsoring Member.[15] User A and User B will use a Multiple Access identifier of ''A'' when requesting STP at the Multiple Access level, as both Users submit Firm 1's orders to the System. User C is not related to Users A and B and uses a Multiple Access identifier of ''C''.

Multiple Access Level STP

Scenario 1: User A submits a buy order. User B submits a sell order. User C also submits a sell order. User A has enabled STP at the Multiple Access level using a Multiple Access identifier of A. User B has enabled STP at the Multiple Access level using a Multiple Access identifier of A. User C has not enabled STP. User A's buy order is prevented from executing with User B's sell order as each User has enabled STP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order will be permitted to execute with User C's sell order because User C has not enabled STP, depending on which STP modifier has been chosen by User A.

Scenario 2: User A submits a buy order. User B submits a sell order. User C also submits a sell order. User A has enabled STP at the Multiple Access level using a Multiple Access identifier of A. User B has not enabled STP. User C has enabled STP at the Multiple Access level using a Multiple Access identifier of C. User A's order will be eligible to trade with both User B and User C. User A's order is eligible to trade with User B because User B did not enable STP. In order for STP to prevent the matching of contra side orders, both the buy and sell order must contain an STP modifier. User A's order is also eligible to trade with User C because even though User A and User C have both enabled STP at the Multiple Access level, User A and User C have different Multiple Access identifiers.

Scenario 3: User A submits a buy order and a sell order. User B submits a buy order. User A has enabled STP at the Multiple Access level using a Multiple Access identifier of A. User B has enabled STP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order is not eligible to execute with User A's sell order because User A has enabled STP at the Multiple Access level using a Multiple Access identifier of A. User A's sell order is not eligible to execute with User B's buy order because both User A and User B have enabled STP at the Multiple Access level using a Multiple Access identifier of A.

Scenario 4: User A submits a buy order and a sell order. User B submits a sell order. User C submits a sell order. User A has enabled STP at the Multiple Access level using a Multiple Access identifier of A. User B has enabled STP at the Multiple Access level using a Multiple Access identifier of A. User C has enabled STP at the Multiple Access level using a Multiple Access identifier of C. User A's buy order is not eligible to execute with User A's sell order because User A has enabled STP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order is not eligible to execute with User B's sell order because both User A and User B have enabled STP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order is eligible to execute with User C's sell order because while User A and User C have enabled STP at the Multiple Access level, User A and User C have been assigned different Multiple Access identifiers.

This proposed rule change is designed to provide additional flexibility to Equity Members in how they implement

[11] *See also supra* note 4.

[12] A ''wash sale'' is generally defined as a trade involving no change in beneficial ownership that is intended to produce the false appearance of trading and is strictly prohibited under both the federal securities laws and FINRA rules. *See, e.g.,* 15 U.S.C 78i(a)(1); FINRA Rule 6140(b) (''Other Trading Practices'').

[13] Self-trades are ''transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in beneficial ownership of the security.'' FINRA requires members to have policies and procedures in place that are reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. *See* FINRA Rule 5210, Supplementary Material .02.

[14] The Exchange will require firms requesting to use the Multiple Access identifier to complete an affidavit stating: (i) it is currently an Equity Member of the Exchange that submits orders directly to the System, and (ii) it also submits orders to the System through a Sponsored Access arrangement.

[15] *See* Exchange Rules 210 and 2602.

self-trade prevention, and thereby better manage their order flow and prevent undesirable executions or the potential for ''wash sales'' that may occur as a result of the speed of trading in today's marketplace. Based on informal discussions with Equity Members, the Exchange believes that the proposed amendments will be useful to Equity Members in implementing their own compliance controls. Furthermore, the additional STP functionality may assist Members in complying with certain rules and regulations of the Employee Retirement Income Security Act (''ERISA'') that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts.

The Exchange notes that, as with the current anti-internalization functionality offered by the Exchange, use of the proposed new Multiple Access identifier STP grouping will not alleviate, or otherwise exempt, Equity Members from their best execution obligations. As such, Equity Members and their Affiliates using STP will continue to be obligated to take appropriate steps to ensure customer orders which were prevented from execution due to anti-internalization ultimately receive the same price, or a better price, than they would have received had execution of the orders not been inhibited by anti-internalization. Further, as with current rule provisions, Market Makers and other Users may not use STP functionality to evade the firm quote obligation, as specified in Exchange Rule 2606(b), and the STP functionality must be used in a manner consistent with just and equitable principles of trade.[16] For these reasons, the Exchange believes the proposed new Equity Member Affiliate level of STP grouping offers Equity Members enhanced order processing functionality that may prevent potentially undesirable executions without negatively impacting broker-dealer best execution obligations.

Implementation

The Exchange will issue a trading alert publicly announcing the implementation date of this proposed rule change to provide Equity Members with adequate time to prepare for the associated technological changes. The Exchange anticipates that the implementation date will be in the fourth quarter of 2023.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5),[18] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because allowing Users that access the Exchange through a direct connection and also access the Exchange through Sponsored Access to be part of the same STP group will provide Equity Members with additional flexibility with respect to how they implement self-trade protections provided by the Exchange that may better support their trading strategies and compliance controls. Equity Members that prefer the current anti-internalization groupings offered by the Exchange can continue to use them without any modification.

In particular, the Exchange believes that the proposed Multiple Access level STP functionality promotes just and equitable principles of trade by allowing individual firms to better manage order flow and prevent undesirable trading activity such as wash sales or self-trades that may occur as a result of the velocity of trading in today's high-speed marketplace. The proposed Multiple Access identifier and description of eligibility to utilize the proposed Multiple Access identifier does not introduce any new or novel functionality, as the proposed amendment does not seek to change the underlying STP functionality, but merely extends the current STP functionality to another trading relationship. For instance, a User may operate trading desk 1 that accesses the Exchange via the User's direct connection, as well as trading desk 2 that accesses the Exchange as a sponsored participant. While these desks may operate different trading strategies, a User may desire to prevent these desks from trading versus each other in the marketplace because the orders are originating from the same entity. Here, Users may desire STP functionality on a Multiple Access level that will help them avoid unintended executions to achieve compliance[20] with regulatory rules regarding wash sales and self-trades in a very similar manner to the way that the current STP functionality applies on the existing Unique Identifier level. In this regard, the proposed Multiple Access level STP functionality will permit individual firms associated with different Users for purposes of submitting orders to the Exchange in a different manner to prevent the execution of transactions by and between the Users. The Exchange also believes that the proposed rule change is fair and equitable and is not designed to permit unfair discrimination as use of the proposed STP functionality is available to all Users that meet the criteria and is optional, and its use is not a prerequisite for trading on the Exchange.

Finally, the Exchange notes other equity exchanges recently amended their rules to allow similar groupings for their own anti-internalization functionality.[21] Consequently, the Exchange does not believe that the proposed rule change raises any new or novel issues not already considered by the Commission.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. STP is an optional functionality offered by the Exchange and Users are free to decide whether to use STP in their decision-making process when submitting orders to the Exchange.

The Exchange believes that the proposed Multiple Access identifier does not impose any burden on intramarket competition as it seeks to enhance an existing functionality available to all Users. The Exchange is not proposing to introduce any new or novel functionality, but rather is proposing to provide an extension of its existing STP functionality to individual firms who choose to access the System

[16] *See* Exchange Rule 2100.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

[20] The Exchange reminds Users that while they may utilize STP to help prevent potential transactions such as wash sales or self-trades, Users, not the Exchange, are ultimately responsible for ensuring that their orders comply with applicable rules, laws, and regulations.

[21] *See supra* note 4.

through both a direct connection and through Sponsored Access. Additionally, the proposed rule specifies which Users are eligible to use the Multiple Access identifier and will be available to any User who satisfies such criteria. STP will continue to be an optional functionality offered by the Exchange and the addition of Multiple Access level STP will not change how the current Unique Identifiers and STP functionality operate.

The Exchange believes that the proposed Multiple Access identifier does not impose any undue burden on intermarket competition. STP is an optional functionality offered by the Exchange and Users are not required to use STP functionality when submitting orders to the Exchange. Further, the Exchange is not required to offer STP and is choosing to do so as a benefit for Users who wish to enable STP functionality. Moreover, the proposed change is not being submitted for competitive reasons, but rather to provide Users enhanced order processing functionality that may prevent undesirable executions by affiliated Users such as wash sales or self-trades. Nonetheless, the proposed rule change would also improve the Exchange's ability to compete with other exchanges that recently amended their rules to allow Multiple Access identifier grouping for their own anti-internalization functionality.[22]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[23] and Rule 19b–4(f)(6) thereunder.[24]

A proposed rule change filed under Rule 19b–4(f)(6)[25] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[26] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay will allow the Exchange to immediately offer individual firms with Users that access the Exchange through a direct connection and through Sponsored Access functionality to better manage order flow and prevent undesirable executions, to help ensure compliance with securities laws relating to potentially manipulative trading activity such as wash sales and self-trades. Further, the Commission notes that this proposed rule change would permit functionality on the Exchange currently available on other exchanges[27] and as such, does not raise any novel legal or regulatory issues. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[28]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–PEARL–2023–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–PEARL–2023–48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–PEARL–2023–48 and should be submitted on or before October 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–21620 Filed 9–29–23; 8:45 am]

BILLING CODE 8011–01–P

[22] *See id.*

[23] 15 U.S.C. 78s(b)(3)(A)(iii).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] *Id.*

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] *See supra* note 4.

[28] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[29] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98528; File No. SR–PHLX–2023–40]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Proposed Rule Change To Amend Equity 4, Rules 3301A and 3301B To Establish New ''Contra Midpoint Only'' and ''Contra Midpoint Only With Post-Only'' Order Types and To Make Other Corresponding Changes to the Rulebook

September 26, 2023.

On August 28, 2023, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Equity 4, Rules 3301A and 3301B [3] to establish new ''Contra Midpoint Only'' and ''Contra Midpoint Only with Post-Only'' Order Types, and to make other corresponding changes to the Rulebook. The proposed rule change was published for comment in the **Federal Register** on September 8, 2023.[4] The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days (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 shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 23, 2023. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,[6] the Commission designates December 7, 2023, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–PHLX–2023–40).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–21619 Filed 9–29–23; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References herein to Phlx Rules in the 3000 Series shall mean Rules in Phlx Equity 4.

[4] *See* Securities Exchange Act Release No. 98280 (September 1, 2023), 88 FR 62129.

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98533; File No. SR–MEMX–2023–24]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule

September 26, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 15, 2023, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members [3] pursuant to Exchange Rules 15.1(a) and (c). Specifically, the Exchange proposes to adopt transaction fees (''Transaction Fees''), routing fees (''Routing Fees''), and definitions (''Definitions'') within the MEMX Options Fee Schedule (the ''Options Fee Schedule''). The Transaction Fees section of the Options Fee Schedule would establish transaction fees and rebates applicable to Options Members trading on the Exchange's options trading platform (such platform, ''MEMX Options'' and such Members, ''Options Members''). The Routing Fees section of the Options Fee Schedule would establish fees for Options Members who route their orders to away exchanges. The Definitions section of the Options Fee Schedule would define and clarify terms used in the Options Fee Schedule. The Exchange proposes to implement the changes to the Options Fee Schedule pursuant to this proposal on September 20, 2023. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to (i) establish transaction rebates and fees applicable to all Options Members trading on MEMX Options; (ii) establish routing fees applicable to all Options Members trading on MEMX Options who route orders to away exchanges; and (iii) define and clarify terms used in the Options Fee Schedule.

Transaction Fees

The proposed Transaction Fees section of the Options Fee Schedule sets forth transaction rebates and fees for executions on MEMX Options. MEMX Options will operate a ''Maker-Taker'' model whereby it provides rebates to Options Members that provide liquidity and charges fees to those that remove liquidity, as further described below. The proposed rebates and fees vary depending on whether a transaction was executed in a customer capacity (''Customer'') [4] or in a non-customer capacity (''Non-Customer'') [5], whether the underlying security of the applicable option is in the Penny Pilot Program

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1.5(p).

[4] Customer capacity applies to any order for the account of a Priority Customer. ''Priority Customer'' means any person or entity that is neither a broker or dealer in securities nor a Professional. *See* Rule 16.1 of the MEMX Rulebook.

[5] Non-Customer capacity applies to any transaction that is not a Customer order.

(''Penny options'') or not in the Penny Pilot Program (''Non-Penny options''), and, finally, whether the transaction adds or removes liquidity from the MEMX Options Book.

The Exchange will provide fee qualifiers to distinguish between Customer transactions and Non-Customer transactions.[6] MEMX Options will provide Fee Codes to distinguish between transactions in Penny options and transactions in Non-Penny options.[7] MEMX Options will also provide Fee Codes to distinguish between transactions that add liquidity to the MEMX Options Book and transactions that remove liquidity from the MEMX Options Book.[8]

Options Members shall be assessed lower transaction fees and smaller rebates for order executions in Penny options than for order executions in Non-Penny options, for which Members will be assessed higher transaction fees and larger rebates. As noted above, Options Members shall be assessed fees for removing liquidity from the MEMX Options Book and provided rebates for adding liquidity to the MEMX Options Book. At this time, the Exchange will not differentiate between fees charged and rebates assessed for different types of Non-Customer transactions; instead, all Non-Customer transactions (*i.e.,* transactions for the accounts of market makers, professionals, firms, away market makers, or broker dealers) will be assessed the same fees and rebates.

The Fee Codes and fee qualifiers will be used to make clear to Members what rebates were provided to them and which fees were assessed.[9] The Exchange believes that designating the Fee Codes will make clear the different types of fees and rebates passed back to Members on execution reports and will be useful for the Exchange in considering potential pricing modifications as it continues to evaluate its pricing structure on an ongoing basis after the launch of MEMX Options. The Exchange's Fee Codes and fee qualifiers will assist the Exchange and Options Members with financial planning, tracking, and reconciliation of invoices generated by the Exchange.

Transactions for Customer accounts in Penny options that remove liquidity from the MEMX Book will be assessed a fee of $0.46 per contract. Transactions for Non-Customer accounts in Penny options that remove liquidity will be assessed a fee of $0.50 per contract. Transactions for Customer accounts in Non-Penny options that remove liquidity from the MEMX Book will be assessed a fee of $0.85 per contract. Finally, transactions for Non-Customer accounts in Non-Penny options that remove liquidity will be assessed a fee of $1.10 per contract. The purpose of the proposed transaction fees is to assess right-sized fees for orders that remove liquidity from the Exchange.

Transactions for Customer accounts in Penny options that add liquidity to the MEMX Options Book will receive a rebate of $0.49 per contract. Transactions for Non-Customer accounts in Penny options that add liquidity will receive a rebate of $0.45 per contract. Transactions for Customer accounts in Non-Penny options that add liquidity to the MEMX Options Book will receive a rebate of $1.04 per contract. Finally, transactions for Non-Customer accounts in Non-Penny options that add liquidity will receive a rebate of $0.80 per contract. The purpose of the proposed transaction rebates is to provide right-sized incentives for Options Members to trade on the Exchange and to incentivize order flow to be directed to the Exchange.

The Exchange does not initially propose to charge tiered fees or provide tiered rebates according to the volume of orders submitted to MEMX Options. Accordingly, all fees and rebates described above are applicable to all Options Members regardless of the overall volume of an Options Member's activities on MEMX Options.

Routing Fees

The Exchange proposes to assess Routing Fees on orders routed to other options exchanges. The amount of the applicable fee will be based on whether the order is for a Penny or Non-Penny option. At this time, the Exchange will not charge different routing fees according to the capacity of the order. The Exchange will charge a fee of $0.60 for Penny options routed to another options exchange and $1.20 for Non-Penny options routed to another options exchange.

The purpose of the proposed Routing Fees is to recoup costs incurred by the Exchange when routing orders to other options exchanges on behalf of Options Members. In determining its proposed Routing Fees, the Exchange took into account transaction fees assessed by other options exchanges, the Exchange's projected clearing costs, and the projected administrative, regulatory, and technical costs associated with routing orders to other options exchanges. The Exchange will use its affiliated broker-dealer, MEMX Execution Services, to route orders to other options exchanges or to other broker-dealers that will route such orders to other options exchanges. Routing services offered by the Exchange and its affiliated broker-dealer are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. The proposed structure for routing fees is similar to the fee structure in place for routing at various other exchanges.[10] The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges.

Definitions

The Exchange has included a Definitions section within the Options Fee Schedule. The purpose of the Definitions section is to streamline the Options Fee Schedule by placing many of the defined terms used in the Options Fee Schedule in one location. The Definitions section defines the terms ''Penny Program Securities'', ''Away Market Maker'', ''Broker Dealer'', ''Customer'', ''Firm'', ''Market Maker'', and ''Professional''. Many of the defined terms are also defined in the Exchange Rules, particularly in Exchange Rule 16.1. The Exchange notes that other exchanges have Definitions sections in

[6] MEMX Options will provide fee qualifier ''c'' for Customer transactions. MEMX Options will provide fee qualifier ''m'' for market maker transactions, fee qualifier ''p'' for professional transactions, fee qualifier ''f'' for firm transactions, fee qualifier ''a'' for away market maker transactions, and fee qualifier ''b'' for broker-dealer transactions. Each of market maker transactions, professional transactions, firm transactions, away market maker transactions, and broker-dealer transactions shall be referred to as ''Non-Customer'' transactions. Fee qualifiers will be provided by the Exchange on the monthly invoices provided to Options Members.

[7] MEMX Options will provide Fee Code ''P'' for transactions in Penny options and Fee Code ''N'' for transactions in Non-Penny options. Fee Codes will be provided by the Exchange on the monthly invoices provided to Options Members.

[8] MEMX Options will provide Fee Code ''D'' for transactions which add liquidity to the MEMX Options Book, and Fee Code ''R'' for transactions that remove liquidity from the MEMX Options Book. Fee Codes will be provided by the Exchange on the monthly invoices provided to Options Members.

[9] For example, for a Customer order in a Penny option that removes liquidity from the MEMX Book, the Exchange would pass back the Fee Code RcP. As another example, for a Non-Customer Away Market Maker order in a Non-Penny option that adds liquidity to the MEMX Book, the Exchange would pass back the Fee Code DaN.

[10] *See* Exchange Act Release Nos. 97896 (July 13, 2023), 88 FR 46313 (July 19, 2023) (SR–PEARL–2023–30); 97901 (July 13, 2023), 88 FR 46202 (July 19, 2023) (SR–EMERALD–2023–15); 85591 (April 10, 2019), 84 FR 15645 (April 16, 2019) (SR–CboeBZX–2019–024); 91677 (April 26, 2021), 86 FR 22989 (April 30, 2021) (SR–NASDAQ–2021–021); and 97234 (March 31, 2023), 88 FR 20589 (April 6, 2023) (SR–NYSEARCA–2023–28).

their respective fee schedules,[11] and the Exchange believes that including such section makes the Options Fee Schedule more readable and user-friendly.

2. Statutory Basis

The Exchange believes that its proposal to amend its Options Fee Schedule is consistent with the provisions of Section 6 of the Act,[12] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Options Members and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Upon its launch, MEMX Options will operate in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge $0.46 for orders for Customer accounts that remove liquidity in Penny options, because it is comparable to the transaction fees charged by other exchanges for Customer transactions that remove liquidity in Penny options.[15] The Exchange further believes that this fee is equitably allocated and not unfairly discriminatory because it applies equally to all Options Members.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge $0.50 for orders for Non-Customer accounts in Penny options that remove liquidity because it is comparable to the transaction fee charged by other exchanges for Non-Customer transactions in Penny options that remove liquidity.[16] The Exchange further believes that this fee is equitably allocated and not unfairly discriminatory because it applies equally to all Options Members.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge $0.85 for orders for Customer accounts in Non-Penny options that remove liquidity because it is comparable to the transaction fees charged by other exchanges for Customer transactions in Non-Penny options that remove liquidity.[17] The Exchange further believes that this fee is equitably allocated and not unfairly discriminatory because it applies equally to all Options Members.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge $1.10 for orders in Non-Customer accounts in Non-Penny options that remove liquidity because it is comparable to the transaction fees charged by other exchanges for Non-Customer transactions in Non-Penny options that remove liquidity.[18] The Exchange

[11] *See, e.g.,* the MIAX Pearl Options Fee Schedule, available at *https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf;* the CBOE BZX Options Fee Schedule, available at *https://www.cboe.com/us/options/membership/fee_schedule/bzx/;* and the Nasdaq Options Market Fee Schedule, available at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7.*

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[15] For example, the MIAX Pearl Options trading fee schedule on its public website reflects a transaction fee ranging from $0.47–$0.48 for Customer transactions that remove liquidity in Penny options; *see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf.* The Cboe BZX Options trading fee schedule on its public website reflects a transaction fee ranging from $0.46–$0.48 for Customer transactions that remove liquidity in Penny options; *see https://www.cboe.com/us/options/membership/fee_schedule/bzx/.* The Nasdaq Options Market trading fee schedule on its public website reflects a transaction fee of $0.49 for Customer transactions that remove liquidity in Penny options; *see https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7.* Additionally, the NYSE Arca Options trading fee schedule on its public website reflects a transaction fee of $0.46–$0.49 for Customer transactions that remove liquidity in Penny options; *see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[16] For example, the MIAX Pearl Options trading fee schedule on its public website reflects a transaction fee of $0.50 for Non-Customer transactions that remove liquidity in Penny options; *see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf.* Per the Cboe BZX Options trading fee schedule on its public website, transactions for the accounts of market maker and professional customers that remove liquidity in Penny options are assessed a $0.47–$0.50 fee and transactions for the accounts of broker dealers that remove liquidity in Penny options are assessed a $0.46–$0.50 fee; *see https://www.cboe.com/us/options/membership/fee_schedule/bzx/.* Per the Nasdaq Options Market trading fee schedule on its public website, transactions for the accounts of firms, broker-dealers, and market makers that remove liquidity in Penny options are assessed a fee of $0.50 and transactions for the accounts of professional customers that remove liquidity in Penny options are assessed a fee of $0.49; *see https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7.* Lastly, per the NYSE Arca Options trading fee schedule on its public website, transactions for the accounts of market makers, broker-dealers, and professional customers that remove liquidity in Penny options are assessed a fee of $0.50; *see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[17] For example, the MIAX Pearl Options trading fee schedule on its public website reflects a transaction fee of $0.85 for Customer transactions that remove liquidity in Non-Penny options; *see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf.* Similarly, the Cboe BZX Options trading fee schedule on its public website also reflects a $0.85 transaction fee for Customer transactions that remove liquidity in Non-Penny options; *see https://www.cboe.com/us/options/membership/fee_schedule/bzx/.* Similarly, the Nasdaq Options Market trading fee schedule on its public website also reflects a $0.85 transaction fee for Customer transactions that remove liquidity in Non-Penny options; *see https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7.* Lastly and similarly, the NYSE Arca Options trading fee schedule on its public website reflects a $0.85 transaction fee for Customer transactions that remove liquidity in Non-Penny options; *see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[18] For example, per the MIAX Pearl Options trading fee schedule on its public website, transactions for the accounts of market makers that remove liquidity in Non-Penny options are assessed a $1.07–$1.10 fee and transactions for the accounts of professional customers, firms, and broker-dealers that remove liquidity in Non-Penny options are assessed a $1.09–$1.10 fee; *see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf.* Per the Cboe BZX Options trading fee schedule on its public website, transactions for the accounts of market makers, firms, broker-dealers, and professional customers that remove liquidity in Non-Penny options are assessed a $1.07–$1.10 fee;

further believes that this fee is equitably allocated and not unfairly discriminatory because it applies equally to all Options Members.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to provide a rebate of $0.49 for orders for Customer accounts in Penny options that add liquidity because it is comparable to the rebate provided by other exchanges for Customer transactions in Penny options that add liquidity.[19] The Exchange further believes that this rebate is equitably allocated and not unfairly discriminatory because all Options Members are equally eligible for the rebate. The Exchange believes that the rebate is reasonably designed to attract order flow to MEMX Options, which the Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to provide a rebate of $0.45 for orders for Non-Customer accounts in Penny options that add liquidity because it is comparable to the rebate provided by other exchanges for Non-Customer transactions in Penny options that add liquidity.[20] The Exchange further believes that this rebate is equitably allocated and not unfairly discriminatory because all Options Members are equally eligible for the rebate. The Exchange believes that the rebate is reasonably designed to attract order flow to MEMX Options, which the Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to provide a rebate of $1.04 for orders for Customer accounts in Non-Penny options that add liquidity because it is comparable to the rebate provided by other exchanges for Customer transactions in Non-Penny options that add liquidity.[21] The Exchange further believes that this rebate is equitably allocated and not unfairly discriminatory because all Options Members are equally eligible for the rebate. The Exchange believes that the rebate is reasonably designed to attract order flow to MEMX Options, which the Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to provide a rebate of $0.80 for orders for Non-Customer accounts in Non-Penny options that add liquidity because it is comparable to the rebate provided by other exchanges for Non-Customer transactions in Non-Penny options that add liquidity.[22] The Exchange further believes that this rebate is equitably allocated and not unfairly discriminatory because all Options Members are equally eligible for the rebate. The Exchange believes that the rebate is reasonably designed to attract order flow to MEMX Options, which the Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge fees of $0.60 for routing in Penny options and $1.20 for routing in Non-Penny options, because these routing fees are comparable to those charged by other exchanges for routing Penny and Non-Penny options to away exchanges.[23] Additionally, the

see https://www.cboe.com/us/options/membership/fee_schedule/bzx/. Per the Nasdaq Options Market trading fee schedule on its public website, transactions for the accounts of market makers, broker-dealers, and firms that remove liquidity in Non-Penny options are assessed a $1.10 fee and transactions for the accounts of professional customers that remove liquidity in Non-Penny options are assessed a $0.85 fee; *see https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7.* Lastly, per the NYSE Arca Options trading fee schedule on its public website, transactions for the accounts of market makers, firms, broker-dealers, and professional customers that remove liquidity in Non-Penny options are assessed a $1.10 fee; *see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[19] For example, the MIAX Pearl Options trading fee schedule on its public website reflects a rebate ranging from $0.25–$0.52 for Customer transactions that add liquidity in Penny options; *see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf.* The Cboe BZX Options trading fee schedule on its public website reflects a rebate ranging from $0.25–$0.53 for Customer transactions that add liquidity in Penny options; *see https://www.cboe.com/us/options/membership/fee_schedule/bzx/.* The Nasdaq Options Market trading fee schedule on its public website reflects a rebate ranging from $0.20–$0.48 for Customer transactions that add liquidity in Penny options; *see https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7.*

[20] For example, per the MIAX Pearl Options trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Penny options with a Priority Customer on the contra side are provided a $0.22–$0.46 rebate, and transactions for the accounts of professional customers and firms that add liquidity in Penny options with a non-Priority Customer on the contra side are provided a $0.25–$0.48 rebate; *see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf.* Per the Cboe BZX Options trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Penny options are provided a $0.29–$0.38 rebate, transactions for the accounts of professional customers that add liquidity in Penny options are provided a $0.25–$0.48 rebate, and transactions for the account of firms and broker-dealers that add liquidity in Penny options are provided a $0.25–$0.46 rebate; *see https://www.cboe.com/us/options/membership/fee_schedule/bzx/.* Per the Nasdaq Options Market trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Penny options are provided a $0.20–$0.48 rebate, and transactions for the accounts of professional customers that add liquidity in Penny options are provided a $0.20–$0.47 rebate; *see https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7.*

[21] For example, per the MIAX Pearl Options trading fee schedule on its public website, Customer transactions that add liquidity in Non-Penny options are provided a $0.85–$1.04 rebate; *see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf.* Per the Cboe BZX Options trading fee schedule on its public website, Customer transactions that add liquidity in Non-Penny options are provided a $0.85–$1.05 rebate; *see https://www.cboe.com/us/options/membership/fee_schedule/bzx/.* Per the Nasdaq Options Market trading fee schedule on its public website, Customer transactions that add liquidity in Non-Penny options are provided a $0.80–$1.10 rebate; *see https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7.* Lastly, per the NYSE Arca Options trading fee schedule on its public website, Customer transactions that add liquidity in Non-Penny options are provided a $0.75 rebate; *see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[22] For example, per the MIAX Pearl Options trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Non-Penny options are provided a $0.30–$0.85 rebate and transactions for the accounts of professional customers and firms that add liquidity in Non-Penny options are provided a $0.30–$0.85 rebate; *see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf.* Per the Cboe BZX Options trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Non-Penny options are provided a $0.40–$0.88 rebate, transactions for the accounts of professional customers that add liquidity in Non-Penny options are provided a $0.65 rebate, transactions for the accounts of away market makers that add liquidity in Non-Penny options are provided a $0.30–$0.52 rebate, and transactions for the accounts of firms and broker-dealers that add liquidity in Non-Penny options are provided a $0.30–$0.82 rebate; *see https://www.cboe.com/us/options/membership/fee_schedule/bzx/.* Lastly, per the NYSE Arca Options trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Non-Penny options are provided a $0.05–0.40 rebate and transactions for the accounts of professional customers that add liquidity in Non-Penny options are provided a $0.75 rebate; *see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[23] For example, per the NYSE Arca Options trading fee schedule on its public website, the fee

Continued

Exchange believes these fees are equitable and not unfairly discriminatory because these fees will apply equally to all Options Members.

Lastly, the Exchange believes that it is reasonable to add a definitions section to clarify the terms used in the Options Fee Schedule, because it will clearly set forth the terms used in the Transaction Fees portion of the Options Fee Schedule. The Exchange further believes the definition section is reasonable as other national securities exchanges include a definition section in their fee schedule.[24] The Exchange believes this section is equitable and not unfairly discriminatory because the definitions section (as part of the Options Fee Schedule) will be distributed to all Members so that all Members will have equal clarity on fees charged and rebates provided.

For the reasons discussed above, the Exchange submits that its proposed fee structure and changes to the Options Transaction Fee Schedule satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act[25] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As a new entrant in the already highly competitive environment for options trading, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. MEMX Options proposes transaction fees, rebates, and routing fees that are comparable to transaction fees, rebates and routing fees assessed by other options exchanges. As a result, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [26]

Intramarket Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees and rebates apply equally to all Options Members. The proposed pricing structure is intended to encourage participants to trade on MEMX Options by providing rebates that are comparable to those offered by other exchanges as well as providing competitive fees. The Exchange believes that the proposed rebates and fees will help to encourage Options Members to send orders to the Exchange to the benefit of all Exchange participants. As the proposed fees and rebates are equally applicable to all market participants, the Exchange does not believe there is any burden on intramarket competition.

Intermarket Competition

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed pricing structure will increase competition and is intended to draw volume to the Exchange as it commences operations. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. Currently, no single registered options exchange has more than approximately 18% of the total market share of executed volume of listed options trading.[27] As a new exchange, the Exchange expects to face intense competition from existing exchanges. The proposed pricing structure is intended to encourage market participants to trade on the exchange by providing rebates and assessing fees that are comparable to those offered by other exchanges, which the Exchange believes will help to encourage Members to send orders to the Exchange to the benefit of all Exchange participants. As the proposed rates are equally applicable to all market participants, the Exchange does not believe there is any burden on intramarket competition.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [28] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *SEC,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[29] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

for routing in Penny options is $0.61 and the fee for routing in Non-Penny options is $1.21; *see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[24] *See supra* note 11.

[25] 15 U.S.C. 78f(b)(4) and (5).

[26] *See supra* note 14.

[27] Market share percentage calculated as of September 14, 2023. The Exchange receives and processes data made available through the consolidated data feeds (*i.e.,* OPRA).

[28] *See supra* note 14.

[29] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [30] and Rule 19b–4(f)(2) [31] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MEMX–2023–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MEMX–2023–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MEMX–2023–24 and should be submitted on or before October 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Sherry R. Haywood,

Assistant Secretary.

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[30] 15 U.S.C. 78s(b)(3)(A)(ii).

[31] 17 CFR 240.19b–4(f)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98530; File No. SR–CboeBZX–2023–028]

Self-Regulatory Organizations; Cboe BZX 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. 3, To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

September 26, 2023.

On April 25, 2023, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the ARK 21Shares Bitcoin ETF under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on May 15, 2023.[3]

On June 15, 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 June 28, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. On June 30, 2023, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and replaced the proposed rule change, as modified by Amendment No. 1, in its entirety. On July 11, 2023, the Exchange filed Amendment No. 3 to the proposed rule change, which amended and replaced the proposed rule change, as modified by Amendment No. 2, in its entirety. On August 11, 2023, the Commission published notice of Amendment No. 3 to the proposed rule change and instituted proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 3.[7]

Section 19(b)(2) of the 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 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 the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on May 15, 2023.[9] The 180th day after publication of the proposed rule change is November 11, 2023. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97461 (May 9, 2023), 88 FR 31045. Comments received on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-cboebzx-2023-028/srcboebzx2023028.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 97732, 88 FR 40877 (June 22, 2023). The Commission designated August 13, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 98112, 88 FR 55743 (Aug. 16, 2023).

[8] 15 U.S.C. 78s(b)(2).

[9] *See supra* note 3.

to consider the proposed rule change, as modified by Amendment No. 3, and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates January 10, 2024, as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment No. 3 (File No. SR– CboeBZX–2023–028).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–21622 Filed 9–29–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98532; File No. SR–CboeBZX–2023–063]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt an Alternative to the Minimum $4 Price Requirement for Companies Seeking To List Tier II Securities on the Exchange

September 26, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 19, 2023, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to adopt an alternative to the minimum $4 price requirement for companies seeking to list Tier II securities on the Exchange.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt an alternative to the minimum $4 price requirement for companies that seek to list Tier II securities on the Exchange which meet the express exclusion from the definition of a ''penny stock'' contained in Exchange Act Rule 3a51–1(g) (the ''Penny Stock Rules'').[3] Such an amendment would allow a Company to list a Tier II security on the Exchange if it satisfies all existing and proposed listing standards except for the $4 price requirement.[4] As discussed below, the ''net tangible assets and average revenue tests'' proposed herein that satisfies the requirements of Exchange Act Rule 3a51–1(g) are substantively identical to the net tangible assets and average revenue tests proposed by Nasdaq Stock Market, LLC (''Nasdaq'') that received Commission approval.[5]

The Exchange is seeking to make this change to enhance competition among exchanges for companies with securities priced between $2 and $4. Rule 3a51–1[6] defines a ''penny stock'' as any equity security that does not satisfy one of the exceptions enumerated in subparagraphs (a) through (g) under the Rule. If a security is a penny stock, Rules 15g–1 through 15g–9 under the Act[7] impose certain additional disclosure and other requirements on brokers and dealers when effecting transactions in such securities. Exchange-listed securities are not considered penny stocks because they comply with the requirements of Rule 3a51–1(a)(2) under the Act,[8] which excepts from the definition of penny stock securities registered on national securities exchanges that have initial listing standards that meet certain requirements, including a $4 bid price at the time of listing. The Exchange's listings standards currently include all the requirements to qualify for the penny stock exception under Exchange Act Rule 3a51–1(a)(2) so that today, once a security is initially listed on the Exchange, the Exchange will not be considered a penny stock for so long as it is listed on the Exchange.

The penny stock rules also exclude from the definition of penny stock, under a ''grandfather'' provision, securities registered on a national securities exchange that has been continually registered as such since April 20, 1992, and has maintained quantitative listing standards that are substantially similar to or stricter than those listing standards that were in place on the exchange on January 8, 2004.[9] NYSE American, LLC (''NYSE American'') meets this standard, but the Exchange, which was more recently registered as a national securities exchange, does not. Accordingly, NYSE American's initial listing price requirements of either $2 or $3 are grandfathered under this provision.

In 2012, Nasdaq received Commission approval for a proposed rule change that allowed it to adopt an alternative to the $4 bid price requirement (the ''Nasdaq proposal'').[10] The Exchange is now proposing to similarly adopt an alternative to the minimum $4 price requirement for companies seeking to list Tier II securities on the Exchange that is substantively identical to the Nasdaq proposal at the time it was adopted.[11]

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.3a51–1(g).

[4] *See* Rule 14.9(b)(1)(A).

[5] *See* Securities Exchange Act Nos. 66159 (January 13, 2012) 77 FR 3021 (January 20, 2012) (SR–NASDAQ–2012–002) (Notice of Filing of Proposed Rule Change To Adopt an Alternative to the $4 Initial Listing Bid Price Requirement for the Nasdaq Capital Market of Either $2 or $3, if Certain Other Listing Requirements Are Met); 66830 (April 18, 2012) 77 FR 24549 (April 24, 2012) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment No. 1, To Adopt an Alternative to the $4 Per Share Initial Listing Bid Price Requirement for the Nasdaq Capital Market of Either $2 Closing Price Per Share or $3 Closing Price Per Share, if Certain Other Listing Requirements are Met).

[6] 17 CFR 240.3a51–1.

[7] 17 CFR 240.15g–1.

[8] 17 CFR 240.3a51–1(a)(2).

[9] *See* 17 CFR 240.3a51–1(a)(1).

[10] *Supra* note 5.

[11] The Exchange notes that since Nasdaq adopted the alternative minimum price requirement in 2012, it has adopted certain other initial listing requirements that differ from the Exchange's current initial listing requirements. The Exchange is not proposing to amend its initial listing requirements except for the proposed alternative

Under proposed Rule 14.9(b)(1)(A)(ii), companies that maintain a $2 or $3 closing price for at least five consecutive business days prior to approval would qualify for listing, if among other things, they meet the net tangible assets or average revenue tests of the alternative penny stock exclusion set forth in Exchange Act Rule 3a51–1(g) [12] and meet all existing listing standards except for the $4 price requirement. Such a company must instead have a minimum $3 price if it qualifies under the $5 million equity [13] or $750,000 net income alternatives [14] or a minimum $2 price if it qualifies under the $50 million market value of listed securities alternative.[15] In addition, a company qualifying under the proposed standard must have either: (a) net tangible assets in excess of $2 million, if the issuer has been in continuous operation for at least three years; or (b) net tangible assets in excess of $5 million, if the issuer has been in continuous operation for less than three years; or (c) average revenue of at least $6 million for the last three years. For this purpose, net tangible assets or revenue must be demonstrated on the Company's most recently filed audited financial statements, satisfying the requirements of the Commission, and which are dated less than 15 months prior to the date of listing.[16]

As proposed under new interpretation and policy .01(a) to Rule 14.9, an Exchange-listed security could become subject to the penny stock rules following initial listing if it no longer meets the tangible assets or average revenue tests of the alternative exclusion, and does not qualify for another exclusion under the penny stock rules. Further, unlike securities listed under the Exchange's existing standards, which have a blanket exclusion from the penny stock rules, broker-dealers that effect recommended transactions in securities that originally qualified for listing under the Exchange's alternative price standard would, among other things, under Exchange Act Rule 3a51–1(g), need to review current financial statements of the issuer to verify that it meets the applicable net tangible assets or average revenue test, have a reasonable basis for believing they remain accurate, and preserve copies of those financial statements as part of its records. As provided in proposed Interpretation and Policy .01 to Rule 14.9, in order to assist brokers' and dealers' compliance with the requirements of the Penny Stock Rules, the Exchange will monitor companies listed under the proposed alternative and publish a list of any company that initially listed under that requirement, which does not then meet the requirements of Exchange Act Rule 3a51–1(g), described above, or any of the other exclusions from being a penny stock contained in Rule 3a51–1.[17] Such list will be updated on a daily basis.

If a company initially lists with a bid price below $4 under the alternative requirement contained in Rule 14.9(b)(1)(A)(ii), but subsequently achieves a $4 closing price for at least five consecutive business days and, at the same time, satisfies all other initial listing criteria, it will no longer be considered as having listed under the alternative requirement and the Exchange will notify the Company that it has qualified for listing under the price requirement contained in Rule 14.9(b)(1)(A)(i).[18] If a security obtains a $4 closing price, the Exchange will determine whether it meets all other initial listing requirements for the Tier II securities, including both the quantitative and qualitative requirements.[19] If the security meets all initial listing requirements, it will satisfy the requirements for the exclusion contained in Rule 3a51–1(a)(2) and no longer be monitored for compliance with the other exclusions from the definition of a penny stock. Brokers and dealers are reminded that the list published by the Exchange is only an aid and that the Penny Stock Rules impose specific obligations on brokers and dealers with respect to transactions in penny stocks.

Proposed Interpretation and Policy .01(b) to Rule 14.9 provides that the proposed alternative price test will be based on the BZX Official Closing Price [20] in the security.[21]

The Exchange also proposes that the required closing price must be achieved for at least five consecutive business days before approval of the listing application.[22] The Exchange may extend the minimum five-day compliance period required to satisfy these tests based on any fact or circumstance, including the margin of compliance, the trading volume, the trend of the security's price, or information or concerns raised by other regulators concerning the trading of the security. The Exchange believes that requiring the minimum $2 or $3 closing price to be maintained for a period of five days (as opposed to one day) should reduce the risk that some might attempt to manipulate or otherwise artificially inflate the closing price in order to allow a security to qualify for listing. In

minimum price requirement at this time. Instead, the Exchange is proposing to adopt the proposed alternative minimum price requirement while its other initial listing standards are substantively identical to Nasdaq's initial listing standards at the time the minimum price requirement was approved by the Commission in 2012.

[12] *See* 17 CFR 240.3a51–1(g). A company seeking to qualify under only the Market Value of Listed Securities Standard would, among other things, also be required to maintain for 90 consecutive trading days the market value of their listed securities at $50 million and the $2 price requirement prior to applying to list under the alternative standard. *See* Exchange Rule 14.9(b)(2)(B). Under the Market Value of Listed Securities Standard, an issuer would need to meet, among other things: (A) Market value of listed securities of at least $50 million (current publicly traded issuers must meet this requirement and the price requirement for 90 consecutive trading days prior to applying for listing if qualifying to list only under the market value of listed securities standard); (B) stockholders' equity of at least $4 million; and (C) market value of publicly held shares of at least $15 million. The Exchange proposes to revise Rule 14.9(b)(2)(B) in order to make it consistent with the proposal. In particular, Rule 14.9(b)(2)(B)(i) would be revised to delete the specific reference to $4 bid price requirement, since an issuer seeking to initially list its securities under the Market Value of Listed Securities Standard using the proposed alternative price requirement would have to maintain a closing price of at least $2 per share for 90 consecutive trading days.

[13] *See* Exchange Rule 14.9(b)(2)(A).

[14] *See* Exchange Rule 14.9(b)(2)(C).

[15] *See* Exchange Rule 14.9(b)(2)(B).

[16] The proposed rule adopts the 15-month requirement to assure consistency with the timing requirements contained in Exchange Act Rule 3a51–1(g).

[17] The Exchange believes that the other exclusion most likely to be implicated would be Rule 3a51–1(d), 17 CFR 240.3a51–1(d), which provides an exclusion from the definition of a penny stock for a security with a minimum bid price of $5. Note, however, that if a Company obtains a $4 minimum bid price at a time when it meets all other initial listing requirements, the Exchange would no longer consider the company as having listed under the proposed alternative standard.

[18] *See* proposed Interpretation and Policy .01(a) to Rule 14.9.

[19] The security will have to meet the $4 bid price requirement contained in Rule 14.9(b)(1)(A)(i). In addition, Rule 14.9(b)(2)(B) requires a company qualifying only under the Market Value of Listed Securities requirement to satisfy that requirement and the price requirement for 90 consecutive trading days prior to applying for listing. Such a company will have to achieve a $4 bid price for 90 consecutive trading days and a $4 closing price for five days, although these periods may overlap.

[20] *See* BZX Rule 11.23(a)(3). As provided in Exchange Rule 11.23(c)(2)(B), ''[f]or a BZX-listed corporate security, the Closing Auction price will be the BZX Official Closing Price. In the event that there is no Closing Auction for a BZX-listed corporate security, the BZX Official Closing Price will be the price of the Final Last Sale Eligible Trade. *See* Exchange Rule 11.23(a)(9) for the definition of ''Final Last Sale Eligible Trade''.

[21] The Exchange notes that the process for determining the BZX Official Closing Price is similar to the process on Nasdaq for determining the Nasdaq Official Closing Price. *See* Nasdaq Rule 4754. The Exchange notes that pursuant to Nasdaq Rule 4754(b)(5), Nasdaq may apply auxiliary procedures for the Closing Cross to ensure a fair and orderly market, where no such provision is available on BZX.

[22] The Exchange, working with FINRA, will also adopt surveillance procedures to monitor securities listed under the proposed alternative as they approach $4. These procedures will be designed to identify anomalous trading that could be indicative of potential manipulation of the price.

addition, the Exchange will exercise its discretionary authority to deny initial listing if there are particular concerns about an issuer, such as its ability to maintain compliance with continued listing standards or if there are other public interest concerns.[23]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[24] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[25] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change would adopt a $2 and $3 initial listing price alternative for Tier II securities listed on the Exchange that is substantially similar to the requirements of NYSE American and Nasdaq. Particularly, the proposed rule change would require companies to satisfy an additional net tangible asset or revenue test, which is consistent with the requirements for a security to avoid being a penny stock as set forth in Exchange Act Rule 3a51–1(g).[26] The proposed additional net tangible asset or revenue test is also identical to the existing test on Nasdaq.[27]

As discussed above, broker-dealers that effect recommended transactions in securities that originally qualified for listing under the Exchange's alternative standard would among other things, under Exchange Act Rule 3a51–1(g), need to review current financial statements of the issuer to verify that it meets the applicable net tangible assets or average revenue test, have a reasonable basis for believing they remain accurate, and preserve copies of those financial statements as part of its records. To facilitate compliance by broker-dealers, the Exchange has committed to monitor the companies listed under the alternative price standard and to publish on its website, and update daily, a list of any such company that no longer meets the net tangible assets or average revenue tests of the penny stock exclusion, and which does not satisfy any other penny stock exclusion. The Exchange also specifically reminds broker-dealers of their obligations under the penny stock rules. The Exchange believes that, although the listing of securities that do not have a blanket exclusion from the penny stock rules and require ongoing monitoring may increase compliance burdens on broker-dealers, the additional steps proposed by the Exchange to facilitate compliance should reduce those burdens and that, on balance, the Exchange's proposal is consistent with the requirement of Section 6(b)(5) of the Act that the rules of an exchange, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

Further, to address concerns about the potential manipulation of lower priced stocks to meet the initial listing requirements, the Exchange has proposed to require a company to maintain a $2 or $3 closing price for five consecutive business days prior to approval for listing, rather than on a single day. The Exchange believes that requiring the minimum $2 or $3 closing price to be maintained for a longer period should reduce the risk that some might attempt to manipulate or otherwise artificially inflate the closing price in order to allow a security to qualify for listing. In addition, the Exchange notes that it will exercise its discretionary authority to deny initial listing if there are particular concerns about an issuer, such as its ability to maintain compliance with continued listing standards or if there were other public interest concerns. The Exchange believes these additional measures, in conjunction with Exchange's surveillance procedures and pre-listing qualification review, should help reduce the potential for price manipulation to meet the new initial listing standards, and in this respect are designed to prevent fraudulent and manipulative acts and practices consistent with Section 6(b)(5) of the Act.

As proposed, if securities listed under the alternative price listing standard subsequently achieve a $4 closing price over at least five consecutive business days, and the issuer and the securities satisfy all other relevant initial listing criteria, then such securities would no longer be considered as having listed under the alternative price requirement. The Exchange notes that it has taken several steps to address whether this provision could provide an incentive for market participants to manipulate the price of the security in order to achieve the $4 closing price and no longer be considered as having listed under the alternative requirement. First, the Exchange represents that it will conduct a robust, wholesale review of the issuer's compliance with all applicable initial listing criteria, including qualitative and quantitative standards, at the time the $4 closing price is achieved, and will have a reasonable basis to believe that that price was legitimately, and not manipulatively, achieved. Secondly, the Exchange represents that it is developing enhanced surveillance procedures to monitor securities listed under the alternative price requirement as they approach $4 to identify anomalous trading that would be indicative of potential price manipulation. Finally, the proposal requires the $4 closing price to be met over at least a five consecutive business day period in order to reduce the potential for price manipulation. The Exchange believes that these measures should help reduce the potential for price manipulation to achieve the $4 closing price, and in this respect are designed to prevent fraudulent and manipulative acts and practices consistent with Section 6(b)(5) of the Act.

Section 6(b)(8) of the Act requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In addition, Section 11A of the Act[28] requires that there be fair competition among exchange markets to further the public interest and protection of investors. Currently, both Nasdaq and NYSE American rules allow for companies to list within a minimum price requirement of $2 or $3. The Exchange's initial listing requirements are substantively identical to Nasdaq's initial listing requirements at the time the Nasdaq proposal was approved by the Commission.[29] Further, the net tangible assets and average revenue tests proposed herein are identical to those on Nasdaq. Moreover, the proposed net tangible assets and average revenue tests satisfy the requirements of Exchange Act Rule 3a51–1(g). The proposed rule change would enhance the competition between exchanges, and benefit companies and their investors, by providing companies with another

[23] *See* Exchange Rule 14.2.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] 17 CFR 240.3a51–1(g).

[27] *See* Nasdaq Rule 5505(a)(1).

[28] 15 U.S.C. 78k–1.

[29] *Supra* note 5.

listing venue. As such, the proposed rule change is consistent with Sections 6(b)(8) and 11A.

Finally, as noted above, the proposed rule change would adopt the identical initial listing price requirement contained in the NYSE American Company Guide as well as Nasdaq Listing Rules. While the Exchange acknowledges that Nasdaq has amended its initial listing requirements as it pertains to unrestricted publicly held shares since the Commission approved the alternative minimum price requirement, the Exchange notes that its initial listing standards are substantively identical to the Nasdaq Capital Market initial listing standards at the time the alternative minimum price requirement was approved by the Commission.[30] As such, the Exchange believes that its listing requirements would remain substantially similar to those of ''Designated Markets'',[31] as required for covered securities under Section 18 of the Securities Act.[32]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes the proposed rule change will not impose any unnecessary burden on intramarket competition as all companies seeking to list Tier II securities on the Exchange would be affected in the same manner by the proposed change.

The proposed rule change will expand the competition for the listing of equity securities as they will enable the Exchange to compete for the listing of companies that are currently not qualified for listing on the Exchange but are qualified to list on other national securities exchanges. To the extent that companies prefer listing on a market with these proposed listing standards, other exchanges can choose to adopt similar enhancements to their requirements. As such, these changes are neither intended to, nor expected to, impose any burden on competition between exchanges.

[30] *Id.*

[31] Designated Markets refers to the national securities exchanges designated by the Commission to have substantially similar listing standards to those of the ''named markets'' (*i.e.,* NYSE American and Nasdaq).

[32] 15 U.S.C. 77r.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Exchange 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–CboeBZX–2023–063 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2023–063. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2023–063 and should be submitted on or before October 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–21624 Filed 9–29–23; 8:45 am]

BILLING CODE 8011–01–P

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, October 5, 2023.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: September 28, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–21848 Filed 9–28–23; 4:15 pm]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18195 and #18196; Wyoming Disaster Number WY–00073]

Administrative Disaster Declaration of a Rural Area for the State of Wyoming

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative disaster declaration of a rural area for the State of Wyoming dated 09/25/2023.

Incident: Flooding.

Incident Period: 06/15/2023.

DATES: Issued on 09/25/2023.

Physical Loan Application Deadline Date: 11/24/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 06/25/2024.

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: Alan 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 Administrator's disaster declaration of a rural area, applications for disaster loans may be filed 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: Natrona.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 18195 6 and for economic injury is 18196 0.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–21570 Filed 9–29–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the Government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.13 percent for the October–December quarter of fiscal year 2024. Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

David Parrish,

Chief, Secondary Markets Division.

[FR Doc. 2023–21712 Filed 9–29–23; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18179 and #18180; Vermont Disaster Number VT–00049]

Administrative Disaster Declaration of a Rural Area for the State of Vermont

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Administrative disaster declaration of a rural area for the State of Vermont dated 09/14/2023.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 07/07/2023 through 07/21/2023.

DATES: Issued on 09/25/2023.

Physical Loan Application Deadline Date: 11/13/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 06/14/2024.

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: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the Administrator's disaster declaration of a rural area for the State of Vermont, dated 09/14/2023, is hereby amended to re-establish the incident period for this disaster as beginning 07/07/2023 and continuing through 07/21/2023.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–21569 Filed 9–29–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice 12181]

60-Day Notice of Proposed Information Collection: Statement of Exigent/ Special Family Circumstances for Issuance of a U.S. Passport to a Child Under Age 16

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to December 1, 2023.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2023–0029 in the Search field. Then click the ''Comment Now'' button and complete the comment form. Email and regular mail options have been suspended to centralize receiving and addressing all comments in a timely manner.
- *Email: Passport-Form-Comments@State.gov.* You must include the DS form number (if applicable), information collection title, and the OMB control number in the email subject line.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Statement of Exigent/Special Family Circumstances for Issuance of a U.S. Passport to a Child under Age 16.
- *OMB Control Number:* 1405–0216.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services (CA/PPT).
- *Form Number:* DS–5525.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 28,933.
- *Estimated Number of Responses:* 28,933.
- *Average Time per Response:* 30 minutes.
- *Total Estimated Burden Time:* 14,467 hours per year.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

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

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The information collected on the DS–5525, Statement of Exigent/Special Family Circumstances for Issuance of a U.S. Passport to a Child under Age 16, is used in conjunction with the DS–11, Application for a U.S. Passport. The DS–5525 can serve as the statement describing exigent or special family circumstances, which is required if written consent of the non-applying parent or guardian cannot be obtained when the passport application is executed for a child under age 16.

Methodology

Passport Services collects information from U.S. citizens and non-citizen nationals when they complete and submit the DS–5525, Statement of Exigent/Special Family Circumstances for Issuance of a U.S. Passport to a Child under Age 16. Passport applicants can either download the DS–5525 from the internet or obtain the form from an acceptance facility/passport agency. The form must be completed, signed, and submitted along with the applicant's DS–11, Application for a U.S. Passport.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, U.S. Department of State.

[FR Doc. 2023–21704 Filed 9–29–23; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 12199]

60 Day Notice of Proposed Information Collection: Medical Clearance Update

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to December 1, 2023.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2023–0032'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: Monnajl@state.gov.*
- *Regular Mail:* Send written comments to: Medical Director, Office of Medical Clearances, Bureau of Medical Services, 2401 E Street NW, SA–1, Room H–242, Washington, DC 20522–0101.
- *Fax:* 202–647–0292, Attention: Medical Clearance Director.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument, and supporting documents, to Jennifer Monna who may be reached at 202–663–1657 or at *Monnajl@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Medical Clearance Update.
- *OMB Control Number:* 1405–0131.
- *Type of Request:* Reinstatement of a discontinued collection.
- *Originating Office:* Bureau of Medical Services: MED/CP/CL.
- *Form Number:* DS–3057.
- *Respondents:* Contractors and eligible family members.
- *Estimated Number of Respondents:* 8,782.

• *Estimated Number of Responses:* 8,782.

• *Average Time per Response:* 30 minutes.

• *Total Estimated Burden Time:* 4,391 hours.

• *Frequency:* As needed.

• *Obligation to Respond:* Mandatory.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Form DS–3057 is designed to collect medical information to provide medical providers with current and adequate information to base decisions on whether contractors and eligible family members will have sufficient medical resources at a diplomatic mission abroad to maintain the health and fitness of the individual and family members.

Methodology

The respondent will obtain the DS–3057 form from their human resources representative or download the form from a department website. The respondent will complete and submit the form offline.

Jennifer L. Monna,

Director of Medical Clearances, Bureau of Medical Clearances, Department of State.

[FR Doc. 2023–21397 Filed 9–29–23; 8:45 am]

BILLING CODE 4710–36–P

DEPARTMENT OF STATE

[Public Notice: 12182]

30-Day Notice of Proposed Information Collection: Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to November 1, 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.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the PRA, (44 U.S.C. 3501–3520) Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Department of State is publishing notice of the proposed collection of information set forth in this document.

Whether seeking a loan, Social Security benefits, veteran's benefits, or other services provided by the Federal Government, individuals and businesses expect Government customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector.

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. To support this, OMB Circular A–11 Section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. The Department of State will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data and user insights. It will also provide government-wide data on customer experience that can be displayed on performance.gov to help build transparency and accountability of Federal programs to the customers they serve.

Method of Collection

The Department of State will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. The Department of State may also utilize observational techniques to collect this information.

Data:

Form Number(s): DS–4318.

Type of Review: Extension.

B. Annual Reporting Burden

Affected Public: Collections will be 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. For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor. This could include individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal governments; Federal government; and Universities.

- *Estimated Number of Respondents:* 1,001,550.
- *Estimated Time per Response:* Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 3 minutes or up to 1.5 hours to participate in an interview.
- *Estimated Total Annual Burden Hours:* 101,125.
- *Estimated Total Annual Cost to Public:* $0.

C. Public Comments

The Department of State invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Zachary A. Parker,

Director, Officer of Directives Management, Department of State.

[FR Doc. 2023–21690 Filed 9–29–23; 8:45 am]

BILLING CODE 4710–24–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Continuation and Request for Nominations for the Trade and Environment Policy Advisory Committee

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for applications.

SUMMARY: The Office of the United States Trade Representative (USTR) expects to establish a new two-year charter term and is accepting applications from qualified individuals interested in serving as a member of the Trade and Environment Policy Advisory Committee (TEPAC). The TEPAC is a trade advisory committee that provides general policy advice to the U.S. Trade Representative on trade policy matters that have a significant impact on the environment.

DATES: USTR will accept nominations on a rolling basis for membership on the TEPAC for a new two-year charter term expected to expire in September 2025.

FOR FURTHER INFORMATION CONTACT: Amanda Mayhew, Office of Environment and Natural Resources, *Amanda.B.Mayhew@ustr.eop.gov* or (202) 395–9629, or Ethan Holmes, Director for Private Sector Engagement, at *Ethan.M.Holmes@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

Section 135(c)(1) of the Trade Act of 1974, as amended (19 U.S.C. 2155(c)(1)), authorizes the President to establish individual general trade policy advisory committees for industry, labor, agriculture, services, investment, defense, small business, and other interests, as appropriate, to provide general policy advice. The President delegated that authority to the U.S. Trade Representative in Executive Order 11846, section 4(d), issued on March 27, 1975. Pursuant to an executive order that renewed the TEPAC and extended Executive Order 12905 of March 25, 1994, the U.S. Trade Representative expects to establish a new two-year charter term for the TEPAC, which would end in September 2025.

The TEPAC is a trade advisory committee established to provide general policy advice to the U.S. Trade Representative on trade policy matters that have a significant impact on the environment. More specifically, the TEPAC provides general policy advice with respect to the effect on the environment of the implementation of trade agreements; negotiating objectives and bargaining positions before entering into trade agreements; the operation of any trade agreement once entered into, and other matters arising in connection with the development, implementation, and administration of the trade policy of the United States.

The TEPAC meets as needed, at the call either of the U.S. Trade Representative or their designee, or two-thirds of the TEPAC members, depending on various factors such as the level of activity of trade negotiations and the needs of the U.S. Trade Representative.

II. Membership

The TEPAC is composed of not more than 35 members, including, but not limited to, representatives from environmental interest groups (including environmental justice), industry (including the environmental technology and environmental services industries), agriculture, academia, consumer groups, services, non-governmental organizations, and others with expertise in trade and environment matters. USTR intends for the TEPAC to be broadly representative of key sectors and groups of the economy with an interest in trade and environmental policy issues. Fostering diversity, equity, inclusion and accessibility (DEIA) is one of the top priorities.

The U.S. Trade Representative appoints TEPAC members in consultation with relevant Cabinet Secretaries, as appropriate, for a term that will not exceed the duration of the charter. Members serve at the discretion of the U.S. Trade Representative. Individuals can be reappointed for any number of terms.

The U.S. Trade Representative is committed to a trade agenda that advances racial equity and supports underserved communities and will seek advice and recommendations on trade policies that eliminate social and economic structural barriers to equality and economic opportunity, and to better understand the projected impact of proposed trade policies on communities of color and underserved communities. The U.S. Trade Representative strongly encourages diverse backgrounds and perspectives and makes appointments to the TEPAC without regard to political affiliation and in accordance with equal opportunity practices that promote diversity, equity, inclusion, and accessibility. USTR strives to ensure balance in terms of sectors, demographics, and other factors relevant to USTR's needs.

TEPAC members serve without either compensation or reimbursement of expenses. Members are responsible for

all expenses they incur to attend meetings or otherwise participate in TEPAC activities. Committee members must be able to obtain and maintain a security clearance in order to serve and have access to classified and trade sensitive documents. They must meet the eligibility requirements at the time of appointment and at all times during their term of service.

TEPAC members are appointed to represent their sponsoring U.S. entity's interests on trade and the environment, and thus USTR's foremost consideration for applicants is their ability to carry out the goals of section 135(c) of the Trade Act of 1974, as amended. Other criteria include the applicant's knowledge of and expertise in international trade issues as relevant to the work of the TEPAC and USTR. USTR anticipates that almost all TEPAC members will serve in a representative capacity with a limited number serving in an individual capacity as subject matter experts. These members, known as special government employees, are subject to conflict of interest rules and may have to complete a financial disclosure report.

III. Request for Nominations

USTR is soliciting nominations for membership on the TEPAC. To apply for membership, an applicant must meet the following eligibility criteria at the time of application and at all times during their term of service as a TEPAC member:

1. The person must be a U.S. citizen.
2. The person cannot be a full-time employee of a U.S. governmental entity.
3. If serving in an individual capacity, the person cannot be a federally registered lobbyist.
4. The person cannot be registered with the U.S. Department of Justice under the Foreign Agents Registration Act.
5. The person must be able to obtain and maintain a security clearance.
6. For representative members, who will comprise almost all of the TEPAC, the person must represent a U.S. organization whose members (or funders) have a demonstrated interest in issues relevant to trade and the environment or have personal experience or expertise in trade and the environment.
7. For eligibility purposes, a ''U.S. organization'' is an organization established under the laws of the United States, that is controlled by U.S. citizens, by another U.S. organization (or organizations), or by a U.S. entity (or entities), determined based on its board of directors (or comparable governing body), membership, and funding sources, as applicable. To qualify as a U.S. organization, more than 50 percent of the board of directors (or comparable governing body) and more than 50 percent of the membership of the organization to be represented must be U.S. citizens, U.S. organizations, or U.S. entities. Additionally, at least 50 percent of the organization's annual revenue must be attributable to nongovernmental U.S. sources.
8. For members who will serve in an individual capacity, the person must possess subject matter expertise regarding international trade and environmental issues.

In order to be considered for TEPAC membership, interested persons should submit the following to Amanda Mayhew, Office of Environment and Natural Resources, *Amanda.B.Mayhew@ustr.eop.gov,* and Ethan Holmes, Director for Private Sector Engagement, at *Ethan.M.Holmes@ustr.eop.gov:*

- Name, title, affiliation, and contact information of the individual requesting consideration.
- If applicable, a sponsor letter on the organization's letterhead containing a brief description of the manner in which international trade affects the organization and why USTR should consider the applicant for membership.
- The applicant's personal resume.
- An affirmative statement that the applicant and the organization they represent meet all eligibility requirements.

USTR will consider applicants who meet the eligibility criteria in accordance with equal opportunity practices that promote diversity, equity, inclusion, and accessibility, based on the following factors:

- Ability to represent the sponsoring U.S. entity's or U.S. organization's and its subsector's interests on trade and environmental matters.
- Knowledge of and experience in trade and environmental matters relevant to the work of the TEPAC and USTR.
- How they will contribute to trade policies that eliminate social and economic structural barriers to equality and economic opportunity and to understanding of the projected impact of proposed trade policies on communities of color and underserved communities.
- Ensuring that the TEPAC is balanced in terms of points of view, demographics, geography, and entity or organization size.

Roberto Soberanis,

Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Engagement, Office of the United States Trade Representative.

[FR Doc. 2023–21652 Filed 9–29–23; 8:45 am]

BILLING CODE 3290–F3–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Public Availability of the Fiscal Year 2021 Service Contract Inventory

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: USTR is announcing that its fiscal year (FY) 2021 service contract inventory is publicly available.

FOR FURTHER INFORMATION CONTACT: Michelle Secrist, Financial and Accounting Analyst, at *Michelle_Secrist@ustr.eop.gov* or (202) 395–3505.

SUPPLEMENTARY INFORMATION:

In accordance with section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), USTR is providing notice that USTR's FY2021 service contract inventory is publicly available. The inventory includes several attributes of certain service contracts such as dollar value, contract type, and place of performance. USTR developed its inventory and analysis in accordance with instructions issued by the Office of Management and Budget's Office of Federal Procurement Policy.

USTR's inventory is included in the government-wide inventory at *https://www.acquisition.gov/service-contract-inventory.* The government-wide inventory can be filtered for USTR data. In addition, analysis of FY2020 service contract data is available on the USTR website at *https://ustr.gov/about-us/reading-room/service-contract-inventories.*

Fred Ames,

Assistant U.S. Trade Representative for Administration, Office of the United States Trade Representative.

[FR Doc. 2023–21677 Filed 9–29–23; 8:45 am]

BILLING CODE 3290–F3–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2022–0767; Summary Notice No.–2023–34]

Petition for Exemption; Summary of Petition Received; Flexjet, LLC

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 23, 2023.

ADDRESSES: Send comments identified by docket number FAA–2022–0767 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://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, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, 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 accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nia Daniels, (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 26, 2023.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2022–0767.
Petitioner: Flexjet, LLC.
Section of 14 CFR Affected: 135.152(j).
Description of Relief Sought: Flexjet, LLC petitions for an exemption from 14 CFR 135.152(j) that would allow the Gulfstream 450 to meet the flight data recording requirements of part 91, Appendix E and § 91.609(c)(1), instead of the 88 required parameters detailed in § 135.152(h). As these aircraft do not have an 88-parameter FDR installed, such relief is necessary until such time that Gulfstream makes the components available.

[FR Doc. 2023–21582 Filed 9–29–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property at the Acadiana Regional Airport, New Iberia, Louisiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request for a change in designation of on-airport property federally conveyed, as a result of the Surplus Property Act of 1944, from aeronautical to non-aeronautical use.

SUMMARY: The FAA is requesting public comment on the Iberia Parish Airport Authority's proposal to change 233 acres of airport property at Acadiana Regional Airport in New Iberia, Louisiana from aeronautical to non-aeronautical use. This acreage was federally conveyed through the Surplus Property Act of 1944.

DATES: Comments must be received on or before November 1, 2023.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Justin Barker, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Louisiana/New Mexico Airports Development Office, ASW–640, Fort Worth, Texas 76177.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Maurice Songy, Airport Executive Director, at the following address: 1404 Hangar Drive, New Iberia, LA 70560.

FOR FURTHER INFORMATION CONTACT: Ms. Haley Hood, Program Manager, Federal Aviation Administration, Louisiana/New Mexico Airports Development Office, ASW–640, 10101 Hillwood Parkway, Fort Worth, Texas 76177, Telephone: (817) 222–5522, Email: *haley.e.hood@faa.gov,* Fax: (817) 222–5218.

SUPPLEMENTARY INFORMATION: In accordance with 49 U.S.C 47107(h), this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The following is a brief overview of the request:

The Iberia Parish Airport Authority requests portions of parcels 2 and 4B (as shown on the Exhibit A) totaling 233 acres, be released for non-aeronautical use. The proposed lease includes a solar manufacturing facility. Historic parcel 2 was acquired on May 6, 1968 and historic parcel 4B on February 9, 1970 under the Surplus Property Act of 1944. The proposed lease area is located north of NW Bypass Highway,east of Leon Landry Road,west of West Admiral Doyle Drive, south of Fox Road, and southeast of the Terminal Area. The Airport Authority will lease this property to grow airport revenues as well as the economy. The purpose of this request is to permanently change the designation of the property given there is no potential for future aviation use, as demonstrated by the Airport Layout Plan. Subsequent to the implementation of the proposed redesignation, rents received by the airport from this property must be used in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

Any person may inspect the request by appointment at the FAA office address listed above. Interested persons are invited to comment. All comments will be considered by the FAA to extent practicable.

Issued in Fort Worth, Texas.

Ignacio Flores,

Director, Office of Airports Southwest Region.

[FR Doc. 2023–21150 Filed 9–29–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2020–0564; Summary Notice No. 2023–35]

Petition for Exemption; Summary of Petition Received; Causey Aviation Unmanned, Inc.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 23, 2023.

ADDRESSES: Send comments identified by docket number FAA–2020–0564 using any of the following methods:

- *Federal eRulemaking 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, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, 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 accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *https://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nia Daniels, (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on 26 September, 2023.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0564.

Petitioner: Causey Aviation Unmanned, Inc.

Section of 14 CFR Affected: section 43.3(a).

Description of Relief Sought: Causey Aviation Unmanned, Inc. petitions for an exemption from 14 CFR 43.3(a), Appendix A (c)(24) for the purpose of allowing qualified remote pilots to perform unmanned aircraft battery replacements rather than a certificated airframe and powerplant mechanic to do so.

[FR Doc. 2023–21583 Filed 9–29–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2020–0486]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Survey of Uncrewed-Aircraft-Systems Operators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information collection involves a survey of uncrewed-aircraft-systems (UAS) operators within the United States. The information gathered through the survey's questionnaire on flight behavior and fleet characteristics is used to inform UAS rule making and guide investment in UAS research and infrastructure. This renewal seeks to continue the survey and improve the survey design to increase the generalization of survey results.

DATES: Written comments should be submitted by November 29th, 2023.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: William Ekins, FAA–APO, 800 Independence Ave SW, Suite 935, Washington, DC 20591.

By fax: Attention: Survey of Uncrewed-Aircraft-System Operators, (202) 267–6384.

FOR FURTHER INFORMATION CONTACT: William Ekins by email at: *9-APO-Surveys@faa.gov*; phone: (202) 267–4735.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0797.

Title: Survey of Uncrewed-Aircraft-Operators.

Form Numbers: Online Collection.

Type of Review: The review is for the modification and renewal of the Survey of Unmanned-Aircraft-Systems Operators.

Background: We conducted the Survey of UAS Operators for 2021 and 2022 UAS activity under the original information collection request granted in March of 2021. These surveys utilized a stratified random sampling design with the operator's county of residence and type of operator as strata. The survey collected information through a questionnaire with 76 questions, but due to the skip logic of the questionnaire, the average respondent only answered 16 questions. The 2021 and 2022 surveys received 17,736 and 22,846 responses,

respectively. The information from these surveys have been used to improve the questionnaire and inform rule making.

This information collection request is to modify and renew the existing Survey of UAS Operators. The continuation of this survey is expected to improve the FAA's knowledge of UAS operations and better predict the nature of UAS operations within the national airspace system (NAS). The information gathered empowers the FAA to make informed decisions surrounding UAS operations within the NAS thereby supporting its mission of safety and alignment with title 49 of the United States Code.

This information collection renewal asks to improve the survey design by expanding the target population and adding an additional stratum to the sampling process. The original survey's target population included only registered small UAS operators—operators with UAS weighing less than 55lbs—within the United States. The survey under the renewed information collection would expand the target population to include all UAS operators, regardless of UAS weight, by including UAS operators with a section 44807 exemption, which utilizes the aircraft registry under section 44103 as a sample frame. In addition, data collected from the 2021 and 2022 UAS activity surveys suggested that operators with larger UAS fleets have more diverse UAS activity than UAS operators with small fleets, who are most of the section 349 and part 107 registries. Therefore, to improve sampling a fleet-size based stratum will be added to the sampling process when a registry contains information on the size of the fleet, such as the part 107 registry. This will ensure proper sampling of operators with large fleets.

Selected registrants are invited to complete a questionnaire regarding the operator's fleet characteristics, flight behavior, and overall UAS activities. The survey's questionnaire contains over 80 questions, but due to skip logic, the average respondent will only answer 18 questions. Commercial and emergency response operator have 6 and 10 additional questions, respectively, specific to their sector. We estimate the questionnaire requires 10 minutes on average to complete. Responding to the survey is voluntary, and respondents are given the option of opting out of the current year's survey or all future surveys. All collected data are anonymized and only aggregated data are reported, thereby protecting the identity of the respondents. The survey will open in November of the year for which the UAS activity is gathered and close on February 1st of the following year.

Due to the changing nomenclature of this section of aviation, we request to change the name of the survey from the Survey of Unmanned-Aircraft-Systems Operators to the Survey of Uncrewed-Aircraft-Systems Operators.

Respondents: We expect approximately 113,000 respondents from across the United States over the three-years authorization of this information collection. The collection's sample is formed from three registries of UAS operators: (1) the registry of small, non-recreational operators under Title 14, Part 107 of the Code of Federal Regulation, (2) the registry of small, recreational operators under Section 349 of the FAA Reauthorization Act of 2018; and (3) the commercial operators with section 44807 exemptions who are registered in the aircraft registry under title 49 of the U.S.C., section 44103 registry.

Frequency: Annually.

Estimated Average Burden per Response: 10 minutes.

Estimated Total Annual Burden: 6,279 hrs/yr.

Issued in Washington, DC on September 29th, 2023.

William Ekins,

Economist, Office of Aviation Policy and Plans, APO–100, Federal Aviation Administration, Department of Transportation.

[FR Doc. 2023–21639 Filed 9–29–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[FAA–2023–1929]

Notice of Availability of the Draft Environmental Review Document for Amended Arrival Routes at Los Angeles International Airport

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

ACTION: Public comment period for the FAA's draft environmental review document.

SUMMARY: The FAA announces the release of the draft environmental review document for the amendments to area navigation (RNAV) arrival procedures, HUULL, IRNMN, and RYDRR, at Los Angeles International Airport (KLAX), in Los Angeles, California for public review and comment. The draft environmental review document is available for public review beginning on October 2, 2023 and comments can be submitted on or before November 1, 2023. Comments can be submitted by email to *9-AJO-LAX-Community-Involvement@FAA.GOV* or by mail to Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 216th Street, Des Moines, WA 98198. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Joe Bert, Operations Support Group, Western Service Center, 2200 216th Street, Des Moines, WA 98198; telephone (206) 231–2233.

SUPPLEMENTARY INFORMATION: In accordance with the U.S. Court of Appeals for the Ninth Circuit's (Court) holding in *City of Los Angeles, et al* v. *Dickson,* No. 19–71581, the FAA is performing a new review of the potential environmental impacts of the implementation of the amendments. The Court's decision ''remand[ed] the amended Arrival Routes to the FAA without vacatur, leaving the amended Arrival Routes in place while the FAA undertakes the proper National Environmental Policy Act (NEPA) analysis and National Historic Preservation Act of 1966, 16 U.S.C. 470, *et seq.,* (NHPA) and Department of Transportation Act of 1966, 49 U.S.C § 303 (Section 4(f)) consultation.

The draft environmental review document is available on the FAA website at: *https://www.faa.gov/air_traffic/community_engagement/lax.*

Issued in Des Moines, WA, on September 26, 2023.

Ryan Wade Weller,

Environmental Specialist Operations Support Group Western Service Center.

[FR Doc. 2023–21614 Filed 9–29–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2023–0002–N–29]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) summarized below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before December 1, 2023.

ADDRESSES: Written comments and recommendations for the proposed ICR should be submitted on *regulations.gov* to the docket, Docket No. FRA–2023–0002. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number (2130–0565) in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice, made available to the public, and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: (571) 609–1285 or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, comments received will advance three objectives: (1) reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Safety Appliance Concern Recommendation Report, Safety Appliance Standards Guidance Checklist Forms.

OMB Control Number: 2130–0565.

Abstract: Title 49 Code of Federal Regulations (CFR) part 231, Railroad Safety Appliance Standards, was supplemented and expanded in 2013 to include the industry standard established by the Association of American Railroads (AAR), Standard 2044 or S–2044, which prescribed safety appliance arrangements for 11 new types of cars. As a result of the inclusion, FRA developed Forms FRA F6180.161(a)–(k) as guidance checklist forms to facilitate railroad, rail car owner, and rail equipment manufacturer compliance with S–2044 and 49 CFR part 231. AAR has since updated S–2044 to include seven new types of cars.

In this 60-day notice, FRA made no adjustments to the previously approved burden hours and responses in the OMB, Office of Information and Regulatory Affairs (OIRA) inventory.[1]

Type of Request: Extension without change of a currently approved collection.

Affected Public: Businesses.

Form(s): 18 forms (FRA F 6180.161(a)–(r)).

Respondent Universe: Car manufacturers/State inspectors.

Frequency of Submission: On occasion.

Reporting Burden:

CFR part 231	Respondent universe	Total annual responses (forms) (A)	Average time per response (hour) (B)	Total annual burden hours (C = A * B)	Total cost equivalent in U.S. dollar (D = C * wage rates)[2]
Form FRA F 6180.161a	Car manufacturers/State inspectors	20	1	20.00	$1,839.60
Form FRA F 6180.161b	Car manufacturers/State inspectors	7	1	7.00	643.86
Form FRA F 6180.161c	Car manufacturers/State inspectors	15	1	15.00	1,379.80
Form FRA F 6180.161d	Car manufacturers/State inspectors	15	1	15.00	1,379.80
Form FRA F 6180.161e	Car manufacturers/State inspectors	15	1	15.00	1,379.80
Form FRA F 6180.161f	Car manufacturers/State inspectors	10	1	10.00	919.80
Form FRA F 6180.161g	Car manufacturers/State inspectors	3	1	3.00	275.94
Form FRA F 6180.161h	Car manufacturers/State inspectors	3	1	3.00	275.94
Form FRA F 6180.161i	Car manufacturers/State inspectors	20	1	20.00	1,839.60
Form FRA F 6180.161j	Car manufacturers/State inspectors	3	1	3.00	275.94
Form FRA F 6180.161k	Car manufacturers/State inspectors	10	1	10.00	919.80
Form FRA F 6180.161l	Car manufacturers/State inspectors	3	1	3.00	275.94
Form FRA F 6180.161m	Car manufacturers/State inspectors	3	1	3.00	275.94
Form FRA F 6180.161n	Car manufacturers/State inspectors	3	1	3.00	275.94
Form FRA F 6180.161o	Car manufacturers/State inspectors	3	1	3.00	275.94

[1] Changes to the total cost equivalent in U.S. dollars, a category not included in the OIRA inventory, are due to updated statistics from the Department of Labor (DOL), Bureau of Labor Statistics (BLS), Occupational Employment Statistics.

CFR part 231	Respondent universe	Total annual responses (forms) (A)	Average time per response (hour) (B)	Total annual burden hours (C = A * B)	Total cost equivalent in U.S. dollar (D = C * wage rates) [2]
Form FRA F 6180.161p	Car manufacturers/State inspectors	3	1	3.00	275.94
Form FRA F 6180.161q	Car manufacturers/State inspectors	3	1	3.00	275.94
Form FRA F 6180.161r	Car manufacturers/State inspectors	3	1	3.00	275.94
Total [3]	Car manufacturers/State inspectors	142 responses	N/A	142	13,061

Total Estimated Annual Responses: 142.

Total Estimated Annual Burden: 142 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $13,061.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,

Acting Deputy Chief Counsel.

[FR Doc. 2023–21655 Filed 9–29–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2023–0002–N–28]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) summarized below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before December 1, 2023.

ADDRESSES: Written comments and recommendations for the proposed ICR should be submitted on *regulations.gov* to the docket, Docket No. FRA–2023–0002. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number (2130–0594) in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice, made available to the public, and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: (571) 609–1285 or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, comments received will advance three objectives: (1) reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Railroad Safety Appliance Standards.

OMB Control Number: 2130–0594.

Abstract: The information collection associated with 49 CFR part 231 is used by FRA to promote and enhance the safe placement and securement of safety appliances on newly constructed rail vehicles. The regulation provides a process for railroads or car owners to submit requests for the approval of existing industry standards for safety appliance arrangements on newly constructed railroad cars, locomotives, tenders, or other rail vehicles in lieu of the specific arrangements in part 231.

In this 60-day notice, FRA made no adjustments to the previously approved burden hours and responses in the OMB, Office of Information and Regulatory Affairs (OIRA) inventory.[1]

Type of Request: Extension without change of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Frequency of Submission: On occasion.

[2] The dollar equivalent cost is derived from the DOL, BLS, Occupational Employment Statistics (OES) 11–3012, May 2022 National Industry-Specific Occupational Employment and Wage Estimates NAICS 999200—Local Government, excluding schools and hospitals (OEWS Designation) hourly wage rate of $52.56. The total burdened wage rate (Straight time plus 75%) used in the table is $91.98 ($52.56 × 1.75 = $91.98).

[3] Totals may not add up due to rounding.

[1] Changes to the total cost equivalent in U.S. dollars, a category not included in the OIRA inventory, are due to updated statistics from the 2022 Surface Transportation Board (STB) Full Year Wage A&B data series.

REPORTING BURDEN

CFR section	Respondent universe	Total annual responses (A)	Average time per response (hours) (B)	Total annual burden hours (C = A * B)	Total cost equivalent in U.S. dollar (D = C* wage rates)[2]
231.33(b)—Procedure for special approval of existing industry safety appliance standards—filing of petitions.	AAR (industry rep.) ...	1 petition	16	16.00	$1,374.88
—(b)(6) Affirmative statement by petitioner that a petition copy has been served on rep. of employees responsible for equipment's operation/inspection/testing/maintenance.	AAR (industry rep.) ...	1 affirmation statement.	1	1.00	85.93
—(f)(3)(iii) Disposition of petitions: petition returned by FRA requesting additional information.	AAR (industry rep.) ...	1 petition or additional document.	2	2.00	171.86
231.35(a)—Procedure for modification of an approved industry safety appliance standard for new car construction—filing of petitions.	AAR (industry rep.) ...	1 petition for modification.	16	16.00	1,374.88
—(b)(3) Affirmative statement by petitioner that a petition copy has been served on rep. of employees responsible for equipment's operation/inspection/testing/maintenance.	AAR (industry rep.) ...	1 affirmation statement.	1	1.00	85.93
—(e) FRA review of petition for modification; agency objection and AAR response.	AAR (industry rep.) ...	1 additional comment	1	1.00	85.93
Total[3]	765 railroads	6 responses	N/A	37	3,179

Total Estimated Annual Responses: 6.

Total Estimated Annual Burden: 37 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $3,179.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,

Acting Deputy Chief Counsel.

[FR Doc. 2023–21657 Filed 9–29–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2023–0002–N–30]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Requests (ICRs) summarized below. Before submitting the ICRs to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICRs.

DATES: Interested persons are invited to submit comments on or before December 1, 2023.

ADDRESSES: Written comments and recommendations for the proposed ICRs should be submitted on *regulations.gov* to the docket, Docket No. FRA–2023–0002. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number for each ICR, 2130–0506 and 2130–0556, respectively, in any correspondence submitted. FRA will summarize comments received in a subsequent 30-day notice and include them in its information collection submission to OMB.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: (571) 609–1285 or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICRs regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative

[2] The dollar equivalent cost is derived from the 2022 STB Full Year Wage A&B data series using the employee group 200 (Professional & Administrative) hourly wage rate of $49.10. The total burden wage rate (Straight time plus 75%) used in the table is $85.93 ($49.10 × 1.75 = $85.93).

[3] Totals may not add up due to rounding.

and paperwork burdens associated with the collection of information that Federal statutes and regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICRs that FRA will submit for OMB clearance as the PRA requires:

Title: Identification of Railroad Cars.

OMB Control Number: 2130–0506.

Abstract: This collection of information is associated with 49 CFR 232.3(d). Section 232.3(d)(3) conditionally excepts certain export, industrial, and other cars not owned by a railroad from part 232 compliance. It requires cars to be identified by a card attached to each side of the equipment, signed by the shipper, specifically noting that the car is being moved under the proper authority. Railroads typically use carrier bad order forms or tags for these purposes. These forms are readily available from all carrier repair facilities. FRA estimates approximately 400 cars per year, each bearing two forms or tags, are moved under this regulation.

In this 60-day notice, FRA made no adjustments to the previously approved burden hours and responses in the OMB, Office of Information and Regulatory Affairs (OIRA) inventory.[1]

Type of Request: Extension without change of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 765 railroads and freight car owners.

Frequency of Submission: On occasion.

Reported Burden:

CFR section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C = A * B)	Total cost equivalent in U.S. dollar (D = C * wage rates)[2]
232.3(d)(3)—Tagging	765 railroads and freight car owners.	800 tags	5 minutes	67.00	$4,496.37
Total[3]	765 railroads and freight car owners.	800 responses	N/A	67.00	4,496

Total Estimated Annual Responses: 800.

Total Estimated Annual Burden: 67 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $4,496.

Title: U.S. Locational Requirement for Dispatching U.S. Rail Operations.

OMB Control Number: 2130–0556.

Abstract: Title 49 CFR part 241 requires, in the absence of a waiver, that all dispatching of United States railroad operations be performed in the United States. A railroad may, however, dispatch from a country other than the United States in an emergency situation, but only for the duration of the emergency situation.[4] A railroad relying on this exception must provide written notification of its action to FRA as soon as practicable; such notification is not required before addressing the emergency situation. The information collected under this ICR is used as part of FRA's oversight function to help ensure that extraterritorial dispatchers comply with applicable safety regulations.

In this 60-day notice, FRA made no adjustments to the previously approved burden hours and responses in the OMB, OIRA inventory.[5]

Type of Request: Extension without change of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 4 railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe (railroads)	Total annual responses (A)	Average time per responses (hours) (B)	Total annual burden hours (C = A * B)	Total cost equivalent in U.S. dollar (D = C * wage rates)[6]
241.9(c)—Written notification to FRA of emergency where dispatcher outside the U.S. dispatches a railroad operation in the U.S. for the duration of the emergency.	4	1 notice	8	8.00	$687.44
Total[7]	4	1 response	N/A	8	687

Total Estimated Annual Responses: 1.

Total Estimated Annual Burden: 8 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $687.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does

[1] Changes to the total cost equivalent in U.S. dollars, a category not included in the OIRA inventory, are due to updated statistics from the 2022 Surface Transportation Board (STB) Full Year Wage A&B data series.

[2] The dollar equivalent cost is derived from the 2022 STB Full Year Wage A&B data series using employee group 400 (Maintenance of Equipment & Stores) hourly wage rate of $38.35. The total burden wage rate (straight time plus 75%) used in the table is $67.11 ($38.35 × 1.75 = $67.11).

[3] Totals may not add due to rounding.

[4] *See* 49 CFR 241.9(c).

[5] Changes to the total cost equivalent in U.S. dollars, an estimation category not included in the OIRA inventory, are due to updated statistics from the 2022 STB Full Year Wage A&B data series.

[6] The dollar equivalent cost is derived from the 2022 STB Full Year Wage A&B data series using employee group 200 (Professional & Administrative) hourly wage rate of $49.10. The total burden wage rate (straight time plus 75%) used in the table is $85.93 ($49.10 × 1.75 = $85.93).

[7] Totals may not add up due to rounding.

not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,

Acting Deputy Chief Counsel.

[FR Doc. 2023–21656 Filed 9–29–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch. 10, that the Executive Committee of the VA Voluntary Service (VAVS) National Advisory Committee (Committee) will meet on October 26–27, 2023 at the Veterans of Foreign Wars Washington Office located at 200 Maryland Avenue NE, Washington, DC 20002. The meeting sessions will begin and end as follows:

Date(s)	Time(s)
Thursday, October 26, 2023	9:00 a.m. to 5:00 p.m. Eastern Standard Time (EST).
Friday, October 27, 2023	9:00 a.m. to 12:30 p.m. EST.

The meeting sessions are open to the public.

The Committee advises the Secretary, through the Under Secretary for Health, on the coordination and promotion of volunteer activities and strategic partnerships within VA health care facilities on matters related to volunteerism. The Committee is also comprised of 56 major Veteran, civic and service organizations. The Executive Committee consists of 20 representatives from the Committee member organizations.

Agenda topics will include the Committee goals and objectives; review of minutes from the April 26, 2023 meeting; an update on VA Center for Development and Civic Engagement activities; Veterans Health Administration update and journey to become a High Reliability Organization; subcommittee reports; review of standard operating procedures; review of fiscal year 2023 organization data; 2024 annual the Committee meeting plans; and any new business.

The public may submit written statements for the Committee's review to Sabrina C. Clark, Ph.D., Designated Federal Officer, VA Center for Development and Civic Engagement (15CDCE), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, or email at *Sabrina.Clark@va.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Dr. Clark at 202–536–8603.

Dated: September 27, 2023.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–21736 Filed 9–29–23; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 88 Monday,
No. 189 October 2, 2023

Part II

Department of Homeland Security

Federal Emergency Management Agency

44 CFR Part 9

Updates to Floodplain Management and Protection of Wetlands Regulations To Implement the Federal Flood Risk Management Standard; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 9

[Docket ID: FEMA–2023–0026]

RIN 1660–AB12

Updates to Floodplain Management and Protection of Wetlands Regulations To Implement the Federal Flood Risk Management Standard

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Emergency Management Agency (FEMA) proposes to amend its regulations to implement the Federal Flood Risk Management Standard (FFRMS) and update the agency's 8-step decision-making process floodplain reviews. FEMA also proposes a supplementary policy that would further clarify how FEMA would apply the FFRMS. The proposed rule would change how FEMA defines a floodplain with respect to certain actions, and FEMA would use natural systems, ecosystem process, and nature-based approaches, where possible, when developing alternatives to locating the proposed action in the floodplain.

DATES: Comments must be received no later than December 1, 2023.

ADDRESSES: You may submit comments, identified by Docket ID: FEMA–2023–0026, via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Portia Ross, Policy and Integration Division Director, Office of Environmental Planning and Historic Preservation, Resilience, DHS/FEMA, 400 C Street SW, Suite 313, Washington, DC 20472–3020. Phone: (202) 709–0677; Email: *fema-regulations@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

Table of Abbreviations

0.2PFA—0.2 Percent Annual Chance Flood Approach
ABA—Architectural Barriers Act
ADA—Americans with Disabilities Act
CEQ—Council on Environmental Quality
CFR—Code of Federal Regulations
CISA—Climate-Informed Science Approach
CRS—Community Rating System
EA—Environmental Assessment
EIS—Environmental Impact Statement
E.O.—Executive Order
FBFM—Flood Boundary Floodway Map
FEMA—Federal Emergency Management Agency
FFRMS—Federal Flood Risk Management Standard
FHBM—Flood Hazard Boundary Map
FIRM—Flood Insurance Rate Map
FIS—Flood Insurance Study
FMA—Flood Mitigation Assistance
FVA—Freeboard Value Approach
GPD—Grant Programs Directorate
HMA—Hazard Mitigation Assistance
HUD—Department of Housing and Urban Development
IA—Individual Assistance
IRFA—Initial Regulatory Flexibility Analysis
NEPA—National Environmental Policy Act of 1969
NFIA—National Flood Insurance Act, as amended
NFIP—National Flood Insurance Program
NOAA—National Oceanic and Atmospheric Administration
NPRM—Notice of Proposed Rulemaking
OMB—Office of Management and Budget
PA—Public Assistance
PDM—Pre-Disaster Mitigation
PHC—Permanent Housing Construction
PIA—Privacy Impact Assessment
PRA—Paperwork Reduction Act of 1995
PV—Present Value
RCP—Representative Concentration Pathway
RFA—Regulatory Flexibility Act
RIA—Regulatory Impact Analysis
SBREFA—Small Business Regulatory Enforcement Fairness Act of 1996
SFHA—Special Flood Hazard Area
SLR—Sea Level Rise
SORN—System of Records Notice
Stafford Act—Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended
THU—Temporary Housing Unit
USGS—United States Geological Survey
WRC—Water Resources Council

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting comments and related materials. We will consider all comments and material received during the comment period.

If you submit a comment, include the Docket ID FEMA–2023–0026, indicate the specific section of this document to which each comment applies, and give the reason for each comment. All submissions may be posted, without change, to the Federal e-Rulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. For more about privacy and the docket, visit *https://www.regulations.gov/document?D=DHS-2018-0029-0001.*

Viewing comments and documents: For access to the docket to read background documents or comments received, go to the Federal e-Rulemaking Portal at *http://www.regulations.gov.*

II. Executive Summary

On January 30, 2015, the President issued Executive Order 13690, ''Establishing a Federal Flood Risk Management Standard (FFRMS) and a Process for Further Soliciting and Considering Stakeholder Input.'' [1] Executive Order 13690 amended Executive Order 11988 and established the FFRMS. The FFRMS is a flood resilience standard that is required for ''Federally funded projects'' and provides a flexible framework to increase resilience against flooding and help preserve the natural values of floodplains and wetlands.

On August 22, 2016, FEMA published a Notice of Proposed Rulemaking (NPRM) entitled ''Updates to Floodplain Management and Protection of Wetlands Regulations to Implement Executive Order 13690 and the Federal Flood Risk Management Standard'' in the **Federal Register** (81 FR 57402). This NPRM would have revised FEMA's regulations on ''Floodplain Management and Protection of Wetlands'' to implement Executive Order 13690. FEMA also proposed a supplementary policy entitled ''FEMA Policy: Guidance for Implementing the Federal Flood Risk Management Standard (FFRMS)'' (FEMA Policy 078–3), which would have further clarified how FEMA would apply the FFRMS. The notice of availability and request for comments for the supplementary policy also published in the August 22, 2016 **Federal Register** at 81 FR 56558. On September 20, 2016, FEMA published a notice of data availability regarding a draft report, the *2016 Evaluation of the Benefits of Freeboard for Public and Nonresidential Buildings in Coastal Areas,* which had been added to the docket for the proposed rule (81 FR 64403).

On August 15, 2017, the President issued Executive Order 13807 (''Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects'') which revoked Executive Order 13690. *See* 82 FR 40463, Aug. 24, 2017. Accordingly, in light of the revocation of Executive Order 13690, FEMA withdrew the August 22, 2016 NPRM and supplementary policy (83 FR 9473). On May 20, 2021, the President issued Executive Order 14030 (''Climate-Related Financial Risk'') [2] reinstating Executive Order 13690, thereby reestablishing the FFRMS. Accordingly, FEMA is proposing an updated revision to its regulations and an updated supplementary policy to implement the FFRMS.

FEMA is proposing to amend 44 CFR part 9, ''Floodplain Management and Protection of Wetlands,'' and issue a supplementary policy to implement the FFRMS and update the agency's 8-step process. As mentioned above, the FFRMS is a flood resilience standard that is required for ''Federally funded projects'' and provides a flexible framework to increase resilience against flooding and help preserve the natural values of floodplains and wetlands. A floodplain is any land area that is subject to flooding and refers to geographic features with undefined boundaries. 44 CFR part 9 describes the 8-step process FEMA uses to determine whether a proposed action would be located within or affect a floodplain, and if so, whether and how to continue with or modify the proposed action. Executive Order 11988, as amended,[3] and the FFRMS changed the Executive Branch-wide guidance for defining the ''floodplain'' with respect to ''Federally funded projects'' (*i.e.,* actions involving the use of Federal funds for new construction, substantial improvement, or to address substantial damage to a structure or facility). The revised definitions allow for consideration of both current and future flood risks in defining the floodplain to minimize the impact of floods on human health, safety, and welfare and reduce the risk of flood loss. For actions subject to the FFRMS, FEMA proposes to use the updated definition of ''floodplain'' contained in the Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input (Revised Guidelines).[4] As discussed further below, the FFRMS allows the agency to define ''floodplain'' using any of three approaches or a fourth approach resulting from any other method in an update to the FFRMS. In many cases, each of these approaches would result in a larger floodplain and a requirement to design projects such that they are resilient to a higher vertical elevation. For actions that do not meet the definition of an action subject to the FFRMS, FEMA would continue to use the historical definition of floodplain with minor clarifying revisions to help stakeholders better understand the terminology. Regardless of whether the action is subject to FFRMS, FEMA will follow the Revised Guidelines [5] to determine whether an action is in the floodplain. Finally, the proposed rule would require the use, where possible, of natural systems, ecosystem processes, and nature-based approaches in the development of alternatives for all actions proposed in a floodplain.

FEMA believes that this rule is an important step toward mitigating future flood risk, and that such mitigation will ultimately benefit communities by allowing them to recover from future disasters more efficiently and effectively. The United States is experiencing increased flooding and flood risk from climate change.[6] The full extent of future changes in flood risk has not yet been estimated across the full inventory of Federal, State, local, Tribal, and territorial properties. However, in a survey of Federal properties alone, those assessments that have been completed identified over 40,000 individual Federal buildings and structures with a combined replacement cost of $81 billion located in the current 100-year floodplain and approximately 160,000 structures with a total replacement cost of $493 billion located in the current 500 year floodplain.[7] Approximately 10,250 individual Federal buildings and structures were identified in coastal areas with a combined replacement cost of $32.3 billion that would be severely impacted by an eight-feet sea-level rise scenario and over 12,195 individual Federal buildings and structures with a combined replacement cost of over $43.7 billion under a ten-foot ''worst case'' sea level rise scenario.[8] This proposed rule would ensure that actions subject to the FFRMS are designed to be resilient to both current and future flood risks to minimize the impact of floods on human health, safety, and welfare

[1] 80 FR 6425, Feb. 4, 2015.

[2] 86 FR 27967 (May 25, 2021).

[3] Executive Order 13690 amended Executive Order 11988 in 2015 and was revoked in 2017 by Executive Order 13807. Executive Order 13690 was reinstated in 2021 by Executive Order 14030. *See* 80 FR 64008 (Oct. 22, 2015), 82 FR 40463 (Aug. 24, 2017), and 86 FR 27967 (May 25, 2021).

[4] 80 FR 64008 (Oct. 22, 2015); *https://www.regulations.gov/document/FEMA-2015-0006-0358.* (Last accessed July 12, 2023).

[5] *Id.*

[6] As a result of climate change, flood events are on the rise. Climate change is increasing flood risk through (1) more ''extreme'' rainfall events,'' caused by a warmer atmosphere holding more water vapor and changes in regional precipitation patterns; and (2) sea-level rise. *See* Rob Bailey, Claudio Saffioti, and Sumer Drall, *Sunk Costs: The Socioeconomic Impacts of Flooding* 3 and 8, Marsh McLennan (2021).

[7] Federal Budget Exposure to Climate Risk. OMB Assessment found *https://www.whitehouse.gov/wp-content/uploads/2022/04/ap_21_climate_risk_fy2023.pdf* (last accessed July 12, 2023).

[8] *Id.*

and to protect Federal investments by reducing the risk of flood loss.

FEMA estimated the total impacts of the proposed rule by analyzing the impact of the FVA, 0.2PFA and CISA for FEMA's Public Assistance (PA), Individual Assistance (IA), and Hazard Mitigation Assistance (HMA) grant programs by examining the number of projects that would be subject to the proposed requirements in the first 10 years after the rule's publication.[9] FEMA's analysis focused on the costs, benefits, and transfer payments (*i.e.,* impacts on FEMA grants), that would result over a 50-year period from applying the requirements of the proposed rule to those projects, for a total period of analysis spanning 60 years. Tables 1 and 2 show the total impacts of this proposed rule under the three approaches for each of the affected programs.

TABLE 1—SUMMARY OF COSTS, TRANSFERS AND BENEFITS BY APPROACH AND PROGRAM FOR AFFECTED PROJECTS IN YEARS 1–10

[Low estimate, 2021$]

Costs *	Undiscounted	3% Discount rate		7% Discount rate	
		Present value	Annualized	Present value	Annualized
CISA Total (primary) (+5-ft)	$138,393,786	$118,052,707	$4,265,594	$97,202,003	$6,923,623
PA	102,794,460	87,685,759	3,168,346	72,198,527	5,142,645
IA	1,421,690	1,212,730	43,820	998,537	71,125
HMA	48,908,310	41,719,781	1,507,459	34,351,150	2,446,806
FVA Total	61,994,588	52,882,642	1,910,806	43,542,402	3,101,492
0.2PFA Total	53,397,625	45,549,257	1,645,829	37,504,256	2,671,399
FEMA Admin	3,741,680	3,267,150	118,052	2,776,613	197,776
Not Quantified	*Not Estimated:* Increased resiliency standard for approximately 20,961 facility projects over 10 years, Additional costs for Adding Requirements to Buildings with Basements, Diversion of Projects Out of the Floodplain, Lifecycle maintenance costs for floodproofing, and Project Delays and Forgone Projects.				
Transfer Payments from FEMA to Grant Recipients *					
CISA Total (primary) (+5-ft)	109,216,359	93,163,768	3,366,283	76,709,000	5,463,923
PA	82,955,130	70,762,410	2,556,855	58,264,212	4,150,115
IA	1,421,690	1,212,730	43,820	998,537	71,125
HMA	36,681,233	31,289,834	1,130,594	25,763,363	1,835,104
FVA Total	48,898,424	41,711,348	1,507,154	34,344,206	2,446,311
0.2PFA Total	41,973,888	35,804,576	1,293,725	29,480,702	2,099,888
Benefits *					
PA (CISA, primary) (+1-ft)	55,180,000	47,069,660	1,700,766	38,756,122	2,760,569
Not Quantified	*Not Estimated:* Damage Avoidance for approximately 13,254 IA and HMA structure projects and 20,961 PA and HMA facility projects over 10 years, Potential Lives Saved, Increased Public Health and Safety, Decreased Cleanup Time, Protection of Critical Facilities, Reduction of Personal and Community Impacts.				

* FEMA focused its analysis on the projects impacted in the first 10 years after the rule's publication. FEMA considered the resulting costs, benefits, and transfer payments of the proposed rule on those projects over a 50-year period, for a total of 60 years. The costs and transfers occur in the first 10 years of the 60-year period because that is when the initial investment to elevate or floodproof them to meet the proposed requirements takes place. This is an upfront cost that occurs when the project is constructed. However, the benefits of the proposed rule are realized over the 50-year useful life of the affected structures.

TABLE 2—SUMMARY OF 60-YEAR COSTS, TRANSFERS AND BENEFITS BY APPROACH AND PROGRAM FOR AFFECTED PROJECTS IN YEARS 1–10

[High estimate, 2021$]

Costs *	Undiscounted	3% Discount rate		7% Discount rate	
		Present value	Annualized	Present value	Annualized
CISA Total (primary) (+5-ft)	$151,319,537	$129,078,635	$4,663,993	$106,280,511	$7,570,278
PA	120,722,020	102,978,331	3,720,912	84,790,095	6,039,533
IA	1,421,690	1,212,730	43,820	998,537	71,125
HMA	48,908,310	41,719,781	1,507,459	34,351,150	2,446,806
FVA Total	68,035,769	58,035,891	2,097,008	47,785,478	3,403,723
0.2PFA Total	57,766,400	49,275,911	1,780,484	40,572,701	2,889,962
FEMA Admin	4,942,430	4,291,414	155,061	3,619,968	257,848

[9] FEMA used an average of the number of affected projects during the prior 10-year period to estimate the average annual impacts of the future 10-year period.

TABLE 2—SUMMARY OF 60-YEAR COSTS, TRANSFERS AND BENEFITS BY APPROACH AND PROGRAM FOR AFFECTED PROJECTS IN YEARS 1–10—Continued

[High estimate, 2021$]

Costs*	Undiscounted	3% Discount rate		7% Discount rate	
		Present value	Annualized	Present value	Annualized
Not Quantified	*Not Estimated:* Increased resiliency standard for approximately 20,961 facility projects over 10 years, Additional costs for Adding Requirements to Buildings with Basements, Diversion of Projects Out of the Floodplain, Lifecycle maintenance costs for floodproofing, and Project Delays and Forgone Projects.				
Transfer Payments from FEMA to Grant Recipients*					
CISA Total (primary) (+5-ft)	119,647,439	102,061,693	3,687,791	84,035,355	5,985,773
PA	97,422,670	83,103,514	3,002,776	68,425,607	4,873,903
IA	1,421,690	1,212,730	43,820	998,537	71,125
HMA	36,681,233	31,289,834	1,130,594	25,763,363	1,835,104
FVA Total	53,773,657	45,870,019	1,657,420	37,768,366	1,657,420
0.2PFA Total	45,499,493	38,811,991	1,402,392	31,956,941	2,276,268
Benefits*					
PA (CISA, primary) (+1-ft)	61,985,720	52,875,076	1,910,533	43,536,175	3,101,048
Not Quantified	*Not Estimated:* Damage Avoidance for approximately 13,254 IA and HMA structure projects and 20,961 PA and HMA facility projects over 10 years, Potential Lives Saved, Increased Public Health and Safety, Decreased Cleanup Time, Protection of Critical Facilities, Reduction of Personal and Community Impacts.				

*FEMA focused its analysis on the projects impacted in the first 10 years after the rule's publication. FEMA considered the resulting costs, benefits, and transfer payments of the proposed rule on those projects over a 50-year period, for a total of 60 years. The costs and transfers occur in the first 10 years of the 60-year period because that is when the initial investment to elevate or floodproof them to meet the proposed requirements takes place. This is an upfront cost that occurs when the project is constructed. However, the benefits of the proposed rule are realized over the 50-year useful life of the affected structures.

Table 3 provides the estimated number of structures and facilities affected by the proposed rule over the first 10 years, assuming that each approach is the only expansion option. Structures, which are walled and roofed buildings, would comply with the proposed FFRMS through elevating or floodproofing to the required height. Facilities, which are any human-made or human-placed items other than a structure such as roads and bridges, would require different mitigation measures in order to comply with the increased resiliency standard of the proposed rule. The monetized impacts of this rule are representative of the floodproofing and elevation mitigation measures that would be required of structures. However, for reasons explained in more detail later, FEMA was unable to monetize the impacts of the rule for facilities.

TABLE 3—ESTIMATED NUMBER OF STRUCTURES AND FACILITIES AFFECTED BY THE PROPOSED RULE IN YEARS 1–10

FFRMS approach	Structures			Total structures	Facilities		Total facilities	Total projects
	PA	IA	HMA		PA	HMA		
FVA	1,090	2,650	9,492	13,232	20,120	841	20,961	34,193
0.2PFA	840	2,650	9,447	12,937	20,120	841	20,961	33,898
CISA	1,173	2,903	10,351	14,427	20,120	841	20,961	35,388

Quantified estimates of the benefits of this rule are available for only non-residential PA Category E projects, which are for structures. Due to the highly project-specific nature of facilities projects and numerous options for making them resilient, FEMA could not estimate the costs of improving flood resiliency of facilities.[10] Tables 1 and 2 show that the total 60-year benefits for non-residential PA Category E projects in the first 10 years is $43.5 million (7 percent, high). This benefit is for adding one foot of freeboard, assuming a 59-inch sea level rise (SLR).[11] Although the cost for PA Category E projects is $84.8 million (7 percent, high), this cost represents 5 feet of freeboard (FEMA's assumption for CISA).[12] FEMA does not have data to quantify the benefits of additional freeboard and thus the quantified benefits represent only a portion of the increased risk reduction that would be achieved through this rule. Ensuring projects are built to the height necessary to avoid additional loss scenarios would provide additional unquantified benefits of avoided damages to the structure,

[10] Category E projects are public buildings and contents. *See* Public Assistance Fact Sheet at *https://www.fema.gov/sites/default/files/2020-07/fema_public-assistance-fact-sheet_10-2019.pdf.*

[11] FEMA used one foot for benefits as the 2022 report only specifies monetary benefits for an additional one foot over current requirements. FEMA included this number in the quantified benefits because it is the only monetary benefit available for any freeboard level.

[12] Costs for the FVA may be a better comparison because they represent 2 or 3 feet of freeboard, depending on criticality. However, the number of projects using FVA and CISA differ, making such a comparison difficult.

decreased cleanup time and disruption to the community, and increased public health and safety. Moreover, FEMA's use of CISA as its preferred approach would use the best available and actionable scientific data to tailor future flooding risk to each project ensuring that projects are built only to the height necessary and thus maximizing net benefits. Accordingly, FEMA believes the benefits of the rule—quantified and unquantified—would justify its costs.

III. Legal and Factual Background

Below, FEMA describes in more specific detail the basis for this proposed rule. Section III.A describes Executive Order 11988, the Water Resources Council's 1978 ''Floodplain Management Guidelines'' (1978 Guidelines), and the statutory authority underlying the Executive Order. Executive Order 11988 along with the 1978 Guidelines established an 8-step decision-making process by which Federal agencies carry out Executive Order 11988's direction to avoid the long- and short-term adverse impacts associated with the occupancy and modification of the floodplain and avoid the direct or indirect support of floodplain development whenever there is a practicable alternative. Section III.B describes FEMA's statutory authority to require its grant recipients to carry out repairs or construction in accordance with specific standards. Section III.C describes FEMA's implementing regulations at 44 CFR part 9, which closely follow the model decision-making process under Executive Order 11988. Section III.D describes how lessons learned from major events, including Hurricane Sandy, prompted reevaluation of the prevailing standard for determining whether a proposed action was located within a floodplain. Section III.E describes the development of Executive Order 13690, the Federal Flood Risk Management Standard, and additional guidance in the Revised Guidelines issued in 2015 as well as subsequent amendments to Executive Order 11988. Section III.F describes the substantive components of the Federal Flood Risk Management Standard and Section III.G describes FEMA's proposed approach to implement the required changes.

A. Executive Order 11988, ''Floodplain Management''

The President issued Executive Order 11988 (42 FR 26951, May 25, 1977) in furtherance of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 *et seq.*); the Flood Disaster Protection Act of 1973, as amended (Pub. L. 93–234, 87 Stat. 975); and the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). The National Flood Insurance Act, as amended by the Flood Disaster Protection Act establishes a multi-purpose program to provide flood insurance, minimize exposure of property to flood losses, minimize the damage caused by flood losses, and guide the development of proposed construction, where practicable, away from floodplains.[13] The National Flood Insurance Act and the Flood Disaster Protection Act highlight coordination of flood insurance with land management programs in flood-prone areas. NEPA requires Federal agencies to analyze the environmental impacts of proposed actions and evaluate alternatives to those actions, which includes the evaluation of the impacts of proposed actions in the floodplains.[14] NEPA mandates that agencies ''attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.'' [15] In furtherance of and consistent with this statutory foundation, Executive Order 11988 requires Federal agencies to avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains, where there is a practicable alternative. The Executive Order requires each Federal agency to provide leadership and take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health, and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for: (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. It states that each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning, programs, and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of the Executive Order.

To meet these requirements, each agency, before taking an action, must determine whether the proposed action will occur in a floodplain.[16] Section (6)(c) of Executive Order 11988 defines the word ''floodplain'' to mean ''the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, the area subject to a one percent or greater chance of flooding in any given year.'' [17]

If the action will occur in a floodplain, the agency must consider alternatives to avoid adverse effects and incompatible development in the floodplain. If the agency finds that the only practicable alternative requires the action to occur in the floodplain, the agency must, prior to taking the action, design or modify the action in order to minimize potential harm to or within the floodplain. Additionally, the agency must prepare and circulate a notice explaining why the action is proposed to be located in the floodplain. Particularly relevant to FEMA, the Executive Order also requires agencies to provide appropriate guidance to applicants for grant funding to encourage them to evaluate the effects of their proposals in floodplains prior to submitting grant applications.

Executive Order 11988 requires agencies to prepare implementing procedures in consultation with the Water Resources Council (WRC),[18] FEMA, and the Council on Environmental Quality (CEQ). As noted, the WRC issued ''Floodplain Management Guidelines'' (1978 Guidelines), the authoritative interpretation of Executive Order 11988.[19] The 1978 Guidelines provided

[13] *See* 42 U.S.C. 4001 and 4102.

[14] *See* 42 U.S.C. 4332(2)(C).

[15] *See* 42 U.S.C. 4331(b)(3).

[16] Any action FEMA takes in a floodplain, including its provision of grants for disaster assistance, undergoes an analysis pursuant to Executive Order 11988 (unless the action is specifically exempted from the requirements of the Order). The grant recipient, therefore, generally provides information to FEMA about the practicability of alternatives outside the floodplain and other information to assist in the analysis.

[17] This is also referred to as the ''100-year floodplain'' or the ''base floodplain.''

[18] The Water Resources Council, established by statute (42 U.S.C. 1962a–1), is charged with maintaining a continuing study and preparing an assessment biennially, or at such less frequent intervals as the Council may determine, of the adequacy of supplies of water necessary to meet the water requirements in each water resource region in the United States and the national interest therein; and maintaining a continuing study of the relation of regional or river basin plans and programs to the requirements of larger regions of the Nation and of the adequacy of administrative and statutory means for the coordination of the water and related land resources policies and programs of the several Federal agencies. It is responsible for appraising the adequacy of existing and proposed policies and programs to meet such requirements and making recommendations to the President with respect to Federal policies and programs.

[19] 43 FR 6030, Feb. 10, 1978. A PDF copy of the 1978 Guidelines can be found at this link: *http://portal.hud.gov/hudportal/documents/*

a section-by-section analysis, defined key terms, and outlined an 8-step decision-making process for carrying out the directives of Executive Order 11988.

B. Statutory Authority To Require FFRMS Under FEMA Grant Programs

FEMA's grant programs that fund new construction, substantial improvement, or repairs to address substantial damage are authorized under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*) and the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 *et seq.*). FEMA generally has authority under these discretionary grant programs to set eligibility criteria. Further, section 323 of the Stafford Act authorizes FEMA to require, as a condition of grant funding for all Stafford Act programs, that the repair or construction of private and public facilities be completed in accordance with ''applicable standards of safety, decency, and sanitation in conformity with applicable codes, specifications and standards.'' [20] Section 323 also grants FEMA discretion to require any other safe land use and construction practices it deems appropriate after adequate consultation with appropriate State and local government officials.[21] Section 404 of the National Flood Insurance Act grants FEMA the authority to provide flood mitigation grant funding and requires the activities funded to be consistent with floodplain management criteria developed by the Administrator.[22]

C. 44 CFR Part 9, ''Floodplain Management and Protection of Wetlands''

Consistent with the National Flood Insurance Act, the Flood Disaster Protection Act, and NEPA, FEMA promulgated regulations implementing Executive Order 11988 at 44 CFR part 9, ''Floodplain Management and Protection of Wetlands.'' [23] Part 9 closely follows the 1978 Guidelines in setting forth FEMA's policy and procedures for floodplain management relating to disaster planning, response and recovery, and hazard mitigation. Part 9 generally applies to FEMA actions, including FEMA direct actions and FEMA's disaster and non-disaster assistance programs.[24]

Pursuant to section 8 of Executive Order 11988, part 9 does not apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to sections 403 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5170b and 5192). In addition, FEMA applies part 9 programmatically to the National Flood Insurance Program (NFIP) [25]. FEMA does not apply part 9 to site-specific actions under the NFIP because the establishment of programmatic criteria, rather than the application of the programmatic criteria to individual situations, is the action with the potential to influence/affect floodplains.[26]

Below FEMA outlines the existing 8-step decision-making process that the agency currently follows in applying Executive Order 11988 to its actions:

Step (1) Floodplain and wetland determination (44 CFR 9.7). Under Step 1, FEMA must determine if a proposed agency action is located in or affects the 1 percent annual chance floodplain (or, for critical actions, the 0.2 percent annual chance floodplain) or wetland. The 1 percent annual chance (or base or 100-year) floodplain is the area subject to inundation by the 1 percent annual chance flood, which is that flood which has a 1 percent chance of occurrence in any given year (also known as the base or 100-year flood). A ''critical action'' is any activity for which even a slight chance of flooding would be too great.[27] The minimum floodplain of concern for critical actions is the 0.2 percent annual chance (or 500-year) floodplain, which is the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year. The 0.2 percent annual chance floodplain generally covers a larger area than the 1 percent annual chance floodplain. FEMA's regulations state that in each instance where the 8-step process refers to the 1 percent annual chance floodplain, an agency should substitute the 0.2 percent annual chance floodplain for the 1 percent annual chance floodplain if the proposed action is a critical action. Absent a finding to the contrary, FEMA currently assumes a proposed action involving a facility or structure that has been flooded is in the floodplain.

FEMA follows a specific regulatory sequence in order to make its floodplain determination. First, FEMA must consult the Flood Insurance Rate Map (FIRM), the Flood Boundary Floodway Map (FBFM), and the Flood Insurance Study (FIS) for the area.[28] A FIRM is an official, detailed map issued by the NFIP, generally showing elevations and boundaries of the 1 percent annual chance floodplain and the 0.2 percent annual chance floodplain.[29] The FBFM is a version of a flood map that shows only the floodway [30] and flood boundaries. An FIS report is an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations. If a FIRM is not available, FEMA must obtain a Flood Hazard Boundary Map (FHBM) which is a less detailed map than a FIRM and shows the approximate areas of the 1 percent annual chance floodplain. If data on flood elevations, floodways, or coastal high hazard areas are needed, or if the map does not delineate the flood hazard boundaries in the vicinity of the proposed site, FEMA must seek detailed information from a list of sources included in the regulations. See 44 CFR 9.7(c)(1)(ii). If the sources listed do not have or know of detailed information and are unable to assist in determining whether the proposed site is in the 1 percent annual chance floodplain, FEMA must seek the services of a licensed consulting engineer experienced in this type of work. If, however, a decision involves an area or

huddoc?id=DOC_14216.pdf (last accessed July 12, 2023).

[20] *See* 42 U.S.C. 5165a(a)(1)

[21] *See* 42 U.S.C. 5165a(a)(2)

[22] *See* 42 U.S.C. 4104c and 4102.

[23] FEMA published an interim final rule on December 27, 1979 (44 FR 76510) and a final rule on September 9, 1980 (45 FR 59520). Note that this part also implements a related Executive Order 11990, ''Protection of Wetlands.'' *See* 42 FR 26961, May 25, 1977.

[24] 44 CFR 9.4 defines the actions subject to the requirements, which include federal lands and facilities, providing federal funds for construction and improvements, and conducting activities or programs that affect land use.

[25] A complete list of FEMA programs to which Part 9 does not apply appears at 44 CFR 9.5. The exemption for actions under the NFIP is located at 44 CFR 9.5(f).

[26] For example, Part 9 requires FEMA to apply the 8-step process to a programmatic determination of categories of structures to be insured but does not require FEMA to apply an 8-step review to a determination of whether to insure each individual structure. *See* 45 44 CFR 9.5(f).

[27] The concept of critical actions evolved during the drafting of the 1978 Guidelines and reflects a concern that the impacts of floods on human safety, health, and welfare for many activities could not be minimized unless a higher degree of protection than the base flood was provided. See Interagency Task Force on Floodplain Management, Further Advice on Executive Order 11988 Floodplain Management (1986) (last accessed July 12, 2023).

[28] FEMA also utilizes best available information in making floodplain determinations, which may include preliminary FIRMs or Advisory Base Flood Elevations (ABFEs). See FEMA Policy: Guidance on the Use of Available Flood Hazard Information (last accessed July 12, 2023).

[29] FEMA estimates that only approximately 20 percent of mapped flood zones have detailed floodplain boundaries of the 0.2 percent annual chance floodplain.

[30] The floodway is the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. See 44 CFR 59.1.

location within extensive Federal or State holdings or a headwater area, and no FIS, FIRM, FBFM, or FHBM is available, FEMA will seek information from the land administering agency before seeking information and/or assistance from the list of sources included in the regulations. Then, if none of the sources listed has information or can provide assistance, FEMA will seek the services of an experienced Federal or other engineer. If the proposed action is outside the floodplain or wetland and has no identifiable impacts or support, the action can be implemented (Step 8).

Step (2) Early public review (44 CFR 9.8). FEMA must make public its intent to locate a proposed action in the floodplain or a wetland.[31] FEMA must provide adequate information to enable the public to have an impact on the decision outcome for all proposed actions having potential to affect, adversely, or be affected by floodplains or wetlands. For each action having national significance for which notice is provided, FEMA uses the **Federal Register** as the minimum means for notice and will provide notice by mail to national organizations reasonably expected to be interested in the action. 44 CFR 9.8(c)(5) describes the contents of the public notice, such as a description of the action, the degree of hazard involved, a map of the area, or other identification of the floodplain, and identification of the responsible agency official.

Step (3) Practicable alternatives (44 CFR 9.9). If the action is in the floodplain or a wetland, FEMA will identify and evaluate practicable alternatives to carrying out a proposed action in floodplains or wetlands, including the following: alternative sites outside the floodplain or wetland; alternative actions which serve essentially the same purpose as the proposed action, but which have less potential to affect or be affected by the floodplain or wetland; and ''no action.'' The floodplain or wetland site itself must be a practicable location in light of the other factors. Under 44 CFR 9.9(c), FEMA will analyze several factors in determining the practicability of the alternatives described in 44 CFR 9.9(b), namely natural environment, social concerns, economic aspects, and legal constraints. 44 CFR 9.9(d) states that FEMA will not locate the proposed action in the floodplain or wetland if a practicable alternative exists outside the floodplain or wetland. For critical actions, FEMA will not locate the proposed action in the 0.2 percent annual chance floodplain if a practicable alternative exists outside the 0.2 percent annual chance floodplain. Even if no practicable alternative exists outside the floodplain, in order to carry out the action the floodplain or wetland must itself be a practicable location in light of the review required under Step 3.

Step (4) Impact of chosen alternative (44 CFR 9.10). FEMA must identify if the action has impacts in the floodplain or wetland. 44 CFR 9.10(b) provides that FEMA will identify the potential direct and indirect adverse impacts associated with the occupancy and modification of floodplains or wetlands and the potential direct and indirect support of floodplain or wetland development that could result from the proposed action.

Step (5) Minimize impacts (44 CFR 9.11). If the proposed action has identifiable impacts in the floodplain or wetland or directly or indirectly supports development in the floodplain or wetland, FEMA must minimize these effects and restore and preserve the natural and beneficial values served by floodplains and wetlands. 44 CFR 9.11(b) states generally that FEMA will design or modify its actions to minimize harm to or within the floodplain; will minimize destruction, loss, or degradation of wetlands; will restore and preserve natural and beneficial floodplain values; and will preserve and enhance natural and beneficial wetland values. Pursuant to 44 CFR 9.11(c), FEMA will more specifically minimize potential harm to lives and the investment at risk from the 1 percent annual chance flood, or, in the case of critical actions, from the 0.2 percent annual chance flood; potential adverse impacts the action may have on others; and potential adverse impacts the action may have on floodplain values.

Pursuant to 44 CFR 9.11(d), FEMA will not allow new construction or substantial improvement in a floodway and will not allow new construction in a coastal high hazard area, except for a functionally dependent use[32] or a structure or facility which facilitates an open space use. For a structure which is a functionally dependent use, or which facilitates an open space use, FEMA will not allow construction of a new or substantially improved structure in a coastal high hazard area unless it is elevated on adequately anchored pilings or columns and securely anchored to such piles or columns so that the lowest portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the 1 percent annual chance flood level (the 0.2 percent annual chance flood level for critical actions) (including wave height). Regarding elevation of structures, 44 CFR 9.11(d)(3) states that there will be no new construction or substantial improvement of structures unless the lowest floor of the structures (including basement) is at or above the level of the 1 percent annual chance flood, and there will be no new construction or substantial improvement of structures involving a critical action unless the lowest floor of the structure (including the basement) is at or above the level of the 0.2 percent annual chance flood.

Step (6) Reevaluate alternatives (44 CFR 9.9). FEMA must reevaluate the proposed action. Pursuant to 44 CFR 9.9(e), upon determination of the impact of the proposed action to or within the floodplain or wetland and of what measures are necessary to comply with the requirement to minimize harm to and within the floodplains and wetlands, FEMA will determine whether: the action is still practicable at a floodplain or wetland site in light of the exposure to flood risk and the ensuing disruption of natural values, the floodplain or wetland site is the only practicable alternative, the scope of the action can be limited to increase the practicability of previously rejected non-floodplain or non-wetland sites and alternative actions, and minimization of harm to or within the floodplain or wetland can be achieved using all practicable means. Pursuant to 44 CFR 9.9(e)(2), FEMA will take no action in a floodplain or wetland unless the importance of the floodplain or wetland site clearly outweighs the requirement of Executive Order 11988 to avoid direct or indirect support of floodplain or wetland development; reduce the risk of flood loss; minimize the impact of floods on human safety, health, and welfare; and restore and preserve floodplain and wetland values.

Step (7) Findings and public explanation (44 CFR 9.12). If FEMA finds that the only practicable alternative is to take the action in the floodplain or wetland, it must give public notice of the reasons for this finding. 44 CFR 9.12(e) describes the requirements for the content of such notice, such as a statement of why the proposed action must be located in an area affecting or affected by a floodplain or wetland, a description of all significant facts considered in making

[31] This step is required for any action that is within or affects a floodplain or wetland unless exempted or subject to the abbreviated processes outlined in 44 CFR 9.5.

[32] A functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. *See* 44 CFR 9.4.

this determination, identification of the responsible official, and a map of the relevant area. FEMA may implement the proposed action after it allows a reasonable period for public response.

Step (8) Implementation (Multiple sections of 44 CFR and applicable program guidance). Implementation of the requirements of Executive Order 11988 is integrated into the specific regulations and procedures of the grant program under which the action is proposed to take place. After the proposed action is implemented, the FEMA program providing the funding determines under its applicable regulations and procedures whether the grant recipient has completed the prescribed mitigation.

D. Reevaluation of the 1 Percent Annual Chance Flood Standard

In the aftermath of Hurricane Sandy, the President issued Executive Order 13632,[33] which created the Federal Interagency Hurricane Sandy Rebuilding Task Force (Sandy Task Force). Pursuant to direction from Executive Order 13632 to remove obstacles to resilient rebuilding, the Sandy Task Force reevaluated the 1 percent chance/100-year standard. In April 2013, the Sandy Task Force announced a new Federal flood risk reduction standard which required elevation or other flood-proofing to 1 foot above [34] the best available and most recent 1 percent annual chance flood elevation and applied that standard to all Federal disaster recovery investments in Sandy-affected communities.[35] The Sandy Task Force called for all major rebuilding projects in Sandy-affected communities using Federal funding to be elevated or otherwise flood-proofed according to this new flood risk reduction standard.

In June 2013, the President issued a Climate Action Plan [36] that directed agencies to take appropriate actions to reduce risk to Federal investments, specifically directing agencies to build on the work done by the Sandy Task Force and to update their flood risk reduction standards for ''federally-funded . . . projects'' to ensure that ''projects funded with taxpayer dollars last as long as intended.'' [37] After a year-long process of receiving input from State, local, Tribal, and territorial governments; private businesses; trade associations; academic organizations; civil society; and other stakeholders, the Task Force provided a recommendation to the President in November 2014. The Climate Task Force recommended that, in order to ensure resiliency, Federal agencies, when taking actions in and around floodplains, should include considerations of the effects of changing conditions, including sea level rise, more frequent and severe storms, and increasing river flood risks. The Climate Task Force also recommended that the best available climate data should be used in siting and designing projects receiving Federal funding, and that margins of safety, such as freeboard and setbacks, should be included.[38]

E. Executive Order 13690, the Federal Flood Risk Management Standard and Subsequent Amendments to Executive Order 11988, and Revisions to the 1978 Guidelines

On January 30, 2015, the President issued Executive Order 13690, ''Establishing a Federal Flood Risk Management Standard (FFRMS) and a Process for Further Soliciting and Considering Stakeholder Input.'' [39] Executive Order 13690 amended Executive Order 11988 and established the FFRMS. It required FEMA to publish an updated version of the Implementing Guidelines (revised to incorporate the changes required by Executive Order 13690 and the FFRMS) in the **Federal Register** for notice and comment. Finally, Executive Order 13690 required the WRC to issue final Guidelines to provide guidance to agencies on the implementation of Executive Order 11988, as amended, consistent with the FFRMS.

FEMA, acting on behalf of the Mitigation Framework Leadership Group, published a **Federal Register** notice for a 60-day notice and comment period seeking comments on a draft of the Revised Guidelines on February 5, 2015.[40] FEMA received over 556 separate submissions.[41] The final Revised Guidelines were issued on October 8, 2015.[42] The Revised Guidelines contain an updated version of the FFRMS (located at Appendix G of the Revised Guidelines), reiterate key concepts from the 1978 Guidelines, and explain the new concepts resulting from the FFRMS. In response to public comments, the Mitigation Framework Leadership Group clarified the distinction between actions and Federally funded projects.

On August 22, 2016, FEMA published an NPRM entitled ''Updates to Floodplain Management and Protection of Wetlands Regulations To Implement Executive Order 13690 and the Federal Flood Risk Management Standard'' in the **Federal Register** (81 FR 57402). The rulemaking would have revised FEMA's regulations on ''Floodplain Management and Protection of Wetlands'' to implement Executive Order 13690. FEMA also proposed a supplementary policy entitled ''FEMA Policy: Guidance for Implementing the Federal Flood Risk Management Standard (FFRMS)'' (FEMA Policy 078–3), which would have further clarified how FEMA would apply the FFRMS. The notice of availability and request for comments for the supplementary policy also published in the August 22, 2016 **Federal Register** at 81 FR 56558. On September 20, 2016, FEMA published a notice of data availability regarding a draft report, the *2016 Evaluation of the Benefits of Freeboard for Public and Nonresidential Buildings in Coastal Areas,* which had been added to the docket for the proposed rule (81 FR 64403).

On August 15, 2017, the President issued Executive Order 13807 (''Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects'') which revoked Executive Order 13690. *See* 82 FR 40463, Aug. 24, 2017. Accordingly, on March 6, 2018, in light of the revocation of Executive Order 13690, FEMA

[33] 77 FR 74341 (Dec. 14, 2012).

[34] This is also known as ''freeboard.'' ''Freeboard'' is a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrologic effect of urbanization of the watershed. *See https://www.fema.gov/glossary/freeboard* (last accessed July 12, 2023).

[35] HUD release entitled, ''Federal Government Sets Uniform Flood Risk Reduction Standard for Sandy Rebuilding Projects,'' April 4, 2013.

[36] Executive Office of the President, *The President's Climate Action Plan* (2013), available at *https://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf. (last accessed July 12, 2023).*

[37] *See id* at 15.

[38] President's State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience, *Recommendations to the President,* (2014), *available at https://obamawhitehouse.archives.gov/sites/default/files/docs/task_force_report_0.pdf at 7 (last accessed July 12, 2023).*

[39] 80 FR 6425, Feb. 4, 2015.

[40] 80 FR 6530, Feb. 5, 2015.

[41] FEMA received approximately 556 separate submissions, which raised over 2700 separate issues and positions. Written comments were received at a series of 8 in-person listening sessions across the country (135 submissions); verbal comments were shared during the public comment periods of these same listening sessions (74 commenters); comments were submitted through the FFRMS email address (20 submissions); comments were submitted through *regulations.gov* (326 submissions); and comments were submitted as part of a petition of support (1 submission).

[42] 80 FR 64008 (Oct. 22, 2015); *https://www.regulations.gov/document/FEMA-2015-0006-0358* (last accessed July 12, 2023).

withdrew the August 22, 2016 NPRM and supplementary policy (83 FR 9473).

On May 20, 2021, the President issued Executive Order 14030 (''Climate-Related Financial Risk'') [43] reinstating Executive Order 13690, thereby reestablishing the FFRMS. Executive Order 14030 also states that the Revised Guidelines issued in 2015 were never revoked and remain in effect. As such, FEMA reviewed its prior NPRM and proposed policy and decided to revise its approach to implementation based on lessons learned during and since the 2016 rulemaking process. Specifically, FEMA first partially implemented the FFRMS by policy with respect to covered projects in existing floodplains in its Public Assistance and Hazard Mitigation Assistance programs.[44] FEMA next proposes to fully implement the FFRMS through this updated revision to its regulations and an updated supplementary policy.

F. Substantive Components of the FFRMS

The FFRMS is a flexible framework to increase resilience against flooding and help preserve the natural values of floodplains and wetlands.[45] Incorporating the FFRMS will expand the floodplain and require projects be built with higher resiliency. Applying the FFRMS will help ensure that Federally funded projects will last as long as intended. In addition, the FFRMS and revised guidelines require the evaluation of natural features and nature-based approaches, where possible, in the analysis of practicable alternatives in Step 3 of the decision-making process for all Federal actions.

Under the FFRMS, a Federal agency may establish the floodplain for actions subject to the FFRMS using any of the following approaches:

- *Approach 1:* Climate-Informed Science Approach (CISA): Utilizing the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science;
- *Approach 2:* Freeboard Value Approach (FVA): Freeboard (1 percent annual chance flood elevation + X, where X is 3 feet for critical actions and 2 feet for other actions);
- *Approach 3:* 0.2-percent-annual-chance Flood Approach (0.2PFA): 0.2 percent annual chance flood (also known as the 500-year flood); or
- *Approach 4:* the elevation and flood hazard area that result from using any other method identified in an update to the FFRMS.[46]

Each of the approaches is described in further detail below.

FFRMS Approach 1: CISA. The FFRMS and Revised Guidelines state that the CISA is the preferred approach, and that Federal agencies should use this approach when data to support such an analysis are available. CISA uses existing, sound science and engineering methods (*e.g.,* hydrologic and hydraulic analysis and methods used to establish current flood elevations and floodplain maps), supplemented with best available and actionable climate science and consideration of impacts from projected land cover/land use changes, long-term erosion, and other processes that may alter flood hazards over the lifecycle of the Federal investment.[47] For areas vulnerable to coastal flood hazards, the CISA includes consideration of the regional sea-level rise variability and lifecycle of the Federal action. This includes use of the Department of Commerce's National Oceanic and Atmospheric Administration's (NOAA's) or similar global mean sea-level-rise scenarios. These scenarios would be adjusted to the local relative sea-level conditions and would be combined with surge, tide, and wave data using state-of-the-art science in a manner appropriate to policies, practices, criticality, and consequences. For areas vulnerable to riverine flood hazards (*i.e.,* flood hazards stemming from a river source), the CISA would account for changes in riverine conditions due to current and future changes in climate and other factors such as land use by applying state-of-the-art science in a manner appropriate to policies, practices, criticality, and consequences (risk). The CISA for critical actions would utilize the same methodology as used for non-critical actions that are subject to Executive Order 11988, as amended, but with an emphasis on criticality as one of the factors for agencies to consider when conducting the analysis.

FFRMS Approach 2: FVA. The FFRMS and Revised Guidelines define freeboard values as an additional 2 feet added to the 1 percent annual chance flood elevation, or, for critical actions, an additional 3 feet added to the 1 percent annual chance flood elevation. In other words, the floodplain established by the FVA is the equivalent of the 1 percent annual chance floodplain, plus either 2 or 3 feet of vertical elevation, as applicable based on criticality, and a corresponding increase in the horizontal extent of the floodplain. The increased horizontal extent will not be the same in every case. As shown in the next two illustrations, when the same vertical increase is applied in multiple actions subject to the FFRMS in different areas, the amount of the increase in the horizontal extent of the respective floodplains will depend upon the topography of the area surrounding the proposed location of the action. FVA Illustration A reflects an area with relatively flat topography on either side of the flooding source (*i.e.,* river or stream) channel. This is generally representative of coastal plains, portions of the Midwest, and other areas with less variation in topography. FVA Illustration B reflects an area with steep topography on either side of the flooding source channel. This is representative of mountainous areas or areas with changes in elevation near the flooding source. With the same addition of 2 feet to the 1 percent annual chance flood elevation applied to both example locations, the increase to the horizontal extent of the floodplain in FVA Illustration A is comparatively larger than the increase to the horizontal extent of the floodplain in FVA Illustration B. These illustrations visually depict the fact that the horizontal increase to the floodplain will not be uniform when applying the same increase to establish the FVA and

[43] 86 FR 27967 (May 25, 2021).

[44] *See* FEMA Policy 104–22–003, ''Partial Implementation of the Federal Flood Risk Management Standard for Public Assistance (Interim),'' June 3, 2022 found at *https://www.fema.gov/sites/default/files/documents/fema_fp-104-22-0003-partial-implemetnation-ffrms-pa-interim.pdf* (last accessed July 12, 2023) and FEMA Policy 206–21–003–0001, ''Partial Implementation of the Federal Flood Risk Management Standard for Hazard Mitigation Assistance Program,'' Dec. 7, 2022 found at *https://www.fema.gov/sites/default/files/documents/fema_policy-fp-206-21-003-0001-implementation-ffrms-hma-program_122022.pdf* (last accessed July 12, 2023).

[45] Although the FFRMS describes various approaches for determining the higher vertical flood elevation and corresponding horizontal floodplain for Federally funded projects, it is not meant to be an ''elevation'' standard. The FFRMS is a resilience standard. The vertical flood elevation and corresponding horizontal floodplain determined using the approaches in the FFRMS establish the level to which a structure or facility must be resilient. This may include using structural or non-structural methods to reduce or prevent damage; elevating a structure; or, where appropriate, designing it to adapt to, withstand, and rapidly recover from a flood event. *See* ''Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input'' (Oct. 8, 2015), found at *https://www.fema.gov/sites/default/files/documents/fema_implementing-guidelines-EO11988-13690_10082015.pdf* (last accessed July 12, 2023).

[46] *See* Executive Order 13690 Section 2(i), 80 FR 6425, 6426 (Feb. 4, 2015).

[47] *See* Guidelines, pgs. 36–37.

will vary depending on local topography.

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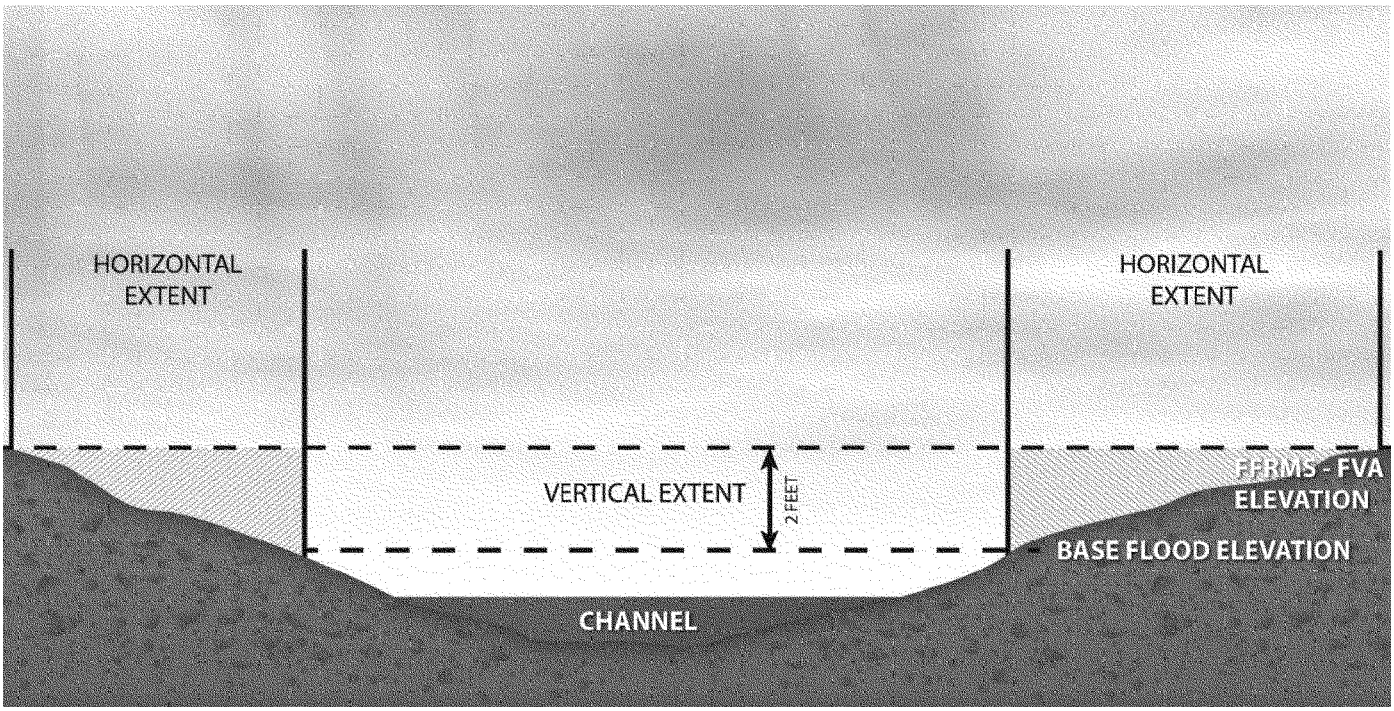
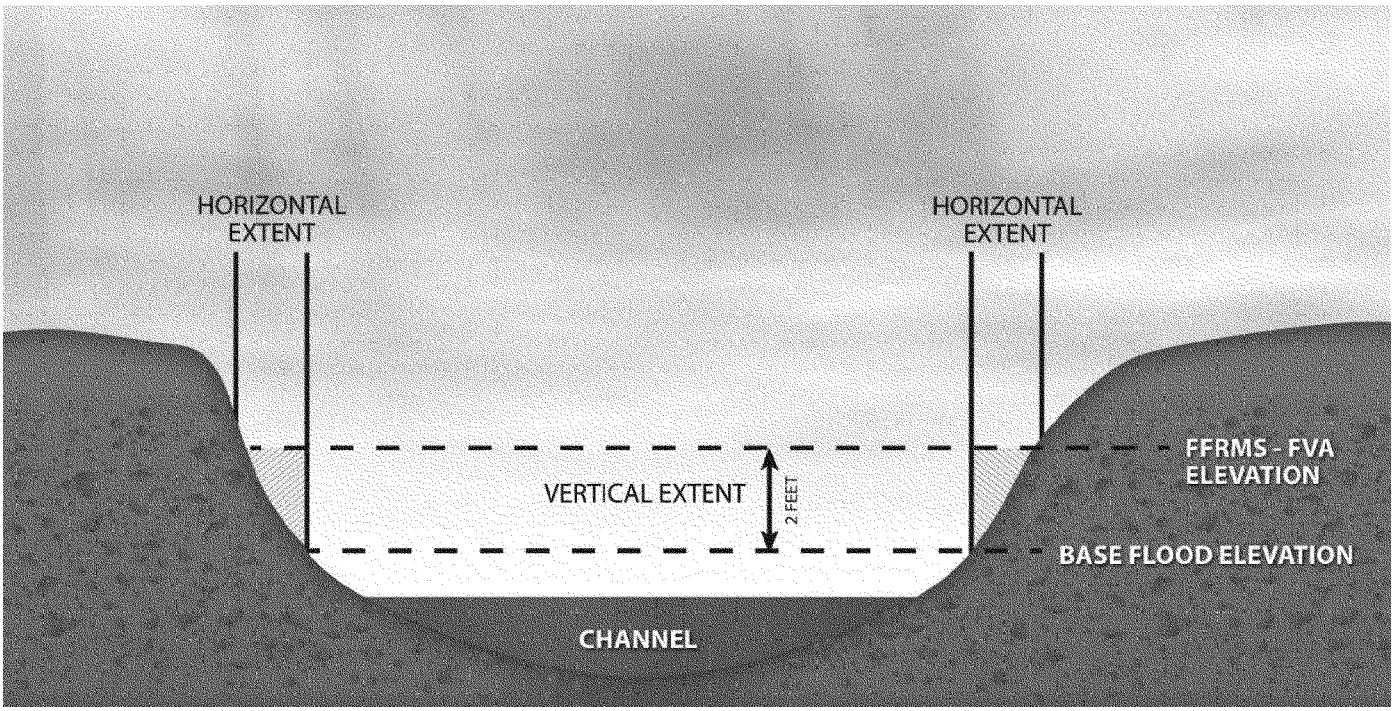
FVA Illustration A



FVA Illustration B



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FFRMS Approach 3: 0.2PFA. Agencies may use available 0.2 percent annual chance (or ''500-year'') flood data as the basis of the FFRMS elevation and corresponding floodplain extent. Under this approach the same floodplain and elevation is used for critical and non-critical actions. The FFRMS and Revised Guidelines note that often the 0.2 percent annual chance flood elevation data provided by FEMA in coastal areas only considers storm-surge hazards; these data do not include local wave action or storm-induced erosion that are considered in the computation of flood elevations. The FFRMS and Revised Guidelines encourage agencies to obtain or develop the necessary data, including wave heights, to ensure that any 0.2 percent annual chance flood data applied will achieve an appropriate level of flood resilience or use the FVA approach instead for the proposed investment.

FFRMS Approach 4: Update to FFRMS. The Mitigation Framework Leadership Group in consultation with the Federal Interagency Floodplain Management Task Force must reassess the FFRMS annually after seeking stakeholder input, and provide recommendations to the WRC to update the FFRMS. if warranted. The WRC must issue an update to the FFRMS at least every 5 years. The updates ensure the floodplain determination process for actions subject to the FFRMS reflects current methodologies.

Further Guidance on Application of the FFRMS Approaches To Establishing the Floodplain. The FFRMS and Revised Guidelines state that when an agency does not use CISA in a coastal flood hazard area and where the FEMA 0.2 percent annual chance flood elevation does not include wave height, or a wave height has not been determined, the 0.2 percent annual chance elevation should not be used and the FVA should be used instead. The FFRMS and Revised Guidelines note that where the 0.2-percent-annual-chance-flood elevation does not consider wave action, the result will likely either be lower than the current base flood elevation or the base flood elevation plus applicable freeboard. Where wave action has been incorporated into the 0.2 percent annual chance elevation, the 0.2 percent annual chance elevation can be used.

The Guidelines state that for riverine flood hazard areas agencies may select either the FVA, or 0.2 percent annual chance flood elevation approach (or a combination of approaches, as appropriate) when actionable science is not available and an agency opts not to follow the CISA. It states that the agency is not required to use the higher of the elevations but may opt to do so. The elevation standards of the FFRMS are not intended to supplant applicable State, Tribal, territorial, or local floodplain protection standards. If such standards exceed the FFRMS, an agency should apply those standards if the agency determines the application of the standards is reasonable in light of the goals of Executive Order 11988, as amended.[48]

G. FEMA's Implementation of the FFRMS and the Revised Guidelines

When Executive Order 13690 was issued, and again when it was reinstated with Executive Order 14030, FEMA evaluated the application of the FFRMS with respect to its existing authorities and programs. The FFRMS establishes a flexible standard to improve resilience against the impact of flooding—to design for the intended life of the Federal investment. FEMA supports this principle. Between 1980 and 2021, the United States experienced 35 flooding disaster events, each with damages totaling over $1 billion or more, and a total of $164.2 billion in damages for those 35 flooding disasters.[49] FEMA, as a responsible steward of Federal funds, must ensure it does not needlessly repeat Federal investments in the same structures and/or facilities after flooding events. In addition, the FFRMS will help support the thousands of communities across the country recovering from disasters, seeking to mitigate future impacts of flooding and to strengthen infrastructure and other community assets to be more resilient to flood risk.[50] FEMA recognizes that the need to make structures resilient also requires an equitable and flexible approach to adapt to the needs of the Federal agency, local community, and the circumstances surrounding each project or action consistent with evolving science and engineering advancements that demonstrate a better understanding of flood risk and flood risk reduction.

The current floodplain policy was designed to accept a specific level of flood risk utilizing the 1 percent or 0.2 percent annual chance floodplains. However, these values do not incorporate changing future conditions caused by increasing severity of flooding and other associated issues such as coastal erosion. The result is that the current level of the 1 percent annual chance and 0.2 percent annual chance flood elevation can underestimate the flooding risk to a particular action and leave communities at higher risk to future flooding events.

Where CISA is available and actionable, the risk of flooding can be determined based on climate science to identify the appropriate level of risk protection for an action based on factors such as local flood characteristics, criticality of the action, and planned lifespan of the action. As CISA is based on the available and actionable science for a specific location and action, the result is a determination of the appropriate level of resiliency to design minimization measures. Other methods may lower the flood risk as they are above the current floodplain policy, but in some instances, projects may be built to a higher resiliency than required (overbuilt) or to a lower resiliency than needed (underbuilt).[51]

FEMA intends to implement the FFRMS and the Revised Guidelines through this proposed rule and supplementary policy, which would (1) add or revise definitions to be consistent with those included in Executive Order 11988, as amended, and the Revised Guidelines to make them more accessible to stakeholders; (2) incorporate the use of the FFRMS approaches for establishing the floodplain into FEMA's existing 8-step process; and (3) include the requirement to use natural features and nature-based approaches, where possible, when developing alternatives to the proposed action. These revisions also update other sections of the 8-step process to reflect current FEMA policies and

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[48] *See* Revised Guidelines at 53. The Revised Guidelines suggest that agencies should apply a reasonableness standard to higher State, Tribal, Territorial, or local (STTL) floodplain management standards. FEMA has historically deferred to higher local codes and standards from an STTL government in 44 CFR 9.11(d)(6) and will continue the practice through this rulemaking, rather than applying a case-by-case reasonableness analysis and believes this is appropriate because of program-specific controls that ensure higher standards are reasonable. Specifically, in the PA program, if an STTL government has adopted a code or standard that exceeds minimum standards set by FEMA, regulations at 44 CFR 206.226(d) require the code to be in place and adopted pre-disaster which guards against an STTL government's adoption of unreasonably high codes and standards. With respect to mitigation projects, they are all required to be cost-effective as a minimum criteria of eligibility. *See* 42 U.S.C. 5170c(a); 42 U.S.C. 5133(b); 42 U.S.C. 4104c(c)(2)(A). This project-by-project cost-effectiveness analysis should guard against any STTL standards that are unreasonably high.

[49] See ''Billion-Dollar Weather and Climate Disasters,'' *https://www.ncdc.noaa.gov/billions,* DOI: 10.25921/stkw–7w73 (last accessed July 12, 2023).

[50] For example, FEMA data indicates approximately 18,068 eligible applicants for public assistance have participated in the 8-step process required by 44 CFR part 9 between 2012 and 2021.

[51] *See http://www.asfpmfoundation.org/ace-images/forum/Meeting_the_Challenge_of_Change.pdf.*

processes and provide additional clarity.

Making the Initial Floodplain Determination. As stated above, the FFRMS changed the definition of ''floodplain'' with respect to actions subject to the FFRMS (*i.e.,* actions involving the use of FEMA funds for new construction, substantial improvement, or to address substantial damage to a structure or facility). The FFRMS allows the agency to define ''floodplain'' using any of three approaches and take actions that are informed by the best available and actionable science. Agencies should use the CISA approach when the best available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science are available for actions subject to the FFRMS.[52] For actions which do not meet the definition of an action subject to the FFRMS, an agency should continue to use the historical definition of floodplain with minor clarifying revisions. This means that one of the first steps an agency must take is to determine the appropriate floodplain. Figure 1 illustrates the process by which FEMA would decide which floodplain would apply to an action subject to the FFRMS compared to an action that would not be subject to the FFRMS.

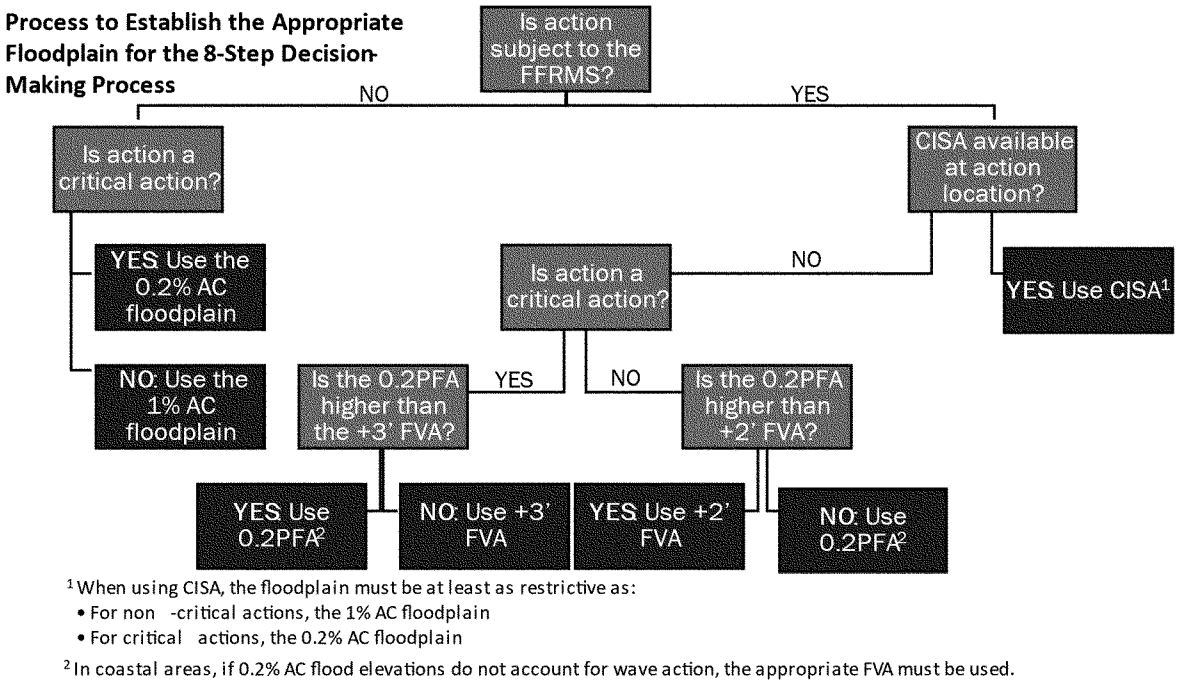

Figure 1: Process to Establish the Appropriate Floodplain for the 8-Step Decision-Making Process

Selection Between the FFRMS Approaches. In selecting between the FFRMS approaches, FEMA sought to retain sufficient flexibility to account for updates to the FFRMS and yet also implement a framework that is sufficiently standardized to be easily understood and consistently applied to ensure an appropriate level of resilience without overbuilding.[53] These considerations have led FEMA to propose a policy that considers the type and criticality of the action involved, the availability and actionability of the data, and equity concerns, as further explained in the current proposed supplementary policy.

FEMA proposes to implement the FFRMS by adopting the flexible framework detailed in the Revised Guidelines. Under this proposal, FEMA would provide additional guidance that addresses which approach FEMA would use for different types of actions and how FEMA would tailor its application of the various approaches depending on

[52] FEMA considers data to be available and actionable based on the Revised Guidelines. Appendix H of the Revised Guidelines states that best available data and science are transparent—clearly outlines assumptions, applications, and limitations; technically credible—transparent subject matter or more formal external peer review, as appropriate, of processes and source data; usable—relevance and accessibility of the information to its intended users. For the climate-informed approach, usability can be achieved by placing climate-related scenarios into appropriate spatial, temporal, and risk-based contexts; legitimate—perceived by stakeholders to conform to recognized principles, rules, or standards. Legitimacy might be achieved through existing government planning processes with the opportunity for public comment and engagement; and flexible—scientific, engineering, and planning practices to address climate change-related information are evolving. To respond, agencies need to adapt and continuously update their approaches consistent with agency guidelines and principles. Also under Appendix H, actionable science consists of theories, data, analyses, models, projections, scenarios, and tools that are: relevant to the decision under consideration; reliable in terms of its scientific or engineering basis and appropriate level of peer review; understandable to those making the decision; supportive of decisions across wide spatial, temporal, and organizational ranges, including those of time-sensitive operational and capital investment decision-making; and co-produced by scientists, practitioners, and decision-makers, and meet the needs of and are readily accessible by stakeholders. *See* Appendix H at pgs. 5–6.

[53] For purposes of this rulemaking, overbuilding and underbuilding refers to building or protecting structures and facilities to a higher or lower resilience standard than necessary to reduce flood risks.

the best available information to inform current and future flood risk, the type and criticality of the action, and equity. FEMA's 2016 supplementary policy proposed to use the FVA to establish the elevation and associated floodplain for non-critical actions. For critical actions, FEMA's 2016 supplementary policy proposed to allow the use of the FVA or the CISA, but only if the elevation established under the CISA was higher than the elevation established under the FVA.[54]

For the reasons stated below, FEMA's current proposed supplementary policy proposes a different approach. Specifically, FEMA's current proposed supplementary policy prefers the CISA floodplain where data is available and actionable. Where CISA data is not available and actionable, the supplementary policy selects Where CISA data is not available and actionable, the supplementary policy selects either the FVA or 0.2PFA to establish the floodplain. Specifically, for critical actions, the supplementary policy requires use of the higher of the FVA+3 or 0.2PFA. For non-critical actions, the supplementary policy requires the use of the lower of the FVA+2 or 0.2PFA. For actions not subject to the FFRMS, the floodplain would continue to be the 0.2 percent annual chance floodplain for critical actions and the 1 percent annual chance floodplain for non-critical actions. Other FEMA requirements to follow consensus codes and standards [55] and to meet NFIP and State, local, Tribal, and territorial standards will continue to apply.[56] In doing so, FEMA believes the 8-step process with FFRMS implementation will result in a level of resiliency that is effective for the action and also equitable for the community by utilizing available and actionable scientific data to tailor the future flooding risk to the action.

The FVA Considered. FEMA considered using the FVA as the default approach for both critical and non-critical actions subject to the FFRMS. A choice to use the FVA as a default would reflect the practical need for standardization in the earlier stages of implementation. The FVA elevation is computed using the base flood elevation, and FEMA may use the same sequence it has followed to determine the base flood elevation for the purposes of establishing the FVA elevation. This would still allow for the use of widely available FEMA regulatory products, such as Flood Insurance Rate Maps and Flood Insurance Study Reports.[57] By following the same sequence that FEMA has historically used for determining the appropriate elevation and utilizing known mapping products, FEMA staff would need relatively minimal additional training to be able to use these products to determine the horizontal extent of the FVA floodplain. In addition, the familiarity of the process and products to be used in most projects would benefit stakeholders by providing a consistent methodology which stakeholders would similarly be able to use to determine where FEMA will require application of the FFRMS. Additionally requiring the use of the FVA as the minimum elevation for critical actions would be consistent with FEMA's policy to encourage communities to adopt higher standards, including freeboard standards, than the minimum floodplain management criteria under the NFIP.[58] Generally, adoption of a freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.[59] Consistent with FEMA's Community Rating System (CRS) policy, 1,380 of the 1,740 CRS-participating localities have adopted freeboard requirements that exceed current Federal standards within 50 states.[60] FEMA supports that adoption by requiring that all of its projects are consistent with more restrictive Federal, State, or local floodplain management standards.[61]

The FVA, however, is not without challenges. First, while application of the FVA relies on data that is more available and readily accessible, it is not always the most suitable information to inform flood risk. Although FVA uses a fixed freeboard value across the nation, the FVA results in widely varying impacts to the current and future risk to the project. In some locations, applying the FVA+3 reduces the chance of being impacted by current flooding conditions by 2 times, while in other cases applying the FVA might reduce such chances by 10 times or more.[62] This wide variation in risk reduction using the FVA approach may result in underbuilding or overbuilding in some areas. Without data narrowly tailored to the location's specific risks, the FVA may result in building or protecting structures and facilities to a higher or lower resilience standard than necessary to reduce flood risks. This potential for overbuilding or underbuilding may raise equity concerns for underserved communities seeking to rebound quickly and effectively from a disaster. Those communities may struggle to pay the additional costs required to build to a higher resilience standard than might be necessary if FEMA were to instead apply the CISA, thus unnecessarily delaying disaster recovery.[63] Alternatively, communities may be more vulnerable to future flooding and therefore repair expenses where building to a lower resilience standard under the FVA than if FEMA were to apply CISA.

The 0.2PFA Considered. FEMA considered using the 0.2PFA, as the horizontal extent of the 0.2PFA floodplain is already mapped in some locations. Further, the 0.2PFA results in a much more consistent reduction in the chances of being impacted by a flood for projects in different areas. This is because the 0.2PFA floodplain and elevation are calculated to have the same probability of occurrence everywhere.[64] The 0.2PFA may result in a higher elevation than the FVA in some circumstances and lower elevations in other areas. FEMA is challenged by the limited national availability of information on the 0.2 percent annual chance flood elevation and the additional costs associated with producing this information where it is not yet available. While most areas of the country have 1 percent annual chance floodplain information and the necessary topographical information to determine the horizontal extent under

[54] 81 FR 56558.

[55] *See* ''Consensus-Based Codes, Specifications, and Standards for Public Assistance (Version 2)'' found at *https://www.fema.gov/assistance/public/policy-guidance-fact-sheets/section-1235b-consensus-based-codes-and-standards* (last accessed July 12, 2023).

[56] *See* 44 CFR part 60.3 for the NFIP minimum floodplain management standards.

[57] FEMA Flood Map Products. See *https://www.fema.gov/flood-maps/products-tools/products.* (Last accessed July 27, 2023).

[58] *See* 44 CFR 60.1(d).

[59] *See* 44 CFR 59.1.

[60] *See https://www.fema.gov/floodplain-management/community-rating-system#participating* (last accessed July 12, 2023).

[61] *See* 44 CFR 9.11(d)(6).

[62] *See* National Research Council, ''Risk Analysis and Uncertainty in Flood Damage Reduction Studies,'' Table 7–1 pg. 144, found at *https://nap.nationalacademies.org/catalog/9971/risk-analysis-and-uncertainty-in-flood-damage-reduction-studies* (last accessed July 12, 2023). Note that when downloaded in portable document format, table 7–1 is cut off. When viewed in the web version, Column 14 provides the return period for a 3 foot freeboard value.

[63] *See* Jeremy Martinich, James Neumann, Lindsay, Ludwig, and Lesley Jantarasami, ''Risks of sea level rise to disadvantaged communities in the United States'' *Mitig Adapt Strateg Glob Change* (2013) 18:169–185, found at *https://link.springer.com/article/10.1007/s11027-011-9356-0* (last accessed July 12, 2023).

[64] *See* Guidelines at pg. 6.

the FVA, far fewer are mapped with 0.2 percent annual chance floodplain information. This is because although all FEMA-mapped flood zones have either detailed or approximate 1 percent annual chance floodplain boundaries, FEMA estimates that only 20 percent of effective flood zones have detailed floodplain boundaries of the 0.2 percent annual chance floodplain.[65] There is some additional 0.2 percent annual chance floodplain mapping coverage available from FEMA products that are in preliminary or draft stages, and from other Federal, state, and local agencies. Data showing the boundaries and elevations for the 0.2 percent annual chance flood, however, is far less available than information for the 1 percent annual chance flood. Additionally, in coastal areas, the FFRMS requires Federal agencies to use the FVA as the minimum elevation when not using the CISA, if the 0.2 percent annual chance flood information depicted on FEMA's regulatory products considers storm-surge hazards but not wave action, and wave action data cannot be obtained from other sources.[66] This requirement is essential to ensure the effectiveness of this resilience standard. Only some areas have 0.2PFA with wave action information. Finally, there could also be equity concerns related to underbuilding or overbuilding to this standard, as again communities seeking to rebound quickly and effectively from a disaster may struggle to pay the additional costs required to build to a higher resilience standard than might be necessary if FEMA were to instead apply the CISA, thus unnecessarily delaying disaster recovery. Given the challenges with information availability, costs, and certainty for stakeholders, FEMA is not proposing the 0.2PFA for all actions subject to the FFRMS. However, the consistency provided by the 0.2PFA when the data is available provides a check against the variability of the FVA approach, so FEMA plans to use the two approaches together.

The CISA Considered. Consistent with the Revised Guidelines, FEMA is proposing the use of CISA as the preferred approach where data is available and actionable for both critical and non-critical actions as CISA uses a more site-specific approach to predict flood risk based on future conditions. FEMA believes CISA has the potential to be the best and most well-informed approach to building resilience in an equitable manner and ensuring a reduction in disaster suffering. While all three approaches consider the effects of changing conditions on current and future flood risk, CISA is the only approach that uses climate science data to determine the appropriate floodplain for actions subject to the FFRMS. The FVA is a standard of protection set within a margin of error and can result in underbuilding or overbuilding because the data is not tailored to consider the flood risk in a specific location. The 0.2PFA provides a consistent reduction in flood risk but the data is often not available. Neither approach uses climate science to determine future flood risk for specific locations. CISA is the only approach that ensures projects are designed to meet current and future flood risks unique to the location and thus ensures the best overall resilience, cost effectiveness, and equity. CISA provides a forward-looking assessment of flood risk based on likely or potential climate change scenarios, regional climate factors, and an advanced scientific understanding of these effects. CISA allows FEMA to make this assessment specific to the communities involved and to tailor the assessment to their specific resilience needs, factoring in cost-effectiveness of resilience efforts and equity. As explained above, the FVA approach presents a uniform solution that is not sufficiently tailored to meet specific community needs and lacks full consideration of future conditions. With a mandate to expand the floodplain and elevate to a specific height without additional considerations, the FVA approach can result in a community's project being built to a higher or lower standard than necessary for the community's intended use and result in additional expense to the community. Similarly, the 0.2PFA may result in a community's project being built to a higher or lower standard than necessary for the community's intended use and result in additional expense to the community because the 0.2PFA lacks full consideration of future conditions. Where available, CISA presents the best data available on current and future conditions to help FEMA work with communities to implement resilient, cost-effective projects.

For critical actions, FEMA is proposing to utilize elevations determined by applying CISA so long as that elevation is at least the elevation of the 0.2PFA. Under this proposal, FEMA could choose to allow use of the CISA, even if the resulting elevation is lower than the application of the FVA. This approach would give FEMA and its recipients more flexibility in implementing the standard, would enable FEMA and its recipients to build to an elevation based on the best available science taking criticality into account, would ensure adequate protection in those areas that are projected to experience future flood elevations beyond those identified using the FVA or 0.2PFA, and would provide a pathway to relief for those areas that experience declining flood risks.[67]

Similarly, for non-critical actions, FEMA is proposing to utilize elevations determined by applying CISA so long as that elevation is at least the elevation of the 1 percent annual chance flood elevation. Combined, these options would balance the objectives that applicants are building in an equitable manner to the most protective level based on the best available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science without overbuilding and would eliminate the potential for a scenario where an applicant was allowed to build to a lower elevation than previously required for critical and non-critical actions under FEMA's current implementation of Executive Order 11988.[68]

As explained above, FEMA understands that the availability and actionability of data is a key factor in completing this analysis in a consistent, equitable manner. Since the introduction of the CISA in 2015, additional data has become available to better inform CISA.[69] FEMA believes data availability and actionability will continue to advance for CISA in the future. However, as actionable climate data are not currently available for all locations, FEMA is proposing the FVA and 0.2PFA alternatives in the absence of actionable CISA data.

For coastal floodplains, one of the primary considerations associated with CISA is determining what the projected

[65] FEMA riverine flood hazard data inventory information comes from the Coordinated Needs Management Strategy dataset.

[66] *See* Revised Guidelines at 57.

[67] While FEMA believes that the average flood risk will generally continue to increase nationwide due to changing conditions, there is considerable uncertainty in projecting flood risk at more granular levels. Some areas may experience declines in flood risk due to reduced rainfall or other unpredictable changes to the floodplain.

[68] *See* 44 CFR 9.7(a)(1) detailing the current floodplain for critical and non-critical actions.

[69] *See* Fourth National Climate Assessment, Volume II, found at *https://nca2018.globalchange.gov* (last accessed July 12, 2023) and the ''Federal Flood Risk Management Standard Climate-Informed Science Approach (CISA) State of the Science Report,'' found at *https://www.whitehouse.gov/wp-content/uploads/2023/03/Federal-Flood-Risk-Management-Standard-Climate-Informed-Science-Approach-CISA-State-of-the-Science-Report.pdf* (last accessed Aug. 14, 2023).

future sea level rise will be for the area in which the project will be completed. There are currently multiple interagency reports and agency tools that provide scenario-based projections of sea level rise for coastal floodplains.[70] Sea level rise projections are just one potential factor in a climate-informed science approach. FEMA expects that more data will be developed supporting broader-based application of CISA as agencies implement the FFRMS and that this data will be considered and incorporated into future updates of the FFRMS and FEMA's implementation thereof. FEMA requests comment on the availability of actionable, planning-scale and/or project-scale climate data with respect to coastal and riverine floodplains.

In addition to the data challenges, there are a number of factors in deciding how to apply the CISA that might result in a decision-making process that could unnecessarily delay recovery in the wake of a disaster event for non-critical actions. The Revised Guidelines recommend that the CISA methodology account for project-specific factors such as the criticality of the action, the risk to which the action will be exposed, the anticipated level of investment, and the lifecycle of the action.[71] For example, an applicant might consider a construction project that is in a coastal floodplain and find that there are multiple projections for what the sea level rise may be in 50 years. The most aggressive projection might indicate that the project should be elevated 10 feet above the base flood elevation for a critical action. However, the applicant may determine that this project is not intended to be functional for 50 years, the action is not critical, and justify a lesser projection based on criticality and expected lifespan. FEMA anticipates these types of decisions may be more standardized and accessible with a suite of Federal tools under development to assist FEMA and stakeholders in establishing the CISA floodplain. Further, FEMA's proposed approach focuses on leveraging the best available data to inform flood risk, generally allowing communities that have actionable data specific to their locations to utilize that information in the 8-step process. FEMA requests comment regarding how FEMA could implement the CISA using a publicly accessible, standardized, predictable, flexible, and cost-effective methodology. FEMA also seeks comment on whether the agency should accept locally available CISA data and methods.

Other Options Considered. FEMA also considered whether it should alter its proposal for preferring use of the CISA in relation to the FVA (or 0.2PFA). FEMA specifically welcomes comment on each of the potential alternatives outlined below. FEMA could choose a more protective approach in which it would determine the elevations established under CISA, FVA, and the 0.2PFA for critical actions and only allow the applicant to use the highest of the three elevations. This approach would ensure that applicants were protecting these critical assets to the highest protective level. However, as explained above, this approach may lead to overbuilding and thus not be the most cost-effective or equitable approach. FEMA believes that its proposed approach is sufficiently protective of critical action and would be less expensive and complex to administer and implement than the alternative approach described above as the alternative approach would require a determination of elevation under all three approaches before a project could proceed; nonetheless, FEMA welcomes comment on this alternative approach.

Alternatively, FEMA could choose to require use of the highest standard for all actions, regardless of criticality. As explained above, while this approach would ensure that applicants were building all actions to the most protective level, this approach may lead to overbuilding and thus not be the most cost-effective, equitable approach particularly for non-critical actions. FEMA believes that its proposed approach is sufficiently protective of all actions and would be less expensive and complex to administer and implement than the alternative approach described above as this alternative approach would always require a determination of elevation under all three approaches before a project could proceed; nonetheless, FEMA welcomes comment on this alternative approach.

FEMA also considered requiring the use of the 0.2PFA when CISA is not available for non-critical actions rather than the lower of the 0.2PFA or FVA. As explained above, FEMA notes the challenges with the limited national availability of information on the 0.2 percent annual chance flood elevation and the additional costs associated with producing this information when not yet available. Additionally, in coastal areas, the FFRMS requires Federal agencies to use the FVA as the minimum elevation when not using the CISA, if the 0.2 percent annual chance flood information depicted on FEMA's regulatory products considers storm-surge hazards but not wave action, and wave action data cannot be obtained from other sources. This requirement is essential to ensure the effectiveness of this resilience standard. Only some areas have 0.2PFA with wave action information. Finally, there could also be equity concerns related to underbuilding or overbuilding to this standard, as again communities seeking to rebound quickly and effectively from a disaster may struggle to pay the additional costs required to build to a higher resilience standard than might be necessary if FEMA were to instead apply the CISA, thus unnecessarily delaying disaster recovery. Alternatively, communities may be more vulnerable to future flooding and therefore repair expenses where building to a lower resilience standard under the FVA than if FEMA were to apply CISA. Given the challenges with information availability and costs, FEMA is not proposing the 0.2PFA as the exclusive alternative for non-critical actions when CISA is not available and actionable; nonetheless, FEMA welcomes comment on this alternative approach.

Based on the foregoing, FEMA proposes to focus on the best available and actionable information to inform current and future flood risk, the type and criticality of the action, and equity when determining the approach to utilize for the floodplain determination. Where available and actionable, FEMA proposes to leverage the CISA to establish the floodplain for both critical and non-critical actions. Where the CISA is not available and actionable, the agency proposes to use the lower of the FVA or 0.2PFA to establish the floodplain for non-critical actions and the higher of the FVA floodplain or the 0.2PFA for critical actions. Where the 0.2PFA is not available, or where wave action is not addressed in the 0.2PFA, the FVA is proposed for critical actions. This proposal balances flexibility with standardization, is consistent with FEMA's encouragement to communities to adopt more resilient floodplain management standards and reflects the priority that FEMA places on ensuring adequate planning for critical actions

[70] *See generally* ''Interagency Sea Level Rise Scenario Tool'' found at *https://sealevel.nasa.gov/data_tools/18* (last accessed July 12, 2023), ''2022 Sea Level Rise Technical Report'' found at *https://oceanservice.noaa.gov/hazards/sealevelrise/sealevelrise-tech-report.html* (last accessed July 12, 2023), ''Global and Regional Sea Level Rise Scenarios for the United States'' found at *https://aambpublicoceanservice.blob.core.windows.net/oceanserviceprod/hazards/sealevelrise/noaa-nos-techrpt01-global-regional-SLR-scenarios-US.pdf* (last accessed July 12, 2023), ''Sea Level Rise Viewer,'' found at *https://coast.noaa.gov/digitalcoast/tools/slr.html* (last accessed July 12, 2023).

[71] *See* Revised Guidelines at 55.

while balancing cost and equity considerations.

Requiring the use of the higher of the FVA floodplain or the 0.2PFA floodplain for critical actions where CISA is not available and actionable is consistent with the Revised Guidelines' direction that agencies use higher standards for actions that they determine to be critical actions.[72] The continued emphasis on the importance of making critical actions more resilient demonstrates an ongoing concern that the risks of flooding for many critical actions cannot be minimized without higher standards. The criticality of the action makes the risk of flooding too great, and a higher resilience standard is appropriate to best reduce that risk.

The Revised Guidelines further recognize the importance of consideration of impacts to vulnerable populations, including those at risk to impacts of flooding due to their location or because they are overburdened, lack resources, or have less access to resources.[73] Consistent with these concerns, FEMA's proposed supplementary policy would require the lower of the FVA floodplain or the 0.2 PFA floodplain for non-critical actions. FEMA believes the lower approach would help reduce the burden on communities by addressing concerns related to overbuilding, particularly in underserved communities seeking to rebound quickly and effectively from a disaster. Selecting the lower approach for non-critical actions will still result in a higher level of resilience than the current requirements under part 9 while also taking equity and cost-effectiveness considerations into account.

In addition to seeking comments on FEMA's proposed approach to implementation generally, FEMA specifically seeks public comments on the impact of the proposed elevation requirement[74] on the accessibility of covered facilities under the Fair Housing Act, the Americans with Disabilities Act (ADA), the Architectural Barriers Act (ABA), and Section 504 of the Rehabilitation Act of 1973. Elevating buildings as a flood damage mitigation strategy could have a negative impact on affected communities' disabled and elderly populations if appropriate accommodations are not made. Also, even if the homes of people with disabilities are elevated and made accessible, other elevated single- and multi-family housing stock in the community may become inaccessible if appropriate accommodations are not made. It is crucial for community sustainability and integration of people with disabilities that buildings impacted by FFRMS requirements be made to comply with all accessibility requirements.

In light of the potential community impact of elevating housing and other buildings, along with the challenges associated with the traditional options for making elevated buildings accessible (*i.e.,* elevators, lifts, and ramps), FEMA invites comments on strategies it could employ to ensure accessibility requirements are met for properties that would be impacted by this rulemaking. Additionally, FEMA invites comments on the cost and benefits of such strategies, including data that supports the costs and benefits.

Determining the Corresponding Horizontal Extent of the FFRMS Floodplain. To make the floodplain determination and establish the proper resilience standard under each approach, FEMA intends to leverage its existing processes in each of its grant programs for ensuring compliance with Executive Order 11988, as amended. Although the specifics of the processes may vary somewhat from program to program, FEMA generally uses the following steps. During the initial stages of project development, FEMA informs applicants of all applicable Federal, State, and local requirements which might apply to their projects to include Executive Order 11988 and the 8-step process. Once applicants have identified potential projects, FEMA works with them to assess the proposed project location and determine whether it is in or affects the floodplain and whether it is necessary to apply the 8-step process. FEMA is available to assist applicants with the 8-step process and reviews the project application to ensure that the project scope of work is in compliance with Executive Order 11988 requirements. FEMA will continue to perform these steps in its implementation of the FFRMS and Revised Guidelines. Once FEMA has made the determination that an action is subject to the FFRMS that requires a determination on which FFRMS approach to apply, the agency must then decide where the floodplain lies. FEMA, in conjunction with other Federal agencies, will work to maximize the availability of data showing the horizontal extent of the expanded horizontal floodplain that can be used for the CISA, the FVA, and the 0.2PFA for use on FFRMS following the approach detailed in § 9.7 below. Determination of the FFRMS floodplain will generally require data on current conditions and floodplains, future sea level rise or other changes expected to impact future flood conditions, and ground elevations. All of these data are relevant to determining additional areas that may be inundated by increased flooding in the future. FEMA's approach to determining the floodplain will also utilize available, actionable non-FEMA data from other sources, including other Federal agencies, State, Tribal, territorial, and local governments.

Establishing the FFRMS Resilience Standard Under Each Approach. FFRMS is a resilience standard requiring Federal investments to be more resilient against future flood conditions. FFRMS provides methods for determining a flood elevation to use in minimizing current and future flood risk for many actions in or affecting the floodplain, particularly for elevation of structures. However, other types of projects, including non-structure facilities, cannot reasonably be elevated above the FFRMS flood elevation and must achieve resilience through other minimization measures.[75]

The CISA is established using the best available, actionable climate-informed science. The Revised Guidelines provide guidance to agencies on the application of the CISA approach in coastal and riverine areas.[76] In particular, FEMA will use Appendix H of the Revised Guidelines titled

[72] *See* Guidelines at pg. 4.

[73] *See* Guidelines at pg. 67.

[74] Floodproofing of areas below the BFE in residential buildings is generally not permitted under the NFIP unless communities have been granted an exception to permit floodproofed basements. *See* 44 CFR 60.3. The NFIP restriction against floodproofing of residential structures reflects FEMA's longstanding policy position that residential structures require a higher standard of resilience due to the increased potential for loss of human life. Floodproofing is also not recommended for residential structures under other FEMA programs. *See* Hazard Mitigation Assistance Technical Review Job Aid Series ''Dry Floodproofing Technical Review,'' at pg. 7 found at *https://www.fema.gov/sites/default/files/documents/fema_technical-job-aid-dry-floodproofing.pdf* (last accessed July 12, 2023) (referencing ASCE24—Flood Resistant Design and Construction Section 6.2, which limits the use of dry floodproofing to non-residential structures and non-residential areas of mixed-use structures located outside of High-Risk Flood Hazard Areas, Coastal High Hazard Areas and Coastal A Zones). Consistent with the NFIP regulations and other FEMA policies, the agency generally does not fund floodproofing of residential structures as a flood minimization measure to meet current 44 CFR 9.11 requirements.

[75] For example, see *Low-Water Crossings: Geomorphic, Biological, and Engineering Design Considerations* at *https://www.fs.usda.gov/t-d/pubs/pdf/LowWaterCrossings/Lo_pdf/1_Intro.pdf* (last accessed July 12, 2023) and Best Practice: Construction design saves money, prevents future damage at *https://www.fema.gov/blog/best-practice-construction-design-saves-money-prevents-future-damage* damage (last accessed July 12, 2023).

[76] *See* the Revised Guidelines at Appendix H ''Climate-Informed Science Approach and Resources.''

''Climate-Informed Science Approach and Resources'' to guide its decision-making.

FEMA recognizes that the CISA is a developing process and that there is uncertainty in the considerations and factors that will come up during an CISA analysis. As such, FEMA is not able to develop an exhaustive set of regulatory criteria for determining whether a given methodology is appropriate. However, FEMA recognizes that regulatory transparency reduces uncertainty for its recipients, and it will provide further guidance and information in the future, as appropriate, as the agency's experience in implementing CISA grows.

Appendix H of the Revised Guidelines provides the following criteria to define the CISA, which FEMA will consider when developing further guidance and information: (1) Uses existing sound science and engineering methods (*e.g.,* hydrologic and hydraulic analysis and methodologies) as have historically been used to implement Executive Order 11988, but supplemented with best available climate-related scientific information when appropriate (depending on the agency-specific procedures and type of federal action); (2) is consistent with the climate science and related information found in the latest National Climate Assessment report or other best-available, actionable science; (3) combines information from different disciplines (*e.g.,* new perspectives from the atmospheric sciences, oceanographic sciences, coastal sciences, and hydrologic sciences in the context of climate change) in addition to traditional science and engineering approaches; and, (4) includes impacts from projected land cover and land use changes (which may alter hydrology due to increased impervious surface), long-term coastal and/or riverine erosion, and vertical land movement (for determining local changes to sea level) expected over the lifecycle of the action.

The FFRMS and Revised Guidelines describe the FVA elevation as the addition of 2 or 3 feet to the 1 percent annual chance flood elevation. FEMA would leverage the process described in proposed § 9.7(c) to search for the best available flood hazard information to establish the 1 percent annual chance flood elevation. This process recognizes that information on flood hazards at proposed sites may range from detailed data obtained from FEMA regulatory products to information which approximates the geographic area of the floodplain, to areas with no information. Where FEMA has issued a regulatory product, FEMA could obtain the flood elevation from the regulatory product. FEMA may also seek detailed information from the list of sources in proposed § 9.7(c)(3)(i)–(x).

The 0.2PFA is the elevation of the 0.2 percent annual chance flood. Where FEMA proposes to use this approach, the agency would follow the same process to establish the 0.2 percent annual chance flood elevation as it would to establish the 1 percent annual chance flood elevation, utilizing the best available information. FEMA would first rely on the 0.2 percent annual chance flood elevation from the best available information, including information reported in a FEMA regulatory product, then seek information from additional sources, before finally seeking the assistance of an engineer.

IV. Discussion of the Proposed Rule

As noted above, this proposed rule would implement Executive Order 11988, as amended, the FFRMS, and the Revised Guidelines as part of FEMA's floodplain management regulations while also updating FEMA's 8-step process. Below, we provide a brief summary of a number of the major provisions of the proposed rule, followed by a section-by-section description of these and other changes.

Major Provisions

Severability

FEMA proposes to amend § 9.3 to remove the authorities section as redundant, and to replace it with a severability section. In the event that any portion of the proposed rule is declared invalid, FEMA intends that the remaining provisions of 44 CFR part 9 be severable. A severability clause is a standard legal provision. It indicates FEMA's intent that if a court finds that a specific provision of a rule is unlawful, the court should allow the remainder of the rule to survive. Those provisions that are unaffected by a legal ruling can be implemented by an agency without requiring a new round of rulemaking simply to promulgate provisions that are not subject to a court ruling.

Conforming Changes to Definitions

FEMA proposes to amend § 9.4 to reflect the new definitions required by the FFRMS and Revised Guidelines while also updating other definitions to clarify terms and leverage common usage that has evolved since the regulation was issued. As noted above, the most significant definitional change introduced by the FFRMS is the change to the meaning of ''floodplain.'' As discussed in more detail below, in order to harmonize this change in § 9.4 FEMA proposes to revise a number of existing definitions and remove other definitions. In addition, FEMA proposes to revise the remaining sections of 44 CFR part 9 that refer generally to the floodplain or refer specifically to the base (or 100-year) floodplain or the 500-year floodplain, for clarity.

Distinction Between ''Actions Subject to the FFRMS'' and Other FEMA Actions

As noted above, the first Step in the 8-step process is to determine whether the proposed action is in the floodplain. Because Executive Order 11988, as amended, and the FFRMS revise the definition of the ''floodplain'' that must be used for ''Federally funded projects,'' FEMA proposes to revise the first Step to require FEMA to first determine whether the proposed action falls within the definition of an ''action subject to the FFRMS.'' Under the proposed rule, if FEMA determines that the action is a Federally Funded Project, *i.e.,* if FEMA determines that the action uses FEMA funds for new construction, substantial improvement, or to address substantial damage to a structure or facility, the FFRMS floodplain applies. If, on the other hand, FEMA determines that the action does not fall under the definition of an action subject to the FFRMS and if the action is considered non-critical, the 1 percent annual chance floodplain applies. If the action is considered critical, the 0.2 percent annual chance floodplain applies.

Emphasis on Nature-Based Approaches

Executive Order 11988, as amended, requires that agencies use, where possible, natural systems, ecosystem processes, and nature-based approaches in the development of alternatives for Federal actions in the floodplain. FEMA proposes to incorporate this requirement into § 9.9, which addresses the requirement to consider practicable alternatives when determining whether to locate an action in the floodplain. This requirement applies regardless of whether the proposed action is a FEMA Federally Funded Project. To further explain this requirement, FEMA proposes to add a definition of ''nature-based approaches,'' meaning features designed to mimic natural processes and provide specific services such as reducing flood risk and/or improving water quality. FEMA also proposes to add a definition of ''natural features'' meaning the characteristics of a particular environment that are created by physical, geological, biological, and chemical processes and exist in dynamic equilibrium.

The use of natural features and nature-based approaches in consideration of alternatives within floodplains and wetlands is consistent with the agency's priorities to promote the use of nonstructural flood protection methods, minimize the impact of its actions on the floodplain, and restore and preserve the natural and beneficial values served by floodplains as well as preserve and enhance the natural values of wetlands. In applying the 8-step process to its actions, FEMA has integrated factors into its impact analysis and minimization measures (Step 4 and Step 5) to identify those opportunities for beneficial floodplain and wetland values, to include natural values related factors that prioritize water resource values, living resource values, and agricultural, aquacultural, and forestry resource values. Applying natural features or nature-based approaches as alternatives furthers the goals in 44 CFR part 9 and allows for FEMA to further encourage those actions that increase the natural and beneficial function of the floodplain.

Section-by-Section Analysis

A. Authority Citation

FEMA proposes to revise the authorities section to reflect appropriate statutory and other authorities underlying the regulation.

B. Section 9.1—Purpose of Part

FEMA proposes to add references to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National Environmental Policy Act of 1969, and other relevant statutory authorities, and to add ''as amended'' to reflect amendments made to Executive Order 11988.

C. Section 9.2—Policy

FEMA proposes to add language to paragraph (b) to reflect the policy that the United States must improve the resilience of communities and Federal assets against the impacts of flooding based on the best-available and actionable science. This statement of policy is complementary to the longstanding goals of Executive Order 11988 to reduce the risk of flood loss but reflects an updated Federal policy of resilience and risk reduction that takes the effects of changing conditions into account. FEMA also proposes to restructure paragraph (b)(2) by adding §§ 9.2(c) and 9.2(d). In § 9.2(c), FEMA proposes edits for clarity, while in § 9.2(d), FEMA proposes to reorder the agency's actions to prioritize minimizing the impact of floods on human health, safety, and welfare in this part.

D. Section 9.3—Severability

In Section 9.3, FEMA proposes to remove the authorities as redundant because the authorities are cited at the beginning of Part 9. Instead, FEMA proposes to include a severability section.

FEMA believes that its authority to require an 8-step decision making process and incorporate the FFRMS into it is well-supported in law and policy and should be upheld in any legal challenge. However, in the event that any portion of the proposed rule is declared invalid, FEMA intends that the various provisions of 44 CFR part 9 be severable. The provisions are not so interconnected that the rule's efficacy depends on every one of them remaining in place—implementation of the different provisions is sufficiently distinct that FEMA's aim of updating the 8-step process and incorporating the FFRMS would still be furthered by maintaining the other provisions. For example, if a court were to find unlawful FEMA's inclusion of the FFRMS approaches in § 9.7(c), FEMA intends to retain the inclusion of consideration of nature-based approaches in the appropriate steps of the 8-step decision making process and all other amendments to the 44 CFR part 9 not affected by the court decision. Similarly, if a court were to find unlawful FEMA's chosen approach in the proposed policy, FEMA intends to retain the regulatory changes implementing the FFRMS.

E. Section 9.4—Definitions

In Section 9.4, FEMA proposes to add terms for ''0.2 Percent Annual Chance Flood Elevation,'' ''0.2 Percent Annual Chance Floodplain,'' ''1 Percent Annual Chance Flood Elevation,'' ''1 Percent Annual Chance Floodplain,'' ''Action Subject to the FFRMS,'' ''Base Flood Elevation,'' ''Federal Flood Risk Management Standard (FFRMS),'' ''Federal Flood Risk Management Standard Floodplain,'' ''Federally Funded Project,'' ''FEMA Resilience,'' ''National Security,'' ''Nature-Based Approaches,'' ''Natural and Beneficial Values of Floodplains and Wetlands,'' ''Natural Features,'' and ''Support of Floodplain and Wetland Development.'' FEMA proposes to remove the definitions of ''Base Flood,'' ''Base Floodplain,'' ''Five Hundred Year Floodplain,'' ''Flood Fringe,'' ''Flood Hazard Boundary Map,'' ''Flood Insurance Rate Map,'' ''Flood Insurance Study,'' ''Mitigation Directorate,'' ''Natural Values of Floodplains and Wetlands'', ''New Construction in Wetlands,'' and ''Support.'' Lastly, FEMA proposes to revise the definitions of ''Coastal High Hazard Area,'' ''Critical Action,'' ''Emergency Action,'' ''Flood,'' ''Floodplain,'' ''Functionally Dependent Use,'' ''Mitigation,'' ''New Construction,'' ''Orders,'' ''Practicable,'' ''Regulatory Floodway,'' ''Restore,'' ''Structures,'' ''Substantial Improvement,'' and ''Wetlands.''

0.2 Percent Annual Chance Flood Elevation. FEMA proposes to define the term ''0.2 percent annual chance flood elevation'' to mean the elevation to which floodwater is anticipated to rise during the 0.2 percent annual chance flood (also known as the 500-year flood). FEMA generally proposes to use the term ''0.2 percent annual chance flood'' and discontinue using that term interchangeably with the term ''500-year flood.'' The term ''500-year flood'' can cause confusion as it could be interpreted to mean that the area will only flood once every 500 years, instead of reflecting its true meaning, which is the annual probability of flooding in the area. FEMA is proposing to update other definitions that reference the term ''500-year flood'' and related terms where appropriate to ensure an effective long-term transition away from this terminology.

0.2 Percent Annual Chance Floodplain. FEMA proposes to define the term ''0.2 percent annual chance floodplain'' to mean the area subject to flooding by the 0.2 percent annual chance flood (also known as the 500-year floodplain).

1 Percent Annual Chance Flood Elevation. FEMA proposes to refer to the definition of ''Base Flood Elevation'' to define this term to help transition to this terminology going forward and more accurately reflect the flood probability associated with that elevation.

1 Percent Annual Chance Floodplain. FEMA proposes to define the term ''1 percent annual chance floodplain'' to mean the area subject to flooding by the 1 percent annual chance flood (also known as the 100-year floodplain or base floodplain). This definition would describe the minimum area that FEMA looks at when it determines whether an action will take place in a floodplain under this part.

Action. FEMA proposes to remove the word ''action'' from the definition of ''Action'' because including the term being defined in the definition creates confusion and redundancy.[77]

[77] *See* Office of the Federal Register, Writing Resources for Federal Agencies, Regulatory Drafting Guide, Definitions found at *https://*

Continued

Actions Affecting or Affected by Floodplains or Wetlands. FEMA proposes edits to these definitions consistent with formatting requirements.

Action Subject to the FFRMS. FEMA proposes to define an action subject to the FFRMS as an action where FEMA funds are used for new construction, substantial improvement, or to address substantial damage to a structure or facility. This term would define those actions subject to the FFRMS listed in the Revised Guidelines as a ''Federally Funded Project'' by narrowing the term to apply only to actions that use FEMA funds for these specific activities.

Base Flood. FEMA proposes to remove the definition of the ''base flood'' as FEMA proposes to incorporate it into the definition of ''flood or flooding.''

Base Floodplain. FEMA also proposes to remove the definition of ''base floodplain'' as FEMA proses to incorporate it into the definition of ''1 percent annual chance floodplain.''

Base Flood Elevation. FEMA proposes to define the term ''base flood elevation'' to mean the elevation to which floodwater is anticipated to rise during the 1 percent annual chance flood (also known as the base or 100-year flood). The terms ''base flood elevation,'' ''1 percent annual chance flood elevation,'' and ''100-year flood elevation'' are synonymous and are used interchangeably. FEMA proposes to incorporate the explanation from the current definition of ''base flood'' about how the term is used in the NFIP to indicate the minimum level of flooding to be used by a community in the community's floodplain management regulations. The elevation indicates how high to elevate a structure to protect it from the risk of flooding in a 1 percent annual chance flood.

Coastal High Hazard Area. FEMA proposes to revise the definition of ''coastal high hazard area'' to mean an area of flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. FEMA is proposing to change this definition to more closely reflect the term as used in the NFIP and avoid the use of specific mapping zones for ease of use and reference for stakeholders.

Critical Action. FEMA proposes to revise the definition of ''critical action'' to mean any activity for which even a slight chance of flooding is too great. This revised definition is consistent with the definition of this term in the Orders and Revised Guidelines the agency is implementing with this rule. Additionally, FEMA proposes to remove the requirement that the minimum floodplain of concern for critical actions is the 500-year floodplain. There would no longer be a set requirement that an applicant use a particular approach to establishing the floodplain when the project is a critical action. Instead, FEMA and the applicant would utilize the floodplain established by part 9. FEMA would be required to determine whether the project meets the new definition of ''action subject to the FFRMS'' in § 9.4. If the project is an action subject to the FFRMS, then FEMA would establish the floodplain by using one of the approaches (which require the applicant to consider whether an action is a critical action) explained in proposed § 9.7(c). If the project is not an action subject to the FFRMS, then FEMA would use, at a minimum, the 1 percent annual chance floodplain for non-critical actions and the 0.2 percent annual chance floodplain for critical actions. FEMA further proposes to revise this definition with updated formatting.

Emergency Actions. The current definition of ''emergency actions'' does not correctly cite to the appropriate sections of statutory authority. FEMA proposes to correct citations to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) and remove FEMA regulations citations.

Federal Flood Risk Management Standard (FFRMS). FEMA proposes to add a definition of ''FFRMS,'' which is the Federal flood risk management standard to be incorporated into existing processes used to implement Executive Order 11988, as amended. FEMA proposes to add a definition for FFRMS because this rule proposes to implement it and therefore refers to it throughout the proposed changes to part 9.

Federal Flood Risk Management Standard (FFRMS) Floodplain. FEMA proposes to define the ''FFRMS floodplain'' generally consistent with the definition in the Order and Revised Guidelines being implemented, which is the floodplain that is established using one of the approaches described in proposed § 9.7(c). The four approaches detailed in proposed § 9.7(c) include CISA, FVA, 0.2PFA, and the elevation and flood hazard area that result from using any other method identified in an update to the FFRMS.

Federally Funded Project. FEMA proposes to add a definition of ''Federally Funded Project'' to reference the definition of ''action subject to the FFRMS.'' FEMA is incorporating this definition for consistency with the Revised Guidelines.

Federal Insurance Administration. FEMA proposes to remove the definition of the ''Federal Insurance Administration'' as it is now included in the definition of ''FEMA Resilience.''

FEMA Resilience. FEMA proposes to delete the definition of Federal Insurance Administration and the definition of Mitigation Directorate and add the definition of FEMA Resilience to reflect the current organizational structure within the agency.

Five Hundred Year Floodplain. FEMA proposes to remove the definition of the five-hundred-year floodplain as a standalone term and designated floodplain and to instead substitute the term ''0.2 percent annual chance floodplain.'' The 0.2 percent annual chance floodplain is the floodplain covering an area where the chance of flood is 0.2 percent in any given year.

Flood or Flooding. FEMA proposes to add definitions of the ''0.2 Percent Annual Chance Flood,'' and the ''1 Percent Annual Chance Flood'' to the definition of flood to incorporate all flood definitions in one location. FEMA would further clarify the use of the 500-year flood as interchangeable with the 0.2 percent annual chance flood, and the base flood or 100-year flood as interchangeable with the 1 percent annual chance flood.

Flood Fringe. FEMA proposes to eliminate this definition as the term is no longer used in the regulatory text.

Flood Hazard Boundary Map (FHBM). FEMA proposes to eliminate this definition as the term is no longer used in the regulatory text. FEMA offers a range of flood risk products under the NFIP and categorizes these products as ''regulatory'' or ''non-regulatory.'' Regulatory flood risk products are created subject to procedural due process requirements, contain basic flood information, and are used for official actions such as identifying properties subject to mandatory flood insurance purchase requirements, or enforcing minimum building standards for construction in a floodplain in NFIP participating communities.[78] Non-regulatory flood risk products are not tied to mandatory enforcement or compliance requirements for the NFIP

www.archives.gov/federal-register/write/legal-docs/definitions.html#;~:text=If%20a%20term%20is%20used%20only%20once%20or,term%20being%20defined%20as%20part%20of%20the%20definition. (last accessed July 12, 2023).

[78] *See* ''Flood Risk Products: Using Flood Risk Products in Hazard Mitigation Plans,'' found at *https://www.fema.gov/sites/default/files/2020-07/fema_using-flood-risk-products_guide.pdf* (last accessed July 12, 2023).

and expand upon basic flood hazard information. References to FEMA's regulatory products under the NFIP, such as the Flood Hazard Boundary Map, Flood Insurance Rate Map, and Flood Insurance Study are being eliminated in the proposed regulatory text to allow flexibility to encompass the full range of NFIP products (both regulatory and non-regulatory) available for use with the 8-step process. For example, the existing section 9.7(c) prescribes a sequence of steps to obtaining the floodplain, flood elevation, and other information needed. Current section 9.7(c)(i) only includes use of the FIRM, FBFM and FIS if they exist whereas 9.7(c)(ii) includes options to seek data from other sources if the available NFIP maps do not provide the necessary information. There are cases where a FIRM, FBFM, or FIS exist for the location, but do not provide the necessary information to determine the relevant floodplain and/or elevation. This section is being proposed to be rewritten to allow use of other data sources whenever the information is not available on the NFIP maps or when better information is available.

Streamlining the references to FEMA's regulatory products would also align the regulatory language with the core statutory language that authorizes FEMA to publish determinations of Special Flood Hazard Areas (SFHAs) and flood elevations.[79] These determinations are published in several different products. Rather than itemize and attempt to prioritize the different products, the proposed text would focus instead on whether official determinations of the SFHA or flood elevations are available.

Flood Insurance Rate Map (FIRM). FEMA proposes to eliminate this definition as the term is no longer used in the regulatory text. As explained above, references to FEMA's regulatory products are being eliminated in the proposed regulatory text to allow flexibility to encompass the full range of NFIP products available for use with the 8-step process. There are cases where a FIRM, FBFM, or FIS exist for the location, but do not provide the necessary information to determine the relevant floodplain and/or elevation. This section is being proposed to be rewritten to allow use of other data sources whenever the information is not available on the NFIP maps or when better information is available.

Flood Insurance Study (FIS). FEMA proposes to eliminate this definition as the term is no longer used in the regulatory text. As explained above, references to FEMA's regulatory products are being eliminated in the proposed regulatory text to allow flexibility to encompass the full range of NFIP products available for use with the 8-step process. There are cases where a FIRM, FBFM, or FIS exist for the location, but do not provide the necessary information to determine the relevant floodplain and/or elevation. This section is being proposed to be rewritten to allow use of other data sources whenever the information is not available on the NFIP maps or when better information is available.

Floodplain. FEMA currently defines ''floodplain'' as the lowland and relatively flat areas adjoining inland and coastal waters including, at a minimum, that area subject to a 1 percent or greater chance of flooding in any given year. FEMA proposes to revise the definition to mean any land area that is subject to flooding to more accurately reflect the broad definition of this term. The term ''floodplain'' refers to geographic features with undefined boundaries and the proposed revised regulation will establish a specific floodplain through the process described in proposed § 9.7(c).

The current definition also states that wherever the term ''floodplain'' appears in part 9, if a critical action is involved, ''floodplain'' means the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year (500-year floodplain). FEMA proposes to remove this provision from the definition of floodplain because there is no longer a set requirement that an applicant use a particular approach to establishing the floodplain when there is a critical action. Instead, FEMA and the applicant must follow the sequence described in § 9.7(c) when making the floodplain determination. FEMA must determine whether the project meets the new definition of an ''action subject to the FFRMS'' in § 9.4. If the project is an action subject to the FFRMS, then FEMA must establish the floodplain by using one of the FFRMS approaches (which require the applicant to consider whether an action is a critical action). If the project does not meet the definition of an action subject to the FFRMS (*i.e.,* the project is not ''new construction, substantial improvement, or repairs to address substantial damage to a structure or facility''), then FEMA must use, at a minimum, the 1 percent annual chance floodplain for non-critical actions and the 0.2 percent annual chance floodplain for critical actions.

FEMA proposes to add that the floodplain may be more specifically categorized as the 1 percent annual chance floodplain, the 0.2 percent annual chance floodplain, or the FFRMS floodplain (as defined above). ''Floodplain'' is a flexible, general term, but in establishing the correct floodplain to use, it will be necessary to determine whether the action is an action subject to the FFRMS and whether it is a critical action.

Functionally Dependent Use. FEMA proposes to remove references to examples in this definition to reduce confusion around the definition and avoid any misinterpretation that the term's usage is limited to the current examples. FEMA plans to provide more specific, relevant examples in guidance to better assist stakeholders with particularly nuanced situations.

Mitigation. FEMA proposes to remove the term ''all'' from the definition of mitigation as mitigation would be defined more broadly consistent with the requirements of the Orders and Revised Guidelines being implemented. By removing ''all,'' FEMA would clarify that the agency's goal, consistent with current law and Executive Orders 11988, as amended, and 11990 is to minimize the potentially adverse impacts of the proposed action to the extent possible, including consideration of practicality, rather than to take all mitigation actions.

Mitigation Directorate. FEMA proposes to remove the definition of the ''Mitigation Directorate'' as it is now included in the definition of ''FEMA Resilience.''

National Security. FEMA proposes to add a definition for ''national security'' consistent with the definition used in the Revised Guidelines. The proposed definition would define national security as a condition that is provided by either (1) a military or defense advantage over any foreign nation or group of nations; (2) a favorable foreign relations position; or (3) a defense posture capable of successfully resisting hostile or destructive action from within or without, overt or covert. Incorporating this definition would help stakeholders better understand the 8-

[79] Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105 and the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.* Specifically, 42 U.S.C. 4101(a) states that the Administrator is authorized to consult with other Federal agencies, State or local government agencies, or contract to obtain information ''so that he may identify and publish information with respect to all flood plain areas, including coastal areas located in the United States, which has special flood hazards. . . .'' Further, 42 U.S.C. 4104(a) states ''In establishing projected flood elevations for land use purposes with respect to any community pursuant to section 4102 of this title, the Director shall first propose such determinations by publication for comment in the **Federal Register** . . . .''

step process and the actions to which each Step applies.

Nature-Based Approaches. FEMA proposes to add a definition of ''nature-based approaches.'' Executive Order 11988, as amended, now contains a provision requiring agencies consider nature-based approaches, where possible, in developing alternatives for consideration to meet the purpose of a proposed action within a floodplain or wetland and this term has not previously been defined. FEMA proposes to define nature-based approaches as the features (sometimes referred to as ''green infrastructure'') designed to mimic natural processes and provide specific services such as reducing flood risk and/or improving water quality. Nature-based approaches are created by human design (in concert with and to accommodate natural processes) and generally, but not always, must be maintained in order to reliably provide the intended level of service. Nature-based approaches and nature-based solutions may include, for example, green roofs, or downspout disconnection that reroutes drainage pipes to rain barrels, cisterns, or permeable areas instead of the storm sewer. The proposed definition mirrors the language of the Revised Guidelines.

Natural and Beneficial Values of Floodplains and Wetlands. FEMA proposes to remove the definition of ''natural values of floodplains and wetlands'' and add the definition of ''natural and beneficial values of floodplains and wetlands'' to mean the features or resources that provide environmental and societal benefits. FEMA proposes adding additional clarification that water and biological resources are often referred to as ''natural functions of floodplains and wetlands'' and also proposes to incorporate additional clarifying examples of water resource values, living resource values, cultural resource values, and cultivated resource values for more consistency with the Revised Guidelines and Executive Order 11988, as amended.

Natural Features. FEMA proposes to add a definition of ''natural features'' to mean characteristics of a particular environment that are created by physical, geological, biological, and chemical processes and exist in dynamic equilibrium. Consistent with the Revised Guidelines, natural features are self-sustaining parts of the landscape that require little or no maintenance to continue providing their ecosystem services (functions).

New Construction. FEMA proposes to remove the parenthetical ''including the placement of a mobile home'' from the definition of new construction and instead add that ''new construction'' includes permanent installation of temporary housing units. This change narrows the scope of FFRMS applicability to only those temporary housing units that FEMA permanently installs rather than all placements of temporary housing units. The temporary nature of initial housing unit placements generally does not provide an opportunity to improve community resilience or floodplain management long term, which is the intent of the FFRMS. Prohibiting placement of temporary housing in the FFRMS floodplain may result in the temporary housing of individuals and families many miles from their homes, which is not practicable. Finally, it would not always be feasible to elevate these units to the required flood elevation when placed for temporary housing. Given these concerns, FEMA seeks to apply the FFRMS requirements only to those temporary housing units that the agency permanently installs, becoming permanent housing solutions rather than all temporary housing units placed by the agency. FEMA further proposes to delete the current definition of ''new construction in wetlands'' and incorporate it into the definition of ''new construction'' to reduce confusion and eliminate references to specific dates that no longer apply to current and future actions subject to part 9. The application of the FFRMS is required for any action which meets the definition of an ''action subject to the FFRMS.'' ''Action subject to the FFRMS'' is defined as an action where FEMA funds are used for new construction, substantial improvement, or to address substantial damage to a structure or facility. If FEMA continued to define the placement of a mobile home as ''new construction,'' it would be required to apply the FFRMS to any placement of a temporary housing unit. As described further in the discussion of § 9.13, FEMA does not intend to require the application of the FFRMS in the placement of temporary housing units for the purpose of temporary housing.

Orders. FEMA proposes to revise the definition of ''orders'' to include amendments made to Executive Order 11988.

Practicable. FEMA proposes to revise the definition of ''practicable'' to update the factors considered in the practicability analysis for consistency with the existing regulatory text and the Revised Guidelines, and for clarity. Specifically, FEMA proposes to add ''natural'' to clarify the environmental factor. FEMA also proposes to incorporate into the definition of ''practicable'' references to social concerns, economic aspects, and legal constraints. These concepts are currently included in the description of practicability analysis in § 9.11. As discussed below, the ''economic aspects'' refers to, among other things, cost and technology factors and to add ''legal constraints'' and ''agency authorities'' to specifically reflect additional constraints on the agency's ability to act as a factor in the practicability analysis. By making these changes, FEMA would define practicability in a manner that is generally consistent with the long-standing regulatory text while incorporating updates for additional clarity and consistency with the Revised Guidelines.

Regulatory Floodway. FEMA proposes to clarify the definition of ''regulatory floodway.'' FEMA proposes to eliminate the reference to a specific amount set by the NFIP and instead define the term to mean the area regulated by Federal, State, or local requirements to provide for the discharge of the base flood so that the cumulative rise in water surface is no more than a designated amount above the base flood elevation. These edits more accurately encompass situations where communities have adopted more restrictive floodway definitions than the minimum specified by the NFIP. The changes are intended to help stakeholders better understand what a regulatory floodway is and how it is determined without tying the term to a specific amount that can change under the NFIP.

Restore. FEMA proposes to update the definition of ''restore'' to mean to reestablish a setting or environment in which the natural functions of the floodplain can operate. This change eliminates the redundancy of requiring the floodplain to ''again'' operate.

Structures. FEMA proposes to update the definition of ''structures'' to require that the buildings be both walled and roofed rather than walled or roofed to be considered a ''structure,'' consistent with the definition of ''structure'' in 44 CFR Subchapter B, Insurance and Hazard Mitigation.[80] This change is also consistent with current FEMA practice under the NFIP which designates areas that are not both walled and roofed as facilities.[81] Additionally, FEMA is proposing a change from the term ''mobile homes'' to ''temporary housing units'' to reflect a range of housing units the agency may provide after a disaster while also referencing ''manufactured housing'' to ensure that the public

[80] *See* 44 CFR 59.1.

[81] *Id.*

understand that temporary housing units are regulated as manufactured housing in the NFIP.

Substantial Improvement. FEMA proposes to update the reference to the Stafford Act because the citation is outdated in the current definition. FEMA also proposes to add a sentence stating that substantial improvement includes work to address substantial damage to a structure or facility. This change is for clarity and for consistency with part 59.

Support. FEMA proposes to eliminate the definition of ''support'' and replace it with a new definition of ''support of floodplain and wetland development'' to further clarify the term and ensure consistency of its usage in part 9.

Support of Floodplain and Wetland Development. FEMA proposes to define this term to mean to, directly or indirectly, encourage, allow, serve, or otherwise facilitate development in floodplains or wetlands. Development means any man-made change to improved or unimproved real estate, including but not limited to, new construction; mining; dredging; filling; grading; paving; excavation or drilling operations; or storage of equipment or materials. Direct support results from actions within floodplains or wetlands, and indirect support results from actions outside of floodplains or wetlands. By providing this clarifying definition, FEMA would help eliminate confusion regarding the use of the term ''support'' in the regulatory text and ensure that actions taken under part 9 are done with the intent not to support floodplain and wetland development consistent with Executive Order 11988, as amended, and Executive Order 11990.

Wetlands. FEMA proposes minor edits for clarity and to delete references to the U.S. Fish and Wildlife Service publication in the current definition of ''wetlands'' as the reference is now out of date and rather generally reference the definition utilized by that agency for consistency in the future.

F. Section 9.5—Scope

FEMA proposes to add an effective date provision to this section, indicating that the revisions proposed to part 9, which implement the changes required by Executive Order 11988, as amended, the FFRMS, and Revised Guidelines, would apply to new actions for which assistance is made available pursuant to declarations under the Stafford Act that are commenced on or after the effective date of the final rule, and new actions for which assistance is made available pursuant to notices of funding opportunity that publish on or after the effective date of the final rule. This is to clarify that current part 9, including use of the 1 percent annual chance floodplain (or 0.2 percent annual chance floodplain for critical actions), would still apply to actions relating to declarations and funding opportunities issued prior to the effective date. Only new actions would be subject to revised part 9 so that the changes would not be applied to projects which have already been reviewed for compliance with Executive Order 11988 and may have incurred design expenses to meet the current floodplain management standards. Any actions associated with declarations under the Stafford Act that begin on or after the effective date of the final rule or any actions for which the notice of funding opportunity publishes on or after the effective date of the final rule would be subject to revised part 9, including the changes required under Executive Order 11988, as amended, the FFRMS, and the Revised Guidelines, such as determining the floodplain for the action and requiring the use of nature-based approaches, where possible, to mitigate harm when development in the floodplain is not avoidable. In paragraph 9.5(b)(1), FEMA proposes to add ''as amended'' to reflect amendments to Executive Order 11988.

FEMA proposes to update the citations to the Stafford Act sections and references to organizations and titles in paragraphs (c)–(g) as they are not current and reorganize the section for clarity and readability. FEMA proposes to eliminate current paragraph (c)(3) as unemployment assistance would not constitute an ''action'' under this part (see § 9.4). FEMA proposes to revise current paragraph (c)(6) to clarify that actions involving fire management assistance that include hazard mitigation assistance under sections 404 and 420(d) of the Stafford Act are subject to the 8-step process. Similar to the revision to § 9.7(c)(1), FEMA seeks to clarify where some actions may still be required to complete the 8-step process. FEMA also proposes to update current paragraph (c)(8) as it refers to a defunct title for the Individuals and Households Program and includes programs that no longer exist and restructure the paragraph to reflect current categories of assistance under this program that are not subject to the 8-step process. FEMA proposes to further update this section by removing private bridges from the 8-step process consistent with other exceptions to that process in the Individual Assistance program in current paragraph (c)(8)(i). This change aligns with the existing exemptions for all other forms of home repair and replacement under section 408 of the Stafford Act. FEMA will only provide funding for privately-owned access bridges damaged as a result of a Presidentially-declared disaster in cases where a FEMA inspection determines repairs are necessary to provide drivable access to a primary residence.[82] In addition to this requirement, FEMA will only provide funding when at least one of the following additional conditions exist: (1) the bridge provides the only access to the property; (2) the home cannot be accessed due to damage caused to other infrastructure; or (3) the safety of the occupants or residence would be adversely affected because emergency services and equipment could not reach the residence.[83] As these private bridge projects are small in scale and subject to local review and permitting requirements that otherwise consider local floodplain management concerns, FEMA believes they are unlikely to result in significant impacts to the floodplain and requiring the 8-step process for these projects would not necessarily result in improved community resiliency, a key goal of the FFRMS. FEMA, however, seeks comment on whether removing private bridge projects from the 8-step process would adversely impact the floodplain.

FEMA also proposes to revise current § 9.5(c)(12) to further provide that debris clearance and removal under section 502 of the Stafford Act is not subject to the 8-step process. FEMA is also proposing to add a citation to section 407 of the Stafford Act to accompany the reference to non-emergency disposal of debris in this same provision. In current paragraph (c)(13), FEMA proposes to make revisions to update the current monetary thresholds from $5,000 to $18,000 for actions under sections 406 and 407 of the Stafford Act.[84] This change would reflect the current value of the existing threshold dollar amount, which was set in 1980.[85] Additionally, FEMA proposes language to require adjustment of the threshold based on the Consumer Price Index for All Urban Consumers published by the

[82] *See* Individual Assistance Program and Policy Guide Version 1.1 found at *https://www.fema.gov/assistance/individual/policy-guidance-and-fact-sheets* (last accessed July 12, 2023) pg. 89.

[83] *See* Individual Assistance Program and Policy Guide Version 1.1 found at *https://www.fema.gov/assistance/individual/policy-guidance-and-fact-sheets* (last accessed July 12, 2023) pg. 89.

[84] Section 406 of the Stafford Act involves the repair, restoration, and replacement of damaged facilities while section 407 relates to debris removal.

[85] *See* 45 FR at 59529.

Department of Labor.[86] This proposed language provides for future changes to the applicability of the 8-step process based on inflationary increases in the cost of actions and helps ensure equitable, cost-effective outcomes by limiting this process to actions of a higher dollar amount. Note FEMA is also proposing to add the Stafford Act sections 406 and 407 for repairs or replacements to § 9.5(c). FEMA's current and proposed dollar value thresholds to determine the applicability of the 8-step decision-making process to certain FEMA actions are updated below as follows:

TABLE 4—FEMA'S CURRENT AND PROPOSED DOLLAR VALUE THRESHOLD TO DETERMINE THE APPLICABILITY OF THE 8-STEP DECISION-MAKING PROCESS

	Current threshold	Proposed threshold
Exempt from the 8-step decision making process	Projects under $5,000	Projects under $18,000.
Minimal 8-step decision making process (subject to steps 1, 4, 5, and 8).	Projects between $5,000 and $25,000.	Projects between $18,000 and $91,000.
Abbreviated 8-step decision making process (subject to steps 1, 2, 4, 5, and 8).	Projects above $25,000 and up to $100,000.	Projects above $91,000 and up to $364,000.
Full 8-step decision making process	Projects above $100,000	Projects above $364,000.

FEMA proposes to relocate current paragraph (g) and redesignate it as paragraph (d), restructuring current paragraphs (d)–(f) to (e)–(g) respectively. FEMA believes this restructuring will make the section more readable and easier for stakeholders to understand. FEMA is also proposing to revise the structure and language in current paragraphs (d) and (g) to better explain the exceptions to the full 8-step process detailed in each paragraph. FEMA proposes to update the current monetary thresholds set in current paragraphs (d) and (g) similar to changes proposed to current paragraph 9.5(c)(13), described above, to reflect the current value of these dollar amounts and also require future changes to these amounts based on the Consumer Price Index for All Urban Consumers as published by the Department of Labor. As explained above, FEMA believes these edits would result in limiting applicability of the 8-step process appropriately based on inflationary increases in the cost of actions. FEMA is proposing the increase and future updates as smaller projects offer little, if any, opportunity for mitigation and the agency believes floodplain management resources are best devoted in areas where they will be most effective. By keeping actions under a certain amount either exempt or with a more streamlined/expedited floodplain management process, FEMA would maintain the intent of the Executive Orders to protect floodplains and wetlands while also ensuring appropriately streamlined, cost-effective, and equitable assistance to communities with smaller projects. FEMA is proposing to revise current paragraph (g)(2) to address actions subject to the FFRMS by changing the current text, which refers to new or substantially improved structures or facilities, to instead refer to new construction, substantial improvement, or repairs to address substantial damage of structures or facilities. FEMA is also proposing to revise current paragraph (g)(3) to include facilities or structures on which a flood insurance claim has been paid. This addition would provide consistency with language existing in current paragraph (d)(4)(iii) and ensure that facilities or structures which have previously sustained damage from flooding on which a flood insurance claim has been paid will be subject to the full 8-step process. As FEMA has already provided funding to recover from prior flood damage on these facilities and structures, the agency believes the full 8-step process is required to ensure any additional funds provided increase resilience against flooding.

FEMA proposes to delete current paragraph (d)(1), consistent with the proposed change above to exempt private bridges from the 8-step process entirely. FEMA also proposes to delete current paragraph (d)(2). The current regulatory language allows for an abbreviated 8-step process for small project grants under the PA program[87] unless those projects fell into certain categories. FEMA proposes to remove this language because it is no longer applicable; FEMA stopped applying the abbreviated 8-step process to the small project threshold under the PA program after it increased beyond the $100,000 threshold set in current paragraph 9.5(d)(4)(i). FEMA also proposes minor revisions to current paragraph (d)(4)(iii) (proposed (e)(2)(iii)) for clarity and readability.

In current paragraph (e), FEMA proposes to update the responsible official from Director to Regional Administrator as this authority has been delegated to Regional Administrators and make other clarifying edits to reflect current agency terminology in that paragraph as well as current paragraphs (f)(1) and (f)(2). FEMA also proposes clarifying edits in current § 9.5(f)(1) for readability and to eliminate the prime two example references. As explained above in the definitions, FEMA believes that these types of specific examples are best addressed in guidance that can evolve as issues arise and better assist stakeholders with particularly nuanced situations. Further, these specific examples relate to regulatory provisions (current §§ 9.9(e)(6) and 9.11(e)) that FEMA proposes to remove from this rule.

G. Section 9.6—Decision-Making Process

Section 9.6 sets out the floodplain management and wetlands protection decision-making process to be followed by FEMA in applying Executive Orders 11988, as amended, and 11990 to its actions. FEMA proposes a clarifying edit to § 9.6(a) that would delete redundancy. Paragraph (b) of § 9.6 lays out the eight Steps the agency must follow. Step 1 states that FEMA will determine whether the proposed action is located in the 100-year floodplain or, for critical actions, the 500-year floodplain. FEMA proposes to remove

[86] The U.S. Department of Labor publishes the Consumer Price Index for All Urban Consumers at *https://www.bls.gov/cpi/*. A calculation to determine the impact of CPI–U increases can be made at *https://www.bls.gov/data/inflation_calculator.htm*.

[87] The current outdated regulatory text refers to section 419 of the Stafford Act in identifying what constituted a small project grant under PA. As a result of updates to the Stafford act, section 419 can now be found in section 422 (42 U.S.C. 5189) which sets forth the authority to create a small project threshold that applies to emergency work (sections 403 or 502), debris removal (section 407) and permanent work (section 406) which is all funded under the PA program.

the specific requirement to use the 100-year (1 percent annual chance) floodplain or 500-year (0.2 percent annual chance) floodplain for critical actions and instead use the general term ''floodplain'' and refer the reader to § 9.7, which describes (1) the flexible framework that FEMA would apply to actions subject to the FFRMS, as well as (2) the historical framework that FEMA would continue to apply to actions that do not qualify as actions subject to the FFRMS. Additionally, in Step 3, FEMA proposes to add references to natural features and nature-based approaches consistent with the Revised Guidelines to ensure that natural features and nature-based approaches are fully considered when identifying and evaluating practicable alternatives to locating the action in a floodplain or wetland. As changing conditions elevate the threats posed by natural hazards, FEMA is proposing to incorporate nature-based solutions to help bolster resilience. Nature-based solutions are sustainable planning, design, environmental management, and engineering practices that weave natural features or processes into the built environment to promote adaptation and resilience. These solutions use natural features and processes to combat changing conditions, reduce flood risk, improve water quality, protect coastal property, restore, and protect wetlands, stabilize shorelines, reduce urban heat, and add recreational space. Nature-based solutions offer significant monetary and non-monetary benefits and often come at a lower cost than traditional infrastructure.[88]

Requiring the use of natural features and nature-based approaches, where possible, in consideration of alternatives within or affecting floodplains and wetlands is consistent with the agency's priorities to promote the use of nonstructural flood protection methods, minimize the impact of its actions on the floodplain, and restore and preserve the natural and beneficial values served by floodplains as well as preserve and enhance the natural values of wetlands (44 CFR 9.2). In applying the 8-step process to its actions, FEMA has integrated factors into its impact analysis and minimization measures (Step 4 and Step 5; 44 CFR 9.10 and 9.11) to identify those opportunities for beneficial floodplain and wetland values, to include natural values related factors (44 CFR 9.10(d)(2)) that prioritize water resource values, living resource values, and agricultural, aquacultural, and forestry resource values. Requiring natural features or nature-based solutions as alternatives, where possible, furthers the goals in 44 CFR part 9 and allows for FEMA to further encourage those actions that increase the natural and beneficial function of the floodplain.

FEMA also proposes revisions to Step 5 to clarify that the agency must minimize potential adverse impacts within floodplains and wetlands under Step 4, including minimizing the potential direct and indirect support of floodplain and wetland development identified under Step 4. While not a new requirement, revising this language would help clarify that direct or indirect support of floodplain or wetland development is an adverse impact the agency must consider as part of minimization. FEMA believes these edits would help ensure consistency of use throughout part 9 and reduce stakeholder confusion. Finally, FEMA proposes a minor edit for readability in Step 6 (removing the word ''the'' in the phrase, ''the hazards to others'').

H. Section 9.7—Determination of Proposed Action's Location

Current § 9.7 establishes FEMA's procedures for determining whether any action as proposed is located in or affects a floodplain or a wetland. FEMA is proposing to revise this section to add procedures for identifying the FFRMS floodplain and corresponding elevation. FEMA is also proposing to revise this section's paragraph structure for clarity.

In current and proposed paragraph (a), FEMA proposes minor conforming edits. As in § 9.6, FEMA proposes to simply refer to ''floodplain'' rather than the current regulatory text's ''base floodplain'' or ''500-year floodplain'' references and direct the reader to paragraph (c), because the Revised Guidelines and the FFRMS's flexible framework for determining which floodplain is appropriate depending on the type and criticality of the action means the floodplain must be established using the process set forth in paragraph 9.7(c).

FEMA proposes to reorganize current paragraph (b) for clarity. In proposed paragraph (b)(1), FEMA proposes to replace a reference to ''the Orders'' with a reference to ''this part,'' for clarity. In proposed paragraph (b)(1)(i), FEMA proposes to add the words ''Federal action'' to make clear that the goal is to avoid Federal action, specifically, in a floodplain or wetland location unless they are the only practicable alternatives consistent with the agency's requirements under part 9. This proposed change would reiterate that the focus of the 8-step process is on Federal actions.

FEMA is also proposing to relocate to § 9.7(c) the statement that in the absence of a finding to the contrary, FEMA may assume that a proposed action involving a facility or structure that has been flooded is in the floodplain. FEMA proposes this change for clarity. In addition, Paragraph (b) of § 9.7 currently states that information about the 1 percent annual chance (100-year) and 0.2 percent annual chance (500-year) floods may be needed to comply with the regulations in part 9. In proposed paragraph (b)(2), FEMA proposes to update this statement for simplicity, referencing the floodplain determination process in § 9.7(c) in revised paragraph (b)(2) instead of referencing the 100-year and 500-year floods.

Current paragraph (b) includes a list of ''flooding characteristics'' that the Regional Administer ''shall'' identify, ''as appropriate.'' For clarity, FEMA proposes in new paragraph (b)(3) that the Regional Administrator ''may'' identify ''current and future'' flooding characteristics, ''as applicable.'' These proposed changes are consistent with the Revised Guidelines. FEMA prefers to avoid the use of the term ''shall,'' which suggests a mandatory requirement for the Regional Administrator to identify all of the additional flooding characteristics listed. FEMA's current practices do not require this level of rigidity and FEMA proposes the identification of these characteristics to be within the discretion of the Regional Administrator. FEMA is also proposing to add language for the agency to consider both current and/or future flooding characteristics by adding ''current and future'' to the additional flooding characteristics that may be considered. This addition clarifies the Regional Administrator's discretion to consider both current and future flooding characteristics consistent with the goals of FFRMS to improve the resilience of communities and Federal assets against the impacts of flooding

[88] *See* generally Coastal Resilience Assessment (Suriname), December 2017 published by the World Bank at *https://naturebasedsolutions.org/knowledge-hub/63-coastal-resilience-assessment-suriname* (last accessed June 8, 2022); Environmental and Energy Study Institute Fact Sheet ''Nature as Resilient Infrastructure: An Overview of Nature-Based Solutions'' at *https://www.eesi.org/files/FactSheet_Nature_Based_Solutions_1016.pdf#:~:text=These%20nature-based%20solutions%20are%20often%20higher-quality%2C%20lower-cost%2C%20more,avenue%20for%20rethinking%20and%20remodeling%20our%20nations%20infrastructure* (last accessed July 12, 2023); and Andrea Bassi, Emma Cutler, Ronja Bechauf, and Liesbeth Casier, ''How Can Investment in Nature Close the Infrastructure Gap?'' at *https://www.iisd.org/publications/investment-in-nature-close-infrastructure-gap* (last accessed July 12, 2023).

which are anticipated to increase over time. Further, FEMA proposes to add to the list of flooding characteristics a new item for ''[a]ny other applicable flooding characteristics'' to signal flexibility as flood risks are further studied and developed and allow for local jurisdictions to utilize their own information to support requirements specific to their community's needs.

Paragraph (c) of § 9.7 outlines the process for determining if the proposed action is in the floodplain. As explained above, FEMA proposes to move language regarding previously flooded facilities and structures from the current paragraph (b) to proposed paragraph (c). FEMA also proposes to add the word ''previously'' to this provision for clarity. By moving this language to paragraph (c), FEMA would group this provision with the other floodplain determination provisions. If a proposed action does not involve a previously flooded facility or structure, FEMA would then begin the process set forth in the rest of paragraph (c) to determine whether the proposed action is in the floodplain. FEMA would determine whether the action is an action subject to the FFRMS as defined in § 9.4. If the action is an action subject to the FFRMS, FEMA would establish the floodplain and corresponding flood elevation [89] using one of the four approaches outlined in proposed paragraph (c)(1). For example, FEMA would likely be required to apply one of those four approaches to establish the FFRMS floodplain to projects involving new construction or substantial improvement or addressing substantial damage to a structure or facility. However, FEMA-funded projects that do not rise to the level of new construction or substantial improvement and do not address substantial damage to a structure or facility would not be required to apply any of the four approaches to establish the FFRMS floodplain.[90]

FEMA proposes to implement the FFRMS by adopting the flexible framework identified in Executive Order 11988, as amended by Executive Order 13690, in its entirety, instead of mandating a particular approach in its regulations. Under this proposal, FEMA would provide additional guidance (more readily capable of revisions and updates) that addresses which approach FEMA would generally use for different types of actions and how FEMA would tailor its application of the various approaches depending on the type and criticality of the action, while also considering the availability of actionable data, costs, and equity.

Consistent with Executive Order 11988 as amended by Executive Order 13690 and the Revised Guidelines, proposed § 9.7(c)(1)(iii) would allow FEMA to except from the FFRMS an action that is in the interest of national security, an emergency action, or a mission-critical requirement related to a national security interest or an emergency action. For example, if FEMA proposed to construct an underground bunker at one of its locations for national security reasons, to require the bunker to be elevated pursuant to the FFRMS could run contrary to the purpose of the bunker. It is important to note that an exception to using the floodplain for actions subject to the FFRMS under any of the reasons listed in this section does not exempt the action from the requirements of part 9 and Executive Order 11988 altogether. Instead, if one of FEMA's actions were excepted under this provision, FEMA would still be required to apply the appropriate floodplain established by proposed § 9.7(c)(3). FEMA does have the authority to exempt certain actions from any application of the requirements of Part 9 and Executive Order 11988, as amended, and those actions which are exempted are described in current §§ 9.5(c) and (e).

In proposed § 9.7(c)(2), consistent with existing requirements, FEMA proposes that if FEMA determines that the action is not an action subject to FFRMS, the proposed action would be evaluated using, at a minimum, the 1 percent annual chance floodplain for non-critical actions and, at a minimum, the 0.2 percent annual chance floodplain for critical actions.

In proposed § 9.7(c)(3), FEMA proposes to focus the analysis to establish the floodplain and corresponding elevation using the best available data and proposes that the floodplain and corresponding elevation determined using best available data must be at least as restrictive as FEMA's regulatory determinations under the National Flood Insurance Program. Current § 9.7(c)(1) requires FEMA to first consult the FIRM, FBFM, and FIS which ends the analysis if those ''detailed'' products are available. There are cases where FIRM, FBFM, and FIS are available for an area but do not provide flood elevations, 0.2 percent annual chance floodplain information, or other floodplain information required. The proposed changes allow FEMA to seek additional information even when a ''detailed'' product is available at a location. If those ''detailed'' products are not available, FEMA will then consult the FHBM. If that information is insufficient FEMA will seek other data as part of the floodplain and elevation analysis.

FEMA proposes to update this paragraph to reflect the Revised Guidelines' focus on the use of the best available information. While FEMA still intends to rely on FEMA products such as FIRMs, FBFMs, FISs, and FHBMs, FEMA understands that these products do not always provide all information needed for some locations and do not currently account for future conditions and other factors that better inform the floodplain determination for projects under part 9. In obtaining the best available information, FEMA is proposing to consider other information from FEMA, as well as information in a proposed updated list of sources to reflect those sources suggested in the Revised Guidelines, as well as sources the agency knows may have relevant additional information. Some of the proposed changes to this list are updates to reflect current titles, while other changes reflect newly available resources. Finally, if none of these sources have the information necessary to comply with part 9, the Regional Administrator may seek the services of a professional registered engineer. FEMA proposes clarifying edits in paragraph (d)(3) and (d)(4) of § 9.7.

I. Section 9.8—Public Notice Requirements

FEMA proposes clarifying edits in § 9.8(a) and § 9.8(c)(1)–(c)(4) for readability. FEMA is adding the use of the internet for notice in this process by inserting § 9.8(c)(4)(i) to allow for notice through the internet or another comparable method. This proposed change would codify FEMA's current practice to incorporate notices on the agency's website at *www.fema.gov* in connection with specific disaster relief

[89] Although the FFRMS describes various approaches for determining the higher vertical flood elevation and corresponding horizontal floodplain for Federally funded projects, it is not meant to be an ''elevation'' standard. The FFRMS is a resilience standard. The vertical flood elevation and corresponding horizontal floodplain determined using the approaches in the FFRMS establish the level to which a structure or facility must be resilient. This may include using structural or non-structural methods to reduce or prevent damage; elevating a structure; or, where appropriate, designing it to adapt to, withstand, and rapidly recover from a flood event. *See* Revised Guidelines at 4.

[90] Under proposed § 9.7(c)(2), FEMA would retain discretion to apply the FFRMS to other actions as appropriate. For instance, under the accompanying proposed policy, FEMA would require that all structure elevation, mitigation reconstruction, and dry floodproofing actions under FEMA's Hazard Mitigation Assistance programs comply with the proposed FFRMS policy.

efforts. Currently, notices regarding other FEMA programs may be posted on other websites, such as websites belonging to state or local governments, but these notices are not currently posted on *www.fema.gov* if not tied to a specific disaster. This revision would allow FEMA to further expand the use of *www.fema.gov* for notices for other programs not tied to a specific disaster. By incorporating the use of the internet through FEMA's website and other sites as a means to provide notice, FEMA is seeking to modernize this part for consistency with current practice and to increase public visibility and accessibility of those notices that are not current posted on *www.fema.gov.* FEMA proposes other edits to the notification process in paragraph (c)(4) to eliminate outdated terminology and incorporate newsletters into the ''other local media'' category as a means of providing notice to potentially interested persons. In addition to incorporating the use of the internet for notice, FEMA proposes to clarify in § 9.8(d)(5)(ii) that FEMA may include in the notice a link to access a map of the area of the proposed action. A link may help the public more easily access information associated with the notice. FEMA also proposes to correct a typographical error. FEMA proposes other clarifying edits in § 9.8(c)(5)(i)–(iv) for readability.

J. Section 9.9—Analysis and Reevaluation of Practicable Alternatives

FEMA proposes clarifying edits in § 9.9(a) for readability. In § 9.9(b)(2), FEMA proposes to add the requirement to use natural systems, ecosystem processes, and nature-based approaches, where possible, in the development of alternatives to the proposed actions in or affecting the floodplain and/or wetland. Under § 9.9, FEMA must make a preliminary determination (Step 3 of the 8-step process) as to whether the floodplain is the only practicable location for the action. Part of that analysis involves considering whether there are alternative actions that serve essentially the same purpose as the proposed action, but which have less potential to affect or be affected by a floodplain. Under this proposed rule, during the course of the aforementioned analysis, FEMA would consider whether an alternative using natural systems, ecosystem processes, and nature-based approaches might have less of an effect on the floodplain.

For consistency with the Revised Guidelines and the agency's use of the term in the current regulations, FEMA is proposing to add the cost of technology to the list of economic factors that FEMA considers under § 9.9(c)(3). By adding technology to this list, FEMA would clarify that the cost of technology is a factor to consider in determining practicability of alternatives and also emphasize the importance of the cost of technology and technological advancements in the analysis. FEMA is proposing to add § 9.9(c)(5) to reflect consideration of agency authorities in the practicability analysis, again for consistency with the Revised Guidelines. Additionally, FEMA is proposing clarifying edits throughout paragraph 9.9(c) for readability.

FEMA proposes to remove paragraph (d)(2) of § 9.9, which prohibits FEMA from locating a proposed critical action in the 500-year floodplain, as the language is redundant given the proposed changes to paragraph (d)(1) which explain that FEMA would utilize § 9.7(c) when making the floodplain determination. As noted above, FEMA would determine whether the project meets the new definition of an ''Action subject to the FFRMS'' in proposed § 9.4. If FEMA determined that the project is an action subject to the FFRMS, then FEMA would establish the floodplain by using one of the approaches detailed in proposed § 9.7(c)(1) (which requires the applicant to consider whether an action is a critical action). If FEMA determined that the project is not an action subject to the FFRMS, then FEMA would use, at a minimum, the 1 percent annual chance floodplain for non-critical actions and the 0.2 percent annual chance floodplain, at a minimum, for critical actions as explained in proposed § 9.7(c)(2). After FEMA completed that process, it would apply the appropriate floodplain to the remainder of the 8-step process. Therefore, FEMA proposes to revise paragraph (d)(1) to specify that the ''floodplain'' is the floodplain established in § 9.7(c), eliminate current paragraph (d)(2) as it is redundant, and redesignate current paragraph (d)(3) as new paragraph (d)(2).

FEMA proposes clarifying edits in paragraphs (e)(1)(i), (e)(1)(iii), and (e)(1)(iv) for readability and to eliminate specific references to the Orders in paragraphs (e)(3) and (e)(4). FEMA proposes to eliminate paragraph (e)(6). Paragraph (e)(6) of § 9.9 prohibits FEMA Resilience from providing a new or renewed contract for flood insurance for a structure if the Regional Director has chosen the ''no action'' option provided for in § 9.9(e)(5). This provision was temporarily suspended via a November 28, 1980, **Federal Register** Notice of intent not to enforce certain regulation concerning denial of flood insurance coverage. (45 FR 79069). FEMA ultimately did not implement this provision and does not intend to do so now; therefore, FEMA is proposing to remove it from the regulation.

K. Section 9.10—Identify Impacts of Proposed Actions

FEMA proposes minor clarifying edits in paragraphs (a), (b), and (d) for readability and seeks to remove the reference to contacting regional offices of U.S. Fish and Wildlife Service from section 9.10(c) as this process will be further detailed in guidance. FEMA also proposes edits to paragraph 9.10(d)(2) for consistency with edits made in section 9.4 defining the natural and beneficial values of floodplains and wetlands.

L. Section 9.11—Mitigation

FEMA proposes minor clarifying edits in paragraph (a). In paragraph (c)(1), FEMA proposes to clarify that the minimization provisions require the agency to minimize potential harm to lives and the investment at risk from flooding based on flood elevations established by § 9.7(c). This change first helps further explain that the potential harm to be minimized must be from flooding and that the potential harm is based on flood elevations established by § 9.7(c). This proposed revision removes the reference to the base flood and the 500-year flood from paragraph 9.11(c) and instead references the floodplain as established in § 9.7(c) consistent with other changes in the regulation to reflect the revised process described in § 9.7 when making the floodplain determination.

In paragraph (d), FEMA proposes to revise the text to reflect that the minimization standards are applicable to all of FEMA's grant programs. Currently, § 9.11(d) states that the minimization standards are applicable to only FEMA's implementation of the Disaster Relief Act of 1974. Some of FEMA's grant programs are authorized under other legislation.

In paragraphs (d)(2) and (d)(3)(i), FEMA proposes to specifically require elevation of the lowest floor of a structure to the floodplain established under § 9.7(c) during the construction of new or substantially improved structures. As described above, FEMA must follow the revised process described in § 9.7 when making the floodplain determination. FEMA must determine whether the project meets the new definition of an ''action subject to the FFRMS'' in § 9.4. The definition of ''action subject to the FFRMS'' is an action where FEMA funds are used for new construction, substantial improvement, or to address substantial damage to a structure or facility.

''Substantial Improvement'' as defined in § 9.4 includes all actions taken to address substantial damage to a structure or facility. Because paragraphs (d)(2) and (d)(3)(i) specifically reference new construction or substantial improvement, FEMA must establish the floodplain in these circumstances by using one of the FFRMS approaches (which require the applicant to consider whether an action is a critical action) as detailed in § 9.7(c). FEMA is proposing to remove current § 9.11(d)(3)(ii) as it becomes redundant with changes proposed to § 9.11(d)(3)(i) and redesignate current § 9.11(d)(3)(iii) as new § 9.11(d)(3)(ii). FEMA guidance can be consulted for technical information on elevation methods for new construction and the retrofitting of existing structures with various types of foundations.[91] FEMA proposes to revise current paragraph (d)(3)(iii) to eliminate references to the 100-year or 500-year level consistent with other proposed changes in the regulation to avoid confusion around the use of these terms given the revised process for the floodplain analysis set forth in proposed § 9.7(c). FEMA is also proposing clarifying edits in current paragraph (d)(3)(iv) consistent with proposed changes to § 9.4 definitions by changing ''Federal Insurance Administration'' to reflect organizational changes to ''FEMA Resilience'' and other technical citation edits as well as replacing ''FIRM'' with ''FEMA regulatory product'' consistent with other proposed changes.

In paragraph (d)(4), FEMA proposes minor clarifying edits and to add clarifying terminology consistent with changes proposed to § 9.4 definitions of the base flood and base floodplain. FEMA also proposes to provide that encroachments or other development within a floodway that would result in an increase in flood elevation, rather than in flood levels, are prohibited. FEMA also proposes two further changes to help better address the concern of flood elevation increase because of such development. As revised, paragraph (d)(4) would provide that the increase in elevation must not be more than the amount designated by the NFIP or, as indicated later in this paragraph, the community, whichever is most restrictive. The current designated height of the elevation is no more than one foot at any point, which effectively restates the existing minimum standard under the NFIP.[92] FEMA's proposed changes would remove reference to a one-foot standard, because this minimum standard is subject to change under the NFIP.[93] Further, FEMA's proposed changes would provide that the appropriate elevation is set by either the NFIP or the community, whichever results in the more restrictive standard.

FEMA proposes to update terminology from ''disaster proofing'' to ''flood proofing and/or elevation'' for clarity in paragraph (d)(9). For the same reasons as stated above for §§ 9.11(d)(2) and (d)(3)(i), in paragraph (d)(9), FEMA proposes to remove the reference to the base flood or, in the case of critical actions, the 500-year flood from paragraph (d)(9) and instead reference the floodplain as established in § 9.7(c) when describing the requirements for the replacement of building contents, material and equipment.

FEMA proposes to remove § 9.11(e) as the section's requirements are no longer required. At the time § 9.11(e) was promulgated, FEMA had discrepancies in coastal studies data that resulted in an underrepresentation of flood risk in some areas and this paragraph was meant to address the issues associated with those data discrepancies.[94] Since 1981, FEMA has updated the FIRMs for all coastal high hazard areas to address the earlier data issues and the program no longer maintains these special procedures for insurance or floodplain improvements. The V Zone Risk Factor Rating Form was discontinued by the agency on October 16, 2019, based on a lack of use [95] and, given the effectiveness of FEMA's updated data resolving the initial discrepancies, resulted in little to no impact on an individual's actual flood insurance premium. Given the updated data available and FEMA's reliance on the best available information to determine the floodplain in § 9.7(c), this paragraph is no longer relevant. Additionally, the provision found in paragraph (e)(4) was temporarily suspended via a November 28, 1980, **Federal Register** Notice of intent not to enforce certain regulation concerning denial of flood insurance coverage. (45 FR 79069). FEMA ultimately did not implement this provision and does not intend to do so now. Therefore, FEMA proposes to remove it from the regulation, and redesignate paragraph (f) as paragraph (e).

M. Section 9.12—Final Public Notice

FEMA proposes a minor edit to paragraph (d)(6) to update language to reflect current program terminology. Specifically, FEMA proposes to change the term ''Damage Survey Report'' to ''project application'' to reflect the current document utilized by FEMA's grant programs.

N. Section 9.13—Particular Types of Temporary Housing

FEMA proposes to revise this section to clarify that this part applies to certain specified types of temporary housing at private, commercial, and group site. Currently, this section only applies to private and commercial sites. FEMA is proposing to incorporate group sites into this section so that all of the temporary housing requirements under this part will fall within the same section, promoting ease of use and consistency in the application of the relevant steps of the 8-step process to each type of temporary housing site. Group sites are generally a more intensive action for the agency, as they involve the development of a new site on which to place housing and these actions are currently subject to the normal 8-step process required for most FEMA actions under current § 9.13(b) and (c)(2). However, FEMA's experience with group sites has demonstrated the importance of applying the considerations of Steps 3 (practicable alternatives) and 5 (minimization) to group sites as outlined in proposed § 9.13, rather than the full 8-step process. Group sites share the same need for expedited review as private and commercial sites given the urgent need for shelter after a disaster and the same consideration of other factors such as cost effectiveness, potential flood risk to a temporary housing occupant in a temporary housing situation, and a location close enough to the occupant's former residence to make it possible for the occupant to recover quickly. Given these same considerations, FEMA is proposing to add group sites to coverage under this section. *See* proposed §§ 9.13(a) and (b).

Throughout this section, FEMA proposes to update the terminology from ''mobile home'' to ''temporary housing unit'' [96] and to eliminate references to ''other readily fabricated dwellings'' that are redundant as a result of the change to clarify the types

[91] A catalogue of FEMA Building Science Branch publications, including descriptions of available publications for natural hazards can be accessed at *http://www.fema.gov/emergency-managers/risk-management/building-science/publications* (last accessed July 12, 2023).

[92] 44 CFR 60.3.

[93] *See* 42 U.S.C. 4102(c).

[94] *See* 45 FR 59520, 59525 (Sept. 9, 1980).

[95] *See* 85 FR 31202 (May 22, 2020) and *https://nfipservices.floodsmart.gov/sites/default/files/w-19014%20.pdf* (last accessed July 2023).

[96] Temporary Housing Unit is defined as ''[a] house, apartment, cooperative, condominium, manufactured home, or other dwelling acquired by FEMA and made available to eligible applicants for a limited period of time.'' *See https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf* (last accessed July 28, 2023).

of temporary housing units covered under this section. The statutes and regulations associated with the Individual Assistance Program use the term ''temporary housing unit.'' FEMA believes this proposed change will help eliminate confusion. Examples of temporary housing units include a readily fabricated dwelling such as recreational vehicles, manufactured housing units, travel trailers, yurts, and tiny houses.[97]

In proposed § 9.13(c)(1), FEMA proposes to specifically designate the use of the 1 percent annual chance (base) floodplain when evaluating whether to take a temporary housing action. In proposed § 9.13(c)(3), consistent with the aforementioned proposed changes to § 9.13(c)(1), FEMA proposes to revise the prohibition against housing an individual or family in the ''floodplain'' (which applies unless Regional Administrator has complied with the provisions in proposed § 9.9 to determine that the site is the only practicable alternative), by instead referring to the ''1 percent annual chance (base) floodplain.'' FEMA proposes to designate the 1 percent annual chance (base) floodplain as the floodplain of choice when taking temporary housing actions for several reasons: (1) the temporary nature of the assistance means there is not an opportunity to improve community resilience or floodplain management long term, which is the intent of the FFRMS; (2) expansion of the base floodplain to the FFRMS floodplain and prohibiting placement of temporary housing in the FFRMS floodplain may result in the temporary housing of individuals and families many miles from their homes, which is not practicable; and (3) it is not always feasible to elevate mobile homes when they are being placed as temporary housing.

Consistent with the proposed change to incorporate group sites into this section, FEMA proposes to add § 9.13(c)(4) to clarify that Step 4 of the 8-step process continues to apply to group sites. As explained above, group sites are generally a more intensive action for the agency, as they involve the development of a new site on which to place housing. By adding this paragraph, FEMA is proposing to ensure that step 4 of the 8-step process is applied to group sites in accordance with § 9.10 and that the effects of proposed actions are identified. FEMA is making this proposal because developing a new group site frequently involves development of infrastructure that could result in future development in the floodplain, to a greater extent than actions taken in existing private or commercial sites.

In the 2016 NPRM, FEMA proposed the addition of language to current paragraph (d)(4)(i) to require that actual elevation levels of temporary housing units would be based on manufacturer specifications and applicable Agency guidance. Specifically, the 2016 NPRM stated that it was not always practicable to elevate mobile homes to a given level and that the proposed rule would require that such homes be elevated to the fullest extent practicable. 81 FR at 57419. This NPRM does not seek to add that language because the current regulatory text in paragraph (d)(4)(i) requires these homes to be elevated ''to the fullest extent practicable.'' FEMA believes that what constitutes the fullest extent practicable will vary by location, temporary housing unit type, and a range of other variables not suited for comprehensive identification in the regulation. While FEMA's current practice is to consider manufacturer specifications, the agency is no longer seeking to codify that sole variable into the regulation and will instead clarify the variables to consider in agency procedures.

FEMA seeks to clarify that the agency will not temporarily place a housing unit unless the placement is consistent with the criteria of the NFIP or any more restrictive Federal, State, or local floodplain management standards. The NFIP requires that these units be elevated to at least the base flood elevation, absent a variance.[98] *See* proposed § 9.13(c)(5)(ii). FEMA also proposes to substitute ''44 CFR parts 59–60'' for ''44 CFR part 59 *et seq.*'' (which currently appears in paragraph 9.13(d)(4)(ii), to clarify the specific sections of the regulations the language references. In addition, although not directly stated in current part 9, it is current FEMA practice to complete Step 8 for temporary housing units. FEMA seeks to add proposed § 9.13(c)(7) to clarify that the agency must complete Step 8, ensuring that the requirements and decision-making process are fully integrated into the provision of temporary housing and current practices are codified in regulation.

In proposed § 9.13(d)(2), FEMA also proposes to require the elevation of temporary housing units to at least the level of the FFRMS floodplain if FEMA intends to permanently install a unit that the agency is selling or otherwise disposing of that is located in the FFRMS floodplain.[99] This proposal is consistent with other proposed changes in section 9.4 to the definition of new construction, which now includes permanent installation of a temporary housing unit, and the definition of an action subject to the FFRMS as new construction is subject to the FFRMS. Any sale or disposal of a temporary housing unit that includes permanent installation of a temporary housing unit for residential purposes no longer constitutes temporary housing; FEMA believes that any unit that is permanently installed should be protected to the fullest extent practicable, because the probability that a flood will occur within the floodplain is greater over the anticipated lifespan of a permanent structure than a temporary structure, and so the benefit of hazard mitigation is greater to the permanent structure than the temporary structure. Further, any permanent installation of a temporary housing unit would also be required meet NFIP requirements of residential structures by elevating the lowest floor to or above the base flood elevation, absent a variance.[100] See proposed § 9.13(d)(2).

The proposed requirement to elevate to the FFRMS floodplain when permanently installing these units as part of a sale may result in fewer temporary housing units being sold by FEMA as it will not always be practicable or feasible to elevate a temporary housing unit to the FFRMS requirement. However, this condition is not the only condition placed on the sale to applicants of temporary housing units that will be permanently installed. FEMA already places eligibility and sale conditions on these units to applicants. The sale of a temporary housing unit to an applicant currently requires the unit to be sold only to an individual or household occupying the unit, and requires that the site of the permanent placement comply with local codes and ordinances, and also complies with 44 CFR part 9.[101] FEMA also places a condition of sale on these units to include requirements for those units

[97] Tiny homes are typically between 100 and 400 square feet and rarely exceed 500 feet. *See https://www.realtor.com/advice/buy/what-is-a-tiny-house/* (last accessed July 12, 2023).

[98] 44 CFR 60.3.

[99] By contrast, temporary housing units placed in the floodplain for the purposes of temporary housing must meet the criteria of the NFIP or any more restrictive standards unless the community has granted a variance. See proposed § 9.13(c)(5)(ii).

[100] 44 CFR 206.118(a)(1)(i) and (iii) requires, as a condition of sale, the applicant to agree to purchase flood insurance on the unit (if it is or will be in a special flood hazard area) and have a site that complies with 44 CFR part 9. The NFIP requires communities to elevate manufactured housing units to or above the base flood elevation. *See* 44 CFR 60.3(c)(6)(iv) and 44 CFR 60.3(c)(12)(i).

[101] *See* 44 CFR 206.118(a)(1)(i).

located in a special flood hazard area to purchase flood insurance.[102] Given the current conditions that apply to the sale of these units to applicants, FEMA does not believe the additional FFRMS floodplain requirement will overly burden applicants as FEMA currently intends to cover the costs of any additional elevation required for permanent installation when selling to an applicant.

Because this permanent installation constitutes a permanent housing solution for applicants as opposed to a temporary one lasting 18–24 months on average,[103] the agency believes these mitigation actions are necessary to minimize the long-term risk to human health, safety, and welfare associated with flooding and to meet the agency's obligation to lessen the impacts of our actions that relate to development in and occupancy of the floodplain. These units are generally sold for permanent installation in communities where individuals lack other permanent housing options through no fault of their own.[104] Not requiring the higher resilience standard for these units would make the units more susceptible to future flood risks. Permanent installation of these units by sale to an applicant increases the housing stock in the community and FEMA seeks to ensure that new housing in these communities meets these higher resilience standards. Communities with less resilient housing become more susceptible to future flood risks. A more resilient and equitable nation requires that resilience standards be applied to protect life, health, and safety of all communities. FEMA believes the FFRMS requirement for permanent installation of housing units will improve community resilience and floodplain management long term, consistent with the intent of the FFRMS. By promoting safer permanent housing placement, FEMA can mitigate future flood risks particularly for those individuals and communities that have been historically disadvantaged.

Additionally, FEMA is proposing to change the paragraph structure of § 9.13. No substantive changes are intended as a result of this restructuring.

O. Section 9.14—Disposal of Agency Property

FEMA proposes minor clarifying edits consistent with other proposed changes throughout this part. In § 9.14(b)(4), FEMA proposes clarifying edits consistent with other changes in the regulatory text, replacing the term ''support'' with the term ''support of floodplain and wetland development.'' These edits would be made for clarity and would be consistent with the proposed definition of ''Support of Floodplain and Wetland Development'' found in proposed § 9.4. As previously explained, this clarification helps further delineate the agency's requirement to consider the impacts to floodplains and wetlands and how decisions made in this part could directly or indirectly result in increased development in a floodplain or wetland. These edits would help eliminate confusion regarding the use of the term ''support'' in the regulatory text and ensure that actions taken under part 9 were done with the intent not to support floodplain and wetland development consistent with Executive Order 11988, as amended, and Executive Order 11990.

In paragraph 9.14(b)(5), which currently directs FEMA to focus on minimization through floodproofing and restoration of natural values where improved property is involved, FEMA proposes to also require consideration of elevation. Elevation may be an appropriate focus of the minimization analysis depending on the nature of the improved structure; the current text's emphasis on floodproofing and restoration of natural values, to the exclusion of elevation, is unwarranted. FEMA proposes to make changes to paragraph (b)(7)(ii) to eliminate reference to the ''flood fringe'' and instead explain this concept in terminology more consistently used throughout part 9. This change would reduce the overall technical terminology used in the regulation, making it easier for stakeholders to understand the key concepts around flood risk and the application of part 9.

P. Section 9.16—Guidance for Applicants

FEMA proposes clarifying edits in § 9.16(b) to eliminate examples. The examples provided in current paragraph (b) do not necessarily reflect current agency terminology and, rather than limit the agency to current nomenclatures, FEMA proposes to eliminate references to the examples here. FEMA proposes edits in paragraph (b)(2) to clarify that the decision-making process set out in § 9.6 relates to the determination of whether to take action in floodplains or wetlands. FEMA is proposing this change to clarify that the decision made in § 9.6 is the decision to act (or not take action) in the floodplain or wetland, not a decision generally on eligibility for assistance. FEMA recognizes that the decision to take no action may result in no assistance being provided, but that decision is not the only decision point in § 9.6. FEMA also proposes additional clarifying edits in § 9.16(b)(3)–(5) and § 9.16(c) for readability.

Q. Section 9.17—Instructions to Applicants

FEMA proposes clarifying edits throughout this section for readability. Additionally, in paragraph (a), FEMA proposes to add ''as amended'' to reflect amendments to Executive Order 11988 and in paragraph (b), FEMA proposes to update the reference to the 1978 Guidelines to the full title for the Revised Guidelines. FEMA also proposes additional clarifying edits in § 9.17(b)(3)–(5) to stay consistent with § 9.16(b)(3)–(5).

R. Section 9.18—Responsibilities

FEMA also proposes clarifying edits throughout this section, including updating the references to the Assistant Administrator to refer to FEMA Resilience as the office within FEMA that will review Regional Administrator decisions that are appealed and adding ''as amended'' to reflect amendments to Executive Order 11988.

S. Appendix A to Part 9—Decision-Making Process for E.O. 11988

FEMA proposes to remove ''Appendix A to Part 9—Decision-Making Process for E.O. 11988'' in its entirety. The graphic is no longer accurate. Further, given the amendments to Executive Order 11988 and the Revised Guidelines, there is no utility to including the appendix in regulation. Instead, FEMA would include a revised version of the appendix, including the new decision-making process and the definition of the floodplain, in its policy implementing the FFRMS.

V. Comments Received Associated With Part 9 Revisions

As explained above, FEMA previously sought to revise part 9 to incorporate the FFRMS. On November 17, 2015, FEMA released for public comment FEMA's Overview of FEMA's Intent to

[102] *See* 44 CFR 206.118(a)(1)(iii).

[103] The Robert T. Stafford Disaster Relief and Emergency Assistance Act § 408(c)(1)(B)(iii), 42 U.S.C. 5174(c)(1)(B)(iii), 44 CFR 206.110(e), and Individual Assistance Program Policy and Guide (IAPPG) Version 1.1, pgs. 41, 98, found at *https://www.fema.gov/assistance/individual/policy-guidance-and-fact-sheets* (last accessed July 12, 2023).

[104] *See* Individual Assistance Program Policy and Guide (IAPPG) Version 1.1, pg. 119, found at *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf* (last accessed July 12, 2023).

Implement the FFRMS (Intent).[105] Continuing our commitment to an open, collaborative, stakeholder-focused process in implementing the FFRMS, FEMA shared this framework for public comment on FEMA's website through December 17, 2015. FEMA received 12 comments in response to the Intent. Of the 12 comments received, 10 comments were supportive, 1 comment was opposed, and 1 comment was not germane.[106]

The 10 comments received in support of the Intent came from a variety of sources, including local governments, associations, environmental action organizations, and commenters that chose to reply in their private capacity. The adverse comment stated that the CISA would be ''a means to extort money from citizens based on a junk science forecasts/models of which so called projections have been outrageously inaccurate.'' The commenter did not provide any support for the statement. FEMA disagrees with the commenter's assessment that Climate-Informed Science Approach (CISA) is based on ''junk science forecasts/models.'' Scientists compare models' projections of historical climate trends to actual historical climate data to measure the confidence of the models' abilities to accurately predict future climate conditions.[107] Many peer reviewed studies of climate models have found in general that climate model simulations of historical global temperature and other climactic variables are comparable to the historical recorded observations of those variables.[108] These studies provide confidence in accuracy of climate models' projections of future climate conditions. Within the 10 supportive comments, the commenters provided suggestions and asked questions concerning FEMA's proposed framework. FEMA took these comments and questions into consideration during the drafting process for this proposed rule.

On August 22, 2016, FEMA issued a Notice of Proposed Rulemaking ''Updates to Floodplain Management and Protection of Wetlands Regulations To Implement Executive Order 13690 and the Federal Flood Risk Management Standard.'' 81 FR 57401. In response to the NPRM, FEMA received submissions from 78 commenters. Eighty percent of the comments were favorable. Favorable commenters noted the NPRM represented working ''smarter, not harder,'' and emphasized the importance of protecting taxpayer investments in areas that are vulnerable to recurring damage, considering future flooding from a sustainability point of view, and harmonizing Federal requirements with efforts already underway in States and local communities. FEMA also received comments that were unfavorable and suggestions for changes to the proposed rule. FEMA considered these comments and suggestions in drafting this new proposed rule. Specifically, FEMA is incorporating suggestions received to (1) resolve concerns in the definitions section by adding a definition for ''actions subject to the FFRMS'' and retaining the definition of ''emergency actions'' (as opposed to changing the defined term ''emergency work,'' as FEMA had proposed in 2016); (2) set the effective date of the rule's changes and clarify that current Part 9, including use of the base floodplain (or 500-year floodplain for critical actions), would still apply to actions that are in the planning or development stage or undergoing implementation as of the effective date of the final rule revising part 9 while only new actions would be subject to revised part 9 ensuring the changes would not be applied to projects which have already been reviewed for compliance with Executive Order 11988 and may have incurred design expenses to meet the current floodplain management standards in § 9.5(a)(3); and (3) update § 9.7(c) to provide additional clarity in the floodplain determination process and incorporate additional relevant sources of available information for the floodplain determination. FEMA is also incorporating suggestions to ensure flexibility in the implementation of FFRMS while also leveraging the best available and actionable data to enhance resilience by utilizing the CISA where data is available and actionable and providing options for the use of the FVA or 0.2PFA depending on the type of action involved and data availability and actionability for each of the remaining approaches, while also addressing equity and cost concerns.

In April 2021, FEMA issued a Request for Information (RFI) on FEMA's Programs, Regulations, and Policies. 86 FR 21325 (Apr. 22, 2021). The RFI sought input from the public on specific FEMA programs, regulations, collections of information, and policies for the agency to consider modifying, streamlining, expanding, or repealing in light of recent Executive Orders.[109] FEMA issued two additional RFIs associated with the National Flood Insurance Program [110] in 2021. FEMA received comments related to 44 CFR part 9 as a result of each of these requests. FEMA received eight comments that discussed the FFRMS. One comment suggested confusion exists between the FFRMS and the floodplain management standards under the National Flood Insurance Program. The remaining seven comments were supportive of implementing the FFRMS and/or incorporating the FFRMS into the National Flood Insurance Program's floodplain management standards to increase resilience for communities. While changes to the floodplain management standards are outside this scope of this rulemaking, FEMA is considering a rulemaking to revise the NFIP minimum standards and will assess the expression of support from these comments in that future effort.

VI. Regulatory Analyses

A. Executive Order 12866, Regulatory Planning and Review & Executive Order 13563, Improving Regulation and Regulatory Review

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review) and 13563 (Improving Regulation and Regulatory Review) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and

[105] Available on the public docket for FEMA–2015–0006 at FEMA–2015–0006–0359.

[106] The comments are available on *regulations.gov* under docket ID FEMA–2015–0006.

[107] Risbey et al. 2014. Well-estimated global surface warming in climate projections selected for ENSO phase. ''Nature Climate Change,'' 4, 835–840, at *https://www.nature.com/articles/nclimate2310* (last accessed July 12, 2023).

[108] *See* Covey et al. 2003. An overview of results from the coupled model intercomparison project (CIMP). ''Global and Planetary Change,'' 37, 103–133; and Cubasch *et al.* 2013. Introduction. In: ''Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change'' [Stocker *et al.* (eds)]. Cambridge University Press, Cambridge at 131.

[109] *See* Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' 86 FR 7009 (Jan. 25, 2001); Executive Order 13990 ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,'' 86 FR 7037 (Jan. 25, 2021); and Executive Order 14009, ''Tackling the Climate Crisis at Home and Abroad,'' 86 FR 7619 (Feb. 1, 2021).

[110] ''Request for Information on the National Flood Insurance Program's Community Rating System,'' 86 FR 47128 (Aug. 23, 2021) and ''Request for Information on the National Flood Insurance Program's Floodplain Management Standards for Land Management and Use, and an Assessment of the Program's Impact on Threatened and Endangered Species and Their Habitats,'' 86 FR 56713 (Oct. 12, 2021).

equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has designated this rule a ''significant regulatory action'' as defined under section 3(f) of Executive Order 12866, as amended by Executive Order 14094, but it is not significant under section 3(f)(1) because its annual effects on the economy do not exceed $200 million in any year based on the analysis conducted. Accordingly, OMB has reviewed it.

This Regulatory Impact Analysis (RIA) provides an assessment of the potential costs, benefits, and transfer payments from the Updates to Floodplain Management and Protection of Wetlands Regulations to Implement the Federal Flood Risk Management Standard (FFRMS) Notice of Proposed Rulemaking (NPRM). This analysis does not attempt to replicate the regulatory language of the proposed rule or any other supporting documentation. FEMA urges the reader to review the NPRM before reviewing this report.

The FFRMS is a flood resilience standard that is required for ''Federally funded projects'' and provides a flexible framework to increase resilience against flooding and to help preserve the natural values of floodplains and wetlands. A floodplain is any land area that is subject to flooding and refers to geographic features with undefined boundaries. FEMA proposes to incorporate the FFRMS into its existing processes, to ensure that the floodplain for an action subject to the FFRMS is expanded from the current base flood elevation to a higher vertical elevation and corresponding horizontal floodplain and that, where practicable, natural systems, ecosystem processes, and nature-based approaches would be considered when developing alternatives to locating Federal actions in the floodplain.

Under current FEMA regulations set out in 44 CFR part 9, the floodplain is defined as the 100-year floodplain (1 percent annual chance) for non-critical actions and as the 500-year floodplain (0.2 percent annual chance) for critical actions. New construction or substantial improvement of structures located in a floodplain must be elevated to or above the 1 percent annual chance flood level or base flood elevation (BFE). For critical actions, the new construction or substantial improvement of structures must be elevated to or above the 0.2 percent annual flood level. Non-residential structures may be appropriately floodproofed rather than elevated to meet the applicable flood level.

This rule proposes to implement the FFRMS policy in the expanded floodplain and codify implementation of the FFRMS policy in the current floodplain. FEMA has already implemented partial interim policies for PA and HMA, discussed in further detail below. Depending on the program, these programs apply the FFRMS policy either to the base floodplain, or to both the 100-year (base floodplain) and 500-year floodplain (for critical actions). Following guidance in OMB Circular A–4, FEMA assessed each impact of this rule against a pre-guidance baseline. The pre-guidance baseline is an assessment against what the world would be like if the relevant guidance (*i.e.,* the partial interim policies for PA and HMA) had not been implemented.

At the time this RIA was conducted, these partial implementation policies had been in place for less than 6 months, which is an insufficient period to provide adequate data for analysis. Therefore, FEMA was unable to complete an in-depth analysis of the impact of these interim policies. Accordingly, FEMA used a pre-guidance baseline for this proposed rule to measure the impacts of the rule against the world without the interim PA and HMA policies.

Under the proposed rule, the Climate Informed Science Approach (CISA) would result in a flood elevation and corresponding horizontal expansion floodplain determination utilizing the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science. CISA is FEMA's preferred policy approach as FEMA believes it has the potential to be the best and most well-informed approach to building resilience in an equitable manner and ensuring a reduction in disaster suffering. CISA is the only approach that ensures projects are designed to meet current and future flood risks unique to the location and thus ensures the best overall resilience, cost effectiveness, and equity. The FFRMS considerations require FEMA to consider the type of criticality of the action involved, the availability and actionability of data, and equity concerns, as further explained in the current proposed supplementary policy. As actionable climate data are not currently available for all locations, FEMA is proposing the Freeboard Value Approach (FVA) and 0.2 Percent Annual Chance Flood Approach (0.2PFA) alternatives in the absence of actionable CISA data. Specifically:

- *For critical actions:*[111] FEMA proposes the higher of the +3-foot FVA floodplain or the 0.2PFA floodplain.[112] Where the 0.2PFA data are not available, the +3-foot FVA will be utilized.
- *For non-critical actions:* FEMA proposes the lower of the +2-foot FVA or 0.2PFA.

The floodplain established by the FVA is the equivalent of the 1 percent annual chance floodplain (also known as the 100-year flood), plus either 2- or 3-ft of vertical elevation, as applicable based on criticality, and a corresponding increase in the horizontal extent of the floodplain. The increased horizontal extent will not be the same in every case. When the same vertical increase is applied in multiple actions subject to the FFRMS in different areas, the amount of the increase in the horizontal extent of the respective floodplains will depend upon the topography of the area surrounding the proposed location of the action.

Projects that are located near the SFHA, but not in it, may be in the expanded FFRMS floodplain. Currently, there are no FEMA products depicting the boundary of the FFRMS floodplain. For this reason, FEMA and its interagency partners are developing various tools, like a FFRMS floodplain determination job aid and a web-based decision support tool, that would provide the agency a guide to determining the FFRMS floodplain and flood elevation levels to use for the projects. The web-based decision support tool would take into account the best available and actionable data. However, if this tool is not available to determine the FFRMS floodplain, FEMA would likely utilize the FFRMS floodplain determination job aid.

FEMA believes that the benefits of the rule—quantified and unquantified—would justify its costs. Flooding is the most common type of natural disaster in the United States,[113] and floods are expected to be more frequent and more severe over the next century due to the projected effects of changing conditions.[114] [115] The ocean has

[111] A critical action is any activity for which even a slight chance of flooding would be too great. A non-critical action is any activity not considered a critical action.

[112] For all projects in coastal areas, if the 0.2 percent annual chance flood elevations do not account for the effects of wave action, the appropriate FVA must be used to determine the FFRMS floodplain.

[113] Department of Homeland Security. Natural Disasters. *https://www.dhs.gov/natural-disasters* (last accessed July 12, 2023).

[114] Climate change impacts. National Oceanic and Atmospheric Administration. U.S. Department of Commerce. *https://www.noaa.gov/education/*

warmed, polar ice has melted, and porous landmasses have subsided.[116] Global sea level has risen by about 8 inches since reliable record keeping began in 1880. While a conservative scenario projects a sea level rise under a meter (or 3.3-ft) by 2100,[117] [118] it is projected to rise upwards of 8 feet by 2100 in an extreme scenario.[119] Floods are costly natural disasters; between 1980 and 2021, the United States suffered more than $1.7 trillion (in 2021 dollars) in flood-related damages.[120] This proposed rule would help protect Federal investments from future floods and would help minimize harm in floodplains by changing the standards used to determine future risk for FEMA-funded new construction and substantial improvement or to address substantial damage (*i.e.,* ''Federally funded projects'').

The requirements of this rule would apply to grants for projects funding the new construction, substantial improvement, or repair of substantial damage under FEMA programs such as Individual Assistance (IA), Public Assistance (PA), Hazard Mitigation Assistance (HMA) programs, and grants processed by FEMA's Grants Programs Directorate (GPD) (involving grants for preparedness activities). The primary focus of this analysis is to estimate the costs and benefits resulting from a higher vertical elevation and associated horizontal expansion of the floodplain for specific projects paid for with Federal funds. The expected impacts of this proposed rule primarily result from the cost for the increased elevation or floodproofing requirements of structures in the FFRMS floodplain. The majority of these costs would be funded by FEMA through several grant programs. For the grant programs that have a cost-share requirement, FEMA grant recipients typically would bear about 25 percent of the elevation and floodproofing project costs. Additionally, FEMA expects to incur costs for administration of the proposed requirements, including training FEMA personnel.

To estimate how many projects would be subject to the requirements of this rule, FEMA used historical PA, IA, and HMA data. First, FEMA estimated the number of past new construction, substantial improvement, or repairs to substantial damage projects were in the existing floodplain. Next, FEMA relied upon data from samples of floodplain expansion at varying levels of freeboard in inland and coastal areas to estimate an average percentage expansion of the floodplain under each of the three FFRMS approaches. FEMA then multiplied the expansion percentages by the estimated number of projects in the current floodplain to estimate the number of projects that would be in the expanded floodplain under each of the FFRMS approaches.

To estimate the cost of the proposed elevation requirements, FEMA used reports from the National Flood Insurance Program (NFIP) to determine the increased cost per square foot associated with elevation and floodproofing. FEMA presents the costs as a range because of uncertainty about whether new construction projects would choose to floodproof or elevate.

Finally, to present the total impacts of the proposed rule, FEMA analyzed the impact of the FVA, 0.2PFA, and CISA for each of the programs, PA, IA, and HMA, as if each approach were the only FFRMS expansion option. This is because it is unknown exactly how many projects would be subject to the FVA, 0.2PFA, or CISA requirements under the proposed rule as this will continue to change with the addition of CISA data over time. Accordingly, FEMA estimated the costs of the proposed requirements for each of the approaches separately. This allowed FEMA to create a range for each approach. FEMA opted to use this methodology because it would allow FEMA to estimate the highest and lowest probable costs, transfers, and benefits associated with each of the FFRMS expansion options for each of the programs.

FEMA examined the number of projects that would be subject to the proposed requirements in the first 10 years after the rule's publication.[121] FEMA's analysis focused on the costs, benefits, and transfer payments (*i.e.,* impacts on FEMA grants), that would result over a 50-year period from applying the requirements of the proposed rule to those projects, for a total period of analysis spanning 60 years. For example, if a structure is built in Year 10, the analysis covers 50 years of costs, benefits, and transfers for that structure starting in Year 10. However, if a structure is built in Year 11, that is outside of the first 10 years and so the analysis does not consider the costs, benefits, or transfers of the proposed requirements on that structure.[122] The costs and transfers occur in the first 10 years of the 60-year period because that is when the initial investment to elevate or floodproof those projects take place. This is an upfront cost that occurs when the project is constructed. However, the benefits of the proposed rule are estimated over the 50-year useful life of the affected structures.

The table below provides the estimated number of structures and facilities affected by the proposed rule over the first 10 years, assuming that each approach is the only expansion option. Structures, which are walled and roofed buildings, would comply with the proposed FFRMS through elevating or floodproofing to the required height. Facilities, which are any human-made or human-placed items other than a structure such as roads and bridges, would require different mitigation measures in order to

resource-collections/climate/climate-change-impacts (last accessed July 12, 2023).

[115] 1 Walsh, J., D. Wuebbles, K. Hayhoe, J. Kossin, K. Kunkel, G. Stephens, P. Thorne, R. Vose, M. Wehner, J. Willis, D. Anderson, S. Doney, R. Feely, P. Hennon, V. Kharin, T. Knutson, F. Landerer, T. Lenton, J. Kennedy, and R. Somerville, 2014: Ch. 2: Our Changing Climate. ''Climate Change Impacts in the United States: The Third National Climate Assessment'', J.M. Melillo, Terese (T.C.) Richmond, and G.W. Yohe, Eds., U.S. Global Change Research Program, 19–67. Doi.10.7930/J0KW5CXT. Page 20. *https://nca2014.globalchange.gov/downloads/low/NCA3_Climate_Change_Impacts_in_the_United%20States_LowRes.pdf* (last accessed July 12, 2023).

[116] *Id.* at pg. 21.

[117] Supplementary Material for the Regulatory Impact Analysis for the Supplemental Proposed Rulemaking, ''Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review. Environmental Protection Agency (EPA). *https://www.epa.gov/system/files/documents/2022-11/epa_scghg_report_draft_0.pdf.* Page 36. Last accessed: September 14, 2023.

[118] EPA uses the Framework for Assessing Changes To Sea-level (FACTS) and Building Blocks for Relevant Ice and Climate Knowledge (BRICK) sea-level rise models for their projections.

[119] Payne, J., Sweet, W., Felming, E., Craghan, M., Haines, J., Hart, J., Stiller, H., Sutton-Frier, A., Kruk, M., 2018. Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume I. Ch 8: Coastal Effects. National Climate Assessment. *https://nca2018.globalchange.gov/downloads/NCA4_Ch08_Coastal-Effects_Full.pdf.* Page 329. Last accessed September 14, 2023.

[120] U.S. billion-dollar weather and climate disasters. *Climate.gov. https://www.ncei.noaa.gov/access/billions/summary-stats/US/1980-2021* (last accessed July 12, 2023). Flood related damages are from flooding, severe storms, and tropical cyclones. Data are CPI adjusted.

[121] FEMA used an average of the number of affected projects during the prior 10-year period to estimate the average annual impacts of the future 10-year period.

[122] If FEMA limited the analysis to only 10 years of impacts, it would consider all of the costs and transfers but only a small portion of the benefits from additional protection from flood events because the life of the structure is more than 10 years. After year 10, the proposed rule would continue to impact FEMA projects funding new construction, substantial improvements or repairs to fix substantial damage, but FEMA chose to limit the analysis to 10 years of affected structures because FEMA believes the number of structures affected in this 10-year period is enough to provide a reasonable estimate of the costs, benefits, and transfers resulting from the proposed rule. Accordingly, FEMA's analysis focuses on the 50-year impacts of the rule on projects that take place in the nearest 10-year period, for a total period of analysis spanning 60 years.

comply with the increased resiliency standard of the proposed rule. The monetized impacts of this rule are representative of the floodproofing and elevation mitigation measures that would be required of structures. However, for reasons explained in more detail later, FEMA was unable to monetize the impacts of the rule for facilities.

TABLE 5—ESTIMATED NUMBER OF STRUCTURES AND FACILITIES AFFECTED BY THE PROPOSED RULE IN YEARS 1–10

FFRMS approach	Structures			Total structures	Facilities		Total facilities	Total projects
	PA	IA	HMA		PA	HMA		
FVA	1,090	2,650	9,492	13,232	20,120	841	20,961	34,193
0.2PFA	840	2,650	9,447	12,937	20,120	841	20,961	33,898
CISA	1,173	2,903	10,351	14,427	20,120	841	20,961	35,388

The proposed rule would increase construction and resiliency standards for FFRMS-affected structures and facilities. Implementing these standards, through higher vertical elevation or floodproofing, or other mitigation measures, is new economic activity that would result from this rule. Accordingly, these compliance activities are a cost of this rule.

Using CISA as the primary approach, FEMA estimates that this proposed rule would affect 14,427 PA, IA, and HMA structures over the first 10 years, which would result in a total cost of between $142.1 million and $156.3 million, undiscounted, over the 60-year period of analysis. Discounted, the low estimate cost would be between $121.3 million and $100 million, using 3 and 7 percent respectively, with a 60-year annualized cost between $4.4 million and $7.1 million, using 3 and 7 percent. Discounted, the high estimate cost would be between $133.4 million and $109.9 million, using 3 and 7 percent respectively, with a 60-year annualized cost between $4.8 million and $7.8 million, using 3 and 7 percent respectively. These costs include additional training for FEMA staff as well as the total cost for additional elevation and floodproofing.[123] FEMA was unable to quantify the cost for increased resiliency standards for an estimated 20,961 affected facility projects over the 10-year period of analysis. Additionally, FEMA was unable to quantify the cost for projects that may be diverted out of the floodplain, impacts to projects with existing basements, project delays, or forgone projects that may result from this rule.

Because the cost to implement the proposed mitigation measures would be shared between FEMA and grant recipients according to the statutory cost share, there are also important distributional impacts. The majority of these costs would be borne by FEMA through additional grants (a transfer from FEMA to grant recipients). Grant recipients would bear the remaining cost. Using CISA as the primary approach, FEMA estimated that this proposed rule would affect 14,427 structures in the first 10 years, which would result in an increase in transfers from FEMA to grant recipients of between $109.2 million and $119.6 million, undiscounted, over the 60-year period of analysis. FEMA presents the change in transfer payments as a range because of uncertainty regarding whether new construction projects would be floodproofed or elevated. Discounted, the low estimate would be $93.2 million and $76.7 million, using 3 and 7 percent respectively, with a 60-year annualized increase in transfers between $3.4 million and $5.5 million, at 3 and 7 percent respectively. Discounted, the high estimate would be $102.1 million and $84.0 million, using 3 and 7 percent respectively, with a 60-year annualized increase in transfers between $3.7 million and $6.0 million, at 3 and 7 percent respectively. Grant recipients would be responsible for between $29.2 million and $31.7 million, undiscounted. Discounted, the low estimate would be $24.9 million and $20.5 million, using 3 and 7 percent respectively, with a 60-year annualized amount between $0.9 million and $1.5 million, at 3 and 7 percent respectively. Discounted, the high estimate would be $27.0 million and $22.2 million, using 3 and 7 percent respectively, with a 60-year annualized amount of $1.0 million and $1.6 million, at 3 and 7 percent respectively. Not included in these estimates are the additional grants FEMA would provide, and additional costs recipients would incur for their portion of the cost share, for any of the elevation and floodproofing costs that FEMA was unable to monetize.

FEMA was able to quantify benefits for a portion of projects affected by the rule. Using CISA as the primary approach, FEMA estimated that 1,173 PA Category E (Public Buildings and Contents) projects would be subject to the FFRMS in the first 10 years. Assuming a 59-inch Sea Level Rise,[124] FEMA estimated that the present value benefits of one additional foot of freeboard for the 50-year useful life of projects undertaken during the 10-year period of analysis would be between $55.2 million and $62.0 million, undiscounted. The low estimate would range between $47.1 million and $38.8 million, discounted at 3 and 7 percent respectively, with a 60-year annualized benefit between $1.7 million and $2.8 million. The high estimate would range between $52.9 million and $43.5 million, discounted at 3 and 7 percent respectively, with a 60-year annualized benefit between $1.9 million and $3.1 million. These quantified benefits include estimates of avoided physical damage, avoided displacement, and avoided loss of function for the 1,173 PA Category E projects over their 50-year useful life. In addition, unquantified benefits of this proposed rule include the reduction in damage to 13,254 affected IA and HMA structures and their contents from future floods, 20,961 PA and HMA facilities, potential lives saved, public health and safety benefits, reduced recovery time from floods, and increased community resilience to flooding.

Tables 6 and 7 show the estimated low and high costs, transfer payments, and benefits by FFRMS approach (assuming each approach is the only expansion option used), as well as by program for FEMA's primary approach.

[123] To obtain total costs using tables 6 and 7, please see rows CISA Total (primary) (+5-ft) and FEMA admin.

[124] For FEMA's primary estimate, FEMA used 59 inches of SLR due to it being the closest SLR option to CISA+5-ft. CISA is the preferred approach for FFRMS if the data are available. Since 5 ft is equivalent to 60 inches (5 × 12 inches per foot), 59-inch SLR would be the closest SLR option that FEMA has available to use for this portion of the analysis.

TABLE 6—SUMMARY OF 60-YEAR COSTS, TRANSFERS, AND BENEFITS BY APPROACH AND PROGRAM FOR AFFECTED PROJECTS IN YEARS 1–10

[Low estimate, 2021$]

Costs*	Undiscounted	3% Discount rate		7% Discount rate	
		Present value	Annualized	Present value	Annualized
CISA Total (primary) (+5-ft)	$138,393,786	$118,052,707	$4,265,594	$97,202,003	$6,923,623
PA	102,794,460	87,685,759	3,168,346	72,198,527	5,142,645
IA	1,421,690	1,212,730	43,820	998,537	71,125
HMA	48,908,310	41,719,781	1,507,459	34,351,150	2,446,806
FVA Total	61,994,588	52,882,642	1,910,806	43,542,402	3,101,492
0.2PFA Total	53,397,625	45,549,257	1,645,829	37,504,256	2,671,399
FEMA Admin	3,741,680	3,267,150	118,052	2,776,613	197,776
Not Quantified	*Not Estimated:* Increased resiliency standard for approximately 20,961 facility projects over 10 years, Additional costs for Adding Requirements to Buildings with Basements, Diversion of Projects Out of the Floodplain, Lifecycle maintenance costs for floodproofing, and Project Delays and Forgone Projects.				
Transfer Payments from FEMA to Grant Recipients					
CISA Total (primary) (+5-ft)	109,216,359	93,163,768	3,366,283	76,709,000	5,463,923
PA	82,955,130	70,762,410	2,556,855	58,264,212	4,150,115
IA	1,421,690	1,212,730	43,820	998,537	71,125
HMA	36,681,233	31,289,834	1,130,594	25,763,363	1,835,104
FVA Total	48,898,424	41,711,348	1,507,154	34,344,206	2,446,311
0.2PFA Total	41,973,888	35,804,576	1,293,725	29,480,702	2,099,888
Benefits					
PA (CISA, primary) (+1-ft)	55,180,000	47,069,660	1,700,766	38,756,122	2,760,569
Not Quantified	*Not Estimated:* Damage Avoidance for approximately 13,254 IA and HMA structure projects and 20,961 PA and HMA facility projects over 10 years, Potential Lives Saved, Increased Public Health and Safety, Decreased Cleanup Time, Protection of Critical Facilities, Reduction of Personal and Community Impacts.				

*FEMA focused its analysis on the projects impacted in the first 10 years after the rule's publication. FEMA considered the resulting costs, benefits, and transfer payments of the proposed rule on those projects over a 50-year period, for a total of 60 years. The costs and transfers occur in the first 10 years of the 60-year period because that is when the initial investment to elevate or floodproof them to meet the proposed requirements takes place. This is an upfront cost that occurs when the project is constructed. However, the benefits of the proposed rule are realized over the 50-year useful life of the affected structures.

TABLE 7—SUMMARY OF 60-YEAR COSTS, TRANSFERS, AND BENEFITS BY APPROACH AND PROGRAM FOR AFFECTED PROJECTS IN YEARS 1–10

[High estimate, 2021$]

Costs*	Undiscounted	3% Discount rate		7% Discount rate	
		Present value	Annualized	Present value	Annualized
CISA Total (primary) (+5-ft)	$151,319,537	$129,078,635	$4,663,993	$106,280,511	$7,570,278
PA	120,722,020	102,978,331	3,720,912	84,790,095	6,039,533
IA	1,421,690	1,212,730	43,820	998,537	71,125
HMA	48,908,310	41,719,781	1,507,459	34,351,150	2,446,806
FVA Total	68,035,769	58,035,891	2,097,008	47,785,478	3,403,723
0.2PFA Total	57,766,400	49,275,911	1,780,484	40,572,701	2,889,962
FEMA Admin	4,942,430	4,291,414	155,061	3,619,968	257,848
Not Quantified	*Not Estimated:* Increased resiliency standard for approximately 20,961 facility projects over 10 years, Additional costs for Adding Requirements to Buildings with Basements, Diversion of Projects Out of the Floodplain, Lifecycle maintenance costs for floodproofing, and Project Delays and Forgone Projects.				
Transfer Payments from FEMA to Grant Recipients					
CISA Total (primary) (+5-ft)	119,647,439	102,061,693	3,687,791	84,035,355	5,985,773
PA	97,422,670	83,103,514	3,002,776	68,425,607	4,873,903
IA	1,421,690	1,212,730	43,820	998,537	71,125
HMA	36,681,233	31,289,834	1,130,594	25,763,363	1,835,104
FVA Total	53,773,657	45,870,019	1,657,420	37,768,366	1,657,420
0.2PFA Total	45,499,493	38,811,991	1,402,392	31,956,941	2,276,268

TABLE 7—SUMMARY OF 60-YEAR COSTS, TRANSFERS, AND BENEFITS BY APPROACH AND PROGRAM FOR AFFECTED PROJECTS IN YEARS 1–10—Continued

[High estimate, 2021$]

Costs *	Undiscounted	3% Discount rate		7% Discount rate	
		Present value	Annualized	Present value	Annualized
Benefits					
PA (CISA, primary) (+1-ft)	61,985,720	52,875,076	1,910,533	43,536,175	3,101,048
Not Quantified	*Not Estimated:* Damage Avoidance for approximately 13,254 IA and HMA structure projects and 20,961 PA and HMA facility projects over 10 years, Potential Lives Saved, Increased Public Health and Safety, Decreased Cleanup Time, Protection of Critical Facilities, Reduction of Personal and Community Impacts.				

* FEMA focused its analysis on the projects impacted in the first 10 years after the rule's publication. FEMA considered the resulting costs, benefits, and transfer payments of the proposed rule on those projects over a 50-year period, for a total of 60 years. The costs and transfers occur in the first 10 years of the 60-year period because that is when the initial investment to elevate or floodproof them to meet the proposed requirements takes place. This is an upfront cost that occurs when the project is constructed. However, the benefits of the proposed rule are realized over the 50-year useful life of the affected structures.

Quantified estimates of the benefits of this rule are available for only PA Category E projects. Tables 6 and 7 show that the total 60-year benefits for PA Category E projects in the first 10 years is $43.5 million (7 percent, high). This benefit is for adding one foot of freeboard, assuming a 59-inch SLR. Although the cost for PA Category E projects is $84.8 million, this cost represents 5 feet of freeboard (FEMA's assumption for CISA).[125] FEMA does not have data to quantify the benefits of additional freeboard and thus the quantified benefits represent only a portion of the increased risk reduction that would be achieved through this rule. Ensuring projects are built to the height necessary to avoid additional loss scenarios would provide additional unquantified benefits of avoided damages to the structure, decreased cleanup time and disruption to the community, and increased public health and safety. Moreover, FEMA's use of CISA as its preferred approach would use the best available and actionable scientific data to tailor future flooding risk to each project ensuring that projects are built only to the height necessary and thus maximizing net benefits. Accordingly, FEMA believes the benefits of the rule—quantified and unquantified—would justify its costs.

PA Projects

FEMA provides PA grants to public and certain non-profit entities for rebuilding, replacement, or repair of public and non-profit structures and facilities damaged by disasters. PA projects that involve new construction, substantial improvement, or repairs to address substantial damage would be affected by this rule.[126] FEMA divides its PA work into categories A–G. Projects funded under PA Categories C (Roads and Bridges), D (Water Control Facilities), E (Public Buildings), F (Utilities), and G (Parks, Recreational Areas, and Other Facilities) would be affected by the rule, but FEMA is only able to provide estimates of costs associated with Category E (Public Buildings). The reason FEMA was only able to provide estimates of costs for Category E projects is that Category E projects are for structures whereas projects funded under the remaining categories are for facilities.

FEMA 44 CFR part 9 classifies projects as either structures or facilities. Under this proposal, a structure is a walled and roofed building, including mobile homes and gas or liquid storage tanks. Structures are subject to freeboard requirements to floodproof or elevate to a certain level above the BFE. Freeboard is the additional height above the BFE to which the structure is floodproofed or elevated for the purpose of reducing the risk of flood damage.

In contrast, facilities are any human-made or human-placed item other than a structure, such as roads and bridges. Facility mitigation measures are more varied and highly project-specific. For example, damage to roads during flood events can be caused by numerous events, such as erosion and scour, inundation by floodwater, or debris blockage. Likewise, the mitigation measures to address the damages can include a variety of approaches, such as installing low water crossings, increasing culvert size, installing a relief culvert, adding riprap to a road embankment, and many others.[127]

Due to the vast diversity of facilities, the highly project-specific nature of facilities projects, and numerous options for making them resilient, FEMA could not estimate the costs of improving flood resiliency of facilities. Where facilities are new construction, substantial improvement, or substantially damaged, they will incorporate minimization measures that will consider the FFRMS flood elevation. However, floodproofing and elevation to a specific height would likely not be appropriate. FEMA cannot estimate the cost due to the variability of those measures, which may include a variety of approaches, such as installing low water crossings, increasing culvert size, installing a relief culvert, and many others. Facilities that are already located in the Special Flood Hazard Area (SFHAs) or 0.2 percent annual chance floodplain for critical actions must take resilience measures

[125] Costs for the FVA may be a better comparison because they represent 2 or 3 feet of freeboard, depending on criticality. However, the number of projects using FVA and CISA differ, making such a comparison difficult.

[126] FEMA's PA program requires the use of the American Society of Civil Engineers Standard (ASCE) 24 that establishes minimum requirements for flood-related design and construction of structures that are located in whole or in part in flood hazard areas for PA projects. FEMA was unable to account for these additional baseline requirements since FEMA databases do not identify projects that were built to ASCE standards as these databases were not designed for data analysis. Additionally, these standards are based on the flood zone where the project is located, and FEMA was unable to identify the flood zones where individual projects were located. Instead, FEMA measures the effects of this rule against the current requirements of 44 CFR part 9. Accordingly, the estimated costs of compliance for PA structures may be overstated. *See* FEMA Recovery Interim Policy FP–104–009–11 Version 2, Consensus-Based Codes, Specifications and Standards for Public Assistance (December 2019) *FEMA Recovery Interim Policy FP–104–009–11 Version 2* (last accessed July 12, 2023) (referencing FEMA's Public Assistance Program and Policy Guide, FP104–009–2 (April 2018)).

[127] See FEMA, ''FEMA B–797 Hazard Mitigation Field Book: Roadways,'' (2010), available at *https://www.fema.gov/sites/default/files/2020-07/b797_hazmit_handbook.pdf (last accessed July 12, 2023).*

under current regulations. Based on 2012–2021 data, FEMA estimates that about 1,181 Category C projects, 131 Category D projects, 254 Category F projects, and 446 Category G projects might be affected by the FFRMS each year.

For PA Category E projects, if FVA were the only expansion option, FEMA estimates the proposed rule would affect 1,090 projects over the first 10 years, which would result in a total cost of between $44.3 million and $53.2 million, undiscounted, over the 60-year period of analysis. The costs are incurred in the first 10 years of the 60-year period because that is when the investment in those projects takes place. Accordingly, FEMA estimates average annual costs in years 1–10 would range between $3.9 million and $5.9 million. The average Federal cost share for PA projects from 2012–2021 was 80.7 percent. Accordingly, FEMA estimates that it would cover 80.7 percent of the cost to elevate or floodproof PA projects, for a total of between $3.2 million and $3.7 million in additional grants per year for the first 10 years. Grant recipients would bear the remaining cost of between $0.9 million and $1.0 million per year for the first 10 years.

For PA Category E projects, if 0.2PFA were the only expansion option, FEMA estimates the proposed rule would affect 840 projects over the first 10 years, which would result in a total cost of between $39.5 million and $46.0 million, undiscounted, over the 60-year period of analysis. Because these costs are incurred in the first 10 years, FEMA estimates the average annual costs in years 1–10 would range between $3.2 million and $3.6 million. Using the historical average 80.7 percent Federal cost share, FEMA estimated that it would cover 80.7 percent of the cost to elevate or floodproof PA projects, for a total of between $3.2 million and $3.7 million in additional grants per year for the first 10 years. Grant recipients would bear the remaining cost of between $0.8 million and $0.9 million per year for the first 10 years.

For PA Category E projects, if CISA were the only expansion option, FEMA estimates the proposed rule would affect 1,173 projects over the first 10 years, which would result in a total cost of between $88.9 million and $101.8 million, undiscounted, over the 60-year period of analysis. Because these costs are incurred in the first 10 years, FEMA estimates the average annual costs in years 1–10 would range between $8.9 million and $10.2 million. Using the historical average 80.7 percent Federal cost share, FEMA estimated that it would cover 80.7 percent of the cost to elevate or floodproof PA projects, for a total of between $7.2 million and $8.2 million in additional grants per year for the first 10 years. Grant recipients would bear the remaining cost of between $1.7 million and $2.0 million per year for the first 10 years.

TABLE 8—SUMMARY OF FFRMS PA CATEGORY E PROJECT COSTS AND DISTRIBUTIONAL IMPACTS BY APPROACH

	FVA	0.2PFA	CISA
Low Estimate:			
Annual cost (Years 1–10)	$3,990,396	$3,153,882	$8,887,014
FEMA's portion (grants from FEMA to recipients)	3,220,250	2,545,183	7,171,820
Recipients' portion	770,150	608,700	1,715,190
High Estimate:			
Annual cost (Years 1–10)	4,594,514	3,590,760	10,179,589
FEMA's portion (grants from FEMA to recipients)	3,707,773	2,897,743	8,214,928
Recipients' portion	886,740	693,020	1,964,660

Unquantified: Increased resiliency standard for structures that would affect an estimated 1,181 Category C projects, 131 Category D projects, 254 Category F projects, and 446 Category G projects per year.

IA Projects

IA grants are provided to individuals who, as a direct result of a disaster, have necessary expenses and serious needs that they are unable to meet through other means. IA is divided into housing assistance and other needs assistance. Other Needs Assistance under IA provides a financial assistance for medical, dental, childcare, funeral, personal property, transportation, or other necessary expenses or serious needs. Under Housing Assistance, FEMA may provide temporary housing assistance (financial assistance or direct assistance in the form of temporary housing units); a capped amount of financial assistance for the repair or replacement of disaster-damaged private residences; and, in rare circumstances, financial or direct assistance to construct permanent or semi-permanent housing.

The financial caps on housing repair or replacement assistance means IA grants generally do not fund new construction or substantial improvements. However, there are two types that would be affected by this proposed rule: IA Permanent Housing Construction (PHC) projects and sales and disposal of temporary housing units (THUs). PHC is Federal assistance that FEMA provides under IA for the purpose of constructing permanent housing where alternative housing resources are unavailable or scarce. IA also includes the sale and disposal of THUs, such as mobile housing units and recreational vehicles, and THUs located in the FFRMS floodplain would be subject to the requirements of this rule. FEMA regulations prohibit the floodproofing of residential structures at or below the BFE: elevation is the only option.[128] FEMA calculated the cost of elevating PHC structures, depending on FFRMS approach and location and type of project.[129] FEMA subtracted certain costs that it determined to be part of the baseline. Specifically, numerous States and Localities have existing freeboard requirements that would result in elevation costs and benefits regardless of this rule, so costs and benefits for these areas were reduced based on existing requirements.[130]

[128] *See* 44 CFR 60.3. *See* also Floodproofing, FEMA, available at: *https://www.fema.gov/glossary/floodproofing* (last accessed July 12, 2023).

[129] Projects outside of the 1 percent annual chance floodplain, but below the required level would need to be elevated to the required level. These projects require elevations of different levels, depending on the structure's current elevation. FEMA assumed that half of the projects would need to be elevated 1-ft and the other half or projects would need to be elevated 2-ft. This assumption was made because FEMA is unsure of the actual number of projects that would need to be elevated by 1-ft or 2-ft and so assumed that it would be an even proportion for each height. IA projects are all considered non-critical actions and would not require a 3-ft level.

[130] FEMA estimated that about 43.75 percent of the U.S. population lives in areas with no existing freeboard requirements, while 37.63 percent of the

Continued

For IA, if FVA were the only expansion option, FEMA estimates the proposed rule would affect 2,650 structures over the first 10 years, which would result in a total cost of $511,822, undiscounted, over the 60-year period of analysis. The costs are incurred in the first 10 years of the 60-year period because that is when the investment in those projects takes place. Accordingly, FEMA estimates average annual costs of $51,182 in years 1–10. Since there is no cost share for IA, FEMA would fund the entire cost of elevating IA projects through grants.

For IA, if 0.2PFA were the only expansion option, FEMA estimates the proposed rule would affect 2,650 structures over the first 10 years, which would result in a total cost of $511,822, undiscounted, over the 60-year period of analysis. Because these costs are incurred in the first 10 years of the analysis, FEMA estimates the average annual cost in years 1–10 is $51,182. Since there is no cost share for IA, FEMA would fund the entire cost of elevating IA projects through grants.

For IA, if CISA were the only expansion option, FEMA estimates the proposed rule would affect 2,903 projects over the first 10 years, which would result in a total cost of $1,421,690, undiscounted, over the 60-year period of analysis.[131] Because these costs are incurred in the first 10 years of the analysis, FEMA estimates the average annual cost in years 1–10 is $142,169. Since there is no cost share for IA, FEMA would fund the entire cost of elevating IA projects through grants.

TABLE 9—SUMMARY OF FFRMS IA PROJECT COSTS AND DISTRIBUTIONAL IMPACTS BY APPROACH

	FVA	0.2PFA	CISA
Annual cost (Years 1–10)	$51,182	$51,182	$142,169
FEMA's portion (grants from FEMA to recipients)	51,182	51,182	142,169
Recipients' portion	0	0	0

HMA Projects

FEMA provides HMA grants to States, territories, Federally-recognized Tribes, and local communities for the implementation of hazard mitigation measures to increase resiliency to disasters. HMA projects relating to flood mitigation mainly include elevation of structures, floodproofing of structures,[132] and acquisition of properties that are at a high risk of damage from flooding. HMA also funds various other types of projects, such as minor flood control, property acquisition, and generators, but FEMA was unable to estimate the potential costs associated with these projects because the manner in which each applicant meets the resiliency standards would be fact-specific and dependent upon the nature of the design and purpose of the project. Between 2010 and 2019, FEMA funded a total of 841 minor flood controls and generators projects, for an average of 84 such projects per year. Additional minor mitigation measures would have to be taken for these projects, if located in the expanded FFRMS floodplain.

FEMA used data from HMA grant approvals for projects that include the elevation or floodproofing of structures from 2010–2019 and a multi-step process to estimate the range of costs for elevating or floodproofing these structures to the FFRMS.[133]

For HMA, if FVA were the only expansion option, FEMA estimates the proposed rule would affect 9,492 structures over the first 10 years, which would result in a total cost of $21.6 million, undiscounted, over the 60-year period of analysis. These costs are incurred in the first 10 years of the 60-year period because that is when the investment in those projects takes place. Accordingly, FEMA estimates average annual costs in years 1–10 of $2.2 million. Using the 75 percent Federal cost share, FEMA estimated that it would cover 75 percent of the cost to elevate or floodproof HMA projects, for a total of $1.6 million in additional grants per year in years 1–10. Grant recipients would bear the remaining cost of $0.5 million per year.

For HMA, if 0.2PFA were the only expansion option, FEMA estimates the proposed rule would affect 9,447 structures in the first 10 years, which would result in a total cost of $21.3 million, undiscounted, over the 60-year period of analysis. Because these costs are incurred in the first 10 years of the analysis, FEMA estimates the average annual cost in years 1–10 would be $2.1 million. Using the 75 percent Federal cost share, FEMA estimated that it would cover 75 percent of the cost to elevate or floodproof HMA projects, for a total of $1.6 million in additional grants per year in years 1–10. Grant recipients would bear the remaining cost of $0.5 million per year.

For HMA, if CISA were the only expansion option, FEMA estimates the proposed rule would affect 10,351 structures over the first 10 years, which would result in a total cost of $48.1 million, undiscounted, over the 60-year period of analysis. Because these costs are incurred in the first 10 years, FEMA

U.S. population lives in area with a 1-ft freeboard requirement and 12.87 percent lives with a 2-ft requirement. A further 5.25 percent of the population is subject to a 3-foot existing freeboard requirement and 0.50 percent to a 4-foot requirement.

[131] For analysis purposes, FEMA calculated the expanded floodplain using the mid-point +5-ft CISA by expanding the floodplain by 26 percent. FEMA opted for the mid-point level for CISA because this is the best approach with available data. Please see further explanation in the appropriate CISA sections: 6.4.3, 6.5.3, and 6.6.3.

[132] FEMA's HMA program requires the use of the American Society of Civil Engineers Standard (ASCE) 24 that establishes minimum requirements for flood-related design and construction of structures that are located in whole or in part in flood hazard areas for structure elevation, mitigation reconstruction, and floodproofing projects for HMA. FEMA was unable to account for these additional baseline requirements since the database does not identify projects that were built to ASCE standards as this database was not designed for data analysis. Additionally, these standards are based on the flood zone where the project is located, and FEMA was unable to identify the flood zones where individual projects were located. Instead, FEMA measures the effects of this rule against the current requirements of 44 CFR part 9. Accordingly, the estimated costs of compliance for HMA structures may be overstated. *See* FEMA Policy–203–074–1; issued April 21, 2014. *https://www.fema.gov/sites/default/files/2020-07/asce24-14_highlights_jan2015.pdf* (last accessed July 12, 2023).

[133] To estimate the HMA costs to this section of the proposed rule, FEMA reviewed their HMA database to identify projects over a 10-year period (2010–2019) that would be subject to the FFRMS. FEMA was unable to obtain a 10-year of historical data from 2012–2021 for HMA due to changes within the program's database. From 2010 to 2019, HMA used the Pre-Disaster Mitigation (PDM) grant program. Starting in 2020, HMA used the Building Resilient Infrastructure and Communities (BRIC) grant program. BRIC would only be able to provide limited data over the last 2 years of which would not be sufficient for this analysis. Additionally, PDM and BRIC databases are not compatible with each other. Therefore, FEMA analyzed the best available data from PDM for years between 2010–2019.

estimates the average annual cost in years 1–10 is $4.8 million. Using the 75 percent Federal cost share, FEMA estimates that it would cover 75 percent of the cost to elevate or floodproof HMA projects, for a total of $3.6 million in additional grants per year. Grant recipients would bear the remaining cost of $1.2 million per year.

TABLE 10—SUMMARY OF FFRMS HMA STRUCTURE PROJECT COSTS AND DISTRIBUTIONAL IMPACTS BY APPROACH

	FVA	0.2PFA	CISA
Quantified Estimates:			
Annual cost (Years 1–10)	$2,157,881	$2,134,698	$4,810,196
FEMA's portion (grants from FEMA to recipients)	1,618,411	1,601,024	3,607,647
Recipients' portion	539,470	533,675	1,202,549

Unquantified: Increased resiliency standard for an estimated 84 minor flood controls and generators projects per year.

Total Costs

The proposed rule would increase costs for certain IA, PA, and HMA program projects, as well as result in administrative costs for FEMA. FEMA expects minimal effects on grants processed by FEMA's GPD because these programs involve grants for preparedness activities and generally do not fund new construction or substantial improvement projects. Future FEMA facilities that may be located within the FFRMS floodplain would also be subject to the requirements of the proposed rule.

FEMA was unable to quantify the cost for increased resiliency standards for the 20,961 facility projects estimated to be affected in the first 10 years after the rule's publication. Additionally, FEMA was unable to quantify the cost for projects that may be diverted out of the floodplain, impacts to projects with existing basements, project delays, or forgone projects that may result from this rule.

Using CISA as the primary approach, FEMA estimates that the proposed rule would affect 14,427 PA, IA, and HMA structures over the first 10 years, which would result in a total cost of between $142.1 million and $156.3 million, undiscounted, over the 60-year period of analysis. The costs are incurred in the first 10 years of the 60-year period because that is when the investment in those projects takes place.[134] Discounted over 60 years, the low estimate cost would be between $121.3 million and $100 million, using 3 and 7 percent respectively, with a 60-year annualized cost of $4.4 million and $7.1 million, using 3 and 7 percent respectively (see Table 11). Discounted over 60 years, the high estimate cost for would be between $133.4 million and $109.9 million, using 3 and 7 percent respectively, with a 60-year annualized cost of $4.8 million and $7.8 million, using 3 and 7 percent (see Table 12). Monetized costs include additional training for FEMA staff as well as the cost for the additional elevation or floodproofing. FEMA was unable to quantify the cost for increased resiliency standards for an estimated 20,961 affected facility projects over the 10-year period of analysis. Additionally, FEMA was unable to quantify the cost for projects that may be diverted out of the floodplain, impacts to projects with existing basements, project delays, or forgone projects that may result from this rule.

TABLE 11—PRIMARY APPROACH (CISA) ESTIMATED COSTS OVER THE 60-YEAR PERIOD OF ANALYSIS

[Low estimate, 2021$]

Year	FEMA admin costs	Elevation and floodproofing costs	Undiscounted annual costs	Annual costs discounted at 3%	Annual costs discounted at 7%
1	$950,132	$13,839,379	$14,789,511	$14,358,748	$13,821,973
2	310,172	13,839,379	14,149,551	13,337,309	12,358,765
3	310,172	13,839,379	14,149,551	12,948,843	11,550,248
4	310,172	13,839,379	14,149,551	12,571,692	10,794,624
5	310,172	13,839,379	14,149,551	12,205,527	10,088,434
6	310,172	13,839,379	14,149,551	11,850,026	9,428,443
7	310,172	13,839,379	14,149,551	11,504,879	8,811,629
8	310,172	13,839,379	14,149,551	11,169,786	8,235,167
9	310,172	13,839,379	14,149,551	10,844,452	7,696,418
10	310,172	13,839,379	14,149,551	10,528,594	7,192,914
11–60 *	0	0	0	0	0
Total	3,741,680	138,393,786	142,135,466	121,319,856	99,978,615
Annualized				4,383,645	7,121,399

* After year 10, the proposed rule would continue to impact FEMA projects funding new construction, substantial improvements or repairs to fix substantial damage, but FEMA chose to limit the analysis to 10 years of affected structures because FEMA believes the number of structures affected in this 10-year period is enough to provide a reasonable estimate of the costs, benefits, and transfers resulting from the proposed rule. Accordingly, FEMA's analysis focuses on the 50-year impacts of the rule on projects that take place in the nearest 10-year period, for a total period of analysis spanning 60 years.

[134] FEMA focused its analysis on the projects impacted in the first 10 years after the rule's publication. FEMA considered the resulting costs, benefits, and transfer payments of the proposed rule on those projects over a 50-year period, for a total of 60 years. The costs and transfers occur in the first 10 years of the 60-year period because that is when the initial investment to elevate or floodproof them to meet the proposed requirements takes place. This is an upfront cost that occurs when the project is constructed. However, the benefits of the proposed rule are realized over the 50-year useful life of the affected structures.

TABLE 12—PRIMARY APPROACH (CISA) ESTIMATED COSTS OVER THE 60-YEAR PERIOD OF ANALYSIS

[High estimate, 2021$]

Year	FEMA admin costs	Elevation and floodproofing costs	Undiscounted annual costs	Annual costs discounted at 3%	Annual costs discounted at 7%
1	$1,070,207	$15,131,954	$16,202,161	$15,730,253	$15,142,206
2	430,247	15,131,954	15,562,201	14,668,867	13,592,629
3	430,247	15,131,954	15,562,201	14,241,618	12,703,391
4	430,247	15,131,954	15,562,201	13,826,814	11,872,328
5	430,247	15,131,954	15,562,201	13,424,091	11,095,634
6	430,247	15,131,954	15,562,201	13,033,098	10,369,751
7	430,247	15,131,954	15,562,201	12,653,493	9,691,356
8	430,247	15,131,954	15,562,201	12,284,945	9,057,342
9	430,247	15,131,954	15,562,201	11,927,131	8,464,806
10	430,247	15,131,954	15,562,201	11,579,739	7,911,034
11–60*	0	0	0	0	0
Total	4,942,430	151,319,537	156,261,967	133,370,049	109,900,477
Annualized				4,819,054	7,828,126

*After year 10, the proposed rule would continue to impact FEMA projects funding new construction, substantial improvements or repairs to fix substantial damage, but FEMA chose to limit the analysis to 10 years of affected structures because FEMA believes the number of structures affected in this 10-year period is enough to provide a reasonable estimate of the costs, benefits, and transfers resulting from the proposed rule. Accordingly, FEMA's analysis focuses on the 50-year impacts of the rule on projects that take place in the nearest 10-year period, for a total period of analysis spanning 60 years.

Total Transfer Payments

Because the cost to implement the proposed mitigation measures would be shared between FEMA and grant recipients according to the statutory cost share, there are also important distributional impacts. The majority of elevation and floodproofing costs would be borne by FEMA through additional grants (a transfer from FEMA to grant recipients). Grant recipients would bear the remaining cost. The below section shows the additional transfers from FEMA to grant recipients. Using CISA as the primary approach, FEMA estimated that this proposed rule would affect 14,427 structures in the first 10 years, which would result in an increase in transfer payments (*i.e.,* grants) from FEMA to grant recipients, of between $109.2 million and $119.6 million, undiscounted, over the 60-year period of analysis. Discounted using 3 and 7 percent respectively, FEMA's low estimate of the increase in transfer payments is between $93.2 million and $76.7 million, with a 60-year annualized transfer between $3.4 million and $5.5 million, at 3 and 7 percent respectively (see Table 13). Discounted using 3 and 7 percent respectively, FEMA's high estimate of the increase in transfer payments would be between $102.1 million and $84.0 million, with a 60-year annualized transfer between $3.7 million and $6.0 million, at 3 and 7 percent respectively (see Table 14).

TABLE 13—PRIMARY APPROACH (CISA) ESTIMATED TRANSFERS OVER THE 60-YEAR PERIOD OF ANALYSIS

[Low estimate, 2021$]

Year	Transfers from FEMA to recipients	Total transfers discounted at 3%	Total transfers discounted at 7%
1	$10,921,636	$10,603,530	$10,207,136
2	10,921,636	10,294,689	9,539,380
3	10,921,636	9,994,844	8,915,308
4	10,921,636	9,703,732	8,332,064
5	10,921,636	9,421,099	7,786,975
6	10,921,636	9,146,698	7,277,547
7	10,921,636	8,880,289	6,801,446
8	10,921,636	8,621,640	6,356,492
9	10,921,636	8,370,524	5,940,646
10	10,921,636	8,126,723	5,552,006
11–60*	0	0	0
Total	109,216,359	93,163,768	76,709,000
Annualized		3,366,283	5,463,923

*After year 10, the proposed rule would continue to impact FEMA projects funding new construction, substantial improvements or repairs to fix substantial damage, but FEMA chose to limit the analysis to 10 years of affected structures because FEMA believes the number of structures affected in this 10-year period is enough to provide a reasonable estimate of the costs, benefits, and transfers resulting from the proposed rule. Accordingly, FEMA's analysis focuses on the 50-year impacts of the rule on projects that take place in the nearest 10-year period, for a total period of analysis spanning 60 years.

TABLE 14—PRIMARY APPROACH (CISA) ESTIMATED TRANSFERS OVER THE 60-YEAR PERIOD OF ANALYSIS

[High estimate, 2021$]

Year	Transfers from FEMA to recipients	Total transfers discounted at 3%	Total transfers discounted at 7%
1	$11,964,744	$11,616,256	$11,182,004
2	11,964,744	11,277,919	10,450,471
3	11,964,744	10,949,436	9,766,795
4	11,964,744	10,630,520	9,127,846
5	11,964,744	10,320,893	8,530,697
6	11,964,744	10,020,285	7,972,614
7	11,964,744	9,728,432	7,451,041
8	11,964,744	9,445,079	6,963,590
9	11,964,744	9,169,980	6,508,028
10	11,964,744	8,902,893	6,082,269
11–60*	0	0	0
Total	119,647,439	102,061,693	84,035,355
Annualized	.....	3,687,791	5,985,773

*After year 10, the proposed rule would continue to impact FEMA projects funding new construction, substantial improvements or repairs to fix substantial damage, but FEMA chose to limit the analysis to 10 years of affected structures because FEMA believes the number of structures affected in this 10-year period is enough to provide a reasonable estimate of the costs, benefits, and transfers resulting from the proposed rule. Accordingly, FEMA's analysis focuses on the 50-year impacts of the rule on projects that take place in the nearest 10-year period, for a total period of analysis spanning 60 years.

Total Benefits

FEMA believes that the benefits of the proposed rule would justify the costs. FEMA has identified qualitative benefits, including the reduction in damage to properties and contents from future floods, potential lives saved, public health and safety benefits, reduced recovery time from floods, and increased community resilience to flooding. FEMA has also analyzed quantified benefits of one additional foot of freeboard for PA projects.

FEMA believes this proposed rule would result in savings in time and money from a reduced recovery period after a flood and increased safety of individuals. Generally, if properties are protected, there would be less damage, resulting in less recovery time. In addition, higher elevations would help to protect people, leading to increased safety. FEMA is unable to quantify these benefits.

In support of these benefits, FEMA uses the 2022 Benefits Analysis of Increased Freeboard for Public and Nonresidential Buildings in Riverine and Coastal Floodplains [135] (2022 report), which analyzed potential benefits, such as reduction in damages, displacement, and loss of function, from increased flood protection requirements for public and nonresidential use buildings located in riverine and coastal SFHAs. This report's scope included six construction methods in coastal and riverine areas: Elementary School 1-Story, Hospital 2–3 Stories, Police Station 2-Stories, Office Building (Business) 1-Story, Office Building (Business) 3-Story, and Office Building (Government office) 1-Story. The riverine analysis considered locations along 14 rivers, while the coastal analysis considered 12 different locations along a hypothetical coastal transect, and both only considered scenarios based on future conditions.

Future conditions for the riverine analysis included two climate change scenarios: the Representative Concentration Pathways (RCP) 4.5 scenario and 8.5 scenario, which represent medium and low efforts to curb emissions, respectively. The study used these two climate change scenarios to evaluate the amount of increase or decrease in riverine flood elevations over the next 50 years. For the coastal analysis, the study included the impact of various sea level rise conditions in areas with wave heights less than 1.5-ft (flood zone A) that are subject to coastal storm surge. The sea level rise conditions replicated a 2016 evaluation considering 8-, 20-, 39- and 59-inch sea level rise by 2100. FEMA evaluates benefits associated with the rule using both RCP 4.5 and 8.5 scenarios, and three of the four sea level rise conditions: 8-, 39-, and 59-inches.

The 2022 report used FEMA's BCA Toolkit to calculate benefits for each year between 2023 and 2072 and then used these projections to calculate the present value benefits for each scenario.[136] The Toolkit used standard depth-damage functions (curves) to estimate damages from inundation and to calculate the benefits of mitigation, which included avoided physical damage, avoided displacement (costs incurred while staying in a temporary location following an event), and avoided loss of function (the economic impact to a community due to a lack of critical services). The study considered the potential avoided losses (or benefits) associated with either dry floodproofing or elevation of nonresidential and public use buildings.[137] It compared existing freeboard requirements against one additional foot of freeboard; that is, the study evaluates the benefits of elevating or floodproofing to the BFE+2 from a current assumed height of BFE+1 for non-critical actions and to BFE+3 from a current assumed height of BFE+2 for critical actions.

According to this report, for critical facilities in coastal SFHAs, such as police stations and hospitals, inclusion of one additional foot of freeboard will provide increased protection and continuity of operations and would result in a quantifiable benefit. Elevating buildings would help to maintain community resiliency further into the future. The riverine analysis indicated that despite the large variation in the flood data for the 14 sites, inclusion of

[135] This report is available on *regulations.gov* under Docket ID FEMA–2023–0026.

[136] FEMA developed the BCA Toolkit to perform an analysis of cost-effectiveness of mitigation projects. The BCA Toolkit uses Office of Management and Budget cost-effectiveness guidelines and FEMA-approved methodologies and tools to complete a benefit-cost analysis. The tool can be found here: *https://www.fema.gov/grants/tools/benefit-cost-analysis#toolkit* (last accessed July 12, 2023).

[137] 2016 Evaluation of the Benefits of Freeboard for Public and Nonresidential Buildings in Coastal Areas. *https://www.regulations.gov/document/FEMA-2015-0006-0379* at page 7 (last accessed July 12, 2023).

one additional foot of freeboard would result in quantifiable average benefits. Critical actions and schools had the highest benefits across various riverine locations.

FEMA used this study to estimate the benefits of an additional foot of freeboard for non-residential PA projects. FEMA was unable to use the benefits study to estimate the benefits for HMA and IA projects since HMA data could not be broken out by building types and IA data were limited to residential-related projects.

For FEMA's primary estimate, FEMA used 59 inches of SLR due to it being the closest SLR option to CISA+5-ft. CISA is the preferred approach for FFRMS if the data are available. Since 5 ft is equivalent to 60 inches (5×12 inches per foot), 59-inch SLR would be the closest SLR option that FEMA has available to use for this portion of the analysis. If FEMA used CISA for all PA Category E projects that were subject to the FFRMS with the assumption that there would be a 59-inch SLR, FEMA estimated that the present value benefits of one additional foot of freeboard for the 50-year useful life of 1,173 PA Category E projects undertaken during the first 10 years after the rule's publication would be between $55.2 million and $62.0 million, undiscounted. The low estimate would range between $47.1 million and $38.8 million, discounted at 3 and 7 percent respectively, with a 60-year annualized benefit of $1.7 million and $2.8 million, at 3 and 7 percent (See Table 15). The high estimate would range between $52.9 million and $43.5 million, discounted at 3 and 7 percent respectively, with a 60-year annualized benefit of $1.9 million and $3.1 million, at 3 and 7 percent. (See Table 16).

In Tables 15 and 16 below, FEMA shows the number of projects constructed each year (column 2), the present value of the benefits as of the year in which they were constructed (column 3), and the present value of the benefits as of the beginning of Year 1 using a 3 percent and 7 percent discount rate (columns 3 and 4, respectively). For example, the benefits shown in Year 1 represent the present value of the benefits for the 117 Category E projects constructed in Year 1 over their 50-year useful life (*i.e.,* in Years 1–50 of the analysis). The analysis does not account for any benefits for Year 1 projects after their 50-year useful life. The benefits shown in Year 10 represent the present value of the benefits for projects constructed in Year 10 over their 50-year useful life, (*i.e.,* in Years 11–60 of the analysis).

TABLE 15—PRIMARY APPROACH (CISA) ESTIMATED 50-YEAR BENEFITS FOR PA CATEGORY E PROJECTS UNDERTAKEN DURING YEARS 1–10

[Low estimate, 2021$]

Year	Number of PA Category E projects	Total 50-year present value benefit for projects constructed in each year*	Discounted 3%	Discounted 7%
1	117	$5,518,000	$5,357,282	$5,157,009
2	117	5,518,000	5,201,244	4,819,635
3	117	5,518,000	5,049,752	4,504,332
4	117	5,518,000	4,902,672	4,209,656
5	117	5,518,000	4,759,875	3,934,258
6	117	5,518,000	4,621,238	3,676,876
7	117	5,518,000	4,486,639	3,436,333
8	117	5,518,000	4,355,960	3,211,526
9	117	5,518,000	4,229,088	3,001,426
10	117	5,518,000	4,105,910	2,805,071
60-Year Total*	1,173	.....	47,069,660	38,756,122
Annualized**	.....	.....	1,700,766	2,760,569

*The benefits in this column represent the present value of the benefits for structures constructed in that year over their 50-year useful life, as of the year in which they were constructed.

**The total benefits represent the total present value of benefits as of the beginning of Year 1.

TABLE 16—PRIMARY APPROACH (CISA) ESTIMATED 50-YEAR BENEFITS FOR PA CATEGORY E PROJECTS UNDERTAKEN DURING YEARS 1–10

[High estimate, 2021$]

Year	Number of PA Category E projects	Total 50-year present value benefit for projects constructed in each year*	Discounted 3%	Discounted 7%
1	117	$6,198,572	$6,018,031	$5,793,058
2	117	6,198,572	5,842,749	5,414,073
3	117	6,198,572	5,672,571	5,059,881
4	117	6,198,572	5,507,351	4,728,861
5	117	6,198,572	5,346,943	4,419,496
6	117	6,198,572	5,191,206	4,130,370
7	117	6,198,572	5,040,006	3,860,159
8	117	6,198,572	4,893,210	3,607,625
9	117	6,198,572	4,750,689	3,371,612

TABLE 16—PRIMARY APPROACH (CISA) ESTIMATED 50-YEAR BENEFITS FOR PA CATEGORY E PROJECTS UNDERTAKEN DURING YEARS 1–10—Continued

[High estimate, 2021$]

Year	Number of PA Category E projects	Total 50-year present value benefit for projects constructed in each year *	Discounted 3%	Discounted 7%
10	117	6,198,572	4,612,320	3,151,040
60-Year Total *	1,173		52,875,076	43,536,175
Annualized **			1,910,533	3,101,048

* The benefits in this column represent the present value of the benefits for structures constructed in that year over their 50-year useful life, as of the year in which they were constructed.

** Annualized over the 60-year period of analysis.

For more in-depth review of these costs and benefits, please see the Regulatory Impact Analysis, which can be found in the docket for this rulemaking.

B. Regulatory Flexibility Act

This section considers the effects that this proposed rule would have on small entities as required by the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.,* Pub. L. 96–354) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). Small entities include small businesses, small organizations, and small governmental jurisdictions.

FEMA prepared an Initial Regulatory Flexibility Analysis (IRFA) for this proposed rule. This analysis is detailed in this section and represents FEMA's assessment of the impacts of this proposed rule on small entities. Section 1 outlines FEMA's initial assessment of small entities that would be affected by the proposed regulations. Section 2 presents FEMA's analysis and summarizes the steps taken by FEMA to comply with the RFA.

1. Initial Assessment of Small Entities Affected by the Proposed Regulations

The proposed rule would affect FEMA grant recipients that receive Federal funds for new construction, substantial improvement to structures, or to address substantial damage to structures and facilities. Many of these grants are available to local governmental jurisdictions and non-profit organizations. FEMA does not provide grants to for-profit businesses.

2. Analysis and Steps Taken To Comply With the Regulatory Flexibility Act

The following IRFA addresses the following requirements of the RFA:

(1) a description of the reasons why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule;

(6) a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes, and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as: the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; the use of performance rather than design standards; and an exemption from coverage of the rule, or any part thereof, for such small entities.

2.1 Description of the Reasons Why Action by the Agency Is Being Considered

The President issued Executive Order 11988 in 1977 in furtherance of the National Flood Insurance Act of 1968, as amended; the Flood Disaster Protection Act of 1973, as amended; and the National Environmental Policy Act of 1969 (NEPA). Executive Order 11988 requires Federal agencies to avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains, where there is a practicable alternative. Executive Order 11988 requires agencies to prepare implementing procedures in consultation with the Water Resources Council (WRC), FEMA, and the Council on Environmental Quality (CEQ). The WRC issued ''Floodplain Management Guidelines'' (1978 Guidelines or Implementing Guidelines), the authoritative interpretation of Executive Order 11988. The 1978 Guidelines provided a section-by-section analysis, defined key terms, and outlined an 8-step decision-making process for carrying out the directives of Executive Order 11988.

After Hurricane Sandy it became clear to the Federal Government that there should be a reevaluation of the current flood risk reduction standards. The President issued Executive Order 13632, which created the Federal Interagency Hurricane Sandy Rebuilding Task Force (Sandy Task Force). Pursuant to direction from Executive Order 13632 to remove obstacles to resilient rebuilding, the Sandy Task Force reevaluated the 1 percent annual chance/100-year standard. In April 2013, the Sandy Task Force announced a new Federal flood risk reduction standard that required elevation or other floodproofing to one-foot above the best available and most recent base flood elevation and applied

that standard to all investments in Sandy-affected communities. The Sandy Task Force called for all major Sandy rebuilding projects in Sandy-affected communities using Federal funding to be elevated or otherwise floodproofed according to this new flood risk reduction standard.

In June 2013, the President issued a Climate Action Plan that directs agencies to take appropriate actions to reduce risk to Federal investments, specifically directing agencies to build on the work done by the Sandy Task Force and to update their flood risk reduction standards for ''federally-funded . . . projects'' to ensure that ''projects funded with taxpayer dollars last as long as intended.'' In November 2013, the President's State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience (Climate Task Force) convened, with 26 Governors, Mayors, and Local and Tribal leaders serving as members. After a year-long process of receiving input from States, Local, Tribal, Territorial (SLTT) governments; private businesses; trade associations; academic organizations; civil society; and other stakeholders, the Task Force provided a recommendation to the President in November 2014. In order to ensure resiliency, Federal agencies, when taking actions in and around floodplains, should include considerations of the effects of changing conditions, including sea level rise, more frequent and severe storms, and increasing river flood risks. The Climate Task Force also recommended that the best available climate data should be used in siting and designing projects receiving Federal funding, and that margins of safety, such as freeboard and setbacks, should be included.

On January 30, 2015, the President issued Executive Order 13690, which amended Executive Order 11988 and established a new flood risk management standard called the FFRMS. Executive Order 11988, as amended, and the FFRMS changed the Executive Branch-wide guidance for defining the ''floodplain'' with respect to ''Federally funded projects'' (*i.e.,* actions involving the use of Federal funds for new construction, substantial improvement, or to address substantial damage to a structure or facility). It required FEMA to publish an updated version of the Implementing Guidelines (revised to incorporate the changes required by Executive Order 13690 and the FFRMS) in the **Federal Register** for notice and comment. Finally, Executive Order 13690 required the WRC to issue final Guidelines to agencies on the implementation of Executive Order 11988, as amended, consistent with the FFRMS.

On February 5, 2015, FEMA, on behalf of the Mitigation Framework Leadership Group, published a **Federal Register** notice for a 60-day notice and comment period seeking comments on a draft of the Revised Guidelines. The final Revised Guidelines were issued on October 8, 2015. The Revised Guidelines contain an updated version of the FFRMS (located at Appendix G of the Revised Guidelines), reiterate key concepts from the 1978 Guidelines, and explain the new concepts resulting from the FFRMS.

On August 22, 2016, FEMA issued a Notice of Proposed Rulemaking, ''Updates to Floodplain Management and Protection of Wetlands Regulations To Implement Executive Order 13690 and the Federal Flood Risk Management Standard.'' On August 15, 2017, Executive Order 13807 revoked Executive Order 13690. On March 6, 2018, FEMA withdrew its Notice of Proposed Rulemaking and proposed supplementary policy in light of the revocation of the Executive Order 13690. FEMA wrote that it would continue to seek more effective ways in its programs to assess and reduce the risk of current and future flooding and increase community resilience.

On May 25, 2021, Executive Order 14030 subsequently revoked Executive Order 13807 and reinstated Executive Order 13690, thereby reestablishing the FFRMS. The E.O. also states that the Revised Guidelines issued in 2015 were never revoked and remain in effect.

The FFRMS is a flexible framework to increase resilience against flooding and help preserve the natural and beneficial values of floodplains. Incorporating the FFRMS into FEMA regulations would ensure that FEMA expands flood risk management from the current base flood elevation to a higher vertical elevation and corresponding horizontal floodplain to address current and future flood risk and ensure that projects funded with taxpayer dollars last as long as intended. Several programs exist in order to assist with flood mitigation or recovery efforts after a flood.[138] IA and PA are disaster relief programs and primarily provide assistance after a disaster. HMA Grants are provided in order to increase resilience to hazards, and these have been shown to be very effective. By requiring recipients of FEMA funding to consider an expanded floodplain and build a higher level of flood resilience into their projects, the rule would reduce the likelihood of further damage and help prevent the loss of life in future flooding events. This would compel public recipients of Federal funds to build to higher flood resiliency standards and avoid repetitive loss situations.

[138] In addition to the FEMA-administered grant programs discussed in this analysis (IA, PA, HMA, and programs administered by GPD), FEMA also provides flood insurance through the NFIP. FEMA does not apply 44 CFR part 9 to non-grant site specific actions under the NFIP.

2.2 Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

FEMA is responsible for publishing information on floodplain areas and identifying special hazards. FEMA is also responsible for several grant programs that use Federal funds to assist in construction or reconstruction following a disaster, as well as grants for hazard mitigation and recovery. These grants can potentially be used for locations within a floodplain.

To meet the requirements of section 2(d) of Executive Order 11988, requiring agencies to issue or amend existing regulations and procedures to implement the Executive Order, FEMA promulgated regulations which are located at 44 CFR part 9. FEMA is revising 44 CFR part 9 to reflect the changes to Executive Order 11988 made via Executive Order 13690.

The objective of the proposed rule is to revise the regulations for locating actions subject to the FFRMS in an expanded floodplain to reduce the risk of flooding to those projects. In addition, for actions that are determined to be ''critical actions'' as defined by the proposed rule, the proposed rule would impose more stringent elevation and resiliency requirements. This is necessary to protect actions where even a slight chance of flooding is too great.

The rule would also require the use, where possible, of natural features and nature-based approaches when developing alternatives for consideration that would accomplish the same purpose as a considered action, but which have less potential to affect or be affected by the floodplain. Common examples of a nature-based approach would be replacing concrete drainage systems with natural drainage or covering an area with plants to absorb water and reduce runoff.

2.3 Description of, and Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

This rule would affect certain recipients of FEMA grants. These would primarily be PA and HMA grant recipients, which include States, Tribal governments, local governments, and certain non-profit organizations. The PA

grant recipients would include Categories C, D, E, F, and G projects; however, FEMA is only able to provide reasonable estimates of the number of entities and costs associated with Categories E (public buildings) because Category E projects are for structures whereas projects funded under the remaining categories are for facilities. Facilities would not be required to floodproof or elevate but would instead need to be made resilient to the appropriate flood levels, which is highly project-specific nature and lack of data for such projects makes it exceedingly difficult to estimate costs. IA and GPD are not discussed in this analysis. IA provides grants directly to individuals, who are not small entities as defined in 5 U.S.C. 601(6). FEMA finds that this rule would likely have no effect on GPD grants because GPD projects are not typically substantial improvement or new construction.

FEMA has estimated that the FFRMS requirements would expand the floodplain between 5 percent and 43 percent based on a study [139] conducted in 800 square miles of mapped flood zone areas. FEMA developed floodplain expansion estimates for two distinct areas of the country: coastal and riverine. The first estimate is for coastal areas where FEMA anticipates implementing the CISA approach using currently actionable sea level rise data. The second estimate is for the area that represents the rest of the country where the 0.2PFA or FVA approaches will likely be applied. A total of 400 square miles of mapped flood zones was used as the baseline estimate for each of the two areas of the country. FEMA selected 40 random samples of the coastal and riverine areas since these are the areas where the FFRMS would apply, with various topography, with at least 10 square miles in each sampled area. FEMA calculated the floodplain expansion in each sample at various levels of freeboard so that there was a total of 400 square miles of expansion information for each area.

FEMA selected CISA as its primary approach to evaluate the impacts of this proposed rule. FEMA's accompanying policy proposes use of CISA as the preferred approach because it is the only approach that would ensure projects are designed to meet current and future flood risks unique to the location and thus would ensure the best overall resilience, cost effectiveness, and equity. FEMA does not have data detailed enough to estimate the average CISA level within the United States for this analysis. For CISA, FEMA evaluated a range from 1 to 10 feet of freeboard based on anticipated interagency tools that are currently in development and are projected to apply CISA in those rounded amounts as ''climate-informed freeboard.'' The 10-foot ceiling would account for the highest levels of anticipated sea level rise along the Gulf and Atlantic coasts. Depending on location, under CISA, some places may be required to elevate or floodproof to +1-ft above the 1 percent annual chance plain while other places may be required to use +10-ft above the 1 percent annual chance plain. However, there is no data or research to know what the required levels are or how many structures would be subject to the requirements. For this analysis, FEMA calculated the expanded floodplain using the mid-point +5-ft freeboard level, which FEMA estimates expands the floodplain by 26 percent, on average, in coastal areas.

FEMA considered using the minimum and maximum levels as alternatives to the mid-point level, but the minimum and maximum would not reflect the impacts of the rule accurately. FEMA did not use the minimum level because it would reflect a large number of structures not elevated or floodproofed to a high enough standard, when in reality, the rule would require them to be subject to a higher standard. If FEMA modeled all structures at the minimum standard, the costs would be underestimated compared to the true impact of the rule. The benefits of protecting the structures from flood would also be underestimated because at the minimum level. many structures would be left vulnerable to devastating flood damage. Likewise, FEMA did not use the maximum level because it would reflect a large number of structures elevated or floodproofed to a standard too high compared to what the rule would require. If FEMA modeled all structures at the maximum standard, the costs would be overestimated compared to the true impact. The benefits of protecting the structures from flood could potentially be overestimated, as well, and not reflect the true impact of the rule.

PA provides grants to States, Tribal governments, local governments and certain non-profit organizations for rebuilding, replacement, or repair of public and non-profit facilities damaged by disasters. Where such rebuilding, replacement or repair involves new construction, substantial improvement, and repair of substantial damage of structures in the expanded FFRMS floodplain, PA recipients would incur additional costs to comply with proposed elevation and floodproofing requirements. From 2012–2021, 930 individual PA Category E grant recipients received FEMA funding for substantial improvement floodproofing [140] or new construction. Under the CISA approach, with the 26 percent expansion of the floodplain, an additional 242 PA Category E projects (930 × 26 percent), for a total of 1,172 (930 + 242) projects, would be located in the 1 percent annual chance floodplain or expanded FFRMS floodplain over the 10-year period. FEMA randomly sampled 92 projects.[141] Of the 92 projects, 40 projects, or 43 percent (40 ÷ 92), would meet the definition of small entities under the Regulatory Flexibility Act.

HMA provides mitigation grants to States, Tribal governments, local governments, and certain non-profit organizations to, among other things, relocate property outside of the floodplain, or to elevate or floodproof structures to the flood level. FEMA proposes to apply the FFRMS to all actions subject to the FFRMS, and all structure elevation, mitigation reconstruction, and dry floodproofing projects. As noted in the Regulatory Evaluation, FEMA funded an average of about 84 HMA elevation, mitigation reconstruction, and floodproofing structure projects per year from 2010–2019.[142] Unlike PA grants, the majority of HMA grants are for projects located in the floodplain, so for this analysis FEMA assumes that all HMA elevation, mitigation reconstruction and dry floodproofing projects are in the floodplain. FEMA cannot estimate what projects might be considered actions subject to the FFRMS in addition to structure elevation, mitigation reconstruction, and dry floodproofing projects because HMA data does not distinguish whether projects are

[139] FEMA conducted a study in 2022 in regard to the FFRMS Horizontal Floodplain Expansion Data (also referred to as the ''FFRMS Expansion Study''). Further information can be found in Appendix A to the FFRMS Regulatory Impact Analysis, available on *regulations.gov* under Docket ID FEMA–2023–0026.

[140] The cost of elevating an existing structure is significantly higher than the cost of retrofitting the structure to be floodproofed, so FEMA assumed that substantial improvement projects would elect to floodproof rather than elevate.

[141] The population of PA Category E projects includes all ''Public Buildings'' grants from 2012–2021 that received substantial improvement floodproofing or new construction funding. Because of the large population, FEMA used Slovin's formula and a 90 percent confidence interval to determine the sample size. Slovin's formula: $n = N/(1+N*e\hat{}2)$. Therefore, $1{,}172/(1 + 1{,}172 \times 0.1\hat{}2) = 92$ (rounded).

[142] FEMA was unable to obtain 10-years of historical data from 2012–2021 for HMA due to changes within the program's database and used the best available data for years 2010 through 2019 instead.

considered new construction, substantial improvement, or repairs to address substantial damage. However, structure elevation, mitigation reconstruction, and dry floodproofing are the primary HMA projects relating to flood mitigation.[143]

With the 26 percent expansion of the floodplain, an additional 22 HMA projects per year (84 × 26 percent), for a total of 106 (84 + 22) projects, would be located in the 1 percent annual chance floodplain or expanded FFRMS floodplain. Assuming 43 percent [144] of HMA grant recipients are small entities, approximately 46 small entities receiving HMA grants would be affected per year (106 projects × 43 percent).

Facilities would not be required to floodproof or elevate but would instead need to be made resilient to the appropriate flood levels, which is highly project-specific nature and lack of data for such projects makes it exceedingly difficult to estimate costs. FEMA could not estimate the cost of this rule on small entities for facilities. However, FEMA conducted an analysis to estimate the number of small entities for affected facility projects based on historical data.

In an average year, FFRMS would impact about 1,181 PA Category C facilities. Based on a random sample of 92 projects,[145] FEMA found that grant recipients for 71 of the projects, or 77.2 percent (71 ÷ 92), were small entities that would meet the definition of small entities under the Regulatory Flexibility Act.

In an average year, FFRMS would impact about 131 PA Category D facilities. Based on a random sample of 57 projects,[146] FEMA found that grant recipients for 38 of the projects, or 66.7 percent (38 ÷ 57), were small entities that would meet the definition of small entities under the Regulatory Flexibility Act.

In an average year, FFRMS would impact about 254 PA Category F facilities. Based on a random sample of 72 projects,[147] FEMA found that grant recipients for 52 of the projects, or 72.2 percent (52 ÷ 72), were small entities that would meet the definition of small entities under the Regulatory Flexibility Act.

In an average year, FFRMS would impact about 446 PA Category G facilities. Based on a random sample of 82 projects,[148] FEMA found that grant recipients for 38 of the projects, or 46.3 percent (38 ÷ 82), were small entities that would meet the definition of small entities under the Regulatory Flexibility Act.

In an average year, FFRMS would impact about 84 HMA grant recipients received FEMA funding per year for minor flood controls and generator projects. Based on a random sample of 46 projects,[149] FEMA found that grant recipients for 24 of the projects, or 52.1 percent (24 ÷ 46), were small entities that would meet the definition of small entities under the Regulatory Flexibility Act.

2.4 Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

FEMA will not be changing the application process for its grant programs. The majority of the costs for the increased elevation or floodproofing requirements of structures in the FFRMS floodplain would be funded by FEMA through several grant programs. Small entities, like all entities, would be subject to additional costs not covered by these grants for the floodproofing, elevation of structures, and flood resiliency measures required by the proposed rule. For the purposes of this analysis, and based on historical data, FEMA presents the costs such that all projects would choose to elevate because of the additional level of safety elevation provides over floodproofing and a historically higher number of HMA projects that involved elevation as opposed to floodproofing.[150] FEMA uses an NFIP report to estimate the cost of the proposed elevation requirements.[151] The report provides estimates for the cost of elevating structures as a percentage of total construction cost.

The cost of elevating an existing structure is considerably higher than the cost of retrofitting the structure to be floodproofed. Floodproofing involves sealing off areas below the flood level so that water cannot enter or altering the use of these areas so that flood waters may pass through without causing serious damage. Non-residential structures, where elevation is not feasible, may be floodproofed rather than elevated. Additionally, floodproofing existing properties may be less costly than elevating an existing property. So, where a project may floodproof rather than elevate, costs may be lower for some projects than the costs presented here. However, for existing properties that choose to elevate rather than floodproof, costs may be higher for some projects than the costs presented here because the NFIP report cost estimates are for when freeboard is included in the design of a structure. New buildings would be evaluated for both dry floodproofing (preventing the intrusion of floodwaters into the building by using a system of waterproofing and shields) and elevation (constructing higher), while existing buildings would only be evaluated for dry floodproofing. FEMA requests comments on these assumptions.

As established above, FEMA estimates this rule would impact 40 small entity PA Category E projects annually. Using CISA as the primary approach, FEMA estimates that the total cost for the elevation and floodproofing requirements of this proposed rule for all PA Category E projects would be between $8,887,014 ($88,870,138 ÷ 10 years) and $10,179,589 ($101,795,889 ÷ 10 years) annually for 117 (1,173 PA Total FFRMS action Category E projects ÷ 10 years) projects annually. Therefore,

[143] The other project type related to flood mitigation is acquisition. Generally, acquisition projects are for open space purposes and restore the natural and beneficial functions of the floodplain. Property acquisitions that result in relocated structures would be subject to FFRMS elevation and floodproofing requirements if the structure is relocated within the FFRMS floodplain. HMA data does not break out relocation costs from acquisition costs, so FEMA is unable to estimate additional relocation expenses for acquisition projects.

[144] In FEMA's dataset, HMA recipients only included project titles and not the name of the grantee. This prevented FEMA from determining if a grant recipient was a small entity. Since PA and HMA provide funding to similar entities (States, Tribal governments, local governments, and certain non-profit organizations) for disaster related activity, FEMA used the percentages of small entity grant recipients found in PA Category E as a proxy for HMA small entities.

[145] Because of the large population, FEMA used Slovin's formula and a 90 percent confidence interval to determine the sample size. Slovin's formula: n = N/(1+N*e^2). Therefore, 1,181/(1 + 1,181 × 0.1^2) = 92 (rounded).

[146] Because of the large population, FEMA used Slovin's formula and a 90 percent confidence interval to determine the sample size. Slovin's formula: n = N/(1+N*e^2). Therefore, 131/(1 + 131 × 0.1^2) = 57 (rounded).

[147] Because of the large population, FEMA used Slovin's formula and a 90 percent confidence interval to determine the sample size. Slovin's formula: n = N/(1+N*e^2). Therefore, 254/(1 + 254 × 0.1^2) = 72 (rounded).

[148] Because of the large population, FEMA used Slovin's formula and a 90 percent confidence interval to determine the sample size. Slovin's formula: n = N/(1+N*e^2). Therefore, 446/(1 + 446 × 0.1^2) = 82 (rounded).

[149] Because of the large population, FEMA used Slovin's formula and a 90 percent confidence interval to determine the sample size. Slovin's formula: n = N/(1+N*e^2). Therefore, 84/(1 + 84 × 0.1^2) = 46 (rounded).

[150] According to historical HMA data, there have been an average of 63 elevation projects and only 4 floodproofing projects per year.

[151] FEMA, ''2008 Supplement to the 2006 Evaluation of the National Flood Insurance Program's Building Standards'' Table 3. (last accessed July 12, 2023).

each project would cost between $75,957 ($8,887,014 ÷ 117 projects) and $87,005 ($10,179,589 ÷ 117 projects). There is an average of 40 small entity PA projects per year. Small entity projects would have a total average expected cost between $3,038,280 ($75,957 × 40 small entities PA projects) and $3,480,200 ($87,005 × 40 small entities PA projects) per year. The historical average cost share for PA Category E projects is 80.7 percent covered by FEMA and 19.3 percent covered by the recipients, with the majority of recipients receiving a 75 percent or a 90 percent cost share, depending on the type of disaster declaration. FEMA estimates that, for PA Category E projects, each small entity would have an average expected cost (*i.e.,* their portion of the cost share), of between $13,141 ($75,957 × 17.3 percent) and $15,052 ($87,005 × 17.3 percent) per project.

As established above, FEMA estimates that this rule would affect approximately 43 small HMA grant recipients per year. Using CISA as the primary approach, FEMA estimates that the total 10-year cost for the elevation and floodproofing requirements of this proposed rule for HMA projects would be $4,810,196 ($48,101,958 ÷ 10 years) annually for 1,035 (10,351 HMA Total FFRMS action projects ÷ 10 years) projects annually. There is an average of 43 small entities HMA projects per year. The average HMA project cost is $4,648 ($4,810,196 ÷ 1,035 HMA projects) per project. The cost-sharing arrangement for HMA is 75 percent Federal and 25 percent recipient, so HMA recipients would be required to fund 25 percent of the costs to comply with the requirements of the proposed rule. Each small entity cost share would have an average expected cost is $1,162 ($4,648 × 25 percent).

Reporting and recordkeeping are not expected to change with the exception of minor changes to FEMA's Mitigation Grant Program/e-Grants system. FEMA would still make the determination if a project would take place in an FFRMS floodplain.

2.5 Identification, to the Extent Practicable, of Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

Situations may arise where multiple Federal agencies are conducting, supporting (including funding), or permitting actions in the same geographic area as FEMA actions subject to the FFRMS. In order to address this possibility, Sec. H of FEMA's policy will leverage the Unified Federal Review process. Because FEMA has a coordination process in place for these occasions, the rule does not conflict with or duplicate the rules of other Federal agencies.

This rule proposes to modify existing FEMA regulations relating to compliance with Executive Order 11988, Floodplain Management are being modified to comply with Executive Order 11988, as amended.

2.6 Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes, and Which Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

The standards proposed in this rule represent FEMA's efforts to implement Executive Order 11988, as amended, which establishes executive branch-wide policy in this area. Executive Order 13690 establishes the FFRMS. The policies established in these EOs do not consider exempting small entities from all or part of the standard; the purpose of the FFRMS is to ensure that agencies expand management from the current base flood level to a higher vertical elevation and corresponding horizontal floodplain to address current and future flood risk and ensure that projects funded with taxpayer dollars last as long as intended. Accordingly, FEMA proposes that the rule apply to all affected FEMA projects, including small entities.

As discussed previously, most of the cost of the mitigation standards required by this rule would be paid by FEMA in the form of additional PA, IA, or HMA grants. Cost sharing is required for most FEMA grant programs. For PA and HMA, affected small entities would be required to pay the recipient portion of the cost share, which is 25 percent in most cases. There are, however, some exceptions and cost shares can be waived or set at a different level by Congress. FEMA does not have the authority to adjust the cost share specifically for small entities.

Executive Order 11988, as amended, allows several approaches to determine the FFRMS floodplain. Section F of this NPRM, FEMA's Implementation of Executive Order 11988, as amended, and FFRMS, describes the FFRMS approaches allowed by Executive Order 11988, as amended, and FEMA's considerations when selecting between the FFRMS approaches. FEMA is proposing, in its accompanying policy, to use CISA as the preferred approach. FEMA has chosen CISA as its preferred approach because it is the only one that uses the best available climate science to ensure projects are designed to meet current and future flood risks unique to the location and thus ensures the best overall resilience, cost effectiveness, and equity. Accordingly, FEMA believes its preferred approach will minimize the risk that affected small entities incur more costs than necessary because of overprotection or incur preventable costs from future damage because of under protection.

Small entities affected by the proposed rule, as with any entity affected by the rule, would have the option to relocate outside of the floodplain. This may be preferable in cases where property can be obtained and new facilities built for less cost than elevating or floodproofing to the FFRMS level in the floodplain, and the recipient has the ability to relocate.

FEMA requests public comment on alternatives to the proposed rule that it may not have considered, which accomplish the stated objectives of applicable statutes, and which minimize any significant economic impact of the rule on small entities. FEMA also invites all interested parties to submit data and information regarding the potential economic impact on small entities from adoption of this proposed rule. FEMA will consider all comments received in the public comment process.

C. Unfunded Mandates Reform Act

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law). Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) further requires that before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in 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 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement detailing the effect on State, local, and Tribal governments and the private sector. The proposed rule would not result in such an expenditure, and thus preparation of such a statement is not required.

D. National Environmental Policy Act (NEPA) of 1969

Section 102 of the National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*) requires Federal agencies to evaluate the impact of a proposed major Federal action significantly affecting the human environment, consider alternatives to the proposed action, provide public notice and opportunity for comment, and properly document its analysis. 40 CFR parts 1501, 1502, 1506.6. DHS and its component agencies analyze proposed actions to determine whether NEPA applies and, if so, what level of analysis and documentation is required. 40 CFR 1501.3. DHS Directive 023–01, Rev. 01 and DHS Instruction Manual 023–01–001–01, Rev. 01 (Instruction Manual) establish the policies and procedures DHS and its component agencies use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing the procedural requirements of NEPA codified in 40 CFR parts 1500 through 1508. The CEQ regulations allow Federal agencies to establish—in their NEPA implementing procedures with CEQ review and concurrence—categories of actions (''categorical exclusions'') that normally do not have a significant effect on the human environment. Therefore, these categorically excluded actions do not require preparation of an environmental assessment or environmental impact statement. 40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d). The Instruction Manual, Appendix A, lists the DHS categorical exclusions. Under DHS NEPA implementing procedures, for an action to be categorically excluded it must satisfy each of the following conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.

The proposed rule would update the Floodplain Management and Protection of Wetland requirements to adopt the approaches outlined in E.O. 11988, as amended. This involves establishing the floodplain, using the vertical elevation and corresponding horizontal extent, in the 8-step decision making process FEMA follows in applying E.O. 11988 to its actions. FEMA proposes to amend regulations codified at 44 CFR part 9 to revise the definition of the floodplain based on the approaches in E.O. 11988, as amended, consisting of the Climate-Informed Science Approach, the freeboard value approach, the 0.2 percent annual chance flood approach, and any other method identified in updates. The proposed rule allows FEMA to select and prioritize among these approaches. The rule revises the 8-step decision making process to incorporate consideration of the approaches in determining if the project is in the floodplain. The rule would also add a requirement, where possible, to use natural systems, ecosystem processes, and nature-based approaches in the development of alternatives for Federal actions in a floodplain. The result of redefining the floodplain and applying the approaches outlined in Executive Order 11988, as amended, may be that structures determined to be in the floodplain (''the FFRMS floodplain'') would be elevated or floodproofed to a higher level, and more structures—due to the corresponding horizontal expansion of the floodplain—might be subject to an elevation requirement and/or other mitigation measures. Further, with the expanded horizontal floodplain, and application of the 8-step decision making process which allows for Federal actions in the floodplain only if there is no practicable alternative, it is possible some structures that otherwise would be constructed in a high-risk flood area, would be constructed elsewhere. This would result in better protection of people and their property, the floodplain and environment. When placing the action in the floodplain cannot be avoided, implementing mitigation measures to structures in the FFRMS floodplain will not only promote public safety and lessen flood risk, but may also reduce the impact of the action on the floodplain, and thereby contribute to preserving the natural and beneficial values of the floodplain per the mandate in E.O. 11988. Similarly, the requirement to use natural systems, ecosystem processes, and nature-based approaches, where possible, in alternatives to the proposed action would contribute to restoring and preserving the natural and beneficial values of the floodplain.

FEMA has determined that NEPA applies to the proposed rule because it fits the definition of a ''major federal action.'' CEQ's NEPA regulations define ''major federal action'' to include ''new or revised agency rules,'' regulations and policies. 40 CFR 1508.1(q)(2). The proposed rule, involving revision of the regulations at 44 CFR part 9, and accompanying new policy, constitute a ''major federal action.''

FEMA analyzed the proposed rule and finds that it meets the three DHS criteria for a categorical exclusion. FEMA has determined that consistent with the first criterion, the rule clearly fits within the categorical exclusion found at A3 in the DHS Instruction Manual, Appendix A. Categorical exclusion A3 states that ''promulgation of rules, issuance of rulings or interpretations, and the development and publications of policies'' may be categorically excluded if such actions ''interpret or amend an existing regulation without changing its environmental effect.'' Instruction Manual, Appendix A, A3(d). The proposed rule may result in requiring a structure to have either higher elevation or floodproofing, or more resilient design. The rule, however, does not change the environmental impacts because the modifications do not expand the footprint of the structure. It is possible the expanded horizontal floodplain may discourage placing a ''federal action'' in the floodplain as under the 8-step decision making process, a structure may be located in the floodplain only if there is no practicable alternative. In the event there is a practicable alternative, and new construction is consequently located outside the floodplain, the effect of the proposed rule would be to benefit the environment by contributing to restoring and preserving the values of the floodplain as well as enhancing public safety.

If the Federal action must be located in the FFRMS floodplain, that is, there no practicable alternative, it will be subject to one of the three approaches or a combination of them. FEMA's preferred approach is CISA. If the CISA approach is used, it could result in an estimated average of 5 feet of additional elevation for a structure (or floodproofing to that level). FEMA prefers the CISA approach because it perceives that using the best actionable and available climate informed science to determine the floodplain is the most effective way to make the structure resilient. If CISA is not available, the proposed rule provides alternatives for determining the floodplain for critical actions and non-critical actions: for non-critical actions, the lesser of the freeboard value approach (2 or 3 feet above base flood elevation) or the .2 percent annual flood; and for critical actions, the higher of the freeboard value approach or .2 percent annual flood. Given CISA or the combination of approaches may be used, the potential for the change in elevation (or floodproofing) levels varies. Further, if communities have stricter standards, which they are required to apply, the

communities will still apply that standard and thus application of the FFRMS would not require a change in elevation. If the ''federal action'' is substantial improvement or addresses substantial damage to a structure or facility, it would involve action in a pre-built environment, with the only change being that the structure or facility might be elevated or floodproofed to the appropriate higher level. If design rather than elevation or in addition to elevation is used to comply with the FFRMS resilience standard, it is not anticipated to change the footprint of the structure or to significantly impact the environment. As part of implementing the FFRMS resilience standard, nature-based solutions are required in alternatives to the proposed action, where possible. When applied, they will benefit the environment by contributing to restoring and preserving the natural and beneficial values of the floodplain.

None of the changes required by any of the combined FFRMS approaches are anticipated to change the environmental effects of application of the 8-step process. In addition to and apart from application of the decision process in this proposed rule, all Federal actions, new construction, substantial improvement, and actions addressing substantial damage, are subject to NEPA review and must comply with NEPA requirements. Each Federal action (or project) subject to the FFRMS will be evaluated on an individual basis under NEPA and related environmental laws, regulations, and executive orders. The Federal action will not be approved unless it meets all applicable environmental and historic preservation requirements. Further, the Federal actions subject to the proposed rule must comply with all applicable floodplain requirements. *See* 44 CFR 9.11(d)(6) (referring to requirement to be consistent with the criteria of the National Flood Insurance Program at 44 CFR part 59 *et seq.* or any more restrictive Federal, State, or local floodplain management standard).

FEMA therefore concludes the proposed rule clearly fits within categorical exclusion A3. FEMA also finds the proposed rule meets the second and third DHS criteria for applying a categorical exclusion. The proposed rule is not a piece of a larger action as it will be implemented independently of other FEMA actions and is a separate action unto itself. Furthermore, FEMA finds that adopting the floodplain management and protection approaches outlined in E.O. 11988 presents no extraordinary circumstances that increase the potential for significant environmental effects to the environment. Accordingly, the proposed rule is categorically excluded, and no further NEPA analysis or documentation is required.

E. Paperwork Reduction Act (PRA) of 1995

As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163, (May 22, 1995) (44 U.S.C. 3501 *et seq.*), FEMA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. *See* 44 U.S.C. 3506, 3507. This proposed rulemaking would call for no new collections of information under the PRA. This proposed rule includes information currently collected by FEMA and approved in OMB information collections 1660–0072 (FEMA Mitigation Grant Programs) and 1660–0076 (Hazard Mitigation Grant Program (HMGP) Application and Reporting). With respect to these collections, this proposed rulemaking would not impose any additional burden and would not require a change to the forms, the substance of the forms, or the number of recipients who would submit the forms to FEMA.

F. Privacy Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation would result in a system of records. A ''record'' is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. See 5 U.S.C. 552a(a)(4). A ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. See 5 U.S.C. 552a(a)(5). An agency cannot disclose any record, which is contained in a system of records, except by following specific procedures.

In accordance with DHS policy, FEMA has completed a Privacy Threshold Analysis for this proposed rule. This rule is covered by the following PIAs: DHS/FEMA/PIA–006 FEMA National Emergency Management Electronic Grants System, DHS/FEMA/PIA–025-Hazard Mitigation Grant Program (HMGP) System, DHS/FEMA/PIA–026 Operational Data Store and Enterprise Data Warehouse PIA, and DHS/FEMA/PIA–031 Authentication and Provisioning Services (APS). No updates to these PIAs are necessary. Further, this rule is covered under the following System of Records Notices (SORNs): DHS/FEMA–009 Hazard Mitigation, Disaster Public Assistance, and Disaster Loan Programs, 79 FR 16015, Mar. 24, 2014; DHS/ALL–004 General Information Technology Access Account Records System (GITAARS), 77 FR 70792, Nov. 27, 2012; and DHS/FEMA–008 Disaster Recovery Assistance Files. This proposed rule would not create a new system of records and no update to these SORNs are necessary.

G. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments,'' 65 FR 67249, Nov. 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that 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 on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulations are provided by the Federal Government, or the agency consults with Tribal officials.

FEMA has reviewed this proposed rule under Executive Order 13175 and has determined that this rule would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Part 9 applies to FEMA disaster and non-disaster assistance programs, including PA, Individual Assistance, HMA, and grants processed by GPD. Pursuant to section 8 of Executive Order 11988, part 9 does not apply to

assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to sections 403 and 502 of the Stafford Act, as amended (42 U.S.C. 5170b and 5192).

Indian Tribes have the same opportunity to participate in FEMA's grant programs as other eligible participants, and participation is voluntary. The requirements of this rule do not affect Tribes differently than other grant recipients. Therefore, FEMA does not expect this proposed rule would have a substantial direct effect on one or more Indian Tribes or impose substantial direct compliance costs on Indian Tribal governments but will consider any information provided in comments to inform its analysis of this issue as part of a final rule.

Notwithstanding FEMA's conclusion that this proposed rule would not have tribal implications, FEMA recognizes the importance of engaging with Tribes with respect to the FFRMS. FEMA therefore summarizes below the extensive engagement process that precedes this rule, including significant engagement with Tribal leaders. As noted above, in the aftermath of Hurricane Sandy, the President issued Executive Order 13632,[152] which created the Federal Interagency Hurricane Sandy Rebuilding Task Force (Sandy Task Force). This Task Force was chaired by the Secretary of HUD, who led the effort in coordination with multiple Federal partners, as well as an advisory group composed of State, local, and Tribal elected leaders.

In June 2013, the President issued a Climate Action Plan that directed agencies to take the appropriate actions to reduce risk to Federal investments, specifically directing agencies to build on the work done by the Sandy Task Force and update their flood risk reduction standards for ''federally-funded projects'' to ensure that ''projects funded with taxpayer dollars last as long as intended.'' In November 2013, the Climate Task Force convened, with 26 Governors, mayors, and local and Tribal leaders serving as members. After a year-long process of receiving input from across State, local, Tribal and territorial governments; private businesses; trade associations; academic organizations; civil society; and other stakeholders, the Task Force provided a recommendation to the President in November 2014 that, in order to ensure resiliency, Federal agencies, when taking actions in and around floodplains, should include considerations of the effects of changing conditions, including sea level rise, more frequent and severe storms, and increasing river flood risks.

Executive Order 11988, as amended, established the FFRMS. It also set forth a process by which additional input from stakeholders could be solicited and considered before agencies took any action to implement the FFRMS. It required FEMA to publish an updated draft version of the 1978 Guidelines[153] revised to incorporate the changes required by Executive Order 13690 and the FFRMS in the **Federal Register** for notice and comment. Finally, Executive Order 13690 required the WRC to issue final Guidelines to provide guidance to agencies on the implementation of Executive Order 11988, as amended, consistent with the FFRMS.

FEMA, acting on behalf of the Mitigation Framework Leadership Group, published a **Federal Register** notice for a 60-day notice and comment period seeking comments on a draft of the Revised Guidelines, 80 FR 6530, Feb. 5, 2015. Additionally, on February 27, 2015, FEMA, again acting on behalf of the Mitigation Framework Leadership Group, wrote to Tribal Leaders specifically asking for their comments regarding the Executive Order establishing the FFRMS.

In response to multiple requests, the comment period was extended for an additional 30 days to end on May 6, 2015. The Administration also attended or hosted over 25 meetings across the country with State, local, and Tribal officials (including 26 mayors) and interested stakeholders to discuss the Guidelines. There were 9 public listening sessions across the country that were attended by over 700 participants from State, local, and Tribal governments, and other stakeholder organizations to discuss the Guidelines. There were Tribal representatives at both the Ames, Iowa and Sacramento, California listening sessions; however, the specific Tribes that they were representing were not identified. Notice of these public listening sessions was posted in the **Federal Register**.

The public comment period closed on May 6, 2015. Two Tribes submitted formal comments on the Guidelines during the **Federal Register** comment period. The WRC issued the Revised Guidelines on October 8, 2015, and the corresponding Notice published in the October 22, 2015 **Federal Register** at 80 FR 64008.

FEMA welcomes Tribal comments on all aspects of this proposed rule.

[152] 77 FR 74341, Dec. 14, 2012.

[153] The 1978 Guidelines were the original interpretation of Executive Order 11988.

H. Executive Order 13132, Federalism

Executive Order 13132, ''Federalism,'' 64 FR 43255, Aug. 10, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that 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.'' Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

FEMA has reviewed this proposed rule under Executive Order 13132 and has determined that this rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications as defined by the Executive Order.

Part 9 applies to FEMA disaster and non-disaster assistance programs, including Public Assistance, Individual Assistance, HMA, and grants processed from GPD. Pursuant to section 8 of Executive Order 11988, part 9 does not apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to section 403 and 502 of the Stafford Act, as amended (42 U.S.C. 5170b and 5192). The proposed rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion.

I. Executive Order 12898, Environmental Justice; Executive Order 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All

Under Executive Order 12898, ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,'' (59 FR 7629, Feb. 16, 1994); and Executive Order 14096, ''Revitalizing Our Nation's Commitment to Environmental Justice for All (88 FR 25251, Apr. 26, 2023), FEMA incorporates environmental justice into its policies and programs. Executive Order 14096 charges agencies to make achieving environmental justice part of their missions consistent with statutory

authority by identifying, analyzing, and addressing disproportionate and adverse human health and environmental effects and hazards of Federal activities, including those related to climate change and cumulative impacts of environmental and other burdens on communities with environmental justice concerns.

FEMA does not expect this rule to have a disproportionate and adverse human health or environmental effect on communities with environmental justice concerns but will consider any information provided in comments to inform its analysis of this issue as part of a final rule.

J. Executive Order 12630, Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights'' (53 FR 8859, Mar. 18, 1988).

K. Executive Order 12988, Civil Justice Reform

This NPRM meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, Feb. 7, 1996), to minimize litigation, eliminate ambiguity, and reduce burden.

L. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This NPRM will not create environmental health risks or safety risks for children under Executive Order 13045, ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, Apr. 23, 1997).

M. Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, OMB Circular A–119

''Voluntary consensus standards'' are standards developed or adopted by voluntary consensus standards bodies, both domestic and international. These standards include provisions requiring that owners of relevant intellectual property have agreed to make that intellectual property available on a non-discriminatory, royalty-free, or reasonable royalty basis to all interested parties. OMB Circular A–119 directs agencies to use voluntary consensus standards in their regulatory actions in lieu of government-unique standards except where inconsistent with law or otherwise impractical. The policies in the Circular are intended to reduce to a minimum the reliance by agencies on government-unique standards.

Consistent with then-President Obama's Climate Action Plan,[154] the National Security Council staff coordinated an interagency effort to create a new flood risk reduction standard for Federally funded projects. The views of Governors, mayors, and other stakeholders were solicited and considered as efforts were made to establish a new flood risk reduction standard for Federally funded projects. The FFRMS is the result of these efforts.

List of Subjects in 44 CFR Part 9

Flood plains, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, FEMA proposes to amend 44 CFR part 9, as follows:

PART 9—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

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

Authority: 6 U.S.C. 101 *et seq.;* 42 U.S.C. 4001 *et seq.;* 42 U.S.C. 4321 *et seq.;* E.O. 11988 of May 24, 1977, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990 of May 24, 1977, 42 FR 26961, 3 CFR, 1977 Comp. p. 121; E.O. 13690, 80 FR 6425; E.O. 14030, 86 FR 27967.

■ 2. Revise § 9.1 to read as follows:

§ 9.1 Purpose.

This part sets forth the policy, procedure, and responsibilities to implement and enforce relevant sections of the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4001 *et seq.,* the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.,* as amended, and other relevant statutory authorities in conjunction with Executive Order 11988, Floodplain Management, as amended, and Executive Order 11990, Protection of Wetlands.

■ 3. Amend § 9.2 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 9.2 Policy.

* * * * *

(b) The Agency will provide leadership in floodplain management and the protection of wetlands, informed by the best available and actionable science, to bolster the resilience of communities and Federal assets against the impacts of flooding, which are anticipated to increase over time due to the effects of changing conditions which adversely affect the environment, economic prosperity, public health and safety, and national security.

(c) The Agency shall integrate the goals of the Orders to the greatest possible degree into its procedures for implementing the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

(d) The Agency shall:

(1) Minimize the impact of floods on human health, safety, and welfare;

(2) Avoid long- and short-term adverse impacts associated with the occupancy and modification of floodplains and the destruction and modification of wetlands;

(3) Avoid direct and indirect support of floodplain development and new construction in wetlands wherever there is a practicable alternative;

(4) Reduce the risk of flood loss;

(5) Promote the use of nonstructural flood protection methods to reduce the risk of flood loss;

(6) Minimize the destruction, loss, or degradation of wetlands;

(7) Restore and preserve the natural and beneficial values served by floodplains;

(8) Preserve and enhance the natural values of wetlands;

(9) Involve the public throughout the floodplain management and wetlands protection decision-making process;

(10) Adhere to the objectives of the Unified National Program for Floodplain Management; and

(11) Improve and coordinate the Agency's plans, programs, functions, and resources so that the Nation may attain the widest range of beneficial uses of the environment without degradation or risk to health and safety.

■ 4. Amend § 9.3 by revising to read as follows:

§ 9.3 Severability.

Any provision of this part held to be invalid or unenforceable as applied to any action should be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding is that the provision of this part is invalid and unenforceable in all circumstances, in which event the provision should be severable from the remainder of this subpart and shall not affect the remainder thereof.

■ 5. Amend § 9.4 by:

■ a. Adding in alphanumeric order definitions for ''0.2 Percent Annual Chance Flood Elevation,'' ''0.2 Percent

[154] The White House, ''President Obama's Climate Action Plan, 2nd Anniversary Progress Report—Continuing to cut carbon, pollution, protect American communities, and lead internationally.'' June 2015 found at *https://obamawhitehouse.archives.gov/sites/default/files/docs/cap_progress_report_final_w_cover.pdf (last accessed July 12, 2023).*

Annual Chance Floodplain,'' ''1 Percent Annual Chance Flood Elevation,'' and ''1 Percent Annual Chance Floodplain;''
■ b. Revising the definitions of ''Action'' and ''Actions Affecting or Affected by Floodplains or Wetlands;''
■ c. Adding the definition of ''Action Subject to the Federal Flood Risk Management Standard;''
■ d. Removing the definitions of ''Base Flood'' and ''Base Floodplain;''
■ e. Adding the definition of ''Base Flood Elevation;''
■ f. Revising the definitions of ''Coastal High Hazard Area,'' ''Critical Action'' and ''Emergency Actions;''
■ g. Adding in alphabetical order definitions for ''Federal Flood Risk Management Standard (FFRMS),'' ''Federal Flood Risk Management Standard Floodplain,'' ''Federally Funded Project,'' and ''FEMA Resilience;''
■ h. Removing the definitions of ''Five Hundred Year Floodplain'' and ''FIA;''
■ i. Revising the definition of ''Flood or Flooding;''
■ j. Removing the definitions of ''Flood Fringe,'' ''Flood Hazard Boundary Map (FHBM),'' ''Flood Insurance Rate Map (FIRM),'' and ''Flood Insurance Study;''
■ k. Revising the definitions of ''Floodplain'', ''Functionally Dependent Use'', and ''Mitigation;''
■ l. Removing the definition of ''Mitigation Directorate;''
■ m. Adding in alphabetical order a definition for ''National Security'' and ''Nature-Based Approaches,'' ''Natural and Beneficial Values of Floodplains and Wetlands,'' and ''Natural Features;''
■ n. Removing the definition of ''Natural Values of Floodplains and Wetlands;''
■ o. Revising the definition of ''New Construction;''
■ p. Removing the definition of ''New Construction in Wetlands;''
■ q. Revising the definitions of ''Orders'', ''Practicable'', and ''Regulatory Floodway'', ''Restore'', ''Structures'', and ''Substantial Improvement;''
■ r. Adding the definition of ''Support of Floodplain and Wetland Development;''
■ s. Removing the definition of ''Support;'' and
■ t. Revising the definition of ''Wetlands.''

The additions and revisions read as follows:

§ 9.4 Definitions.

0.2 Percent Annual Chance Flood Elevation means the elevation to which floodwater is anticipated to rise during the 0.2 percent annual chance flood (also known as the 500-year flood).

0.2 Percent Annual Chance Floodplain means the area subject to flooding by the 0.2 percent annual chance flood (also known as the 500-year floodplain).

1 Percent Annual Chance Flood Elevation—see Base Flood Elevation.

1 Percent Annual Chance Floodplain means the area subject to flooding by the 1 percent annual chance flood (also known as the 100-year floodplain or base floodplain).

Action means

(1) Acquiring, managing, and disposing of Federal lands and facilities;

(2) Providing federally undertaken, financed, or assisted construction and improvements; and

(3) Conducting Federal activities and programs affecting land use, including, but not limited to, water and related land resources, planning, regulating, and licensing activities.

Actions Affecting or Affected by Floodplains or Wetlands means actions which have the potential to result in the long- or short-term impacts associated with:

(1) The occupancy or modification of floodplains, and the direct or indirect support of floodplain development, or

(2) The destruction and modification of wetlands and the direct or indirect support of new construction in wetlands.

Action Subject to the Federal Flood Risk Management Standard (FFRMS) means any action where FEMA funds are used for new construction, substantial improvement, or to address substantial damage to a structure or facility.

* * * * *

Base Flood Elevation means the elevation to which floodwater is anticipated to rise during the 1 percent annual chance flood (also known as the base flood or 100-year flood). The terms ''base flood elevation,'' ''1 percent annual change flood elevation,'' and ''100-year flood elevation'' are synonymous and are used interchangeably.

Coastal High Hazard Area means an area of flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

Critical Action means any action for which even a slight chance of flooding is too great. Critical actions include, but are not limited to, those which create or extend the useful life of structures or facilities:

(1) Such as those which produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(2) Such as hospitals and nursing homes, and housing for the elderly, which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events;

(3) Such as emergency operation centers, or data storage centers which contain records or services that may become lost or inoperative during flood and storm events; and

(4) Such as generating plants, and other principal points of utility lines.

* * * * *

Emergency Actions means emergency work essential to save lives and protect property and public health and safety performed under sections 403 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (42 U.S.C. 5170b and 5192).

* * * * *

Federal Flood Risk Management Standard (FFRMS) means the Federal flood risk management standard to be incorporated into existing processes used to implement Executive Order 11988, as amended.

Federal Flood Risk Management Standard (FFRMS) Floodplain means the floodplain established using one of the approaches described in § 9.7(c) of this part.

Federally Funded Project—see *Action Subject to the Federal Flood Risk Management Standard.*

FEMA Resilience means the organization within FEMA that includes the Federal Insurance and Mitigation Administration, the Grants Program Directorate, and the National Preparedness Directorate.

* * * * *

Flood or *flooding* means the general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation of runoff of surface waters from any source. *0.2 Percent Annual Chance Flood* means the flood which has a 0.2 percent chance of being equaled or exceeded in any given year (also known as the 500-year flood). *1 Percent Annual Chance Flood* means the flood which has a 1 percent chance of being equaled or exceeded in any given year (also known as the 100-year flood or base flood). The terms ''base flood,'' ''1 percent annual chance flood,'' and ''100-year flood'' are synonymous and are used interchangeably.

* * * * *

Floodplain means any land area that is subject to flooding. The term

''floodplain,'' by itself, refers to geographic features with undefined boundaries. For the purposes of this part, the FFRMS floodplain shall be established using one of the approaches described in § 9.7(c) of this part. *See 0.2 Percent Annual Chance Floodplain, 1 Percent Annual Chance Floodplain,* and *Federal Flood Risk Management Standard Floodplain.*

* * * * *

Functionally Dependent Use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

* * * * *

Mitigation means steps necessary to minimize the potentially adverse effects of the proposed action, and to restore and preserve the natural and beneficial floodplain values and to preserve and enhance natural values of wetlands.

* * * * *

National Security means a condition that is provided by either (1) a military or defense advantage over any foreign nation or group of nations; (2) a favorable foreign relations position; or (3) a defense posture capable of successfully resisting hostile or destructive action from within or without, overt or covert. National security encompasses both national defense and foreign relations of the United States.

Nature-Based Approaches means the features (sometimes referred to as ''green infrastructure'') designed to mimic natural processes and provide specific services such as reducing flood risk and/or improving water quality. Nature-based approaches are created by human design (in concert with and to accommodate natural processes) and generally, but not always, must be maintained in order to reliably provide the intended level of service.

Natural and Beneficial Values of Floodplains and Wetlands means features or resources that provide environmental and societal benefits. Water and biological resources are often referred to as ''natural functions of floodplains and wetlands.'' These values include, but are not limited to:

(1) Water Resource Values (storing and conveying floodwaters, maintaining water quality, and groundwater recharge);

(2) Living Resource Values (providing habitats and enhancing biodiversity for fish, wildlife, and plant resources);

(3) Cultural Resource Values (providing open space, natural beauty, recreation, scientific study, historic and archaeological resources, and education; and

(4) Cultivated Resource Values (creating rich soils for agriculture, aquaculture, and forestry).

Natural Features means characteristics of a particular environment (*e.g.,* barrier islands, sand dunes, wetlands) that are created by physical, geological, biological, and chemical processes and exist in dynamic equilibrium. Natural features are self-sustaining parts of the landscape that require little or no maintenance to continue providing their ecosystem services (functions).

New Construction means the construction of a new structure or facility or the replacement of a structure or facility which has been totally destroyed. New construction includes permanent installation of temporary housing units. New construction in wetlands includes draining, dredging, channelizing, filling, diking, impounding, and related activities.

* * * * *

Orders means Executive Order 11988, Floodplain Management, as amended, and Executive Order 11990, Protection of Wetlands.

Practicable means capable of being done within existing constraints. The test of what is practicable depends on the situation and includes consideration of all pertinent factors, such as natural environment, social concerns, economic aspects, legal constraints, and agency authorities.

* * * * *

Regulatory Floodway means the area regulated by Federal, State, or local requirements to provide for the discharge of the base flood so the cumulative rise in the water surface is no more than a designated amount above the base flood elevation.

Restore means to reestablish a setting or environment in which the natural functions of the floodplain can operate.

Structure means a walled and roofed building, including a temporary housing unit (manufactured housing) or a gas or liquid storage tank.

Substantial Improvement means any repair, reconstruction or other improvement of a structure or facility, which has been damaged in excess of, or the cost of which equals or exceeds, 50% of the pre-disaster market value of the structure or replacement cost of the facility (including all ''public facilities'' as defined in the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988) (1) before the repair or improvement is started, or (2) if the structure or facility has been damaged and is proposed to be restored. Substantial improvement includes work to address substantial damage to a structure or facility. If a facility is an essential link in a larger system, the percentage of damage will be based on the cost of repairing the damaged facility relative to the replacement cost of the portion of the system which is operationally dependent on the facility. The term ''substantial improvement'' does not include any alteration of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.

* * * * *

Support of Floodplain and Wetland Development means to, directly or indirectly, encourage, allow, serve, or otherwise facilitate development in floodplains or wetlands. Development means any man-made change to improved or unimproved real estate, including but not limited to new construction, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials. Direct support results from actions within floodplains or wetlands, and indirect support results from actions outside of floodplains or wetlands.

Wetlands means those areas which are inundated or saturated by surface or ground water with a frequency sufficient to support, or that under normal hydrologic conditions does or would support, a prevalence of vegetation or aquatic life typically adapted for life in saturated or seasonally saturated soil conditions, including wetlands areas separated from their natural supply of water as a result of construction activities such as structural flood protection methods or solid-fill road beds, and activities such as mineral extraction and navigation improvements. Examples of wetlands include, but are not limited to, swamps, fresh and salt water marshes, estuaries, bogs, beaches, wet meadows, sloughs, potholes, mud flats, river overflows, and other similar areas. This definition is intended to be consistent with the definition utilized by the U.S. Fish and Wildlife Service.

■ 6. Amend § 9.5 by revising paragraph (a)(3), the first sentence of paragraph (b)(1), and paragraphs (c) through (g) to read as follows:

§ 9.5 Scope.

(a) * * *

(3) The amendments to this part made on [EFFECTIVE DATE OF FINAL RULE] apply to new actions for which assistance is made available pursuant to declarations under the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 on or after [EFFECTIVE DATE OF FINAL RULE] and new actions for which assistance is

made available pursuant to notices of funding opportunities published on or after [EFFECTIVE DATE OF FINAL RULE]. For ongoing actions for which assistance was made available prior to that date, legacy program regulations set forth in guidance and available at *http://www.fema.gov* shall apply.

(b) * * *

(1) Executive Order 11990, Protection of Wetlands, contains a limited exemption not found in Executive Order 11988, Floodplain Management, as amended. * * *

* * * * *

(c) *Decision-making involving certain categories of actions.* The provisions set forth in this part are not applicable to the actions enumerated in paragraphs (c)(1) through (10) of this section except that the Regional Administrators shall comply with the spirit of Executive Order 11988, as amended, and Executive Order 11990 to the extent practicable. For any action which is excluded from the actions enumerated below, the full 8-step process applies (see § 9.6) (except as indicated at paragraphs (d), (e), and (g) of this section regarding other categories of partial or total exclusion). The provisions of this part do not apply to the following (all references are to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, Pub. L. 93–288, as amended, except as noted):

(1) Assistance provided for emergency work essential to save lives and protect property and public health and safety performed pursuant to sections 403 and 502;

(2) Emergency Support Teams (section 303);

(3) Emergency Communications (section 418);

(4) Emergency Public Transportation (section 419);

(5) Fire Management Assistance (section 420), except for hazard mitigation assistance under sections 404 and 420(d);

(6) Community Disaster Loans (section 417), except to the extent that the proceeds of the loan will be used for repair of facilities or structures or for construction of additional facilities or structures;

(7) The following Federal Assistance to Individuals and Households Program (section 408) categories of assistance:

(i) Financial assistance for temporary housing (section 408(c)(1)(A));

(ii) Lease and repair of rental units for temporary housing (section 408(c)(1)(B)(ii)), except that Step 1 (§ 9.7) shall be carried out;

(iii) Repairs (section 408(c)(2));

(iv) Replacement (section 408(c)(3)); and

(v) Financial assistance to address other needs (section 408(e)).

(8) Debris clearance and removal (sections 403 and 502), except those grants involving non-emergency disposal of debris within a floodplain or wetland (section 407);

(9) Actions under sections 406 and 407 of less than $18,000. Such $18,000 amount will be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor;

(10) Placement of families in existing resources and Temporary Relocation Assistance provided to those families so placed under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96–510.

(d) *Abbreviated decision-making process applying steps 1, 4, 5, and 8.* The Regional Administrator shall apply steps 1, 4, 5, and 8 of the decision-making process (§§ 9.7, 9.10, and 9.11) to repairs under section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, Public Law 93–288, as amended, between $18,000 and $91,000. Such $18,000 and $91,000 amounts will be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor. For any action which is excepted from the actions listed below (except as otherwise provided in § 9.5 regarding other categories of partial or total exclusion), the full 8-step process applies (See § 9.6). The Regional Administrator may also require certain other portions of the decision-making process to be carried out for individual actions as is deemed necessary. Steps 1, 4, 5, and 8 of the decision-making process apply to actions under section 406 of the Stafford Act referenced above except for:

(1) Actions in a floodway or coastal high hazard area; or

(2) New construction, substantial improvement, or repairs to address substantial damage of structures or facilities; or

(3) Facilities or structures which have previously sustained damage from flooding due to a major disaster or emergency or on which a flood insurance claim has been paid; or

(4) Critical actions.

(e) *Abbreviated decision-making process applying steps 1, 2, 4, 5, and 8.* The Regional Administrator shall apply steps 1, 2, 4, 5, and 8 of the decision-making process (§§ 9.7, 9.8, 9.10, and 9.11, see § 9.6) to certain actions under Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, Public Law 93–288, as amended, provided in paragraphs (1) and (2) below. Steps 3 and 6 (§ 9.9) shall be carried out except that alternative sites outside the floodplain or wetland need not be considered. After assessing impacts of the proposed action on the floodplain or wetlands and of the site on the proposed action, alternative actions to the proposed action, if any, and the ''no action'' alternative shall be considered. The Regional Administrator may also require certain other portions of the decision-making process to be carried out for individual actions as is deemed necessary. For any action which is excluded from the actions listed below (except as otherwise provided in § 9.5 regarding other categories of partial or total exclusion), the full 8-step process applies (see § 9.6). The Regional Administrator shall apply steps 1, 2, 4, 5, and 8 of the decision-making process (§§ 9.7, 9.8, 9.10, and 9.11, see § 9.6) to:

(1) Replacement of building contents, materials, and equipment (section 406).

(2) Repairs under section 406 to damaged facilities or structures, except any such action for which one or more of the following is applicable:

(i) FEMA estimated cost of repairs is more than 50 percent of the estimated reconstruction cost of the entire facility or structure or is more than $364,000. Such $364,000 amount will be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor; or

(ii) The action is located in a floodway or coastal high hazard area; or

(iii) Facilities or structures which have previously sustained structural damage from flooding due to a major disaster or emergency or on which a flood insurance claim has been paid; or

(iv) The action is a critical action.

(f) *Other categories of actions.* Based upon the completion of the 8-step decision-making process (§ 9.6), the Regional Administrator may find that a specific category of actions either offers no potential for carrying out the purposes of the Orders and shall be treated as those actions listed in § 9.5(c), or has no practicable alternative sites and shall be treated as those actions listed in § 9.5(e), or has no practicable alternative actions or sites and shall be treated as those actions listed in § 9.5(d). This finding will be made in consultation with FEMA Resilience and the Council on Environmental Quality as provided in section 2(d) of Executive Order 11988, as amended. Public notice of each of these determinations shall

include publication in the **Federal Register** and a 30-day comment period.

(g) *The National Flood Insurance Program (NFIP).* (1) FEMA Resilience shall apply the 8-step decision-making process to program-wide actions under the NFIP, including all regulations, procedures, and other issuances making or amending program policy, and the establishment of programmatic standards or criteria. FEMA Resilience shall not apply the 8-step decision-making process to the application of programmatic standards or criteria to specific situations. Thus, for example, FEMA Resilience would apply the 8-step process to a programmatic determination of categories of structures to be insured, but not to whether to insure each individual structure.

(2) The provisions set forth in this part are not applicable to the actions enumerated below except that FEMA Resilience shall comply with the spirit of the Orders to the extent practicable:

(i) The issuance of individual flood insurance policies and policy interpretations;

(ii) The adjustment of claims made under the Standard Flood Insurance Policy;

(iii) The hiring of independent contractors to assist in the implementation of the NFIP;

(iv) The issuance of individual flood insurance maps, Map Information Facility map determinations, and map amendments; and

(v) The conferring of eligibility for emergency or regular program (NFIP) benefits upon communities.

■ 7. Revise § 9.6 to read as follows:

§ 9.6 Decision-making process.

(a) *Purpose.* This section sets out the floodplain management and wetlands protection decision-making process to be followed by the Agency in applying the Orders to its actions. The numbering of Steps 1 through 8 does not require that the steps be followed sequentially. As information is gathered through the decision-making process, and as additional information is needed, reevaluation of lower numbered steps may be necessary.

(b) *Decision-making process.* Except as otherwise provided in § 9.5 regarding categories of partial or total exclusion when proposing an action, the Agency shall apply the 8-step decision-making process. FEMA shall:

(1) *Step 1.* Determine whether the proposed action is located in a floodplain and/or a wetland as established by § 9.7; and whether it has the potential to affect or be affected by a floodplain or wetland (see § 9.7);

(2) *Step 2.* Notify the public at the earliest possible time of the intent to carry out an action in a floodplain or wetland, and involve the affected and interested public in the decision-making process (see § 9.8);

(3) *Step 3.* Identify and evaluate practicable alternatives to locating the proposed action in a floodplain or wetland (including alternative sites, actions, natural features, nature-based approaches, and the ''no action'' option) (see § 9.9). If a practicable alternative exists outside the floodplain or wetland FEMA must locate the action at the alternative site.

(4) *Step 4.* Identify the potential direct and indirect impacts associated with the occupancy or modification of floodplains and wetlands and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action (see § 9.10);

(5) *Step 5.* Minimize the potential adverse impacts to or within floodplains and wetlands and minimize support of floodplain and wetland development identified under Step 4. Restore and preserve the natural and beneficial values served by floodplains, and preserve and enhance the natural and beneficial values served by wetlands. Integrate nature-based approaches where appropriate (see § 9.11);

(6) *Step 6.* Reevaluate the proposed action to determine first, if it is still practicable in light of its exposure to flood hazards, the extent to which it will aggravate hazards to others, and its potential to disrupt floodplain and wetland values; and second, if alternatives preliminarily rejected at Step 3 are practicable in light of the information gained in Steps 4 and 5. FEMA shall not act in a floodplain or wetland unless it is the only practicable location (see § 9.9);

(7) *Step 7.* Prepare and provide the public with a finding and public explanation of any final decision that the floodplain or wetland is the only practicable alternative (see § 9.12); and

(8) *Step 8.* Review the implementation and post-implementation phases of the proposed action to ensure that the requirements stated in § 9.11 are fully implemented. Oversight responsibility shall be integrated into existing processes.

■ 8. Amend § 9.7 by revising paragraphs (a), (b), (c), (d)(3) and (4) to read as follows:

§ 9.7 Determination of proposed action's location.

(a) *Purpose.* This section establishes Agency procedures for determining whether any action as proposed is located in or affects a floodplain established in paragraph (c) of this section or a wetland.

(b) *Information needed.* (1) The Agency shall obtain enough information so that it can fulfill the requirements in this part to:

(i) Avoid Federal action in floodplain and wetland locations unless they are the only practicable alternatives; and

(ii) Minimize harm to and within floodplains and wetlands.

(2) In all cases, FEMA shall determine whether the proposed action is located in a floodplain or wetland. Information about the floodplain as established by § 9.7(c) and the location of floodways and coastal high hazard areas may also be needed to comply with this part, especially § 9.11.

(3) The following additional current and future flooding characteristics may be identified by the Regional Administrator as applicable:

(i) Velocity of floodwater;

(ii) Rate of rise of floodwater;

(iii) Duration of flooding;

(iv) Available warning and evacuation time and routes;

(v) Special problems:

(A) Levees;

(B) Erosion;

(C) Subsidence;

(D) Sink holes;

(E) Ice jams;

(F) Debris load;

(G) Pollutants;

(H) Wave heights;

(I) Groundwater flooding;

(J) Mudflow.

(vi) Any other applicable flooding characteristics.

(c) *Floodplain determination.* In the absence of a finding to the contrary, FEMA will determine that a proposed action involving a facility or structure that has been flooded previously is in the floodplain. In determining if a proposed action is in the floodplain:

(1) FEMA shall determine whether the action is an action subject to the FFRMS as defined in § 9.4.

(i) If the action is an action subject to the FFRMS, FEMA shall establish the FFRMS floodplain area and associated flood elevation by using the process specified in (c)(3) of this section and one of the following approaches:

(A) Climate-Informed Science Approach (CISA): Using a climate-informed science approach that uses the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science. This approach will also include an emphasis on whether the action is a critical action as one of the factors to be considered when conducting the analysis;

(B) Freeboard Value Approach (FVA): Using the freeboard value, reached by adding an additional 2 feet to the base flood elevation for non-critical actions and by adding an additional 3 feet to the base flood elevation for critical actions;

(C) 0.2 Percent Annual Chance Flood Approach (0.2PFA): The 0.2 percent annual chance flood; or

(D) Any other method identified in an update to the FFRMS.

(ii) FEMA may select among and prioritize the approaches in paragraph (c)(1) by policy.

(iii) FEMA may provide an exception to using the FFRMS floodplain and corresponding flood elevation for an action subject to the FFRMS and instead use the 1 percent annual chance (base) floodplain for non-critical actions or the 0.2 percent annual chance floodplain for critical actions where the action is in the interest of national security, where the action is an emergency action, or where the action is a mission-critical requirement related to a national security interest or an emergency action.

(2) If the action is not an action subject to the FFRMS as defined in § 9.4, FEMA shall use, at a minimum:

(i) The 1 percent annual chance (base) floodplain and flood elevation for non-critical actions; and

(ii) The 0.2 percent annual chance floodplain and flood elevation for critical actions.

(3) FEMA shall establish the floodplain and corresponding elevation using the best available information. The floodplain and corresponding elevation determined using the best available information must be at least as restrictive as FEMA's regulatory determinations under the NFIP where such determinations are available. In obtaining the best available information, FEMA may consider other FEMA information as well as other available information, such as:

(i) Department of Agriculture: Natural Resources Conservation Service, U.S. Forest Service;

(ii) Department of Defense: U.S. Army Corps of Engineers;

(iii) Department of Commerce: National Oceanic and Atmospheric Administration;

(iv) Department of the Interior: Bureau of Land Management, Bureau of Reclamation, U.S. Fish and Wildlife Service, United States Geological Survey;

(v) Tennessee Valley Authority;

(vi) Department of Transportation;

(vii) Environmental Protection Agency;

(viii) General Services Administration;

(ix) States and Regional Agencies; or

(x) Local sources such as Floodplain Administrators, Regional Flood Control Districts, or Transportation Departments.

(4) If the sources listed in paragraph (c)(3) of this section do not have or know of the information necessary to comply with the requirements in this part, the Regional Administrator may seek the services of a professional registered engineer.

(5) If a decision involves an area or location within extensive Federal or state holdings or a headwater area and FEMA's regulatory determinations under the National Flood Insurance Program are not available, the Regional Administrator shall seek information from the land administering agency before information and/or assistance is sought from the sources listed in paragraph (c)(3).

(d) * * *

(3) If the identified sources do not have adequate information upon which to base the determination, the Agency shall carry out an on-site analysis performed by a representative of the FWS or other qualified individual for wetlands characteristics based on the definition of a wetland in § 9.4.

(4) If an action constitutes new construction and is in a wetland but not in a floodplain, the provisions of this part shall apply. If the action is not in a wetland, the Regional Administrator shall determine if the action has the potential to result in indirect impacts on wetlands. If so, all potential adverse impacts shall be minimized. For actions which are in a wetland and the floodplain, completion of the decision-making process is required. (See § 9.6). In such a case, the wetland will be considered as one of the natural and beneficial values of the floodplain.

■ 9. Amend § 9.8 by revising paragraphs (a), (c)(1), the first sentence of paragraph (c)(2), the introductory text of paragraph (c)(3), paragraph (c)(3)(v), paragraphs (c)(4) and (5) to read as follows:

§ 9.8 Public notice requirements.

(a) *Purpose.* This section establishes the initial notice procedures to be followed when the Agency proposes any action in or affecting floodplains or wetlands.

* * * * *

(c) * * *

(1) For an action for which an environmental impact statement is being prepared, the Notice of Intent to File an EIS constitutes the early public notice if it includes the information required under paragraph (c)(5) of this section.

(2) For each action having national significance for which notice is being provided, the Agency at a minimum shall provide notice by publication in the **Federal Register** and shall provide notice by mail to national organizations reasonably expected to be interested in the action. * * *

(3) The Agency shall determine whether it has provided appropriate notices, adequate comment periods, and whether to issue cumulative notices (paragraphs (c)(4), (6), and (7) of this section) based on factors which include, but are not limited to:

* * * * *

(v) Anticipated potential impact of the action.

(4) For each action having primarily local importance for which notice is being provided, notice shall be made in accordance with the criteria under paragraph (c)(3) of this section, and shall include, as appropriate:

(i) Notice through the internet or another comparable method.

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Information required in the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers.

(v) Notice through other local media including newsletters.

(vi) Notice to potential interested community organizations.

(vii) Direct mailing to owners and occupants of nearby or affected property.

(viii) Posting of notice on and off site in the area where the action is to be located.

(ix) Public hearing.

(5) The notice shall:

(i) Describe the action, its purposes, and a statement of the intent to carry out an action affecting or affected by a floodplain or wetland;

(ii) Based on the factors in paragraph (c)(3) of this section, include a map of the area and other identification of the floodplain and/or wetland areas which is of adequate scale and detail; alternatively, FEMA may state that such map is available for public inspection, including the location at which such map may be inspected and a telephone number to call for information or may provide a link to access the map online;

(iii) Based on the factors in paragraph (c)(3) of this section, describe the type, extent, and degree of hazard involved and the floodplain or wetland values present; and

(iv) Identify the responsible official or organization for implementing the proposed action, and from whom further information can be obtained.

* * * * *

■ 10. Amend § 9.9 by:

■ a. Revising paragraphs (a)(1), (b)(2), and (c)(1) through (4);
■ b. Adding paragraph (c)(5);
■ c. Revising paragraphs (d), (e)(1)(i), (e)(1)(iii), (e)(1)(iv); (e)(2) introductory text, (e)(3) introductory text, and (e)(4);
■ d. Lifting the suspension of paragraph (e)(6) and removing the paragraph.

The addition and revisions read as follows:

§ 9.9 Analysis and reevaluation of practicable alternatives.

(a) * * *

(1) This section expands upon the directives set out in § 9.6 of this part in order to clarify and emphasize the requirements to avoid floodplains and wetlands unless there is no practicable alternative.

* * * * *

(b) * * *

(2) Alternative actions which serve essentially the same purpose as the proposed action, but which have less potential to affect or be affected by the floodplain or wetlands. In developing the alternative actions, the Agency shall use, where possible, natural systems, ecosystem processes, and nature-based approaches; and

* * * * *

(c) * * *

(1) Natural environment (including, but not limited to topography, habitat, hazards, when applicable);

(2) Social concerns (including, but not limited to aesthetics, historical and cultural values, land patterns, when applicable);

(3) Economic aspects (including, but not limited to costs of space, technology, construction, services, relocation, when applicable);

(4) Legal constraints (including, but not limited to deeds and leases, when applicable); and

(5) Agency authorities.

(d) * * *

(1) The Agency shall not locate the proposed action in the floodplain as established by § 9.7(c) or in a wetland if a practicable alternative exists outside the floodplain or wetland.

(2) If no practicable alternative exists outside the floodplain or wetland, in order to carry out the action the floodplain or wetland must itself be a practicable location in light of the review required in this section.

(e) * * *

(1) * * *

(i) The action is still practicable at a floodplain or wetland site, considering the flood risk and the ensuing disruption of natural values;

* * * * *

(iii) The scope of the action can be limited to increase the practicability of previously rejected non-floodplain or wetland sites and alternative actions; and

(iv) Harm to or within the floodplain can be minimized using all practicable means.

(2) Take no action in a floodplain unless the importance of the floodplain site clearly outweighs the requirements to:

* * * * *

(3) Take no action in a wetland unless the importance of the wetland site clearly outweighs the requirements to:

* * * * *

(4) In carrying out this balancing process, give the factors in paragraphs (e)(2) and (3) of this section great weight.

* * * * *

■ 11. Amend § 9.10 by revising paragraph (a), the second sentence of paragraph (b), (c) and (d) to read as follows:

§ 9.10 Identify impacts of proposed actions.

(a) This section ensures that the effects of proposed Agency actions are identified.

(b) * * * Such identification of impacts shall be to the extent necessary to comply with the requirements of this part to avoid floodplain and wetland locations unless they are the only practicable alternatives to minimize harm to and within floodplains and wetlands.

(c) This identification shall consider whether the proposed action will result in an increase in the useful life of any structure or facility in question, maintain the investment at risk and exposure of lives to the flood hazard or forego an opportunity to restore the natural and beneficial values served by floodplains or wetlands.

(d) In the review of a proposed or alternative action, the Regional Administrator shall consider and evaluate: impacts associated with modification of wetlands and floodplains regardless of its location; additional impacts which may occur when certain types of actions may support subsequent action which have additional impacts of their own; adverse impacts of the proposed actions on lives and property and on natural and beneficial floodplain and wetland values; and the three categories of factors listed below:

(1) *Flood hazard-related factors.* These include, but are not limited to, the factors listed in § 9.7(b)(3);

(2) *Natural values-related factors.* These include, but are not limited to: water resource values, as in storing and conveying floodwaters, maintaining water quality, and groundwater recharge; living resource values, as in providing habitats and enhancing biodiversity for fish and wildlife and plant resources; cultural resource values, as in providing open space, natural beauty, recreation, scientific study, historical and archaeological resources, and education; and cultivated resource values, as in creating rich soils for agriculture, aquaculture, and forestry.

(3) *Factors relevant to a proposed action's effects on the survival and quality of wetlands.* These include, but are not limited to: Public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

■ 12. Amend § 9.11 by:
■ a. Revising paragraphs (a) and (c)(1);
■ b. Revising the first sentence of paragraph (d) introductory text, the introductory text of paragraph (d)(1), paragraphs (d)(2), (3) and (4), the introductory text of paragraph (d)(5), and paragraph (d)(9);
■ c. Lifting the suspension of paragraph (e)(4) and removing paragraph (e); and
■ d. Redesignating paragraph (f) as paragraph (e) and revising newly redesignated paragraph (e).

The revisions read as follows:

§ 9.11 Mitigation.

(a) *Purpose.* This section expands upon the directives set out in § 9.6 of this part and sets out the mitigative actions required if the preliminary determination is made to carry out an action that affects or is in a floodplain or wetland.

* * * * *

(c) * * *

(1) Potential harm to lives and the investment from flooding based on flood elevations as established by § 9.7(c);

* * * * *

(d) *Minimization Standards.* The Agency shall apply, at a minimum, the following standards to its actions to comply with the requirements of paragraphs (b) and (c) of this section (except as provided in § 9.5(c), (d), and (g) regarding categories of partial or total exclusion). * * *

(1) There shall be no new construction or substantial

improvement in a floodway and no new construction in a coastal high hazard area, except for: * * *

(2) For a structure which is a functionally dependent use or which facilitates an open space use, the following applies: Any construction of a new or substantially improved structure in a coastal high hazard area must be elevated on adequately anchored pilings or columns, and securely anchored to such piles or columns so that the lowest portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the floodplain as established by § 9.7(c). The structure shall be anchored so as to withstand velocity waters and hurricane wave wash.

(3) *Elevation of structures.* The following applies to elevation of structures:

(i) There shall be no new construction or substantial improvement of structures unless the lowest floor of the structures (including basement) is at or above the elevation of the floodplain as established by § 9.7(c).

(ii) If the subject structure is nonresidential, instead of elevating the structure, FEMA may approve the design of the structure and its attendant utility and sanitary facilities so that the structure is water tight below the flood elevation with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(iii) The provisions of paragraphs (d)(3)(i) and (ii) of this section do not apply to the extent that FEMA Resilience has granted an exception under § 60.6(b) of this chapter, or the community has granted a variance which the Regional Administrator determines is consistent with § 60.6(a) of this chapter. In a community which does not have a FEMA regulatory product in effect, FEMA may approve a variance from the standards of paragraphs (d)(3)(i) and (ii) of this section, after compliance with the standards of § 60.6(a) of this chapter.

(4) There shall be no encroachments, including but not limited to fill, new construction, substantial improvements of structures or facilities, or other development within a designated regulatory floodway that would result in any increase in flood elevation within the community during the occurrence of the 1 percent annual chance (base) flood discharge. Until a regulatory floodway is designated, no fill, new construction, substantial improvements, or other development shall be permitted within the 1 percent annual chance (base) floodplain unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the 1 percent annual chance (base) flood more than the amount designated by the NFIP or the community, whichever is most restrictive.

(5) Even if an action is a functionally dependent use or facilitates open space uses (under paragraph (d)(1) or (2) of this section) and does not increase flood heights (under paragraph (d)(4) of this section), such action may only be taken in a floodway or coastal high hazard area if: * * *

* * * * *

(9) In the replacement of building contents, materials and equipment, the Regional Administrator shall require as appropriate, flood proofing and/or elevation of the building and/or elimination of such future losses by relocation of those building contents, materials, and equipment outside or above the floodplain as established by § 9.7(c).

(e) *Restore and preserve.* (1) For any action taken by the Agency which affects the floodplain or wetland and which has resulted in, or will result in, harm to the floodplain or wetland, the Agency shall act to restore and preserve the natural and beneficial values served by floodplains and wetlands.

(2) Where floodplain or wetland values have been degraded by the proposed action, the Agency shall identify, evaluate, and implement measures to restore the values.

(3) If an action will result in harm to or within the floodplain or wetland, the Agency shall design or modify the action to preserve as much of the natural and beneficial floodplain and wetland values as is possible.

■ 13. In § 9.12 amend paragraph (d) by:

■ a. Designating the introductory text as paragraph (d)(1);

■ b. Designating paragraphs (d)(1) through (6) as paragraphs (d)(1)(i) through (d)(1)(vi);

■ c. Designate the undesignated text after newly designated paragraph (d)(1)(vi) as paragraph (d)(2) and revise newly designated paragraph (d)(2) to read as follows:

§ 9.12 Final public notice.

* * * * *

(d) * * *

(2) When a damaged structure or facility is already being repaired by the State or local government at the time of the project application, the requirements of Steps 2 and 7 (§§ 9.8 and this 9.12) may be met by a single notice. Such notice shall contain all the information required by both sections.

■ 14. Revise § 9.13 to read as follows:

§ 9.13 Particular types of temporary housing.

(a) This section sets forth the procedures whereby the Agency will provide certain specified types of temporary housing at a private, commercial, or group site.

(b) Prior to providing the temporary housing described in paragraph (a) of this section, the Agency shall comply with the provisions of this section. For temporary housing not enumerated above, the full 8-step process (see § 9.6) applies.

(c) The actions described in paragraph (a) of this section are subject to the following decision-making process:

(1) The temporary housing action shall be evaluated in accordance with the provisions of § 9.7 to determine if it is in or affects the 1 percent annual chance (base) floodplain or wetland.

(2) No temporary housing unit may be placed on a site in a floodway or coastal high hazard area.

(3) An individual or family shall not be housed in the 1 percent annual chance (base) floodplain or wetland unless the Regional Administrator has complied with the provisions of § 9.9 to determine that such site is the only practicable alternative. The following factors shall be substituted for the factors in § 9.9(c) and (e)(2) through (4):

(i) Speedy provision of temporary housing;

(ii) Potential flood risk to the temporary housing occupant;

(iii) Cost effectiveness;

(iv) Social and neighborhood patterns;

(v) Timely availability of other housing resources; and

(vi) Potential harm to the floodplain or wetland.

(4) For temporary housing units at group sites, Step 4 of the 8-step process shall be applied in accordance with § 9.10.

(5) An individual or family shall not be housed in a floodplain or wetland (except in existing resources) unless the Regional Administrator has complied with the provisions of § 9.11 to minimize harm to and within floodplains and wetlands. The following provisions shall be substituted for the provisions of § 9.11(d) for temporary housing units:

(i) No temporary housing unit may be placed unless it is elevated to the fullest extent practicable up to the base flood elevation and adequately anchored.

(ii) No temporary housing unit may be placed if such placement is inconsistent with the criteria of the NFIP (44 CFR

parts 59 and 60) or any more restrictive Federal, State, or local floodplain management standard. Such standards may require elevation to the base flood elevation in the absence of a variance.

(iii) Temporary housing units shall be elevated on open works (walls, columns, piers, piles, etc.) rather than on fill where practicable.

(iv) To minimize the effect of floods on human health, safety and welfare, the Agency shall:

(A) Where appropriate, integrate all of its proposed actions in placing temporary housing units for temporary housing in floodplains into existing flood warning or preparedness plans and ensure that available flood warning time is reflected;

(B) Provide adequate access and egress to and from the proposed site of the temporary housing unit; and

(C) Give special consideration to the unique hazard potential in flash flood and rapid-rise areas.

(6) FEMA shall comply with Step 2 Early Public Notice (§ 9.8(c)) and Step 7 Final Public Notice (§ 9.12). In providing these notices, the emergency nature of temporary housing shall be taken into account.

(7) FEMA shall carry out the actions in accordance with Step 8, ensuring the requirements of this section and the decision-making process are fully integrated into the provision of temporary housing.

(d) *Sale or disposal of temporary housing.* The following applies to the permanent installation of a temporary housing unit as part of a sale or disposal of temporary housing:

(1) FEMA shall not permanently install temporary housing units in floodways or coastal high hazard areas. FEMA shall not permanently install a temporary housing unit in floodplains as established by 9.7(c) or wetlands unless there is full compliance with the 8-step process. Given the vulnerability of temporary housing units to flooding, a rejection of a non-floodplain location alternative and of the no-action alternative shall be based on:

(i) A compelling need of the family or individual to buy a temporary housing unit for permanent housing; and

(ii) A compelling requirement to permanently install the unit in a floodplain.

(2) FEMA shall not permanently install temporary housing units in the floodplain as established by § 9.7(c) unless they are or will be elevated at least to the elevation of the floodplain as established by § 9.7(c).

(3) The Regional Administrator shall notify FEMA Resilience of each instance where a floodplain location has been found to be the only practicable alternative for permanent installation of a temporary housing unit.

■ 15. In § 9.14, revise paragraphs (a), (b)(4), (5), (6), (b)(7)(ii) and (iii), and (b)(9) to read as follows:

§ 9.14 Disposal of Agency Property

(a) This section sets forth the procedures whereby the Agency shall dispose of property.

(b) * * *

(4) Identify the potential impacts and support of floodplain and wetland development associated with the disposal of the property in accordance with § 9.10;

(5) Identify the steps necessary to minimize, restore, preserve and enhance in accordance with § 9.11. For disposals, this analysis shall address all four of these components of mitigation where unimproved property is involved, but shall focus on minimization through elevation or floodproofing and restoration of natural values where improved property is involved;

(6) Reevaluate the proposal to dispose of the property in light of its exposure to the flood hazard and its natural values-related impacts, in accordance with § 9.9. This analysis shall focus on whether it is practicable in light of the findings from §§ 9.10 and 9.11 to dispose of the property, or whether it must be retained. If it is determined that it is practicable to dispose of the property, this analysis shall identify the practicable alternative that best achieves the Agency's mitigation responsibility.

(7) * * *

(ii) Properties located inside the floodplain but outside of the floodway and the coastal high hazard area; and

(iii) Properties located in a floodway, regulatory floodway, or coastal high hazard area.

* * * * *

■ 16. In § 9.16, revise paragraph (b) introductory text, paragraphs (b)(2) through (b)(5), and paragraph (c) to read as follows:

§ 9.16 Guidance for applicants.

* * * * *

(b) This shall be accomplished primarily through amendment of all Agency instructions to applicants, and also through contact made by agency staff during the normal course of their activities, to fully inform prospective applicants of:

* * * * *

(2) The decision-making process to be used by the Agency in making the determination of whether to take an action in or affecting floodplains or wetlands as set out in § 9.6;

(3) The practicability analysis as set out in § 9.9;

(4) The mitigation responsibilities as set out in § 9.11;

(5) The public notice and involvement process as set out in §§ 9.8 and 9.12; and

* * * * *

(c) Guidance to applicants shall be provided, where possible, prior to the time of application in order to minimize potential delays in the Agency's processing of the application due to failure of applicants to follow the provisions in this part.

■ 17. In § 9.17, revise paragraph (a), paragraph (b) introductory text, paragraphs (b)(3) through (b)(5), and paragraphs (c) and (d) to read as follows:

§ 9.17 Instructions to applicants.

(a) *Purpose.* In accordance with Executive Orders 11988, as amended, and 11990, the Federal executive agencies must respond to a number of floodplain management and wetland protection responsibilities before carrying out any of their activities, including the provision of Federal financial and technical assistance. This section provides notice to applicants for Agency assistance of both the criteria that FEMA is required to follow, and the applicants' responsibilities under this part.

(b) *Responsibilities of Applicants.* Based upon the guidance provided by the Agency under § 9.16, the guidance included in the U.S. Water Resources Council's Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Oder 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input, and based upon the provisions of the Orders and this part, applicants for Agency assistance shall recognize and reflect in their application:

* * * * *

(3) The practicability analysis as set out in § 9.9;

(4) The mitigation responsibilities as set out in § 9.11;

(5) The public notice and involvement process as set out in §§ 9.8 and 9.12; and

* * * * *

(c) *Provision of supporting information.* Applicants for Agency assistance may be required to provide supporting information relative to the various responsibilities set out in paragraph (b) of this section as a prerequisite to the approval of their applications.

(d) *Approval of applicants.* Applications for Agency assistance shall be reviewed for compliance with the

provisions in this part in addition to the Agency's other approval criteria.

■ 18. In § 9.18, revise paragraph (a)(1), the second sentence of paragraph (b)(1), and the first sentence of (b)(2) to read as follows:

§ 9.18 Responsibilities.

(a) * * *

(1) Implement the requirements of the Orders and this part. Under §§ 9.2, 9.6 through 9.13, and 9.15 where a direction is given to the Agency, it is the responsibility of the Regional Administrator.

* * * * *

(b) * * *

(1) * * * When a decision of a Regional Administrator relating to disaster assistance is appealed, FEMA Resilience may make determinations under this part on behalf of the Agency.

(2) Prepare and submit to the Office of Chief Counsel reports to the Office of Management and Budget in accordance with section 2(b) of Executive Order 11988, as amended, and section 3 of Executive Order 11990.* * *

Appendix A to Part 9 [Removed]

■ 19. Remove appendix A to part 9.

Deanne B. Criswell,

Administrator, Federal Emergency Management Agency.

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A new table will be published in the first issue of each month.

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